Cassels

Disclosures - Lessons and Trends from a Pandemic Year

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For over a year, companies have had to address the impacts of COVID-19 in meeting their continuous disclosure obligations. The Canadian Securities Administrators (CSA) recently conducted a review and assessment of disclosures from 90 issuers regarding the current and anticipated impacts of COVID-19 and published its findings in *Staff Review of COVID-19 Disclosures and Guide for Disclosure Improvements* (Review).

As we addressed in our earlier article *COVID-19 Impact: Disclosure Obligations and Risks for Canadian Public Companies,* reporting issuers must make meaningful disclosures about the business impacts and potential uncertainties regarding COVID-19 so that investors can make informed decisions. The Review evaluates trends and common deficiencies in disclosures from this past year, and offers guidance on improved disclosure practices.

Broadly speaking, the CSA found that the majority of the disclosure reviewed was generally acceptable. However, the CSA did note in the Review that there were certain areas where many issuers provided boiler-plate disclosure with insufficient evidence with respect to the impact of COVID-19 on their operations. Particularly, the CSA specified that it is not sufficient for an issuer to simply report that COVID-19 has or will impact their business; rather, issuers are required to 1) report that the business has or may be impacted by COVID-19; 2) specify how COVID-19 has or may impact their business; and 3) outline the methodology used to determine that COVID-19 impacted (or may impact) their business and not some other market or business factor. This article outlines some of the trends observed, as well as some of the best practices recommended, by the CSA.

Impacts & Responses to COVID-19

Operational and Financial Impacts

The Review covered a wide range of industries and noted the diverse impacts that COVID-19 has had on issuers' operations and businesses. The Review outlined several operational and financial impacts that issuers reported on this last year, including:

Operational impacts:

- Decreased demand for products and services;

- Operational closures and modifications;
- Constrained human resources;
- Disrupted supply and distribution channels; and
- Inability to continue capital projects.

Financial impacts:

- Decreased revenues;
- Asset impairments;
- Credit losses;
- Negative working capital and negative cash flow; and
- Material uncertainties regarding going concern.

Common Measures Taken to Reduce COVID-19 Impact

The Review also noted some of the common measures and operational adjustments taken by issuers in response to the above impacts. These include:

- Participating in government assistance programs;
- Changing product or service mix;
- Changes in budget, or deferral of capital projects and/or acquisitions;
- Employee layoffs; and
- Disposal of assets.

Key Observations and Disclosure Considerations

Though the CSA was positive about the general quality of COVID-19 disclosure, the Review highlighted room for improvement in the following disclosure documents:

- MD&A reporting;
- Financial statements;
- Non-GAAP financial measures (NGMs);
- Forward looking indicators (FLIs);
- Material Change Reports (MCRs); and
- Promotional disclosures.

In particular, the CSA advised that issuers should:

- *Avoid boiler-plate disclosure* – Issuers must provide details of specific risks related to COVID-19, and in particular, details of the nature and extent of credit risks and liquidity uncertainties;

- *Avoid providing inadequate "lists" of impacts, measures and risks related to COVID-19* – Issuers must provide detailed and transparent discussion on how COVID-19 is altering, and is anticipated to alter, the issuer's day-to-day finances and operations;
- *Include specific methodology* – Issuers tended to leave out the methodology used to determine quantitative variances related to COVID-19, but disclosures should include the specific methodology used in calculations and analyses;
- *Disclose and update assumptions used to develop FLIs* – Issuers must update MD&As to account for developments that materially impact previously disclosed FLIs;
- *Adjust NGMs for impacts related to COVID-19* – The CSA noted that only 5% of issuers met this recommendation; issuers should adjust their NGMs so as to avoid potentially misleading disclosures (for example, failing to adjust for government subsidies);
- *Avoid overly promotional language* – As always, issuers must ensure their disclosure enables a full understanding of the issuer's business intentions and expected milestones;
- *Skip the MCR* – Filing an MCR is not always necessary in relation to the impacts of COVID-19, particularly where there is an equal effect throughout an issuer's industry; however, where the impact is unique or more significant to an issuer's business, the issuer should consider filing an MCR; and
- *Ensure disclosure is uniform* – As we discussed in our earlier article, issuers must update their regulatory filings to include as much detail as what is disclosed in press releases and in private discussions with investors.

The Upshot

As we pass the one-year anniversary of the WHO declaring COVID-19 as a global pandemic, it is as important as ever that issuers maintain quality and meaningful disclosure of the current and expected impact of COVID-19. This recent guidance form the CSA should assist Canadian public companies in meeting their COVID-19 related disclosure obligations.

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