



CURRENT DEVELOPMENTS

Canadian Securities Matters

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Canadian securities: New guidance

CSA Multilateral Staff Notice 58-316 - Review of Disclosure Regarding Women on Boards and in Executive Officer Positions

CSA Multilateral Staff Notice 58-316 – Review of Disclosure Regarding Women on Boards and in Executive Officer Positions outlines key findings from a recent review of public disclosure required by Form 58-101F1 Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices (NI 58-101) regarding women on boards and in executive officer positions.

Subject to certain exceptions, issuers listed on the Toronto Stock Exchange (TSX) and other non-venture issuers are required to provide disclosure on an annual basis in the following five areas:

- Number and percentage of women on boards and in executive officer roles;
- Targets for the number or percentage of women on its board and in executive officer positions;
- Director term limits and other mechanisms of board renewal;
- Written policies relating to identification and nomination of women directors; and
- Consideration of the representation of women when identifying and nominating directors and making executive officer appointments.

The objective of the disclosure requirements is to increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions, and the approach that issuers take in respect of such representation.

This is the ninth consecutive annual review of this disclosure that the Canadian Securities Administrators (CSA) have conducted, and the review was completed primarily for the purposes of identifying key trends.

CSA Staff Notice 21-333 Crypto Asset Trading Platforms: Terms and Conditions for Trading Value-Referenced Crypto Assets with Clients

On October 5, 2023, Staff of the Canadian Securities Administrators (CSA staff) published this notice to provide further

guidance to crypto asset trading platforms (CTPs) on staff's interim approach in respect of providing written consent for CTPs to allow their clients to continue trading, on an interim basis, certain fiat-backed crypto assets and that such consent may be subject to terms and conditions imposed on the CTP and the issuer of such crypto assets, as referenced in CSA Staff Notice 21-332.

OSC Notice 11-798 - Statement of Priorities - Request for Comments Regarding Statement of Priorities (SoP) for Fiscal Year 2024-2025

Every year, the Ontario Securities Commission (OSC) releases a business plan that outlines its priorities for the upcoming year. This plan is based on the OSC's mandate and the legislation that it administers. For the fiscal year 2024-25, some of the proposed areas of focus include the advancement of environmental, social, and governance (ESG) issues, promoting greater diversity on boards and in executive roles, strengthening the dispute resolution process, and enhancing oversight and enforcement in the crypto asset sector.

Ontario Securities Commission Staff Notice 51-735 - Corporate Finance Branch 2023 Annual Report

OSC Staff Notice 51-735 Corporate Finance Branch 2023 Annual Report provides an overview of the OSC's Corporate Finance branch's operational and policy work during the fiscal year ended March 31, 2023, 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 that are regulated by the OSC, their advisors, as well as investors.

In publishing the report, the OSC aims 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.

The following is the summary of the CD review outcomes for Fiscal 2023 and Fiscal 2022:

	Full CD reviews		Issuer-oriented reviews	
	2023	2022	2023	2022
Immediate action (e.g., refiling, filing)	32%	22%	5%	5%
Prospective disclosure	59%	66%	5%	5%
No action required	9%	12%	23%	14%
Ongoing oversight	n/a	n/a	67%	76%

The following is a summary of certain discrete areas of non-compliance identified in the reviews and suggested best practices:

- Concluding on internal control over financial reporting (ICFR) - Reporting Issuers are reminded to include a conclusion in the MD&A about the effectiveness of ICFR, irrespective of whether there is a material weakness.
- Restatements of website or social media disclosure - During a CD or prospectus review, Staff may review an Issuer's website and social media disclosures, including investor presentations, technical disclosures, and other public information
- Auditor's report - change in auditor – When a Reporting Issuer changes its auditors during the periods presented in the annual financial statements, the new auditor's report must cover both periods presented and is normally done by the new auditor referring to the predecessor auditor's report unless the predecessor's audit report is reissued.
- Executive compensation - filing deadlines - Non-Venture Issuers must disclose executive compensation information as required by section 9.3.1 of NI 51-102 and Item 8 of Form 5 1-10 2F5 Information Circular within 140 days after the Reporting Issuer's most recently completed financial year and Venture Issuers must file this disclosure within 180 days after the Reporting Issuer's most recently completed financial year.
- Discussion of operations – variance analysis - Reporting issuers are reminded that 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

include supporting analysis that is specific and to disclose information that readers need to make informed investment decisions.

- Forward-looking information (FLI) - Disclosure of material factors and assumptions underlying the FLI is necessary for investors to understand how actual results may vary from FLI. Issuers are reminded that the assumptions should be entity-specific, reasonable, relevant, and quantified whenever possible
- Non-GAAP and other financial measures - During CD reviews conducted during the year, Staff observed deficiencies with certain requirements, including those related to Non-GAAP Financial Measures being provided in earnings releases as well as disclosure requirements related to supplementary financial measures.
- Greenwashing i.e., misleading, unsubstantiated or otherwise incomplete claims about business operations or the sustainability of a product or service, conveying a false impression - Issuers are reminded that any disclosure regarding their future plans to improve the operational performance with regards to ESG standards will usually be considered FLI. The Issuer must have a reasonable basis for FLI they disclose, and they must identify the material risks factors that could cause the actual results to differ materially. In addition, the issuer must state the material factors or assumptions that were used to develop the FLI and describe its policies for updating the information.
- Whistleblower policies (Employees) - Staff are concerned that any requirement that employees first communicate their complaints internally with, or obtain consent from, the Reporting Issuer, before the employee can communicate their concerns externally is contrary to the requirement in subsection 2.3(7) of National Instrument NI 52-110 Audit Committees (NI 52-110)
- Whistleblower policies (Other than Employees) - Audit committees have failed to establish any procedures for persons or companies, other than employees, to communicate their concerns regarding accounting, internal accounting controls or auditing matters to the audit committee and is contrary to the requirements in subsection 2.3(7) of NI 52-110.
- Disclosure considerations pertaining to geopolitical event - Reporting Issuers that have been or could be materially impacted by any geopolitical event are reminded to provide timely, meaningful, transparent, and balanced disclosures about the impact and the uncertainties to allow investors to make informed investment decisions

Canadian securities: Proposed guidance

Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligation

On November 30, 2023, the CSA staff published for comments proposed amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103), as well as proposed changes to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations (31-103CP), to modify the complaint handling process with an objective to improve access to redress for retail clients.

Under the proposed rule, an independent dispute resolution service (IDRS), a not-for-profit entity, would be designated or recognized by securities regulatory authorities, making it the identified ombuds service authorized to make binding final decisions and require that firms¹ comply with a final decision of the identified ombuds service.

Comment period expires February 28, 2024.

¹ registered firm, except an investment fund manager acting in that capacity (see subsection 13.14 (1) of NI 31-103)

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