

COVID-19: Continuous Disclosure Obligations and Considerations for Issuers

May 6, 2020

Overview

- The principal purpose of this presentation is to outline considerations for discussing the effects of the current COVID-19 pandemic when applying **existing disclosure requirements**.
- There is no **“one size fits all”** model for issuers to follow when assessing the disclosure implications of COVID-19.
- Issuers should consider the accounting and disclosure issues **specific** to their circumstances in the current economic environment.

Key areas of focus

Management's
Discussion &
Analysis

Discussion of operations

Liquidity and capital resources

Forward-looking information

Risk factors

Financial
Information

Significant judgements and estimation uncertainty

Impairment considerations for non-financial assets

Non-GAAP financial measures

MCRs

Material change reporting

1/ Management's Discussion & Analysis (MD&A)



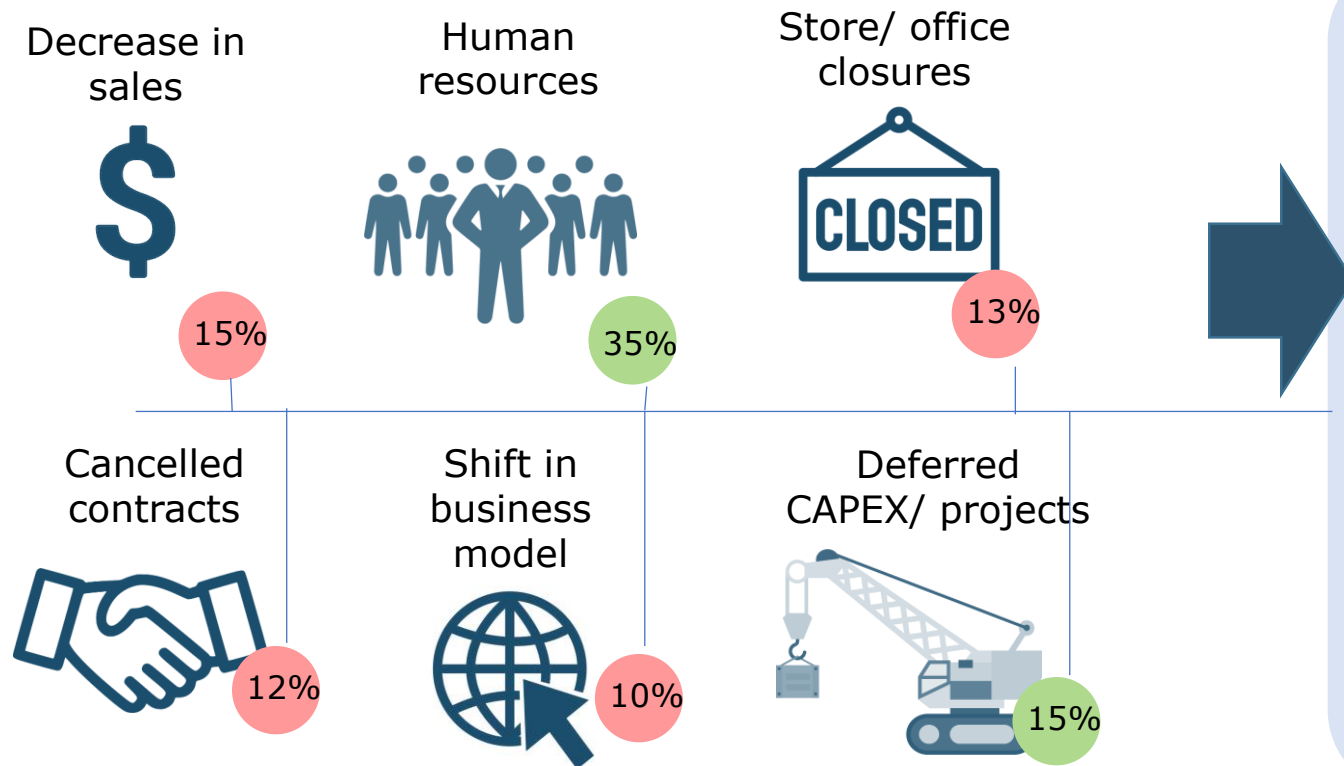
Management's Discussion & Analysis (MD&A)

- MD&A is a narrative explanation **“through the eyes of management”**
- Disclosure relating to COVID-19 should:
 - (i) help investors understand what the financial statements show and do not show;
 - (ii) discuss material information that may not be fully reflected in the financial statements, such as contingent liabilities, defaults under debt or contractual obligations;
 - (iii) discuss important trends and risks that have affected the financial statements and are reasonably likely to affect them in the future; and
 - (iv) provide information about the quality, and potential variability, of profit or loss and cash flow, to assist investors in determining if past performance is indicative of future performance.

