OSC Staff Notice 51-729

Corporate Finance Branch

2017-2018 Annual Report

October 4, 2018

OSC ONTARIO SECURITIES COMMISSION

Director's Message

As Director of the Corporate Finance Branch (the Branch or we), I am pleased to share our 2017-2018 Annual Report (the Report) outlining the operational and policy work of the Branch during the fiscal year ended March 31, 2018 (fiscal 2018).

This Report provides detail on how the Branch carried out its regulatory work in fiscal 2018 in a manner consistent with the Ontario Securities Commission's (the OSC) mandate to protect investors, to foster fair and efficient capital markets, and to contribute to the stability of the financial system and the reduction of systemic risk.

A key component of the Branch's work is issuer regulation and oversight of approximately 1,100 reporting issuers where the OSC is the principal regulator. The Ontario capital markets are constantly evolving as new sectors and products are being created and financed, novel approaches to obtaining financing are being tested, and social media platforms are increasingly being used by issuers to communicate with stakeholders.

Disclosure requirements are a cornerstone of investor protection and are essential for fair and efficient markets. This Report serves as a tool to support issuers and their advisors in meeting their disclosure obligations by discussing novel issues as well as areas where we have seen material deficiencies. We also highlight when the Branch will take remedial action, such as requiring refilings of disclosure documents, and referring matters to the Enforcement branch at the OSC to address deficient disclosure and other regulatory non-compliance concerns.

Every year we design and carry out targeted reviews of reporting issuers with the objective of upholding high standards of disclosure through our continuous disclosure (CD) review program. For example, recently we noted an increase in the potentially misleading use of non-GAAP financial measures. To improve disclosure in this area, the Canadian Securities Administrators (CSA) has recently published for comment Proposed National Instrument 52-112 *Non-GAAP and other Financial Measures Disclosure.*

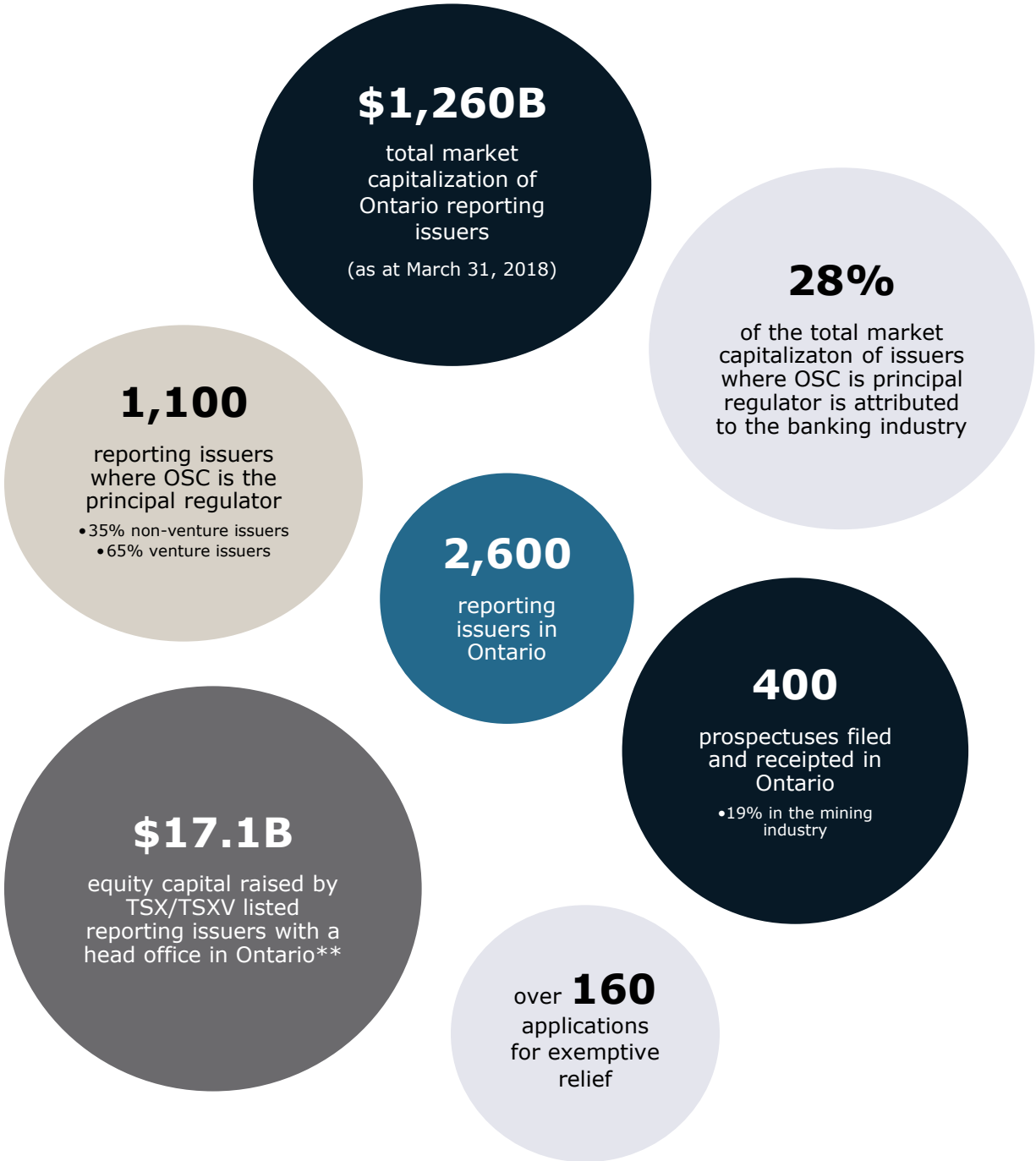
The Branch also continually considers new trends and potential areas of concern that may benefit from rule making, rule amendments or staff guidance. Among other key policy projects that are ongoing, the Report highlights a significant number of initiatives that will continue to be of focus in fiscal 2019 to reduce the regulatory burden on reporting issuers, including removing or modifying the criteria for reporting issuers to file a business acquisition report, facilitating at-the-market offerings, revisiting the primary business requirements, considering an alternative prospectus model, reducing certain CD requirements, and enhancing electronic document distribution for investors. We believe that initiatives such as these can reduce costs for issuers while maintaining essential investor protection measures.

Open communication and regular dialogue with issuers, their advisors, and those making investment decisions is an essential element of our policymaking and a critical component of our work. This Report is one aspect of our ongoing communication regarding compliance, trends, and market observations and we welcome your feedback or questions at any time.

Kind regards,

Huston Loke
Director, Corporate Finance
Ontario Securities Commission

Fiscal 2018 Snapshot*



** Note: all figures are approximate or rounded.*
*** Includes listed convertible debt.*

ONTARIO SECURITIES COMMISSION

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Objectives

This report provides an overview of the Branch's operational and policy work during fiscal 2018, discusses future policy initiatives, and sets out how we interpret and apply our rules in certain areas. The report is intended for individuals and entities we regulate, their advisors, as well as investors.

This report aims to:

- reinforce the importance of compliance with regulatory obligations
- improve disclosure in regulatory filings
- provide insights on trends
- provide guidance on novel issues
- inform on key policy initiatives

Branch Mandate

As a regulatory agency, the OSC administers and enforces the *Securities Act* (*Ontario*) (the Act) and the *Commodity Futures Act (Ontario)*. Specifically, the OSC works to:

Investor protection	• Provide protection to investors from unfair, improper or fraudulent practices.
Efficient capital markets	• Foster fair and efficient capital markets and confidence in capital markets.
Stability and reduction of systemic risk	• Contribute to the stability of the financial system and the reduction of systemic risk.

A key part of the mandate of the Branch is issuer regulation. Regulation in this area is broad and takes many forms, including the following

Issuer regulation	• review of public distributions of securities, • review of exempt market activities and related policy development, • continuous disclosure reviews of reporting issuers, • review and consideration of applications for relief from regulatory requirements, and • issue related policy initiatives.

Other areas covered by our mandate include

Insider reporting	• review of insider reporting,
Designated rating organizations (DROs)	• review of credit rating agencies designated as DROs,
Listed issuer regulation	• oversight of the listed issuer function for OSC recognized exchanges, and • policy initiatives for listed issuer requirements.

We regularly consult and partner with other branches across the OSC in executing our functions. For example, we partner with the Market Regulation branch for oversight of the listed issuer function and the Compliance and Registrant Regulation branch (CRR Branch) for oversight of the exempt market. We also regularly consult with the Enforcement branch regarding matters of non-compliance.

Part B: Compliance

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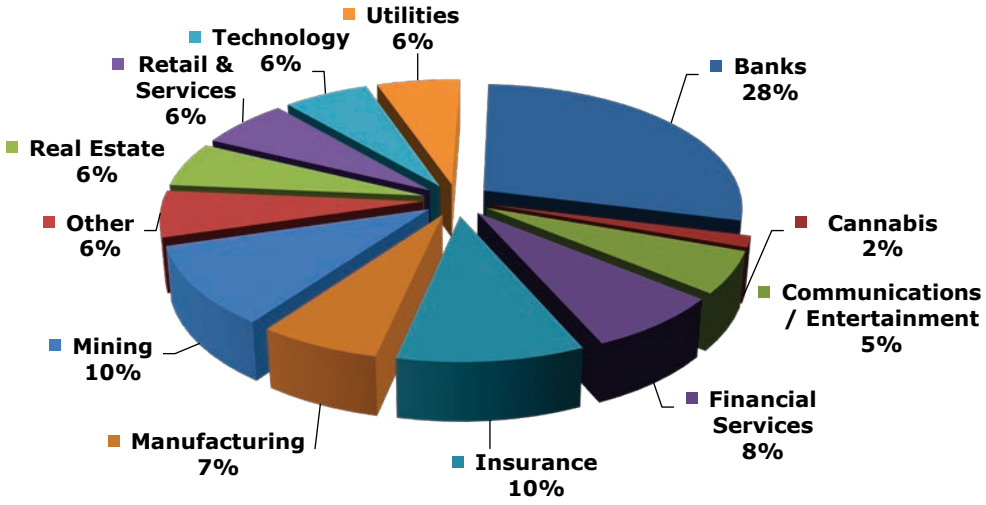
Continuous Disclosure Review Program

Under Canadian securities laws, reporting issuers must provide timely and periodic CD about their business and affairs. Where an issuer has a head office in Ontario, or has a significant connection to Ontario, the OSC has primary responsibility as principal regulator for reviewing that issuer's CD. Disclosure documents include periodic filings such as

- interim and annual financial statements,
- management's discussion and analysis (MD&A),
- certifications of annual and interim filings,
- management information circulars,
- annual information forms (AIF), and
- technical reports.

The market capitalization of Ontario reporting issuers was approximately $1,260 billion as at March 31, 2018 ($1,239 billion as at March 31, 2017). The three largest industries by market capitalization were banks, mining, and insurance.

Market capitalization of reporting issuers, broken down by industry as at March 31, 2018



Overview of the program

Our CD review program is risk-based and outcome focused. It includes planned reviews based on risk criteria as well as ongoing issuer monitoring through news releases, media articles, complaints and other sources. The CD review program is conducted pursuant to the powers in section 20.1 of the Act and is part of a harmonized CD review program conducted by the CSA.

For more information see CSA Staff Notice (Revised) 51-312 *Harmonized Continuous Disclosure Review Program.*

Objectives

The CD review program has two main objectives

Compliance	to assess whether reporting issuers are complying with their disclosure obligations, and
Issuer education and outreach	to help reporting issuers better understand their disclosure obligations.

We assess issuer compliance with CD requirements through a review of an issuer's filed documents, websites and social media. This review function is critical to facilitating fair and efficient markets, investor protection, and informed investment decision making and trading. CD reviews also support the raising of new capital, as many issuers raise funds through short form prospectuses which incorporate CD documents by reference.

Types of CD reviews

In general, we conduct either a "full" review or an "issue-oriented" review (IOR) of an issuer's CD.

Full review	Broad in scope and generally covering an issuer's most recent annual and interim financial statements and MD&A, AIF, annual reports, information circulars, news releases, material change reports, website, social media disclosure, investors' presentation, and SEDI filings.
IOR	An in-depth review focusing on a specific accounting, legal or regulatory issue that we believe warrants regulatory scrutiny.

In planning our full reviews, we draw on our knowledge of issuers and their industries and use risk-based criteria to identify issuers with a higher risk of non-compliant disclosure. We may also select an issuer for review based on a complaint. The criteria are designed to identify issuers whose disclosure is likely to be materially improved or brought into compliance with securities laws or accounting standards as a result of our intervention. Our risk-based procedures incorporate both qualitative and quantitative criteria which we review regularly to keep current with market changes. We also monitor novel and high growth areas of financing activity when developing our review program.

