



CURRENT DEVELOPMENTS

Canadian Securities & Auditing Matters

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Table of contents

This edition provides a summary of newly effective and forthcoming regulatory and auditing matters in Canada in the quarter ended September 30, 2021.

03

Canadian securities: New guidance

- 03 Summary Report for Dealers, Advisers and Investment Fund Managers
- 03 New Self-Regulatory Organization Framework

04

Canadian securities: Proposed guidance

- 04 Proposed Listed Issuer Financing Exemption
- 04 Proposed Changes to Companion Policy 41-101CP Related to Financial Statement Requirements

06

Auditing matters

- 06 Audit Evidence
- 06 Audits of less complex entities
- 06 Auditor Reporting Post-implementation Review
- 06 Communicating with Actuaries
- 06 Fraud
- 06 Group Audits
- 07 Quality management for firms

Canadian securities: New guidance

Summary Report for Dealers, Advisers and Investment Fund Managers

In August 2021, the Ontario Securities Commission (OSC) published Staff Notice 33-752 *Summary Report for Dealers, Advisers and Investment Fund Managers*. The report has 4 parts:

- Outreach;
- Information for dealers, advisers and investment fund managers;
- Initiatives impacting registrants; and
- Acting on registrant misconduct.

New Self-Regulatory Organization Framework

In August 2021, the Canadian Securities Administrators (CSA) published CSA Position Paper 25-404 *New Self-Regulatory Organization Framework*. The paper indicates that the CSA had conducted an in-depth review of the current framework for the two Self-Regulatory Organization (SROs) – the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA).

Based on the review and extensive stakeholder consultations, the CSA has determined to establish a new single enhanced SRO and to consolidate two current investor protection funds which will be independent from the new SRO.

The position paper has 5 sections:

- Introduction;
- Methodology;
- New SRO Framework;
- Specific solutions to support the new SRO; and
- Consideration of written representations and next steps.

Canadian securities: Proposed guidance

Proposed Listed Issuer Financing Exemption

In July 2021, the CSA published a Notice and Request for Comment – Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* to introduce the Listed Issuer Financing Exemption.

The comment period ends October 26, 2021.

To be eligible to use the exemption, the issuer must have securities listed on a Canadian stock exchange, been a reporting issuer for 12 months in at least one jurisdiction in Canada and filed all timely and periodic disclosure documents as required under the continuous disclosure requirements in Canadian securities legislation. The exemption is not available if the issuer is planning to use the proceeds for a significant acquisition or restructuring transaction, such that the issuer would be required to provide additional financial statements under prospectus rules. The exemption applies to listed equity securities or securities convertible into listed equity securities.

The total dollar amount that an issuer may raise using the exemption during any 12 month period may not exceed:

- the greater of \$5 million or 10% of the aggregate market value of the issuer's listed equity securities, to a maximum total dollar amount of \$10 million; or
- 100% dilution.

The issuer must prepare and file a short offering document, proposed new Form 45-106F* *Listed Issuer Financing Document*, containing prescribed disclosure highlighting:

- any new developments in the issuer's business;
- the issuer's financial condition, including confirmation that the issuer will have sufficient funds to last 12 months after the offering;
- how proceeds from the current offering will be used; and
- how proceeds from any other offering in the previous 12 months were actually used.

The issuer must certify that the offering document, together with the continuous disclosure of the issuer for the past 12 months, contains disclosure of all material facts about the issuer or the securities being distributed and does not contain a misrepresentation.

The offering document would be prescribed as a "core document" in the issuer's continuous disclosure record, subject to statutory secondary market civil liability in the event of a misrepresentation.

Purchasers under the exemption would have two options for recourse in the event of a misrepresentation:

- rights of action under secondary market civil liability; and
- a contractual right of rescission against the issuer.

The issuer would be required to report use of the exemption by filing a Form 45-106F1 *Report of Exempt Distribution*.

Proposed Changes to Companion Policy 41-101CP Related to Financial Statement Requirements

In August 2021, the CSA published a Notice and Request for Comment – Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* related to Financial Statement Requirements.

The comment period ends October 11, 2021.

Form 41-101F1 *Information Required in a Prospectus* requires an issuer that is not an investment fund to include certain financial statements in its long form prospectus. These required inclusions include the financial statements of the issuer and any business or businesses acquired, or proposed to be acquired, if a reasonable investor reading the prospectus would regard the primary business of the issuer to be the business or businesses acquired, or proposed to be acquired (collectively, the Primary Business Requirements). The purpose of the Primary Business Requirements is to provide investors with financial history of the business of the issuer even if this financial history spanned multiple legal entities over the relevant time period.

The Primary Business Requirements also apply to instances where securities legislation and exchange requirements refer to disclosure prepared in accordance with Form 41-101F1. An example of this would be the requirement in Form 51-102F5 for an information circular relating to a restructuring transaction to contain prospectus-level disclosure.

The proposed changes aim to reduce the regulatory burden resulting from uncertainty about the interpretation of the Primary Business Requirements.

The primary proposed changes are outlined below.

