

Regulatory Update

October 28, 2021



Regulatory Update

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This presentation

- **Reducing Burden Projects – an update**
- **Primary business guidance – so what; now what?**
- **Other updates**
 - Promotional activity disclosure project
 - Recent CSA publications
- **Looking ahead**

Reducing Burden Projects – an update

- **Started with six and now there are four....ATM and BAR projects have been completed (2020)**
- **Progress on outstanding projects:**
 - **CD requirements** - proposed amendments published for comment in May/21, comment period closed Sept/21
 - Eliminate requirements that are redundant or no longer applicable
 - Combine the financial statements, MD&A and, AIF (if applicable) into one reporting document (ADS and IDS)
 - Introduce a small number of new requirements to address gaps in disclosure
 - Consults on a proposed framework for semi-annual reporting on a limited and voluntary basis – *non-SEC venture issuers*
 - **Next steps – analyze feedback**

Reducing Burden Projects – an update

Alternative Offering System

- **Listed Issuer Financing Exemption (LIFE)** – published for comment July/21 - comment period closed Oct/21
 - exemption relies on issuer's CD record - supplemented with a short offering document
 - would allow issuers to distribute freely tradeable securities
 - generally limited to raising the greater of \$5,000,000 or 10% of the issuer's market capitalization to a maximum of \$10,000,000 (during any 12-month period) – an overall cap of 100% dilution
 - issuer must have been a reporting issuer for at least 12 months and have active business operations
 - Next steps – analyze feedback
- **C-WKSI model** – developing a model for large issuers similar to well-known seasoned issuer (WKSI) regime in US
→ work in progress – stay tuned


Reducing Burden Projects – an update

- **Primary Business** - proposed CP changes published for comment in Aug/21, comment period closed Oct/21
 - clarifies the interpretation of primary business and predecessor entity
 - guidance as to ‘when’ and ‘for what time periods’ financial statements would be required in certain circumstances
 - guidance on the circumstances when we may require additional information (full, true and plain disclosure)
 - clarifies when an acquisition of mining assets is not a business
 - Next steps – analyze feedback

Reducing Burden Projects – an update

- **Electronic Delivery** – consultation paper published in Jan/20
 - 30 comment letters received
 - General support
 - Committee currently working on proposed amendments

Primary business guidance

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- **Goal – Harmonize approach to ‘primary business’ in an IPO prospectus**
 - **Changes – so what; now what?**

Primary business guidance

- **The what?**
 - **What is a ‘business’ and what constitutes the ‘primary business’?** *Remembering ‘primary business’ is IPO’s only*
 - **Significant acquisitions – IPO vs. continuous disclosure**
 - **Significant acquisition of mining assets/claims – how do they fit into the puzzle?**

Primary business guidance

- **Most common phrase from issuers – *we haven't bought a business***
 - **Securities rules are determinative – accounting rules may provide additional information but do NOT trump securities rules**
 - **Most typical situations:**
 - Acquisition of a separate entity (buy shares) – almost always considered a 'business' with a couple of narrow outs (newly incorporated holdco set-up solely to transact (foreign jurisdiction))
 - Acquisition of a subsidiary or a division – usually considered a 'business'
 - Acquisition where issuer is changing businesses (mining → cannabis) - usually considered a 'business'
 - Acquisition where issuer is a shell – we often ask – if not a business then what is the business?

Primary business guidance

- **There can be only one (story that is)**
- **Securities Legislation uses a ‘reasonable investor’ test**
- **Primary factors in determining the ‘primary business’ in an IPO context:**
 - Principal assets prior to acquisition – what would a ‘reasonable investor’ say?
 - Was it an RTO?
 - Was it a QT for a CPC?
 - Was acquisition significant at >100% level?