IORs can be focused on a specific issue related to an individual issuer or on an emerging area of risk related to a broad number of issuers (in some cases, industry specific). Conducting IORs broadly allows us to

- monitor compliance with requirements and provide a basis for communicating interpretations, staff disclosure expectations and areas of concern,
- quickly address specific areas where there is heightened risk of investor harm,
- identify common deficiencies,
- provide industry specific disclosure examples to assist preparers in complying with requirements, and
- assess compliance with new accounting standards.

Outcomes for fiscal 2018

For each issuer, we measure outcomes of a CD review by tracking the following

- prospective disclosure enhancements,
- refilings,
- education and awareness, and
- other outcomes, such as enforcement referrals.

We had at least one outcome in 97% of our full CD reviews and in 67% of our IORs (fiscal 2017: 95% and 90%, respectively. Given our risk-based criteria to identify issuers, the outcomes on a year-over-year basis should not be interpreted as trends since the issues and issuers reviewed each year are generally different).

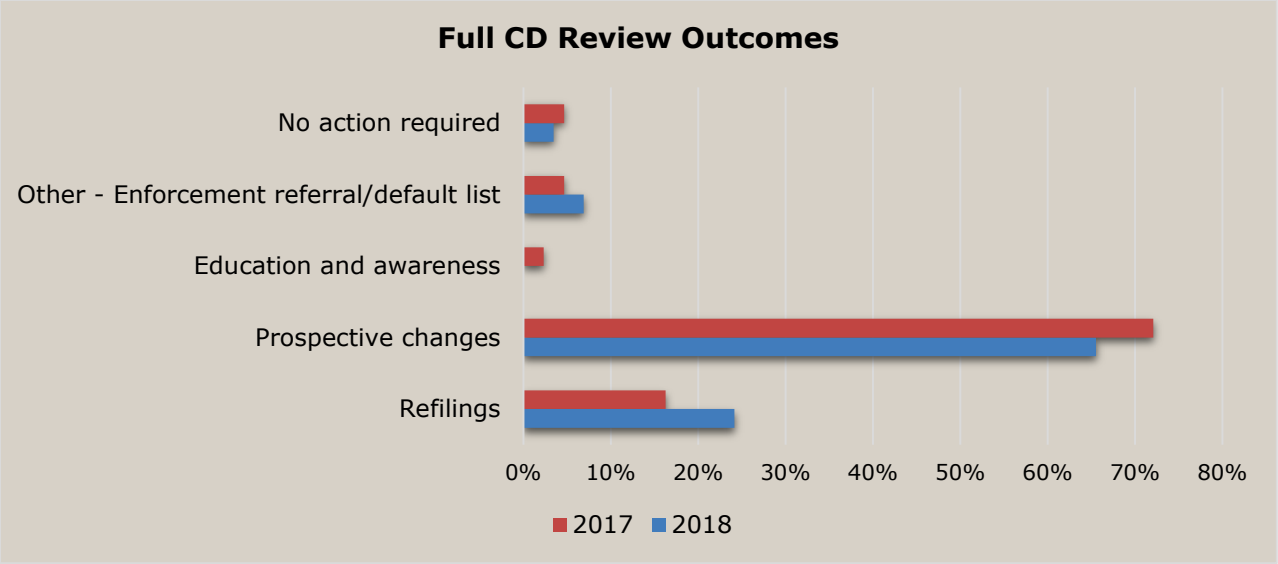
Prospective disclosure enhancements address disclosures that were either not presented or not sufficiently detailed to allow for an informed investment decision but did not reach a level of materiality where a refiling would be necessary.

Refilings

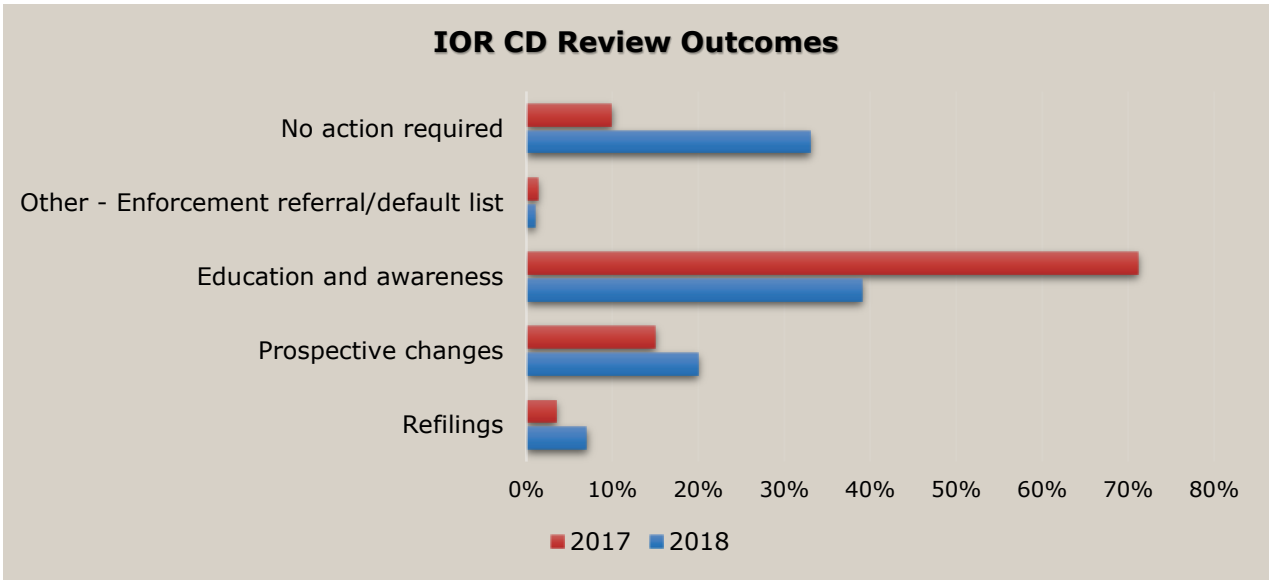
Examples of instances where staff have requested refilings include

- refiling of an MD&A to remove misleading non-GAAP financial measures and to give greater prominence to GAAP measures,
- filing of a clarifying news release when an issuer failed to update the market on material business developments,
- filing of a clarifying news release when an issuer failed to include sufficient disclosure on material assumptions, milestones and risk factors pertaining to forward-looking information (FLI) or failing to update the market on FLI, and
- refiling of a technical report where the report filed was not in compliance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101).

24% of outcomes for full reviews and **7%** of IORs resulted in an issuer refiling a document



Significant fluctuations in outcomes from year to year are anticipated due to the differing nature of IORs conducted in a given fiscal year. For example, in fiscal 2018 we reviewed (i) the climate change-related disclosure of issuers and (ii) the distribution disclosures and non-GAAP financial measures in the real estate industry, while in fiscal 2017 we reviewed (i) social media disclosures by reporting issuers and (ii) disclosure of cyber security risks and incidents of all Ontario-based S&P/TSX Composite Index issuers. Specifically, the climate change-related disclosure reviews and the cyber security reviews were "research oriented" for which few letters were sent out; however, these reviews resulted in the publication of a staff notice and the outcomes were categorized as "education and awareness". These reviews raise market awareness through the publication of staff notices discussing review findings, staff disclosure expectations and providing examples of better industry specific disclosure.



Generally, MD&A and mining technical reports (and related news releases) continue to be the documents we most often request issuers to refile or file (in instances when documents were not filed in the first place). We encourage issuers to continue to review and improve their disclosure, including in those areas noted below which we frequently comment on as part of our reviews.

Trends and guidance

Management's Discussion and Analysis (MD&A)

MD&A is the cornerstone of a reporting issuer's overall financial disclosure that provides an analytical and balanced discussion of the issuer's results of operations and financial condition through the eyes of management. MD&A disclosure must be specific, useful and understandable.

The following table presents a summary of certain key issues, observations and best practices identified in our reviews.

Issue	Observations	Best practices
Liquidity and capital resources	Issuers disclose that "management believes the issuer has adequate working capital to fund operations" or "has adequate cash resources to finance future foreseeable capacity expansions".	Provide insight beyond the numbers by • discussing material cash requirements, • explaining how liquidity obligations have been settled or will be settled, and • quantifying working capital needs and how these needs relate to future business plans or milestones. Be specific about the period(s) to which the discussion applies and when additional financing is relied upon.
Discussion of operations	The variances in financial statement line items are stated without additional discussion.	The discussion should • include a detailed, analytical and quantified discussion of the various factors that affect revenues and expenses beyond the percentage change or amount, • provide insight into the issuer's past and future performance, and • be clear and transparent to be informative. Be specific and disclose information that readers need to make informed investment decisions.

Issue	Observations	Best practices
Risks and uncertainties	Itemized lists of risks are provided that are general in nature.	Be specific about • the material risks and uncertainties applicable to the issuer, and • the anticipated significance and impact those risks may have on the issuer's financial position, operations and cash flows. Explain how the issuer is mitigating the risk and update risk disclosures when circumstances change.
Changes in accounting policies including initial adoption	There is no discussion or analysis of the impact resulting from a change in accounting standards.	Include disclosure of • methods of adoption that the issuer expects to use, • the expected effect on the issuer's financial statements, and • the potential effect on the issuer's business including changes in business practices. Provide increasingly detailed qualitative and quantitative information about the expected impact of the new standards as the effective dates approach.
Summary of quarterly results	Changes in accounting policies are not explained when presenting quarterly results.	If the financial data presented for the eight most recently completed quarters has not been prepared in accordance with the same accounting principles (for example as a result of the adoption of a new accounting standard such as IFRS 15 *Revenue from Contracts with Customers*), disclose this and include the impact of the adoption of the new standard.

Reminder: Issuers must include a comparison in tabular form of disclosure an issuer has previously made about how the company was going to use proceeds (other than working capital) from any financing and include an explanation of variances and the impact of the variances, if any, on the issuer's ability to achieve its business objectives and milestones.

Mining disclosures

Disclosure of mineral resource estimates should provide adequate information on how the qualified person determined that a mineralized body has "reasonable prospects for eventual economic extraction", and therefore meets the 2014 Canadian Institute of Mining, Metallurgy and Petroleum definition of a "mineral resource".

Information provided should include

- the technical and economic factors used to determine the cut-off grade and geological continuity at the selected cut-off,
- metallurgical recovery,
- smelter payments,
- commodity price or product value,
- mining and processing method, and
- mining, processing, and general and administrative costs.

Issuers that disclose economic projections on a mineral project should be aware that forecasts of cash flows, operating costs, capital costs, production rates, or mine life are all considered to be the results of a preliminary economic assessment (PEA). Such disclosure triggers the requirement to file a technical report supporting this information.

Reminder: Issuers that disclose a PEA on an advanced property containing mineral reserves should follow the guidance outlined in CSA Staff Notice 43-307 *Mining Technical Reports – Preliminary Economic Assessments*.

We continue to see non-compliant disclosure of PEAs in technical reports which incorporate the economic analyses, production schedules, and cash flow models based on inferred mineral resources with economic studies based on mineral reserves. Issuers that make such non-compliant disclosure may be required to amend and refile their technical report.

In addition, issuers with mineral reserves on undeveloped mineral projects should regularly determine whether that mineral reserve is still economic, typically by applying a discounted cash flow analysis with updated assumptions.

Non-GAAP financial measures

Non-GAAP financial measures continue to be included by many issuers in news releases, MD&A, prospectus filings, marketing materials, investor presentations and on issuers' websites, as issuers believe this information provides additional insight into their overall performance.

As in past years, we continue to be concerned by the prominence of disclosure given to non-GAAP financial measures, the lack of transparency about the various adjustments made in arriving at non-GAAP financial measures, and the appropriateness of the adjustments themselves (e.g. excluding loan loss provisions from the calculation of net income and earnings per share (EPS) measures,

defining an adjustment such as acquisition costs as "one-time" when these are recurring every year). While the presentation of non-GAAP financial measures may be useful, we are concerned that the issues noted in our reviews have the potential to render such measures to be irrelevant, confusing or misleading.

Issuers should consider the guidance in CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (SN 52-306).

