CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 51-366
Regulatory Concerns with Certain Asset or Business Acquisitions

July 3, 2025

1. Introduction

Staff of the Canadian Securities Administrators (**we** or **us**) have identified regulatory concerns with certain transactions, primarily taking place in venture markets, in which reporting issuers distribute a significant number of securities to acquire assets or businesses that appear to have little or no actual value or operating history at what appear to be significantly inflated prices.

We are issuing this notice to illustrate the key regulatory and investor protection concerns we are seeing with these types of acquisitions, including concerns with misleading disclosure that could constitute market manipulation and to remind reporting issuers of the requirements that may apply.

2. Regulatory concerns

The problematic acquisitions that this notice refers to typically have the following attributes:

- **Significant number of securities issued**
  The reporting issuer distributes a significant number of securities that carry either no resale restrictions or a short hold period to acquire an asset or business having little or no actual value.

- **An asset or business with little or no actual value or operating history acquired at what appears to be a significantly inflated price**
  The reporting issuer ascribes a significant value to the asset or business to be acquired but then provides subsequent continuous disclosure that calls into question the reasonableness of the ascribed value, and that indicates that the acquired business or asset
  - has a minimal carrying value,
  - is at a very early stage of development, or
  - was recently acquired by a vendor from a third party with the vendor having made no significant expenditures to develop the asset or advance the business prior to selling it to the reporting issuer.

Key regulatory concerns with these types of transactions include:

- whether the reporting issuer's continuous disclosure record is potentially misleading or contains a misrepresentation, which could lead to
  - information asymmetry as investors purchase securities at a potentially inflated price without benefit of appropriate disclosure regarding the value of the acquisition, and
  - a significant number of securities being re-sold in the secondary market before information about the actual value of the asset or business is publicly disclosed;
- whether there is a lack of a reasonable basis for the value initially ascribed to the asset or business being acquired giving rise to concerns about misleading disclosure or misrepresentations;

- whether the reporting issuer has
    - recorded all or a substantial portion of the consideration transferred as intangible assets or goodwill based on unreasonable and/or unsupportable assumptions; and
    - impaired substantially all of the value assigned to the intangible assets or goodwill in a short period of time after the acquisition;
- whether promotional campaigns about the acquisition are truthful and balanced; and
- whether the ascribed value is based on reasonable and supportable valuations.

3. Disclosure concerns

A. News release and material change report considerations

Under securities legislation, reporting issuers are required to disclose all material changes[1]. As these problematic acquisitions often involve consideration that is material to the issuer, and the issuance of a significant number of securities, we are of the view that they generally represent a material change requiring the reporting issuer to issue a news release and file a material change report in Form 51-102F3 *Material Change Report.* For guidance on materiality determinations, issuers should refer to National Policy 51-201 *Disclosure Standards*.

To meet its disclosure obligations, the reporting issuer must immediately disclose the nature and substance of the change in the news release and provide sufficient disclosure in the material change report to enable a reader to understand the significance and impact of the material change. The report must be filed as soon as practicable and, in any event, within 10 days of the date on which the change occurs. For these types of acquisitions, examples of disclosure we would generally consider necessary for a reader to understand the significance and impact of the acquisition include the following:

- a description of the assets or business acquired including the stage of development and any patents, licenses, or permits acquired, if applicable,
- an explanation of how the reporting issuer determined the consideration and the number of securities to be issued in connection with the acquisition,
- if the reporting issuer is acquiring the assets or business from a vendor that recently acquired the assets or business from a third party, an explanation of the difference, if material, between what the vendor paid to acquire the assets or business and the fair value of the consideration paid or payable by the issuer, and
- disclosure of any relationship between the reporting issuer and its directors, officers or insiders with the vendor and the vendor's directors, officers, or insiders.

B. Financial statement considerations

Some reporting issuers that have entered into these types of transactions record an impairment of goodwill or intangible assets acquired within a short period of time after the business combination or asset acquisition as defined in IFRS Accounting Standards. The issuance of a significant number of securities and a large impairment loss in a short period of time raise questions about the economic substance of these types of transactions and the appropriate application of the relevant accounting standards[2]. Reporting issuers should ensure they have provided all the disclosures required by IFRS Accounting Standards on these types of transactions in their financial statements.

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[1] National Instrument 51-102 *Continuous Disclosure Obligations*, section 7.1

[2] The IFRS Accounting Standards that are generally most applicable to these types of transactions are IFRS 3 *Business combinations,* IFRS 2 *Share-based payment,* IAS 38 *Intangible assets,* and IAS 36 *Impairment of assets*

Reporting issuers are generally required to file annual and interim financial statements prepared in accordance with IFRS Accounting Standards[3]. Financial statements do not comply with IFRS Accounting Standards if they contain material errors. If a reporting issuer identifies a material misstatement relating to the acquisition or an impairment in previously filed financial statements, the reporting issuer is required to correct the material misstatement retrospectively. If a reporting issuer amends and re-files previously filed financial statements or re-states comparative financial information for material errors, the reporting issuer must immediately issue and file a news release disclosing the nature and substance of the change[4].

C. MD&A considerations

Our reviews have identified that, in some cases, management's discussion & analysis (**MD&A**) disclosure does not contain a sufficient discussion of the nature of the goodwill or intangible assets, and any associated impairment loss.

Among other things, Form 51-102F1 requires a reporting issuer to:

- include discussions in the MD&A to assist the reader to understand trends, events, transactions and expenditures[5],
- include analysis of the effect on the issuer's continuous operations of any acquisition, disposition, write-off, abandonment or other similar transaction[6],
- discuss significant acquisitions or dispositions[7], and
- discuss unusual or infrequent events or transactions[8].

