

Continuous Disclosure Review Program

**2009  
Report**

Alberta Securities  
Commission  
December 2009



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## Executive Summary

The purpose of this CD Report is to provide market participants with the Alberta Securities Commission's (ASC) comments on the quality of continuous disclosure (CD) of Alberta reporting issuers (RIs) for the 2009 year with the objective of improving the quality of future CD. This is the nineteenth year that we are reporting our results.

For the twelve months ended November 30, 2009, we completed 226 CD reviews. Our report discusses the findings from our reviews and identifies areas where disclosure could be improved. We have provided examples of disclosure that was deficient as well as disclosure that met our requirements to highlight our expectations. We have also summarized key disclosure issues and provide guidance to improve the quality of reporting. To help RIs make improvements in their disclosure, we have included practice tips in this year's report. The intent of the practice tips is to provide practical guidance and suggestions on how disclosure could be further enhanced to provide more meaningful information to the reader.

Recently, several Canadian Securities Administrators (CSA) staff notices have been published on various CD topics. These notices communicate staff's expectations and identify certain areas of securities legislation where RIs have not complied. We have identified these publications in this report for ease of reference.

Events and conditions stemming from the global economic downturn and credit crisis have caused many RIs to operate more conservatively to preserve cash and manage risk. As a result, our reviews have focused on how these events and conditions have impacted RIs and how they are portrayed in financial statements and management's discussion and analysis (MD&A). In addition, this report sets out our expectations for financial statement and MD&A reporting for the upcoming year-end.

Other topics in this report include:

- preparations for the changeover to International Financial Reporting Standards (IFRS);
- National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109);
- executive compensation requirements; and
- forward-looking information (FLI).

This year's CD Report also contains guidance to improve disclosure and reduce filing errors for particular subject areas including:

- income trust RIs that plan to convert back to corporate entities;
- RIs with mining projects; and
- recurring errors and deficiencies in commonly filed securities documents.

We are generally satisfied with the results of our reviews. We are encouraged that management of RIs and their advisors take our comments seriously. With the increasing complexity of the business environment and further uncertainties brought on by volatile commodity prices and capital markets, it is critical they find ways to help the reader to understand the RI's business.

Some RIs may have taken the view that providing disclosure that complies with the minimum requirements set out in securities law or generally accepted accounting principles (GAAP) is sufficient to satisfy their reporting obligations. Further disclosures may not only be useful to investors and other users, but necessary in order to make certifications under NI 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*. The uncertainties brought on by the economic environment have caused lenders, investors and their advisors to be more cautious. Readers of CD are seeking out more information to enhance their understanding of an RI's business, performance and operations and to identify areas where there is risk and uncertainty. When competing for funds in a volatile marketplace, RIs that provide high quality CD may find that they are rewarded with better access to capital compared to RIs that provide vague, boilerplate and poor quality CD.

We welcome comments on the CD Report. Our goal is to give practical and relevant guidance to assist management of RIs, advisors and preparers of CD documents in their efforts to provide meaningful disclosure to the public. With numerous changes to securities legislation and more complex accounting principles, management of RIs and their advisors should consult with ASC staff when they have questions about their filing obligations. To facilitate a thorough discussion of the issues, we expect that the inquirer will have researched the matter prior to contacting staff.

## 1. General

This CD report contains the ASC's comments on the quality of CD of Alberta RIs. This is the nineteenth year that we are reporting the results of our CD review program. This year's report discusses the results of our reviews for the twelve months ended November 30, 2009 and our expectations for ongoing CD.

## 2. Our Approach

Each year, we review CD to assess the overall quality of disclosure. This includes assessing whether the disclosure complies with securities legislation, GAAP and whether there is sufficient information for the reader to understand the RI's business including financial performance and condition, risks, and future prospects.

Typically, we review the RI's disclosure specifically mandated by securities legislation (e.g., financial statements, MD&A, Chief Financial Officer (CFO) and Chief Executive Officer (CEO) certifications, annual information form (AIF), material change reports, information circulars etc.). In addition, we may review other disclosure disseminated by the RI such as news releases, corporate website information and quarterly investor webcast presentations.

For resource-based RIs, oil and gas or mining technical staff review some of the RI's disclosure. Results of reviews of compliance with National Instrument 51-101, *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) are reported separately from this CD report<sup>1</sup>. Much of the NI 51-101 disclosure helps the reader understand the RI's technical operations and is complementary to the disclosure about the business, current year operating performance and future prospects discussed in other CD documents such as MD&A and financial statements.

Generally, we apply risk-based criteria to select RIs for review while considering other factors such as market capitalization and length of time since our last review. Staff also review select SEDAR filings and conduct surveillance of some websites, webcast presentations and news releases to further identify risk areas and RIs for review.

On a regular basis we conduct issue-oriented reviews targeting disclosure relevant to the current business environment, new securities requirements or new accounting standards. During the past year, the global economic slowdown and volatility in capital markets and commodity prices have had a significant impact on RIs. As a result, staff reviews have focused on how RIs have accounted for and reported on the impact of these issues in their financial statements and MD&A.

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<sup>1</sup> Staff have reported the results of our reviews of RIs' compliance with NI 51-101 for the past five years. The 2008 Oil and Gas Review Report was published in July 2009 and can be found on the ASC website under Disclosure & Compliance, Disclosure Review Programs.

### 3. CD Review Results

Type of Review	Twelve months ended November 30, 2009	Eleven months ended November 30, 2008 <sup>2</sup>
Full CD reviews	127	119
Issue-oriented reviews	99	30
Other	-	3
Total number of files reviewed	226	152

Outcomes <sup>3</sup>	Twelve months ended November 30, 2009		Eleven months ended November 30, 2008	
Re-filing Requested	56	20%	42	21%
Prospective change requested	173	61%	128	65%
Placed in default	11	4%	5	3%
Referred to Enforcement	4	1%	2	1%
No Action Required	39	14%	19	10%
Total Outcomes	283		196	

Nature of re-filings	Twelve months ended November 30, 2009	Eleven months ended November 30, 2008
▪ financial statements	12%	21%
▪ MD&A	27%	27%
▪ certification	49%	36%
▪ other	12%	16%

Overall this year's results show an increase of 74 files reviewed. This increase is mainly attributed to 58 issue-oriented reviews that were completed in the current period in relation to the CSA coordinated review on NI 52-109 compliance. The increase is also due to the current period being 12 months compared to 11 months in the prior period. The increase in the percentage of NI 52-109 related certification re-filings is also due to the 52-109 issue-oriented review completed in 2009. The outcomes as a percentage of total outcomes were relatively consistent year over year. Outcomes in a given year will change depending on the nature of the files reviewed.

<sup>2</sup> Previously reported in the 2008 CD Report.

<sup>3</sup> The numbers shown in the table represent the number of files that generated the particular outcome. For example, there were 56 files in 2009 that resulted in a re-filing of some kind. There is not a one-to-one correlation between the number of files reviewed and the number of outcomes. For example, one file can generate a number of outcomes, such as a request to make prospective changes for some items and a re-filing for other items.

## 4. Objective of the CD Report

### 4.1 Communicate Staff Findings and Expectations

This CD Report discusses the findings from our reviews and identifies areas where disclosure can be improved. In some cases we provide examples<sup>4</sup> of deficient disclosure and disclosure that meets our requirements to further explain what we expect. We summarize key disclosure issues in certain subject areas and common deficiencies and errors to avoid. Where disclosure meets current requirements but could be further enhanced to include additional information for the reader's benefit, we have highlighted these items as well. To help RIs make such enhancements, we have included practice tips in this year's report. The intent of the practice tips is to provide practical guidance and suggestions on how to provide more information for the reader.

Some RIs may have taken the view that providing disclosure that complies with the minimum requirements set out in securities law or GAAP enables them to satisfy with their reporting obligations. Additional or supplemental information is not provided because this disclosure is "technically not required". Such information is not only useful for investors and other users, but may be necessary in order to make certifications with respect to "no misrepresentation" and "fair presentation" under NI 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*. The uncertainties brought on by the economic environment have caused lenders, investors and their advisors to be more cautious. Readers of CD actively seek out more information to enhance their understanding of a RI's business, performance and operations and to identify areas where there is risk and uncertainty. RIs must balance this demand for better and more detailed disclosure against concerns about disclosing too much information for the benefit of their competitors. However, when competing for funds in a volatile marketplace, RIs that provide high quality CD may find that they are rewarded with better access to capital compared to RIs with vague, boilerplate and poor quality CD.