Summary of staff expectations regarding non-GAAP financial measures

1. state explicitly that the non-GAAP financial measure does not have any standardized meaning
2. name the non-GAAP financial measure in a way that distinguishes it from disclosure items specified, defined or determined under an issuer's GAAP and in a way that is not misleading
3. explain why the non-GAAP financial measure provides useful information to investors and the additional purposes, if any, for which management uses the non-GAAP financial measure
4. present with equal or greater prominence to that of the non-GAAP financial measure, the most directly comparable measure specified, defined or determined under the issuer's GAAP
5. provide a clear quantitative reconciliation from the non-GAAP financial measure to the most directly comparable measure specified, defined or determined under the issuer's GAAP
6. ensure that the non-GAAP financial measure does not describe adjustments as non-recurring, infrequent or unusual, when a similar loss or gain is reasonably likely to occur within the next two years or occurred during the prior two years
7. present the non-GAAP financial measure on a consistent basis from period to period

As the volume and nature of non-GAAP financial measures vary by industry and issuer, we note below a few examples and reminders of staff's expectations on an industry basis.

Examples: production costs, free cash flow

- *disclosure applies to results of economic analyses, production results and production guidance*
- *apply that measure consistently from period to period*
- *provide a clear explanation of how the measure is calculated*
- *investor presentations should be consistent with CD documents*

Mining

Example: AFFO

- *be transparent and disclose adjustments made in arriving at non-GAAP financial measures*
- *clarify how management uses each measure*
- *clearly identify the most directly comparable GAAP measure*
- *present GAAP information with greater or more prominence than non-GAAP financial information*

Real Estate

Examples: EBITDA, adjusted EBITDA

- *Do not describe adjustments as non-recurring, infrequent or unusual, when a similar loss or gain is reasonably likely to occur within the next two years or occurred during the prior two years*
- *When presenting EBITDA, it is misleading to exclude amounts for items other than interest, taxes, depreciation and amortization*

Technology

We caution issuers that the OSC may take regulatory action if an issuer discloses information in a manner that is considered misleading or otherwise contrary to the public interest. While we have reminded issuers of staff disclosure expectations in prior Corporate Finance Branch Annual Reports and as outlined in SN 52-306, we continue to see potentially misleading disclosures which have resulted in issuers having to file clarifying news releases and/or refile CD documents.

Regulatory Developments

To improve the disclosure surrounding non-GAAP financial measures and certain other financial measures, the CSA is intending to replace SN 52-306 with a Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* and a related proposed Companion Policy (Proposed Instrument).

The Proposed Instrument, published on September 6, 2018 for a 90-day comment period sets out disclosure requirements for non-GAAP financial measures and other financial measures (i.e., segment measures, capital management measures, and supplementary financial measures as defined in the Proposed Instrument). Comments should be submitted in writing by December 5, 2018.

Forward looking information (FLI)

Many issuers disclose FLI in news releases, MD&A, prospectus filings, marketing materials, investor presentations or on their website. FLI should provide valuable insight about the issuer's business and how the issuer intends to attain its corporate objectives and targets.

FLI Best Practices

- ✓ Clearly identify FLI so that readers are not confused and treat it as historical information.
- ✓ Adequately describe the key assumptions used and how primary risks may impact future performance.
- ✓ Disclose assumptions specific to the issuer.
- ✓ Issuers presenting FLI for multiple years should ensure FLI is supported by reasonable qualitative and quantitative assumptions that are disclosed. For example, an issuer projecting aggressive growth targets without the benefit of historical experience should be able to show:
  - a reasonable basis for those targets, including the key drivers behind the projected growth with reference to specific plans and objectives that support the projected growth, and
  - why management believes that each of the targets/FLI are reasonable.
- ✓ Include a discussion of the events and circumstances that occurred during the period and the **IMPACT** on the original target.
- ✓ A comparison of the actual results to the FOFI or financial outlook originally disclosed in previous documents allows investors the opportunity to assess the reasonableness of previous disclosure and adjust their expectations.

Presentation Tips

- ✓ Consider having a separate section dedicated to FLI.
- ✓ Present FLI though the use of tables and charts.
  - A table that sets out objectives, key specific assumptions and risks will clarify the relationship between the underlying key components and the FLI.
  - A discussion (including qualitative and quantitative explanation of the material differences) comparing actual results to previously disclosed financial outlook is very effectively communicated in disclosure by using a table format.

Reminder: When **cannabis issuers** make announcements about anticipated production capacity in a new facility under construction, such announcements should be supported by reasonable qualitative and quantitative assumptions not limited to, for example, a discussion of the size of the new facility and the historical output at the entity's other facilities of comparable size. Assumptions for financial projections should be specific and comprehensive, particularly with respect to quantitative details, such that an investor is able to clearly understand how each assumption used to develop the FLI contributes to the projections.

Investment entities

We continue to see new issuers that have determined they meet the criteria to be an "investment entity" under IFRS 10 *Consolidated Financial Statements* (IFRS 10) and measure substantially all of their investments at fair value through profit and loss, including their investments in subsidiaries. While disclosures have improved since the publication of staff guidance on disclosure expectations, we have observed additional instances where investee specific financial information and operational disclosure that was necessary to inform an investment decision was not provided.

For example, where a significant concentration exists in the issuer's investment portfolio, we expect issuers to provide sufficient disclosure about the investment to enable investors to evaluate the performance, operations and risks of the investee and the industry it operates in. This disclosure about an investee is particularly important when the investee is private and disclosure is not otherwise available to investors. At a minimum, we may request issuers to provide summary financial information about the investee company in the MD&A with a discussion of those results.

In addition, the investment portfolio should be presented with sufficient disaggregation and transparency to allow an investor to understand the key characteristics of the portfolio composition including the associated risks and the drivers of any change in fair value.

Given the nature of an investment entity's business and the importance of understanding the investment portfolio, we believe this objective is best met by disclosing a statement of investment portfolio. We note that these issues may also be raised at the time of filing the issuer's prospectus. As such, we encourage issuers to submit a pre-file and consult with staff in these circumstances.

For more information and guidance on disclosure considerations for investment entities and other entities that record investments at fair value see CSA Multilateral Staff Notice 51-349 *Report on the Review of Investment Entities and Guide for Disclosure Improvements*.

Crypto-asset sector disclosure

In fiscal 2018, there was significant growth in the blockchain and crypto-asset sector and several issuers announced plans to change or expand their business to include blockchain technology and/or crypto-assets.

National Policy 51-201 *Disclosure Standards* (NP 51-201) contains guidance on the importance of providing balanced disclosure to investors in disclosure documents, including news releases. The policy also notes that an issuer's news release should contain enough detail to enable investors to understand the substance and importance of the change it is disclosing.

Given that many issuers entering the crypto-asset sector in fiscal 2018 originated as issuers operating in unrelated industries and are in the early stages of development, staff are concerned that investors are not being provided with sufficient information to understand the business changes being proposed by these issuers.

When an issuer materially changes the focus of its business, it should ensure it communicates key information about its intended plans. Issuers should consider the level of disclosure to be included in a news release or material change report, which should include among other things, information about the time and resources required for the change in business as well as the barriers and obligations involved in realizing the change.

Reminder: Disclosure may be misleading where the information is not sufficient to provide a complete picture or is inconsistent with information already disclosed on SEDAR. We continue to monitor disclosure in this area closely and will request re-filings where disclosure appears to be unbalanced or misleading.

Refilings of corrections and errors

Any changes made by an issuer to its CD record, website or social media to comply with CD requirements should be communicated to the market in a transparent manner. On March 8, 2018, we published OSC Staff Notice 51-711 (Revised) *Refilings and Corrections of Errors*, to clarify and expand on our expectations when, during the course of a staff review, an issuer amends its CD record. This includes disclosure made on the issuer's website or on social media.

Reminder: Issuers should consider whether restating previously issued financial statements to reflect the correction of a material misstatement indicates that a deficiency in internal control over financial reporting (ICFR) exists and may represent a material weakness as described in section 9.4 of the Companion Policy to National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

For more information on recent outcomes from recent fiscal CD reviews across the CSA, see CSA Staff Notice 51-355 *Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2018 and March 31, 2017.*

Issue-oriented review staff notices published in fiscal 2018

During fiscal 2018, 91% of our reviews were issue-oriented (fiscal 2017: 86%). We published staff notices summarizing the findings from three IORs covering a broad range of issues. Below is a summary of some of the findings and guidance provided in these staff notices.

Distribution Disclosures and Non-GAAP Financial Measures in the Real Estate Industry

Real estate issuers need to be transparent about the various adjustments made in arriving at non-GAAP financial measures (such as AFFO) particularly maintenance capital expenditures and working capital. They should also provide appropriate disclosures when they are distributing more cash than they are generating from their operations, including the sources of cash used to fund the excess.

For more information see CSA Staff Notice 52-329 *Distribution Disclosures and Non-GAAP Financial Measures in the Real Estate Industry.*

Disclosure Regarding Women on Boards and in Executive Officer Positions

We note disclosure deficiencies where the disclosure is often vague or boilerplate in nature or is not provided at all. The disclosure requirements are intended to increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions, and the approach that specific TSX-listed issuers take in respect of such representation. This objective is most effectively achieved if the disclosure provides a clear description of the corporate governance practices that an issuer has adopted in relation to women on boards and in executive officer positions, or the reasons for not adopting such practices as the case may be.

For more information see CSA Multilateral Staff Notice 58-309 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices*.

Report on Climate-change Related Disclosure Project

Reporting issuers need to disclose in their AIF risk factors relating to their business that would be most likely to influence an investor's decision to purchase the issuers' securities. This includes disclosure of any climate change-related risks that are determined to be material to the reporting issuer. Further, reporting issuers need to discuss in their MD&A, an analysis of their operations for the most recently completed financial year, including commitments, events, risks or uncertainties that they reasonably believe will materially affect their future performance, including those related to climate-change, as applicable.

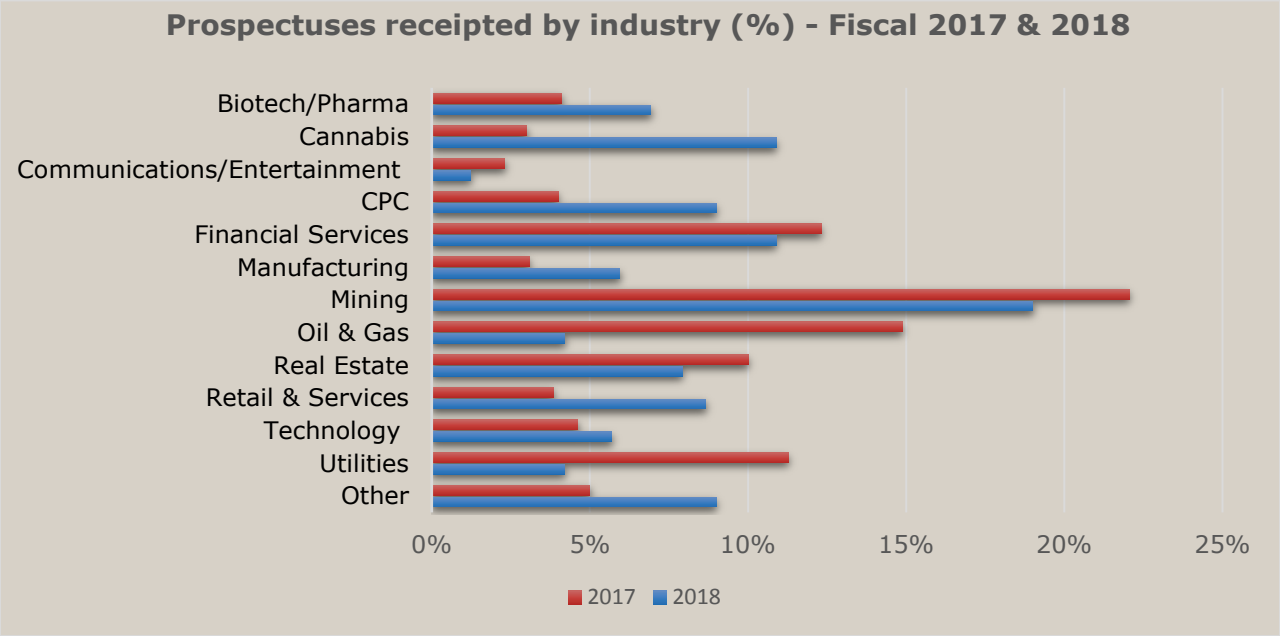
For more information see CSA Staff Notice 51-354 *Report on Climate change-related Disclosure Project.*

We continue to monitor the issues identified in the IORs noted above as well as issues identified in full reviews. This includes reviewing disclosure to confirm that issuers have provided prospective disclosure enhancements as requested by staff. Where an issuer fails to make an agreed prospective disclosure enhancement, staff will consider whether an alternative action such as a refiling is necessary.