Primary business guidance

- **Can be situations that don't fit into four principal factors but still result in the new company considered the primary business**
 - Was it an acquisition <100% significance threshold but still changes the primary business of the issuer, as disclosed in the prospectus?
 - Example - Mining company transitioning to a cannabis/psychedelics company - might not hit any of the four primary considerations but clearly the business going forward is cannabis/psychedelics – it always comes back to what is their business going to be in the future

Primary business guidance

- **After considering primary business issues (IPO or initial listing) – then consider if financial statements are required for a significant acquisition(s) - remember they are mutually exclusive in the IPO world**
 - New assessment for non-venture issuers – financial statements are required for a significant acquisition if the issuer meets 2 tests at 30% significance
 - Threshold for venture issuers remains as meeting 100% under either asset or investment test, no P&L test
- **100% threshold for primary business and a significant acquisition – how can it be both?**
 - Think of primary business as IPO or for new businesses into the system
 - 51-102 does not have a concept of primary business, so it only applies for prospectus filings, but remember that info circular requirements can make prospectus rules apply

Primary business guidance

- **While certain acquisitions of mining assets may constitute acquisitions of a business for securities legislation purposes even if they do not meet the definition of a “business” for accounting purposes, we would not consider an acquisition of mining assets to be a business if all of the following criteria are met:**
 - Acquisition was arm’s length
 - No other assets transferred and no liabilities assumed
 - No exploration, development or other production activity on the assets in the last 2 years for venture issuers before the date of the prospectus
- **Consistent thinking for continuous disclosure purposes as well (the BAR requirement)**

Promotional activity disclosure project

- **Proposed BC Instrument 51-519 *Promotional Activity Disclosure Requirements* published for comment in May/21, comment period closed July/21**
 - The why?
 - Increased problems with different aspects of promotional activity
 - Volume increasing with popularity of social media
 - Problematic promotions seen in emerging sectors – *issuers changing business to, or acquiring a business in*
 - Promotions failing to disclose conflicts of interest of promoters
 - Promotional material containing ‘opinion-based’ content that is unbalanced and often disguised as independent analysis or news and encourages quick investment decisions – FOMO, YOLO
 - Issuers do not disclose compensation paid for promotional campaigns or properly oversee promotional campaigns

Promotional activity disclosure project

- The what?
 - Rule establishes tailored framework for promotional activity disclosure
 - Intended to provide investors improved transparency about source and reliability of information, and conflicts of interest
 - Additional regulatory tool to identify and hold responsible those issuers and persons who conduct problematic promotional activity
 - Excludes:
 - Normal business activities of issuers
 - Promotions conducted by an issuer or its directors, officers or employees
 - Certain registrants engaged in registerable activities
 - Promotions related to investment fund securities

Promotional activity disclosure project

- The details – 4 main components
 - News releases – venture issuers that retain/compensate promoters must issue news release outlining:
 - Contact information of person(s) engaged
 - Platforms on which the activity will occur
 - Compensation to be paid for the promotional activity
 - Disclosure on inquiry (all issuers) – if asked, must disclose the information required to be disclosed in the news release if they retain/compensate promoters
 - Written or oral communications (all persons) – must disclose
 - Engagement – on whose behalf retained
 - Compensation – how and how much
 - Ownership of securities or derivatives that is subject of promotional activity
 - Platforms – where the promotion is being conducted
 - Other facts – any other facts that could be seen to interfere with objectivity
 - Required by law – if compensated, a statement that the above info is required by law

Promotional activity disclosure project

- The details cont'd
 - MD&A disclosure - venture issuers only
 - if total expenditures on promotional activity >10% of its total operating expenses – must disclose the components of those expenditures in interim and annual MD&A
 - excludes amounts spent on promotional activity conducted by the venture issuer's directors, officers and employees
 - Next steps – analyze feedback

Recent publications

- **Recent other publications**

- Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 *Disclosure of Climate-related Matters* – Oct/21
- CSA Notice of Amendments Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1 – Oct/21
- Adoption of National Instrument 45-110 *Start-Up Crowdfunding Registration and Prospectus Exemptions* – harmonizing crowdfunding rules – Sept/21
- Adoption of National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* – Aug/21
- CSA Staff Notice 41-307 (Revised) *Concerns regarding an issuer's financial condition and the sufficiency of proceeds from a prospectus offering* – Mar/21
- CSA Staff Notice 51-363 *Observations on Disclosure by Crypto Assets Reporting Issuers* – Mar/21

What else is on the regulatory horizon?



- **Policy projects related to financial reporting and capital raising**
 - Reducing burden projects – work continues...
 - Promotional activity disclosure project
 - Climate-related disclosure project
 - Offering memorandum project – look to finalize changes (Dec/20 proposals)
 - Other

More information

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Questions