### 4.2 Communicate Applicable CSA Initiatives

Recently, CSA staff notices have been published on selected topics pertaining to CD. Some of these notices communicate staff's expectations or provide guidance to improve disclosure. Other notices summarize results from recent reviews conducted across the CSA and identify areas where RIs did not comply with requirements. We identify and discuss some of these CSA staff notices in this report. Copies of all CSA staff notices are available on the ASC website. ([www.albertasecurities.com](http://www.albertasecurities.com)). Preparers of CD, advisors and management should review these publications in advance of completing their 2009 year-end reporting.

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<sup>4</sup> The examples are based on actual disclosure observed in our CD reviews. While we include examples of disclosure that met our requirements for illustrative purposes, we express no conclusion on the overall quality of any particular RI's disclosure record. We have also changed names, locations, certain of the qualitative content, percentages and amounts to provide anonymity.

CSA staff notices published in recent months	Reference to applicable discussion in this report
Various CSA staff notices relating to proposed changes to securities legislation resulting from IFRS changeover.	Section 7.1.2, IFRS in Securities Laws
CSA Staff Notice 52-325 <i>Certification Compliance Review</i> (CSA Notice 52-325)	Section 7.2, NI 52-109 Certification Requirements
CSA Staff Notice 51-331 <i>Report on Staff's Review of Executive Compensation</i> (CSA Notice 51-331)	Section 7.3, Executive Compensation
CSA Staff Notice 51-330 <i>Guidance Regarding the Application of Forward-looking Information under National Instrument 51-102 Continuous Disclosure Obligations</i> (CSA Notice 51-330)	Section 7.5, Forward-looking Information Requirements

## 5. MD&A Disclosure

### 5.1 Our Observations

While there have been improvements to MD&A disclosure on a year-over-year basis, MD&A continues to be a key area of focus and concern for staff. Many RIs have endured the fallout from the global economic slowdown. As a result, RIs' revenues have been impacted by volatile commodity prices and they have scrambled to conserve cash in the face of the credit crisis. We have identified issues around:

- renewal of significant credit facilities;
- violation of key loan covenants;
- curtailment of capital spending;
- asset impairments;
- credit collection issues; and
- erosion of revenues.

In the face of such issues, we scrutinized the MD&A to determine if there was meaningful discussion about how these issues have impacted the businesses of RIs including:

- ability to operate as going concern;
- liquidity levels and the ability to generate sufficient cash in the short and medium term;

- ability to sustain cash distributions or dividend payments;
- ability to meet medium- and short-term obligations and commitments;
- possible delays or curtailments of capital projects;
- availability of credit facilities to meet funding requirements;
- compliance with covenants in material debt agreements;
- indicators of impairment of key asset balances;
- impact on future revenues;
- counterparty risk, credit risk and other relevant financial instrument risks; and
- updates to previously disclosed material forward-looking information.

To ensure that disclosure was timely, staff initiated these reviews near the beginning of the credit crisis commencing with September 2008 interim reporting. Where disclosure was materially deficient, staff requested that RIs restate and refile their MD&A. Where disclosure was not deficient enough to justify restatement but was lacking sufficient insight, we advised RIs to make improvements to future filings.

We identified a number of recurring areas where RIs failed to provide meaningful analysis, including:

- Little or no discussion of short- and medium-term liquidity needs, commitments and obligations and the possible sources of funds available to meet cash requirements.
- Boilerplate discussion of the current economic conditions with no information about how these conditions would specifically impact the business in areas such as:
  - planned capital expenditures;
  - major capital projects; or
  - asset acquisitions.

In some cases, the RI disclosed the amount of major capital outlays or commitments but there was no discussion about the timing, availability or the sources of cash available to fund such outlays. In the majority of these cases, cash inflows and cash balances reported in the financial statements were less than the required outlay or commitment.

- A lack of meaningful discussion of how an RI would raise sufficient cash to meet operating and capital needs. The MD&A disclosed, in generic terms, that further financing would be sought or current operating cash flow would fund any requirements. However, in correspondence with staff, the RI identified specific measures they would need to pursue in order to secure adequate cash. These measures included reduction of expenditure levels, sale of assets or extension/expansion of available credit facilities. Since the RI was able to discuss such specific measures in their response letters, similar information should have been disclosed in the MD&A.

**PRACTICE TIP:**

One of the objectives of MD&A is to explain, through the eyes of management, the RI's performance, financial condition and future prospects (emphasis added). Consider what information management has presented to the Board of Directors about future capital expenditures and how these expenditures will be funded. This information is consistent with the objective of MD&A and should be disclosed.

- When an asset impairment test had been completed, there was little discussion about the assumptions used in the computation of asset values and recoverability factors. An assessment of impairment and any related impairment provisions are critical accounting estimates. Disclosure requirements for critical accounting estimates are mandated under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), specifically Form NI 51-102F1 *Management's Discussion and Analysis* (51-102F1), item 1.12 and the accompanying instructions. These requirements include:
  - identifying and describing each critical accounting estimate;
  - describing the methodology used in determining the accounting estimate, and discussing assumptions underlying the estimate and any trends, events, commitments, or uncertainties that could materially impact the assumptions or methodology applied. In discussing assumptions that are highly uncertain at the time that the estimate was made, it may be necessary to disclose the upper and lower ends of the range of estimates or provide a sensitivity analysis;
  - explaining the significance of the accounting estimate in relation to the RI's financial statements;
  - discussing any changes made to critical accounting estimates in the past two financial years; and
  - discussing the accounting estimates on a segment basis if the RI operates in more than one segment.
- A lack of insightful analysis of material financing agreements. For example, one RI failed to provide a detailed discussion of the status of material financing agreements currently under review by creditors. In other cases, there was unclear disclosure or lack of information about covenant requirements and other credit restrictions.
- Unbalanced disclosure that failed to give sufficient prominence to the severity of the challenges facing the business. In some cases RIs would focus on the good news and not the bad news. For example, an RI discussed a number of exciting future prospects but failed to explain how they would obtain the necessary funding to finance work on the prospects. Elsewhere in the MD&A, the RI reported that they were unable to raise capital or obtain further financing from the bank because of the economy.
- A more current discussion of the business in corporate website presentations and news releases. If the RI provides more current information on a corporate website, we expect that the RI would issue a news release to ensure that the information becomes widely disseminated to the public<sup>5</sup>. Management should also determine whether this new information triggers the requirement to file a material change report under securities legislation.

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<sup>5</sup> National Policy 51-201 *Disclosure Standards* (NP 51-201) subsection 3.5(4) specifies that one way that companies may satisfy the "generally disclosed" requirement is through the use of news releases.

- New information was provided in investor conference calls held the day after interim financial statements and MD&A were filed. During some of these investor conference calls, more current information or more detail about key issues was discussed. Staff observed that this information was sometimes absent from the interim MD&A disclosure filed the previous day.
- Use of non-GAAP financial measures where the RI did not discuss the closest GAAP financial measure with equal or greater prominence or explain why the measure provided useful information. For example, a RI discussed cash flow from operations in detail in their MD&A and news releases but the closest GAAP measure, cash flow from operating activities, was not discussed or disclosed with equal or greater prominence. In addition, the RI did not explain the relevance of excluding the changes in working capital and/or abandonment outlays in the determination of cash flow from operations or how this measure was used by management.

In another case, the RI failed to identify a net asset value measure as a non-GAAP financial measure even though the term net asset value carries no standardized meaning under GAAP.

## **5.2 Expectations for Year-End Reporting**

Some RIs will continue to operate conservatively to preserve cash, experience ongoing volatility in commodity prices or find it challenging to secure the necessary credit and/or capital financing to meet their funding needs. Accordingly, we would expect that:

- MD&A disclosure should provide sufficient discussion of how the economic environment continues to impact specific areas of the RI's business. Two areas that filers should pay particular attention to are:
  - compliance with material debt agreements; and
  - the ability to fund capital expenditures and other commitments.

## Example 1

### Illustration of how disclosure of compliance with debt covenants could be improved to provide more meaningful information

*Staff comments:*

While the disclosure states that the RI is in compliance with all financial covenants, improvements could be made by:

- 1) providing more information to clarify if all of the ratios are disclosed; and
- 2) describing how ratios are computed (e.g., "funded debt" is not a term that is commonly known by the average reader and "EBITDA" is not a standardized measure under GAAP. Therefore, it would be helpful to describe how funded debt to EBITDA is computed).

#### Note X –

We are in compliance with all financial covenants under this agreement at June 30, 2009... **These covenants include, but are not limited to,** a fixed charge coverage ratio, funded debt to EBITDA ratios...each of which are calculated quarterly on a trailing twelve month basis and adjusted on a pro-forma basis for certain business acquisitions.

Fixed charge ratio

Required: >2.0

Actual: 3.0

**Funded debt to EBITDA**

Required: <4.0

Actual: 3.0

The statement "include but are not limited to" makes it unclear to the reader if all the material required ratios are disclosed.