Offerings - Public

Statistics

Another key component of our compliance work stream is the review of offering documents. In fiscal 2018, approximately 400 prospectuses that were filed in Ontario were receipted, similar to fiscal 2017. These filings covered a wide range of industries with mining, financial services and cannabis being the most active sectors based on the number of offerings.



Trends and guidance

In fiscal 2018, the number of prospectuses we reviewed where Ontario was the principal regulator was higher than the prior fiscal year. While the resource industries (mining, oil and gas) and the financial services industry performed strongly in the Canadian capital markets in fiscal 2018, another key factor for the increase in volume was the interest in the cannabis sector. Given the legalization of cannabis for recreational use in October 2018, we expect that the growth of the Canadian cannabis industry will continue.

Tip: The guidance in this section also applies to prospectus-level disclosure included in an information circular in connection with a proposed significant acquisition or a restructuring transaction as required by Item 14.2 of Form 51-102F5 *Information Circular* (Form 51-102F5).

Key takeaways from our work reviewing offering documents in fiscal 2018 are set out below. Many of the matters highlighted could benefit from pre-file discussions between issuers and staff to avoid delays at the time of the prospectus filing.

Reminder: The process to submit a pre-file to staff is outlined in National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*. For any relief sought in connection with an offering where the relief will be evidenced by receipt, issuers should provide written submissions explaining why relief is required. See OSC Staff Notice 41-703 *Corporate Finance Prospectus Practice Directive #2 – Exemption from Certain Prospectus Requirements to be Evidenced by a Receipt*.

Primary business in an initial public offering (IPO)

The requirements for an issuer's primary business are one of the areas currently under consideration as part of the policy initiative *Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (see Part C for further details). Until this project is completed, the guidance issued for primary business in OSC Staff Notice 51-728 *Corporate Finance Branch 2016-2017 Annual Report* continues to apply.

Disclosure improvements

Disclosure outcomes, where we required material disclosure changes to a prospectus, remained our most consistent outcome. Highlighted below are areas where we frequently find deficiencies.

Description of the business and regulatory environment	Issues may arise in circumstances where an issuer • appears to have no business or the offering is a blind pool, • has a complex corporate structure, • has a significant change in business or operations, • is in the cannabis industry or cryptocurrency sector and lacks disclosure about its specific regulatory environment, or • has recently completed a significant acquisition or capital restructuring where a securities regulatory review has not been carried out.
Risk factors relating to the business and/or offering	Avoid boilerplate language and tailor the disclosure to the issuer's situation (e.g. assess political/regulatory risk, discuss factors that may affect the issuer's title to its assets). • Be specific about any new risks affecting the issuer's business. • Discuss any steps the issuer has taken to mitigate the risk. • Do not include risk factors that do not apply to the issuer just because another issuer in the same industry does.

MD&A disclosure in a long form prospectus	• Include relevant information and provide sufficient detail, especially regarding those items highlighted in this report under the heading "Compliance – Continuous Disclosure Review Program – Trends and Guidance". • MD&A included in a long form prospectus should be just as comprehensive as a stand-alone MD&A.
Use of proceeds	• Provide sufficient detail and be comprehensive. Generic phrases such as "for general corporate purposes" are insufficient disclosure. • Provide an itemized description of how the proceeds will be used. • If proceeds are being raised to take advantage of favourable market conditions, state so clearly in the prospectus. • Use a table format to explain and disclose variances between the intended and actual uses of proceeds from prior financings, if not already disclosed in the MD&A.

Sufficiency of proceeds and financial condition of an issuer

The Act sets out specific circumstances under which a receipt for a prospectus shall not be issued. One example is where the aggregate of the proceeds being raised under the prospectus together with the other resources of the issuer are insufficient to accomplish the purpose of the offering as stated in the issuer's prospectus. The same considerations apply for a non-offering prospectus.

As such, a critical part of every prospectus review is considering the issuer's financial condition and intended use of proceeds (or available funds for a non-offering prospectus). A prospectus must contain clear disclosure of how the issuer intends to use the proceeds raised in the offering as well as disclosure of the issuer's financial condition, including any liquidity concerns. Information we may request issuers to include in describing an issuer's financial condition are disclosure regarding negative cash flows from operating activities, working capital deficiencies, net losses and significant going concern risks. This disclosure is important to investors because it provides appropriate warnings about significant risks that the issuer is facing or may face in the short term and may help investors avoid or minimize negative consequences when making investment decisions.

In some instances, an issuer's representations about its ability to continue as a going concern and the period during which it expects to be able to continue operations may be inconsistent with the issuer's historical statements of cash flows (in particular, its cash flows from operating activities). In these cases, we may request that the issuer provide a cash flow forecast or financial outlook-type disclosure to support its expected period of liquidity (i.e., ability to continue operations). However, disclosure on its own may not be sufficient to satisfy our receipt refusal concerns in certain circumstances, particularly where the issuers' assumptions on future changes in operations are not objective and supportable.

Reminder: A principal purpose of the sufficiency of proceeds receipt refusal provision is to protect the integrity of the capital markets, which would be harmed if an issuer ceased operations on account of insufficient funds shortly after completing a public offering.

An issuer may need to change the structure of an offering to address concerns regarding the issuer's financial condition (e.g. minimum subscription, find additional sources of financing). This could also apply to a non-offering prospectus.

For issuers filing a base shelf prospectus, we may take the view that the structure of a base shelf prospectus is not appropriate given the issuer's financial condition and uncertainty of financing. Typically, receipt refusal concerns on financial condition arise if the issuer does not appear to have sufficient cash resources to continue operations for the next 12 months or to meet concrete developmental milestones expected to be completed in the next 12 months given the business plan and intention of the issuer. In these cases, to address our concern that incremental drawdowns may be insufficient to satisfy the issuer's short term liquidity requirements, we may request that the issuer

- withdraw the base shelf and file a short form prospectus with a minimum subscription amount,
- withdraw the base shelf and file a short form prospectus with a fully underwritten commitment, or
- arrange for additional committed sources of financing.

For more information and guidance, issuers, including those filing a base shelf or non-offering prospectus, should review CSA Staff Notice 41-307 *Corporate Finance Prospectus Guidance - Concerns regarding an issuer's financial condition and the sufficiency of proceeds from a prospectus offering*.

Audit committees in place in IPOs

Where an issuer files an IPO prospectus, it must have an audit committee in place that meets the composition requirements prescribed in National Instrument 52-110 *Audit Committees* (NI 52-110) no later than the date of the receipt for the final prospectus.

- *Non-venture issuers*: must have an audit committee in place that is composed of at least three members, all of whom are independent and financially literate as defined in NI 52-110 (subject to exemptions set out in NI 52-110).
- *Venture issuers*: must have an audit committee in place that is composed of at least three members, a majority of whom are not executive officers, employees or control persons of the issuer or of an affiliate of the issuer.

Material contracts

We encourage issuers to review all contracts entered into within the last financial year, or before the last financial year if the contract is still in effect, to determine whether the contract is a "material contract" that must be filed on SEDAR. While material contracts entered into in the ordinary course of business are generally exempt, we remind issuers that any material contract on which the issuer's business is substantially dependent must be filed (for issuers operating in the Canadian medical cannabis industry, see below).

Reverse takeover transactions (RTO)

Issuers conducting their first public offering following an RTO should be mindful of the requirements in Item 10A.1 of Form 44-101F1 *Short Form Prospectus*. If the RTO was completed after the end of the financial year in respect of which the issuer's current AIF is incorporated by reference into the short form prospectus, the prospectus is required to include the same disclosure about the RTO acquirer that would be contained in Form 41-101F1 *Information Required in a Prospectus* if the RTO acquirer were the issuer of the securities being distributed.

Issuers should consider whether their current CD and documents incorporated by reference into the prospectus satisfy the disclosure requirements in National Instrument 41-101 *General Prospectus Requirements* in respect of the RTO acquirer, including financial statements for the required period. Some of the most common deficiencies we note include

- predecessor entity financial statements or primary business financial statements are omitted,
- missing MD&A for the relevant periods (annual and interim periods) for the RTO acquirer,
- missing comparative years auditor's report incorporated by reference (if a change of auditors has occurred), and
- auditors are not named as experts.

Cannabis industry

We note that issuers in the cannabis industry may operate in several different jurisdictions and the regulatory uncertainty, differences in legal and regulatory frameworks across jurisdictions, and other novel considerations should be disclosed to investors. We have included specific guidance by jurisdiction for issuers operating in the cannabis industry as noted below.

Jurisdiction	Guidance
Canada	We expect that the growth of the Canadian cannabis industry will continue given the legalization of cannabis for recreational use in October 2018. Canadian licensed medical cannabis producers have conducted significant public equity financings over the last few years and are investing heavily in production capacity expansion projects. If issuers publicly state that they are funding construction projects to expand their current production growth facilities (in anticipation of the legalized recreational cannabis market in Canada), such disclosure should be qualified, as appropriate, by specific risk factor disclosure. As issuers in the Canadian medical cannabis industry operate in a complex legal and regulatory framework, these issuers should file on SEDAR as material contracts their Health Canada licenses, and leases for facilities associated with those licenses, on which their business is substantially dependent.
United States of America (U.S.)	Issuers that have, or are in the process of developing, cannabis-related activities in the U.S. should also review the specific disclosure expectations set out in CSA Staff Notice 51-352 (Revised) *Issuers with U.S. Marijuana-Related Activities.* Issuers with cannabis-related activities in the U.S. assume certain risks due to conflicting state and federal laws. While some U.S. states have authorized the use and sale of cannabis, it remains illegal under U.S. federal law. The federal law relating to cannabis could be enforced at any time, and this would put issuers with U.S. cannabis-related activities at risk of being prosecuted and having their assets seized. We expect issuers with cannabis-related activities in the U.S. to address the current legal and regulatory environment in their disclosures, including any related risks that result from government policy changes or the introduction of new or amended guidance, laws or regulations regarding cannabis regulation. Staff's specific disclosure expectations apply to all issuers with U.S. cannabis-related activities, including those with direct and indirect involvement in the cultivation and distribution of cannabis, as well as issuers that provide goods and services to third parties involved in the U.S. cannabis industry. Staff expect these disclosures to be clearly and prominently disclosed in prospectus filings and other required documents such as an issuer's AIF, marketing materials, and MD&A. In the context of a prospectus, such disclosure should include bold boxed cover page disclosure about the illegal nature of cannabis under U.S. federal law and the potential associated risks. We also expect issuers with U.S. cannabis-related activities who enter our capital markets through an RTO or spinoff transaction to include these disclosures in their listing statement, or other documents, as applicable.

Jurisdiction	Guidance
Other Foreign Jurisdictions	The growing trend towards legalization of cannabis laws has created opportunities for Canadian reporting issuers to engage, directly or indirectly (through investments or otherwise), in foreign cannabis operations that operate legally within the confines of a foreign regulatory framework. We encourage issuers and their advisors to consult with staff on a pre-file basis in these circumstances to discuss the appropriate level of disclosure and potential risks and other novel considerations that may arise. Issuers involved in cannabis activities in foreign jurisdictions should specifically describe the regulatory and legal framework of cannabis in these foreign jurisdictions including details about the nature of their involvement in such foreign jurisdictions. Licenses, leases for facilities associated with those licenses and agreements on which the issuer's business is substantially dependent on in the foreign jurisdiction should be filed as material contracts on SEDAR.

For more information:
CSA Staff Notice 51-352 (Revised) *Issuers with U.S. Marijuana-Related Activities*

CSA Staff Notice 51-342 *Staff Review of Issuers Entering Into Medical Marijuana Business Opportunities*

Prospectus filings - timing

Reminder: A preliminary prospectus, together with all accompanying materials in acceptable form, should be filed before 12:00 p.m. on the day that the receipt is required. If materials are filed after 12:00 p.m., the receipt will normally be issued before 12:00 p.m. on the next business day and dated as of that day.

If issuers anticipate filing a preliminary prospectus within a reasonable period of time after 12:00 p.m. (or 3:00 p.m. for a bought deal prospectus) and need a receipt issued that day, they should advise the prospectus review officer by email at prospectusreviewofficer@osc.gov.on.ca and explain the reason for not filing before the applicable deadline. We will attempt to accommodate these requests, but there is no assurance that a receipt will be issued on the same day.

Where an issuer plans to conduct an overnight marketed deal, the issuer should (a) advise the prospectus review officer by email no later than the morning of the day on which the receipt is required (but prior to filing the materials), and (b) file all materials in acceptable form before 12:00 p.m. that day. In such cases, we will make reasonable efforts to issue a receipt for the preliminary prospectus at or just after 4:00 p.m. on the day of the filing.

