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The Listed Issuer Financing Exemption: overview, FAQs, and looking to the future

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LIFE exemption

- Listed issuer financing exemption (LIFE) – Nov. 2022
- Intended to facilitate access to capital by listed issuers (Canadian exchanges) seeking moderate amounts of capital (<\$10M)
- Allows issuers to distribute freely-tradeable securities



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LIFE exemption

Requirement	Comment
Reporting issuer	<ul style="list-style-type: none"> ▪ The issuer <ul style="list-style-type: none"> ▪ must have been a reporting issuer for the last 12 months ▪ has not ceased operations or the issuer is not an issuer whose principal asset is cash, cash equivalents or its exchange listing ▪ is not an investment fund, a capital pool company (CPC), or similar
Number of securities	Generally limited to raising the greater of \$5,000,000 or 10% of the issuer's market capitalization to a maximum of \$10,000,000 (during any 12-month period) – an overall cap of 50% dilution
Type of security	Restricted to offering listed equity securities and units consisting of listed equity securities and warrants convertible into listed equity securities. The exemption cannot be used for the distribution of subscription receipts, special warrants, or convertible debentures

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LIFE exemption

Requirement	Comment
Use of funds	The issuer cannot allocate funds towards the following: <ul style="list-style-type: none"> a significant acquisition under Part 8 of NI 51-102 a restructuring transaction eg. reverse takeover any transaction for which the issuer seeks approval of any security holder
Sufficiency of proceeds	Issuer must reasonably expect to have available funds to meet business objectives and liquidity requirements for 12 months following closing
Filing documents	Before soliciting an offer to purchase, the issuer must: <ul style="list-style-type: none"> issue and file a news release with a required statement file a Form 45-106F19 <i>Listed Issuer Financing Document</i>, including CEO/CFO certification On completion of offering - Form 45-106F1 <i>Report of Exempt Distribution</i>

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LIFE exemption



□ What have we seen?

- Very strong uptake on the use of the exemption – from inception to Jan. 30/25
 - # of offerings – total 246 offerings (~156 by BC-based issuers)
 - \$\$ raised – total of \$950M+ (~\$560M by BC based issuers)
- Challenges – sufficiency of proceeds requirements and inclusion of projected revenues
- FAQs issued (CSA SN 45-330) – hopefully assisting in use/adoption
- Going forward – exemption working well – can we improve it?

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Tips for a smooth prospectus filing

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February 27, 2025

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Introduction



- Common issues seen on prospectus filings
- Technical issues
- Administrative tips
- Examples
- Additional guidance

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Tip 1 – Sufficient funds

- Applicable for all prospectus types
- Receipt refusal concern if insufficient funds to accomplish business objectives and milestones
- Generally, we consider 12 months
- Example – issuer with negative working capital files a base-shelf prospectus
- CSA staff notice 41-307 (Revised) *Concerns regarding an issuer's financial condition and the sufficiency of proceeds from a prospectus offering*

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Tip 2 – Use of proceeds

- Applicable for all prospectus types
- Provide reasonable details about use of proceeds
- If there's a min and max offering, need to provide details for both cases
- Example of insufficient disclosure:

	Amount of Gross Proceeds Allocated (CAD)
Purchase assets	\$19,500,000.00
General Working Capital & Overhead	\$7,370,000.00
TOTAL:	\$26,870,000.00

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Tip 3 – Ambiguous or overly promotional language

- Applicable for all prospectus types
- Avoid ambiguous or overly promotional language
- Examples
 - "state of art, best in class" without explaining why
 - "leading providers of xx" without revenue
 - Disclosing favourable contract terms without disclosing costs, risks to the company
- CSA Staff Notice 51-356 *Problematic promotional activities by issuers*

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Tip 4 – Business and financial history



- Applicable for long form prospectus
- FS of the business, which can be a predecessor entity, business acquired or combined financial statements of the issuer and another entity
- Generally, we require FS for two years and subsequent interim FS
- For recently incorporated companies, there must be some audited history of the business [e.g. 5.5(1) of 41-101CP]

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Tip 5 – Directors and officers



- Applicable for long form prospectus
- Receipt refusal concern if the business of the issuer may not be conducted with integrity and in the best interests of the security holders of the issuer because of:
 - the financial condition,
 - past conduct; or
 - lack of knowledge and expertise
 of any of the issuer's officers, directors, promoters, or control persons
- Examples

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Tip 6 – Cheap share structure

- Applicable for long form prospectus
- Cheap shares – example
 - 10 million shares to founders at \$0.001 per share: \$10,000
 - IPO prospectus issuing 5M shares at \$ 0.2 per share: \$1M
- Receipt refusal concern if:
 - an unconscionable consideration has been paid
 - an escrow or pooling agreement in the form that the executive director considers necessary has not been entered into
- We may request to revise the share structure and/or place shares into more stringent escrow

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Tip 7 – Confidential pre-filing and inquiries

- Applicable for all prospectus types
- Consider:
 - Pre-filing procedures in CSA staff notice 43-310 to resolve material issues before public filing
 - Consultation with the BCSC staff over email or phone – refer to the contact list of speakers

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Tip 8 –Engagement of professionals

- Applicable for all prospectus types
- Benefits of involvement of legal counsel and accountants
 - Form requirement
 - Technical issues
 - Internal consistency
 - Filing procedures



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Tip 9 – Last minute filings

- Applicable for all prospectus types
- We require sufficient time to review filings
- Potential issues with the documents submitted or technical issues
- If a receipt is desired on the same date as filing, let us know ahead of time and allow at a minimum ½ day for review

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Tip 10 – Principal regulator



- Applicable for all prospectus types
- Ensure to identify a principal regulator
- Principal regulator is the regulator of the jurisdiction in which the issuer's head office is located

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Mining Team Update

What does the BCSC's mining team do?

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Focused on National Instrument 43-101 which is:

- Part of securities law to guide disclosure of scientific & technical information about mineral projects
- To offer consistent, comparable & decision-useful information to support investment decisions
- To support public confidence in disclosure of the minerals industry
- Applies to all disclosure (written & oral) about mineral projects

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NI 43-101's Objectives

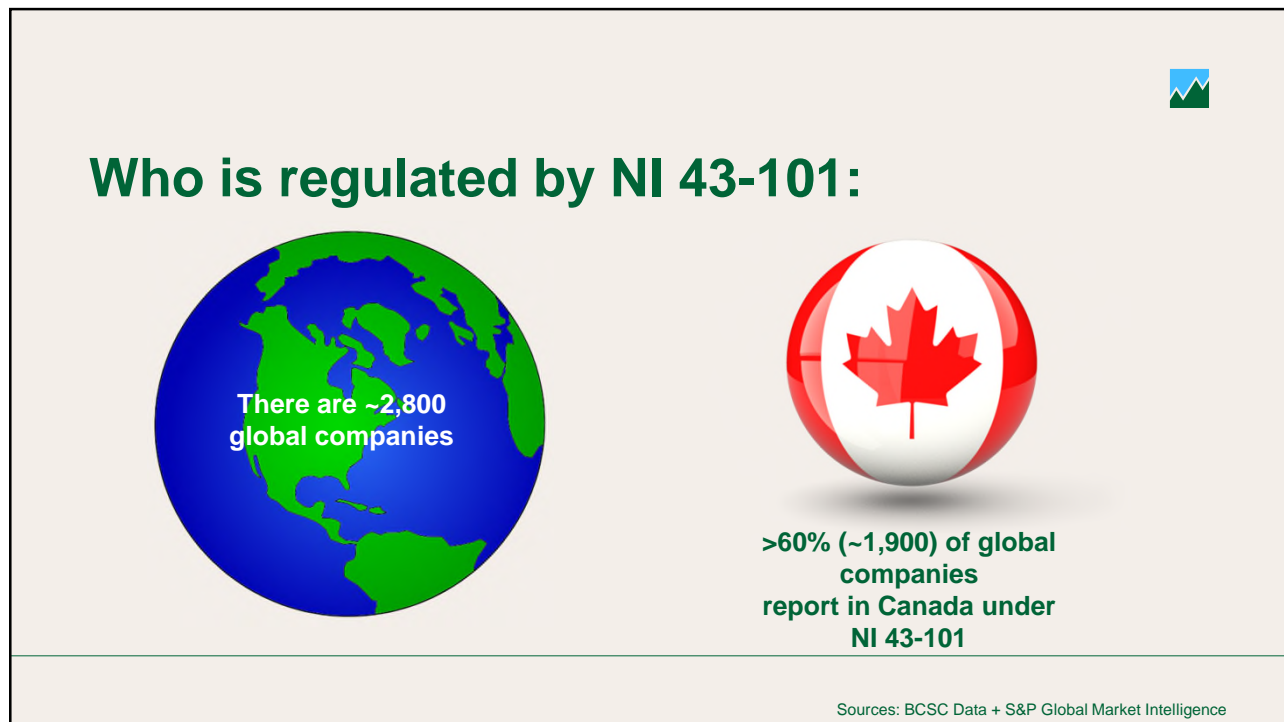
A disclosure rule to enhance accuracy & integrity of mining disclosure for the public through national standards