The disclosure could have been improved by substituting the following statement: "the major financial covenants comprise of..."

To improve the disclosure, the RI should describe how the specified debt covenant ratios are computed. Since many of the ratios use terminology specific to a particular agreement, a reader does not necessarily know how the "fixed charged coverage" ratio or the "funded debt to EBITDA" ratio is computed without further information. (Refer to practice tip)

#### PRACTICE TIP:

MD&A should be written in a manner that is easy to understand; see s. 1.5 of the Companion Policy to NI 51-102 (NI 51-102CP). Explaining how the ratios are computed is consistent with this principle. If technical terms are used, such terms should be explained in a clear and concise manner (51-102F1 s.1 (n)). Explanations should be sufficient to enable the reader to understand trends, events, transactions and expenditures (51-102F1 s.1 (d)).

**PRACTICE TIP:** When discussing near-term capital expenditures and other commitments, provide sufficient information to enable the reader to reconcile the dollar amounts of these expected expenditures and commitments to the available sources of funding<sup>6</sup>. It is not sufficient to provide a generic statement (e.g., “management believes that cash on hand and amounts available under the credit facilities will be sufficient to fund payments”) without providing supporting analysis<sup>7</sup>. If there is uncertainty about the ability to secure the necessary financing, it is also useful to distinguish discretionary expenditures from non-discretionary expenditures.

## Example 2

### Example of disclosure about compliance with debt covenants that met our requirements

*Staff comments:*

*The disclosure below provides sufficient background information to enable the reader to understand the capital spending requirements. When this is read with the cash flow provided by operating activities section, the reader can assess whether there is sufficient cash to meet capital spending needs.*

#### RI Disclosure

##### Capital expenditures note

The majority of our equipment is new...and the remaining useful life is long. Over time, we expect to incur annual maintenance capital expenditures in an amount that approximates our amortization of this equipment for each period adjusted for inflation. However, we do not expect this level of maintenance capital expenditures for a number of years until the average age of our equipment approaches the end of their economic useful life...

For this year, our capital expenditure program will be tightly controlled and is currently expected to range between \$5 million and \$8 million. The majority of these expenditures will be maintenance capital. This program reflects a reduction of \$80 million in planned capital expenditures from the prior year. We expect this year's capital expenditures will be funded by cash provided by operating activities...

##### Cash provided by operating activities note

Cash provided by operating activities for the three months ended March 31, 2009 is \$50 million...We believe that the remainder of 2009 will continue to be a challenging operating environment...If our cash provided by operating activities is not sufficient to fund our capital expenditures or to make scheduled debt repayments, we would anticipate covering any shortfall with any of these initiatives:

- utilize undrawn funds from credit facility X which was \$50 million at May xx, 2009,
- pursue opportunities to dispose of certain underutilized or non-core assets,
- further reduce capital expenditures.

As of the date of this MD&A we do not anticipate that the current economic environment would prevent us from funding our current operating and liquidity needs in the near term...

<sup>6</sup> 51-102F1 item 1.7(a) requires a discussion of (i) the amount, nature and purpose of commitments and (ii) the expected sources of funds to meet these commitments.

<sup>7</sup> The use of boilerplate statements is not consistent with plain language principles (51-102CP s. 1.5).

- MD&A disclosure should be balanced, not overly optimistic<sup>8</sup>. It should give sufficient prominence to the challenges facing the RI, notwithstanding the fact that the RI's future outlook may be more positive. Due to uncertain economic conditions, some RIs are finding themselves in positions of financial hardship. RIs should be candid and fact-based in their discussions about financial hardship. Management should not attempt to downplay the seriousness of the issues at hand.

The example below illustrates one situation where an RI failed to provide balanced disclosure. The facts and circumstances specific to each particular situation will determine whether the disclosure is balanced. However, the principle of reporting bad news with equal prominence to good news is universal.

### Example 3

#### Example of unbalanced disclosure

*Staff comments:*

*The disclosure is deficient because the RI did not communicate the delisting review with sufficient prominence. Also, the statement that "management believes Company A will be in compliance with stock exchange requirements" appears to downplay the seriousness of the delisting review.*

*The overall tone of the news release was positive, discussing the proposed offering details and how the proceeds raised will improve the RI's liquidity position. The RI should have communicated the delisting review with equal prominence to ensure that the overall message presented in the news release was balanced. The RI should have provided disclosure about how the delisting review could negatively affect the RI's liquidity.*

#### RI Disclosure

##### News release excerpt

*Note: Staff found this statement in the second to last paragraph of a two page news release discussing the details of a planned securities offering.*

As the number of shares issuable without shareholder approval exceeds the number issuable under the rules of ABC Stock Exchange, Company A is applying to ABC Stock Exchange for an exemption from the requirement to seek shareholder approval...on the basis of financial hardship. As a consequence of relying upon the financial hardship exemption, ABC Stock Exchange has commenced a delisting review. **However, management believes that, upon completion of the Offering, Company A will be in compliance with ABC Stock Exchange's listing requirements.**

It is unclear how the RI will continue to be in compliance with stock exchange listing requirements if the stock exchange has commenced a delisting review. To clarify, management should discuss the delisting process by including the following:

- general background information on how the delisting process works;
- the stage of the delisting process Company A is at and anticipated timelines for concluding the delisting review; and
- why management believes that Company A will continue to be in compliance with listing requirements in spite of the delisting review.

<sup>8</sup> 51-102F1, item 1(a) discusses the need to provide a balanced discussion and openly reporting bad news as well as good news.

- To the extent that the MD&A discusses the future outlook and prospects, the disclosure may be forward-looking and subject to the requirements set out in NI 51-102 Part 4A and 4B.
- In analyzing the RI's overall liquidity position and cash flow from operating activities, RIs should discuss any known trends and uncertainties that could materially affect liquidity and cash inflows and outflows. (51-102F1, item 1.6)
- As discussed in section 5.1 of this report, we observed situations where a RI completed an asset impairment test and provided little discussion about the assumptions used to apply the test. Non-venture issuers are subject to the critical accounting estimate disclosure requirements set out in item 1.12 of 51-102F1. Times of economic uncertainty increase the risk that key assumptions used for accounting purposes could change (e.g., collectability of accounts, business valuations, assessment for impairment, determination of fair values, etc.). Therefore, management should be prepared to provide a thorough discussion of the issues.

Note: The MD&A disclosure required for critical accounting estimates contains more information than the disclosure requirements under GAAP. Therefore, it is not sufficient to simply cut and paste the disclosure from the financial statement notes to the MD&A.

- Management should ensure that the MD&A includes the information disseminated in subsequent investor conference calls. To the extent that new developments give rise to more up-to-date information not discussed in the MD&A, management should provide an update by news release and consider whether this new information needs to be disclosed in a subsequent material change report.

<b>PRACTICE TIP:</b>	Coordinate conference call timing and MD&A publication to ensure that the MD&A is kept as current as possible.
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- As previously discussed in section 5.1 of this report, RIs should present non-GAAP financial measures with equal or no greater prominence to the closest GAAP financial measures. Disclosure of non-GAAP financial measures should follow the five principles outlined in the Staff's Expectations section of CSA Staff Notice 52-306 – *Non-GAAP Financial Measures* (CSA Notice 52-306).
- For related party transactions, RIs should apply the requirements set out in Form NI 51-102F1 item 1.9. Often, RIs fail to disclose the business purpose of the transaction. This disclosure is over and above the requirements in the Canadian Institute of Chartered Accountants (CICA) Handbook. To meet the MD&A disclosure requirements, it is not sufficient to simply cut and paste the related party disclosure from the financial statement notes.

<b>REMINDER:</b>	If material debt agreements were previously filed with us as material contracts and the RI has renegotiated the terms of these agreements, the RI should also file updated copies of these debt agreements in compliance with NI 51-102, Part 12.
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## 6. Financial Statement Presentation

### 6.1 Our Observations

Global economic uncertainty has dominated the attention of accounting standard setters, auditors and securities regulators worldwide. As a result, our CD reviews have also focused on financial statement presentation and accounting matters in this area.

We have identified recurring deficiencies in the following subject areas:

- going concern;
- capital disclosures;
- terms of debt including any defaults;
- impairment of goodwill and other assets;
- collection of receivables; and
- disclosure of risks arising from financial instruments.

#### Going concern

In some cases, RIs did not provide going concern disclosure even though there were significant developments leading to questions as to the ability of the RI to continue as a going concern. In other cases, disclosure of the going concern assessment was superficial and did not address the facts and circumstances specific to the RI.

CICA Handbook (HB) paragraph 1400.08B provides guidance for concluding on the ability to continue as a going concern. If there is a long history of profitable operations and ready access to financial resources, paragraph 1440.08B states that little analysis may be required to conclude that an entity can operate as a going concern. However, entities with little or no history of revenues or cash flow should not make this assessment lightly.

