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What Issuers Should Know Before Their Next Transaction – Understanding CSA Staff Notice 51-366

Why issuers, directors, and officers should rethink how they value and disclose asset acquisitions

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Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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On July 3, 2025, the Canadian Securities Administrators (the “**CSA**”) released Staff Notice 51-366 (the “**Notice**”) raising red flags over a growing trend in the venture markets, where reporting issuers distribute a significant number of freely tradeable securities to acquire businesses or assets that appear to have little or no actual value or operating history, at what appear to be significantly inflated prices. The CSA warns that such transactions, coupled with misleading disclosure, could constitute market manipulation and expose issuers, and their directors and officers, to liability.

These transactions often result in financial statements and public disclosures that significantly overstate asset value, only to be followed by swift impairments of goodwill or intangibles. The CSA sees this pattern as a regulatory red flag, especially where disclosures omit critical information about the vendor, asset history, or valuation basis.

Disclosure Risks and Regulatory Expectations

One of the central concerns raised by the CSA is that the continuous disclosure

record in these transactions may be misleading or contain misrepresentations. In such cases, investors are exposed to material information asymmetry, purchasing securities at inflated prices without access to sufficient information about the asset's value or stage of development. The CSA warns that even if an issuer is not deliberately misleading, a lack of reasonable basis for valuation may still give rise to a misrepresentation under securities law.

Issuers must ensure they meet the disclosure obligations under NI 51-102 (*Continuous Disclosure Obligations*) and NP 51-201 (*Disclosure Standards*), including issuing a timely material change report that accurately reflects:

- The nature and stage of development of the acquired business or asset;
- How consideration and the number of securities to be issued was determined;
- Relationships between the issuer (and its insiders) and the vendor (and its insiders);
- Prior transactions involving the asset or business.

Financial Reporting

Another area of concern involves financial reporting. The CSA has noticed that some issuers are recording large amounts of goodwill or intangible assets only to recognize impairments shortly after closing the transaction. This pattern raises questions about whether:

- Valuations were based on reasonable and supportable assumptions;
- The acquisition had legitimate economic substance; and
- IFRS Accounting Standards (such as IFRS 3 *Business combinations*, IFRS 2 *Share-based payment*, IAS 38 *Intangible assets*, and IAS 36 *Impairment of assets*) were appropriately applied.

The CSA warns that financial statements containing material errors are not in compliance with IFRS. When misstatements occur, they must be corrected retrospectively, with issuers issuing news releases to inform the market and re-filing the amended documents. Certifying officers should be aware that they may face personal liability if they approve misleading filings without adequate diligence.

MD&A Disclosure Expectations

Management's discussion and analysis (**MD&A**) must do more than summarize events. The CSA found that, in some cases, MD&A disclosure fails to adequately discuss the nature of acquired intangible assets or the basis for associated impairment losses. Boilerplate language is no longer acceptable. To meet regulatory expectations, issuers must provide clear, substantive, thorough explanation of:

- How the value of goodwill or the intangible asset was derived;
- The nature and cost of the asset as acquired by the vendor;
- Any relevant development costs, licensing, or permits; and
- The methodology behind any impairment loss.

This level of disclosure is especially critical where impairments occur shortly after an acquisition, as such timing may indicate that the original valuation lacked a reasonable basis.

Concerns with Promotional Campaigns and Valuations Reports

In several instances, issuers have launched promotional campaigns that present an overly optimistic view of the acquisition while omitting key limitations or assumptions embedded in valuation reports or fairness opinions. The CSA cautions that such opinions are often based on minimal due diligence and may include unreasonable assumptions, yet they are cited without disclosing scope limitations or caveats. Issuers must clearly disclose any limitations, assumptions, and scope restrictions tied to such reports. Otherwise, they risk misleading the market and drawing regulatory scrutiny.

Exchange Oversight and Intervention

Under Canadian stock exchanges recognition orders, they may refuse to approve or require restructuring of transactions where there is inadequate evidence supporting the value of the acquired asset, or where the price paid significantly exceeds recent valuations without a sound explanation.

Canadian stock exchanges may intervene in certain circumstances, including when:

- Acquisition prices significantly exceed recent purchase prices without justification; or
- There is insufficient evidence of the target's value.



Exchanges may impose conditions, such as requiring transaction restructuring, placing securities in escrow, or imposing resale restrictions. Depending on the circumstances, CSA staff may escalate matters through cease trade orders, default listings, or enforcement proceedings for market manipulation or misrepresentation.

Disclosure Related Liability

The message from the CSA is clear: acquisitions that lack economic merit and inflate valuations are not merely poor business judgment, they can cross into securities violations where directors, officers, and issuers can face civil liability for secondary market disclosure if it contains misrepresentations. To mitigate risk, issuers and their advisors should:

- Scrutinize the basis for acquisition valuations;
- Conduct thorough due diligence on vendors and prior ownership history;
- Prepare robust disclosure tailored to the transaction;
- Ensure MD&A and financial statements reflect economic substance; and
- Proactively engage with exchanges and regulators where appropriate.

Final Thoughts

Ultimately, the Notice serves as both a warning and a roadmap. Issuers, particularly those operating in venture markets, must ensure that asset and business acquisitions are supported by sound governance, appropriate valuation practices, and clear, accurate disclosure.

For more information or any questions relating to acquisitions, disclosure practices, corporate governance, or compliance with CSA Staff Notice 51-366, please contact **Michael C. DeCosimo**.

(This article is for informational purposes only and does not constitute legal advice. Readers should seek legal counsel before acting on any of the information contained herein).