It requires that disclosure of mineral project information is:

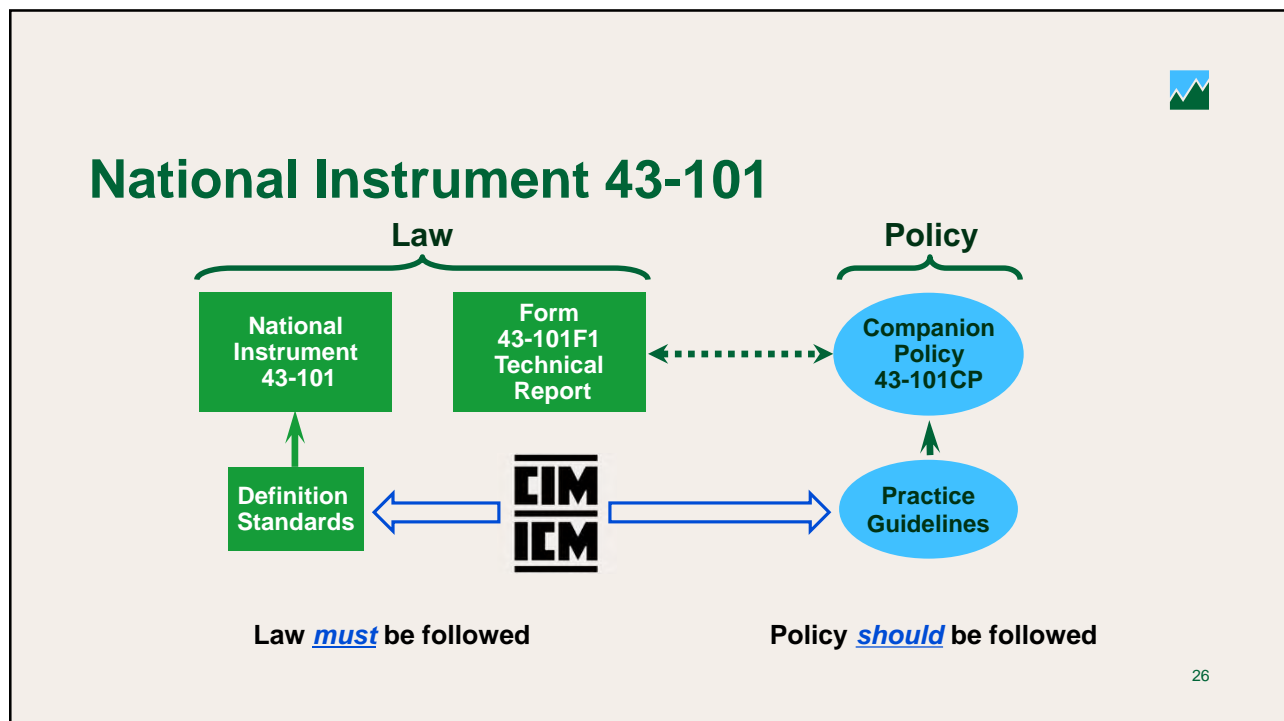
- Understandable to a reasonable person, a “non-expert”
- Balanced & not misleading
- Based on reliable & verified data
- Based on reasonable assumptions that are clearly explained
- Uses standardized terms & definitions
- Unbiased & identifies the potential risks & uncertainties
- Signed off by a professional (Qualified Person) taking responsibility for the information

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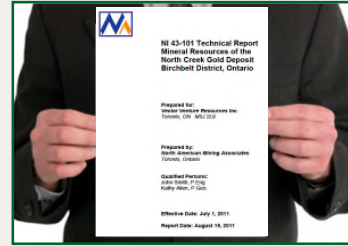
Core Principles of NI 43-101



Qualified Person



**CIM Definition Standards
&
CIM Practice Guidelines**



Technical Report

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What happens if a company is subject of a technical disclosure review?

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Types of Disclosure Reviews

1) Prospectus Review

- When prospectuses are filed, the technical disclosure will be reviewed for mining companies

2) Continuous Disclosure (CD) Review

- Can be selected for a review at any time
- Assesses the company's technical disclosure for compliance with the requirements
- May help companies understand their disclosure obligations
- Is a full review, broad in scope and based on selected risk criteria
- Includes SEDAR+ filings, website, news releases, AIF, MD&A, technical reports, social media, etc.

3) Issue or Targeted review

- Focuses on a specific technical issue based on complaints, news releases, trends, etc.

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Disclosure Review Process

Formal comment letter is sent electronically to a company

- Outlines specific disclosure concerns, tied to the Instrument or Form specifically
- Requests the company explain, clarify, or remove disclosure, or other corrective action
- Staff may comment on issues such as:
 - Non-compliance with or missing requirements of NI 43-101
 - Website that includes disclosure (or a trigger) to be supported by a technical report
 - Technical reports that do not follow the requirements of Form 43-101F1
- Company is requested to respond in writing within 5-10 business day
- Disclosure review process may involve multiple comment / response letters
- Staff may also find that a company is in "default" of a specific filing obligation

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Sample Comment Letter



British Columbia
Securities Commission

December 4, 2024

The Corporate Finance Department of the British Columbia Securities Commission has selected your company for a technical disclosure review.

The purpose of our review is to assess the Company's disclosure practices and overall level of compliance. Based on this review, BCSC staff has concluded that the Company is in default (the Default) of certain NI 43-101 continuous disclosure obligations.

Failure to file a technical report

Disclosure on the Company's website of economic projections and outcomes triggered the filing of a technical report to support the economic analysis disclosure. Examples of the economic analysis on the Company's website not supported by a technical report include:

September 2023 investor presentation on the "Golden Fantasy" project which discloses ...

DETAILS OF ISSUES FOUND IN DISCLOSURE FOLLOW...

The Company must file a technical report within 10 business days.

If it is unable to provide a suitable report within this timeframe, the Company must issue a clarifying news release. The news release should state that the estimates are not supported by a compliant NI 43-101 technical report, contrary to NI 43-101, and that the estimates should not be relied on until they have been verified and supported by a technical report. Please provide a final, fully executed copy of the revised Report for our review prior to filing.

Please preface the clarifying news release with the following:

"As a result of a review by the British Columbia Securities Commission, we are issuing the following news release to clarify our disclosure." Please provide us with a copy of the news release for our review before the Company disseminates it.

In addition, the Company must amend its website, social media pages and other investor relations materials to correct the above issues and remove any other non-compliant or misleading information. Please provide a written response to our letter within two weeks. Also, provide a copy of this letter to each member of the company's board of directors and confirm specifically in your response that you did this.

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What's new in mining disclosure?

Policy Project to modernize & enhance NI 43-101

A project to update NI 43-101 was proposed and approved (late Oct '23)

A working committee of technical and legal staff from across the CSA worked on revisions to the Instrument, Form & Companion Policy.

