ONTARIO SECURITIES COMMISSION

OSC Staff Notice 51-734

Corporate Finance Branch 2022 Annual Report

December 1, 2022

OSC ONTARIO SECURITIES COMMISSION

Director's Message and Executive Summary

I am proud to share our annual Report, which provides an overview of the Branch's operational and policy work and guidance about our expectations and our interpretation of regulatory requirements in certain areas.

This year has brought new challenges to Ontario and capital markets worldwide, including geopolitical tensions, surging inflation, volatile crypto asset prices and continuing supply chain issues. These challenges and the resulting capital market uncertainty reinforce the need for balanced, tailored, flexible and responsive regulation to carry out the OSC's mandate to protect investors, to foster fair, efficient and competitive capital markets and confidence in capital markets, to foster capital formation and to contribute to the stability of the financial system and the reduction of systemic risk.

Capital raising in Ontario continued at a fast pace during Fiscal 2022, leading to a record number of prospectus filings; over 700 prospectuses were filed in Ontario.

Throughout Fiscal 2022, the Branch, with its CSA partners, continued to advance its policy work, including projects related to climate-related disclosure and diversity on board and in executive officer positions.

At the same time, the Branch, with its CSA partners, continued work on initiatives designed to reduce regulatory burden. On January 4, 2022, Ontario Instrument 44-501 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers (Interim Class Order)* came into effect, providing novel temporary exemptions from certain base shelf prospectus requirements for qualifying well-known seasoned issuers. On April 7, 2022, the CSA published proposed amendments to implement an access equals delivery model for prospectuses generally, annual financial statements, interim financial reports and related MD&A for non-investment fund Reporting Issuers.

These initiatives will continue to be part of the Branch's main policy focus in fiscal 2023. The Branch will continue to monitor and consider new market trends and potential areas of concern that may warrant a regulatory response.

This Report is an important tool for engaging with our stakeholders. We hope that this Report will serve as a guide to better understand disclosure and other regulatory obligations under Securities Law. We welcome any questions or feedback that you may have.

Kind regards,

Winnie Sanjoto
Director, Corporate Finance
Ontario Securities Commission

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Glossary

The following terms are used widely throughout the Report and have the meanings set forth below unless otherwise indicated. Words importing the singular number include the plural, and vice versa.

Act: means the Securities Act, R.S.O. 1990, chapter s.5.

AIF: means an annual information form as such term is defined in Form 51-102F2 *Annual Information Form*.

AMF: means the Autorité des marchés financiers.

Branch: means the Corporate Finance branch at the OSC.

CD: means the continuous disclosure obligations of a reporting issuer as set out in NI 51-102.

CDR program: means the harmonized program established in 2004 by the CSA for continuous disclosure reviews.

COVID-19: means the global pandemic of coronavirus disease declared on March 11, 2020.

CPC: means a capital pool company as such term is defined in TSXV Policy 2.4 Capital Pool Companies.

CSA: means the Canadian Securities Administrators.

CSE: means the Canadian Securities Exchange.

ESG: means environmental, social and governance.

Fiscal 2021: means the fiscal year ended March 30, 2021.

Fiscal 2022: means the fiscal year ended March 31, 2022.

Form 51-102F1: means Form 51-102F1 *Management's Discussion & Analysis*.

FLI: means forward-looking information as such term is defined in NI 51-102.

IOR: means an issue-oriented review conducted by the Branch.

IOSCO: means the International Organization of Securities Commissions.

IPO: means an initial public offering as such term is defined in the Act.

Issuer: means an issuer as such term is defined in the Act.

MD&A: means management's discussion and analysis as such term is defined in Form 51-102F1.

NEO: means the Neo Exchange Inc.

NI 31-103: means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

NI 41-101: means National Instrument 41-101 *General Prospectus Requirements*.

NI 43-101: means National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.

NI 44-101: means National Instrument 44-101 *Alternative Forms of Prospectus*.

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NI 44-102: means National Instrument 44-102 *Shelf Distributions*.

NI 45-106: means National Instrument 45-106 *Prospectus Exemptions*.

NI 51-102: means National Instrument 51-102 *Continuous Disclosure Obligations*.

NI 52-112: means National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*.

NP 11-202: means National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*.

NGFM: Non-GAAP Financial Measures as such term is defined in NI 52-112.

OSC: means the Ontario Securities Commission.

PIF: means a personal information form as such term is defined in NI 41-101.

R&D: means research and development.

Report: means this 2022 annual report, published by the Branch.

Reporting Issuer: means a reporting issuer as defined in the Act.

Securities Law: means Ontario securities law as defined in the Act.

SEDAR: means the system for electronic document analysis as such term is defined in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* of the Act.

SEDI: means the system for electronic disclosure by insiders as such term is defined in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*.

Staff: means staff at the Branch.

TSX: means the Toronto Stock Exchange.

TSXV: means the TSX Venture Exchange.

Venture Issuer: means a venture issuer as defined in NI 51-102.

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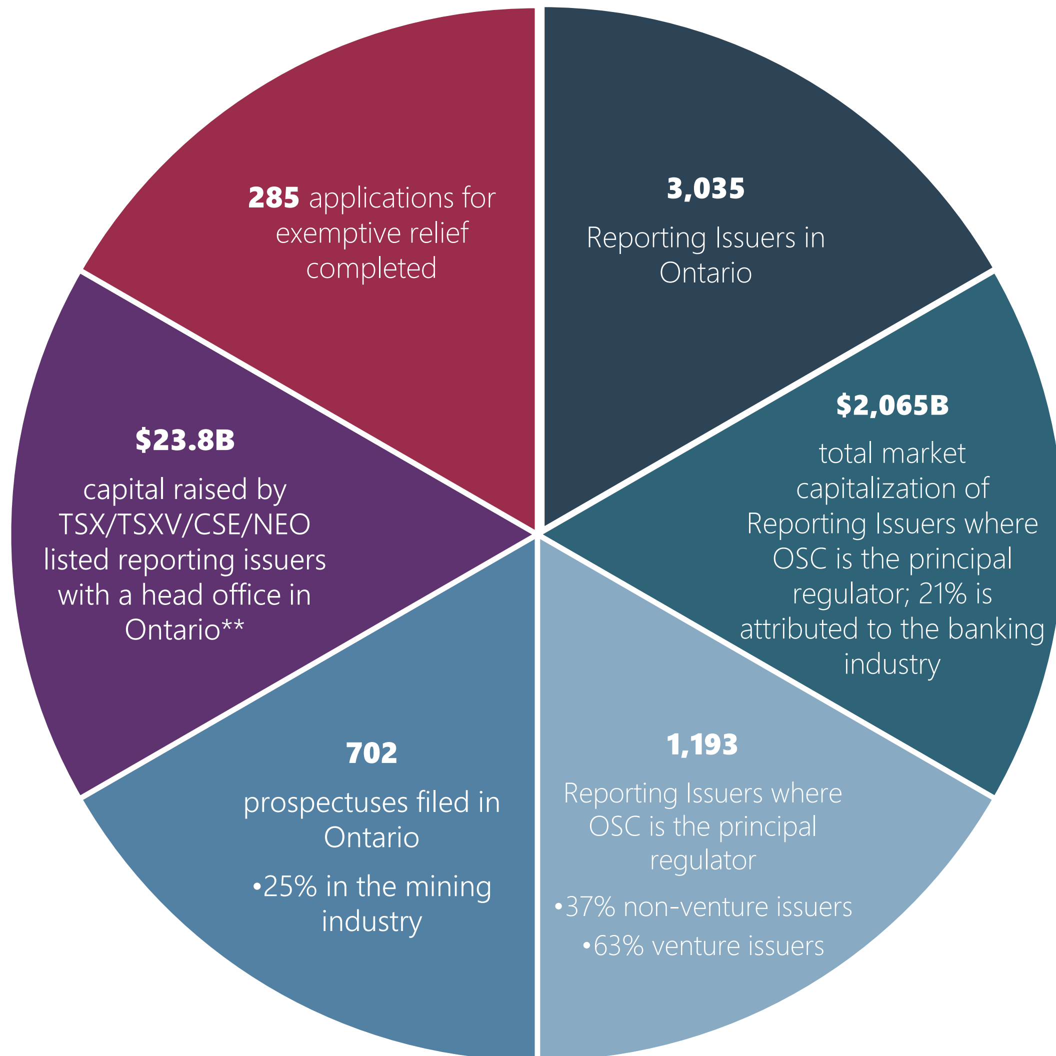
Fiscal 2022 Snapshot*



* Note: all figures are as at / for Fiscal 2022 and are approximate or rounded.

** Includes public offerings and private placements of equity and convertible debentures.

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Introduction

This Report provides an overview of the Branch's operational and policy work during Fiscal 2022, including a summary of key findings and outcomes from our regulatory oversight program (Part A), and the nature, purpose and status of ongoing issuer-related policy initiatives (Part B). The Report is intended for entities and individuals we regulate, their advisors, as well as investors.

In publishing this Report we aim to

- **REINFORCE** the importance of compliance with regulatory obligations,
- **PROVIDE GUIDANCE** to improve disclosure in regulatory filings,
- **HIGHLIGHT** trends in the capital markets, and
- **INFORM AND UPDATE** stakeholders on new and ongoing policy initiatives.

Ontario Securities Commission

The OSC continues to implement the Ontario government's five-point capital markets plan focused on strengthening investment in Ontario, promoting competition and facilitating innovation.[1]

- **OSC VISION:** to be an effective and responsive securities regulator – fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.
- **OSC MANDATE:** to provide protection to investors from unfair, improper or fraudulent practices; to foster fair, efficient and competitive capital markets and confidence in the capital markets; to foster capital formation; and to contribute to the stability of the financial system and the reduction of systemic risk.
- **OSC VALUES:**

  Professional, People, and Ethical:

  - protecting the public interest is our purpose and our passion;
  - we value dialogue with the marketplace;
  - we are professional, fair-minded and act without bias.

[1] See the 2022 Annual Report published by the Ontario Securities Commission.

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Each year, the OSC publishes a statement of priorities that sets out the OSC's strategic goals, priorities, and specific initiatives for the year. Our priorities are aligned with our statutory mandate and the annual mandate letter from the Minister of Finance.

Our 2022–2023 OSC Goals are

- GOAL 1 promote confidence in Ontario's capital markets,
- GOAL 2 reduce regulatory burden,
- GOAL 3 facilitate financial innovation, and
- GOAL 4 strengthen our organizational foundation.

Corporate Finance Branch: Who We Are & What We Do

In support of the OSC's mandate, the Branch regulates approximately 1,200 Reporting Issuers in Ontario that are not investment funds. The Branch assesses whether Reporting Issuers in Ontario provide the required level of disclosure of material information to investors so they can make informed investment decisions. Through this oversight role, the Branch supports the OSC's goal to improve transparency, trustworthiness, and efficiency in Ontario's capital markets.

To do this, our operational work includes:

- ✓ review of public offerings of securities;
- ✓ review of capital raising activities in the exempt market;
- ✓ review of CD filed by Reporting Issuers;
- ✓ review and consideration of applications for exemptive relief from regulatory requirements;
- ✓ review of insider reporting;
- ✓ review of credit rating agencies that are designated rating organizations;
- ✓ oversight of designated benchmarks and benchmark administrators;
- ✓ oversight of the listed Issuer function for OSC recognized exchanges;
- ✓ engagement with stakeholders through a number of activities, including external advisory committees;
- ✓ provision of guidance to stakeholders through staff notices that communicate expectations and interpretations of regulatory requirements in certain areas;

- ✓ delivery of Issuer education and outreach programs.

We regularly consult and partner with other branches across the OSC in executing our operational work. For example, we partner with the Market Regulation branch for oversight of recognized exchanges, the Compliance and Registrant Regulation branch for oversight of the exempt market and the Enforcement branch on matters of non-compliance with Securities Law requirements.

In addition, we also engage in policymaking to update, enhance and streamline securities regulation in alignment with the OSC's mandate.

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Part A: Compliance

1. Continuous Disclosure Review Program

2. Public Offerings

3. Exemptive Relief Applications

4. Insider Reporting

5. Our Service Commitments

6. Administrative Matters

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1. Continuous Disclosure Review (CDR) Program

This section of the Report provides an overview of the key findings and outcomes from our Fiscal 2022 CDR program. We discuss key or novel issues, suggest best practices, and specify applicable legislation and relevant guidance to assist Issuers in addressing each of the topic areas.

Under Canadian Securities Law, a Reporting Issuer must provide timely and periodic CD about its business and affairs.

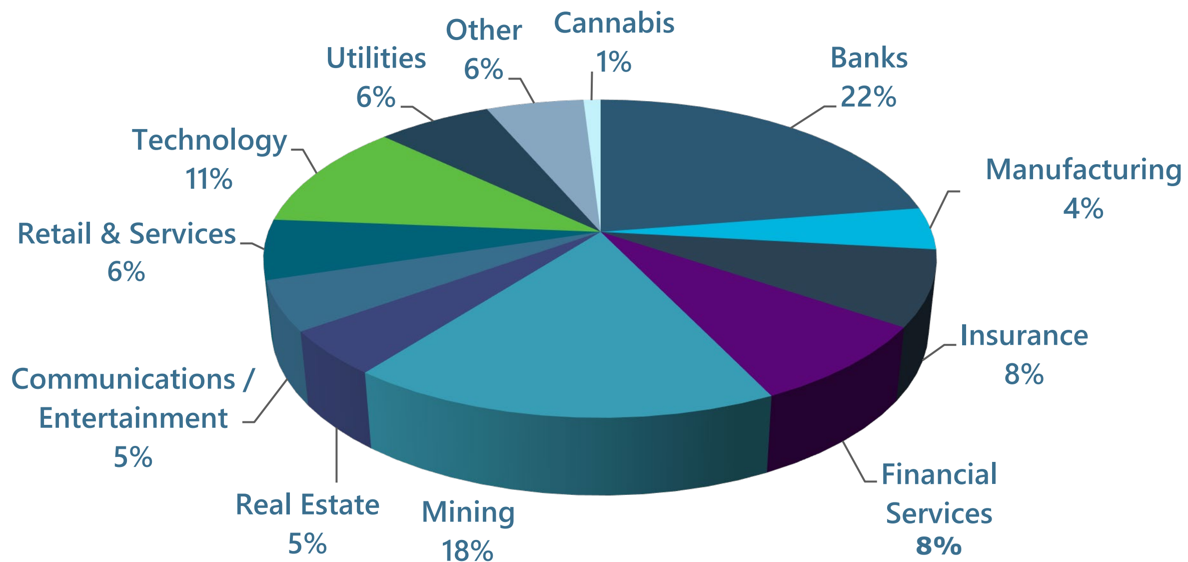
CD includes periodic filings such as:

- interim and annual financial statements;
- MD&As;
- certificates of annual and interim filings;
- management information circulars;
- AIFs;
- technical reports.