#### PRACTICE TIP:

If there are circumstances present that may lead to questions about the RI's ability to continue as a going concern, RIs should provide a going concern financial statement note.

To help the reader understand assumptions that may not be fully disclosed in the financial statements, RIs with little or no history of revenues or cash flow should also provide supporting analysis and discussion that the going concern assumption is appropriate. This may be achieved by including a discussion of the facts and circumstances management considered in coming to this conclusion.

## Example 1

### Staff comments:

*As discussed in the staff observation below, there are many issues that could cast significant doubt upon the RI's ability to continue as a going concern. The financial statements did not contain a going concern note. The MD&A was also silent on this issue. Given the uncertainties facing the RI, staff requested that management discuss how they came to the conclusion that the going concern assumption continues to be appropriate.*

### Staff observation:

The RI is in development stage, has no foreseeable sources of revenues and has had history of net losses. In order to advance the development of their business, the RI must spend substantial amounts of capital on research and development (R&D) activities every year.

As at and for the year ended December 31, 2008, the RI's financial status is as follows:

- net loss of \$20 million;
- a cumulative deficit of \$120 million;
- cash outflows from operating activities \$18 million; and
- cash and cash equivalents of \$8 million.

Based on the past three years financial history, it appears that the R&D expenditures average \$13 million per annum. During 2007, the RI raised \$30 million through share issuances. In 2008, due to the state of the capital markets, the RI only raised \$5 million through share issuances and had to redeem all of their outstanding short term investments to finance their cash flow needs. Given present economic conditions, it is uncertain whether the RI will be able to raise sufficient cash through future share issuances.

Given the RI's financial status, it is unclear whether the RI will be able to continue as a going concern. To clarify, management should discuss in the financial statement notes:

- if the going concern assumption continues to be appropriate; and
- facts and circumstances to support the conclusion that the going concern assumption is appropriate (specifically addressing anticipated R&D expenditure requirements, continued lack of revenues and inability to raise sufficient capital in the current year).

The MD&A should also include a discussion of risks that are reasonably likely to affect the RI's liquidity, capital resources and solvency in the future. (51-102F1 instruction (ii) to item 1.2 and item 1.6)

## Example 2

### Example of going concern disclosure that met our requirements

#### Staff comments:

*In this example, the RI provided specific information about the activities management has pursued and assumptions to support their assessment that the going concern assumption is appropriate.*

#### RI disclosure

##### Going concern note

These...financial statements have been prepared on a going concern basis...

As at June 30, 2009, the Company has a working capital deficiency of \$16 million and incurred a net loss for the period of \$7 million. Funds flow from operations was \$1 million... The Company is faced with a number of significant uncertainties. The amount owing under the credit facility...(the Lender) as at June 30, 2009 was \$12 million. The Company is in default of their credit facilities *[note - details of covenant defaults are disclosed but not included in this example to keep it brief]*. The...Lender indicat[ed] that they were not prepared to permit these defaults to continue. On July xx, 2009 the Company and the Lender entered into an agreement...*[designed]* to allow the Company to comply with the terms of the credit agreement.

The Company has laid out a comprehensive plan of action *[to remedy this default by the end of the third quarter]*. The Company expects to reduce their debt through the sale of \$9 million of assets relating to Project X. The Company entered into agreements to sell \$7 million of assets. To date the Company has received proceeds of \$5 million from these sales with the balance to be received by September xx, 2009. The Company has raised \$1 million...in...equity...and expects to raise a further \$2 million...*[by the end of the third quarter]*. To date, the Company has paid down *[the]*...line of credit by \$5.0 million and expects to pay it down by a further \$2.0 million by September xx, 2009.

The Company's ability to continue as a going concern...is contingent upon the return of favourable commodity prices, the maintenance of their existing reserve and production base, internally generated cash flow from operations, the availability of financing from a lending institution, the continued support of their creditors, realizing on proposed asset sales and raising additional equity...This information is current as of August xx, 2009.

## Capital disclosures

CICA HB s. 1535 establishes standards for disclosures about an entity's capital and how it is managed. These new standards are applicable for fiscal periods beginning on or after October 1, 2007. We identified cases where RIs provided superficial and boilerplate capital disclosures.

### Example 3

#### Example of boilerplate CICA HB s. 1535 capital disclosures that is deficient

*Staff comments:*

*The disclosure is deficient because it is generic and does not:*

- provide summary quantitative data about what the RI manages as capital. (CICA HB paragraph 1535.02(b))
- discuss how the RI is specifically meeting their objectives for managing capital. (CICA HB paragraph 1535.02(a)(iii))

#### RI disclosure

##### Capital disclosures note

The capital structure of the Company consists of common shares, contributed surplus, warrants, subscriptions receivable, deficits and accumulated other comprehensive income. The Company's objectives when managing capital are to: (i) preserve capital, (ii) obtain the best available net return, and (iii) maintain liquidity.

The Company manages the capital structure and makes adjustments to it in light of changes in economic condition and the risk characteristics of the underlying assets. To maintain or adjust the capital structure, the Company may attempt to issue new shares, issue new debt, acquire or dispose of assets or adjust the amount of cash and cash equivalents and investments. The Company's policy is to invest its excess cash in highly liquid, fully guaranteed, bank sponsored instruments. This strategy is unchanged from year end 2008.

The RI could also improve the disclosure with an explicit statement of whether the RI has any externally imposed capital requirements. In this particular example, the RI is participating in several joint venture projects with a foreign national oil company as the primary financier and joint venture operator. It is unclear if there are any capital requirements imposed by the joint venture operator.

### Example 4

*Staff observation:*

The RI disclosed that they were in breach of a debt covenant in the current interim period. However, Section 1535 note disclosure for prior period interim financial statements did not discuss the existence of debt covenants.

#### Deficient disclosure about a debt covenant breach

*Staff comments:*

*The prior period interim financial statement disclosure was deficient because they did not comply with the CICA HB s. 1535 disclosure.*

*CICA HB paragraph 1535.03(d) requires an explicit discussion of compliance with capital restrictions which includes debt covenants. Also, CICA HB paragraphs 1535.03(a)(ii) and (b) requires disclosure of the nature of these covenants and related quantitative disclosure.*

In some cases, the ability to draw on available credit facilities requires that certain conditions be met. This is generally considered an externally imposed capital requirement affecting the management of capital and the disclosure requirements in CICA HB paragraph 1535.03(a)(ii) apply. Management should ensure that there is prominent disclosure of the nature of such conditions and provide an assessment of whether these conditions will be met in order to draw on the available funds.

We also observed disclosure of debt covenants where it was not possible for the reader to understand how the covenants were calculated.

### Example 5

#### Deficient disclosure of compliance with debt covenants

*Staff comments:*

*CICA HB paragraph 1535.03(a)(ii) requires a description of the nature of externally imposed capital requirements. The term "first LIEN to EBITDA" is not a term that is well known or readily understood by the average reader. In order for the reader to obtain a good understanding of the nature of this requirement, the RI should describe how this ratio is calculated.*

*Staff observation:*

In one case, a covenant ratio called "first LIEN to EBITDA" was disclosed as 4:1. The note disclosure also stated that the calculation is specifically defined in the debt agreement. The debt agreement was not filed as a material contract. The financial statement note disclosure did not discuss how this ratio was defined, calculated or its relevance.

This is not a term that is commonly known to the average reader. Therefore, it is necessary to provide a further description for the reader's benefit. Also refer to the practice tip below.

**PRACTICE TIP:** Particularly when a covenant calculation requires the use of non-standard terminology or non-GAAP measures, RIs should describe how these covenants are calculated. Readers should not have to refer to a separate document in order to get an understanding of the calculation. Regardless of whether the debt agreement is filed as a material contract, the disclosure in the financial statement notes should be able to stand on its own.

## Information about terms of debt including defaults

CICA HB paragraph 3862.18 sets out the disclosure requirements when there is a default in loans payable. We noted cases where it was difficult to obtain a clear understanding of the default because there were no meaningful explanations provided about the nature and terms of the default.

As a result of the default, staff also questioned whether the balance of the debt outstanding should be reclassified to current liabilities.

## Impairment of goodwill and other assets

In our reviews we identified cases where the financial statement note disclosure, when read in their entirety, did not provide the reader with a good understanding about the methodology used to determine the impairment write-down (e.g., how fair values were determined, key assumptions used and areas subject to measurement uncertainty).