Currently, the proposed revisions have been shared February 13th, as a **BC Notice for information only (BCN 2025-01)**

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Proposed revisions include:

To Instrument:

- No new sections added, 2 removed
- Removal of "foreign codes"
- Clarify to mineral "projects" & removal of early-stage & advanced definitions
- 3 new definitions from CIM replacing CSA versions
- Clarification of QP definition
- Removal of restriction on adding inferred
- Metal equivalent clarity
- Disclaimer clarity

- Removal of 2 tech report triggers
- Removal of requirement to file tech. reports for royalty issuers
- Removal of seasonal weather current personal inspection deferral
- Removal of adjacent property definition & allowance
- Removal of record maintenance
- Update of all definitions
- Fixed sign-off by QP to reflect actual disclosure practice
- Fixed misplaced responsibility on QP rather than issuer where it belongs

To Form:

- No Items added, remains 27
- Adjustments to project ownership disclosure including that of Indigenous rightsholders
- Extending tech report life by listing disclosure required by other agencies/permitting – including environmental and other issues
- Replacement of Item 23 Adjacent Properties with Current Personal Inspection

To Companion Policy:

- New section of guidance for the Form

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Additional Resources

More mining information, including the latest short course slides and mining team contacts at: www.bcsc.bc.ca/mining

Advance Notice of proposed revisions at:

www.bcsc.bc.ca/securities-law/law-and-policy/bc-notices

Or look under "Securities Law" heading for "BC Notices" on the top of main website

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Thank you



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Update from the M&A Team

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27 Feb 2025

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M&A Team (Legal Services)



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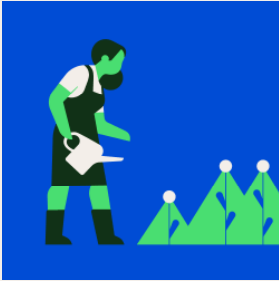
*Staff in CF-Continuous Disclosure, CF-Compliance and Enforcement as needed

Update from the M&A Team

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Areas of Expertise



- Take-over bid and issuer bid requirements and exemptions (NI 62-104)
- Early warning reporting (NI 62-103 and NI 62-104)
- Proxy solicitations and shareholder communications (NI 51-102, NI 54-101)
- Complaints, exemptive relief applications and hearings related to above matters, as well as appeals from TSXV and CSE decisions

Update from the M&A Team

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Modernization Amendments to Securities Act (2020)

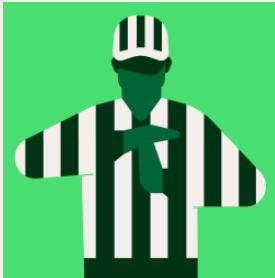
- Expanded circumstances under which a person can make a special application to the Commission or the Court
- Under s. 114, among other things, Commission may make an order:
 - rescinding a transaction (h)
 - prohibiting any person from exercising a voting right attaching to a security (j) ("cease vote" power)
- Expanded powers currently unique to BC

Update from the M&A Team

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Notable BCSC Hearings



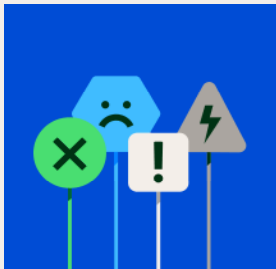
- *Re NorthWest Copper Corp. (2023)*
 - Clarifies threshold for establishing a “joint actor” relationship and confirms acquisition trigger for reporting
 - *YourWay Cannabis Brands Inc. (2022)*
 - Commission’s jurisdiction does not extend to enforcing compliance with corporate law requirements
- In both cases, Commission declined to make orders under s. 114 but provided insight into limits of Commission jurisdiction and which remedies may be appropriate

Update from the M&A Team

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Areas Outside our Mandate



- Shareholder disputes and civil matters:
 - Corporate law matters: oppression, fiduciary duties, meeting conduct
 - Company mismanagement
 - Contractual matters
- MI 61-101 *Protection of Minority Security Holders in Special Transactions*
 - Not adopted in BC but BC issuers subject to requirements in other jurisdictions and under exchange requirements

Update from the M&A Team

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MI 61-101 Jurisdictions

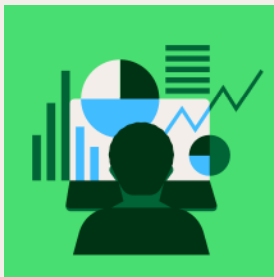


Update from the M&A Team

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MI 61-101 Real-Time Reviews



- Multilateral CSA Staff Notice 61-302 *Staff Review and Commentary on Multilateral Instrument 61-101*: **read!**
- CSA staff screen meeting information circulars for M&A transactions to:
 - assess compliance with MI 61-101 and related policy guidance and commentary (SN 61-302)
 - determine whether a transaction raises potential public interest concerns
- CSA staff alert M&A Team when they engage BC-PR issuers and refer non-MI 61-101 issues (e.g. disclosure deficiencies) to us



Update from the M&A Team

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M&A Team (Legal Services)

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Update from the M&A Team

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Update from the Chief Accountant's Office

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27 Feb 2025

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What we will cover today

- IFRS 18
- Non-GAAP financial measures
- Looking ahead – year-end reminders

Update from the Chief Accountant

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IFRS 18

Presentation and disclosure in financial statements

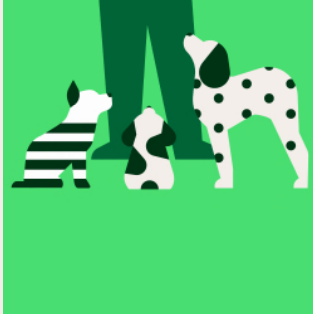
- New required and defined subtotals, including operating profit
- Disclosures about 'management-defined performance measures' (MPMs)
- Enhanced guidance on group of information – disaggregation and aggregation
- ➡ Changes to presentation and disclosure, recognition and measurement unchanged

Update from the Chief Accountant

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IFRS 18 – Getting ready



- Update financial reporting systems, processes and controls
- If you already disclose an “operating profit”, may need to change how measure
- Exercise greater judgment, if multiple business activities
- Review contracts tied to performance measure metrics
- Revisit communications to investors
- Reminder: MD&A and IAS 8 disclosure requirements

Update from the Chief Accountant

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MPMs and NGMs

- MPMs – subset of non-GAAP financial measures (NGMs)
- Will update NI 52-112 to ensure all financial measures traditionally considered NGMs continue to be regulated under NI 52-112 when disclosed outside the financial statements

Update from the Chief Accountant

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NI 51-112

Non-GAAP and other financial measures disclosures



- Disclosure requirements in NI 52-112
- Common findings:
 - Label unclear / misleading
 - Reconciliation deficient or missing from an earnings release
 - Insufficient disclosure about other specified financial measures, including supplementary financial measures
 - Unclear explanation why measure is useful to investors

Update from the Chief Accountant

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Looking ahead and selected year-end reminders



- Amendments to IAS 1
 - Timing of derecognition of trade payable and recognition of cash
 - Non-current liabilities with covenants
- Connectivity with disclosure outside the FS
 - Use reasonable assumptions, identify areas of significant estimation uncertainty
 - FS areas affected by uncertainty: going concern, valuation, impairment, ECL, subsequent events, etc.
- 2025 IASB / AcSB activities: intangibles research project, rate regulated standard

Update from the Chief Accountant

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Governance – NI 52-110 *Audit committees*



- Roles and responsibilities include:
 - Oversee the work of external auditor
 - Review the financial statements, MD&A and annual and interim earnings releases
- Financial literacy
 - Not required for any audit committee member of a venture issuer
- Independence
 - Venture issuer: majority must not be officer, employee or control person
 - Non-venture issuer: generally, all members must be independent