The Branch has primary responsibility as principal regulator[2] over approximately 1,200 Reporting Issuers with an aggregate market capitalization of approximately $2,065 billion as at March 31, 2022. The three largest industries by market capitalization were banking, mining, and technology.

[2] For a prospectus filing, pursuant to NP 11-202, an Issuer's principal regulator is the regulator of the jurisdiction in which the Issuer's head office is located. If the regulator identified is not in a specified jurisdiction, the principal regulator is the regulator in the specified jurisdiction with which the Issuer has the most significant connection. See subsections 3.4(4) – 3.4(8) of NP 11-202.

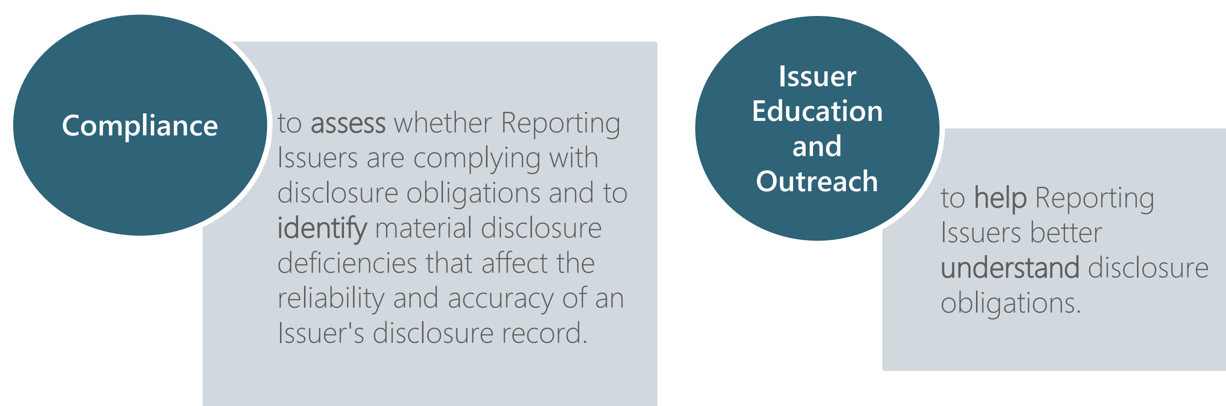
Market capitalization of Ontario Reporting Issuers by industry as at March 31, 2022



A) Overview

Our CDR program is risk-based and outcome focused. It includes planned reviews based on risk criteria as well as ongoing monitoring through news releases, media articles, complaints, and other sources. The CDR program is conducted pursuant to the powers in subsection 20(1) of the Act and is part of a harmonized CD review program conducted by the CSA.[3]

I) Objectives of the CDR program

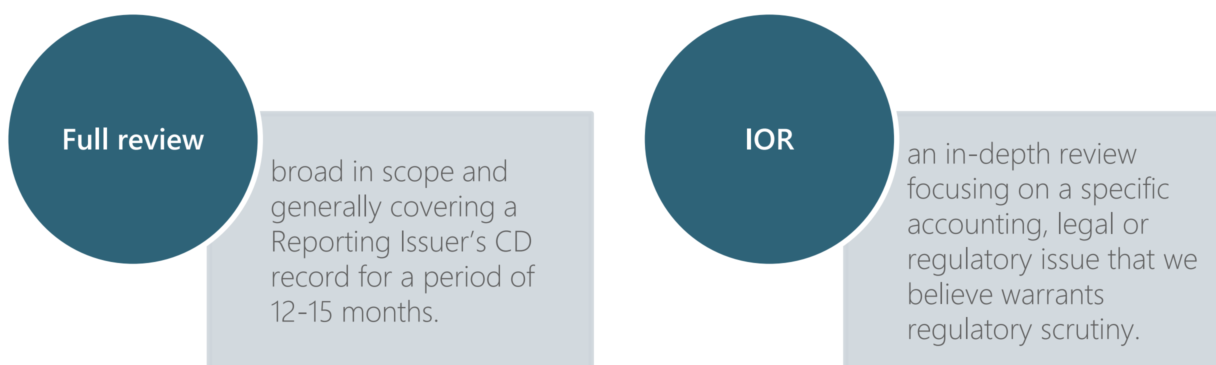


[3] For more information see CSA Staff Notice 51-312 (Revised) *Harmonized Continuous Disclosure Review Program*.

The goal of the CDR program is to improve the completeness, quality and timeliness of CD provided by Reporting Issuers. This program assesses compliance with CD requirements through a review of a Reporting Issuer's filed documents, its website and social media. This review function is critical to facilitating fair and efficient markets, investor protection, and informed investment decision making and trading. Disclosure about a Reporting Issuer and its business is important not only when a Reporting Issuer first enters the market, but also on an ongoing basis; for example, many Reporting Issuers raise funds through short form prospectuses which incorporate CD documents by reference.

II) Types of CD reviews

In general, we conduct either a full review or an IOR of a Reporting Issuer's CD.



In planning full reviews, we draw on our knowledge of Reporting Issuers and the industries in which they operate and use risk-based criteria to identify Reporting Issuers with a higher risk of deficient disclosure. The criteria are designed to identify Reporting Issuers whose disclosure is likely to be materially improved or brought into compliance with Securities Law or accounting standards as a result of our intervention. Our risk-based assessment incorporates both qualitative and quantitative factors that we review regularly to keep current with our evolving capital markets.[4] We also monitor new or novel and high growth areas of financing activity when developing our review program and consider any complaints received regarding the Reporting Issuer.

IORs are generally focused on a specific accounting, legal or regulatory issue, an emerging issue or industry or to assess compliance with a new or amended rule that recently came into force.

Conducting CD reviews helps us to

- monitor compliance with CD requirements by Reporting Issuers,

[4] A full review generally includes a review of the Issuer's most recent annual and interim financial statements and MD&As, AIF, annual reports, information circulars, news releases, material change reports, website, social media disclosure, investor presentations, and SEDI filings.

- communicate Staff interpretations and expectations on specific requirements, and identify areas of concern,
- address specific areas where there is heightened risk of investor harm,
- identify common deficiencies,
- provide industry-specific or topic-specific disclosure guidance that may assist preparers in complying with regulatory requirements, and
- assess compliance with new accounting standards and new or amended rules.

III) Tips for Reporting Issuers that are selected for a CD review

Below are tips on what to do if you receive a comment letter from Staff in connection with a CD review:

- ✓ read the first paragraph of the letter which will state whether we are conducting a full review or an IOR;
- ✓ consider whether you need to seek advice from legal, accounting, and/or other advisors. If so, engage them early in the process;
- ✓ reach out to Staff if you require clarification about any of the comments. Note that Staff cannot provide legal or accounting advice;
- ✓ provide a thorough response, referencing Securities Law or IFRS[5], where relevant;
- ✓ continue to file required CD documents during the review. An ongoing review does not alleviate or alter a Reporting Issuer's ongoing CD obligations;
- ✓ note the response deadline and plan accordingly. Reach out to Staff well in advance of the deadline, should you require additional time to provide a response letter. In appropriate circumstances, Staff may grant an extension request.

B) CDR program outcomes for Fiscal 2022

We track three categories of outcomes of the CD program: no action is required, prospective continuous disclosure enhancements are required, or immediate corrective action is required for deficiencies. Immediate corrective action includes the refiling of a previously filed CD document, a referral to the Enforcement branch or the issuance of a cease trade order. A CD review may result in more than one outcome. For example, a Reporting Issuer may be required to refile certain CD documents while also committing to prospective disclosure enhancements. Tracking these outcomes

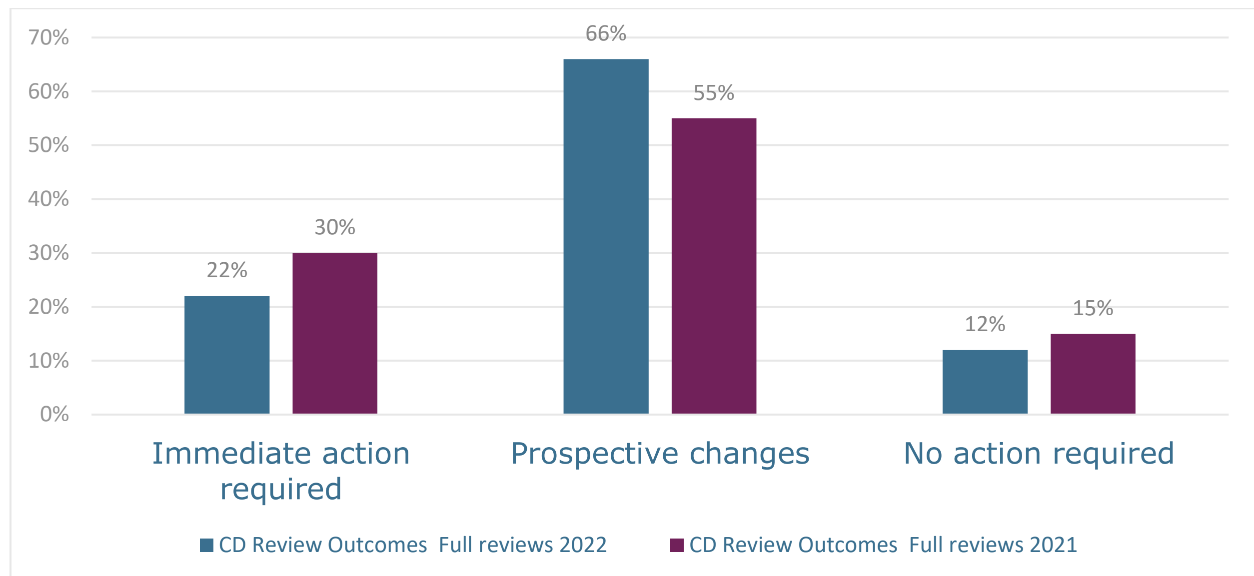
[5] The standards and interpretations issued by the International Accounting Standards Board, as amended from time to time.

assists us in planning the CDR program in subsequent years, including the re-evaluation of existing risk-based factors.

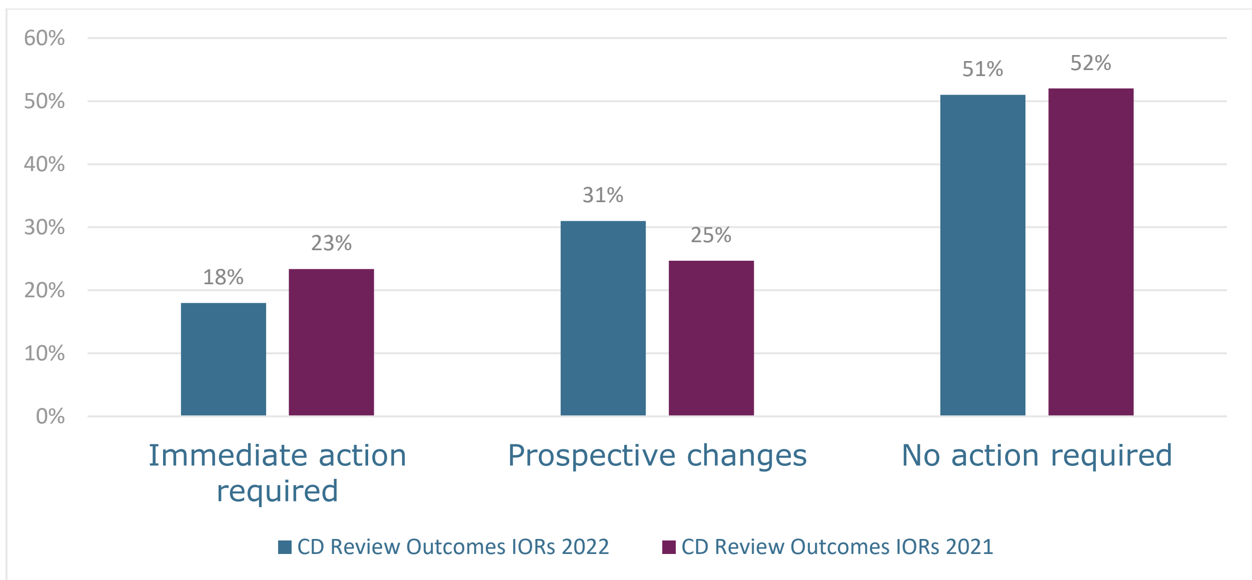
Given our risk-based criteria to identify Reporting Issuers for review, the outcomes on a year-over-year basis should not necessarily be interpreted as trends since the issues and Reporting Issuers reviewed each year are generally different. Reviews may be issue-specific, focusing on a particular CD requirement for which we have noted widespread deficiencies. These reviews may result in an increased number of outcomes categorized as "prospective changes" or "immediate action required" if deficiencies identified are prevalent among several Reporting Issuers.

The following is the summary of the CD review outcomes for Fiscal 2022 and Fiscal 2021.