Discussion of operations

- An issuer should discuss the impact of COVID-19 on its operations for the most recently completed reporting period(s), including any impact on:
 - changes in total revenue, cost of sales or gross profit,
 - risks or uncertainties that management reasonably believe will materially affect its future performance including total revenue and profit or loss from continuing operations,
 - how the issuer was going to use proceeds (other than working capital) from any prior financing, including the impact of the variances, if any, on the issuer's ability to achieve its business objectives and milestones.
- Discussion of the **specific** impacts on an issuer and any operational response(s) to COVID-19.

Discussion of operations



Discussion of operations

- Discuss **issuer-specific** impacts of COVID-19 on the issuer's operations, including revenue, cost of sales and gross profit.
- **Quantify** impact of each material factor causing variance in financial performance metrics, where possible (e.g., revenue, cost of sales, gross profit, etc.).

Discussion of operations

Some key questions to consider when assessing impacts of COVID-19:

- How has demand for products and services been impacted?
- How have costs, including changes in prices, been impacted? Increased sanitation costs?
- What is the overall strategy or changes to strategies, including cost saving measures, restructuring initiatives or a realignment of operational and financial resources?
- How has the company addressed workplace health and safety?
- Have the company's customers, supply chain or distribution channels, or constraints on supply been affected?
- How have the company's human resources, operating expenses and internal controls been impacted?
- How has the status, timing, and budget for planned projects been impacted?
- What is the impact of any government support and insurance recoveries?
- Have there been any breaches or potential breaches of material contracts by the issuer or its counterparties?

Liquidity and capital resources

Government
subsidies



OPEX
reductions



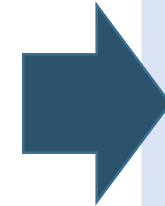
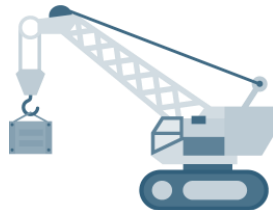
Halting
dividends