Update from the Chief Accountant

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Office of the Whistleblower

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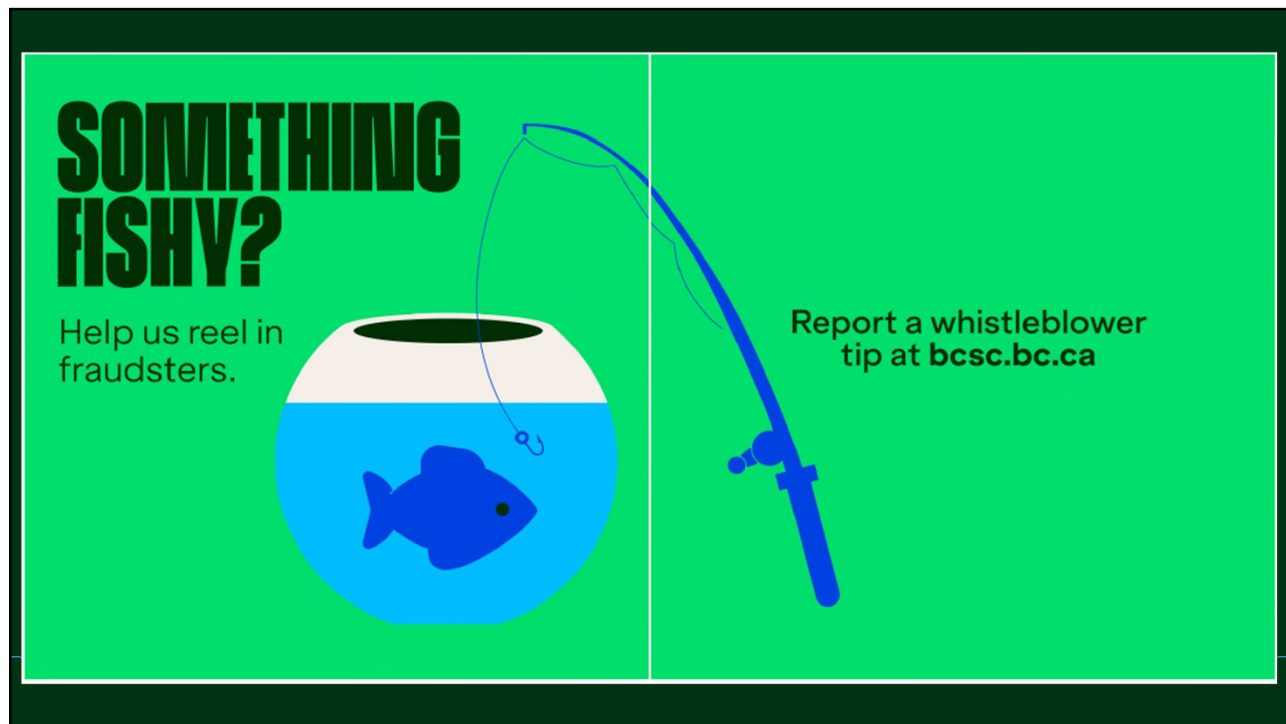
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**DON'T LET
SCANNIERS
STEAL NEST EGGS.**

Help us make sure
investment fraud
doesn't fly.




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- **Launched November 7, 2023**
- **A whistleblower can be anyone**
- **Anonymous or not**
- **Submit tips on website, by phone or by mail - <https://www.bcsc.bc.ca/report-to-us/about-the-whistleblower-program>**



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- **\$1,000 to \$500,000**
- **Enforcement events, not a final result**
 - **Preservation order**
 - **Issuing a Notice of Hearing or concluding a settlement agreement**
 - **Collection of amounts owing to the BCSC**
 - **Others**
- **What is a good whistleblower tip?**

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Credit for cooperation


- **Policy updated in November of 2023**
- ***Anyone* can be a whistleblower**
 - **If you are reporting misconduct involving yourself and others, you can be a whistleblower**
 - **If only your misconduct, consider Credit for Cooperation**

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SOMETHING FISHY?
Help us stop fraudsters




Whistleblowers are eligible to receive a financial award of **\$1,000 to \$500,000.**


Submit a tip to the BCSC's Whistleblower Program:

- BCSC.BC.CA
- Call 1-866-BCSC-TIP (1-866-227-2847)
- P.O. Box 91088
West Vancouver, B.C.
V7V 4S4

Report online:



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Thank you!

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Key Problematic Continuous Disclosure Issues from the BC Securities Commission Corporate Disclosure Group

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February 27, 2025

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What we will cover today

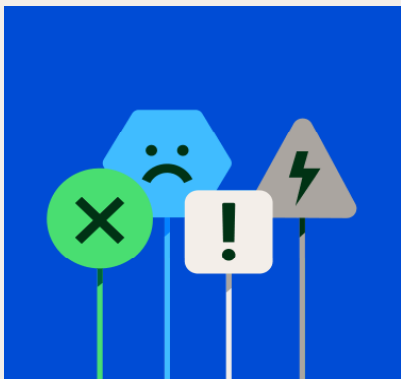


- CSA Staff Notice 51-365 / Areas of Focus
- Problematic Promotional Disclosure
- Acquisitions of Businesses or Assets

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CD review program – areas of regulatory focus



CSA SN 51-365 – CD Review Program Activities for fiscal 2024/23

- Risk-based and outcomes-focused approach
- CSA staff conduct both full CD reviews and issue-oriented reviews
- Categories of outcomes: CTO/DIL/referral to Enforcement; refiling; prospective changes; no actions required

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Key Problematic Disclosure Issues – promotional disclosure

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Problematic promotional disclosure

- CSA Staff Notice 51-356 – *Problematic promotional activities by issuers*
 - Activities of concern
 - Regulatory response
- BC Notice 15-702 – *Prohibitions against Misrepresentations and False or Misleading Statements*



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AI Washing

When a company makes false, misleading or exaggerated claims about its use of AI in its products or services, to capitalize on the growing interest in AI technology.



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Where we have seen AI washing



- Prospectus filings
- Continuous disclosure documents
 - News releases
 - MD&As
- Websites
- Investor presentations

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Key Problematic Continuous Disclosure Issues – acquisitions

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Acquisitions of Businesses or Assets



For certain acquisitions

- Observations
- Disclosure requirements / expectations

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News release and material change report

- Insufficient disclosure, promotional disclosure
- Disclosure requirements / expectations
 - Material terms of the acquisition
 - Material information of the business or asset acquired
 - Timely, factual, complete, and balanced disclosure

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Financial statements

- Impact of the acquisition on financial statements
- Disclosure requirements / expectations
 - Disclosure for business combinations
 - Recognition criteria for intangible assets
 - Disclosure re impairment

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MD&A



- Insufficient disclosure
- Disclosure requirements / expectations
 - Details of intangible assets/business acquired
 - Why management decided to pay a significant excess
 - Disclosure re significant impairment losses

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Valuation report / fairness opinion



- Assumptions – reasonable and supportable
- Considerations over disclosure or filing of a valuation report / fairness opinion

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Other CD filing obligations



- Material change report
- Material contracts
- Report of exempt distributions
- Business acquisition report

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Thank you!

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**So, you don't think you'll make
your filing deadline?**

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February 27, 2025

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Now what?

- Brief recap on filing requirements
- What are my options?
- NP 12-203 *Management Cease Trade Orders*
 - Overview
 - Eligibility and application
 - Application tips
 - Approval and next steps
- Regulatory actions



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NI 51-102 *Continuous Disclosure Obligations* - periodic filings *

Documents and due dates:

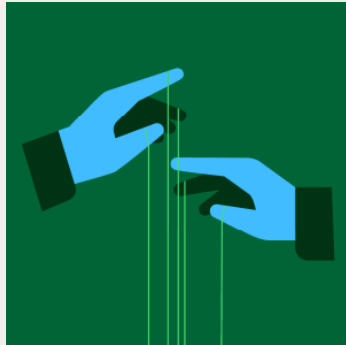
- Financial statements (interim and annual), MD&A and CEO/CFO certificates
 - Venture – 60 and 120 days after period-end
 - Non-venture – 45 and 90 days after period-end
- Annual Information Form (AIF)
 - Required to be filed within 90 days of year-end for non-venture issuers
 - May be filed on a voluntary basis for venture issuers
- “Specified defaults” include these documents

• * Parts 4, 5 and 6 of NI 51-102

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Options...