Outcomes of full CD reviews



Outcomes of IORs



The most common types of immediate action required from Reporting Issuers were the following:

- refiling of financial statements to correct material misstatements;
- refiling of an MD&A where the MD&A was materially deficient and did not meet the form requirements of Form 51-102F1;
- filing of a clarifying news release when a Reporting Issuer failed to include sufficient disclosure of material assumptions, milestones and risk factors pertaining to FLI or failed to update the market on FLI;
- refiling or filing (in instances when documents were not filed in the first place) of material contracts;
- refiling of a technical report where the report filed was not in compliance with NI 43-101.

Reporting Issuers that refile CD documents during a Staff review are placed on the Refilings and Errors List found on the OSC Website.

C) Trends and guidance

This section highlights some of the common deficiencies that were observed during our CD reviews in Fiscal 2022, and includes some best practices and guidance to assist Reporting Issuers and their advisors in meeting their regulatory obligations. We encourage Reporting Issuers to continue to review and improve the quality of their CD, including with reference to the guidance below.

I) Management's discussion & analysis

The MD&A is the cornerstone of an Issuer's overall financial disclosure and is intended to provide an analytical and balanced discussion of the Issuer's results of operations and financial condition through the eyes of management. MD&A disclosure should be specific, useful, and understandable. The MD&A requirements are set out in Part 5 of Form 51-102F1.

Over the past year, the world has been impacted by a number of major, ongoing events including COVID-19, geopolitical tensions (notably the war in Ukraine), rising interest rates, inflationary pressures and supply chain disruptions. These events have generally had a material adverse impact on the economy and continue to pose challenges for many Issuers. It is critical that Issuers provide meaningful disclosure about the impact of these events on their business. An Issuer should consider its specific business and operations, and provide clear, transparent and balanced disclosure of the business impacts and potential uncertainties regarding these events in its MD&A. Such information is necessary to meet Securities Law requirements and for investors to make informed investment decisions. It is important that each Issuer tailors its disclosure to provide investors with insight into the specific and material operational challenges, financial impacts and risks it faces, and its related responses. Issuers should also keep in mind that the financial statements may also need to reflect and disclose the impacts of these events.

Staff have discussed certain MD&A deficiencies below but refer Issuers to previous Branch reports (links in Part C) that discuss other MD&A matters that remain relevant.

Discussion of operations - development stage issuers and significant projects without revenue

Issuers are required to discuss significant projects that have not yet generated significant revenue in their MD&A (Item 1.4(d) of Form 51-102F1). Staff frequently raised comments in respect of this requirement over the past year, both in the context of CD and prospectus reviews. We continue to see Issuers that do not provide sufficient information to enable the reader to understand the project, including timing and costs associated with the project. While this issue is most often observed with early-stage/development-stage Issuers or those with a change in business, this requirement applies to *all* Issuers that have significant projects that have not yet generated significant revenue. Over the past year, this has been particularly prevalent for technology-based and manufacturing Issuers conducting

R&D and those developing new products or technologies. Issuers will often disclose the total expense incurred during the period in the variance analysis but will fail to provide sufficient disaggregation of the material components of the costs, how those costs impact timing and the remaining costs to take the project to the next stage. In addition, the disclosure often does not include sufficient detail to understand the Issuer's plan for the project, including significant milestones.

Tip: Issuers should describe *each* significant project in sufficient detail, including, but not limited to, the following information:

- the Issuer's overall plan for the project and the status of the project relative to that plan. The discussion should include short and long-term plans. For R&D activity, this discussion should be included for each stage;
- the expected timeline of the project, including the Issuer's progress compared to the timeline;
- the key concrete milestones in the plan and what specific events need to occur to meet each milestone;
- the expenditures made to date for each project/stage/milestone, and how these expenditures relate to anticipated timing and costs to take the project to the next stage of the project plan;
- the license(s) and regulatory approval(s) that the Issuer must obtain. The discussion should include the anticipated timeline and expenditures associated with obtaining the license/regulatory approval and the risks and associated impact if regulatory approval and licenses are not obtained;
- the status of the project, including any delays in the disclosed timeline and/or anticipated cost overruns. In addition, if the Issuer previously disclosed material FLI, the MD&A must include a discussion of events and circumstances that occurred during the period that are reasonably likely to cause actual results to differ materially from the FLI and the expected differences.

Reminder: **Venture Issuers without significant revenue from operations must provide a breakdown of material costs incurred, including, but not limited to, the following:**

- **exploration and evaluation assets or expenditures;**
- **expensed research and development costs;**
- **intangible assets arising from development;**
- **general and administration expenses.**

If the Venture Issuer's business primarily involves mining exploration and development, the analysis of exploration and evaluation assets or expenditures must be presented on a property-by-property basis.

See item 5.3 of NI 51-102.

Non-Venture Issuers must also include disclosure in their AIF about R&D. Item 5.1(1)(a)(iv) of Form 51-102F2 *Annual Information Form* requires Issuers with R&D to describe

- the stage of development of the products and services and, if the products are not at the commercial production stage, the timing and stage of R&D programs,
- whether the Issuer is conducting its own R&D, subcontracting out the R&D or using a combination of those methods, and
- the additional steps required to reach commercial production and an estimate of costs and timing.

Discussion of operations – variance analysis

In discussing period-over-period financial statement variances, Issuers reviewed continued to provide limited narrative discussion of the factors resulting in the variances and any trends or potential trends.

Simply stating the percentage change or amount, which is information that is readily available from the financial statements, is not sufficient and does not provide investors with insight into the Issuer's operations, or how the economic environment and trends, events and uncertainties impact its business. It is important to be specific and to disclose information that readers need to make informed investment decisions.

When discussing variances in financial statement line items, Issuers should

- quantify changes and clearly explain the factors, drivers and reasons contributing to the period-over-period variances that affect revenues and expenses. For example, in discussing

revenues, discuss variables such as price, volume or quantity of goods or services being sold, introduction of new products or services (or discontinuation) or other significant factors by segment. In discussing expenses, quantify the material components of the expense and provide a detailed explanation of each variance, and

- provide insight into the Issuer's past and future performance.

When discussing the changes in financial condition and results, it is also important to include an analysis of the effect on continuing operations of any acquisition, disposition, write-off, abandonment or other similar event.

Forward-looking information (FLI)

FLI is an area of interest to many investors and can provide valuable insight about a Reporting Issuer's business and how it intends to attain its corporate objectives and targets. It is important that investors receive transparent and clear disclosure that is specific, understandable, and relevant. The FLI, together with the accompanying disclosures, should be presented in an easy-to-read manner by, for example, providing the required disclosures near the FLI statement and presenting the information in tabular form that clearly links the particular FLI to the associated factors, assumptions and material risks. These disclosures will enable investors to interpret the FLI and simplify monitoring of progress in subsequent reporting periods.

FLI continued to be an area of challenge for Reporting Issuers over the past year, whether in the context of a prospectus or CD. We continue to see deficiencies, including a lack of balanced discussion of key factors and assumptions used and the material risk factors that could cause actual results to differ materially from the FLI. We have highlighted a few of the more common deficiencies below.

Updating and withdrawing FLI

We continue to see Reporting Issuers that do not provide updates to previously disclosed FLI or do not explain the reasons why they have withdrawn FLI.

Reporting Issuers that have previously disclosed FLI have an obligation to update the FLI in CD documents. Simply providing an update to the figures, without disclosing the underlying factors and assumptions that drive the change, does not provide insight on why the FLI is being updated. Reporting Issuers must provide a comparison of actual results to the previously disclosed FLI. The comparison of actual results to previously disclosed FLI is important for investors in making investment decisions, in their assessment of management and of the current and future business performance of the Reporting Issuer.

In certain circumstances, which may include broader economic and market developments, Reporting Issuers must consider whether they should withdraw previously published guidance and financial

outlooks if these outlooks can no longer be supported by reasonable assumptions and there is no longer a reasonable basis for the achievement, or accurate updating, of conclusions, forecasts or projections in the FLI. Reporting Issuers that choose to withdraw or cease to report previously disclosed material FLI must disclose the decision to withdraw and discuss events and circumstances that led to the decision to withdraw previously disclosed FLI, including a discussion of any assumptions that are no longer valid. Simply deleting the FLI from the CD documents does not relieve the Reporting Issuer of its disclosure obligations under section 5.8 of NI 51-102.

FLI disclosed outside of MD&A

Many Reporting Issuers disclose FLI in news releases, marketing materials, investor presentations, social media platforms or on their website. Often, FLI in these documents is not supported by the required FLI disclosures. Most notably, some Reporting Issuers do not include the accompanying factors and assumptions to support such FLI and fail to discuss and/or update the FLI in the MD&A. Irrespective of where the FLI is disclosed, Reporting Issuers must comply with the disclosure requirements of Parts 4A/4B and section 5.8 of NI 51-102.

Multi-Year FLI

Some Reporting Issuers present FLI that span multiple years, without providing reasonable and sufficient quantitative and qualitative assumptions to support the FLI. While such multi-year FLI is more prevalent in prospectus filings, we have also observed multi-year FLI on a CD basis. Reporting Issuers must not disclose a financial outlook unless it is based on assumptions that are reasonable in the circumstances. The assumptions for financial projections should be specific and comprehensive, particularly with respect to quantitative details, such that an investor is able to clearly understand how each assumption was used to develop the FLI that contributes to the projections. In general, FLI or future-oriented financial information, must be limited to a time period that can be reasonably estimated, which generally will not go beyond the end of the Reporting Issuer's next fiscal year. Where FLI is presented for multiple years without sufficient support, Staff may ask Reporting Issuers to limit the disclosure of FLI to a shorter period that can be more clearly supported (for example, one or two years, depending on facts and circumstances).

We may also raise questions in cases where a Reporting Issuer's FLI assumptions are not reflected in the Reporting Issuer's track record. For example:

- the Reporting Issuer projects aggressive growth targets (i.e. revenue; store openings) over a certain number of years without the benefit of historical experience or concrete plans in place to support the growth;
- the disclosure does not provide detailed explanations for expected changes to items such as revenue, gross margins, costs or does not provide a reasonable basis for the targets, including

the key drivers behind the projected growth with reference to specific plans and objectives that support the projected growth;

- the disclosure does not explain why management believes that each of the targets/FLI is reasonable;
- factors and assumptions do not appear reasonable in light of the Reporting Issuer's size and the scope of the Reporting Issuer's current business plans.

In some cases, Reporting Issuers have been able to address our concerns by amending the FLI disclosure in one or more of the following ways:

- providing more robust factors and assumptions to support the FLI;
- providing more recent information about its operations since the date of the Reporting Issuer's last MD&A in support of the FLI included in the prospectus;
- limiting the disclosure of FLI to a shorter period;
- removing the FLI.

Practice Points

Where FLI is presented for multiple years, we may also ask Issuers to specifically confirm that updates will be provided at least annually, in their continuous disclosure documents of their progress towards achieving the targets. The disclosure includes information on the previously disclosed targets, actual results, and a discussion of the variances.

We may also ask the Issuer to disclose its policy and processes should it decide to withdraw previously disclosed FLI.

II) Non-GAAP and other financial measures

NI 52-112 was issued in 2021 to replace the guidance in CSA Staff Notice 52-306 (Revised) Non-GAAP Financial Measures (SN 52-306). Whereas SN 52-306 outlined disclosure expectations for non-GAAP financial measures (as previously defined in SN 52-306), NI 52-112 outlines disclosure requirements for six different categories of measures, being historical NGFMs, forward-looking NGFMs, non-GAAP ratios, capital management measures, total of segments measures and supplementary financial measures (as each are now defined in NI 52-112).

To assess compliance with certain aspects of NI 52-112, during Fiscal 2022, CSA staff reviewed the disclosures in the annual MD&A, related earnings release, and investor presentation of approximately 85 Issuers with financial years ended on or after October 15, 2021. The review primarily focused on disclosures that were "new or different" compared to SN 52-306. Reporting Issuers selected for review varied by size and industry.

Our reviews resulted in outcomes where no action was required, where prospective disclosure enhancements were made, where retrospective restatements were made, or where communication is ongoing to resolve any issues identified. While we were generally pleased with the quality of the disclosure that we observed, we noted the following areas where Reporting Issuers should improve their disclosure:

CSA staff identified the following key deficiencies:

- ✓ failure to include the required quantitative reconciliation to the most directly comparable financial measure disclosed in the primary financial statements (i.e. GAAP measure), in earnings releases;
- ✓ failure to comply in earnings releases with the requirement that NGFM must be presented with no more prominence than that of the most directly comparable financial measure disclosed in the primary financial statements of the entity to which the measure relates;
- ✓ failure to describe the significant differences between NGFMs that are FLI and the equivalent historical NGFMs;
- ✓ inappropriate identification of a total of segments measure and consequently, failure to include the required disclosure;
- ✓ mislabeling of supplementary financial measures that could lead to confusion or misleading disclosure;
- ✓ inappropriate incorporation of information by reference in investor presentations.

For a more fulsome discussion of CSA staff's findings, including examples, please refer to CSA Staff Notice 51-364 *Continuous Disclosure Review Program Activities for fiscal years ended March 31, 2022 and March 31, 2021.*

Non-GAAP and other financial measures continue to be an area of focus for Staff and we will continue to monitor and review disclosure of NGFMs as part of our normal course CD review program.

III) Overly promotional press releases

Disclosure must be factual and balanced, giving equal prominence to favorable and unfavorable information, with unfavorable information being disclosed as promptly and completely as favorable information.

Increasingly, we are observing Reporting Issuers that disseminate numerous news releases that include overly promotional or "good news" announcements and do not balance this disclosure with unfavorable information that may exist. This trend is particularly prevalent with early stage, pre-revenue Reporting Issuers that are engaged in multiple business opportunities. These Reporting Issuers provide news releases that frequently do not disclose material information or any new material facts and may obscure the true business activity of the Reporting Issuer. We have concerns that this type of promotional disclosure may cause an artificial increase in a Reporting Issuer's share price or trading volume, thereby undermining the integrity of the capital markets, and putting investors at risk of harm by making misinformed investment decisions. In these instances, we may request Reporting Issuers to limit these types of news releases or to issue a clarifying news release. In certain instances, it may also lead to further regulatory action. Further guidance is provided in CSA Staff Notice 51-356 *Problematic Promotional Activity by Issuers* and National Policy 51-201 *Disclosure Practices* (NP 51-201).