Revolving
Line of Credit



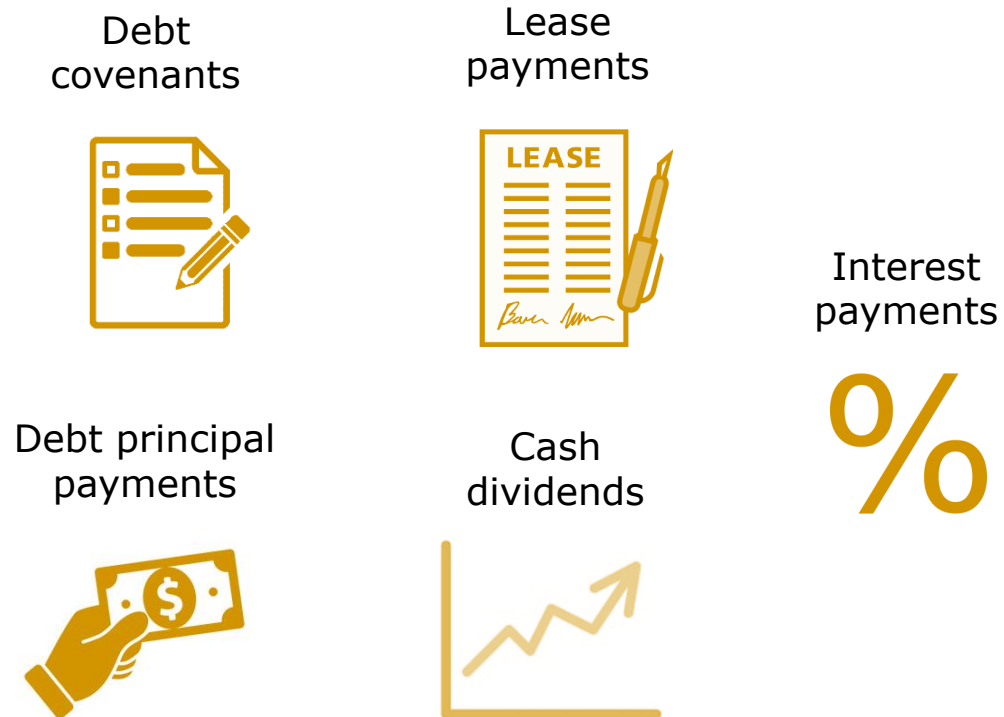
Deferred
CAPEX



Liquidity and Capital Resources

- **Discuss** ability to generate sufficient amounts of cash and cash equivalents, in the short term and the long term, to maintain your company's capacity, to meet your company's planned growth or to fund development activities; and
- **Discuss** trends or expected fluctuations in your company's liquidity, taking into account demands, commitments, events or uncertainties.

Liquidity and capital resources



Liquidity and Capital Resources

- **Discuss** defaults or arrears or significant risk of defaults or arrears on:
 - (i) distributions or dividend payments, lease payments, interest or principal payment on debt; and
 - (ii) debt covenants.
- **Discuss** how your company intends to remedy the default or arrears or address the risk.

Liquidity and capital resources

Some key questions to consider when assessing impacts of COVID-19:

- How has COVID-19 impacted your company's liquidity position (short-term and long-term)?
- What is the impact on A/R collection? Has the company modified credit terms?
- Is your company eligible for subsidies and/or funding from government programs?
- Has the cost of or access to capital changed for your company?
- Will the company be able to satisfy contractual liabilities?
- What is the impact on expenditures required to maintain capacity, for planned growth or development activities?
- Has the company's dividend policy changed as a result of its new liquidity position?
- Does the company expect that it will be able to satisfy covenants in credit facility agreements?
- What remedies has the company considered to address any liquidity concerns or uncertainties?

Forward-looking information

- A reporting issuer must only disclose forward-looking information (**FLI**) if **the issuer has a reasonable basis for the FLI**.

Requirements for disclosure of FLI in Part 4A of NI 51-102:

- (i) identifies material FLI as such;
- (ii) cautions users of FLI that actual results may vary from the FLI and **identifies material risk factors that could cause actual results to differ materially** from the FLI;
- (iii) states the **material factors or assumptions** used to develop FLI; and
- (iv) describes the reporting issuer's policy for updating FLI.

Forward-looking information

- **Updating previously disclosed forward-looking information:**
 - Updates to or notification that FLI is being withdrawn must be included in the MD&A or in a news release.
 - Section 5.8 of NI 51-102 provides flexibility to allow the updated information to be included in a news release as long as it is filed prior to the MD&A. In this case, the MD&A must refer to the news release to satisfy the requirements.
 - The disclosure and discussion of material differences between actual results and previously disclosed FOFI or financial outlook must be included in the MD&A; including this information in a news release instead of the MD&A is not permitted.

Forward-looking information

Forward-looking information – Q3 2019 MD&A	Results to date – Q1 2020
<p>Growth targets: We will aggressively pursue growth opportunities, and anticipate that we will increase our store count by 35 new stores in 2020, to reach 106 stores by end of fiscal 2020. We have agreements, leases and planned launch dates in place for 20 of the 35 new store openings planned for 2020.</p>	<p>Growth targets: We launched 5 of the 35 planned new store openings for 2020 and are no longer on track to meet the previously disclosed target of 35 store openings in 2020 as a result of having to temporarily close our existing stores during the recent government shutdown due to the COVID-19 pandemic.</p> <p>Agreements for 15 locations planned for 2020 have been deferred, by negotiating amended agreements with the respective vendors. We have not finalized agreements for the remaining 15 new locations. As a result, we now tentatively target opening the remaining 30 additional stores by the end of 2021, not the end of 2020.</p>
<p>We have substantially negotiated the terms for 15 of the 35 new store openings planned for 2020, but launch dates and locations are still being finalized.</p>	<p>We now plan to pick locations and agree on terms for the remaining 15 additional locations not in 2020 but in 2021, after our operations stabilize following the COVID-19 pandemic.</p>
<p>We assume stores are opened evenly throughout the year, and generate, in aggregate, total expected sales of \$50 to 55 million for fiscal 2020.</p>	<p>Due to the drop in retail foot traffic after temporarily closing our physical stores being only partially offset by an increase in sales through our digital platform, we have revised our assumed increase in total expected sales down, to an increase of between \$19 and 22 million for fiscal 2020.</p>

Forward-looking information

Some key questions to consider when assessing impacts of COVID-19:

- Is there still a **reasonable basis** for previously disclosed FLI?
- Are the **assumptions** reasonable and entity-specific? Are they **disclosed**?
- Have **risk factors** that could cause actual results to vary been identified?
- Have users been cautioned that **actual results may vary** from FLI?
- How has COVID-19 impacted your company's overall outlook for its future operations and liquidity position?
- Has previously issued FLI been **updated**?
- Have decisions to update or withdraw material FLI been adequately and promptly communicated to the market?