- **Request extension?**
 - No authority under the Act
 - No precedent for relief
- **Take my chances?**
 - May be subject to failure-to-file cease trade order (FFCTO)
 - FFCTO issued approximately 3-5 business days after filing deadline
 - Will need to reactivate on the exchange once revoked
- **Apply for Management Cease Trade Order (MCTO)?**
 - If the delay is out of management's control
 - Application filed at least 2 weeks before the filing deadline
 - Cease trade only applies to CEO/CFO



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NP 12-203 Management Cease Trade Order



- Applies to periodic filings (interim and annual)
- Cannot be used for any other filings (i.e. BAR, material change report, technical reports, etc.)
- Application must be filed on SEDAR+
 - File with Principal Regulator (PR)
 - BCSC filing fee \$1000
 - System fee of \$350
- Must meet eligibility criteria
- Must agree to comply with conditions



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Eligibility Criteria *



All 5 criteria must be met:

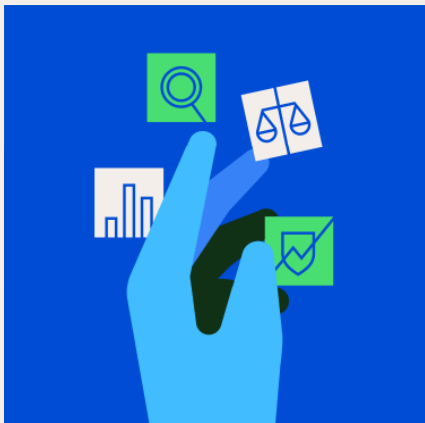
1. Outstanding filings must be expected to be made within a reasonable time
 - Regulators will specify filings required within 60 days
 - Only exceptional circumstances will permit an extension
 - No extension past 90 days
2. Issuer is generating revenue *or* actively pursuing the development of its business
3. Issuer has necessary financial and human resources to remedy the default in a timely manner
4. Issuer's securities are listed for trading on a Canadian Exchange and there is an active liquid market
5. Issuer is not on the default list in any CSA jurisdiction

• * section 6 of NP 12-203

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Application documents



- Application letter must confirm all criteria met plus:
 - Explain reason for the default and a remediation plan
 - Include executed CEO and CFO consents (appendix A)
 - Include copy of a default announcement (draft news release)
 - Confirm the issuer will follow alternative disclosure (status update bi-weekly)
 - Include required undertaking (cease certain trading activities)
 - description of issuer's blackout policies and other policies and procedures relating to insider trading

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Application tips



- You must be realistic about whether the filings can be made within 60 days
- The reason for the delay must be out of management's control
 - Audit delays due to staffing/timing
 - Unforeseen illness of key people
 - Logistical issues with foreign assets/management
- There must be some money spent on "business" activities
 - Management remuneration is not considered valid
 - Money must be spent on exploration or R&D type activities
 - Shell companies may be considered
- Issuer has necessary resources to get the filings done
 - Can have someone act as both CEO and CFO
 - Any proposed financings must be at an advanced stage

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Application tips continued



- Must be listed and trading on a Canadian Exchange
 - Trading cannot be halted or suspended
 - "active liquid market" is viewed very liberally in BC (but no less than 5-6 trades in 30 days)
- Check default list on SEDAR+ to see if in default anywhere in Canada
 - Some defaults we can work with
 - If in default, call and talk to us before applying
- Must be filed on SEDAR+ 2 weeks prior to deadline
 - Can be less (in certain circumstances) but risk of not being accepted due to high volume
- CEO and CFO need SEDI profiles
- Do not change CEO and CFO consents
- READ the consents – cannot buy or sell securities

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Application review



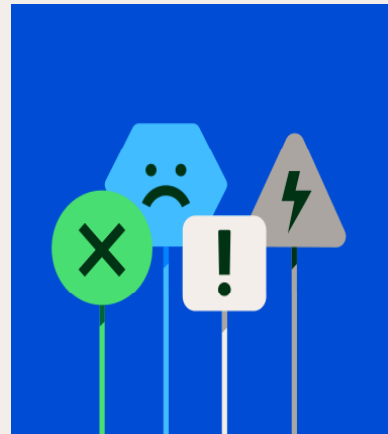
- BCSC staff will review application to determine if criteria met and documents included
- May have questions or request clarification
- Approval provided by email and will detail date filings expected and expectation to provide bi-weekly status updates
- Issuer required to file default announcement the same day as the MCTO is issued
- Staff will review SEDAR+ for status update and other relevant news releases that may impact approval

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Regulatory action – what happens once approved


- **Defaulting Issuers List**
 - Applied the day after the filing deadline
- **Management Cease Trade Order (MCTO)**
 - Issued the day after filing deadline and will apply to named Insiders on the order (CEO and CFO as applicable)
 - Revoked once filings made (may be delayed if subsequent filing not made yet such as a Q1)
- **Failure to file Cease Trade Order (FFCTO)**
 - Issued if filings not completed at 60-day deadline for MCTO or if issuer fails to comply with status updates or eligibility criteria Issued in addition to MCTO
 - Revocation of MCTO and FFCTO once filings are made if under 90-days after FFCTO (otherwise must apply to revoke)



• Default codes and orders are publicly available on BCSC Website and SEDAR+

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More information

www.bcsc.bc.ca

Jody-Ann Edman
jedman@bcsc.bc.ca

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**BC Securities
Commission**
Invest Right

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Section 52(2)

Disclosure of Investor Relations Activities

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Compliance investigator
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95

“Investor Relations Activities”



“Investor relations activities” are defined in section 1(1) of the Act to include:

“any activities or oral or written communications, by or on behalf of an issuer ..., that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer”.

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“Investor Relations Activities”



➤ Limited Exceptions

For example, if the records:

- cannot reasonably be considered to promote the purchase or sale of securities of the issuer, and
- they are disseminated in the issuer’s ordinary course of the business to:
 - promote the sale of its products or services of the issuer, or
 - raise public awareness of the issuer,

the records may not be investor relations activities.

➤ Includes:

- | | |
|----------------------|------------------------------|
| • Business Promotion | • Market Awareness |
| • Marketing | • Social Media – Influencers |

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s. 52(2) requires clear and conspicuous disclosure that the record is issued by or on behalf of the issuer or securityholder



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BC Notice 51-703



“Clear and Conspicuous” Disclosure of Investor Relations Activities

- Plain language
- Prominent Place
- Catch Reader’s Attention

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ABC CO (ABC.CN)

← **Missing Disclosure**

ABC Launches Disruptive Technology

Published February 25, 2025

Investing News

Nvidia boosts production

Investing News

AI Chip Stocks on the Rise



Growth Strategy

ABC plans to unlock the potential of the market with expert analysis.



100

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ABC CO (ABC.CN)

Disseminated on behalf of ABC Co.

ABC Launches Disruptive Technology

Published February 25, 2025

Investing News


Nvidia boosts production

Investing News

AI Chip Stocks on the Rise


Growth Strategy

ABC plans to unlock the potential of the market with expert analysis.



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ABC Co (ABC.CN)

Critical processing technology created in Canada will help advance AI chip making technologies.

