

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 OSC Staff Notice 51-711 (Revised) Refilings and Corrections of Errors

OSC STAFF NOTICE 51-711 (Revised)

REFILINGS AND CORRECTIONS OF ERRORS

March 8, 2018

This Notice has been amended to clarify and expand on our expectations when, during the course of a staff review, an issuer amends its continuous disclosure record, including disclosure made on the issuer's website or on social media.

Background

This staff notice (the **Notice**) discusses our expectations when an issuer amends its continuous disclosure (**CD**) record or makes changes to its website or social media to comply with CD requirements. The Notice also discusses the public list of Refilings and Errors (the **List**).

On October 25, 2002, we introduced the List on the Commission's web site (http://www.osc.gov.on.ca/en/Investors_refilings-errors-list.htm). The purpose of the List is to provide transparency to the market when, during a staff review, an issuer has amended its CD record, website or social media.

We refer to any changes made by an issuer to CD filings, website or social media in the circumstances described in the Notice as "Corrective Disclosure". It is our view that Corrective Disclosure should be communicated to the market in a transparent manner. The following are examples of Corrective Disclosure that may be made by an issuer:

- (1) restating and refiling its financial statements;
- (2) implementing accounting or disclosure changes on a retroactive basis if the changes correct an error in the originally filed information;
- (3) amending and refiling other CD documents previously filed with the Commission;
- (4) filing document(s) that were required to be filed at an earlier date;
- (5) clarifying or removing content from the issuer's website or made by the issuer on social media;
- (6) issuing a news release to clarify information included in a CD document or news release previously filed with the Commission.

Part A of the Notice provides clarification around the circumstances when staff will put an issuer on the List and our expectations regarding Corrective Disclosure identified during, or as a result of a staff review. Part B of the Notice outlines guidance on what communication issuers are expected to provide with Corrective Disclosure whether or not it is identified in the course of a staff review.

Part A – Corrective Disclosure identified during a staff review

Any deficiency for an issuer that is identified during a staff review and that leads to Corrective Disclosure will result in the issuer being placed on the List. Please note that we will add the name of an issuer to the List irrespective of whether the deficiency was identified by staff, by the issuer or the issuer's advisors during the review process. We will also add the issuer to the List regardless of whether the Commission ordered the filing or refiling or the issuer took this step voluntarily.

An issuer's name will be kept on the List for a period of three years from the date the Corrective Disclosure is made to an issuer's CD record or website, or on social media. After the three-year period, the issuer's name will be archived.

The following are frequently-asked questions and answers about errors identified during a staff review:

Q1: What constitutes the beginning and end of a staff review?

A1: The beginning and end of a staff review will vary depending on the basis for staff's review. A CD review pursuant to CSA Staff Notice 51-312 (Revised) *Harmonized Continuous Disclosure Review Program* is considered to begin when an issuer receives a comment letter from staff and ends when the issuer is notified that staff has completed its review.

A review in connection with a prospectus or application begins when an issuer delivers materials to the OSC and ends when (a) a final receipt is issued for a prospectus, (b) the issuer is granted the exemption sought for an application, or (c) the issuer is otherwise notified that staff has completed its review.

Q2: Can an issuer wait until a subsequent filing to make Corrective Disclosure?

A2: Generally, staff expect Corrective Disclosure to be made by an issuer as soon as possible after the determination that the CD record needs to be corrected. However, in limited circumstances, staff may not object if the issuer includes its Corrective Disclosure in an imminent CD filing. In either case, we expect the issuer to follow the guidelines in Part B of the Notice about the details of the Corrective Disclosure. The issuer will be placed on the List shortly after filing its Corrective Disclosure.

Q3: What if an issuer is asked to remove or clarify content on its website or social media?

A3: If the issuer provides social media disclosure which staff conclude is potentially misleading or unbalanced, or is otherwise inconsistent with information already disclosed on SEDAR, we would ask the issuer to clarify the disclosure on SEDAR as soon as possible and/or to remove the social media disclosure. In these circumstances, the issuer will be placed on the List.

Q4: Should issuers provide a draft of the Corrective Disclosure and a draft of any news release to OSC staff prior to disseminating to the public?

A4: Yes, we generally recommend that an issuer share a draft of any news release as well as a draft of the Corrective Disclosure, with sufficient time for staff review, before making the documents public.

Please note that responsibility for the content of the news release and the Corrective Disclosure remains with the issuer and their advisors. Our review does not in any way diminish such responsibility.

Q5: Should the news release make reference to the Ontario Securities Commission (OSC)?

A5: Yes. For greater transparency, the news release should indicate that the Corrective Disclosure was requested by staff of the OSC in connection with a staff review.

Q6: Will an issuer be noted in default until it files or makes Corrective Disclosure?

A6: Depending on the nature of the issue(s) identified, the issuer may be noted in default of its disclosure requirements under the *Securities Act* (Ontario) (the **Act**) and regulations. Please refer to the guidance contained in OSC Policy 51-601 *Reporting Issuer Defaults*.

Part B – What other communications or documentation should accompany the Corrective Disclosure?

Once an issuer has decided to file or make Corrective Disclosure, staff would consider this to be an acknowledgement by the issuer of a significant event that should be clearly and broadly disclosed to the market in a timely manner by way of a news release and, if appropriate and required, a material change report. Consistent with this view, it would not generally be considered appropriate for an issuer to withhold the Corrective Disclosure until the next required filing or the next earnings news release, even if the issuer requires more time to investigate and quantify all aspects of the error. We further note that the issuer's responsibility is the same whether the correction is made in the context of a staff review or at any other time.

A news release should be widely and publicly disseminated. Issuers should consider both the timing of the news release and the prominence of the description of the Corrective Disclosure to ensure that market participants are not likely to miss it. Also, staff expect the news release and any Corrective Disclosure to be prominently displayed on the issuer's website.

We note that if the issuer identifies and makes Corrective Disclosure that is not in the context of a staff review, the issuer will not be placed on the List.

The following are frequently-asked questions and answers about Corrective Disclosure and news releases:

Q7: What should issuers include in the communication/news release?

A7: The news release should clearly describe the nature and implication(s) of any error or other factors leading to the Corrective Disclosure as well as how the issuer is proposing to correct the disclosure. The Corrective Disclosure should not be put at the end of a news release that includes other disclosure. We expect the news release to be clear on its face that the issuer has made Corrective Disclosure.

As noted above in the responses to Q4 and Q5, if the Corrective Disclosure is made during the time of a staff review, we recommend that an issuer provide staff with a draft of the news release before its dissemination and we expect the issuer to include reference to a review by the OSC in the news release.

Q8: Is the Corrective Disclosure a material change?

A8: When Corrective Disclosure is required, issuers are reminded to consider whether the circumstances give rise to a material change under the Act. If so, issuers must comply with the applicable reporting obligations. However, even where the Corrective Disclosure (including the surrounding circumstances giving rise to the correction(s)) does not represent a material change, we take the view that investors should be informed as soon as possible by way of a news release (as described in the Notice).

Q9: How should an error be described in the Corrective Disclosure of a CD document and how should it be filed on SEDAR?

A9: Any documents that are amended and refiled should be clearly titled as “revised” or “restated”, should identify and describe the nature of the revisions and should be filed under the applicable “amended” document type on SEDAR.

Any documents that are being filed for the first time to correct a non-filing at an earlier date should clearly indicate that the filing is remedying a previous non-filing and should describe the circumstances surrounding the late filing of the document.

Questions or comments concerning the Notice should be provided to:

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