We have also observed Reporting Issuers that provide news releases announcing multiple partnerships, agreements, transactions or findings from R&D activities, but fail to provide an update on such matters in their MD&A or subsequent news releases. We emphasize that the MD&A is a core document of a Reporting Issuer's continuous disclosure (as well as the AIF, if applicable) and should provide investors with ***all*** the relevant material information impacting the Reporting Issuer's business and operations. Reporting Issuers providing a chronology of news releases issued in the description of business and/or recent developments section of the MD&A should also supplement that disclosure with the necessary updates about the status of these developments.

Reporting Issuers are reminded that if a news release includes information that is forward-looking in nature (for example, estimating production targets, profitability and/or revenue estimates), supporting material factors and assumptions must be provided as required by Part 4A/B of NI 51-102.

Tip: Reporting Issuers should consider the following disclosure best practices:

- establish appropriate written disclosure policies focused on promoting consistent disclosure practices aimed at providing informative, timely and broadly disseminated disclosure of material information to the market;
- consult with advisors, as appropriate, to ensure that the information in the news release is balanced and not misleading or overly-promotional;
- assess the materiality of the information being disseminated and consider whether a material change report should be filed;
- ensure that disclosure in any news release is sufficiently detailed to understand its substance and importance to the Reporting Issuer's business and operations;
- ensure the disclosure is consistent with disclosures previously filed by the Reporting Issuer in news releases or continuous disclosure documents;
- ensure FLI is appropriately supported by material factors and assumptions and updated as required;
- have the board of directors or audit committee review the disclosure in advance of public release, which may increase the quality, credibility and objectivity of such disclosure. Refer to 6.4 (1) of NP 51-201;
- ensure all material information has been included and discussed in the MD&A.

IV) Material contracts

Timing of filing

We continue to see Reporting Issuers who do not file material contracts on a timely basis or at all. We encourage Reporting Issuers to review all contracts entered into within the last financial year, or before the last financial year if the contract is still in effect, to determine whether the contract is a "material contract" that must be filed on SEDAR. While material contracts entered into in the ordinary

course of business are generally exempt from filing, we remind Reporting Issuers that any material contract on which the Reporting Issuer's business is substantially dependent must be filed.

The following chart sets out the timeline for filing material contracts that are required to be filed under NI 51-102.

Description	Timeline for Filing
If the Reporting Issuer is required to file an AIF	
• A material contract for which a material change report is filed	The material contract must be filed no later than the material change report
• All other material contracts	Material contracts made or adopted before the date of the AIF must be filed no later than the time of filing the AIF
If the Reporting Issuer is not required to file an AIF	
• A material contract for which a material change report is filed	The material contract must be filed no later than the material change report
• All other material contracts	Material contracts must be filed within 120 days after the end of the financial year in which they were made/adopted

Tip: A Reporting Issuer must file any material contracts that are required to be filed under NI 51-102, but that have not been previously filed, at the same time as filing a preliminary prospectus, accelerating the timing for filing a material contract in the context of a prospectus offering. If a material contract is not executed at the time the final prospectus is filed, the Reporting Issuer must file an undertaking to file the contract no later than seven days after the document becomes effective.

Redactions

Reporting Issuers may omit or redact a provision of a material contract that is required to be filed if there are reasonable grounds to believe that disclosing the omitted or redacted provision would violate a confidentiality provision. In these cases, subsection 12.2(5) of NI 51-102 directs the Reporting

Issuer to include a *description* of the type of information that has been omitted or redacted. A brief description immediately following the omitted or redacted information is generally sufficient.

Staff have identified instances where redacted material contracts are filed without these required disclosures. Staff may ask Reporting Issuers to re-file material contracts in instances where the required description of omitted or redacted information has not been included.

V) Diversity on boards and in executive officer positions

Disclosure requirements for the representation of women on boards and in executive officer positions are set out in NI 58-101 and have been in place for eight annual reporting periods. The disclosure requirements are intended to increase transparency for investors and other stakeholders regarding the representation of women in these roles and the approach that specific TSX-listed Reporting Issuers take in respect of such representation. This transparency is intended to assist investors when making investment and voting decisions.

CSA Multilateral Staff Notice 58-314 *Review of Disclosure Regarding Women on Boards and in Executive Officer Positions - Year 8 Report* (SN 58-314) was published on October 27, 2022. SN 58-314 reports the findings of our eighth review of disclosure regarding women on boards and in executive officer positions. Of note, 45% of board vacancies filled during the year were filled by women, resulting in 24% of overall board seats being occupied by women, compared to 22% in the prior year. 87% of Reporting Issuers in the review sample had at least one woman on the board and 70% of Reporting Issuers in the review sample had at least one woman in an executive officer position.

The CSA Diversity Initiative Working Group also concluded research and consultations with various stakeholders between June 2021 and October 2021 to determine whether and how the disclosure needs of Canadian investors and corporate governance practices among public companies have evolved since the above noted gender diversity requirements were originally adopted. A virtual 'Diversity in Capital Markets' roundtable, moderated and hosted by the OSC, was held on October 13, 2021. The AMF and ASC also held public roundtables on October 14, 2021 and December 10, 2021, respectively. CSA Staff are continuing to consider feedback received during these consultations.

VI) Related-party transactions/cross financial interests

Staff have observed M&A transactions where either the acquiror or the acquiree (or a director/executive officer of either entity) had an undisclosed financial interest in the other entity. Staff are of the view that, in the context of M&A transactions, detailed disclosure of the cross-ownership of financial interests (held either by the acquirer, the acquiree, or either of their directors or executive officers) is material information for investors and their investment/voting decisions and should be disclosed in the applicable disclosure document.

The cross-ownership of financial interests could give rise to conflicts of interest that may lead investors to re-examine other variables such as purchase price, transaction timing or contingent payments. These variables may not otherwise be considered in the same manner if the potential conflict of interest is not disclosed. Non-disclosure of the cross-ownership of financial interests may also cause investors to question whether the M&A transaction occurred on its own merits.

The document in which disclosure is required will vary depending on the structure of the proposed transaction, whether the Reporting Issuer is the acquiror or acquiree, and the applicable requirements of the stock exchange on which the Reporting Issuer's securities are listed. For example, an M&A transaction may give rise to an obligation to file a material change report, a take-over bid circular, a listing statement / filing statement, or an information circular. A prospectus may also be filed in connection with the M&A transaction. Regardless of the form of document required to be filed, we remind Reporting Issuers to disclose the cross-ownership of financial interests based on the broader materiality requirements of the applicable disclosure document.

Further information on this topic can be found in CSA Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations for Reporting Issuers in the Cannabis Industry*. We note that, while this topic was initially presented in a staff notice specific to the cannabis industry, the same principles are applicable to Reporting Issuers, especially those in emerging growth industries.

VII) Disclosure considerations pertaining to the war in Ukraine (the Conflict)

The unprecedented sanctions imposed by most major governments and disruptions to the global economy as a result of the Conflict have contributed to financial market volatility, and directly and indirectly impacted businesses in Canada and around the world. Issuers that have been or could be materially impacted should provide timely, meaningful, transparent, and balanced disclosures about the impact and the uncertainties to allow investors to make informed investment decisions. Issuers should also keep apprised of ongoing changes and continuously evaluate the necessity to update previously issued disclosure or to provide new disclosure.

Issuers should think broadly when assessing the impact and the uncertainties the Conflict has on its business and operations, for instance, disruption to supply-chains and the ability to access raw materials, and the prices paid for such raw materials, or heightened cybersecurity risks given the potential for cyberattacks perpetuated by state actors. While this list is not exhaustive, some disclosures that may be relevant to understanding the impact of the Conflict include:

- key risks that the conflict presents to the Issuer. Risks should be tailored and disclosures relating to such risks should not be boilerplate;

- known and expected trends, demands, events or uncertainties related to the Conflict that management reasonably believes will materially affect the Issuer's financial condition, future revenue, expenses or projects;
- operational challenges and other measures taken by management in response to the Conflict, including any detailed plans to divest investments or exit operations in Russia, Belarus or Ukraine;
- whether the Issuer has been impacted by the sanctions imposed by the Canadian Federal government or by other jurisdictions. Additionally, Issuers should disclose how management is monitoring compliance with the sanctions imposed;
- discussions about challenges relating to flow of funds and other resources (e.g. raw materials, utilities and labor) that might not be as accessible as a result of the Conflict;
- financial reporting considerations including areas subject to significant judgment and measurement uncertainties relating to the Conflict.

Issuers should carefully consider whether the requirement to file a material change report has been triggered as a result of the impact of the Conflict. Additionally, while Issuers might have provided detailed operational updates via news releases, we remind Issuers that such disclosure should also be included and updated in prospectuses and CD documents, such as MD&A and AIFs.

VIII) Syndicated mortgages

Following amendments to NI 45-106, NI 31-103, and OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* related to syndicated mortgages that came into force on July 1, 2021, the OSC assumed oversight of higher risk syndicated mortgages sold to retail investors in Ontario and introduced requirements for non-qualified syndicated mortgages distributed to non-permitted clients that are the same as, or stricter than, the requirements for the distribution of other forms of real estate investments.

Over the past 12 months, filers reported the issuance of syndicated mortgages for which the OSC has principal oversight under the amended regime with a value of approximately $390 million. The capital raising activity in the syndicated mortgage sector continues to increase at a steady pace.

	Capital Raised	Number of Distributions	Number of Issuers	Number of Exempt Market Dealers
Q3 & Q4 2021	$201,453,531	31	8	4
Q1 & Q2 2022	$189,195,336	29	14	3
Total 12-month period	$390,648,868	60	19	4

Most distributions (98.3%) were completed under the accredited investor prospectus exemption under section 73.3 of the Act. The remaining distributions were completed using the minimum amount investment prospectus exemption under section 2.10 of NI 45-106 and the family, friends and business associates prospectus exemption under sections 2.5 and 2.6.1 of NI 45-106.

Based on our review of syndicated mortgage investment (SMI) filings, Staff note that Issuers have quickly aligned themselves with the new compliance and reporting requirements, and that legacy loans are being repaid or refinanced through conventional channels. Staff have also observed that non-qualifying SMI issuances are concentrated in a handful of Issuers and exempt market dealers, suggesting that the market is maturing and becoming more specialized.

The OSC works closely with the Financial Services Regulatory Authority to ensure that market participants are licensed or registered with the appropriate regulatory authority and meet the appropriate requirements. Educational information for investors is also regularly updated on https://www.getsmarteraboutmoney.ca/.

IX) Filing reports of exempt distribution

Issuers and underwriters that rely on certain prospectus exemptions to distribute securities are required to file a report of exempt distribution (RED Report) on Form 45-106F1 *Report of Exempt Distribution* within a prescribed timeframe set out in NI 45-106. We sometimes see Issuers that either file the RED Report late or not at all. The deadline for filing the report is generally 10 days after the distribution.

A distribution occurs in the jurisdiction where a purchaser is resident. In most cases, a distribution also occurs in the jurisdiction where the Issuer's head office is located. A distribution may also occur in a jurisdiction if the Issuer has a significant connection to that jurisdiction. A RED Report must be filed in each jurisdiction in which a distribution takes place.

To determine if a distribution has occurred in one or more jurisdictions of Canada, consult applicable Securities Law. If an Issuer is uncertain as to whether a distribution has occurred in a jurisdiction of Canada, should seek advice as to where the distribution occurred.

For more information on filing a RED Report, please refer to the "Frequently Asked Questions – Form 45-106F1 *Report of Exempt Distribution*" document, available on the OSC's website.

X) Crypto asset industry

The crypto asset industry has continued to see growth as well as significant volatility. We have made the following observations regarding recent disclosure by Issuers in the crypto asset industry but also remind Issuers of previous guidance listed at the end of this section. We will continue to monitor disclosure in the crypto asset industry through our review program activities moving forward.

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Applicable regulatory regime

Given that the regulatory environment for the crypto asset industry differs across jurisdictions and may, in some cases, be evolving or lack certainty, we consider the following disclosure to be necessary to fairly present all material facts, risks and uncertainties:

- For each jurisdiction in which the Issuer operates:
    - details of the Issuer's operations in the jurisdiction;
    - the applicable regulatory regime;
    - any registrations, exemptions or no action letters relied upon by the Issuer;
    - any terms and conditions on those registrations, exemptions or no action letters;
    - discussion of any statements or other available guidance made by applicable regulators;
    - whether legal advice has been obtained, either in the form of a legal opinion or otherwise, regarding compliance with applicable regulatory regimes;
- Discussion of the Issuer's policies and procedures for monitoring compliance with applicable regulatory regimes, including monitoring for any changes to those regimes;
- Related risks, which may include uncertainty around regulatory regimes applicable to the Issuer's business or crypto assets that are material to the issuer.

We expect the above disclosures to be clearly and prominently disclosed in prospectus filings and other required documents such as an Issuer's AIF, marketing materials, and MD&A (see for example Part 2, Item 1.2 of Form 51-102F1). We also expect Issuers that enter our capital markets through a reverse takeover or spinoff transaction to include these disclosures in their listing statement or other documents, as applicable.

Further to the OSC and CSA news releases from March 29, 2021[6], we also remind Issuers with operations in Canada (whether providing products or services from a location in Canada or to residents of Canada) that there are potential public interest concerns if an Issuer that is not in compliance with Securities Law were to become an Reporting Issuer. For example, this would be the case if an Issuer that is conducting business that requires registration under Securities Law is not yet registered. If we receive a prospectus from such an Issuer , or an Issuer that is already a Reporting Issuer and not in compliance with Securities Law, we would likely have receipt refusal concerns. We

[6] OSC news release: https://www.osc.ca/en/news-events/news/osc-working-ensure-crypto-asset-trading-platforms-comply-securities-law
CSA news release: https://www.osc.ca/en/news-events/news/canadian-securities-regulators-outline-regulatory-framework-compliance-crypto-asset-trading

encourage Issuers engaged in novel crypto businesses to consider submitting a confidential prospectus pre-file, if eligible.