[LEARN MORE](#)
[SHARE](#)

Overview Company Highlights Management Team **Investor Kit**

This ABC Co. company profile is part of a paid investor education campaign.*

- COMPANY HIGHLIGHTS**
- ABC Co. is a BC company developing innovative chip technology
- Dedicated team of experts
- Successful introduction of product to market

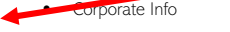
ABC CO. Investor Kit

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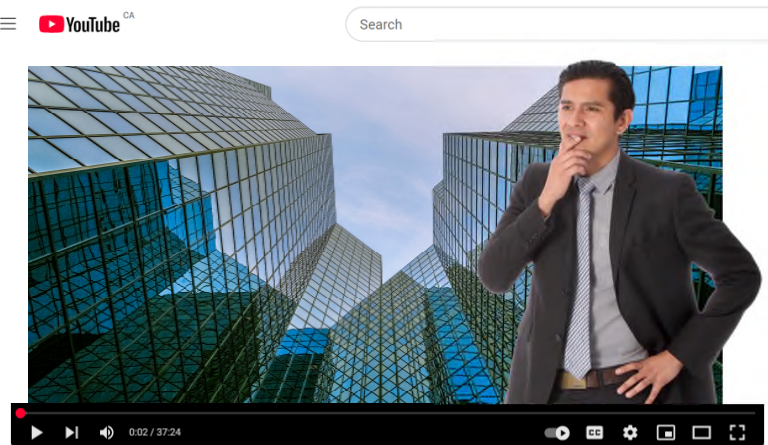
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Not plain language and not prominent



102



AI chips for all

IR Research Group
50K subscribers

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LiveNOW from FOX 111K views · 2 hours ago New

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LiveNOW from FOX 1.6M views · 1 day ago New

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KAROLINE LEAVITT CALLS OUT MEDIA
FOX 17:55

DOGE FINDINGS: Karoline Leavitt slams media on DOGE...

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Times Of India 4:03

KAROLINE LEAVITT CALLS OUT MEDIA
FOX 17:55

DOGE FINDINGS: Karoline Leavitt slams media on DOGE...

Missing Disclosure

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The screenshot shows a YouTube interface. The main video features a man in a suit sitting on a chair against a cityscape background. A large green starburst graphic is overlaid on the video, containing the text "ABC Co. (NEO: A) (OTC: AABBS)". Below the video, there is a yellow highlight over the word "Disseminated" in the title "Disseminated on Behalf of ABC Co.". To the right of the video player, there is a sidebar with several recommended videos, including "LIVE: FULL BRIEFING White House Briefing: Trump Press Secretary Karoline Leavitt...", "TRUMP FULL REMARKS President Donald Trump & Jordan's King Abdullah on Gaza", "WATCH LIVE: White House Press Secretary Karoline Leavitt...", "MORE EXECUTIVE ORDERS FULL REMARKS: Trump signs executive orders in Oval Office...", "BREAKING NEWS: John Kennedy Breaks Down Federal...", "MY GOD", "Lawrence: In Oval Office, Elon Musk shows the world Trump...", "Putin's Warplanes Arrive In Mideast: Israel, U.S. In Shock...", and "U.S. IN SHOCK AS RUSSIA SENDS JETS TO MIDEAST".

Disclaimer not clear and conspicuous

Disclaimer not clear and conspicuous

EMAIL

SUBJECT:
ABC'S INNOVATION OPPORTUNITY!

IR Research Group <contactus@research.ca>
Reply-To: IR Research Group contactus@rese
To: investor@gmail.com

With this product, ABC Corp is positioned fo
market.

With a focus on innovation, user experience, a
anticipate reaching new heights in the coming

Our commitment to user satisfaction undersc
operations. We're active in reviewing supply o
position ourselves for international trade. This
product strategically within the market.

Our competitors are now focusing on digital n
suggesting a shift in consumer behavior Unde
dynamics positions us to adapt and capitalize
preferences. Data reveals a steady increase in
sustainable products, presenting an opportun
offerings.

FINANCIAL

TRACTION

PRODUCT LAUNCH

Successful introduction of our product t
market. This will lead to increased produ
seamless integration and an enhanced u
experience.

10,000 USER MILESTONE

Substantial user base, indicating growin
demand. This leads towards enhance
scalability for future growth using our us
friendly learning technology.

STRATEGIC PARTNERSHIP

Expanding market presence and capabi
with letters of intent signed and sealed.

ExpandEnhance

Foster collaborative growthEnsure a tailored and user-focused experienceCapitalize on emerging global markets

MILESTONE

QUARTER

Product launchQ1

10,000 user milestoneQ2

Strategic partnershipQ3

Campaign launchQ4

• Strong market positioning

• Robust growth strategy

• Innovative product development

• Commitment to user satisfaction

MANAGEMENT

The Corporation plans to leverage its expertise in technology with current senior executive officer Mr. ABC.

Mr. ABC has twenty years experience in the industry Former CEO of XYZ Corp and Director of ZZZ Corp. Mr. ABC is a specialist in the industry and holds a master of business administration as well as a bachelor of commerce.

All directors have education and practical hands-on experience required to deal with the breadth and complexity of issues that can arise in the industry. The competitive landscape is highly fragmented, and ABC Corp. intends to expand its product range to customers.

Directors all hold experience with multiple public companies.

Sincerely,

Mr. ABC, CEO, ABCCo.ca

We are not securities broker or dealer, investment advisor or financial adviser. As a result, you should not rely on information herein as investment advice. We are a marketing company and are paid advertisements. If you are seeking personal investment advice please consult a qualified and registered broker. You should not make any investment decisions based on our communications. On January thirty first, twenty twenty two, in connection with our agreement with ABC Corp., we received two hundred thousand dollars per \$10,000 agreement.

Disclaimer is clear and conspicuous

EMAIL

SUBJECT:
ABC'S INNOVATION OPPORTUNITY!

IR Research Group <contactus@irresearch.ca>

Reply-To: IR Research Group contactus@irresearch.ca

To: Investor@gmail.com

Disseminated on behalf of ABC Co.

With this product, ABC Corp is positioned for success in the dynamic market.

With a focus on innovation, user experience, and strategic growth, we anticipate reaching new heights in the coming year.

Our commitment to user satisfaction underscores every aspect of our operations. We're active in reviewing supply chain logistics and routes to position ourselves for international trade. This helps us administer our product strategically within the market.

Our competitors are now focusing on digital marketing strategies, suggesting a shift in consumer behavior. Understanding these nuanced dynamics positions us to adapt and capitalize on emerging market preferences. Data reveals a steady increase in consumer demand for sustainable products, presenting an opportunity for our eco-friendly offerings.

INFORMATION

our product to
increased productivity,
an enhanced user

STONE

growing
enhanced
using our user-

INERSHIP

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AL

QUARTER

Q1

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Enforcement

Re Stock Social Inc, 2023 BCSECCOM 52

Sanctions:

- Investor Relations Firm:
\$50,000
- Investor Relations Firm's Principal:
\$25,000
- Issuer:
\$20,000

Settlements:

- Issuer \$25,000
- Principal \$10,000
- Agent \$10,000
- Issuer \$25,000
- Principal \$10,000
- Issuer \$25,000
- Principal \$10,000
- Principal \$10,000



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Material Changes ***Disclosure Requirements for*** ***Reporting Issuers***

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Material Changes

- What are they?
- What disclosure is required?
- Which are most common?
- How can issuers identify them?
- Why is this important?
- *Lundin Mining Corporation v. Markowich*

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Defined in s. 1(1) of the Act

“Material change”:

- a change in the business, operations, or capital of the issuer
- that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer

or

- a decision by directors / senior management to implement such change

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"Material change" not the same as a "material fact"



"Material fact" as defined in s. 1(1) of the Act:

- ..a fact that would reasonably be expected to have a significant effect on the market price or value of the security..."

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Disclose "Immediately" & in the Required Forms

NI 51-102, s. 7.1(1):

- immediately issue and file a news release
- and
- as soon as practicable, and in any event within 10 days, file a Material Change Report.



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Alternatively: File Confidential Report “Immediately”

NI 51-102, s. 7.1(2):

- confidential material change report allowed if disclosure:
“would be unduly detrimental to the interests of the reporting issuer”
- it is expected to be a temporary measure

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Common Material Changes

See NP 51-201, s. 4.3:

- resignation or appointment of directors and senior officers
- significant acquisitions or dispositions – remember to file the contract under NI 51-102, s. 12.2!
- impairment or disposition of key assets
- new classes / modification of securities
- consolidation, repurchase, or sale of securities
- significant borrowing or lending

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How to Identify material changes?

