



Trinidad and Tobago Securities and Exchange Commission

**Material Change Guidance:**  
*Understanding Materiality within the  
context of the Securities Act 2012*

April 14<sup>th</sup> 2014

# Agenda

- (1) Why is material information important?
- (2) What is Material?- A Comparative view of Material Changes under the Securities Industry Act 1995 and the Securities Act 2012
- (3) Materiality/the Material Change Standard in the United States and Canada
- (4) Who is the Reasonable Investor?
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- (6) Non-Exhaustive List of Material Information
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# Why is Material Information Important?

- Materiality is linked to the necessary disclosure requirements and its significance in securities law.

# What is Material? - A Comparative view of Material Change under the Securities Industry Act 1995 and the Securities Act 2012

## SIA 1995

...a change...that would reasonably be expected to have **a significant effect on the market price or the value of the securities** of the issuer

## SA 2012

Other than a Collective Investment Scheme...a change in the business, operations, assets or ownership of an issuer, the disclosure of which **would be considered important to a reasonable investor in making an investment decision**

In relation to a Collective Investment Scheme...a change in the business, operations or affairs of the issuer, the disclosure which **would be considered important by a reasonable investor**

# Materiality/the Material Change Standard in the United States and Canada

- **USA** - The United States (U.S.) Supreme Court case, *TSC Industries, Inc. v. Northway, Inc* ('Northway').
- Applies the reasonable investor test.
- It is viewed by the reasonable investor as having significantly altered the total mix of information made available.

# Materiality/the Material Change Standard in the United States and Canada

- **CANADA** - *Cornish v. Ontario Securities Commission*. There are two materiality standards for disclosure purposes in Canada. The first being the “market impact test” and the second being, the “reasonable investor” test.
- The former is premised on statutory definitions of materiality expected to have a significant effect on the market price or value of a security and used in civil liability cases. The latter, establishes a broader materiality standard based on what a reasonable investor would consider important in making an investment decision and is used for the purpose of regulatory liability.

# Who is the Reasonable Investor?

- Guidance from the United Kingdom's Financial Conduct Authority ('FCA') provides:-  
*"The investor is specifically a reasonable investor and not just a reasonable person. This simply means that the objective standard to be applied is that of the reasonable investor."*

*Characteristics of the reasonable investor include:*

- (1) sound judgment based on good sense;*
- (2) some knowledge of, and possibly experience in, the field of investment in property of the same kind as that in which the body corporate is to invest; and*
- (3) some knowledge of the characteristic features of collective investment."*

# Who is the Reasonable Investor?

*"Where investment in a particular body corporate is clearly targeted at investors with certain characteristics, the reasonable investor can be assumed to have those characteristics."*

- The changes under the SA 2012 are meant to allow for disclosure of the variety of material information that would not necessarily be apparent to, or furthermore, kept from, a more sophisticated type of investor.



# The Process for Gauging Materiality

- The revision of the materiality benchmark under the SA 2012 evidences a divergence from what has been coined the 'market impact' standard and has instead shown movement towards a standard that is concerned with information that the investor would have found important in making an investment decision.
- The U.S. and Canadian decisions reveal that in giving effect to the new threshold as set out by the SA 2012, materiality is to be determined objectively, from the perspective of a reasonable investor.

# The Process for Gauging Materiality

- The new approach is to reject sole reliance on the bright-line test.
- It has ceased to allow certain financial and quantitative information to determine what is immaterial, as all information must now be assessed by adopting a holistic approach in view of a company's activity, that is, qualitative and quantitative factors.

# The Process for Gauging Materiality

- Materiality hinges on a specific set of facts that is to be assessed in light of all the surrounding circumstances forming the 'total mix of information.'
- The materiality of a piece of information will vary from one company to the next depending on its distinctive size, structure and business operations, among other factors.
- The test is not premised on whether information obtained would have changed the investment decision of a reasonable investor but rather would have assumed actual significance in a reasonable investor's deliberations.

