

OSC adopts pre-filing reviews for mining issuers

JUNE 6, 2019 4 MIN READ

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Authors: [James R. Brown](#), [Alan Hutchison](#)

On June 6, 2019, the Ontario Securities Commission (OSC) announced by way of [Staff Notice \[PDF\]](#) the adoption of a pre-filing review regime for mining issuers. The pre-filing review process is intended to reduce execution risk for issuers and investment dealers seeking to launch public offerings under a short form prospectus by providing a means to correct technical disclosure deficiencies prior to commencing a public offering. Refer to our prior Osler Updates ([here](#) and [here](#)) regarding the impact of technical disclosure deficiencies on bought deal financings.

In connection with the OSC's regulatory burden reduction initiative, mining issuers and dealers flagged the uncertainty caused by the potential for technical disclosure compliance issues to be identified during the pendency of a public offering. The challenge, of course, is that technical deficiencies, particularly those contained within a technical report, can't be easily cured in the time periods necessary to satisfy typical bought deal timetables. While the securities regulators may be willing to allow minor deficiencies to be corrected following completion of an offering, major deficiencies in disclosure or an underlying technical report can result in the regulators refusing to issue a receipt for a final prospectus. In response to the feedback, the OSC is now encouraging public mining issuers to seek a pre-filing review of their technical disclosure in advance of filing a short form prospectus.

The pre-filing review regime brings Ontario in line with British Columbia, which has had a formal [pre-filing review](#) program in effect since 2009. Given the bulk of Canadian mining issuers are headquartered in B.C. or Ontario, most mining issuers will now have the opportunity to seek a formal pre-filing review.

Pre-filing review

The pre-filing review will include technical disclosure in documents of the public mining issuers filed on SEDAR and on the issuer's website, including the current annual information form, news releases and material change reports, current technical reports and investor presentations.

The review will be focused on any material issues that could affect the ability of the issuer to obtain a receipt for a short form prospectus on a timely basis.

Applications for pre-filing reviews are to be submitted through the OSC's electronic filings portal. To be eligible for a pre-filing review, the issuer must be eligible to use the short form prospectus regime.

In making an application, the issuer is required to identify its material mineral properties and associated technical reports and to indicate the anticipated timing of filing of a preliminary short form prospectus. Issuers are advised to seek pre-filing review at least 10 days prior to

the anticipated filing date.

Unlike in B.C., where there is currently no charge for the pre-filing review, in Ontario, at the time of an application, issuers will also be required to pay a prospectus pre-filing fee (currently \$3,800), which will be credited against the filing fees payable for the preliminary short form prospectus.

Impact on market practice

We consider the OSC's pre-filing initiative as a positive development for Ontario-based mining issuers. Issues associated with technical disclosure deficiencies identified during a short form prospectus offering have disrupted a number of public offerings over the past number of years. We anticipate that issuers will take advantage of the pre-filing program in Ontario (as we are aware of a number of B.C. issuers who take advantage of the program there), but given the current market environment where mining issuers continue to have difficulty raising capital in the public markets, the take-up may be a little slower than it otherwise might have been until market conditions improve. We also anticipate that underwriters may encourage pre-filing applications for bought deals, in particular, to provide greater certainty to the offering timeline.

It should also be noted that deficient and non-compliant technical reports and other technical disclosure has been an ongoing concern for Canadian securities regulators. A pre-filing review regime is a welcome development to address the quality of mining issuers' technical disclosure records in an efficient and timely manner, and should lead to better compliance practices since mining issuers will be motivated and positioned to address deficiencies to facilitate a public offering.