Risk Factors

- The **specific** risk factors of the current COVID-19 pandemic will differ by industry, geography and even reporting issuer.
- There is **no "one size fits all"** model of risk factor disclosure.
- Risk factors **should not be generic** or "boilerplate".

Disruptions to day-to-day operations resulting from health and safety measures or government-imposed closures.

Disruptions and volatility in the global capital markets, increasing the cost of capital and adversely impacting access to capital.

Disruptions to supply chain as a result of mass quarantines or lockdowns in the issuer's home jurisdiction or abroad.

Interruptions to, or restrictions on, the export or shipment of our products to other countries.

Limitations on the ability of issuer's customers to perform, including in making timely payments.

Reliance on major customers that have stopped or decreased operations as a result of shutdown of non-essential services.

Risk factors

Some key questions to consider when assessing impacts of COVID-19:

- Has your company avoided boilerplate language and tailored the disclosure to the issuer's specific circumstances?
- Has your company been specific in its disclosure about any new specific risks affecting the issuer's business?
- Did your company discuss in sufficient detail the specific steps it has taken to mitigate the risk(s)?
- Has your company provided entity-specific information as part of its risk factor disclosure, and not just included general risk factor disclosure because another issuer in the same industry has disclosed a similar risk factor?
- Have you considered risks or uncertainties that you reasonably believe will materially affect your company's future performance and liquidity position?

2/ Financial Information



Significant judgements and estimation uncertainty

We Understand

- Issuers are preparing financial statements in an **evolving and uncertain environment**, with potentially imperfect information that could change after materials are made publicly available.

We Expect

- Issuers to use the **best available information** in making **well-reasoned judgements** and estimates and provide the required disclosure of significant judgements and estimates.
- Issuers with similar circumstances may have different judgements and estimates based on the information available, which is why **detailed entity-specific disclosure** in an entity's annual or interim financial statements is of great importance.

We Remind

- Issuers must consider, **as new information becomes available**, whether their judgements and estimates need to be **updated and prospectively** reflected in the financial statements.

Areas that may be subject to significant judgement and estimation uncertainty

Going concern assessment

Impairment assessments

Fair value calculations

Government assistance

Revenue recognition

Deferred tax recoverability

New judgements or estimates may be needed as a result of COVID-19



Interim Financial Statements Reminder

Entity-specific disclosure about new or updated significant judgements and estimates must be included in an entity's interim financial statements.

Impairment considerations for non-financial assets

- Consider whether any triggers for impairment are present for non-financial assets (e.g., intangible assets, goodwill, PP&E, etc.).
- Test goodwill and indefinite-lived intangible assets for impairment **annually or when there is an indicator of impairment**.
- Other non-financial assets (e.g., PP&E, non-indefinite life intangible assets) should be tested **whenever there is an indicator of impairment**.
- Staff may request that issuers provide their analyses of impairment triggers/impairment tests.

Examples of impairment triggers resulting from COVID-19:

- market value declines
- negative changes in markets, economy, or laws
- net assets of the company higher than market capitalization
- asset is idle, part of a restructuring or held for disposal
- worse economic performance than expected

Non-GAAP financial measures

We Remind

- **Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures***
- A loss or expense should not be described 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.

We Expect

- Given the uncertainty in the current environment, there may be a limited basis for management to conclude that a loss or expense is non-recurring, infrequent or unusual.
- It would be misleading to describe an adjustment as COVID-19 related, if management does not explain how the adjustment amount was specifically associated with COVID-19. For example, we caution issuers from characterizing an impairment as COVID-19 related, where indicators of impairment existed prior to the pandemic that are unrelated to COVID-19.

3/ Material Change Reports (MCRs)



Material Change Reports (MCRs)

- The term “material change” is generally defined in each jurisdiction's securities legislation and is usually based on a market impact test. For example, the *Securities Act* (Ontario) includes the following definition:

Material change: When used in relation to an issuer other than an investment fund, means,

- (i) 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 any of the securities of the issuer, or
- (ii) a decision to implement a change referred to in subclause (i) made by the board of directors or other persons acting in a similar capacity or by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable.