Material changes

The determination of whether something is a material fact or material change under Securities Law is fact specific. The CSA has provided guidance on this determination in NP 51-201, which is applicable to Issuers in all industries.

In addition to the examples provided in section 4.3 of NP 51-201, we note the following non-exhaustive list of types of events or information that may be material to Issuers in the crypto asset industry:

- a collapse in the price of a crypto asset to which an Issuer has material exposure;
- an announcement by a regulator of its views about whether a crypto asset that an issuer has material exposure to is a security and/or derivative, or regulatory action taken that includes a view that it is a security and/or derivative;
- entering into by an Issuer of an arrangement for the borrowing or lending of a significant amount of crypto assets or any significant encumbering of the Issuer's crypto assets, including details of the counterparty;
- announcements by a regulator of its views about the business in which the Issuer is engaged, or regulatory action taken against an Issuer with a similar business;
- the issuance by a regulator of a cease-and-desist order against the Issuer, and if the regulator allows the Issuer to operate in the interim, any restrictions placed on its business.

In addition to disclosure requirements regarding material changes and material facts under Securities Law, we remind listed Issuers that the exchange on which they are listed may have timely disclosure policies in respect of material information.

Material contracts

We have observed Issuers that have not filed material contracts on SEDAR as required. We remind Issuers that the exception in subsection 12.2(2) of NI 51-102, for material contracts entered into in the ordinary course of business, is not available in respect of a contract on which the Issuer's business is substantially dependent. For example, if an Issuer enters into a crypto asset loan agreement upon which the solvency of its business is dependent, we would consider this to be a material contract required to be filed.

We also refer Issuers to section 12.3 of NI 51-102 as well as the above guidance regarding material changes (including whether entering into a contract constitutes a material change for the issuer) in regard to the timing for filing a material contract on SEDAR.

Corporate governance

We note there has recently been significant consolidation of Issuers within the crypto asset industry. We remind Issuers that the guidance in Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations* (SN 51-359) for Reporting Issuers in the cannabis industry is equally applicable to Issuers in other emerging growth industries, like the crypto asset industry.

As discussed in SN 51-359, Issuers should

- disclose the cross-ownership of financial interests by Issuers (or their directors and officers) involved in mergers, acquisitions or other significant corporate transactions (M&A transactions), as Staff are of the view that this is material information for investors and their investment/voting decisions,
- give adequate consideration to potential conflicts of interest, or other factors that may compromise their independence when identifying board members as being independent, and
- adopt a written code of business conduct and ethics, which includes standards for ethical decision making and compliance, and which addresses potentially challenging situations that may arise during the normal course of business.

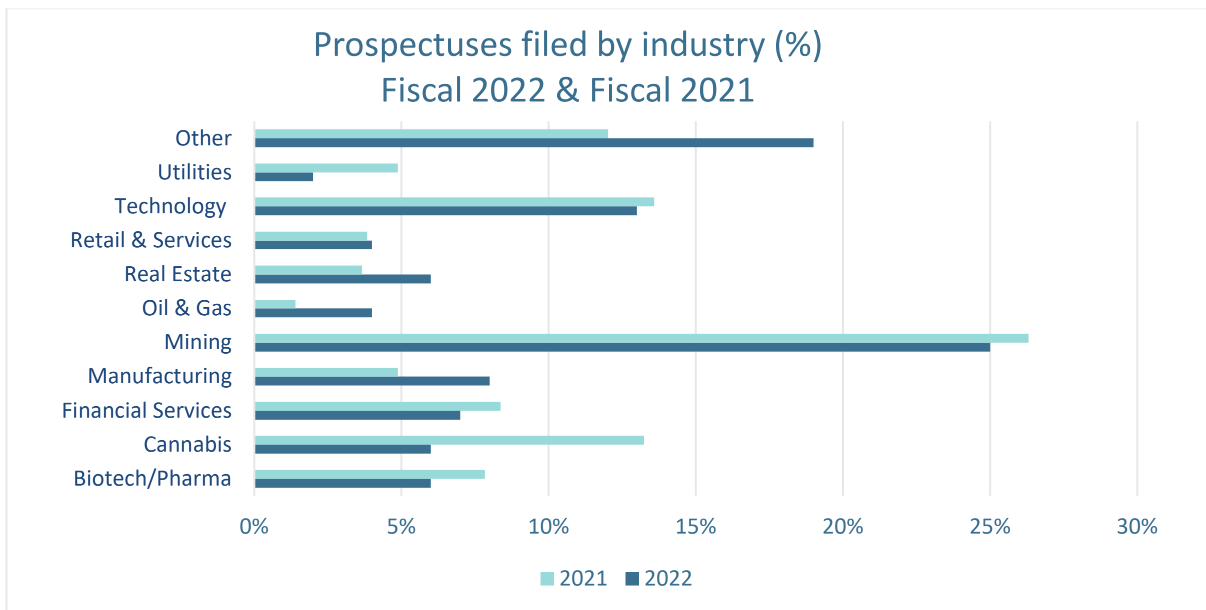
For more information and guidance issuers should also review:

- CSA Staff Notice 51-363 *Observations on Disclosure by Crypto Assets Reporting Issuers*
- Joint CSA/IIROC Staff Notice 21-330 *Guidance for Crypto-Trading Platforms: Requirements relating to Advertising, Marketing and Social Media Use*
- CSA Staff Notice 51-356 P*roblematic promotional activities by issuers*
- National Policy 51-201 *Disclosure Standards*
- Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations for Reporting Issuers in the Cannabis Industry*

2. Public Offerings

Under Canadian Securities Law, to distribute securities, an Issuer must file and obtain a receipt for a prospectus or rely upon a prospectus exemption. Another key component of our compliance work stream is the review of prospectuses in connection with public offerings. This section outlines data and trends with respect to public offerings and provides guidance on common issues that arise during our prospectus reviews.

In Fiscal 2022, 702 prospectuses were filed in Ontario (Fiscal 2021: 574). These filings covered a wide range of industries with mining, technology and cannabis being the most active sectors based on the number of offerings.



A) Trends and guidance

Fiscal 2022 was another record-breaking year for prospectus volumes, particularly in the first half of the year. Overall capital raising activity was high for that period, driven by an increase in offerings in the manufacturing and technology industries, as well as a range of other[7] industries. The last quarter of the year saw a drop in activity, partly attributed to geopolitical tensions, volatile markets and other economic factors.

[7] Other includes industries such as CPCs, hospitality, gaming, cryptocurrency and transportation.

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

Key takeaways from our reviews of prospectuses in Fiscal 2022 are set out below.

I) Primary business requirements in an IPO

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

On April 14, 2022, changes were made to Companion Policy 41-101CP related to primary business requirements. The purpose of the changes was to harmonize the interpretation of the financial statement requirements for a long form prospectus in situations where an Issuer has acquired a business, or proposes to acquire a business, that a reasonable investor would regard as being the primary business of the Issuer[8]. The changes provide additional guidance on the interpretation of primary business, including in what situations, and for which time periods, financial statements should be required. The changes provide guidance in circumstances when additional information may be necessary for the prospectus to meet the requirement to contain full, true and plain disclosure of all material facts relating to the securities being distributed.

The changes also clarify when an Issuer can use the optional tests in Part 8 of NI 51-102 to calculate the significance of an acquisition, and when an acquisition of mining assets would not be considered an acquisition of a business. The changes were informed by stakeholder feedback that certain inconsistent interpretations of the primary business requirements add time, cost and uncertainty for Issuers. These changes will facilitate a harmonized approach for Issuers across Canada and will reduce regulatory burden by giving Issuers additional clarity on the historical financial information required in an IPO, without compromising investor protection.

The changes came into effect on April 14, 2022.

[8] For more information, see CSA Notice of Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* Related to Financial Statement Requirements.

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II) Description of business

Where the business of the Issuer is in the early stages of development, and the business has little or no operations or revenues, we find that Issuers often do not provide sufficient detail on the business itself and/or its business plan. We note this trend particularly with Issuers completing CPC qualifying transactions and reverse takeover transactions. In order to comply with the requirements in Item 5 of Form 41-101F1, we remind Issuers that the disclosure of the business and/or business plan must be entity-specific and clear in the prospectus. Issuers should consider including this disclosure in one section (rather than dispersing the information throughout the prospectus). This is important for investors to be able to clearly understand the business and/or business plan of the Issuer.

We also encourage Issuers to segregate their disclosures about the business into two parts: (i) the current business of the Issuer, describing the Issuer's current operations, if any, and stage of product/service development, and (ii) future business plans of the Issuer, describing the Issuer's anticipated business plans and milestones, including any/applicable research and development.

In discussing current business and future business plans, Issuers should provide disclosure on at least all the following:

Current business

- description of the product/service currently provided,
- markets in which the products/services are being offered,
- regulatory framework applicable to those products/services,
- licenses and permits obtained,
- agreements/partnerships in place with individuals and/or entities to conduct the current business (such as distribution, manufacturing, construction, R&D agreements),

Future business plans

- identification of specific milestones in the issuer's business plans,
- for each milestone, a description of the steps and associated costs required to complete it or to take it to the next stage,
- identification of the anticipated timing of completion or timing to achieve the various stages in the business plan,
- regulatory framework applicable to these anticipated operations,
- discussion of material risk and uncertainties regarding these plans,
- if an R&D program is part of the anticipated operations, a discussion of the various stages of R&D, regulatory approvals required to achieve the objectives of the program, the activities completed to date, costs incurred to date and timing and costs anticipated to achieve the next stage.

Where business plans are preliminary in nature and there are no binding agreements, or where an Issuer currently has not commenced its execution of such plans, these facts should also be clearly disclosed in the prospectus.

In discussing future or anticipated business plans, Issuers should avoid using overly promotional language that is not based on the Issuer's current stage of development. For example, phrases such as "the largest of its type", "best in the market", or "leader in the field" should be supported by objective data that provides the Issuer with a reasonable basis on which to conclude that the statement is accurate.

In addition, Issuers should avoid disclosing FLI and long-range projections reflecting revenue, growth, and market share assumptions that appear speculative in comparison to the size and scope of the Issuer's current business plans. For example, without further information, it would appear speculative for an Issuer to forecast production targets of 50,000 units and sales of $10 million by 2024, when the production facilities have not been built. FLI must be supported by material factors and assumptions or removed from the disclosure as it may be misleading.

Further information on FLI is included throughout this Report.

III) Prospectus filings by investment issuers

We continue to review initial public offerings by Issuers that intend to invest the proceeds of the offering into a portfolio of assets, to determine if there are any novel business models giving rise to public interest concerns that cannot be addressed by disclosure alone. Where an Issuer is structured as a corporate finance Issuer, but its business objectives are similar to an investment fund or private equity fund, public interest concerns may arise due to the fact that substantive investor protections and registration requirements that apply to investment funds may not apply to the Issuer. Structural investor protections may be required to address such public interest concerns. We encourage Issuers to submit a pre-file application and consult with Staff in these circumstances.

IV) Base shelf prospectus - sufficiency of proceeds and financial condition

For certain Reporting Issuers, the filing of a base shelf prospectus may not be appropriate given the Reporting Issuer's financial condition and uncertainty of financing. Typically, receipt refusal concerns on financial condition arise if the Reporting Issuer does not appear to have sufficient cash resources to continue operations for the next 12 months. In these cases, to address our concern that incremental drawdowns may be insufficient to satisfy the Reporting Issuer's short-term liquidity requirements, we may request that the Reporting Issuer

- withdraw the base shelf and file a short form prospectus with a minimum subscription amount,

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

Staff note that any arrangements to address our concerns about a Reporting Issuer's financial condition should be finalized before a Reporting Issuer's prospectus is cleared for final.

In addition, Staff may question the size of a base shelf offering if it appears that the amount contemplated under the base shelf is significantly higher than the Reporting Issuer's current market capitalization. This imbalance may indicate a potential significant acquisition, transaction or change of business and, as such, Staff will inquire about the rationale for filing a base shelf prospectus with a contemplated offering in excess of its market capitalization.[9]

V) Prospectus lapse date

Under NI 41-101, an Issuer must not file its first amendment to a preliminary prospectus more than 90 days after the date of the receipt for the preliminary prospectus and must not file a final prospectus more than 90 days after the date of the receipt for the preliminary prospectus or an amendment to the preliminary prospectus. In addition, the final prospectus must be filed within 180 days from the date of the receipt for the preliminary prospectus.

Issuers are reminded to track the number of days that have passed since the date of the receipt of a preliminary prospectus and to file an amendment to a preliminary prospectus if it does not anticipate filing the final prospectus within 90 days of the date of the receipt for the preliminary prospectus or amendment to the preliminary prospectus. Issuers are encouraged to provide Staff with sufficient notice in advance of the lapse date to indicate their intentions with respect to the preliminary prospectus.

Reminder: To avoid withdrawing a preliminary prospectus, an Issuer must

- ***file the final prospectus or an amendment to the preliminary prospectus*** **within 90 days of the date of receipt of the preliminary prospectus, and**
- ***file the final prospectus within 180 days of the date of the receipt of the preliminary prospectus.***

[9] For more information and guidance, Reporting Issuers and advisors, including those filing a base shelf or non-offering prospectus, should review CSA Staff Notice 41-307 *(Revised) Concerns regarding an issuer's financial condition and the sufficiency of proceeds from a prospectus offering* as well as section 5.4 of NI 44-102.

VI) Comfort letter requirements

Issuers filing a preliminary prospectus that is accompanied by an unsigned auditor's report must file a comfort letter (Letter) signed by the auditor and addressed to the applicable securities regulatory authorities where the prospectus is being filed under section 9.1(b)(iii) of NI-41-101 or section 4.1(b)(ii) of NI 44-101.