# The Process for Gauging Materiality

- There is no precise formula attached to a finding of materiality and each matter is to be determined on a case by case basis.
- The disclosure based regime was redefined with the intent that it strike *“the proper balance between the need to ensure adequate disclosure and the need to avoid the adverse consequences of setting too low a threshold.”*
- The determination as to what constitutes a material change lies with the Commission.

# The Process for Gauging Materiality

- The process of gauging materiality for the purposes of disclosure as contemplated by the SA 2012 therefore is that it must:-
  - (i) be determined that there has been a change in the business, operations assets or ownership of an issuer;
  - (ii) this change must have been material;
  - (iii) if it is material, when did this change occur.

# Non-Exhaustive List of Material Information

Changes in  
Corporate  
Structure

Changes in  
Capital  
Structure

Changes in  
Financial  
Results

Changes in  
Business and  
Operations

Acquisitions  
and Disposals

Changes in  
Credit  
Arrangements

# Non-Exhaustive List of Material Information

Changes in Corporate Structure	<ul style="list-style-type: none"><li>• changes in share ownership that may affect control of the company</li><li>• major reorganizations, amalgamations, or mergers</li><li>• take-over bids, issuer bids, or insider bids</li></ul>
Changes in Capital Structure	<ul style="list-style-type: none"><li>• planned repurchases or redemptions of securities</li><li>• planned splits of common shares or offerings of warrants or rights to buy shares</li><li>• any share consolidation or share exchange</li><li>• changes in a company's dividend policies</li><li>• the possible initiation of a proxy fight</li><li>• material modifications to rights of security holders</li></ul>
Changes in Financial Results	<ul style="list-style-type: none"><li>• a significant increase or decrease in near-term earnings prospects</li><li>• unexpected changes in the financial results for any periods</li><li>• substantial changes in the value or composition of the company's assets resulting from major asset write-offs or write-downs</li><li>• any material change in the company's accounting policy</li></ul>

# Non-Exhaustive List of Material Information

## Changes in Business and Operations

- a significant development that affects the company's resources, technology, products or markets
  - a significant change in capital investment plans or corporate objectives
- major labour disputes or disputes with major contractors or suppliers
- significant new contracts, products, patents, or services or significant losses of contracts or business
- significant discoveries by resource companies
  - changes to the board of directors or any other senior officer as defined in Section 4 (1) of the Act
- the commencement of, or developments in, material legal proceedings or regulatory matters
- waivers of corporate ethics and conduct rules for officers, directors, and other key employees
  - any notice that reliance on a prior audit is no longer permissible
- de-listing of the company's securities or their movement from one quotation system or exchange to another



# Non-Exhaustive List of Material Information

<b>Acquisitions and Disposals</b>	<ul style="list-style-type: none"><li>• significant acquisitions or disposals of assets, property or joint venture interests</li><li>• acquisitions of other companies, including a take-over bid for, or merger with, another company</li></ul>
Changes in Credit Arrangements	<ul style="list-style-type: none"><li>• the borrowing or lending of a significant amount of money</li><li>• mortgaging or encumbering of the company's assets</li><li>• defaults under debt obligations, agreements to restructure debt, or planned enforcement procedures by a bank or any other creditors</li><li>• changes in rating agency decisions</li><li>• significant new credit arrangements</li></ul>

# Filing Reports and Publishing Notices

- Section 64 (1) of the SA 2012 introduces a new three part procedure for treating with the disclosure requirements of material changes. It requires reporting issuers to:
  - File a report with the Commission, certified by a senior officer, containing details of the substance of the material change within three (3) days of the date of the change.
  - Publish a notice of the material change, authorized by a senior officer, in two daily newspapers of general circulation in this country detailing the nature and substance of the change within seven (7) days of the change.
  - File a copy of the published notice with the Commission within seven (7) days of the material change.