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Disclosure compliance system  
Seven questions directors should ask





# Introduction

An effective disclosure compliance system is imperative in assisting directors to demonstrate due diligence in the fulfillment of their oversight responsibilities. The following questions have been developed to help directors assess the disclosure compliance system that has been established within their organizations. To be satisfied that the system in place is effective and sufficient, respondents must be able to respond in the affirmative to each of the seven questions listed below:

Question	Yes/no	Related risks
1. Has management designed, documented and implemented a disclosure compliance system to ensure that the issuer meets all of its continuous disclosure obligations?		Without documentation, it may be difficult to establish at a later date, that a well designed disclosure compliance system existed.
2. Does the disclosure compliance system include appropriate "disclosure controls and procedures" to ensure the disclosure compliance system is operating at the reasonable assurance level?		If the disclosure compliance system does not contain effective disclosure controls and procedures it will be difficult to assert, with a reasonable level of assurance, that the system would achieve its objectives.
3. Are the disclosure controls and procedures aligned with the principal disclosure risks?		Without effective alignment, major disclosure risks may not be controlled, minor risks may be excessively controlled and the risk of poor disclosure decisions is likely to increase.
4. Have the CEO and CFO conducted a meaningful evaluation of the disclosure controls and procedures (upward and outward) to ensure they are, in fact, effective at the "reasonable assurance" level?		Without a meaningful evaluation and appropriate testing of controls, disclosure controls may appear to be well designed, but may not be operating effectively in practice, providing officers and directors with a false sense of comfort.
5. Have the CEO and CFO included in their evaluation of disclosure controls: <ul style="list-style-type: none"> <li>• An appropriate assessment of the design and operating effectiveness of internal control over financial reporting</li> <li>• All relevant information relating to the effectiveness of internal control over financial reporting?</li> </ul>		If the CEO and CFO's evaluation of disclosure controls is not effective because it was either poorly planned (e.g., ignored key elements of internal control over financial reporting) or executed (e.g., did not involve testing the operating effectiveness of those elements of internal control over financial reporting that form an integral component of disclosure controls and procedures) then the risk of an incorrect conclusion on the effectiveness of disclosure controls is likely to increase.
6. Are the conclusions formed by the CEO and CFO resulting from this evaluation fairly stated in the MD&A?		If the conclusions set forth in the MD&A do not reflect the findings obtained in the CEO and CFO evaluation, or other information on the effectiveness of disclosure controls (e.g., conclusions are inconsistent with the reports and observations made by the internal and external auditor); there may be a material misstatement.
7. Is it therefore reasonable to rely on the issuer's disclosure compliance system and on the CEO, CFO's evaluation of disclosure controls?		After considering the above questions and risks, a determination that it would not be reasonable to rely on the issuer's disclosure compliance system means that it is unlikely that a due diligence defence will be available to officers or directors.

# Conclusion

If you had a negative response to even one of the above questions, then it is critical that the issue be addressed diligently and in a timely fashion. A lack of action could leave your board members open to civil liability and unable to implement a due diligence defense.



# Contact

To explore these ideas further, contact your

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