The fair presentation principle pursuant to CICA HB paragraph 1400.04 states:

A fair presentation in accordance with generally accepted accounting principles is achieved by:

- a) applying...[GAAP]...
- b) providing sufficient information about transactions or events having an effect on the entity's financial position, results of operations and cash flows for the periods presented that are of such size, nature and incidence that their disclosure is necessary to understand that effect; and (emphasis added)
- c) providing information in a manner that is clear and understandable. (emphasis added)

The measurement uncertainty requirements in CICA HB paragraph 1508.13(a) specify:

Consideration would also be given to disclosing other relevant information such as the following so as to appropriately describe the measurement uncertainty:

- (a) a description of the key assumptions used in estimating the amounts and whether the assumptions are susceptible to change... (emphasis added)

## Example 6

### Boilerplate measurement uncertainty disclosure pertaining to an impairment write-down

Staff comments:

(In this particular example, the size of impairment write-off was very significant in relation to net loss and total assets.)

The disclosure did not meet the principles set out for fair presentation and measurement uncertainty. The measurement uncertainty disclosure is deficient because it is boilerplate and does not provide the reader with any insight into the key assumptions used in developing the impairment estimate, including inputs that are unobservable or difficult to estimate and how actual results could vary if key assumptions change.

We have also identified areas where the goodwill impairment disclosure could be improved to provide additional information for the reader.

#### RI disclosure

##### Measurement uncertainty note

The preparation of financial statements...requires...estimates and assumptions that affected the reported amounts...Estimates are used when accounting for such items as...amortization periods, **test of impairment for goodwill**...Although management reviews its estimates on an ongoing basis, actual results may materially differ from these estimates.

##### Goodwill impairment note

In Q4, 2008, Company X performed their annual goodwill impairment test and determined that the carrying value of the goodwill was impaired. Goodwill is tested for impairment at the level of the reporting unit to which goodwill has been allocated to. The goodwill has been allocated to reportable segment 1...The goodwill impairment test is a two-step test... [Note: **RI included 2 paragraphs from CICA HB s. 3063 repeating the requirements verbatim**...we have not reproduced this information in this example.] It was determined that the carrying value exceeded fair value and a goodwill impairment write-down of \$50 million and a related future income tax recovery of \$10 million was recognized in segment 1...Company X uses the **discounted cash flow method** as well as a **market comparable approach** to assess the fair value of their goodwill...The assessment of fair value...involves **assumptions** about future conditions for the economy, the length of the recession, capital markets and industry specific factors. It is possible...that changes in future conditions in the near term could require a material change in the recognized amount of goodwill.

- What is a market comparable approach?
- What are the key assumptions used in the market comparable approach?
- Who are the comparable entities?
- Were external valuers or other experts involved?

This is boilerplate and does not discuss actual assumptions used.

Discuss specific assumptions applicable to the industry and the business.

Repeating the CICA HB requirements verbatim is not meaningful for the reader.

- What is the discount rate?
- What are the cash flow assumptions?
- What is the relevant time period in the model?

## Disclosure of risks arising from financial instruments

In some cases, disclosure of interest rate risk, credit risk and commodity price risk reported by RIs under CICA HB Section 3862 was superficial and did not provide useful information about the extent of the RI's exposure. For example, some RIs with substantial interest-bearing debt disclosed they were subject to interest rate risk but failed to provide any quantitative data about their exposure or discuss how this risk was managed. (CICA HB paragraphs 3862.33 and .34)

## 6.2 Expectations for Year-End Reporting

Some RIs will continue to be impacted by uncertain economic conditions and volatility in the marketplace. When preparing financial statements, RIs need to pay particular attention to the principles of liquidity, going concern, asset impairment, measurement uncertainty, valuation and disclosure of risk.

We will continue to focus on generic and boilerplate disclosure and ensure there is appropriate application of GAAP. Filers should pay particular attention to the following areas:

- CICA HB s. 1535 capital disclosures.

RIs should disclose the nature of debt covenants and provide the actual ratios. They should also explicitly state whether the RI is in compliance with their debt covenants (CICA HB paragraphs 1535.03(a) (ii) and 1535.03(d)).

### PRACTICE TIP:

In order for the reader to have sufficient information about the nature of externally imposed capital requirements and their sensitivity, the actual covenants and ratios computed for the current reporting period should be disclosed along with a description of how these covenants and ratios are calculated.

- Impairment of goodwill and other assets.

RIs should clearly disclose assumptions used to determine fair values for the purposes of impairment write-downs, particularly in situations when market prices are not readily determinable. RIs should also discuss assumptions that are subject to measurement uncertainty.

- Disclosure of risk areas and areas of measurement uncertainty.

Many RIs will continue to operate in an environment of economic uncertainty. RIs have to manage this risk as part of daily operations. RIs need to disclose these risks and explain how they impact the business, including how these risks are being managed. If these risks affect accounting estimates, this should be discussed.

## 7. Other Reporting Requirements

### 7.1 IFRS

#### IFRS Readiness Disclosure

CSA Staff Notice 52-320 – *Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards* (CSA Notice 52-320) provides guidance to RIs on disclosure of their state of preparedness for IFRS changeover for reporting periods in the three years prior to the IFRS changeover date.

The IFRS changeover date is January 1, 2011. While some RIs have undertaken substantial preparations in anticipation of the IFRS changeover, other RIs have focused on their business and operations in uncertain times. Accordingly, IFRS changeover preparations may be low on the list of priorities for those struggling to stay in business. Regardless of the stage of preparations, for the purposes of 2009 year-end reporting, management should be prepared to speak frankly about their state of readiness.

Silence on the subject, or generic and vague references to the fact that management is aware that IFRS is coming, does not provide the reader with a clear understanding of the RI's state of preparedness for IFRS.

If the RI has done little to prepare for IFRS, the RI should:

- explicitly state that little or no preparation has occurred and the reasons for this; and
- discuss any measures planned for the current year to advance the RI's state of IFRS preparedness.

Depending on the facts and circumstances, it may be reasonable in the eyes of the reader that management spend their time and resources on other more crucial priorities during the past year. However, the reader should be given the benefit of full information in order to make this assessment.

## Example 1

### IFRS preparedness disclosure that is deficient

*Staff comments:*

*The disclosure is deficient because it is unclear what specific measures the RI has completed to prepare for IFRS changeover aside from hiring appropriate staff and identifying appropriate resources.*

### RI Disclosure

#### MD&A excerpt

... Currently, the application of IFRS to the oil and gas industry in Canada requires considerable clarification: correspondingly, the effect of IFRS on the Company's accounting policies and reporting standards and practices is not presently determinable...With respect to organizing for the changeover; the Company has recruited appropriately qualified staff and has identified external resources to assist in the process.

Key elements of the changeover plan include: staff education; choosing among policies permitted under IFRS; deciding whether certain changes will be applied on a retroactive or prospective basis; evaluating the effect of adoption on Company A's information technology and data systems and internal control over financial reporting and disclosure controls and procedures; alignment of internal and outsourced processes, applications and internal controls; external and internal communications; and liaison with peers, industry groups and professional advisors.

The second paragraph uses boilerplate language to discuss the tasks that need to be completed by the IFRS changeover date. This passage does not allow the reader to understand what measures the RI has actually completed to date. NI 51-102F1 Part 1(n) sets out the objective of writing MD&A using plain language and in a writing style that is easy to understand for the average reader. The MD&A disclosure provided by the RI did not achieve this objective.

Whether it was the intention of management or not, the lack of specific information about actual tasks completed suggests to the reader that the RI has done very little to prepare for IFRS changeover.

In CSA Notice 52-320, interim and annual MD&A three years<sup>9</sup> before changeover to IFRS, staff expect a discussion of:

- key elements of an issuer's changeover plan;
- the timing of the changeover plan; and
- status or progress towards achievement of the changeover plan.

The example below illustrates one way that a RI is able to provide the information expected in MD&A three years before changeover to IFRS. We noted several RIs using a template that is similar to this example.

<sup>9</sup> As stated in CSA Notice 52-320, interim and annual MD&A three years before changeover to IFRS means the interim and annual periods of the financial year ending December 31, 2008 in the case of an issuer that will change to IFRS for its financial year beginning January 1, 2011.

## Example 2

### IFRS preparedness disclosure that met our expectations (three years prior to changeover date)

*Staff comments:*

*This disclosure clearly sets out the key activities, milestones and status enabling the reader to understand the RI's progress at each reporting period.*

#### RI Disclosure

##### MD&A excerpt

We have commenced our IFRS project with a target implementation date of January 1, 2011. The following table summarizes our key activities, related milestones and work accomplished to date...

##### **\*Key Activity:**

Identify differences between IFRS and Canadian GAAP

##### **Milestones:**

Milestone 1 (deadline date 1)

Milestone 2 (deadline date 2)

Milestone 3 (deadline date 3)

##### **Status at March 31, 2009:**

Assessment processes are ongoing.