Primary business

Examples of when a reasonable investor would conclude that an acquired business is the primary business of the issuer are when the acquisition was:

- a reverse takeover;
- a qualifying transaction for a capital pool company (CPC); and
- an acquisition that exceeds the 100% significance threshold calculated under subsection 35.1(4) of Form 41-101F1 *General Prospectus Requirements*.

The proposed changes add the following two examples:

- a qualifying acquisition or qualification transaction by a special purpose acquisition corporation (SPAC); and
- an acquisition that is less than the 100% significance threshold but still changes the primary business of the issuer, as disclosed in the prospectus.

Two specific, fact-based examples have been included to help issuers determine the circumstances where:

- an issuer may rely upon the “Optional Significance Tests” when determining whether the 100% significance threshold has been met; and
- an acquisition that is less than the 100% significance threshold still changes the primary business of the issuer, as disclosed in the prospectus.

Finally, the proposed changes clarify that an acquisition may constitute the acquisition of a business for securities legislation purposes, even if the acquired set of activities or assets does not meet the definition of a “business” for accounting purposes.

Predecessor entity

Guidance to help determine whether predecessor entities form or will form the basis of the issuer’s business has been added. An example is used to illustrate this guidance.

Additional information to be included in the prospectus

In the case of an issuer that has incurred significant growth through a series of pre-IPO acquisitions such that it has an insufficient financial history of the primary business, the proposed changes include guidance as to what additional information should be included in the prospectus, such as property or business valuation reports and forecasted cash flow information.

The obligation to provide business acquisition report level disclosure for a non-reporting issuer

The rules around significant acquisitions and business acquisitions as applicable to non-reporting issuers are confirmed as being substantively the same as those applicable to reporting issuers. The proposed changes refer issuers to the existing “decision tree” set out in Chart 2, Appendix A to CP 41-101 as a source of guidance.

Determining what constitutes a business or requires a business acquisition report – mining assets

The proposed changes will clarify that an acquisition of mining assets will not be considered to be a business requiring financial statements if all of the following apply:

- the acquisition of the mining assets was an arm’s length transaction;
- no other assets were transferred, and no other liabilities were assumed as part of the acquisition; and
- there has been no exploration, development or production activity on the mining assets in the three years (two years for a venture issuer) before the date of the preliminary long-form prospectus.

Corresponding changes to Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations* will confirm that the CSA would not consider an acquisition of mining assets to be a business requiring the filing of a business acquisition report, if the conditions set out directly above have been met.

Auditing matters

Audit Evidence

The Auditing and Assurance Standards Board (AASB) provided input to the International Auditing and Assurance Standards Board (IAASB) members from Canada on issues related to the IAASB's project to revise International Standard on Auditing (ISA) 500 *Audit Evidence*.

Key issues discussed included the proposed approach for using the terms "consistent and inconsistent" and "corroborate and contradict" in the context of exercising professional skepticism relating to audit evidence.

Audits of less complex entities

The AASB discussed a draft Canadian discussion paper *Exploring Standard-setting Options for Audits of Less Complex Entities*.

This discussion paper will seek input from stakeholders on possible options to explore in Canada to address the challenge of applying the Canadian Auditing Standards (CAS) to audits of less complex entities. This discussion paper also seeks views on:

- the concept of a separate standard for the audit of less complex entities; and
- the IAASB's Exposure Draft *Proposed International Standard on Auditing for Audits of Financial Statements of Less Complex Entities*.

Auditor Reporting Post-implementation Review

The AASB discussed issues related to the IAASB's post-implementation review of auditor reporting. Key issues discussed included:

- whether the IAASB should undertake a follow-up post-implementation review focusing on key audit matters (KAM) reporting; and
- whether the material uncertainties section in an auditor's report should be similar to KAM. In particular, the AASB discussed whether such material would be similar to close-call going concern assessments or set out the auditor's procedures undertaken.

Communicating with Actuaries

The AASB unanimously approved a project proposal to revise the Joint Policy Statement *Concerning Communications between Actuaries Involved in the Preparation of Financial Statements and Auditors*, found in the Appendix to CAS 500 *Audit Evidence*.

Fraud

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

- whether further transparency is needed related to fraud in the auditor's report;
- enhanced engagement team discussions on fraud considerations; and
- clarifying the relationship between ISA 240 and ISA 250 *Consideration of Laws and Regulations in an Audit of Financial Statements*, by developing new application material.

Group Audits

The AASB discussed 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:

- the need for guidance on using audit evidence from an audit conducted for statutory purposes, whether already completed or being performed; and
- how the group auditor determines whether, and to what extent, to review parts of the component auditor audit documentation.

The IAASB is expected to approve ISA 600 (Revised) at its December 2021 meeting. The AASB would approve CAS 600 in early 2022.

Quality management for firms

The AASB received a presentation related to the IAASB project to make conforming and consequential amendments to its non-International Standards in Auditing as a result of approving the quality management suite of standards. The AASB also received an update on the status of the Exposure Draft *Quality Management – Conforming Amendments to Other Canadian Standards* which has a comment deadline of September 30, 2021.



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