



CURRENT DEVELOPMENTS

# Canadian Securities & Auditing Matters

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# Canadian securities: New guidance

## Non-GAAP Measures and Other Financial Measures

In May 2021, the Canadian Securities Administrators (CSA) published NI 52-112 *Non-GAAP Measures and Other Financial Measures Disclosure*. The new rule expands existing guidance found in CSA Staff Notice (revised) 52-306 *Non-GAAP Financial Measures*. The guidance is largely consistent with respect to the disclosure requirements when a historical or forward-looking non-GAAP financial measure (NGFM) is disclosed in any written communication.

The rule introduces additional categories of measures requiring lesser amounts of disclosure:

- Non-GAAP ratios (NGR);
- Capital management measures (CMM);
- Total of segment measures; and
- Supplementary financial measures.

When a NGFM is included in another measure (it will be in an NGR or may be in a CMM) then the NGFM must be disclosed and all the disclosure requirements related to NGFMs met.

The rule allows certain disclosures to be cross-referenced to an issuer's management discussions and analysis (MD&A) (e.g. composition of the measure, usefulness of the measure, changes in the measure, quantitative reconciliation) that has been filed simultaneous or earlier than the other document. If the other document is an earnings release the quantitative reconciliation may not be cross-referenced.

For reporting issuers, the rule applies to documents filed for a financial year ending on or after October 15, 2021 (e.g. not required for the third quarter for calendar year-end entities). Investment funds under NI 81-06, designated foreign issuers and SEC foreign issuers are exempt. For non-reporting issuers, that rule applies to documents in scope filed after December 31, 2021.

## Start-up Crowdfunding Registration and Prospectus Exemptions and Guidance

In June 2021, the CSA published NI 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* and a CSA Staff Notice 45-329 *Guidance for using the start-up crowdfunding registration and prospectus exemptions*. The Staff Notice has two appendices, one aimed at businesses and the other aimed at funding portals.

The rule will come into force September 21, 2021 provided ministerial approvals are obtained.

The rule provides a harmonized national framework to facilitate securities crowdfunding for start-ups and early stage issuers.

The rule provides:

- An exemption from the prospectus requirement (the Start-up Crowdfunding Prospectus Exemption) that allows an issuer to distribute eligible securities through an online funding portal; and
- An exemption from the dealer registration requirement for funding portals that facilitate online distributions by issuers relying on the Start-up Crowdfunding Prospectus Exemption.

The aggregate gross proceeds raised by the issuer group during the 12-month period before the closing of the crowdfunding distribution cannot exceed \$1,500,000. When using the exemption Form 45-110F1 Offering Document must be completed and provided to the funding portal. The same form must also be provided to the securities regulator along with Form 45-106F1 Report of Exempt Distribution no later than 30 days after the crowdfunding distribution. There are numerous other requirements to be met by the issuer and funding portal.

Annex A of the publication identifies the key differences between the rule and the existing blanket orders.

## **Transitional relief for Mutual Funds with respect to Deferred Sales Charge Option**

The CSA has published amendments to NI 81-105 *Mutual Fund Sales Practices* to prohibit (the DSC ban) the payment by fund organizations of upfront sales commissions to dealers, which will result in the discontinuation of all forms of a compensation model referred to as the deferred sales charge option (the DSC option). In order to give dealers time to transition from the DSC option, the DSC ban is not effective until June 1, 2022 (the DSC transition period).

Certain other client focused reforms related to enhanced conflict of interest provisions and suitability provisions (including the requirement to put the client's interest first), come into effect on June 30, 2021 and December 31, 2021. As a result, there will be an overlap period of approximately 11 months between the effective date of the enhanced conflicts of interest provisions and the DSC ban and 5 months with the enhanced "client first" suitability provisions and the DSC ban.

In order to address any issues raised by the overlapping periods, the CSA has decided to grant relief from these enhanced standards in respect of the sale of DSC products during the DSC transition period.

The remainder of the client focused reforms will apply as of the original implementation date.

The relief orders issued as blanket orders will come into effect on June 30, 2021 and expire on June 1, 2022.

# Canadian securities: Proposed guidance

## Proposed Amendments to Continuous Disclosure Obligations

In May 2021, the CSA published Proposed Amendments to NI 51-102 *Continuous Disclosure Obligations* and requested feedback for semi-annual reporting for venture issuers.

Comments are due on or before September 17, 2021.

