

Managing Disclosure Around COVID 19

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COVID-19 has taken a toll on global stock markets as many countries struggle to deal with the pandemic. Reporting issuers (each an “Issuer” or “Company”) should be aware of how COVID-19 may affect their disclosure obligations, including but not limited to, the Management’s Discussion and Analysis (“MD&A”), Material Change Reports (“MCR”), and published Forward-Looking Information (“FLI”).

Issuers in Canada must carefully monitor the impacts of COVID-19 on their business and appropriately update the market as the situation changes.

CSA Blanket Filing Relief

As of March 18, 2020, the Canadian Securities Administrators (the “CSA”) will provide temporary blanket relief from some regulatory filings required to be made on or before June 1, 2020. The blanket relief provides a 45-day extension on filings such as financial statements, management’s discussion and analysis, management reports of fund performance, annual information forms, technical reports, and certain other filings. Issuers choosing to rely on this exemption and that are complying with the conditions of the relief will not need to file applications for a management cease trade order as they will not be noted in default.

Management’s Discussion and Analysis

National Instrument 51-102 – Continuous Disclosure Obligations (“NI 51-102”) requires Issuers to prepare and file a Management’s Discussion and Analysis (“MD&A”) through which management discusses, among other things, trends and risks that are reasonably likely to affect the Issuer’s business in the future. When deciding whether information is material, Issuers need to assess whether or not a reasonable investor’s decision to buy, not to buy, sell, or hold securities of the Issuer is likely to be influenced or changed if the information in question was omitted or misstated. Based on this threshold, Issuers should give serious consideration to the potential risk factors of COVID-19 that should be discussed within the MD&A. A number of Issuers have started identifying the following risks, among others, in their MD&A:

- The effects of COVID-19 on their financial and/or operating performance;
- Slowdowns or temporary suspensions of operations;

- Limitations in employee resources due to illness, quarantine periods and social distancing;
- Delays in fulfilling customer orders;
- The unknown duration and impact of COVID-19; and
- Global uncertainty caused by COVID-19.

Material Change Report

Issuers are subject to timely disclosure obligations that may be triggered by COVID-19, including the obligation to report any material changes. A “material change” is any change in the business, operations, or capital of the Issuer that would reasonably be expected to have a significant impact on the market price or value of any of the securities of the Issuer. Upon the occurrence of a material change, an Issuer must immediately issue and file a news release disclosing the substance of the change. The Issuer must also file a Material Change Report (“MCR”) as soon as practicable and within 10 days of the date on which the change occurs.

As a result of COVID-19, Issuers may be required to report such material changes as:

- Precautionary financings;
- Effect of shelter-in-place orders, including temporary work stoppages in affected area(s);
- Temporary closure of retail store(s);
- Suspension of exports;
- Supply chain disruption;
- Increased purchase orders received for products to combat COVID-19; and
- Other material changes as applicable to the Issuer’s business.

While COVID-19 could have a significant impact on the value of the securities of the Issuer, which would trigger the timely disclosure requirements under [National Policy 51-201 – Disclosure Standards](#) (“NP 51-201”), the CSA generally does not require Issuers to discuss the impact of external political, economic, and social developments on their affairs. Issuers are only required to do so where the external development will have or has had a direct effect on the business that is both material and uncharacteristic of the effect generally experienced by other Issuers engaged in the same business or industry. Based on this guidance, if COVID-19 has an equal effect throughout an Issuer’s industry, timely disclosure obligations are not likely to be triggered, and no MCR will be required. It is important to note, however, that even if it is determined that the Issuer is being uniquely affected by COVID-19, the nature of the pandemic makes it difficult to determine when disclosure is required, as Issuers are required to file an MCR within 10 days of the date on which the change occurs.

Forward-Looking Information

Issuers often provide Forward-Looking Information (“FLI”) in their disclosure documents, which includes future-oriented financial information and financial outlook. Under [NI 51-102](#), Issuers cannot disclose FLI unless there is a reasonable basis for the information. Furthermore, when providing



FLI, Issuers are required to caution users of the information that actual results may vary from the FLI and identify material risk factors that could cause actual results to differ materially from the forward-looking information. It is important that Issuers consider whether to include COVID-19 risk factors when providing FLI within their disclosures.

Where the assumptions underlying previously-disclosed FLI are no longer valid, the Issuer may be required to update or withdraw such FLI. An Issuer who chooses to do so must disclose any decision to withdraw previously-disclosed FLI, the events and circumstances that led to the decision, and the assumptions underlying the FLI that are no longer valid. Issuers are cautioned to continue to monitor the effect of COVID-19 on any previously-disclosed FLI and assess, where appropriate, whether such FLI should be updated or withdrawn.

Insider Trading, Tipping, and Trading Restrictions

As a result of the circumstances caused by COVID-19, Issuers may be required to take drastic measures (which could constitute material information) on short notice to protect their business. This may result in a delay in the time that such measures are taken and the time that the material information is disclosed to the public. This process may expose the Issuer to “insider trading” or “tipping” issues if any individuals who are deemed to be a “special relationship” with the Issuer (such as directors, officers or controlling shareholders) trade or encourage others to trade the securities of the Issuer while in possession of material non-public information (“MNPI”). To reduce the potential issues associated with insider trading or tipping, Issuers may consider imposing an internal blackout on any trading of the Issuer’s securities until all applicable disclosure has been provided to the market.

In addition, the uncertainties in the market caused by COVID-19 may present opportunities for insiders of any Issuer to purchase securities at a lower price than normal. As such, insiders of Issuers should take special care to ensure that they are not in possession of MNPI before trading securities or encouraging or recommending that others trade securities of an applicable Issuer.

It is increasingly important for Issuers to monitor the potential adverse effects of the outbreak. Issuers should take proactive steps by reviewing their upcoming disclosure requirements to ensure that they remain compliant with CSA obligations.

For more information or guidance for any other business issues involving public companies and securities, please contact [Andrew Elbaz](#), [Alexander Katznelson](#), or [Darren Nguyen](#) in our [Securities and Capital Markets Group](#):

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