Each year, we receive requests to issue a receipt for a preliminary prospectus at a specific time of the day. In rare circumstances, staff may consider this request where the issuer can demonstrate that there would be a material adverse consequence to an issuer if a preliminary receipt is not issued at the specific time. The issuer should make such a request along with reasons in its cover letter accompanying the filing of the preliminary prospectus. The issuer should acknowledge that it bears the risk of the receipt being issued at a time other than the requested time. Issuers should note that we cannot guarantee that the request will be satisfied and there is a practical risk that the receipt will be issued at a time other than the requested time.

Offerings – Exempt Market

Recent changes to increase access to the exempt market have expanded investment opportunities for all investors, including retail investors. The OSC recognizes the need to be vigilant in its oversight of these markets as they evolve under the new regulatory framework. Our program for overseeing distributions in the exempt market, including those under the new prospectus exemptions, has three main elements

- to assess whether issuers are complying with their disclosure obligations,
- to help issuers better understand their disclosure obligations, and
- to be able to analyze and report on the use of prospectus exemptions.

Our Branch and the CRR Branch have primary responsibility for oversight of compliance in the exempt market. Both branches are working to coordinate and conduct the compliance reviews of issuers and registrants.

Assessing Compliance

As part of the compliance and oversight program, the OSC oversees issuers and registrants that distribute securities under prospectus exemptions to confirm whether they are complying with their respective obligations.

We use a risk-based approach to select issuers for review. As part of our reviews, we look at offering materials that are distributed to investors. In reviewing the offering materials, we look to identify misuse of the exemptions and conduct that may be contrary to the public interest. Where warranted, we will take appropriate compliance and cross-branch referral action, including recommendations on enforcement action.

Oversight activities for fiscal 2018 focused primarily on increasing coordination and joint reviews with staff of the CRR Branch and a continued emphasis on the use of the offering memorandum exemption (OM Exemption) under section 2.9 of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106), which came into force on January 13, 2016.

Enhancing Awareness

We issued comment letters to issuers in connection with reviews primarily for the following reasons

- repeated offerings to retail investors by issuers not using a registered dealer,
- failure to comply with the disclosure requirements of the OM Exemption, including financial statement requirements,
- failure to file marketing materials,

- insufficient disclosure regarding the business of the issuer, such as operating history and information regarding the issuer's mortgage portfolio (if applicable),
- use of the OM Exemption to distribute structured finance products, and
- out of date disclosure.

Frequent market activity without involvement of a registered dealer

We conducted a joint review with CRR staff of issuers that accessed the exempt market repeatedly without using a dealer. Our focus in these reviews was to ascertain whether these issuers were complying with the terms of the prospectus exemptions relied upon.

We found several issues with exemption compliance, including

- Reliance on the family, friends and business associates (FFBA) exemption where the purchaser lacked the requisite relationship with a principal of the issuer. In particular, we remind issuers, that a relationship between the purchaser and an officer of the related dealer is not sufficient to satisfy the requirements of the exemption.

- Reliance on the accredited investor exemption without taking reasonable steps to verify that the purchaser meets the definition of an accredited investor. Issuers are required to maintain adequate records to demonstrate compliance with securities law and in several cases it appears that inadequate steps were taken to verify the accredited investor status and inadequate documentation was maintained.

- Non-compliance with the investment limits under the OM Exemption:

    - Issuers are required to take reasonable steps to determine whether an investor is an eligible investor and to confirm compliance with the appropriate investment limit for purchases under the exemption.
    - A positive suitability assessment by a registrant is required for an eligible investor to exceed the $30,000 annual limit for purchases under the exemption. Issuers that are offering securities directly, without the involvement of a registered dealer, cannot sell securities to an eligible investment in excess of the $30,000 annual limit.

- Failure to provide or correctly complete the required risk acknowledgement forms under the accredited investor, OM and FFBA exemptions.

- Discrepancies between the reporting of trades under the report of exempt distribution and the issuer's records of the securities actually issued.

We remind issuers that offer their own securities to continually assess whether they are trading in, or advising on, securities for a business purpose and, therefore, subject to the dealer or adviser registration requirements. A discussion of the factors relevant to that determination is included in section 1.3 of the Companion Policy to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103CP).

Disclosure requirements

Issuers relying on the OM Exemption frequently have complex structures with funds being raised by one issuer that are loaned or otherwise invested in another entity that conducts the business activities intended to produce a return on investment. We note that where such a structure is used, it is the issuer's responsibility to ensure that the offering memorandum contains sufficient information to allow a potential purchaser to make an informed investment decision in relation to the securities being distributed.

Ongoing disclosure requirements

Issuers are required to make their audited annual financial statements reasonably available to each purchaser of securities distributed under the offering memorandum and to deliver the financial statements to the OSC.

These financial statements must be accompanied by a notice detailing the use of funds raised under the exemption in accordance with Form 45-106F16 *Notice of Use of Proceeds*. The audited financial statements must be prepared in accordance with International Financial Reporting Standards.

Reminder: When filing audited annual financial statements and notices of use of proceeds, issuers should do so on the OSC Electronic Filing Portal by selecting "Annual financial statements required to be delivered pursuant to s. 2.9 (17.5) of NI 45-106*, including 45-106F16 Notice of Use of Proceeds*." Alternatively, the audited annual financial statements can be attached to the issuer's latest offering memorandum if an updated offering memorandum is being filed concurrently.

As indicated in Appendix D of OSC Rule 13-502 *Fees* (the Fee Rule), we remind issuers that a fee for the late delivery of annual financial statements to the OSC will be levied.

Marketing materials

Any marketing materials used in connection with a distribution under the OM Exemption must be incorporated by reference into the prescribed form of offering memorandum and filed with the OSC (either as an attachment to a report of exempt distribution or through the OSC electronic filing portal) within 10 days of the first use of the materials. This requirement is subject to a limited exception that allows the use of an "OM standard term sheet". We found in several instances where issuers have delivered or made available materials to prospective investors without filing those materials.

Reminder: Issuers that use exemptions other than the OM Exemption, such as the accredited investor exemption, FFBA exemption, private issuer exemption or minimum amount exemption, should consider the requirements of OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501) regarding disclosure provided in connection with the distribution of securities.

Material purporting to describe the business and affairs of an issuer that are prepared primarily for prospective investors will generally fall within the definition of "offering memorandum" in section 1(1) of the Act. While the use of such documents is voluntary and not subject to specific form requirements, Part 5 of OSC Rule 45-501 provides that statutory rights of action in favour of a purchaser of securities will apply if the material contains a misrepresentation. Furthermore, an issuer is required to include a description of these statutory rights and deliver the material to the OSC within 10 days. These requirements may apply to materials such as investor presentations, letters or brochures.

Distributions outside of Ontario

OSC Rule 72-503 *Distributions Outside Canada* (OSC Rule 72-503) became effective on March 31, 2018. The rule (and related companion policy) modernizes and replaces Interpretation Note 1 *Distributions of Securities outside Ontario*, bringing greater certainty to cross-border activities in Ontario by providing explicit exemptions from prospectus and registration requirements for distributions of securities outside Canada.

Priorities

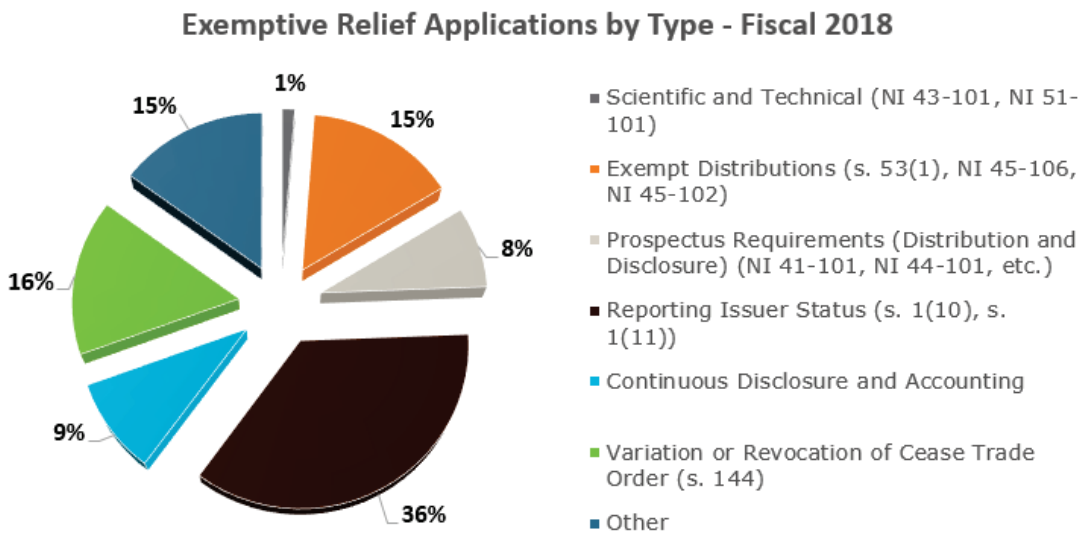
We expect to continue to focus on integrating our compliance reviews with the CRR Branch registrant reviews in the next fiscal year. In addition, we will prioritize reviews of distributions in the real estate and mortgage sector as we consider issues related to the updated regulation of syndicated mortgage investments. Refer to "Part C - Responsive Regulation - Syndicated Mortgages" for additional details.

Exemptive Relief Applications

Staff review and make recommendations to appropriate decision makers on applications for exemptive relief. The review standard for granting relief varies, but it generally requires a decision maker to determine that granting the requested relief would not be prejudicial to the public interest.

Statistics

In fiscal 2018, we reviewed over 160 applications for exemptive relief from various securities law requirements (fiscal 2017: over 170).



Trends and guidance

While the number of applications received in fiscal 2018 was slightly lower than fiscal 2017, the proportion of the various types of applications has been generally consistent over the last few fiscal years. Applications for relief in connection with reporting issuer status remained the predominant type of application, followed by partial or full revocations of cease trade orders and exempt distributions.

We will continue to monitor the types of applications we receive and the exemptive relief granted to determine whether we should consider changes to our rules or policies.

Key takeaways from our exemptive relief work in fiscal 2018 are set out below.

Tip: Prior OSC orders and exemptive relief decisions can be found on the OSC website or on CanLII at https://canlii.org/en/on/onsec/.

Revocation of failure-to-file cease trade orders

Under Multilateral Instrument 11-103 *Failure-to-file Cease Trade Orders in Multiple Jurisdictions* and local statutory provisions adopted by certain CSA jurisdictions: (i) a failure-to-file cease trade order will generally result in the same prohibition or restriction in other participating jurisdictions; and (ii) a reporting issuer will generally deal only with the regulator that issued the failure-to-file cease trade order if it is seeking a revocation or variation of this order that has the same result in multiple jurisdictions.

National Policy 11-207 *Failure-to-file Cease Trade Orders and Revocations in Multiple Jurisdictions* outlines the interface process for Ontario to opt into decisions to issue and revoke failure-to-file cease trade orders made by other CSA regulators. We remind issuers that in Ontario, as a result of amendments to the Act and the Fee Rule, the OSC can treat the filing of the CD document referred to in a failure-to-file cease trade order that has been in effect for 90 days or less as an application for the revocation of the cease trade order. An application and related fee is not required in this circumstance.

Revocation of a cease trade order that has been breached

If an issuer has breached the terms of a cease trade order, it can still seek a revocation. However, we will ask for disclosure of the circumstances surrounding the breach in the draft decision document which staff will consider in making a recommendation in connection with the issuer's application. In some cases, staff will not recommend granting a revocation order in the face of one or more breaches of the cease trade order and may also consider whether breaches of a cease trade order warrant enforcement action.

Reminder: The definition of "trade" in the Act includes acts in furtherance of a trade such as advertising or soliciting investors, directly or indirectly, to promote a trade.

Revocation of a long-standing cease trade order

Where an issuer with a long standing cease trade order seeks a revocation, the review process may take longer than usual as staff will review the issuer's updated CD record to consider whether it is in compliance with applicable securities laws. We remind issuers and their advisors that this includes compliance with applicable audit committee composition requirements under NI 52-110. As well, we may require an issuer to provide a written undertaking that it will not execute an RTO of, a restructuring transaction involving, or a significant acquisition of a business outside of Canada unless

the issuer files with the OSC and obtains a receipt for a final prospectus containing the disclosure required for the transaction.