### *Proposed Amendments*

The proposed amendments to NI 51-102 change the annual and interim filing requirements of reporting issuers (other than investment funds). Specifically, the following new forms would be required:

- Annual Disclosure Statement
  - For a reporting issuer that is not a venture issuer: will combine in one filing the annual financial statements, MD&A and the annual information form (AIF);
  - For a venture issuer: will combine in one filing the annual financial statements and MD&A.

If a venture issuer intends to be short form prospectus eligible, it has the option to file a standalone AIF or combine the AIF into the one filing similar to a non-venture issuer.

- Interim Disclosure Statement
  - Combine in one filing the interim financial report and MD&A (or where appropriate, quarterly highlights).

In addition, the CSA has streamlined and clarified certain disclosure requirements for the MD&A and AIF.

The proposed amendments to NI 51-102 will also result in certain consequential amendments and changes to other rules and policies applicable to reporting issuers.

The final amendments are expected to be effective December 15, 2023, required for the first financial year ending on or after December 15, 2023. An issuer may voluntarily file earlier. If an Interim Disclosure Statement is voluntarily filed before an Annual Disclosure Statement, the MD&A must meet the requirements in the Annual Disclosure Statement.

### *Feedback on Proposed Semi-Annual Reporting*

The CSA also requested feedback on proposed semi-annual reporting for venture issuers. In particular:

- the proposal would be limited to venture issuers that are not SEC issuers;
- voluntary; and
- alternative disclosure would be required for interim periods where interim financial statements and MD&A are not filed.

The alternative disclosure via a news release would be provided within 60 days of the end of the interim period. It would:

- provide an update on the issuer's operations, major operating milestones, commitments, unexpected events, risks that are likely to materially affect operations going forward, and explain any significant changes from previous disclosures regarding the use of proceeds from any financing; and
- disclose information and events that are material, including those related to the following:
  - the issue or cancellation of any securities;
  - new or modified litigation or liabilities;
  - new or modified financing arrangements;
  - defaults under financing arrangements;
  - changes to the financial condition of the issuer;
  - the inability to pay debts as they become due; and
  - related party transactions.

Certain requirements would remain applicable such as:

- material change reporting requirements;
- Business Acquisition Report requirements for significant acquisitions; and
- timely disclosure requirements still applicable.

# Auditing matters

## Audits of less complex entities

The Auditing and Assurance Standards Board (AASB) provided input to the International Auditing and Assurance Standards Board (IAASB) members from Canada on the IAASB's project to develop a separate standard for audits of the financial statements of less complex entities (LCEs). Key issues discussed included:

- the extent of judgment inherent in the characteristics of complexity and how many of these characteristics an entity needs to exhibit before it is no longer appropriate to use the separate standard for audits of LCEs;
- understanding the related implications, including the work effort and reporting, of transitioning between International Standards on Auditing (ISAs) and the separate standard for audits of LCEs; and
- the proposed approach to maintain the separate standard for audits of LCEs, including the potential for narrow-scope amendments, when necessary.

The AASB expects to approve a Canadian discussion paper for audits of the financial statements of LCEs at its July 2021 meeting.

## Fraud

The AASB provided input to the IAASB members from Canada on issues related to the information the IAASB gathered on ISA 240, *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements*. Key issues discussed included possible actions to:

- address the presumed risks of fraud in revenue recognition;
- enhance the introductory paragraphs of the standard to clarify the auditor's responsibilities in relation to fraud; and
- retain the definition of fraud but incorporate additional guidance to address how other concepts, such as bribery and corruption, may impact the auditor's responsibilities related to fraud.

Based on the information it gathered, the IAASB anticipates approving a project proposal to revise ISA 240 at a future meeting.

## Group Audits

The AASB provided input to the IAASB members from Canada on issues related to the IAASB's project to revise ISA 600, *Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors)*. Key issues discussed included:

- clarifying the application of the risk-based approach in a group audit engagement;
- documenting the group auditor's determination that component auditors have the competence, capabilities, and sufficient time to perform the engagement; and
- removing the requirement related to using audit evidence from an audit performed for another purpose and including a general paragraph on this topic in the introduction of the standard.

## Quality management for firms

The AASB reviewed a draft of its exposure draft addressing conforming amendments to Other Canadian Standards, resulting from the January 2021 approval of Canadian Standard on Quality Management 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements*.

The AASB approved its exposure draft *Quality Management – Conforming Amendments to Other Canadian Standards* by email ballot vote.

The exposure draft will be issued in the summer of 2021, with comments due by September 30, 2021.



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