

# CORONAVIRUS DISCLOSURE CONSIDERATIONS FOR CANADIAN PUBLIC COMPANIES

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The outbreak and spread of a novel coronavirus (COVID-19), declared a public health emergency by the World Health Organization, has already had significant human, political, and economic consequences around the world. The coronavirus is still evolving, and its full impact remains to be determined. However, its wide-ranging effects include financial market volatility, interest rate cuts, disrupted movement of people and goods, and diminished consumer confidence.

Canadian public companies preparing disclosure documents - whether annual and quarterly filings, or in connection with offerings of securities - should consider disclosure regarding any effects that the coronavirus has had or may be expected to have on their operations, financial performance, and prospects, and the risks and uncertainties to which they are exposed.

## Gowling WLG Focus

While Canadian securities regulators have not to date issued any guidance regarding coronavirus disclosure, the Securities and Exchange Commission (SEC) in the United States has addressed this issue - on [January 30, 2020\[i\]](#) and [February 19, 2020\[ii\]](#). Notwithstanding, we are already seeing Canadian public companies incorporating disclosure regarding the coronavirus in their filings. Between January 1 and March 3 of this year, 161 companies filed a total of 271 documents with Canadian securities regulators that included the words "coronavirus" or "COVID-19". Some companies have provided detailed disclosures of actual and potential impacts of the coronavirus on their operations and industries, while others have made general disclosures addressing general conditions and unforeseeable events. For companies with connections to China and other

affected jurisdictions, it may be easier to assess these impacts and risks. For others, given the evolving situation, it may be harder to do so.

## Management's Discussion and Analysis<sup>(iii)</sup>

MD&A is intended to be a narrative explanation through management's eyes of how a company performed during a particular period and its future prospects. Canadian public companies are required to discuss trends and risks that are reasonably likely to affect their financial statements, and events and uncertainties that are reasonably likely to affect their business. Risks or uncertainties may be discussed in the context of a company's operations, liquidity and/or capital resources.

As examples:

- A Canadian retailer recently raised coronavirus in its MD&A, specifically in the factors affecting its performance in the context of global political events and other disruptions. In this particular case, the company's expansion into China is a key component of its global strategy. It noted that the ongoing coronavirus crisis in China developed ahead of a peak travelling and shopping season around the Lunar New Year and that the outbreak and measures aimed at limiting its expansion, including travel and other restrictions or advisories, were resulting in decreased retail traffic in, and global travel to and from, China and other affected regions. Those circumstances, together with potential store closures and reduced store operating hours at certain of its retail stores in the region, may have significant adverse consequences on its results of operations in the current fiscal period and may negatively impact future fiscal periods in the event of prolonged disruptions associated with the outbreak. This company also noted that prolonged disruptions could affect its ability to procure raw materials from suppliers in China.
- A Canadian airline company noted that outbreaks or the threat of outbreaks of viruses or other contagions or epidemic diseases, including the coronavirus outbreak in China, as well as any travel or other advisories relating to same, whether domestic or international or whether relating to Canadian cities or regions or other cities, regions or countries, could have a material adverse effect on demand for air travel and could result in a major negative impact on traffic on the company's network. Any resulting reduction in traffic in the markets served by the company could have a material adverse effect on the company, its business, results from operations and financial condition.
- More generally, a Canadian blockchain technology company cautioned that current

global uncertainty with respect to the spread of the coronavirus and its effect on the broader global economy may have a significant negative effect on the company. While the precise impact remains unknown, rapid spread of the virus may have a material adverse effect on global economic activity, and could result in volatility and disruption to global supply chains, operations, mobility of people and the financial markets, which could affect interest rates, credit ratings, credit risk, inflation, business, financial conditions, results of operations and other factors relevant to the company.

## Annual Information Form<sup>[iv]</sup>

AIFs are intended to provide material information about a company and its business at a point in time in the context of its historical and possible future development. It describes the company, its operations and prospects, risks and other external factors that impact the company specifically. In particular, companies are required to disclose risk factors relating to the company and its business, including any matter that would be likely to influence a reasonable investor's decision to purchase or hold its securities. Risk factors must be disclosed in order of seriousness from the most serious to the least serious and must not be de-emphasized by including excessive caveats or conditions. Risk factors should be stated with meaningful precision where possible, and should not be boilerplate.