1. read NP 51-201, especially
 - Part IV *Materiality*
 - Part VI *Best Disclosure Practices*
2. have a written disclosure policy that management have read and understand



NP 51-201, s. 4.4:

- "not generally required to interpret the impact of external political, economic and social developments on issuer's affairs"

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“As a guiding principle, if there is any doubt about whether particular information is material, we encourage companies to err on the side of materiality and release information publicly.”

NP 51-201, s. 4.2(2), citing
Canadian Investor Relations Institute's
Model Disclosure Policy



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Why is this important?

- Enforcement proceedings against individual officers and directors for issuer's failure to disclose material changes – see *Re Arian Resources Corp.*:
 - Liability: [2021 BCSECCOM 391](#)
 - Sanctions: [2022 BCSECCOM 55](#)
- If material information has not been disclosed, management are also at risk of committing illegal insider trading or tipping - [s. 57.2 of the Act](#).

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What's next?

Clarification of what is a "change"?

Supreme Court of Canada heard arguments on January 15, 2025 in *Lundin Mining Corporation v. Markowich*

From Ontario Court of Appeal:
[2023 ONCA 359](#)

- "the definition of "change" was not meant to include its magnitude, but rather its qualitative nature."
- "a change is a change and it should be defined broadly"
- "one of the only restrictions on the meaning of change is that it cannot be external to the company without a resulting change in the business, operations or capital of the company, or it cannot simply be an unexplained change in results"

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Recordkeeping

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Recordkeeping

- Records: [Section 57.7](#) of the Act
- Why Must I Keep Records?
- Who Must Keep Records?
- What Are Records?
- What Kind of Records?
- How Do I Keep Records?
- When Must I Keep Records?
- Best Practices
- Keep Records Safe
- Examples



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Section 57.7

Records

- 1) Subject to the regulations, a person referred to in section 141 (2) must keep the following:
 - (a) records of the person's business transactions and financial affairs and the transactions that the person executes on behalf of others;
 - (b) records that enable the determination of the person's compliance with this Act, the regulations and any decision that applies to the person.
- 2) A record required to be kept under subsection (1) must be kept for a period of 7 years from the date the record is created or the date the record is obtained, whichever is later.



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Why Must I Keep Records?



- Allows the BCSC to:
 - promote public interest and protect investors, and
 - administer the Act through hearings, reviews, investigations, examinations, and inspections.
- A person who breaches section 57.7 of the Act can be ordered to pay an administrative penalty of up to **\$5 million** – [s.162\(2\) of the Act](#).
 - Highest penalty under the Act for a civil contravention.

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Who Must Keep Records?



Any person (market participant) referred to in [section 141\(2\) of the Act](#).

To name a few...

- Reporting issuers ([s.1\(1\) of the Act](#)).
- Person distributing securities using a prospectus exemption (such as a private placement).
- Person ([s.1\(1\) of the Act](#)) engaged in promotional activities ([s.1\(1\) of the Act](#)) by or on behalf of an issuer, security holder or themselves.
- Promoter ([s.1\(1\) of the Act](#)) of a reporting issuer.
- Director or officer of a reporting issuer.
- Any person who was formerly a person described in section 141(2) of the Act → **Important!**

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What Are Records?



- Broad meaning including any thing on which information is recorded or stored by any means whether graphic, electronic, mechanical, or otherwise – Interpretation Act, RSBC 1996, c. 238, section 29.
- Includes:
 - ✓ Physical documents and images.
 - ✓ Electronic documents and other records including:
 - Emails, instant messages and text messages.
 - Social media posts and videos.
 - Metadata of creation and changes to electronic files.

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What Kind of Records?



- Records of the person's business transactions and financial affairs,
- Records of transactions that the person executes on behalf of others, and
- Records showing the person's compliance with securities laws.

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How Do I Keep Records?



Create

AND

Preserve

- ✓ New records in addition to existent records.
- ✓ Records of financial affairs and business transactions, AND
- ✓ Records of how you have complied with the law.

- ✓ Safe and easily retrievable.
- ✓ Store within reasonable access.
- ✓ Back-ups of electronic files.
- ✓ Protect records from water, fire, animal, or other dangers.

Cannot avoid s.57.7 of the Act by not Creating the Record or by not Preserving the Record appropriately.

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When Must I Keep Records?



- “7 years from the date the record is created or the date the record is obtained, whichever is later”
- after resigning, you are “a person who was formerly a person described” in section 141(2) of the Act
- directors and officers of a reporting issuer are individually included in section 141(2) of the Act in addition to their company and must maintain their own records for 7 years.

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Best Practices



- ✓ Have a retention policy.
- ✓ Have a written policy for preserving records that is reviewed periodically.
- ✓ Incoming officers and directors should obtain copies of relevant records from predecessors.
- ✓ Be careful when upgrading software, hardware or migrating data.
- ✓ Be very diligent when choosing to delegate the creation or preservation of records to service providers.
- ✓ Consider what your contract with service providers will allow you to access if you cannot pay them.
- ✓ Do not solely rely on social media or messaging applications' platforms – create your own back-ups.

Delegating your recordkeeping to a third party does not relieve you from your obligations under s.57.7 of the Act.

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Keep Records Safe



Prevent this...

- The only copy we have is not in the office and we cannot access it.
- The person who had the records left the company.
- All records were kept by a previous service provider, and they will not give them back.
- Everything was in one computer that crashed, or the files appear corrupted.
- We only had paper copies, and we cannot find all of them.

By doing this...

- ✓ Have more than one copy.
- ✓ Make electronic copies of important hardcopy documents promptly.
- ✓ Do not store on a single device.
- ✓ Do not store with a password known to a single person.
- ✓ Keep copies of all records accessible to all officers and directors – i.e., not just at a single, restricted physical location (e.g. CEO's home office or at the mine site)

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Some Records Related to Contract Work

You know this...

- ✓ Contracts, agreements and understandings with persons engaged in investor relations/promotional activities, geoscientists, consultants, and other service providers.
- ✓ Documentation of payments and transfers of funds.
- ✓ Copies of final work-product.

But consider this...

- ✓ Communications with all service providers including consultants, persons engaged in investor relations/promotional activities, and authors of NI 43-101 technical reports.
- ✓ Drafts of work-product including their metadata.
- ✓ Proof of service or work provided to justify their compensation (e.g. consultants).

Scenario: Keep copies of instructions to persons engaging in promotional activities and all materials they disseminate. They might not keep their own copies.

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Some Records Related to Capital-Raising

You know this...

- ✓ Copies of signed subscription agreements and investment contracts.
- ✓ Copies of loan agreements.
- ✓ Copies of treasury orders.
- ✓ Documentation of funds received (cheques, wires, deposits, transfers, cash receipts, invoices, bank statements, etc.).

But consider this...

- ✓ Any other reason for the receipt of funds.
- ✓ Representations made to investors and the basis or support for such statements.
- ✓ Communications with investors, transfer agents and loan providers.
- ✓ Analysis to confirm the investor qualifies for an exemption from the prospectus requirements – [45-106CP Prospectus Exemptions](#).

Scenario: Avoid “a friend of a friend”, “my barber”, “they selected accredited on their form”. Have documentation and record of analysis of how an investor qualifies as a “close personal friend” or “an accredited investor”.

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Some Records Related to Business Development

You know this...

- ✓ All documentation regarding acquisitions, mergers, divestitures, etc.
- ✓ Copies of all memorandums, understandings or commitments prior to final transaction.
- ✓ Documentation of funds received/sent (cheques, wires, deposits, transfers, receipts, invoices, etc.).

But consider this...

- ✓ Analysis and due diligence supporting the decision for the transaction and the value of the transaction, including market research and business valuations.
- ✓ Analysis of third-parties, arm's length and non-arm's length aspects of the transaction.