- Issuers should refer to their principal regulator’s applicable securities legislation for the definition of “material change”.

Material Change Reports (MCRs)

- Part 7 of National Instrument 51-102 *Continuous Disclosure Obligations* requires that reporting issuers, upon the occurrence of a material change in their affairs:
 - (i) immediately issue and file a news release authorized by an executive officer disclosing the nature and substance of the change; and
 - (ii) as soon as practicable, and in any event within 10 days of the date on which the change occurs, file a Form 51-102F3 Material Change Report with respect to the material change.

Material Change Reports (MCRs)

- If COVID-19 has an equal effect throughout an issuer's industry, a material change report may not be required. However, COVID-19 may result in material, issuer-specific implications.
- Issuers should be aware of impacts of COVID-19, or resulting governmental or regulatory policies, that may be unique or more significant to them than to others in their industry.

Examples of potentially material information as result of COVID-19:

- significant disruptions to an issuer's workforce or operations
- negative changes in markets, economy, or laws
- supply chain delays or disruptions that are critical to an issuer's business
- changes in credit arrangements
- increased cost of goods or services
- suspension of exports

4/ Blanket Relief Orders



Blanket Relief Orders

- BC Instrument 51-515 *Temporary Exemption from Certain Corporate Finance Requirements* or substantially similar orders in other CSA jurisdictions (**BCI 51-515**).
 - BCI 51-515 provides a 45-day extension to file, send or deliver certain documents otherwise due during the period from March 23, 2020 to June 1, 2020.
 - The conditions to the extension differ by category of regulatory requirement and include issuing and filing a news release before the filing deadline that discloses each applicable requirement which the issuer is relying upon, as well as periodic updates during the extension period.
- CSA Staff Notice 51-360 (Updated) *Frequently Asked Questions Regarding Filing Extension Relief Granted by Way of a Blanket Order in Response to COVID-19*
 - Updated April 16, 2020, May 1, 2020 and May 13, 2020

CSA Staff Notice 51-360

Frequently asked questions regarding filing extension relief granted by way of a blanket order in response to COVID-19

April 3, 2020

On March 23, 2020, the Canadian Securities Administrators (CSA) published substantively harmonized temporary exemptions from certain regulatory filing requirements as a result of COVID-19. The CSA has implemented the relief through local blanket orders that are substantively harmonized across the country.

This notice contains CSA staff's views on frequently asked questions (FAQs) about the exemptions from certain corporate finance requirements provided by the CSA that apply to reporting issuers and other issuers that are not investment funds in the following local blanket orders (collectively, the **Blanket Order**):

- In Alberta, Blanket Order 51-517 *Temporary Exemption from Certain Corporate Finance Requirements* (**ASC Blanket Order 51-517**)
- In British Columbia, BC Instrument 51-515 *Temporary Exemption from Certain Corporate Finance Requirements* (**BC Instrument 51-515**)
- In Ontario, Ontario Instrument 51-502 *Temporary Exemption from Certain Corporate Finance Requirements* (**OSC Instrument 51-502**)
- In Quebec, Decision No. 2020-PDG-0023 *Décision générale relative à la prolongation de délais concernant certaines obligations d'information continue et de prospectus applicables aux émetteurs et aux agences de notation désignées* (**AMF Decision 2020-PDG-0023**)
- In Manitoba, Manitoba Blanket Order 52-502 *Temporary Exemption from Certain Corporate Finance Requirements* (**Manitoba Blanket Order 52-502**)
- In New Brunswick, Blanket Order 51-507 *Temporary Exemption from Certain Corporate Finance Requirements* (**FCNB Blanket Order 51-507**)
- In Newfoundland and Labrador, Blanket Order Number 110 *Temporary Exemption from Certain Corporate Finance Requirements* (**NL Blanket Order 110**)
- In Nova Scotia, Blanket Order 51-509 *Temporary Exemption from Certain Corporate Finance Requirements* (**NSSC Blanket Order 51-509**)
- In Saskatchewan, General Order 51-501 *Temporary Exemption from Certain Corporate Finance Requirements* (**FCAA General Order 51-501**)
- In Prince Edward Island, Blanket Order 51-503 *Temporary Exemption from Certain Corporate Finance Requirements* (**PEI Blanket Order 51-503**)
- In the Northwest Territories, Blanket Order 51-502 *Temporary Exemption from Certain Corporate Finance Requirements* (**NWT Blanket Order 51-502**)
- In Yukon, Superintendent Order 2020-02 *Temporary Exemption from Certain Corporate Finance Requirements* (**Yukon SO 2020-02**)

Blanket Relief Order



- BCI 51-515 **provides** a 45-day extension to file, send or deliver certain documents otherwise due during the period from March 23, 2020 to June 1, 2020.