We are of the view that to meet the requirements under Form 51-102F1, and to ensure that its disclosure is not misleading, a reporting issuer recording significant goodwill or intangible assets associated with these types of acquisitions should include sufficient MD&A disclosure to assist the reader to understand the transaction and the effect on the reporting issuer's continuing operations, for example,

- for an intangible asset acquired by the vendor, the
    - date the vendor acquired the intangible asset,
    - cost of the intangible asset to the vendor, including acquisition costs and the estimated development costs incurred by the vendor after the acquisition, and
- for an intangible asset developed internally by the vendor, the
    - date when the development of the intangible asset commenced,
    - estimated development expenditures and their material components,
    - stage of development, and
    - information on any patents, permits or licenses associated with the intangible asset.

Furthermore, we would generally expect a reporting issuer recording a significant impairment of goodwill or intangibles within a short period after the transaction to include in the MD&A an analysis of the impairment loss[9]. This analysis should supplement the disclosure in the financial statements and, if applicable, discuss changes

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[3] Sections 4.1 and 4.3 of National Instrument 51-102 *Continuous Disclosure Obligations* and section 3.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*

[4] National Instrument 51-102 *Continuous Disclosure Obligations*, section 11.5

[5] Part 1(d) of Form 51-102F1 *Management's Discussion and Analysis*

[6] Item 1.2 of Part 2 of Form 51-102F1 *Management's Discussion and Analysis*

[7] Item 1.3(2) of Part 2 of Form 51-102F1 *Management's Discussion and Analysis*

[8] Item 1.4(j) of Part 2 of Form 51-102F1 *Management's Discussion and Analysis*

[9] Form 51-102F1 *Management's Discussion and Analysis,* items 1.2, 1.3(2) and 1.4(j)

from the methodologies, key inputs or assumptions utilized in the purchase price allocation or impairment analysis at the acquisition date.

D. Certifying officers and the audit committee

We remind certifying officers that in connection with the annual and interim filings, they must certify the following based on their knowledge:

- no misrepresentations: that the filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered.

- fair presentation: that the annual financial statements or interim financial report together with the other financial information included in the annual filings or interim filings fairly present in all material respects the financial condition, financial performance and cash flows of the issuer[10].

We also remind audit committee members that they are responsible for reviewing the reporting issuer's financial statements, MD&A, and annual and interim profit or loss press releases before the reporting issuer publicly discloses this information. The audit committee must be satisfied that adequate procedures are in place for the review of the reporting issuer's public disclosure of financial information extracted or derived from the reporting issuer's financial statements and periodically assess the adequacy of those procedures.

4. Concerns with promotional campaigns

When engaging in promotional campaigns, we expect issuers and other persons to comply with all applicable securities law requirements, including the general prohibitions against false or misleading statements that would be expected to have a significant effect on the price or value of an issuer's securities, and follow relevant guidance[11].

5. Concerns with certain valuation reports or fairness opinions

A valuation report may provide a conclusion with respect to a specific value or range of values of the business or assets acquired or to be acquired. A fairness opinion provides a conclusion as to the fairness of a proposed transaction to security holders, from a financial point of view. Valuation reports or fairness opinions are generally limited in scope, contain restrictions and qualifications, and serve specific needs.

For the acquisitions identified in this notice, we have seen valuations referenced in news releases or continuous disclosure documents that are often based on unreasonable or unsupportable assumptions, leading to an inflated price of the acquisition of a business or asset and therefore potentially misleading disclosure. In these situations, the scope of the valuation or fairness opinion generally includes minimal review and analysis with little or no corroboration of relevant information by the valuator. We have seen instances in which the reporting issuer fails to disclose the limited scope, restrictions, and qualifications of the valuation report or fairness opinion, which potentially leads to incomplete, unbalanced, and misleading disclosure.

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[10] Items 2 and 3 of Form 52-109F1 and Form 52-109FV1 *Certification of Annual Filings,* and items 2 and 3 of Form 52-109F2 and Form 52-109FV2 *Certification of Interim Filings*

[11] CSA Staff Notice 51-356 *Problematic Promotional Activities by Issuers* and BC Notice 15-702 *Prohibitions against Misrepresentations and False or Misleading Statements*

6. Exchange review

Issuers are reminded that the exchanges in Canada, under their recognition orders, are required to operate in the public interest. When reviewing a filing in connection with an acquisition, an exchange may consider either not approving or objecting to the transaction, or requiring the reporting issuer to change the structure of the transaction if

- inadequate evidence of the value of the asset or business is provided, or
- the issuer pays significantly more for an asset or a business than the vendor paid to acquire the asset or business and there is no reasonable explanation for the increase.

Exchanges may also impose conditions on these transactions. As an example, an exchange may apply escrow to the securities or require resale restrictions based on milestones that are appropriate to the reporting issuer's business and stage of development.

7. Liability and potential regulatory response

Reporting issuers and their directors and officers may be subject to civil liability for secondary market disclosure if the disclosure contains a misrepresentation. Certifying or approving financial statements and MD&A that contain material deficiencies or errors in relation to the acquisition or impairment may expose the certifying officers, directors and the reporting issuer to potential regulatory action and civil liability.

Staff will continue to apply additional regulatory scrutiny to reporting issuers involved in acquisitions that appear to raise the concerns set out in this notice. When we identify concerns, we may take action including placing the reporting issuer on the default list, requesting the reporting issuer to re-file certain continuous disclosure documents or to issue a clarifying news release, or seeking a cease trade or halt trade order.

Reporting issuers and their directors and officers that are involved in market manipulation or other misconduct may also be subject to enforcement action.

8. Questions

Please refer your questions to any of the following:

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