

## APPENDIX C

### OTHER REGULATORY DISCLOSURE DEFICIENCIES

CSA Staff assess issuer compliance with securities laws. Our objective is to promote clear and informative disclosure that will allow investors to make informed investment decisions. The areas where compliance issues persist include disclosure about: 1) mineral projects; 2) oil and gas activities; 3) disclosure controls and procedures and internal control over financial reporting in venture issuers' MD&A; and 4) executive compensation.

#### 1. Mineral projects

Issuers engaged in mining activities have to comply with the requirements set out in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*. Common deficiencies noted include:

- incomplete or inadequate disclosure of preliminary economic assessments, mineral resources and mineral reserves;
- non-compliant certificates and consents of qualified persons for technical reports;
- incomplete or inadequate disclosure of historical estimates and exploration targets; and
- name of the qualified person omitted in documents containing scientific and technical information.

#### 2. Oil and gas activities

Issuers engaged in oil and gas activities must comply with the requirements set out in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities (NI 51-101)*. Common deficiencies noted include:

- failure to adapt to current requirements of Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information (Form 51-101F1)*, Form 51-101F2 *Report on Reserves Data by Independent Qualified Reserves Evaluator or Auditor*, and Form 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure*;
- non-compliance with sections 5.9, 5.16 and 5.17 of NI 51-101 concerning disclosure of resources other than reserves, classification to the most specific category of resources, summation across resource categories and disclosure of high case estimates of resources;
- inadequate disclosure of the meaning of, and method of calculating, the metrics used by issuers to measure and compare oil and gas activities;
- deficiencies in reserves reconciliation disclosure, including, for example, opening balances for the reserves reconciliation required under item 4.1 of Form 51-101F1 that do not agree with the prior year's closing balances; and
- insufficient and boilerplate disclosure of significant factors and uncertainties as per items 5.2 and 6.2.1 of Form 51-101F1, regarding the issuer's proved and probable undeveloped reserves and plans for developing those reserves under item 5.1 of Form 51-101F1.

#### 3. Disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR) in venture issuers' MD&A

Some venture issuers discussed DC&P or ICFR in their MD&As, but did not include cautionary language. In accordance with section 15.3 of the Companion Policy to National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings (52-109 CP)*, if a

venture issuer and its certifying officers file Forms 52-109FV1 or 52-109FV2 (**Venture Issuers Basic Certificates**) and choose to discuss the design or operation of one or more components of their ICFR and DC&P in the MD&A or other regulatory filings, they should also consider disclosing in the same document that:

- (a) the venture issuer is not required to certify the design and evaluation of its DC&P and ICFR and has not completed such an evaluation; and
- (b) inherent limitations on the ability of the certifying officers to design and implement on a cost-effective basis DC&P and ICFR for the issuer may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.

Venture Issuers Basic Certificates provided in National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109)* include a "Note to Reader" that the certifying officers are not making any representations relating to the establishment and maintenance of:

- i) controls and other procedures designed to provide reasonable assurance that information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation; and
- ii) a process to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP.

In the following example, the venture issuer used Venture Issuers Basic Certificates.

***Example of deficient disclosure***

**Disclosure controls and procedures**

The Company's Chief Executive Officer (CEO) and the Chief Financial Officer (CFO) are responsible for establishing and maintaining the Company's disclosure controls and procedures. These controls and procedures have been evaluated as at December 31, 2012 and have been determined to be effective.

**Internal controls over financial reporting**

The Company's CEO and the CFO are responsible for establishing and maintaining the Company's internal controls over financial reporting.

The internal control system pertaining to financial reporting gives a reasonable assurance as to the reliability of the financial information reported and the preparation of the financial statements in accordance with IFRS.

In the above example, to avoid confusion, it would have been more appropriate for the venture issuer to use Forms 52-109F1 or 52-109F2 (**Full Certificates**) as allowed by subsections 4.2(2) and 5.2(2) of NI 52-109. However, if the venture issuer does use Full Certificates, it must use a control framework for the design of ICFR, as required by subsection 3.4(2) of NI 52-109. The guidance in Parts 6 and 7 of 52-109 CP regarding establishing and evaluating DC&P and ICFR would also apply.

If in the above example, the venture issuer intends to use only a Venture Issuers Basic Certificate then it could have discussed only one or a few discrete components of DC&P or ICFR. In addition, the MD&A disclosure should be clear and should not include assertions about the design or evaluation of all aspects of DC&P or ICFR, and should not include any conclusions on the effectiveness of DC&P or ICFR. In addition, the cautionary language set out in section 15.3 of 52-109 CP would ensure transparent disclosure.

For additional guidance on NI 52-109, please see CSA Staff Notice 52-325 *Certification Compliance Review* and CSA Staff Notice 52-327 *Certification Compliance Update*.

#### **4. Executive compensation**

Issuers must provide the executive compensation disclosure for the periods set out in, and in accordance with Form 51-102F6 *Statement of Executive Compensation* of National Instrument 51-102 *Continuous disclosure obligations*. This disclosure can be included in an information circular, an annual information form (AIF) or as a stand-alone document.

The executive compensation disclosure must be filed not later than 140 days after the end of the issuer's most recently completed financial year pursuant to subsection 11.6(3) of National Instrument 51-102 *Continuous Disclosure Obligations*. We noted that some issuers failed to file the executive compensation disclosure within 140 days. We remind issuers, that if they are not planning to send an information circular to their securityholders within 140 days after the end of their most recently completed financial year, they must include the executive compensation disclosure in either the AIF or as a stand-alone document, and file it within the 140 days.