

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission – Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission
Newfoundland and Labrador Securities Commission
Registrar of Securities, Prince Edward Island
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Cameron McInnis, Chair of the National Policy 48 *Future-Oriented Financial Information*
Reformulation Committee
Ontario Securities Commission
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Anne-Marie Beaudoin, Secretary
Autorité des marchés financiers
e-mail: consultation-en-cours@lautorite.qc.ca

February 28, 2007

Dear Sirs/Mesdames:

**Proposed Amendments to National Instrument 51-102, *Continuous Disclosure Obligations*,
("NI 51-102") Regarding Future-Oriented Financial Information**

We are pleased provide our comments on the proposed changes to this instrument.

We are strongly in favour of changes that could lead to a greater use of forward-looking information in MD&A. However, for reasons detailed in our attached comments, we are concerned about changes that could lead to a proliferation of unaudited FOFI in prospectuses or take-over bid circulars. We believe that the existing requirement for an audit of FOFI included in a prospectus or a take-over bid circular should be carried forward into NI 51-102. We are not opposed to the deletion of the requirement for an audit of FOFI included in certain offering memoranda.

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If the audit requirement is completely eliminated, as proposed, we believe it would be beneficial to provide further guidance for the circumstance when previously released (and not withdrawn) FOFI exists for a forecast period ending after the date of the most recent historical financial statements included or incorporated by reference in a prospectus.

We would welcome any opportunity to discuss our responses with you in greater detail.

Yours very truly,

A handwritten signature in cursive script that reads "Alan Van Weelden".

Alan G. Van Weelden
Associate Partner, KPMG LLP
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416-777-8080

1. Forward-Looking Information Belongs in MD&A

We support the principle that a forward-looking orientation is fundamental to useful MD&A reporting, as expressed in Principle 4 in section 240.1 of *Management's Discussion and Analysis: Guidance on Preparation and Disclosure*, published by the Canadian Performance Reporting Board. The General Provisions to Form 51-102F1 encourage an issuer to provide forward-looking information where there is a reasonable basis to do so. If forward-looking information is indeed fundamental to useful MD&A, then we believe that MD&A is the most appropriate continuous disclosure document for discussing forward-looking information. Therefore we would eliminate the proposed options provided under subsections 5.8(3) and 5.8(6) to exclude forward-looking disclosures from MD&A. While the need for timely disclosure may require use of a news release (or material change report) to introduce or update forward-looking information between periodic financial reporting dates, this disclosure should be incorporated into the next MD&A filing.

2. Retain Audit Report Requirement for FOFI in a Prospectus or Take-over Bid Circular

We are concerned about the timing of the proposed deletion of the audit requirement for FOFI included in a prospectus and believe that FOFI included in a prospectus or take-over bid circular should continue to be subject to an audit requirement. Our concerns and the basis for our support for a continued audit requirement are outlined in the paragraphs below.

Lack of controls over FOFI preparation

Substantial measures have been introduced in recent years to enhance the integrity of the historical financial information released by reporting issuers. These measures include enhancements to disclosure controls and procedures, internal controls over financial reporting processes, and audit committee responsibilities for financial releases. We are not convinced that similar controls and procedures exist for FOFI.

Implied degree of accuracy is unwarranted

The preparation of FOFI in the same format as historical financial statements (as required by CICA 4250) suggests a degree of accuracy that may be unwarranted and may lead to inappropriate reliance. For example, issuers and auditors are presently grappling with the complexities of accounting for financial instruments and for the recognition of revenue under multi-element contracts in historical financial statements. The assumptions about future revenues and future financing arrangements for which contracts/agreements do not exist cannot help but gloss over the complexities that will be faced when the actual transactions occur. We are also entering an era of unprecedented accounting change as the CICA moves ahead with its strategy for transitioning to international financial reporting standards. The requirement to prepare FOFI in accordance with the accounting standards that will apply to forecast periods will prove to be challenging in many cases.

Prospectus liability provisions may not provide adequate protection

We are not convinced that the prospectus liability provisions will adequately protect the investors. The potential for statutory primary market liability for a misrepresentation in FOFI did not prevent a flurry of overly optimistic financial forecasts from being included in prospectuses in the late 1980's and early 1990's, as indicated in a comparison of forecast and actual results published by the Ontario Securities Commission (and perhaps other commissions). As auditors, we learned from these initial

experiences and significantly enhanced our FOFI examination engagement acceptance processes, particularly in the area of assessing the nature and quality of evidence expected to be available to support forecast revenue.

EU Prospectus Regulation requires audit of FOFI

An auditor's report on a profit forecast or profit estimate is required under the EU Prospectus Regulation so we believe there is still a place for an examination of FOFI included in a prospectus or take-over bid circular. In our experience, the topic of FOFI arises most often in circumstances where the issuer's track record of historical earnings is insufficient. The existence of an audit requirement over the years has resulted in the exclusion from prospectuses of many financial forecasts and projections that were supported by little more than "hopes and good intentions".