Applications for a decision that an issuer is not a reporting issuer

We receive a significant number of these applications each fiscal year and our process for reviewing them is currently set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*. The process for Ontario-only applications for such a decision is set out in OSC Staff Notice 12-703 *Applications for a Decision that an Issuer is not a Reporting Issuer.*

Foreign issuers who seek a decision that they are no longer a reporting issuer should review the "modified procedure" to consider details that help support such an application. Staff will generally ask issuers to describe the due diligence that was conducted in order to make the representations that residents of Canada do not own more than 2% of each class of outstanding securities and do not comprise more than 2% of the total number of securityholders.

Reminder: There should be sufficient time between the news release and the date of the order to provide securityholders with the opportunity to object to the order.

Business acquisition report (BAR)

The number of applications seeking relief from the BAR requirements in Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) has decreased in the last two fiscal years. Notwithstanding this, the criteria to file a BAR is one of the areas currently under consideration as part of the policy initiative *Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (see Part C for further details).

Tip: Issuers should file their BAR relief applications early to avoid going into default. The cost or time involved in preparing and auditing the financial statements required to be included in the BAR are not generally viewed by staff as relevant factors when considering whether to recommend relief.

Requests for confidentiality

A filer requesting that an application and supporting materials be held in confidence during the application review process should provide substantive reasons for the confidentiality request in its application. If a filer is also requesting that the decision be held in confidence after the effective date of the decision, the filer should explain why the confidentiality request is reasonable in the circumstances, not prejudicial to the public interest, and when the decision granting confidentiality could expire. Generally, staff is of the view that a decision should not be held in confidence for a period of greater than 90 days following the date of the decision.

Reverse takeover transactions – relief from financial statements

If an issuer prepares an information circular in respect of a significant acquisition or a restructuring transaction, including an RTO, under which securities are to be changed, exchanged, issued or distributed, the information circular is required to include prospectus level disclosure (including financial statements) for the entities referred to in Item 14.2 of Form 51-102F5.

While exchanges can waive certain listing requirements, they cannot waive financial statement requirements in respect of information circulars. In these circumstances, issuers must obtain exemptive relief prior to mailing their information circular.

Tip: Issuers and their advisors may wish to consider whether a pre-file is appropriate for novel applications. See National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.

Insider Reporting

We review compliance of reporting insiders and issuers with insider reporting requirements through a risk-based compliance program. We actively and regularly assist filers and their agents by providing guidance on filing matters.

The objective of our insider reporting oversight work is twofold

- compliance
- education and outreach

Insider reporting serves a number of functions, including deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information concerning the trading activities of insiders, and, by inference, the insiders' views of the respective issuer's future prospects. Non-compliance affects the integrity, reliability and effectiveness of the insider reporting regime, which in turn has a negative impact on market efficiency. Where we identify non-compliance, we reach out to filers and request remedial filings. Filers should make remedial filings as soon as they become aware of an error to accurately inform investors of their activities and to avoid any further late filing fees.

We educate filers through our compliance reviews and we also reach out to new reporting issuers directly to inform them of insider reporting obligations. We encourage issuers to implement insider trading policies and monitor insider trading to meet best practice standards in NP 51-201.

Reminder: the definition of "reporting insider" can be found in National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (NI 55-104).

We remind issuers and their insiders that they should also refer to the definition of "significant shareholder" and the interpretation of "control" in NI 55-104 as well as the interpretation of "beneficial ownership" in the Act when determining who is required to file on SEDI. Understanding these definitions and interpretations will help filers identify and comply with their obligations.

For more information and guidance issuers and insiders should also review guidance provided in OSC Staff Notice 51-726 *Report on Staff's Review of Insider Reporting and User Guides for Insiders and Issuers*.

We also encourage issuers and insiders to refer to the filing tips provided below to avoid some of the common errors we observed during the most recent fiscal year.

Tips for issuers

- ✓ Check your issuer profile supplement to ensure your insider affairs contact is up to date.
- ✓ Ensure that your issuer profile supplement shows all your security designations.
- ✓ If you have engaged in a normal course issuer bid recently, set up an insider profile on SEDI to report acquisitions.
- ✓ The exemption in Part 5 of NI 55-104 does not apply to the acquisition of options or similar securities or related financial instruments (e.g. deferred share units, restricted share awards or stock appreciation rights) granted to a director or an officer. Rather, you must comply with Part 6 of NI 55-104 and file an issuer grant report within five days of the grant date if you want insiders to have the benefit of the delayed reporting exemption available for these transactions.
- ✓ In filing an issuer grant report, disclose all of the details required by NI 55-104. If you have not, your reporting insiders cannot rely on the exemption in Part 6 of NI 55-104 and may be subject to late filing fees.
- ✓ Create deferred share units, restricted share awards and other similar securities under the security category of "issuer derivative" on SEDI. Creating these under the category of "equity" is incorrect.

Tips for insiders

- ✓ Check your insider profile to ensure the contact information is correct.
- ✓ File an amended insider profile within ten days of any change in your name, your relationship to an issuer or if you have ceased to be a reporting insider of an issuer.
- ✓ File insider reports on SEDI to reflect all of your securities holdings and related transactions for an issuer. For example, if you have recently received a grant of stock options or other form of compensation under a reporting issuer's compensation plan, you are required to file an insider report disclosing those holdings.
- ✓ For securities exchangeable, exercisable or convertible into other securities of the issuer, disclose all of the details required by 55-102F2 *Insider Report*, including the exercise price and expiry date.
- ✓ File reports on transactions in securities over which you have control or direction or beneficial ownership.
- ✓ Consider whether you can rely on any of the exemptions in Part 9 of NI 55-104. For example, the "corporate group" reporting exemption in section 9.5 of NI 55-104 is not available where securities representing 10% or more of voting rights in a reporting issuer are held for an individual through a holding corporation which the individual controls. In such cases, both the individual and the corporation must file insider reports.
- ✓ Review CD filings of the reporting issuer (e.g., management information circulars) that include your securities holdings for accuracy and completeness. Report any discrepancies to the reporting issuer.

Designated Rating Organizations (DROs)

In April 2012, the CSA implemented a regulatory oversight regime for credit rating agencies (CRAs) through National Instrument 25-101 *Designated Rating Organizations* (NI 25-101). The regime recognizes and responds to the role of CRAs in our credit markets, and the role of CRA-issued ratings which are referred to in securities rules and policies. Under the regime, the OSC has the authority to designate a CRA as a DRO, to impose terms and conditions on a DRO, and to revoke a designation order, or change its terms and conditions, where the OSC considers it in the public interest to do so.

There are currently five CRAs that have been designated as DROs in Canada under NI 25-101:

1. DBRS Limited
2. Fitch Ratings, Inc.
3. Kroll Bond Rating Agency, Inc. (Kroll)
4. Moody's Canada Inc.
5. S&P Global Ratings Canada

Kroll has only been designated as a DRO for certain purposes (discussed below). In Canada, the OSC is the principal regulator of these DROs.

We conduct reviews of DROs using a risk-based approach. Our reviews focus on credit rating activities of the CRAs in Canada or in respect of Canadian issuers.

When we identify a concern, or an area of material non-compliance, we may take various actions depending on the nature of the observation and the perceived or potential harm to the marketplace. This may include, but is not limited to, recommending changes to the DRO's policies, procedures or information and documents on the DRO's website, or requiring training or specified oversight of DRO staff in areas where we have seen non-compliance with the DRO's policies or procedures.

Financial benchmarks

In the OSC's statement of priorities for 2018-2019, it was announced that we would be developing an OSC/CSA regulatory regime for financial benchmarks and publishing for comment a proposed rule to establish a Canadian regulatory regime for financial benchmarks. Work is ongoing on this initiative.

We are pursuing this initiative since we believe

- there is a need for regulation due to conduct lapses in other jurisdictions and the potential for similar misconduct in Canada, and
- we need to reflect global developments in benchmarks regulation, including the IOSCO *Principles for Financial Benchmarks* and the European Union's *The Benchmarks Regulation*.

Recent rule amendments and policy changes

July 6, 2017

The CSA published for comment rule amendments and policy changes relating to the application by Kroll for designation as a DRO (the Kroll-related amendments), and amendments to NI 25-101 relating to European Union (EU) equivalency and the March 2015 revision of the IOSCO *Code of Conduct for Code of Conduct Fundamentals for Credit Rating Agencies* (the NI 25-101 amendments).

March 29, 2018

The CSA published final Kroll-related amendments which amend NI 44-101 and National Instrument 44-102 *Shelf Distributions* to recognize the credit ratings of Kroll, but only for the purposes of the alternative eligibility criteria for issuers of asset-backed securities to file a short-form prospectus or shelf prospectus, respectively.

The amendments came into effect on June 12, 2018.

However, the new provisions relating to Kroll were only available for use by market participants when Kroll was formally designated as a DRO for purposes of the alternative eligibility criteria on June 21, 2018.

Upcoming

The CSA plans to publish final NI 25-101 amendments in 2019.

The existing DROs in Canada are only relying on the EU "endorsement" regime. The NI 25-101 amendments would be required if a DRO wanted to instead rely on the EU "equivalence/certification" regime.

Part C:
Responsive Regulation

- Exempt Distribution Reporting
- Foreign Issuer Resale Exemption
- Syndicated Mortgages
- Climate Change Related Disclosures
- Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers
- Women on Boards and in Executive Officer Positions
- Faith-Based, Not-for-profit Organizations Distributing Securities
- Advisory Committees

Exempt Distribution Reporting

On June 19, 2018, the CSA published final amendments (the Rule Amendments) to NI 45-106 to amend Form 45-106F1 *Report of Exempt Distribution* (Form 45-106F1). We are also making a related change to Companion Policy 45-106CP *Prospectus Exemptions* (collectively with the Rule Amendments, the Revisions).

Last year, the CSA published proposed amendments to NI 45-106 relating to Form 45-106F1 (the 2017 Proposal). The proposed amendments aimed to reduce the burden on filers, provide greater clarity and flexibility regarding the certification requirement of Form 45-106F1 and streamline certain information requirements, while still providing regulators with the information necessary for oversight and policy development. After considering the comments received, we have made non-material changes to the 2017 Proposal, which are reflected in the Revisions.

In Ontario, the OSC is also making consequential amendments to OSC Rule 72-503 relating to Form 72-503F *Report of Distributions Outside Canada* to align OSC Rule 72-503 with the amendments to NI 45-106 and certain parts of Form 72-503F with the amendments to Form 45-106F1, as well as to delete an unnecessary reference to section 2.2 of OSC Rule 72-503. The OSC is also adopting a conforming change to Companion Policy 72-503 *Distributions Outside Canada*.

Provided all necessary ministerial approvals are obtained, these amendments will come into force on October 5, 2018 in all CSA jurisdictions and all issuers must use the amended Form 45-106F1 for any filings submitted on or after October 5, 2018.

The CSA has also concurrently published a revised version of CSA Staff Notice 45-308 (Revised) *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions* to reflect the Revisions.

The CSA has also made minor changes to the instructions and examples contained in the Schedule 1 Excel Template. Provided all necessary ministerial approvals are obtained on the Revisions, issuers should use the revised Schedule 1 Excel Template for any filings submitted on or after October 5, 2018.

For more information:

CSA News Release: Canadian Securities Regulators Publish Final Amendments on Report of Exempt Distribution

Revised Schedule 1 Excel template (effective October 5, 2018)

Foreign Issuer Resale Exemption

Amendments to OSC Rule 72-503 became effective on June 12, 2018. The amendments move the existing prospectus exemption for resales of securities of issuers with a minimal connection to Canada from section 2.14 of National Instrument 45-102 *Resale of Securities* (NI 45-102) into section 2.7 of OSC Rule 72-503. The amendments also introduce a new prospectus exemption for the resale of securities (and underlying securities) by a "foreign issuer" in section 2.8 of OSC Rule 72-503, provided

- the issuer was not a reporting issuer in any jurisdiction of Canada on the distribution date or is not a reporting issuer in any jurisdiction of Canada on the date of the trade, and
- the resale is on a market outside of Canada or to a person or company outside of Canada.

The new exemption is intended to facilitate participation by Canadian investors in prospectus-exempt offerings by foreign issuers. The amendments may also result in increased participation by foreign issuers in Canadian capital markets as there is more certainty regarding investors' ability to resell securities of foreign issuers who have a minimal connection to Canada because of not being organized in Canada, not having their head office in Canada, and not having a majority of ordinarily resident Canadian directors or executive officers.

