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## OSC Issues Staff Notice Regarding Disclosure of Corporate Governance and Environmental Matters by Reporting Issuers

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The Ontario Securities Commission (the "OSC") has recently issued Staff Notice 51-717 – *Corporate Governance and Environmental Disclosure* (the "Notice"). The Notice outlines the OSC's plans regarding disclosure of corporate governance and environmental matters by reporting issuers (other than investment funds).

The Notice was triggered by a unanimous, non-binding resolution adopted by the Ontario Legislature in April 2009, which called on the OSC to undertake a broad consultation to establish best practice corporate social responsibility and environmental, social, and governance reporting standards. Accordingly, the OSC embarked on a corporate and sustainability reporting initiative (the "Initiative") in consultation with stakeholders. Focusing on corporate governance and environmental disclosure<sup>1</sup>, the OSC consulted with various stakeholders including investors, analysts, legal and accounting advisors, and the Prospectors and Developers Association, among others. Details of the Initiative and the consultations related thereto can be found in the OSC Corporate Sustainability Reporting Initiative – *Report to the Minister of Finance* (the "Minister's Report"), published simultaneously with the Notice<sup>2</sup>.

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Based on the consultation carried out pursuant to the Initiative, the OSC plans two undertakings for 2010. First, the OSC will prepare a staff notice providing additional guidance to issuers with regard to environmental disclosure and compliance obligations. Second, the OSC will conduct a compliance review by issuers with regard to issuer compliance with the requirements of National Instrument 58-101 *Disclosure of Corporate Governance Practices*. The OSC Staff will invite staff at other Canadian Securities Administrators to participate in both of these undertakings.

## Environmental Disclosure Guidance

While the Minister's Report indicates that environmental disclosure requirements are broadly in-line with international best practices, compliance with those requirements has been inconsistent, as demonstrated by a targeted review conducted by the OSC as set out in OSC Staff Notice 51-716 *Environmental Reporting* (the "51-716 Notice").

The intention of the proposed staff notice is to provide guidance for issuers in order that they steer away from the use of boilerplate language in their disclosure, and towards the use of more meaningful qualitative and quantitative language in order to give investors a clearer idea of the impact a given issuer's environmental footprint might have upon the issuer. Similar guidance has been issued by the Canadian Institute of Chartered Accountants (the "CICA"), which published a disclosure guide "intended to assist

MD&A preparers in making decisions about the nature of annual MD&A disclosures regarding the business and financial impacts of climate change issues".

Currently, the disclosure materiality threshold (i.e., a matter must be "material" to require disclosure) and the typology of environmental disclosure requirements are set out under National Instrument 51-102 *Continuous Disclosure Obligations*, Form 51-102F1 *Management's Discussion & Analysis* and Form 51-102F2 *Annual Information Form*. Issuers are required to make a variety of environmental disclosure, including with regard to environmental liabilities, financial and operational effects of environmental protection requirements, environmental policies fundamental to operations, and environmental risks. However, as indicated in the 51-716 Notice, the degree to which issuers have in the past disclosed information has been inconsistent. The planned guidance will attempt to provide greater clarity to existing rules. Whether additional guidance is provided with respect to disclosure of climate change risk *per se* (as had been requested by certain stakeholders) remains to be seen.

The OSC intends to consult with its advisory committees and other experts in this area and plans to publish the notice by December 2010 so that reporting issuers will have sufficient time to consider the guidance when preparing their 2010 annual continuous disclosure documents.

## Corporate Governance Review

In addition, during 2010, the OSC will conduct a review of compliance with the requirements of National Instrument 58-101 *Disclosure of Corporate Governance Practices*. The review will build on the results of a 2007 review, described in CSA Staff Notice 58-303 *Corporate Governance Disclosure Compliance Review*. The 2010 review will involve assessing the adequacy of corporate governance disclosure in information circulars (or annual information forms or management's annual discussion and analysis, if applicable) filed by issuers in spring 2010.

## Background

For more information on the subject of this bulletin, please contact the authors or any member of Fasken Martineau's Securities and Mergers & Acquisitions Group.

### Notes:

<sup>1</sup> A separate review of corporate social responsibility disclosure is being carried out separately by the Hennick Centre for Business and Law at York University with recommendations to be provided to the Minister of Finance (Ontario) in early 2010.

<sup>2</sup> [http://www.osc.gov.on.ca/documents/en/Securities-Category5/rule\\_20091218\\_51-717\\_mof-rpt.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category5/rule_20091218_51-717_mof-rpt.pdf).

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