3. Audit Committee should review FOFI before it is released

It is our understanding that section 6.4 of NP 51-201 “Disclosure Standards” will remain unchanged, in which case it will continue to be a “best disclosure practice” to have the board of directors or audit committee review “earnings guidance” (or a “financial outlook” as defined in proposed section 4B.1 of NI 51-102). It would appear that under the proposed rules it would not even be a best disclosure practice to have the board of directors or audit committee review FOFI included in a continuous disclosure document.

Subsection 2.3(5) of MI 52-110 requires an audit committee to review the issuer’s financial statements, MD&A and annual and interim earnings press releases before the issuer publicly discloses this information. Since (i) FOFI is required to be prepared in the format of historical financial statements and (ii) where applicable, MD&A will contain disclosure of material differences between actual results and previously released FOFI, we believe an audit committee should be required to review FOFI before the issuer publicly disclosed this information. This could be accomplished by amending subsection 2.3(5) of MI 52-110 to include a reference to FOFI (as defined in Part 4B of NI 51-102).

We believe the CSA also should consider requiring an audit committee to be satisfied that adequate procedures are in place for the preparation of FOFI. Appendix A to CICA Assurance and Related Services Guideline 6, “*Examination of a Financial Forecast or Projection Included in a Prospectus or Other Public Offering Document*”, provides an outline of the matters a public accountant would expect to see in management’s plan for the development of FOFI. An audit committee should expect no less from management.

If the above recommendations are considered too onerous, we believe the CSA should at least consider amending section 6.4 of NP 51-201 to make it a “best disclosure practice” to have FOFI reviewed by the board of directors or audit committee.

4. Matters Related to FOFI and Short Form Prospectus Distributions

Outlined below are a few matters for your consideration that came to mind as we tried to anticipate some of the effects of the proposed elimination of the audit requirement for FOFI included in a prospectus.

Previously Disseminated FOFI

Proposed section 4.14 of NI 44-101CP addresses FOFI disseminated during the course of a distribution of securities. We believe similar consideration should be given to FOFI disseminated prior to a distribution of securities when the FOFI covers a period for which historical results have not yet been released at the date of a short form prospectus. If the FOFI is not discussed in the most recent MD&A incorporated by reference, then the short form prospectus should be required to contain at least an updated “financial outlook” for the remaining portion of the forecast period, if not the FOFI itself. If circumstances indicate the FOFI was disseminated in anticipation of the distribution, then we would expect the FOFI to be included and discussed in the prospectus.

If the audit requirement is retained for FOFI included in a prospectus, guidance on the treatment of FOFI disseminated prior to a distribution of securities would be appropriate when the FOFI covers a period for which historical results have not yet been released at the date of a short form prospectus. As auditors, we would not want to be faced with a retroactive requirement to audit FOFI because the FOFI may not be “auditable”. We believe our clients also would not want to be faced with a retroactive audit requirement. In these circumstances we recommend a requirement to include a presentation in the prospectus in the form of a updated “financial outlook” for the remaining portion of the forecast period. A caution in the Companion Policy about the consequences of disseminating unaudited FOFI in anticipation of a distribution may be appropriate. These consequences could range from having the FOFI audited, if possible, and included in the prospectus, to having it withdrawn.

Mandatory Incorporation by Reference

We suspect that paragraph 4 of subsection 11.1(1) of Form 44-101F1 was not intended to cover FOFI, however it would not be unreasonable to regard FOFI as “financial information for a period more recent than the period for which financial statements are required under paragraphs 2 and 3 [of subsection 11.1(1) of Form 44-101F1]”. For example, during 20X7 an issuer disseminates FOFI consisting of a forecast income statement for the year ending December 31, 20X7. The issuer

subsequently files a short form prospectus on January 15, 20X8 containing December 31, 20X6 and 20X5 annual financial statements and September 30, 20X7 and 20X6 interim financial statements. The FOFI represents financial information for a period more recent than September 30, 20X7. We believe the Companion Policy to 44-101 or the Instructions to Item 11 of Form 44-101F1 should clarify that the above paragraph does not apply to FOFI.

Mandatory Review Requirement

A proposed amendment to section 4.3 of NI 44-101 will clarify that the mandatory review requirement does not apply to pro forma financial statements. Since CICA 4250.20 requires FOFI to be presented in the format of historical financial statements, if the audit requirement is dropped we believe section 4.3 should be further amended to clarify that it does not apply to FOFI.

Additional Caution when Unaudited FOFI is Included in a Prospectus

If the long-standing audit requirement is deleted we are concerned that prospective investors may inappropriately conclude that the professional standards for an auditors' association with offering documents include some procedures on the FOFI. While CICA 7110 includes specific procedures for pro forma financial statements, there are no specific procedures for FOFI. Accordingly, when unaudited FOFI is included in a prospectus or take-over bid circular we believe cautionary disclosure under proposed section 4A3 of NI 51-102 should include a statement by the issuer that the FOFI has not been audited and that the issuer's auditors have not expressed any assurance, positive or negative, on it. Cautionary language of this nature is acceptable in SEC registration statements containing unaudited FOFI.