The rest of the CSA has also made similar amendments which are reflected in NI 45-102. In Alberta, these amendments are reflected in Alberta Securities Commission Blanket Order 45-519 *Prospectus Exemptions for Resale Outside of Canada.*

Syndicated Mortgages

Subsections 35(4) and 73.2(3) of the Act provide that mortgages sold by persons registered or exempt from registration under mortgage brokerage legislation are exempt from the registration and prospectus requirements in Ontario. These exemptions currently include syndicated mortgages, which are defined as mortgages in which two or more persons participate, directly or indirectly, as the mortgagee. As such, syndicated mortgage investments are primarily regulated by the Financial Services Commission of Ontario (FSCO).

Concerns have been raised about the current regulatory framework, including in a 2016 expert report to the Ministry of Finance reviewing the mandate of the FSCO. In response to these concerns, on April 27, 2016, the Ontario government announced its plan to update regulatory oversight of syndicated mortgage investments.

On March, 8, 2018, the OSC, along with the CSA, published for comment proposed amendments to NI 45-106 and NI 31-103, which together with changes to the Act that have not yet been proclaimed in force, would substantially harmonize the treatment of syndicated mortgages across the CSA.

The proposed amendments would replace subsections 35(4) and 73.2(3) with harmonized exemptions in NI 31-103 and NI 45-106 that exclude syndicated mortgages.

The proposed amendments also provide for additional investor protections, such as

- enhancing disclosure and requiring the delivery of a current property appraisal prepared by an independent professional appraiser to investors who purchase syndicated mortgage investments under the OM Exemption, and
- removing the private issuer exemption for syndicated mortgage investments.

The comment period for the proposed amendments ended on June 6, 2018, with comments provided by 26 market participants ranging from mortgage professionals, legal counsel, industry associations and investor advocates. We are working with the CSA to review and respond to the comments received with a view to publishing amended proposals during the current fiscal year.

We continue to work with other branches of the OSC, FSCO staff and Ministry of Finance staff to coordinate the oversight of investments in the syndicated mortgage sector.

Climate Change-Related Disclosures

On March 21, 2017, the CSA announced a project to review the disclosure of risks and financial impacts to issuers associated with climate change, and the governance processes related to them (the Project). After completing significant research and consultation over the last year, on April 5, 2018, we published CSA Staff Notice 51-354 *Report on Climate change-related Disclosure Project* (the Climate Change Report).

In connection with the Project, we conducted

- research in respect of the current or proposed climate change-related regulatory disclosure requirements in selected jurisdictions outside of Canada, as well as disclosure standards contained in certain voluntary frameworks related to climate change,
- a targeted review of current public disclosure practices of selected large Canadian issuers in a number of industries with respect to climate change-related information,
- a voluntary and anonymous on-line survey designed to solicit feedback from a wider range of TSX-listed issuers, and
- focused consultations with issuers, users and other stakeholders.

A number of key themes emerged from our work on the Project which informed our recommendations for next steps. Notably, the topic of materiality assumed a central role in our consultations and the other work performed in connection with the Project, with users and issuers offering a wide range of perspectives on the materiality of climate change-related risks and opportunities. Additionally, substantially all of the users consulted agreed that issuers in many industries will be affected by climate change-related risks, and should provide disclosure regarding their governance and oversight of such risks.

Our plans for future work in this area reflect our consideration of what we heard, our assessment of the current state of disclosure in this area, and recognition of the realities of the Canadian capital markets. We are also mindful to avoid imposing undue regulatory burden on Canadian issuers.

As discussed in further detail in the Climate Change Report, CSA staff have recommended the following areas of future work in this area

- development of guidance and educational initiatives for issuers with respect to the business,
- risks and opportunities and potential financial impacts of climate change, and
- consideration of new disclosure requirements regarding corporate governance in relation to risks, including climate change-related risks, and risk oversight and management.

In addition, we will continue to monitor the quality of issuers' disclosure with respect to climate change-related matters, as well as the ongoing development of best disclosure practices in this area, to assess whether further work needs to be done to ensure that Canadian issuers' disclosure continues to develop and improve. We also intend to continue to monitor developments in reporting frameworks, evolving disclosure practices and investors' need for additional types of climate change-related disclosure to make investment and voting decisions, and consider whether disclosure requirements in relation to greenhouse gas emissions are warranted in the future.

Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

The OSC 2017-2018 Statement of Priorities noted that securities regulators continue to face pressure to reduce regulatory burden. As the complexity of regulatory requirements increases, market participants often require greater resources to ensure compliance. The need for a cost-effective regulatory framework, with proportionate regulation that supports innovation and competition – while maintaining appropriate investor protections – is critical. Both over-regulation and under-regulation can dampen innovation and undermine the competitiveness of our capital markets. Additionally, the current CSA Business Plan identifies a review of the regulatory burden on reporting issuers as one of the CSA's key initiatives for 2016-2019.

In collaboration with the CSA, the OSC published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the Consultation Paper) on April 6, 2017. The purpose of the Consultation Paper was to identify and consider areas of securities legislation applicable to non-investment fund reporting issuers that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital markets. In response to the Consultation Paper, 57 comment letters were received from a wide range of stakeholders. In addition, the OSC and our colleagues in other CSA jurisdictions completed a number of in-person consultations.

In consideration of all feedback received and together with its CSA partners, the OSC will be taking the following steps:

- Initiate key policy initiatives to streamline reporting issuer requirements, including potential draft rule amendments (where applicable), related to
    - the criteria to file a business acquisition report,
    - primary business requirements,
    - at-the-market offerings,

- identified opportunities to reduce CD requirements, and
- consideration of a potential alternative prospectus model.

- Identify opportunities to use technology and data to reduce regulatory burden (e.g. electronic delivery of documents).

We note that there are a number of steps that must occur in connection with any changes to our regulatory regime. There is no assurance that any changes to our regulatory regime will ultimately be adopted in any of the CSA jurisdictions.

For more information see CSA Staff Notice 51-353 *Update on Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers.*

Women on Boards and in Executive Officer Positions

The disclosure requirements regarding women on boards and in executive officer positions are set out in National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101) and have been in place for three annual reporting periods. The disclosure requirements are intended to increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions, and the approach that specific TSX-listed issuers take in respect of such representation. This transparency is intended to assist investors when making investment and voting decisions.

On October 5, 2017, CSA Multilateral Staff Notice 58-309 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices* (CSA Staff Notice 58-309) was published. CSA Staff Notice 58-309 reports the findings of our third review of disclosure regarding women on boards and in executive officer positions as prescribed in NI 58-101. Of note, 61% of issuers had at least one woman on their board and the overall percentage of board seats occupied by women was 14%.

On November 30, 2017 the underlying data used in CSA Staff Notice 58-309 was published. Following publication of CSA Staff Notice 58-309, the OSC's *Roundtable to Discuss Third Annual Review of Women on Boards and in Executive Officer Positions* was held on October 24, 2017. The roundtable featured a panel discussion on the results of the review, as well as the benefits, challenges and experiences associated with the existing disclosure requirements relating to women on boards and in executive officer positions.

In light of this experience, the OSC and its CSA partners are assessing the effectiveness of the disclosure requirements and in particular, are considering whether

- changes to the disclosure requirements are warranted and, if so, the nature of those changes, and

- strengthening the existing "comply or explain" disclosure model with guidelines regarding corporate governance practices is warranted.

From the OSC's perspective, any action taken in this area is about promoting effective corporate governance and decision-making as diverse boards are better equipped to understand risks and recognize opportunities. It is important for our corporate governance regime to continue to be relevant, to encourage good governance and to provide investors with the information they need to make investment and voting decisions.

To obtain feedback on the effectiveness of the disclosure requirements, the OSC participated along with other CSA jurisdictions in the consultation process. The OSC completed 44 consultations with a variety of stakeholders (advisory committees, stock exchanges, investors, issuers, directors, advocacy groups, governance and diversity experts and academics) and met with 147 individuals from 59 organizations. The committee is considering potential recommendations for further regulatory action.

Subsequently, on September 27, 2018, CSA Multilateral Staff Notice 58-310 *Report on Fourth Staff review of Disclosure regarding Women on Boards and in Executive Officer Positions* was published.

Faith-based, Not-for-profit Organizations Distributing Securities

We are aware of several not-for-profit organizations that, on a regular basis, directly solicit and sell investment opportunities to community members associated with the organization, including retail investors. These financing activities are sometimes done through a separate corporate entity that may or may not be organized as a not-for-profit entity. In particular, we have considered requests for exemptive relief from certain not-for-profit organizations that continually raise and pool capital, which is subsequently used to provide mortgages for the acquisition, construction, or renovation of houses of worship, homes for their leaders, and other places for their organization's activities such as schools, camps, and other similar programs. We encourage other not-for-profit organizations engaging in similar financing activities and their counsel to contact us to discuss the issues discussed below and potential options, including applying for exemptive relief.

(i) Business Model and Financing Activities

It is our understanding that not-for-profit organizations have established investment programs to provide these mortgage services because their borrowers (who are usually affiliated with the not-for-profit organization) generally have difficulty accessing financing at reasonable rates, if at all, from banks and other commercial lenders. The primary source of capital used by these organizations to fund mortgages or loans is selling securities to their community members. Typically, donations are not solicited or used to fund the mortgages or loans.

The activities of these organizations are not targeted to a specific project (e.g., a single faith group fundraising for the renovation of their own house of worship) but involve more general capital raising programs (e.g., for the provincial or national community). These more general capital raising investment programs are similar to those of mortgage investment entities that pool capital raised from investors and use that capital to provide loans to borrowers who are unable to access

conventional mortgage financing. These organizations typically originate and administer these loans or mortgages and they earn a spread between the interest charged to borrowers and the interest paid to investors. This spread, or profit is often used to pay for the organization's expenses from operating this program and the excess may be used for various purposes, including funding more mortgages, establishing a reserve fund for possible mortgage defaults, returning monies to current borrowers in the mortgage pool, or funding other programs of the organization.

We have been working with several of these organizations to ensure compliance with securities law requirements, including: (i) their or the separate corporate entity's registration as dealers and (ii) their reliance on available prospectus exemptions or discretionary relief. As an example, see the decision *In the Matter of Pentecostal Financial Services Group Inc., Pentecostal Securities Corp. and The Pentecostal Assemblies of Canada*, (2017) 40 OSCB 8504.

(ii) Investor Protection Concerns

While acknowledging that these not-for-profit organizations may wish to engage in certain general capital raising activities through offering securities to their community members, staff are concerned that, in certain circumstances, these activities are not being undertaken in compliance with applicable securities law (both registration and prospectus requirements) and may raise potential investor protection concerns, including the following

- investors may be provided with limited information about the securities being sold and the marketing materials provided may be overly promotional,
- investors may not be provided with any disclosure of conflicts of interest,
- there may not be an assessment of whether the investment is suitable for the investor, and if there is such an assessment, it may not be adequate,
- selling persons may lack proficiency as they may not have taken any securities related courses and may not have any securities related experience,
- investors may not be experienced investors (i.e., very limited or no investing experience), and
- investors may be asked to invest based on appeals to support the mission of the not-for-profit organization, which raises the possibility for affinity fraud.

(iii) Registration as Dealers

When these organizations have formal or sophisticated capital raising and securities distribution programs, originate or administer loans or mortgages as part of these programs, and pool capital to invest in opportunities that do not necessarily directly benefit the community members that are solicited to invest (e.g., not raising funds necessarily for the camp that the investors' children will be attending that summer), we typically are of the view that they require registration as dealers because they are in the business of trading in securities.

For example, these organizations solicit investors (often retail) through word-of-mouth, webpages and/or community brochures, and carry on their capital raising and lending activities (which are similar to other registered firms) with repetition and regularity. As noted in section 1.3 of NI 31-103CP, the following factors, among others, are relevant to the registration business purpose analysis

- having the capacity or ability to carry on the organization's activities to produce profit,
- the various sources of income for the organization,
- the amount of time the organization spends on the activities associated with the trading activity,
- soliciting investors or potential investors, and
- expecting to be remunerated or compensated.

Any one of the above factors on its own is not determinative of whether an individual or firm is in the business of trading securities.

Although not-for-profit organizations are not established for the purposes of earning a profit, a not-for-profit organization may engage in activities that result in income or profit and may carry on a business similar to "for profit" organizations. However, as a not-for-profit entity, the income or profits must only be used to carry out the goals and objectives of the organization and may not be paid to or made available for the personal benefit of any of its members or securityholders. Being a not-for-profit entity does not prevent the organization from being in the business of trading in securities.