Scenario: Analysis of why management approves buying an asset from a director's friend that the company promptly writes-off.

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Some Records Related to General Business

You know this...

- ✓ Corporate minute book.
- ✓ All accounting data including general ledger, invoices, receipts, billings, etc.
- ✓ Shareholder register.
- ✓ Company's policies and procedures.
- ✓ Copies of all company's disclosure including one not filed on SEDAR+.

But consider this...

- ✓ Notes of important communication that was unwritten or otherwise unrecorded.
- ✓ Analysis of budget and revenue projections.
- ✓ Discussions, reviews and approvals of the company's public disclosure (e.g. Materiality of disclosure to comply with [NI 51-102, s 7.1\(1\)](#)).

Scenario: Management receives adverse information and needs to decide whether it is material and needs to be disclosed.

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Prospectus Exemptions: ***Questions to Ask Before Relying on an Exemption***



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Joel Hill
Manager, Compliance
jhill@bcsc.bc.ca

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Every Distribution Requires a Prospectus or a Valid Exemption

s. 61(1) of the Act

- where to look for guidance?
- private issuer exemption:
 - 50 security holders
 - “person that is not the public”
- “close personal friend”
- “consultant”
- syndication
- taking reasonable steps to verify
- filing reports timely

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Review the Exemption, Other Legislation, & the Companion Policies

- Read the full text of the exemption
- Read the definitions:
 - at the beginning and **throughout** the relevant instrument,
 - in the Act, and
 - in NI 14-101 Definitions
- Especially read the Companion Policy:
 - 45-106CP Prospectus Exemptions
 - 72-503CP Distribution of Securities outside British Columbia

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Private Issuer

NI 45-106
s. 2.4(1)(b)(ii)

Issuer's securities (other than non-convertible debt securities) can be beneficially owned by not more than 50 persons, not including employees and former employees of the issuer or its affiliates.

Count distributions sequentially, even if occurring at the same time – *i.e.* if the transaction will take the issuer over 50, it's non-compliant.

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Private Issuer

NI 45-106
s. 2.4(1)(c)(i)

Distributions can only have ever been to a person in section 2.4(2), including:

“a person that is not the public”

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Private Issuer

**NI 45-106
s. 2.4(1)(c)(i)**

(continued)

Who is “the public”?

Re Bilinski et al., 2002 BCSECCOM 102:

- interpretation is “very broad”
- “need to know” test
 - ✓ knows everything that would be in a prospectus
- “common bonds” test
 - ✓ “known the officer or director for a number of years”
 - ✓ “same moral commitment from the officer or director as would a family member”

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“Close Personal Friend”

**NI 45-106
s. 2.4(2)(e) &
s. 2.5(1)(d) & (f)**

Relationship must be:

- direct (no “friends of friends”)
- at the time of the distribution (no “we became friends through the investment”)

Can they explain the relationship promptly?

Is it just “they know me”?

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“Close Personal Friend”

**NI 45-106
s. 2.4(2)(e) &
s. 2.5(1)(d) & (f)**

(continued)

Close friends:

- ✓ How many? (“a large number of persons under this exemption may give rise to a presumption that not all” qualify)
- ✓ Length of time
- ✓ Frequency and nature of the contacts (where and why?)

Close business associates:

- ✓ also, most recent business dealings

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“Close Personal Friend”

**NI 45-106
s. 2.4(2)(e) &
s. 2.5(1)(d) & (f)**

(continued)

Not enough to be:

- ✓ a relative,
- ✓ a member of the same club, organization, association or religious group,
- ✓ a co-worker, colleague or associate at the same workplace,
- ✓ a client, customer, former client or former customer,
- ✓ a mere acquaintance, or
- ✓ connected through some form of social media, such as Facebook, Twitter or LinkedIn.

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“Consultant”

Defined in s. 2.22 of NI 45-106

NI 45-106 s. 2.24

“Consultant” must:

- ✓ have a written contract
- ✓ spend a significant amount of time and attention on the affairs and business

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Syndication

Persons created to use exemptions expressly disallowed.

**NI 45-106
s. 2.3(5)
s. 2.4(1)&
s. 2.10(2)**

“A person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a “syndicate”) may be considered a distribution of securities to the persons beneficially owning or controlling the syndicate”

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Onus to Verify Status of Investor

45-106CP, Part 1.19:

“The person relying on a prospectus exemption is responsible for determining whether the terms and conditions of the prospectus exemption are met. That person should retain all necessary documents to demonstrate that they properly relied on the exemption.”

Take “reasonable steps”:

- ✓ understand exemption
- ✓ have policies and procedures
- ✓ verify that investor qualifies
 - more than a mere representation
- ✓ keep documentation – see also s. 57.7 of the Act

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File Report of Exempt Distribution within Ten Days

Must file a RED “no later than 10 days after the distribution”

When is “after the distribution”?

- ✓ “security” includes “an agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person”

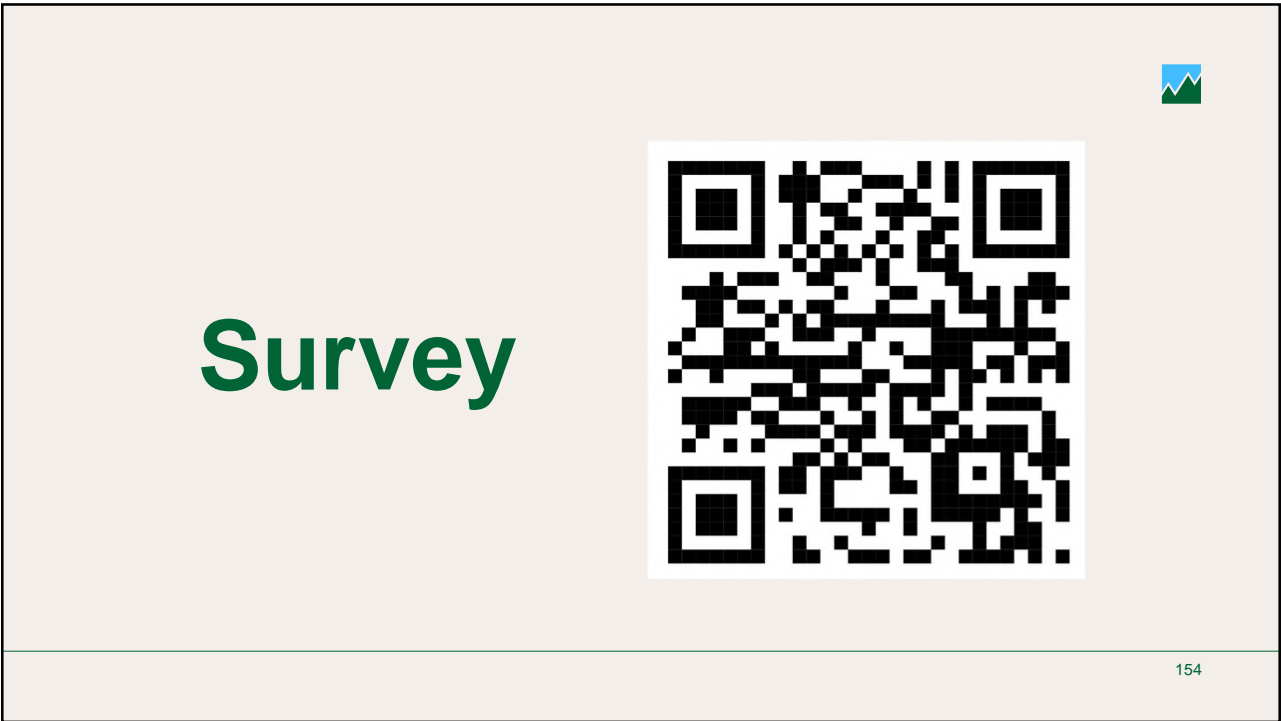
So, no taking investors’ \$ and not filing a RED because “the distribution hasn’t closed”

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