In recently filed AIFs, companies have referred to the coronavirus in the context of matters specific to them and their industries, as well as more broadly. For example:

- A Canadian mining company noted in its risk factor relating to fluctuations in the market price of certain minerals that it produces that the Chinese market is a significant source of global demand for commodities. A sustained slowdown in China's growth or demand, or a significant slowdown in other markets, could have an adverse effect on the price and/or demand for the company's products. The coronavirus and efforts to contain it may have a significant effect on Chinese commodity prices and demand and potentially broader impacts on the global economy.
- A Canadian REIT included a risk factor providing that disease outbreaks may negatively impact performance, including a general or acute decline in economic activity in the regions the REIT holds assets, a decrease in the willingness of the general population to travel, staff shortages, reduced tenant traffic, mobility restrictions and other quarantine measures, supply shortages, increased government regulation, and the quarantine or contamination of one or more of the REIT's apartment units. Contagion in a REIT building or market in which the REIT operates could negatively impact the REIT's occupancy, its reputation or attractiveness of that market. All of these

occurrences could have a material adverse effect on the business, financial condition and results of operations of the REIT.

- A Canadian power and utilities company noted that disruptions in its supply chain may have a material adverse effect on its business, results of operation, financial condition and cash flows. It noted that it had received force majeure notices from certain of its suppliers related to the coronavirus outbreak relating to wind energy projects and a solar project and while the exact impacts remain unknown, manufacturing and delivery delays could adversely affect its projects, including causing one or more projects scheduled for completion in 2020 to not be placed into service until 2021 or adversely impacting the availability of financing.

## Timely Disclosures

In addition to continuous disclosures such as MD&A and the AIF, Canadian public companies are required to make timely disclosure of material changes. When it becomes clear that risks have materialized to the level of a change in the business, operations or capital of the company that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the company, a press release must be issued immediately and a material change report is required to be filed with the applicable securities regulators within 10 days. Rapidly evolving situations may make it difficult to determine precisely when timely disclosure is necessary. Premature disclosure is also problematic. Heightened vigilance will help to limit disclosure risks. It may be desirable to review corporate disclosure policies and the adequacy of internal reporting procedures, and confirm that the company's disclosure committee continues to be available on short notice.

## Forward-Looking Information

Canadian public companies are encouraged to provide forward-looking information in their disclosures if they have a reasonable basis for doing so. That said, all forward-looking information must contain: a statement that the information is forward-looking; a description of the factors that may cause actual results to differ materially from the forward-looking information; material assumptions; and appropriate risk disclosure and cautionary language. In conjunction with updating their risk disclosures, Canadian public companies should also consider whether updates to their forward-looking cautionary language are appropriate.

# Next Steps

In preparing their disclosures, Canadian public companies are required to consider the risks and uncertainties that have impacted or may impact their financial performance and future prospects. Whether a particular impact to a supply chain, other key operational relationships, pricing, markets, sales, business continuity, reputational matters or more broadly risks impacting the global economy, the evolving coronavirus is a development that Canadian public companies should be considering when preparing their disclosures.

Canadian public companies should consider whether existing risk factors in recent filings adequately disclose the risks they now face in light of the coronavirus. They will also need to review their coronavirus-related disclosures in subsequent filings to ensure that they remain accurate in light of rapidly changing circumstances.

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[i] On January 30, 2020, the SEC noted that the effects of the coronavirus "may be difficult to assess or predict with meaningful precision both generally and as an industry- or issuer-specific basis. This is an uncertain issue where actual effects will depend on many factors beyond the control and knowledge of issuers. However, how issuers plan for that uncertainty and how they choose to respond to events as they unfold can nevertheless be material to an investment decision."

[ii] On February 19, 2020, the SEC noted that "U.S.-listed companies (including companies based in the U.S., companies based in China and companies based outside of the U.S. but not based in China) may have significant operations in China and other jurisdictions that may be affected by the coronavirus. In addition, companies that do not themselves have operations in China or other potentially affected jurisdictions may depend on companies that do have operations in those jurisdictions, including, for example, as suppliers, distributors and/or customers." The SEC also emphasized, among other things, "the need to consider potential disclosure of subsequent events in the notes to the financial statements...".

[iii] See Form 51-102F1 - Management's Discussion & Analysis.

[iv] See Form 51-102F2 - Annual Information Form.

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**Related** [Capital Markets, COVID-19: How will coronavirus impact your business?](#)

## Authors

### **Kathleen M. Ritchie**

Partner - Head of Toronto Business  
Law Department , Toronto

 Email

[kathleen.ritchie@gowlingwlg.com](mailto:kathleen.ritchie@gowlingwlg.com)

 Phone

+1 416-369-4579

 vCard

Kathleen M. Ritchie

### **Warren Cass**

Associate - Toronto

 Email

[warren.cass@gowlingwlg.com](mailto:warren.cass@gowlingwlg.com)

 Phone

+1 416-862-5706

 vCard

Warren Cass