

Securities Law Bulletin

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OSC Publishes Staff Notice Regarding Mining Issuers' MD&A Disclosure

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On February 6, 2014, the Ontario Securities Commission (OSC) published Staff Notice 51-722 – *Report on a Review of Mining Issuers' Management's Discussion and Analysis and Guidance* (the Staff Notice). In the Staff Notice, the OSC summarizes the results of its recent review of the MD&A filed by mining issuers with a market capitalization of less than \$100 million and provides guidance to assist these issuers in complying with their disclosure obligations. The following provides an overview of the Staff Notice.

Areas of Improvement

The Staff Notice identifies four primary areas for improvement:

- venture issuers without significant revenue from operations did not provide the breakdown of material components of exploration and evaluation (E&E) assets or expenditures
- issuers with exploration projects did not discuss and itemize their exploration expenditures
- issuers with a working capital deficiency provided very general discussion or no discussion about potential sources of financing and how they plan on continuing operations
- issuers did not appropriately disclose the identity of the parties involved in related party transactions

Venture Issuer Disclosure

In its review, the OSC found that most exploration stage mining issuers failed to provide adequate disclosure of

E&E assets or expenditures. As stated in the Staff Notice, providing a breakdown of the material components of E&E, a presentation of E&E assets or expenditures on a property-by-property basis, general and administrative expenses and other material costs incurred helps investors understand the nature of the work being performed, how money is being spent and helps them evaluate the impact the expenses have in moving the exploration or developments of properties forward.

Discussion of Operations

The Staff Notice states that issuers without producing mines should be disclosing essential information about their material mineral projects, including work completed and expenses incurred during the period, current (and future) project plans and budgets.

For issuers with producing mines, the OSC advises that MD&A should include information on production figures, production activities and milestones, operating and production costs, sales and revenue, explanations of any substantial changes to production and operation information, new developments and the impact each of these have on mineral resources and reserves.

Liquidity and Capital Resources

The OSC found that a majority of the mining issuers selected for review failed to provide adequate disclosure concerning their working capital requirements. For those with a working capital deficiency, a large majority provided no discussion or a very general discussion about needing to access the capital markets in the future.

Transactions Between Related Parties

As stated in the Staff Notice, the OSC is aware that many smaller issuers leverage their business relationships to advance their projects in a cost controlled fashion by entering into related party contracts or transactions. However, the OSC found that a large proportion of issuers failed to appropriately disclose the identity of the related party involved in the transaction.

Guidance and Sample Disclosure

In recent years, the OSC has provided guidance in the form of examples to assist issuers in understanding the type of entity-specific disclosure required by regulators. In this Staff Notice, the OSC provides a detailed guide setting out examples of the inadequate disclosure often found in MD&A and comparing it against the disclosure it expects issuers to provide. While the examples provided are illustrative only and should not replace entity-specific disclosure as mandated by an issuer's specific set of circumstances, mining issuers should take note of the level of detail provided in the examples.

How to Respond

When it comes to regulatory compliance, the best strategy is usually a proactive one. Acting proactively to improve MD&A disclosure, as described in the Staff Notice, can assist issuers in communicating their results to investors and decrease the likelihood of problems in connection with a continuous disclosure review. For mining issuers contemplating a prospectus offering or any other transaction contingent upon a disclosure review by regulators, complying with the disclosure requirements as set out in the Staff Notice should be considered essential in order to make the review go as smoothly as possible.

Aird & Berlis LLP has more than 75 years of history in providing expert, experienced and thoughtful legal services to participants in the mining industry. We can help to identify and implement practical solutions for mining issuers and their advisors no matter what stage of development. If you have questions or concerns regarding the Staff Notice or any other matter, please contact **Richard Kimel**, **Morris Popowich** or any member of our **Corporate Finance** or **Mining** Group.

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