##### **Status at June 30, 2009:**

Assessment processes are ongoing. We are completing our final review on area A. For the remaining areas, work is ongoing with significant progress.

##### **\*Key Activity:**

IT infrastructure changes

##### **Milestone:**

Ensure readiness for parallel processing of 2010 financial results and IFRS compliant reporting in 2011.

##### **Status March 31, 2009.**

Testing of parallel reporting system has begun.

##### **Status June 30, 2009.**

Testing of parallel reporting system is ongoing.

For RIs that have advanced their IFRS changeover preparations beyond the initial diagnostic phase, more detailed disclosure will be expected for 2009 year-end reporting (i.e., two years prior to changeover date). Some RIs may determine that it is premature to provide numerical analysis to quantify the impact of the IFRS changeover on their financial statements. However, we expect a detailed qualitative analysis to discuss key elements in the financial statements that will likely be impacted by IFRS changeover<sup>10</sup>.

<sup>10</sup> Refer to CSA Notice 52-320 discussion about disclosure expected in annual MD&A two years before changeover to IFRS. As stated in the notice, the annual MD&A two years before changeover to IFRS means the financial year ending December 31, 2009 in the case of an issuer that will change to IFRS for its financial year beginning January 1, 2011.

For RIs seeking more guidance material, the Canadian Performance Reporting Board has published communications focused on disclosures regarding IFRS conversion. In addition, websites of various professional services firms contain useful guidance material.

A new IFRS 1 exemption was issued for oil and gas issuers using full cost accounting and is effective for annual periods beginning on or after January 1, 2010. In February 2009, the Small Explorers and Producers Association of Canada (SEPAC) and the Canadian Association of Petroleum Producers (CAPP) also published the Information Guide on Adoption of International Financial Reporting Standards for the Canadian Upstream Oil and Gas Industry (IFRS Guide). The IFRS Guide is available for download from the CAPP or SEPAC websites.

Some oil and gas RIs may have been waiting for the IFRS Information Guide and the new IFRS 1 exemption to be issued in order to proceed further with their IFRS preparations. Now that this information is available, we expect more disclosure about IFRS preparedness in the 2009 year-end MD&A for such issuers.

### **IFRS in Securities Law**

CSA staff are analyzing and drafting proposed changes to securities legislation and policies to address the impact of the IFRS changeover on accounting terminology and concepts embedded in securities legislation. These changes will impact securities law and policy in key areas including continuous disclosure and securities offerings.

During Fall of 2009, the CSA published for comment proposed changes to securities legislation resulting from the IFRS changeover. These proposals are preliminary and may be subject to further changes as a result of comments received. However, RIs should be aware of the proposed changes and contact the ASC staff identified in the applicable staff notices with any questions or comments about these proposals.

Listed below are some of the proposed changes relating to IFRS changeover that have been published for comment, specifically in the subject areas of CD and securities offering. There are numerous other proposed changes relating to IFRS changeover affecting other areas of securities law that we have not identified in this CD Report. However, copies of all of the proposed changes can be found on the ASC website.

Date of publication	Subject
September 25, 2009	Acceptable accounting principles, certification, CD and prospectus rules <sup>11</sup> .
October 16, 2009	Investment funds and exempt offerings <sup>12</sup> .
December 18, 2009	Standards of disclosure for oil and gas activities <sup>13</sup> .

CSA staff continue to analyze how IFRS changeover will impact CD reporting and other aspects of securities legislation (e.g., non-GAAP performance measures, *Securities Act* (Alberta) etc.). Filers should monitor the ASC website in the coming months for additional publications on these matters.

## 7.2 NI 52-109 Certification Requirements

### CSA Compliance Review

NI 52-109 came into force on December 15, 2008, at which time Multilateral Instrument 52-109 *Certification of Disclosure In Issuers' Annual And Interim Filings* (MI 52-109) was repealed. NI 52-109 includes a number of new certificate forms and additional disclosure requirements for RIs. CSA staff reviewed certification filings to determine compliance with these changes. ASC staff participated in this CSA initiative through reviews of Alberta-based RIs.

CSA Notice 52-325 – *Certification Compliance Review* (CSA Notice 52-325) outlines the results of the compliance review and provides guidance to assist RIs in complying with the requirements of NI 52-109. These national results are consistent with issues observed by ASC staff in reviews of Alberta RIs. Given the significant number of cases where RIs were asked to refile certificates or restate MD&A because of non-compliance with the new NI 52-109 requirements, it appears that RIs were either unfamiliar with the changes, or did not appreciate the implications of some of their disclosure. As illustrated by the current year's statistics, 49 per cent of restatements were attributed to certification issues (as compared to 36 per cent for the prior year). Certifying officers, preparers of CD,

<sup>11</sup> Proposals exposed for comment on September 25, 2009 include: National Instrument 52-107 *Acceptable Accounting Principles*; National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*; National Instrument 51-102 *Continuous Disclosure Obligations*; National Instrument 71-102 *Continuous Disclosure and Other Exemptions*; National Instrument 41-101 *General Prospectus Requirements*; National Instrument 44-101 *Short Form Prospectus Distributions*; National Instrument 44-102 *Shelf Distributions*; *ASC Rules (General)*; and National Instrument 14-101 *Definitions*. Copies of these proposed changes can be found on the ASC website in the category for the specified instrument under Securities Law and Policy, Instruments and Policies.

<sup>12</sup> Proposals exposed for comment on October 16, 2009 include: National Instrument 81-101 *Mutual Fund Prospectus Disclosure*; National Instrument 81-102 *Mutual Funds*; National Instrument 81-104 *Commodity Pools*, National Instrument 81-106 *Investment Fund Continuous Disclosure*; and National Instrument 45-106 *Prospectus and Registration Exemptions*. Copies of these proposed changes can be found on the ASC website in the category for the specified instrument under Securities Law and Policy, Instruments and Policies.

<sup>13</sup> National Instrument 51-101 – *Standards of Disclosure for Oil and Gas Activities* proposed amendments published for comment December 18, 2009 includes among other things, proposals that relate to IFRS changeover.

management of RIs and their advisors should familiarize themselves with CSA Notice 52-325 in preparation for year-end reporting to avoid the errors identified in this notice.

### **The Alberta Experience**

In Alberta, many small- to medium-sized RIs tend to operate with a small staff complement and as a result, lack appropriate segregation of duties. To remedy this situation, the RI's audit committee or board of directors will review and approve certain key transactions. However, there may be few other resources or procedures that would act as a compensating control for lack of appropriate segregation of duties. Oversight by the audit committee or the board of directors by itself is a mitigating procedure and NOT a compensating control<sup>14</sup>. In making this determination RIs should consider:

- evidence of extensive involvement by directors;
- the nature of procedures performed;
- the volume of transactions; and
- the complexity of the business.

Accordingly, staff would generally expect that the certifying officers would conclude that internal control over financial reporting (ICFR) was not effective, but they may wish to include disclosure of the mitigating procedures. If the certifying officers conclude that ICFR is not effective, this would almost always indicate that disclosure controls and procedures (DC&P) are not effective as well.

Staff also observed cases where ambiguous language in the MD&A made it unclear whether a definitive conclusion on ICFR or DC&P was made. An explicit conclusion on whether ICFR and DC&P are effective is required.

In other cases, the RI rolled forward their prior period disclosure on DC&P and ICFR, while not understanding the implications under the new rule of their old disclosure on weaknesses or prior period weaknesses that no longer existed, but were nonetheless disclosed.

In one situation, the RI discussed a number of weaknesses relating to the design of ICFR but concluded that the ICFR was effective. When questioned by staff, the RI responded that the items discussed were not necessarily "material weaknesses". To minimize confusion for the reader, it is important to discuss "material weaknesses" and "weaknesses that are significant" and not include additional detail that confuses the intended message. Certifying officers may not qualify their assessment by stating that the RI's ICFR or DC&P is effective subject to certain qualifications or exceptions unless the qualifications pertain to one of the permitted scope limitations.

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<sup>14</sup> CSA Notice 52-325 states that staff believe that the threshold is high for the additional involvement of the audit committee or board of directors to constitute a compensating control rather than a mitigating procedure.

**Example 1**

**Example of language that is not considered acceptable**

*Staff comments:*  
*The disclosure is deficient because the statement “except as noted above” is a qualification and suggests that the Company cannot unequivocally conclude that controls are effective. The RI should make an explicit statement of whether controls are effective or ineffective.*

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**RI disclosure**

**MD&A excerpt**

“while management believes that the Company’s controls provide a reasonable level of assurance that they are effective (except as noted above) they do not expect such controls and procedures to prevent all errors and fraud”...

This language implies there is a qualification.