The Letter must be prepared in accordance with the relevant standards in the Handbook of the Chartered Professional Accountants of Canada, specifically, paragraph A38 of CICA Handbook 7150 *Auditor's Consent to the Use of a Report of the Auditor Included in an Offering Document*. The Letter provides comfort on the financial statements and informs the regulatory authorities that the audit has been substantially completed, except for the following matters:

- consideration of events between the dates of the preliminary and final prospectuses;
- review of comments issued by securities regulators;
- authorization of the financial statements by those charged with governance;
- reading of the final prospectus.

We remind Issuers and their advisors that the auditor comfort letter must be **signed**, **dated** and must **not include other qualifications** outside of the four qualifications noted above. For example, including a qualification that the audit procedures related to revenue are still outstanding would not be acceptable and the preliminary receipt (or the acceptance of the confidential pre-file) will not be issued until a revised letter is submitted. This may unnecessarily delay the review process.

VII) President's lists

A president's list is a list of potential investors in a securities offering that is provided by management of an Issuer to the underwriters. Where an Issuer proposes a president's list, the underwriting agreement may provide that the underwriters will receive a reduced commission (or no commission) on the securities sold to the investors on the president's list since the underwriters did not market the securities to them.

Subsection 130(1)(b) of the Act provides that each underwriter of securities that is required to sign a prospectus certificate is liable for misrepresentations in that prospectus. Staff are of the view that this liability extends to purchasers on a president's list. As such, where an Issuer identifies purchasers who will purchase securities in a prospectus offering, Staff may request that the prospectus contain a statement clearly indicating that purchasers who acquire securities from the Issuer have the same rights and remedies for rescission and/or damages against the Issuer and the underwriters, as the case may be, as purchasers who acquired securities through the underwriters.

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VIII) Flow-through units

Staff are aware of a prospectus offering structure used by certain mining exploration companies where

- two types of flow-through units (FT Units and Premium FT Units) are offered at different prices (each for one common share and one-half of a common share purchase warrant at same exercise price per warrant share), and
- one type of flow-through unit (Premium FT Units) may be transferred from the initial purchasers to charities and then resold (Redistributed Units).

Reporting Issuers using this prospectus offering structure should include language in the prospectus which discloses that

- the tax benefits associated with the Premium FT Units are only available to the initial purchasers, and
- purchasers who acquire the Redistributed Units, either through a charitable organization or through arrangements made by the underwriters, will be afforded the same withdrawal rights, rescission rights and rights to damages against the Reporting Issuer or the underwriters, as the case may be, pursuant to applicable Securities Law as the initial purchasers of the Premium FT Units sold directly by the Reporting Issuer.

IX) Cessation of Canadian Dollar Offered Rate

We expect Reporting Issuers with outstanding securities that reference the Canadian Dollar Offered Rate (CDOR) to monitor developments in this area and consider whether appropriate fallback mechanisms are included in the relevant trust indenture, or other contractual document, for any relevant securities.

If a Reporting Issuer files a prospectus to qualify securities that will or may reference CDOR, we may raise comments, including why the Reporting Issuer still wants the ability to use CDOR as a reference rate given the announcement by Refinitiv Benchmark Services (UK) Limited (RBSL) regarding its cessation and the transition roadmap published by the Canadian Alternative Reference Rate Working Group (CARR). If a Reporting Issuer has a legitimate business rationale for issuing securities referencing CDOR, we expect the Reporting Issuer will

- monitor developments regarding the cessation of CDOR,
- include the provisions recommended by CARR in the relevant trust indenture, or other contractual document, providing a fallback mechanism if CDOR ceases to be available while the securities are outstanding, and

- include disclosure in the prospectus, or the relevant prospectus supplement in the case of a base shelf prospectus, on the fallback mechanism and the risks related to the fallback mechanism and CDOR ceasing to be available while the securities are outstanding.

Please see Part B – Responsive Regulation of this Report for further information on the designation and regulation of financial benchmarks.

X) Underwriting conflicts disclosure requirements

On March 1, 2022, the OSC made, as a rule under the Act, OSC Rule 33-508 Extension to Ontario Instrument 33-507 *Exemption from Underwriting Conflicts Disclosure Requirements* (the Rule), which came into force on August 18, 2022.

The Rule extends the blanket relief issued on February 18, 2021 by Ontario Instrument 33-507 *Exemption from Underwriting Conflicts Disclosure Requirements* (Interim Class Order) (the OSC Blanket Order) by 18 months, therefore the OSC Blanket Order is still in effect until February 17, 2024.

The OSC Blanket Order provides an exemption from the underwriting conflicts disclosure requirements in National Instrument 33-105 *Underwriting Conflicts* (NI 33-105) if

- the distribution is made under an exemption from the prospectus requirement,
- the distribution is of a security that is an "eligible foreign security" as defined in NI 33-105, and
- each purchaser in Ontario that purchases a security pursuant to the distribution through such person or company is a "permitted client" as defined in section 1.1 of NI 31-103.

The OSC issued the OSC Blanket Order following discussions between the Compliance and Registrant Regulation branch, Staff and various institutional investors that had advised Staff that the underwriting conflicts disclosure requirement in NI 33-105 created barriers that prevent institutional investors in Ontario from participating in global offerings on a timely basis.

Staff are continuing to review options for a more permanent solution and may propose an amendment to NI 33-105 at a later date.

XI) Confidential prospectus pre-file review

In March 2020, Staff began accepting confidentially pre-filed prospectuses for review. We did so to provide Issuers with greater flexibility and more certainty in planning prospectus offerings, and to encourage continued capital formation during the pandemic.[10] On January 28, 2021, Staff issued a press release providing best practice guidance for confidential pre-file prospectuses. Since March 2020, we have reviewed 103 prospectuses on a confidential pre-filed basis.

[10] See CSA Staff Notice 43-310 *Confidential Pre-file Review of Prospectuses* (for non-investment fund Issuers).

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Tip: We would like to remind Issuers and advisors to carefully consider whether the draft preliminary prospectus is at an appropriate stage for a confidential pre-file review. We may determine that a draft is not at an appropriate stage for Staff review and ask that the submission be withdrawn. This may occur in any of the following circumstances:

- the disclosure in the draft document falls significantly short of the standard required of a preliminary prospectus. The pre-filed prospectus should contain all financial and non-financial disclosure that would be in the actual prospectus filing;
- there is no significant prospect of a transaction occurring within the foreseeable future. A deal timeline should be included in the filed cover letter to assist Staff in understanding when the review should ideally be completed. Staff will normally assume that the Issuer will file a preliminary prospectus shortly after the completion of the review of the pre-filed prospectus;
- the terms and conditions of the offering, and any related transactions, are still in flux.

In addition, the OSC will not review pre-files of:

- non-offering prospectuses, other than non-offering prospectuses pre-filed in connection with cross-border financings or where there is a specific legal or accounting matter requiring Staff input;
- prospectuses that solely qualify the issuance of securities on conversion of convertible securities, such as special warrants.

Review Process

Any prospectus pre-filed confidentially will be subject to a full review, regardless of whether it is a long form, short form or shelf prospectus. Any legal or accounting questions where the Issuer is seeking a pre-filing interpretation or waiver should be highlighted.

The prospectus should be substantially complete. If the Issuer has not substantially settled the terms of offering or any related transactions, we may ask for the submission to be withdrawn. A substantially complete prospectus will also include all required financial statements. Accordingly, the

financial statements included in a draft prospectus must include all the financial statements prescribed for a preliminary prospectus and be audited (or be accompanied by a comfort letter signed by the auditor) or reviewed, as applicable. Also refer to Section VI Comfort letter requirements of this Report.

The purpose of the pre-filing review is to expedite the review of the subsequently publicly filed preliminary prospectus. Accordingly, for existing Reporting Issuers, where it is clear from the Reporting Issuer's proposed timing that financial statements for a subsequent period will be required to be included in the publicly filed preliminary prospectus and those statements will be available shortly after the date of the pre-filing, we may defer our review until those financial statements are made available for our review.

In a slight departure from prior practice, we will generally accept confidential pre-filings for review that do not include all of the financial statements that will be required to be included in the publicly filed preliminary prospectus where:

1. The prospectus is being filed for an initial public offering or other transaction that will result in a new or substantially different Issuer, such as a spin-off transaction or special purpose acquisition corporation qualifying transaction;
2. The confidential pre-filed prospectus includes sufficient current financial history (recent financial statements for enough periods); and
3. The other disclosure in the draft prospectus is substantially complete.

To avoid the review of the confidential pre-filing being delayed, Issuers and their advisors should consult with staff to confirm which financial statements must be included in the prospectus pre-filed confidentially. Issuers and their advisors should be prepared to describe the rationale for commencing the pre-filing at an early stage and include submissions as to why the pre-filing should not lead to unnecessary duplication in the review of the prospectus.

Once the prospectus submission is deemed to be substantially complete, it will be assigned for review by Staff and an "acknowledgment of receipt" will be sent to counsel. We will use our best efforts to issue our first comment letter within published service standards for a long form prospectus starting from the date of the acknowledgement of receipt.

Reminder: **The process to submit a prospectus for a confidential pre-file review is outlined in CSA Staff Notice 43-310 *Confidential Pre-File Review of Prospectuses (for non-investment fund issuers)*. The process to submit a pre-file application regarding interpretation of securities legislation to a particular offering or proposed offering or exemptive relief from securities legislation is outlined in NP 11-202.**

Refer to "Our Service Commitments" below for further information.

As the objective of the confidential prospectus pre-file review process is to provide Issuers with greater flexibility and more certainty in planning prospectus offerings and not to provide an open-ended review of a draft prospectus, we will consider a pre-file to be withdrawn and will close the file if Issuers are unresponsive (i.e. have not provided a response to Staff comment letters for an extended period of time). For greater certainty, we will consider the pre-file to be withdrawn if there is no response within 90 days of the date Staff last issued comments. If the pre-file has not been completed within 180 days from the initial pre-filing date, similar to the timing requirements in Item 2.3 of NI 41-101, Staff will close the file and the Issuer will be required to re-submit a new pre-file and pay the associated fees. In both cases, Staff will advise counsel that the pre-file will be closed.

XII) Actuarial consents

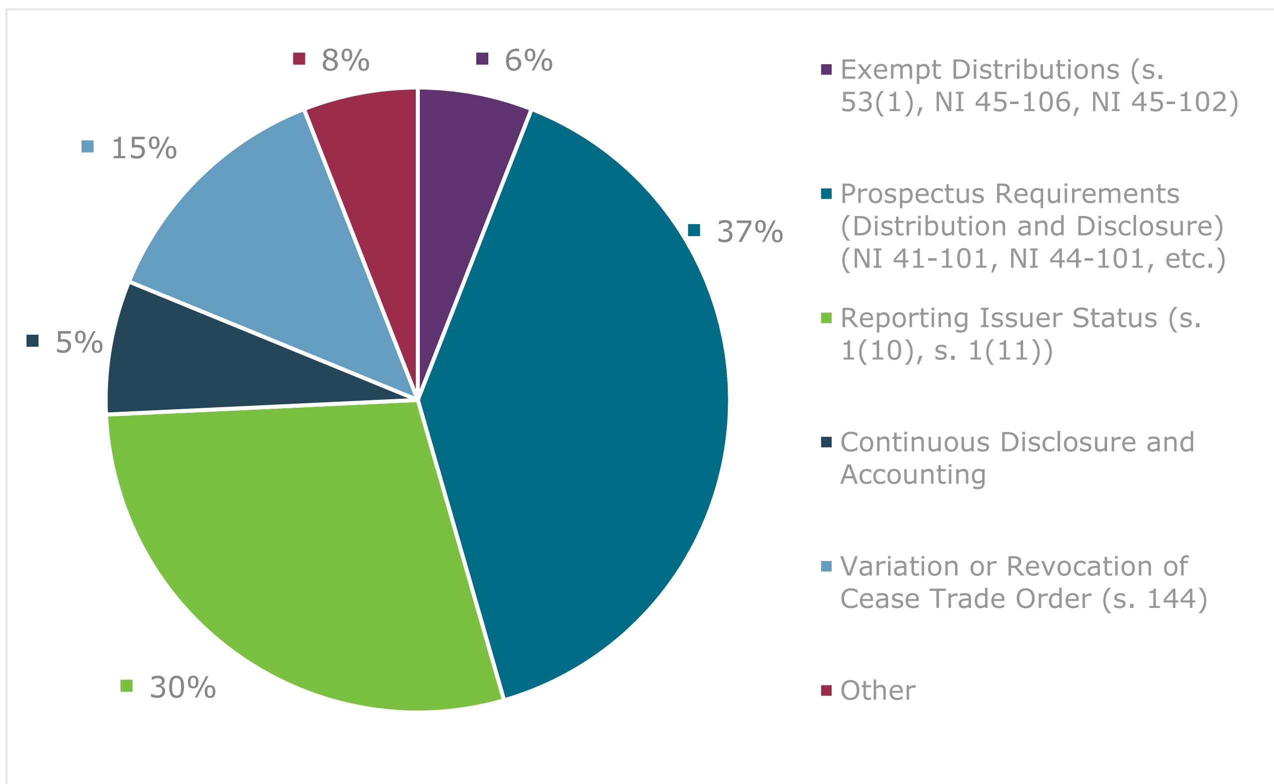
Insurance companies that provide a report of the appointed actuary with their annual financial statements that are included in a long form prospectus, or incorporated by reference into a final short form or base shelf prospectus, are required to file an expert's consent from the appointed actuary with the final prospectus in accordance with paragraph 9.2(a)(viii) of NI 41-101 or paragraph 4.2(a)(vii) of NI 44-101. The final prospectus must also include the disclosure required by Item 28 (Experts) of Form 41-101F1 or Item 15 (Interest of Experts) of Form 44-101F1, as applicable, in respect of the appointed actuary.