There is no available exemption from the dealer registration requirement for these not-for-profit organizations. Further, if these organizations are not registered as dealers, there is no available exemption from the adviser registration requirement in respect of any incidental advice provided by the organization in connection with a trade in its securities.

However, depending on the organization's business model, we may consider exemptive relief from certain requirements, if they are not appropriate for this type of business model and if our concerns can otherwise be adequately addressed.

(iv) Availability of Not-for-Profit Issuer Prospectus Exemption

Given the extent and sophistication of the capital raising programs run by these not-for-profit issuers, Staff view these organizations' financing activities to likely be beyond the scope and intent of the not-for-profit issuer prospectus exemption in section 2.38 of NI 45-106 because this exemption requires that, among other things, issuers be organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit. That is, to use this exemption, issuers must be organized exclusively for one or more of the listed purposes and use the funds for these purposes.

The guidance in section 4.8 of the Companion Policy to NI 45-106 indicates that if one of the not-for-profit organization's mandates is to provide an investment vehicle for its members, or if over time an organization that was initially organized for a listed purpose devotes more and more of its efforts to lending money or other capital raising activities, then the not-for-profit organization may be unable to rely upon section 2.38 of NI 45-106.

In considering whether a not-for-profit organization may appropriately rely on the exemption in section 2.38 of NI 45-106, we may not consider an issuer's status as a registered charity to be determinative and the following factors may also be considered

- the extent, frequency and scope of the issuer's capital raising activities to its community

members and whether such activities extend beyond its community,
- the nature of the securities offered and whether these securities are offered with an investment purpose or are held in registered accounts (e.g., RRSPs, RRIFs, etc.),
- the stated purposes of the issuer in their articles of incorporation, charter or other organizational documents, in particular, whether capital raising or providing financing to other persons is a listed purpose of the issuer, and
- whether the issuer is established solely to lend money or to carry on a business, even if for an educational, benevolent, fraternal, charitable, religious or recreational motive.

The presence of any or a combination of these factors may suggest an issuer is not organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and, consequently, the issuer's activities would not fall within the intended scope of the prospectus exemption in section 2.38 of NI 45-106.

Under these circumstances, we are of the view that these organizations fall outside of the scope of the exemption in section 2.38 of NI 45-106 and should instead rely on other available prospectus exemptions to offer securities, such as

- the accredited investor exemption (set out in section 73.3 of the Act and section 2.3 of NI 45-106),
- the offering memorandum exemption (set out in section 2.9 of NI 45-106), and
- the friends, family and business associates exemption (set out in section 2.6.1 of NI 45-106).

Issuers may also apply for discretionary exemptive relief to accommodate the use of a restricted dealer to conduct suitability assessments in connection with the investment limits for eligible investors under the offering memorandum exemption or to otherwise accommodate the issuer's specific business model.

Advisory Committees

The Branch has several committees that have been constituted to advise OSC staff on matters related to a range of projects as well as policy initiatives.

Continuous Disclosure Advisory Committee (CDAC)

The CDAC advises staff on a range of projects, including the planning, implementation and communication of its CD review program, as well as related policy initiatives. The CDAC also serves as a forum to advise OSC staff on emerging issues, and to critically assess procedures.

The CDAC consists of 10 to 15 members who meet approximately five times annually. Members serve two-year terms and are selected for their extensive knowledge of CD issues and a strong interest in related policy. The CDAC is currently chaired by Sonny Randhawa, Deputy Director of the Branch. You can find a list of the current CDAC members here.

Small and Medium Enterprises Committee (SMEC)

The SMEC advises staff on matters related to small and medium enterprises (SMEs). Committee members discuss the development, implementation and communication of policies and practices to address issues affecting SMEs, in the pursuit of capital market efficiency, investor protection and economic growth.

SMEC members also provide input on regulatory approaches to capital raising in the exempt market, including the development of our compliance program and the impact of new prospectus exemptions on SMEs.

The SMEC meets approximately four times a year, with members serving a one-year term. The committee consists of 10 to 15 members with a variety of perspectives. The SMEC is chaired by Jo-Anne Matear, Manager of the Branch. You can find a list of the current SMEC members here.

Mining Technical Advisory and Monitoring Committee (MTAMC)

The MTAMC provides advice to the CSA on technical issues relating to disclosure requirements for the mining industry. The committee also serves as a forum for continuing communication between the CSA and the mining industry.

The MTAMC consists of approximately 15 members who meet three times annually. Members typically serve three-year terms and are drawn from across Canada and different sectors of the mining industry, ranging from early stage exploration to commercial production. Members typically have significant technical experience and a strong interest in securities regulatory policy as it relates to the mining industry. The MTAMC is currently co-chaired by Craig Waldie, Senior Geologist of the Branch. You can find a list of the current MTAMC members here.

Part D:
Additional Resources

Online Resources

Issuer Education and Outreach

A part of our Branch's mandate is to foster a culture of compliance through outreach and other initiatives. Although we cannot provide legal, financial accounting or other advice, we try to assist issuers in meeting their regulatory requirements by providing the following resources.

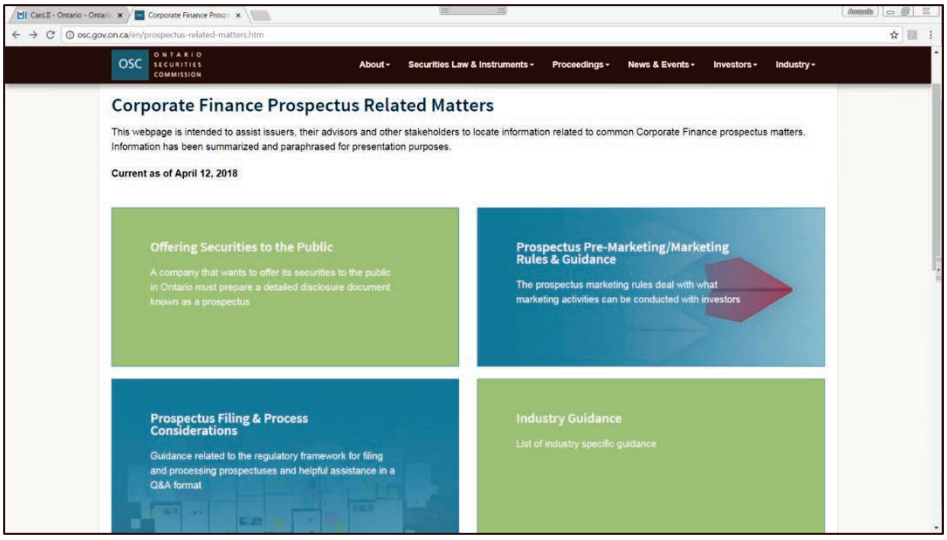
Online resources

Corporate Finance section of OSC website - The Corporate Finance section of the OSC website provides a basic outline for issuers on how to comply with Ontario securities law and file certain documents with the OSC. It describes the steps an issuer needs to take to

- distribute and market securities,
- disclose information on a timely and accurate basis, and
- apply for regulatory exemptions.

In particular, there is a page that contains links to information for smaller issuers (both reporting issuers and other issuers) that want to learn more about Ontario securities law. The "Information for Companies" section of the OSC website can be found here.

OSC Corporate Finance Prospectus WebPage - On May 16, 2018, the Branch launched a webpage focused exclusively on Corporate Finance Prospectus Related Matters.



This webpage is intended to assist issuers, their advisors and other stakeholders in locating information related to common Corporate Finance prospectus matters. This webpage will serve as a useful guide to easily access prospectus related information articulated in the form of guidance, notices, policies and branch reports. We encourage issuers and their advisors to review the webpage for helpful prospectus related details.

OSC Exempt Market Webpage - The OSC exempt market webpage provides access to the OSC Electronic Filing Portal and electronic form to file reports of exempt distribution. The webpage also provides links, information, and guidance for issuers including

- a summary and comparison of the key capital raising exemptions in Ontario,
- exempt market activity data,
- forms and filing requirements,
- tips on completing Form 45-106F1 and frequently asked questions, and
- exempt market publications.

Issuer education and outreach

Issuer education and outreach occurs at both a micro level through direct communication with an issuer, as well as at a macro level through broad communications, such as staff notices. We also share the observations and findings of our review program through the Branch's outreach program for SMEs called The OSC SME Institute. Through the institute, we offer SMEs a series of free educational seminars to help them and their advisors understand the securities regulatory requirements for being or becoming a public company in Ontario, and participating in the exempt market. Anyone interested in attending an event or consulting past presentations can visit the section Information for Small and Medium Enterprises on the OSC's website. A summary of the seminars we have conducted during fiscal 2018 is included in the table below (along with links to the presentation).

Date of seminar	Topic
February 22, 2018	Procedural Matters and Preparing for Annual Filings
January 25, 2018	Current Trends in Prospectus Filings
December 7, 2017	Hot Topics in Continuous Disclosure

Finally, staff of the Branch give presentations from time to time at industry conferences, professional advisory firms' offices and provide staff views and commentary through various media forums.

APPENDIX A – Key Staff Notices

Topic	Reference
Prospectus Practice Directives	• OSC Staff Notice 41-702 – *Prospectus Practice Directive #1 – Personal information forms and other procedural matters regarding preliminary prospectus filings* • OSC Staff Notice 41-703 – *Corporate Finance Prospectus Practice Directive #2 – Exemption from certain prospectus requirements to be evidenced by a receipt*
Disclosure Obligations	• OSC Staff Notice 51-711 (Revised) – *Refilings and Corrections of Errors* • OSC Staff Notice 51-723 – *Report on Staff's Review of Related Party Transaction Disclosure and Guidance on Best Practices*
Forward Looking Information	• OSC Staff Notice 51-721 – *Forward Looking Information Disclosure*
Non-GAAP Financial Measures	• CSA Staff Notice 52-306 (Revised) – *Non-GAAP Financial Measures* • CSA Staff Notice 52-329 – *Distribution Disclosures and Non-GAAP Financial Measures in the Real Estate Industry* • OSC Staff Notice 52-722 – *Report on Staff's Review of Non-GAAP Financial Measures and Additional GAAP Measures*
Industries	• CSA Staff Notice 43-307 – *Mining Technical Reports – Preliminary Economic Assessments* • CSA Staff Notice 43-309 – *Review of Website Investor Presentations by Mining Issuers* • CSA Staff Notice 51-327 – *Revised Guidance on Oil and Gas Disclosure* • CSA Staff Notice 51-342 – *Staff Review of Issuers Entering Into Medical Marijuana Business Opportunities* • CSA Multilateral Staff Notice 51-349 – *Report on the Review of Investment Entities and Guide for Disclosure Improvements* • CSA Staff Notice 51-352 (Revised) – *Issuers with U.S. Marijuana-Related Activities* • OSC Staff Notice 51-720 – *Issuer Guide for Companies Operating in Emerging Markets* • OSC Staff Notice 51-722 – *Report on a Review of Mining Issuers' Management's Discussion and Analysis and Guidance* • OSC Staff Notice 51-724 – *Report on Staff's Review of REIT Distributions Disclosure*
Insider Reporting and SEDI	• OSC Staff Notice 51-726 – *Report on Staff's Review of Insider Reporting and User Guides for Insiders and Issuers* • CSA Staff Notice 55-316 – *Questions and Answers on Insider Reporting and the System for Electronic Disclosure by Insiders (SEDI)*

Use of the Internet and Cyber Security	• CSA Multilateral Staff Notice 51-347 – *Disclosure of cyber security risks and incidents* • CSA Staff Notice 51-348 – *Staff's Review of Social Media Used by Reporting Issuers*
Corporate Governance	• CSA Multilateral Staff Notice 58-309 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices* • CSA Multilateral Staff Notice 58-310 *Report on Fourth Staff review of Disclosure regarding Women on Boards and in Executive Officer Positions*
Climate Change	• CSA Staff Notice 51-354 – *Report on Climate change-related Disclosure Project*

The OSC Inquiries & Contact Centre operates from
8:30 a.m. to 5:00 p.m. Eastern Time, Monday to Friday,
and can be reached on the Contact Us page on the OSC website at:

osc.gov.on.ca

Contacts

If you have questions or comments about this report, please contact:

Huston Loke
Director
Corporate Finance
hloke@osc.gov.on.ca
(416) 593-8254

Marie-France Bourret
Senior Accountant
Corporate Finance
mbourret@osc.gov.on.ca
(416) 593-8083

Katie DeBartolo
Accountant
Corporate Finance
kdebartolo@osc.gov.on.ca
(416) 593-2166

Amanda Ramkissoon
Legal Counsel
Corporate Finance
aramkissoon@osc.gov.on.ca
(416) 593-8221