### 7.3 Executive Compensation

A new executive compensation form, Form 51-102F6, *Statement of Executive Compensation* (51-102F6) is effective for financial years ending on or after December 31, 2008. This new form must be filed with the RI’s information circular or AIF (if the RI is not sending an information circular). RIs not filing an AIF are required to provide disclosure in accordance with NI 51-102 s.11.6.

During the year, CSA staff members, including ASC staff, reviewed executive compensation disclosure to monitor whether the new changes are working as intended.

CSA Notice 51-331 notice discusses the results from CSA staff reviews and outlines recurring problem areas where RIs failed to comply with the new executive compensation reporting requirements. Preparers of CD, management of RIs and their advisors should review in detail, the concerns described in CSA Notice 51-331 when preparing executive compensation disclosure for year-end reporting.

### 7.4 Reviews of Mining Issuers

Staff reviewed a number of Alberta-based RIs in the mining industry and noted some recurring problem areas. We have summarized these issues below.

#### Recurring MD&A Compliance Issues

- Insufficient discussion of the progress and plans for key exploration and development projects. For example, news releases sometimes contain more recent and detailed information or information that is inconsistent with the MD&A. (51-102F1, item 1.4d)
- Boilerplate liquidity and capital resources discussion. It is unclear how the planned work will be financed in the immediate and near future. (Also, refer to Section 5.1 and 5.2 (MD&A) in this CD Report.)

- Insufficient explanation to be able to understand related party transactions. Disclosure needs to better explain the terms and the business purpose for the transaction. (51-102F1, item 1.9)
- Failure to provide a breakdown and analysis of material components of exploration costs (both capitalized and expensed) on a property-by-property basis. (NI 51-102, s. 5.3)
- Disclosure is unbalanced, overly promotional or misleading. In a number of cases, we requested that the RI refile the offending disclosure. All of the NI 52-109 certificate forms require an explicit “no misrepresentation” and “fair presentation” representation by the certifying officer. Certifying officers should be mindful that a misrepresentation on an NI 52-109 certificate could be subject to quasi-criminal, administrative or civil proceedings under securities law (see s. 18.1 of the Companion Policy to NI 52-109.)

### **National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) Compliance Issues**

- In some cases, non-compliant technical disclosure was found on RIs’ websites. NI 43-101, Part 2 sets out the requirements applicable for all disclosure. NI 43-101, Part 3 sets out additional requirements for written disclosure. These requirements are applicable to content posted on RIs’ websites.
- Unsubstantiated references to major mineral findings disclosed in news releases with no technical data to support these references.
- Selective disclosure of technical data in news releases. For example, a RI referred to “major mineral findings” for Zone 1 of Project X. The technical data for this zone indicated “carbonate minerals” rather than a presentation of the precious metal-bearing minerals (i.e., economic minerals). Upon further inquiries by staff, it was determined that the technical data did not support a “major mineral finding”. Carbonate minerals could provide an indication of a favourable host-environment for economic minerals in some circumstances. However, the presence of carbonate minerals by themselves does not support the potential or existence of actual economic minerals.
- Failure to provide the consent of the qualified person when a technical report is filed. The consent requirements are set out in Part 8 of NI 43-101.
- Failure to provide the required support for historical data (such as estimates) set out in a technical report (e.g., source of the information, dates and applicable disclaimers). (NI 43-101, Parts 2 and 3).
- Failure to name the “qualified person” in all documents and their relationship to the RI. (NI 43-101, s. 3.1)
- Use of a “qualified person” who did not have the qualifications described in NI 43-101 s. 1.1.
- Failure to file a form 43-101F1 *Technical Report* (43-101F1).

NI 43-101 s.4.2 lists the events that trigger the requirement to file a technical report. One of the most common errors encountered is the failure to file a report when:

- there is a news release that contains first-time disclosure of a preliminary assessment, resources or reserves related to material property (NI 43-101, s. 4.2(j)(i)) (emphasis added); or
- there is disclosure of material changes to a property that was subject to a previously filed 43-101F1 (NI 43-101 s.4.2 (j) (ii)).

- Management should adopt disclosure practices to control the disclosure of material information about the RI<sup>15</sup>. This includes establishing a process to review and authorize disclosure and control the risk of unauthorized disclosure.

In one case, we found disclosure about a material property in a third-party research report filed on a third-party website. The RI was aware of this research report. However, the RI had not filed a 43-101F1 that supported the information contained in this research report. We requested that the RI:

- (1) file a news release to disassociate themselves from the information disclosed by the third party and warn readers not to rely on it; and
- (2) require the third-party to remove the report from their website.

Alternatively, the RI could file a news release disclosing the existence of the third party report. This news release would trigger the filing of a 43-101F1 to support the third party information (NI 43-101 s.4.2 (j)).

- Often staff identified deficiencies relating to the technical report because it did not comply with the 43-101F1 requirements. These deficiencies are easily avoidable. Prior to filing a technical report, filers should obtain the 43-101F1 from the ASC website and use this as a checklist to conduct a completeness test.

### **GAAP Issues**

- CICA HB Accounting Guideline 11 (AcG-11) paragraph 32(c) requires disclosure of amounts expensed to date on a project. Some RIs failed to provide this disclosure.
- AcG-11 paragraph 33 encourages development stage enterprises to provide cumulative inception to date balances on the cash flow and income statements. A number of RIs did not provide this information.

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<sup>15</sup> Refer to NP 51-201, Part 6 which discusses the need for RIs to adopt disclosure practices that will enhance the quality of information provided to investors and minimize the risk of non-compliance with securities legislation.

## 7.5 Forward-looking Information (FLI) Requirements

CSA staff conducted CD reviews on the application of FLI requirements and summarized their findings in CSA Notice 51-330. This notice identifies areas where disclosure of FLI is deficient as well as areas where disclosure of FLI can be enhanced.

In Alberta, since the implementation of the FLI requirements in NI 51-102 (December 31, 2007) and the prior year's focus by ASC staff on educating RIs on these new requirements, we have noted some improvements in this area.

The following principles are key:

- Any material differences between actual results and previously disclosed material FLI must be discussed in the MD&A.

Many RIs disclosed FLI measures such as exit rates of production, anticipated pricing, anticipated revenues and cash flows in prior reporting periods. As part of discussing current year-end results, where there are material differences, we expect a discussion of actual results against previously disclosed FLI. (NI 51-102, Part 5.8)
- Clearly identify the material factors or assumptions used. The reader should be able to clearly distinguish the disclosure of material assumptions from disclosure of risk factors.
- Future-oriented financial information (FOFI) and financial outlook disclosure should consider the effect of IFRS changeover. For example, MD&A for financial periods in 2010 may include FOFI or financial outlooks relating to the 2011 time period. In such cases, the FOFI or financial outlook should be prepared using IFRS accounting principles. (NI 51-102, s. 4B.2(2)(b).)
- Economic outlook for the business is often discussed in MD&A. To the extent this discussion includes FLI, it should comply with NI 51-102 Part 4A and 4B (FLI Rules).
- At times, news releases and presentations filed on company websites did not comply with the FLI Rules. RIs should be mindful that the FLI Rules apply to all written disclosure. (NI 51-102, s.4A.3.)
- Absent evidence to the contrary, disclosure of targets or goals is generally considered FLI as defined in securities legislation<sup>16</sup>. It is assumed that RIs will only disclose a target or goal if its achievement is possible. To the extent that management determines that a disclosed material target or goal does not constitute material FLI, management should provide additional disclosure to explain the purpose for providing disclosure about the material target or goal.

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<sup>16</sup> Refer to CSA Notice 51-330 section 5 for further information.

## Example 1

### Example of disclosure that met our expectations

*Staff comments:*

*This disclosure describes the specific FLI statements contained in the MD&A. In addition, the discussion clearly distinguishes between risk factors and material assumptions enabling the reader to readily identify this information.*

### RI Disclosure

#### Forward-looking Information

This interim MD&A contains information that constitutes "forward-looking information" within the meaning of applicable securities legislation. This forward-looking information includes... statements regarding:

- increases in the 2009 drilling program;
- business strategy and plans;
- expected sources of funding for the capital program;
- expected production to meet fixed price sales contract commitments;
- statements about results of operations or performance...

Each of the forward-looking information listed above are based on Company A's 2009 capital program as announced on February xx, 2009. The material assumptions supporting the 2009 capital program are (1) 2009 annual production of approximately \_\_mboe/d; (2) a US\$/bbl WTI oil price for 2009 and (3) a US\$/mmbtu NYMEX natural gas price for 2009...