3. Exemptive Relief Applications

Staff review and make recommendations to appropriate decision makers on applications for exemptive relief. The review standard for granting relief varies, but it generally requires a decision maker to determine that granting the requested relief would not be prejudicial to the public interest. For further information about the process for exemptive relief applications, please refer to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.

In Fiscal 2022, we completed reviews of 285 applications for exemptive relief from various Securities Law requirements, 14% higher than Fiscal 2021.

Exemptive Relief Applications by Type - Fiscal 2022



A) Trends and guidance

We have noted an increase in applications compared with Fiscal 2021, with the majority of applications made in connection with relief from certain prospectus requirements and Reporting Issuer status. These two types of applications for relief have remained the most common. We will continue to monitor the types of applications we receive and the exemptive relief granted to

determine whether we should consider changes to our rules or policies. Key takeaways from our exemptive relief work in Fiscal 2022 are set out below.[11]

I) Management cease trade orders (MCTO)

National Policy 12-203 *Management Cease Trade Orders* (NP 12-203) provides guidance as to when we will consider issuing an MCTO rather than a failure-to-file cease trade order. We previously provided certain guidance in OSC Staff Notice 51-731 *Corporate Finance 2020 Annual Report* regarding the timing of applications and our considerations of what constitutes an active, liquid market for a Reporting Issuer's securities. Reporting Issuers should consider when and how its determination of a failure to comply with a specified requirement will be disclosed. A Reporting Issuer should generally be able to determine that it will not comply with a specified requirement at least two weeks before the due date of the required filings and, as soon as it makes this determination, should issue the default announcement and submit the application as described in NP 12-203. We will generally not exercise our discretion to issue an MCTO unless a default announcement has been made.

4. Insider Reporting

We review compliance of reporting insiders and Reporting Issuers with insider reporting requirements through a risk-based compliance program. We actively and regularly assist Reporting Issuers and advisors by providing guidance on filing matters. The objective of our insider reporting oversight work is twofold:

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

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

Tip: Staff encourage Reporting Issuers to remind their insiders regarding their SEDI filing obligations and to file reports on time to avoid late fees.

Late insider reports (generally, those filed more than five calendar days after the date of the transaction) are subject to late filing fees. Late filing fees are set out in Appendix D of OSC Rule 13-502 *Fees*.

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

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

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

Staff often see problems with reporting the type of ownership (for example, not reporting by type of holding or reporting it incorrectly). For indirect ownership or control or direction holdings, we remind Reporting Issuers and insiders to report the name of the registered holder.

A person is an indirect beneficial owner when the person's securities are held through an Issuer, an affiliated Issuer, a family trust, a third person or other legal entity. If you are an insider and you are the beneficial owner of the securities held in trust, you must report the holdings and transactions of the trust on your insider report. The key information to be included:

- Ownership type: Indirect

- Disclose the name of the trust as the registered holder

If you are an insider and you exercise control or direction over securities held in trust, you must report the holdings and transactions of the trust on your insider report. The key information to be included:

- Ownership type: Control or Direction
- Disclose the name of the trust as the registered holder

Refer to sections 3.2 and 3.3 of Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions* for additional information.

How do I submit a SEDI late fee waiver request?

A reporting insider or their agent (as applicable, a "filer") can submit a late fee waiver request in writing to sedilatefees@osc.gov.on.ca.

The filer should include the insider's name, the Reporting Issuer's name and invoice number in the email and provide a detailed explanation of why the late fee should be waived.

Staff will consider late fee waiver requests on a case-by-case basis. However, filers should note that late fee waiver requests will generally not be granted for the following reasons:

- unfamiliarity with the legal obligations of an insider (generally, within 10 calendar days of becoming a reporting insider and five days for any change in holdings);
- an insider's or an agent's misunderstanding of the five day reporting requirement (e.g., reporting within five business days rather than five calendar days);
- delays caused by vacations or business trips;
- miscommunication between the insider and their agent or broker (e.g., failure of a broker to provide the insider with the details of a trade);
- negligence of filing agents.

Reminder to Insiders/Agents: Ensure the contact information is correct on the insider's profile and file any amendments within ten days of any change in name, relationship to a Reporting Issuer, or if the insider has ceased to be a reporting insider of the Reporting Issuer.

5. Our Service Commitments

Staff remind Issuers to consider the following when filing a confidential pre-file prospectus, preliminary prospectus or exemptive relief application:

- see our service commitments on the OSC website for guidance on when we will aim to respond to inquiries and issue comment letters;
- if you send an email or voicemail to Staff outside of our normal business hours from 9 am to 5 pm from Monday to Friday, you may not receive a response until the following business day;
- note that novel pre-file prospectuses, preliminary prospectuses or exemptive relief applications that are complex or raise new policy issues generally take longer to review;
- if you file a preliminary short form prospectus or a preliminary base shelf prospectus for a novel product/structure or after completing a reverse take-over transaction, a restructuring transaction or similar transaction, we may place the file on "long form" timing pursuant to subsection 5.5(3) of NP 11-202;
- when you file a preliminary prospectus, please make sure that any PIFs delivered with the preliminary prospectus have been properly completed (e.g., that the PIF has a response for each question and is signed). Deficient PIFs will give rise to Staff comments in connection with a prospectus filing;
- if an Issuer is currently subject to an OSC enforcement proceeding, any application for a "not a Reporting Issuer" order under subsection 1(10) of the Act may take longer than usual and would not be considered "routine".

Tip: Prior to filing a pre-file prospectus, preliminary prospectus or exemptive relief application check the OSC website at www.osc.ca for precedents, guidance and resources to assist with any questions you may have.

6. Administrative Matters

A) Participation fee form

Under OSC Rule 13-502 *Fees*, if a Reporting Issuer files its annual financial statements before they are due, the participation fee must also be paid on the same date. If the participation fee is not paid at the same time the annual financial statements are filed, late fees will be applied starting from the date that the annual financial statements were filed.

Each Reporting Issuer must select the participation fee form applicable to its Reporting Issuer classification as the forms and related fees are substantively different.

Staff have observed that many new Reporting Issuers are submitting participation fees that are often not required with their first annual financial statements. As a result, Staff are seeing an increase in refund requests. On this point, please refer to section 2.2(4) of OSC Rule 13-502 *Fees* which states:

> *"Despite subsections (1) to (3), a participation fee is not payable by a participant under this section if the participant became a reporting issuer in the period that begins immediately after the time that would otherwise be the end of the previous fiscal year in respect of the participation fee and ends at the time the participation fee would otherwise be required to be paid under section 2.3."*

For example: ABC Inc. became a Reporting Issuer on January 10, 2022 and has a December 31 year end. ABC Inc. filed its annual financial statements for the period ended December 31, 2021, together with Form 13-502F2 on April 29, 2022, and paid a participation fee of $890. However, a participation fee was not required to be paid because the first participation fee is not due until the filing deadline for the next annual period ended December 31, 2022.

An Issuer that is not yet a Reporting Issuer in Ontario and is adding Ontario as a recipient agency to its previously filed annual filings is not required to submit a participation fee form and pay a participation fee. Participation fees would only be required if, as at the financial year end, the Issuer was a Reporting Issuer in Ontario.

Tip: Pay participating fees at the same time as filing financial statements to avoid incurring late fees *and* select the applicable fee form.

B) Well-known seasoned issuers

On December 6, 2021, the CSA published temporary exemptions from certain base shelf prospectus requirements for qualifying well-known seasoned Issuers (WKSIs). These exemptions will reduce regulatory burden on qualifying large, well-known Reporting Issuers. The CSA has implemented the relief through local blanket orders that are substantively harmonized across the country, which in Ontario is: Ontario Instrument 44-501 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers* (Interim Class Order) (Ontario Instrument 44-501).

Reporting Issuers that meet the eligibility criteria in section 10 of Ontario Instrument 44-501 are exempt from the requirement to file and receive a receipt for a preliminary short form base shelf prospectus. Rather, Reporting Issuers file a final short form base shelf prospectus and receive a final receipt provided that required documentation is in good order.

To date, 22 Reporting Issuers have filed 25 WKSI prospectuses, with Ontario acting as the principal regulator.

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Filing Procedure

A Reporting Issuer files, in place of a preliminary short form base shelf prospectus, a letter that is compliant with section 10 of Ontario Instrument 44-501. Specifically, this letter should be filed under the "Shelf Prospectus (NI 44-102)" filing type, "Preliminary short form prospectus" filing subtype. If the Reporting Issuer is a mining Issuer, any technical reports must also be filed under the "preliminary" subtype.

The Reporting Issuer then files a final short form base shelf prospectus under the "final" subtype together with all other documents typically filed with a final short form base shelf prospectus (for example: confirmation letter regarding final materials, legal consents, auditor consents, non-issuer submission to jurisdiction forms, material contracts).

Filing Type: Shelf Prospectus (NI 44-102)

- Filing Subtype: *Preliminary Short Form Prospectus*

  Documents to be filed:

  - WKSI letter (per section 10 of Ontario Instrument 44-501)
    Use document type: Preliminary short form prospectus
  - Technical report (for mining Issuers)
    Use document type: Technical report (NI 43-101)

- Filing Subtype: *Final Short Form Prospectus*

  Documents to be filed:

  - Final short form base shelf prospectus
  - List of directors and officers with locations of previously filed PIFs, if applicable
  - Any PIFs that have not been previously filed
  - All other documents typically filed with a final short form base shelf prospectus

WKSI FAQs

1. Are Reporting Issuers required to pay the $3,800 fee?

Yes, through SEDAR. The short form prospectus fee code remains the same (AI4A30).

2. What should be in the WKSI filing letter?

Please refer to requirements in section 10(l) of Ontario Instrument 44-501.

3. What documents should be filed under the preliminary subtype with the WKSI filing letter?

Only the document type "Technical reports (NI 43-101)" must be filed under the preliminary subtype (for mining Issuers). All other documents are to be filed under the final subtype.

4. Is the NP 11-202, section7.2(2) confirmation letter and qualification certificate required?

No. Please refer to section 10(k) of Ontario Instrument 44-501.

5. When do we file the final prospectus?

All documents are filed immediately after the WKSI filing letter preliminary submission.

6. Are PIFs required? If so, when should they be filed?

Yes. Unlike all other prospectuses, the PIFs are required to be filed with the final prospectus.

7. What additional documents are filed with the final prospectus?

Any documents typically filed with a final short form prospectus (see Item 4.2 of NI 44-101 section 7.3(4) of NP 11-202, i.e. confirmation letter, legal consents, auditor consents, non-issuer submission to jurisdiction forms, undertakings, material contracts etc.)

8. What will be the access level of the WKSI letter filed under "Preliminary Short Form Prospectus"?

The WKSI filing letter will be made public after the issuance of the final receipt.

9. What is the OSC's expected timing for issuance of a final receipt?

In the ordinary course, for a final base shelf prospectus filed before noon, and in compliance with the requirements of NI 44-102 and Ontario Instrument 44-501, we expect that the accelerated procedures will permit the receipt to be issued on the same business day. If a final base shelf prospectus is filed after noon, and in compliance with the requirements of NI 44-102 and Ontario Instrument 44-501, we expect that the accelerated procedures will permit the receipt to be issued before noon on the next business day.

C) Common preliminary prospectus filing deficiencies

Prospectus Review Officers in the Branch perform a basic preliminary review on all prospectus filings to ensure that there are no disclosure or fee issues that may cause us not to issue a preliminary receipt.

Staff would like to highlight some of the more common errors when filing a preliminary prospectus that often result in comments and requests for changes.

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- *Incorrect or missing red herring language*. For example, missing either the short form and base shelf red herring language on the face page of a base shelf prospectus, or missing or incorrect jurisdictions.
- *Incorrect language of the certificate pages of the prospectus*. For example, long form language used on a short form prospectus, or missing or incorrect jurisdictions.
- *Missing or incorrect Auditor's Comfort letter*. For example, comfort letter does not reference the prospectus and date filed, or missing a statement that audit is substantially completed.
- *Incorrect or missing reference to the national instrument in the qualification certificate*. For example, the reference to Part 2 of NI 44-101 is incorrect or missing, or the certificate is not signed by an executive officer.
- *Missed jurisdictions for documents incorporated by reference*. For example, documents incorporated by reference are not filed in each jurisdiction where securities are being offered under the prospectus.

Tip: Provide a complete list of current directors, officers and promoters in the cover letter. To facilitate our review of PIFs, Issuers are advised to provide the following information in the cover letter accompanying the materials filed with a preliminary prospectus:

- the name of each current director, executive officer and promoter of the Issuer (and, if the promoter is not an individual, each director and executive officer of the promoter);
- for each of the individuals, an indication as to whether a PIF has been delivered with the preliminary prospectus or a PIF or other acceptable authorization document for the individual was previously filed or delivered;
- for each of the individuals for whom the Issuer has not delivered a PIF because a PIF or other acceptable authorization document was previously filed, the SEDAR project number and submission number under which the PIF or other acceptable authorization document was previously filed.

See OSC Staff Notice 41-702, *Prospectus Practice Directive #1 - Personal information forms and other procedural matters regarding preliminary prospectus filings*.

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D) Prospectus filings – timing

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

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

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

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

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Part B: Responsive Regulation

1. Access Equals Delivery
2. Continuous Disclosure Requirements
3. Listed Issuer Financing Exemption
4. Environmental, Social and Corporate Governance
5. Benchmarks
6. Designated Rating Organizations
7. NI 43-101 Consultation Paper

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1. Access Equals Delivery

On April 7, 2022, the CSA published for comment proposed amendments to introduce an access equals delivery (AED) model for prospectuses, generally, annual financial statements, interim financial reports and related MD&A of non-investment fund Reporting Issuers. The proposed amendments contemplate that the delivery requirement for a document under Securities Law will be satisfied when the document is filed on SEDAR and, where applicable, a news release is issued to alert investors that the document is available and that a paper or an electronic copy can be obtained upon request. The proposed AED model does not remove an investor's ability to request documents in paper or electronic form or prevent an Issuer from delivering financial statements and related MD&A based on an investor's standing instructions. The purpose of the proposed amendments is to modernize the way documents are made available to investors and to provide a more cost-efficient, timely and environmentally friendly manner of communicating information to investors than paper delivery. The comment period expired on July 6, 2022. The CSA received 29 comments from various stakeholders, including Issuers, investors, industry associations and law firms and is currently considering the feedback.