- BCI 51-515 **does not** provide an exemption from content requirements.
- BCI 51-515 **does not** provide an exemption for material change reports.

Blanket Relief Orders

- BC Instrument 51-517 *Temporary Exemption from Certain Corporate Finance Requirements with Deadlines during the Period from June 2 to August 31, 2020* or substantially similar orders in other CSA jurisdictions (**BCI 51-517**).
 - Publication made effective on May 20, 2020.
 - BCI 51-517 provides a 45-day extension to file, send or deliver certain documents otherwise due during the period from June 2, 2020 to August 31, 2020.
 - Issuers must file a news release before the required filing deadline that discloses each applicable requirement which the issuer is relying upon, and comply with other conditions

British Columbia Securities Commission

BC Instrument 51-517

Temporary Exemption from Certain Corporate Finance Requirements with Deadlines during the Period from June 2 to August 31, 2020

Definitions

1. Terms defined in the *Securities Act*, National Instrument 14-101 *Definitions*, National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, National Instrument 44-102 *Shelf Distributions*, National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* and National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) have the same meaning in this Instrument.
2. In this Instrument:

“extension period” means the period between the date the person was required to file, send or deliver a document under a requirement listed in the Group A requirements and 45 days following that date;

“Group A requirements” means the requirement to file, send or deliver a document during the period from June 2, 2020 to August 31, 2020 under any of the following provisions:

 - (a) section 4.2 [filing deadline for annual financial statements] of NI 51-102,
 - (b) section 4.4 [filing deadline for an interim financial report] of NI 51-102,
 - (c) sections 4.6(3) [delivery of financial statements] of NI 51-102,
 - (d) sections 4.7(2) and (3) [filing of financial statements after becoming a reporting issuer] of NI 51-102,
 - (e) section 4.10(2) [financial statements of the reverse takeover acquirer for periods ending before a reverse takeover] of NI 51-102,
 - (f) section 5.1(2) [filing of MD&A] of NI 51-102,
 - (g) section 5.2 [filing of MD&A for SEC issuers] of NI 51-102,
 - (h) sections 5.6(1) [delivery of MD&A] of NI 51-102,
 - (i) section 6.2 [filing deadline for an AIF] of NI 51-102,
 - (j) section 4.2(1)(j) [technical report filing] of National Instrument 43-101 *Standards of Disclosure for Mineral Projects*,
 - (k) section 2.1 [reserves data] of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, and
 - (l) a requirement to file, send or deliver any similar annual or interim disclosure document of a reporting issuer pursuant to an exemption from one of the requirements listed in this definition, included in an exemptive relief decision made by a securities regulatory authority or regulator prior to the date of this Instrument; and

Blanket Relief Order



- BCI 51-517 **provides** a 45-day extension to file, send or deliver certain documents otherwise due during the period from June 2, 2020 to August 31, 2020.



- BCI 51-517 **does not** provide an exemption from content requirements.
- BCI 51-517 **does not** provide an exemption for material change reports.
- BCI 51-517 **does not** provide a further extension of any deadline previously extended under BCI 51-515.

Blanket Relief Orders

- BC Instrument 51-516 *Temporary Exemption from Certain Requirements to File or Send Securityholder Materials* or substantially similar orders in other CSA jurisdictions (**BCI 51-516**)
 - BCI 51-516 gives issuers until December 31, 2020 to file their executive compensation disclosure and temporarily relieves issuers from requirements to send, or send upon request, copies of annual or interim financial statements and MD&A to investors within certain time periods up to December 31, 2020.
 - The relief is limited and is subject to terms and conditions. Issuers and their counsel should refer to the blanket order and, if they have questions, are encouraged to contact their principal regulator.

British Columbia Securities Commission

BC Instrument 51-516

Temporary Exemptions from Certain Requirements to File or Send Securityholder Materials

Definitions

1. Terms defined in the *Securities Act*, National Instrument 14-101 *Definitions* and National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) have the same meaning in this Instrument.

