

MSC Notice 2003-19

Manitoba Securities Commission

Implementation of a Continuous Disclosure Review Program by the Corporate Finance Section

The purpose of this Notice is to advise the Commission's stakeholders of the commencement of a continuous disclosure review (CD Review) program and to communicate the general features of the CD Review program.

The quality and timeliness of information disclosed to capital markets by reporting issuers (RIs) has always been of interest to the Commission. However, in order to better focus attention on this area, the Corporate Finance section of the Commission will now be responsible for the ongoing review of continuous disclosure filings made by RIs.

What is the purpose of CD Review?

To monitor information filed with the Commission and/or publicly disseminated by reporting issuers (RIs), including mutual funds, to determine whether such information is prepared in accordance with regulatory requirements.

In a mutual fund context, CD Reviews will also be used to monitor how investment funds are being managed. This will include checking for compliance with securities regulation and how an investment fund is being managed compared to the investment objective and strategies disclosed in the fund's prospectus.

CD Review will also have an educational aspect, as the overall goal is to improve, in a pro-active way, the quality of information being provided by RIs.

The goals of CD Review include increasing the awareness of continuous disclosure issues and effecting greater discipline in the marketplace, with respect to continuous disclosure requirements and obligations under securities legislation.

What is the scope of a CD Review?

RIs will be subject to either a full, issue-oriented or limited review based on review criteria. The Corporate Finance staff will also be responsible for the review of insider trade report filings. The following is a summary of what each of these reviews would entail.

Full Review: A RI selected for a full review will have, at a minimum, its entire continuous disclosure record for the past year reviewed by Corporate Finance staff. The financial statement review will cover a 2 year period. In certain cases, staff will extend the scope of the review to prior years, depending on the results of staff's initial review of the disclosure record.

A full review will encompass a RI's financial disclosure (including interim and annual financial statements), as well as other types of corporate disclosure, including AIFs, MD&A, Material Change Reports, proxy circulars, information circulars and press releases, as well as a review of

the issuer's website. Staff will also monitor press articles and other sources, such as public complaints concerning the RI, as a means of gathering information about the RI and its disclosure practices. The review may also include a review of trading activity, industry data, analyst reports, transcripts of investor/analyst meetings and Internal Bulletin Boards, as appropriate.

In a mutual fund context, a full review will include a comprehensive examination of the investment funds entire disclosure record, including financial statements for a minimum of two years. In addition to all prescribed regulatory filing, staff may review other materials that are aimed at investors such as the fund manager's website, newsletters and marketing brochures.

Issue-orientated Review: An issue-orientated review will focus on a specific issue or possibly a particular industry. Examples of an issue-orientated review would be the review of an issuer's MD&A, review of executive compensation disclosure or review for compliance with new accounting standards.

In a mutual fund context, issue-orientated reviews will also focus on particular issues and may include valuation, compliance with investment objectives, compliance with conditions of orders and incentive fee disclosure.

Limited Review: A limited review will encompass a smaller portion of the RI's continuous disclosure record and will ensure that all required continuous disclosure documents have been filed in accordance with securities legislation requirements.

Insider Trade Report Review: Once the System for Electronic Disclosure by Insiders (SEDI) is operational, Corporate Finance staff will commence reviews of insider trade report filings on an on-going basis. The implementation of this system will allow staff to efficiently and effectively scrutinize insider trade reports.

Insider trade report reviews will normally be conducted separate and apart from the review of continuous disclosure filings made by RIs. However, circumstances may warrant the review of a RIs continuous disclosure and insider trade reporting concurrently.

How will reporting issuers be selected for review?

CD Reviews will only be performed on RIs for which Manitoba acts as the principal regulator (PR).

CD Reviews will be performed on all types of RIs including corporations, trusts, income funds, limited partnerships, labour-sponsored investment funds and conventional mutual funds.

Unlike other jurisdictions such as Ontario, Manitoba will not be employing a selective review criteria. However, factors that appear to staff to create a greater risk that disclosure issues may exist, will be considered. Factors that will be considered when prioritizing RIs for review include, but are not limited to:

- exchange listing

- total market capitalization
- the length of time since the last CD Review by staff
- change in auditor
- history of prior defaults or prior non-compliance with securities requirements
- filing of restated financial statements, etc.
- complaints and/or investigations
- media coverage indicating potential problems

What is the CD Review process?

When a RI is selected for CD Review, a notification letter will be sent advising that it has been selected for a CD Review. Depending on the nature of the issues identified during the CD Review, the RI will either receive a comment letter or notification that the review has been completed.

Initial comment letters will request a response, in writing, within two to four weeks of the date of the letter, depending on the complexity of the request. If necessary, additional comment letters will follow. Staff is expecting reporting issuers to provide a response within the specified timeframe and will generally not grant extensions. Adherence to these timeframes is necessary to ensure a reasonably timely resolution of issues. It will be in the RI's best interest to provide comprehensive and complete responses as this will allow staff to complete the CD Review in an efficient and timely manner and reduce the amount of follow-up necessary.

Why CD Review and what will be the impact on the review of prospectuses and rights offering circulars?

The Corporate Finance section has traditionally focused on offering documents. However, given the increasing importance of secondary market trading, it is imperative that we focus on continuous disclosure information. It is estimated that approximately 97% of all trading activity occurs in the secondary market and the secondary market relies on disclosure by the issuer in establishing a market price.

Corporate Finance staff will reduce the number of prospectuses and rights offerings that it reviews in order to accommodate CD Review. However, staff will continue to perform full and timely reviews of all prospectuses filed for which we are the PR. Therefore, local issuers will not notice any change in the level and timing of services provided by the Corporate Finance section.

How often will a RI be selected for CD Review?

The goal of the program will be to perform some level of CD Review on all reporting issuers (other than conventional mutual funds) on an average of once every three years. For conventional mutual funds, we will annually perform full reviews on three to five specific funds from each of the mutual fund organizations for which Manitoba acts as the PR.

How will issues identified in the CD Review be resolved?

Corporate Finance staff will work with RIs to resolve issues in a proactive and timely manner. However, staff will be aggressive in pursuing matters arising from CD Reviews and, where necessary, will enforce the requirements of securities legislation through all available means.

If material deficiencies are identified, the Corporate Finance staff will take corrective action such as:

- requiring the RI to correct its disclosure record (file restated financial statement, etc.)
- issuing a cease trade order
- referring the matter to enforcement

What is the status of CD Review within the CSA?

The CSA established a Continuous Disclosure Mutual Reliance Review System Committee, of which Manitoba is a member. The CD MRRS Committee is working towards developing a system of mutual reliance for continuous disclosure review. A CD MRRS approach is a vital part of a successful continuous disclosure review program that will ensure that all RIs in Canada are treated equitably, regardless of their PR.

Manitoba joins the Commissions of Ontario, British Columbia and Alberta in having CD Review programs in operation. Only Manitoba and Ontario include mutual fund issuers in their respective CD Review programs.

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