2. Continuous Disclosure Requirements

On May 20, 2021, the CSA proposed changes to the CD requirements for non-investment fund Reporting Issuers to streamline and clarify annual and interim filings. The comment period ended on September 17, 2021 and the CSA received 36 comment letters.

The proposed changes are as follows:

- streamline and clarify certain disclosure requirements in the MD&A and AIF for non-investment fund Reporting Issuers;
- eliminate certain requirements that are redundant or no longer applicable;
- combine the financial statements, MD&A and, where applicable, AIF into one reporting document called the annual disclosure statement for annual reporting purposes, and the interim disclosure statement for interim reporting purposes;
- introduce a small number of new requirements to address gaps in disclosure.

The feedback in respect of the proposed changes to streamline and clarify annual and interim filings was generally supportive. The CSA has considered the feedback received and is in the process of revising the proposed changes to reflect certain of the comments received and to improve or clarify drafting. The revisions are not considered to be material changes. Provided all necessary approvals are obtained, the CSA expects to publish the final amendments in 2023.

The CSA also consulted on a proposed framework for semi-annual reporting on a limited basis. The framework would allow Venture Issuers, that are not SEC issuers, the choice of reporting on a semi-annual rather than a quarterly basis. Alternative disclosure would be required for interim periods where financial statements and MD&A would not be filed. While a rule was not published for comment, the CSA sought public comment on whether rules consistent with the proposed framework could further reduce regulatory burden for these Venture Issuers while still providing investors with adequate information to make informed decisions. The stakeholder feedback in response to the proposed semi-annual reporting framework was mixed. The CSA will consider the feedback received in connection with any future CSA proposal in relation to semi-annual reporting.

3. Listed Issuer Financing Exemption

On September 8, 2022, the CSA published amendments to NI 45-106 to introduce a new prospectus exemption, the listed Issuer financing exemption, that came into force on November 21, 2022. The exemption allows a Reporting Issuer to distribute freely tradeable securities of a type that trades on a Canadian stock exchange to any class of investor, primarily based on its CD record. The exemption is expected to reduce costs for Reporting Issuers raising capital through the public markets. It also allows Reporting Issuers greater access to retail investors and provides retail investors with a broader choice of investments.

The exemption is available to a Reporting Issuer that has been a Reporting Issuer for at least 12 months, is listed on a Canadian stock exchange and has filed all continuous disclosure documents required under Canadian Securities Law. An eligible Reporting Issuer must file a short offering document to supplement and confirm the accuracy of the Reporting Issuer's continuous disclosure record. Under the exemption, a Reporting Issuer could raise up to the greater of $5 million or 10 per cent of the Reporting Issuer's market capitalization, to a maximum of $10 million, annually. More significant transactions that could affect a Reporting Issuer's overall business will continue to require the use of a prospectus or other available prospectus exemption.

4. Environmental, Social and Corporate Governance

On October 18, 2021, the CSA published for comment National Instrument 51-107 *Disclosure of Climate-related Matters* to address the need for more consistent and comparable information to help inform investment decisions. The proposed requirements contemplate disclosure largely consistent with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD). The comment period closed on February 16, 2022. We received 131 comment letters in response to this consultation. The CSA is currently considering stakeholder feedback on this consultation. On October 12, 2022, the CSA issued a news release noting that it is actively considering international developments, including the proposals published by the International Sustainability Standards Board

(ISSB) (further discussed below) and proposed rule amendments for climate-related information published by the United States Securities and Exchange Commission, and how they may impact or further inform the proposed climate-related disclosure rule published in October 2021.

The OSC continues to be involved with IOSCO's Sustainable Finance Task Force (STF), established in 2020 to carry out work to improve the consistency, comparability and reliability of sustainability-related disclosures. In March 2022, the ISSB, a newly created organization which will establish one of its two global offices in Montréal, published exposure drafts of a proposed general sustainability standard and climate-related disclosure standard. Staff, along with other OSC representatives, are also involved in the work of the IOSCO STF Technical Review Coordination Group Climate Working Group, which is conducting a deep-dive assessment of the ISSB's exposure drafts.

5. Benchmarks

A) Financial Benchmarks

On July 13, 2021, Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (MI 25-102), which establishes a comprehensive regime for the designation and regulation of financial benchmarks and those that administer them, came into force in Ontario.

In Canada, the OSC and the AMF are the co-lead authorities for CDOR and RBSL. We conduct reviews of designated benchmarks, designated benchmark administrators and benchmark contributors using a risk-based approach.

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

B) Commodity Benchmarks

On April 29, 2021, the CSA published proposed amendments to MI 25-102, which would establish a regime for the designation and regulation of commodity benchmarks and those that administer them. The comment period ended on July 28, 2021 and we received five comment letters. The CSA is in the process of preparing the final version of the amendments.

6. Designated Rating Organizations

In April 2012, the CSA implemented a regulatory oversight regime for credit rating agencies (CRAs) through National Instrument *25-101 Designated Rating Organizations* (NI 25-101) (DROs). The regime

recognizes and responds to the role of CRAs in our credit markets, and the role of CRA-issued ratings, which are referred to in securities rules and policies. Under the regime, the OSC has the authority to designate a CRA as a DRO, to impose terms and conditions on a DRO, and to revoke a designation order, or change its terms and conditions, where the OSC considers it in the public interest to do so.

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

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

Kroll has only been designated as a DRO for the purposes of the alternative eligibility criteria in section 2.6 of NI 44-101 and section 2.6 of NI 44-102 for Issuers of asset-backed securities to file a short-form prospectus or shelf prospectus, respectively.

In Canada, the OSC is the principal regulator of these DROs. We conduct reviews of DROs using a risk-based approach. Our reviews focus on credit rating activities of the CRAs in Canada or in respect of Canadian Issuers.

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

Review program for Fiscal 2022

The DRO review program for Fiscal 2022 focused on the following four topics:

- deficiencies identified by DRO compliance monitoring and internal audit functions;
- ESG factors;
- digital assets;
- global transition from interbank offered rates (IBORs) to risk-free rates (RFRs).

These risk-based topics were chosen following consideration of current regulatory issues and the OSC's statement of priorities for that fiscal year. In particular, the DRO review sought to obtain

information on certain topics that were being considered in other work streams of the Branch, to create the potential for "leveraging" knowledge and for regulatory efficiencies.

In terms of findings, we note that:

- most deficiencies reported by the DROs were related to adherence to policies, procedures and methodologies, followed by deficiencies related to management of conflicts of interest. Deficiencies were generally resolved through the DROs' internal processes;
- all the DROs consider ESG factors as part of their credit rating process;
- at the time of our review, the DROs had not rated any Canadian crypto asset Issuers or any Canadian entities that mine crypto assets;
- during the review period, DROs considered how discontinuation of the London Interbank Offered Rate (LIBOR) could impact existing or new ratings of securities or loan agreements that used LIBOR as a reference rate. In particular, the DROs considered how Issuers would transition from LIBOR to an RFR.

Review program for 2022-2023 fiscal year

In our DRO review program for the 2022-2023 fiscal year, we plan to conduct further work regarding deficiencies identified by DRO compliance monitoring and internal audit functions and the use of ESG factors in determining credit ratings.

International cooperation

The OSC is a founding member of the Supervisory Colleges for the three largest global credit ratings agencies (S&P, Moody's and Fitch). The Supervisory Colleges were established by the SEC, ESMA and other securities regulators as a result of an IOSCO recommendation and hold virtual meetings on a quarterly basis. Staff also play a key role in other virtual meetings with securities regulators regarding CRAs. The OSC is also a member of IOSCO Committee 6 on CRAs.

7. NI 43-101 Consultation Paper

On April 14, 2022, the CSA published Consultation Paper 43-401 *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects* seeking comments on Canada's standards for disclosing scientific and technical information about mineral projects as the CSA considers ways to update and enhance mining disclosure requirements. The comment period closed on September 13, 2022. We received 74 comment letters in response to this consultation. The CSA is currently considering that feedback.

NI 43-101 was first adopted in 2001 and was last amended in 2011. The CSA continually monitors the mining disclosure requirements in NI 43-101, and has gathered data showing deficiencies in technical report disclosure identified through CD reviews, prospectus reviews, and targeted IORs. These deficiencies include:

- improper self-assessment by report authors of their independence, competence, expertise or relevant experience;
- poor quality of scientific and technical disclosure for early-stage exploration properties related to new stock exchange listings;
- inadequate mineral resource estimation disclosure, including disclosure related to reasonable prospects for eventual economic extraction;
- misuse of preliminary economic assessments;
- inadequate disclosure of all business risks.

The consultation paper is seeking general comments and asking specific questions touching on a wide range of issues, including:

- the application of innovative technologies to the requirement that a technical report author conduct a current personal inspection of a mineral project;
- verification of data from previous property owners;
- the broad, undefined range of precision of a preliminary economic assessment;
- the independence of and qualifications for technical report authors;
- disclosure requirements related to environmental matters;
- disclosure of the risks and uncertainties that arise as a result of the rights of Indigenous Peoples.

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Part C: Resources

1. Prior Year Corporate Finance Branch Reports

2. Key Staff Notices

3. Staff Contact Information

1. Prior Year Corporate Finance Branch Reports

Many topics discussed in previous Branch reports remain relevant. These reports continue to be valuable resources for Issuers and their advisors to consult when preparing an Issuer's continuous disclosure or prospectus.

OSC Staff Notice 51-732 *Corporate Finance Branch 2021 Annual Report*

OSC Staff Notice 51-731 *Corporate Finance Branch 2020 Annual Report*

OSC Staff Notice 51-730 *Corporate Finance Branch 2019 Annual Report*

2. Key Staff Notices

New Staff Notices

Topic	Reference
Corporate Governance	• CSA Multilateral Staff Notice 58-314 – *Report on Eighth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions*
Disclosure Obligations	• CSA Multilateral Staff Notice 51-364 – *Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2022 and March 31, 2021*

Previous Staff Notices

Topic	Reference
Prospectus Practice Directives	• CSA Staff Notice 41-307 *Corporate Finance Prospectus Guidance – Concerns Regarding an Issuer's Financial Condition and the Sufficiency of Proceeds from a Prospectus Offering* • OSC Staff Notice 41-702 – *Prospectus Practice Directive #1 – Personal Information Forms and Other Procedural Matters Regarding Preliminary Prospectus Filings*

	• OSC Staff Notice 41-703 – *Corporate Finance Prospectus Practice Directive #2 – Exemption from Certain Prospectus Requirements to be Evidenced by a Receipt*
Pre-File Reviews	• CSA Staff Notice 43-310 – *Confidential Pre-File Review of Prospectuses (for non-investment fund issuers)* • OSC Staff Notice 43-706 – *Pre-filing Review of Mining Technical Disclosure*
Disclosure Obligations	• OSC Staff Notice 51-711 (Revised) – *Refilings and Corrections of Errors* • OSC Staff Notice 51-723 – *Report on Staff's Review of Related Party Transaction Disclosure and Guidance on Best Practices* • CSA Multilateral Staff Notice 51-361 *Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2020 and March 31, 2019*
Forward-Looking Information	• OSC Staff Notice 51-721 – *Forward-Looking Information Disclosure* • CSA Staff Notice 51-356 – *Problematic promotional activities by issuers*
Industries	• CSA Staff Notice 51-363 *Observations on Disclosure by Crypto Assets Reporting Issuers* • CSA Staff Notice 55-317 *Automatic Securities Disposition Plans* • CSA Staff Notice 43-307 – *Mining Technical Reports – Preliminary Economic Assessments* • CSA Staff Notice 43-309 – *Review of Website Investor Presentations by Mining Issuers* • CSA Staff Notice 43-311 – *Review of Mineral Resource Estimates in Technical Reports*

	• CSA Staff Notice 51-327 – *Revised Guidance on Oil and Gas Disclosure* • CSA Staff Notice 51-342 – *Staff Review of Issuers Entering Into Medical Marijuana Business Opportunities* • CSA Multilateral Staff Notice 51-349 – *Report on the Review of Investment Entities and Guide for Disclosure Improvements* • CSA Staff Notice 51-352 (Revised) – *Issuers with U.S. Marijuana-Related Activities* • CSA Staff Notice 51-357 – *Staff Review of Reporting Issuers in the Cannabis Industry* • OSC Staff Notice 51-719 – *Emerging Market Issuer Review* • OSC Staff Notice 51-720 – *Issuer Guide for Companies Operating in Emerging Markets* • OSC Staff Notice 51-722 – *Report on a Review of Mining Issuers' Management's Discussion and Analysis and Guidance* • OSC Staff Notice 51-724 – *Report on Staff's Review of REIT Distributions Disclosure*
Insider Reporting and SEDI	• OSC Staff Notice 51-726 – *Report on Staff's Review of Insider Reporting and User Guides for Insiders and Issuers* • CSA Staff Notice 55-316 – *Questions and Answers on Insider Reporting and the System for Electronic Disclosure by Insiders (SEDI)*
Use of the Internet and Cyber Security	• CSA Multilateral Staff Notice 51-347 – *Disclosure of cyber security risks and incidents* • CSA Staff Notice 51-348 – *Staff's Review of Social Media Used by Reporting Issuers*

Corporate Governance	• CSA Multilateral Staff Notice 58-313 – *Report on Seventh Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions* • CSA Multilateral Staff Notice 58-312 – *Report on Sixth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions* • CSA Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations for Reporting Issuers in the Cannabis Industry*
COVID-19	• CSA Staff Notice 51-362 *Staff Review of COVID-19 Disclosures and Guide for Disclosure Improvements* • 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*

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3. Staff Contact Information

Topic	Staff Contact information	
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The OSC Inquiries & Contact Centre operates from
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