2. In this Instrument:

“annual request form requirement” means the requirement in subsection 4.6(1) of NI 51-102 for a reporting issuer to send annually a request form to its securityholders, other than holders of debt instruments;

“executive compensation disclosure requirement” means the requirement in subsection 9.3.1(2.2) of NI 51-102 for a reporting issuer to file the executive compensation disclosure required under subsection 9.3.1(1) of NI 51-102 by the deadlines set out in subsection 9.3.1(2.2) of NI 51-102;

“next AGM information circular” means the information circular that a reporting issuer sends to its securityholders for its next annual meeting of securityholders; and

“send-on-request requirements” means the requirements in subsections 4.6(3) and 5.6(1) of NI 51-102 for a reporting issuer to send annual financial statements and MD&A, or interim financial reports and MD&A, to its securityholders, other than holders of debt instruments, who requested them, by the deadlines set out in subsection 4.6(3) of NI 51-102.

Background

3. The COVID-19 pandemic may present challenges for market participants in meeting certain obligations under securities legislation. Specifically, as a result of the COVID-19 pandemic, some issuers may have difficulties or may be unable to comply with requirements to make certain filings or to send or deliver certain documents.
4. Reporting issuers include their executive compensation disclosure in the information circular for their annual meeting of securityholders. As a result of the COVID-19 pandemic, many reporting issuers are postponing their annual meeting of securityholders.
5. Subsections 4.6(5) and 5.6(3) of NI 51-102 contain exceptions to the annual request form requirement and send-on-request requirements which allow reporting issuers to send their annual financial statements and MD&A with the information circular for their annual meeting of securityholders, provided they are sent within 140 days of their financial year

Final Thoughts

- We recognize that issuers are preparing disclosure in a **rapidly-changing environment**, making it more difficult to determine the necessary information to provide.
- Reporting issuers must **comply with the requirements of securities law** and are expected to prepare the required disclosure with the information that is available to them.
- Staff are sensitive to the challenging circumstances reporting issuers find themselves in and invite you to **reach out to your principal regulator** with any questions regarding compliance with your continuous disclosure obligations during these difficult times.

Questions?



Appendix A – CSA Contact Information

British Columbia

Mike Moretto

Chief of Corporate Disclosure,
Corporate Finance

British Columbia Securities
Commission

T: (604) 899-6767

E: mmoretto@bcsc.bc.ca

Anita Cyr

Associate Chief Accountant,
Corporate Finance

British Columbia
Securities Commission

T: (604) 899-6579

E: acyr@bcsc.bc.ca

Alberta

Tom Graham

Director, Corporate Finance

Alberta Securities Commission

T: (403) 297-5355

E: tom.graham@asc.ca

Saskatchewan

Heather Kuchuran

Deputy Director, Corporate Finance

Financial and Consumer Affairs
Authority of Saskatchewan

T: (306) 787-1009

E: heather.kuchuran@gov.sk.ca

Manitoba

Patrick Weeks

Corporate Finance Analyst

Manitoba Securities Commission

T: (204) 945-3326

E: patrick.weeks@gov.mb.ca

Appendix A – CSA Contact Information

Ontario

Jessie Gill

Legal Counsel, Corporate Finance
Ontario Securities Commission
T: (416) 593-8114
E: jessiegill@osc.gov.on.ca

Ray Ho

Senior Accountant,
Corporate Finance
Ontario Securities Commission
T: (416) 593-8106
E: rho@osc.gov.on.ca

Michael Rizzuto

Accountant, Corporate Finance
Ontario Securities Commission
T: (416) 263-7663
E: mrizzuto@osc.gov.on.ca

Quebec

Nicole Parent

Senior Analyst, Financial Information
Autorité des marchés financiers
T: (514) 395-0337 ext. 4455
E: nicole.parent@lautorite.qc.ca

Suzanne Poulin

Chief Accountant
Autorité des marchés financiers
T: (514) 395-0337 ext. 4411
E: suzanne.poulin@lautorite.qc.ca

New Brunswick

Joe Adair

Senior Securities Analyst
Financial and Consumer
Services Commission
T: (506) 643-7435
E: joe.adair@fcnb.ca

Nova Scotia

Jack Jiang

Securities Analyst, Corporate
Finance
Nova Scotia Securities
Commission
T: (902) 424-7059
E: jack.jiang@novascotia.ca