Undue reliance should not be placed on forward-looking information. Forward-looking information is based on current expectations, estimates and projections that involve a number of risks which could cause actual results to vary...The material risk factors include, but are not limited to:

- the uncertainty of reserves estimates, reserves life and underlying reservoir risk;
- the uncertainty of estimates and projections relating to production, costs and expenses;
- the impact of the economy and credit crisis;
- fluctuations in oil and gas prices;
- uncertainties as to the availability and cost of financing and changes in capital markets...

## Example 2

### Example of disclosure that is deficient

*Staff comments:*

*This disclosure is deficient because it states that assumptions are made but does not specify the actual assumptions. For example, the RI should have disclosed their assumptions about oil prices, exchange rates and key operating cost assumptions for Project X.*

### RI Disclosure

#### Forward-Looking Information

FORWARD-LOOKING INFORMATION

Certain statements contained herein are forward-looking statements, including...statements relating to: the

expected production performance of the Project X (the Project) ... the Company's financial outlook respecting the estimate of the netback for Phase 1 of the Project; anticipated financial condition and liquidity over the next 12 to 24 months; and our estimated future tax asset.... Readers are cautioned not to place undue reliance on forward-looking information... By its nature, forward-looking information involves numerous assumptions, inherent risks and uncertainties. A change in any one of these factors could cause actual events or results to differ materially from those projected in the forward-looking information...The forward-looking statements are based on a number of assumptions that may prove to be incorrect...The Company has made assumptions regarding...market costs and other variables affecting operating costs of the Project; the ability of joint venture partners to obtain equipment, services and supplies, including labour, in a timely and cost-effective manner; the availability and costs of financing; oil prices; foreign currency exchange rates and hedging risks...

**7.6 Conversion of Income Trusts Back to Corporate Entities**

On June 12, 2007, the Government of Canada enacted legislation to impose additional income taxes on publicly traded income trusts and limited partnerships (Specified Investment Flow-Through Entities or SIFT), effective January 1, 2011. As a result, we are beginning to see some income trust RIs restructure back to corporate entities. Restructuring an income trust entity in response to the SIFT income tax rules may trigger a number of reporting obligations under securities law. We have summarized some of the more common obligations below:

<p><b>Information circular</b></p>	<p>The transaction to convert back to a corporate entity will often require the mailing of a circular to enable shareholders to vote on the proposal. Form 51-102F5 <i>Information Circular</i> (51-102F5) item 14.2 requires "prospectus level" disclosure for certain entities involved in the transaction. 51-102CP, section 9.2 states that the relevant form of prospectus applicable to each entity depends on what the entity would be eligible to use at the time that the circular is filed. In other words, certain entities involved in the transaction may be not be qualified to use prospectus-level disclosure under the short form prospectus form (i.e., 3 years historical financial statements would be required).</p> <p>If the restructuring transaction is accounted for as a reverse takeover, this will also affect the financial statements required in the circular for each of the reverse takeover acquirer and reverse takeover acquiree.</p> <p>If the transaction gives rise to a proposed business acquisition, the information circular would need to include prospectus-level disclosure for the acquiree. (Also refer to the business acquisition report discussion below.)</p> <p>Where the filer wishes to seek relief from the requirements in 51-102F5, an exemption order must be obtained from the principal regulator<sup>17</sup> prior to the mailing of the circular. Therefore, filers should budget sufficient time to complete the exemptive relief application process.</p> <p>If the circular does not contain prospectus level disclosure for the entities involved in the proposed transaction, staff cannot grant retroactive relief after the circular has been mailed. As a result, the circular is deficient;</p>
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<sup>17</sup> see Part 6 of National Policy 11-203 Process for Exemptive Relief Applications

	<p>the RI is in default of their CD requirements and may not be able to file a short form prospectus in the future.</p>
<p><b>Filing of financial statements after becoming a reporting issuer</b></p>	<p>Where the nature of the restructuring transaction gives rise to a new RI, refer to the financial statement filing requirements set out in NI 51-102 s. 4.7.</p>
<p><b>Business acquisition report (BAR)</b></p>	<p>It is necessary to carefully review the requirements in NI 51-102, Part 8 to determine if the restructuring triggers a BAR filing and if so, what financial statements will be required.</p> <p>Depending on the nature of the restructuring transaction, the new entity may be “acquiring” a portion of the business from the former income trust. In cases where the transaction cannot be accounted for as a reverse takeover or reorganization under common control, management should determine if the transaction triggers the requirement to file a BAR.</p> <p>Under NI 51-102 Part 8, a business is defined to include an interest in an oil and gas property to which reserves have been attributed. Therefore, a transfer of oil and gas properties from one legal entity to another may trigger the filing of a BAR.</p> <p>Some income trusts may first transfer the business to an intermediate entity that eventually transfers the business into the new corporate entity. This intermediate entity may be set up for tax planning purposes. This arrangement may constitute an “indirect acquisition” for the purposes of applying the significance tests and determining the financial statements to be included in a BAR (51-102CP s. 8.7(8)).</p>
<p><b>Reverse takeover filings</b></p>	<p>The reverse takeover filings pursuant to NI 51-102 are based on reverse takeover transactions recognized under GAAP. Depending on the nature of the restructuring transaction, a reverse takeover transaction, for accounting purposes, may have occurred.</p> <p>Under NI 51-102, a reverse takeover acquirer is defined to be the accounting parent or the legal subsidiary. We have seen cases where management failed to correctly identify the reverse takeover acquirer and as a result, the continuous disclosure record did not contain the correct financial statements for the correct entity or the correct time period. NI 51-102 s. 4.10 sets out the financial statement filing requirements for reverse takeover transactions.</p> <p>Also, 51-102CP s. 3.8(2) discusses the requirement for the reverse takeover acquiree or legal parent to file their final set of financial statements and MD&amp;A under NI 51-102 s. 4.1 and 4.3 for the period ending <u>before</u> the date of the reverse takeover transaction even if the filing deadline for these documents occurs <u>after</u> the date of the reverse takeover transaction.</p> <p>If the year end of the reverse takeover acquirer (legal subsidiary) is different than that of the reverse takeover acquiree (legal parent), NI 51-102 s. 4.8 requires the filing of a change in year-end notice. (Also refer to section 8.1, Recurring Errors and Deficiencies in Commonly Filed Securities Documents, of this CD Report.)</p>

<b>Change in corporate structure</b>	NI 51-102 s. 4.9 sets out the requirements for filing a change of corporate structure notice.
<b>Documents affecting the rights of security holders and material contracts</b>	NI 51-102 s. 12.1 requires the filing of documents affecting the rights of security holders. NI 51-102 s. 12.2 requires the filing of material contracts. As a result of the restructuring transaction, any new constating documents, shareholder agreements, documents affecting the rights of security holders and/or new material contracts must be filed.
<b>MD&amp;A discussion of business performance</b>	While the legal structure of the entity operating the business has changed, it is likely that the underlying business has not changed substantially. Where “continuity of interests” accounting is not appropriate, staff would expect a meaningful analysis of the current period’s business results against prior periods <sup>18</sup> . Specifically, management should compare key performance indicators in the current period to prior periods (e.g., sales, operating expense, gross margins) even if the legal structure has changed.
<b>Completeness of CD filings under the RI’s System for Electronic Document Analysis and Retrieval (SEDAR) profile</b>	<p>Upon the completion of the transaction, ensure that the CD record contained in the RI’s SEDAR profile is complete.</p> <p>We have observed cases where a short form prospectus is filed and incorporates by reference documents that are filed in a different SEDAR profile. The requisite documents must be filed in the RI’s SEDAR profile or the predecessor’s SEDAR profile (if the predecessor’s SEDAR profile is physically linked to the RI’s SEDAR profile) before these documents can be incorporated by reference into the short form prospectus.<sup>19</sup></p> <p>Similar to the above discussion, any information incorporated by reference into an RI’s BAR must be filed in the RI’s SEDAR profile or the predecessor’s SEDAR profile (if that profile is appropriately linked).</p>
<b>Qualification to file a short form prospectus</b>	Entities emerging from the restructuring transaction should review the applicable sections in Part 2 of National Instrument 44-101 <i>Short Form Prospectus Distributions</i> (NI 44-101) to determine if (and how) they are qualified to file a short form prospectus.

<sup>18</sup> refer to 51-102F1 s.1(o)

<sup>19</sup> Note – Clearly identify what is being incorporated by reference into the short form prospectus (see Form NI 44-101F1, *Short Form Prospectus* (44-101F1) instruction 5). If the RI’s short form prospectus incorporates by reference the entire information circular containing information about the restructuring transaction (including the fairness opinion), then expert’s consent for the fairness opinion must be filed (NI 44-101 s. 4.2).

In cases where an RI failed to meet a particular reporting obligation, the RI is placed in default. This may delay or impede the RI's ability to access the capital markets as time and resources are required to remedy the default. For example, we have seen some RIs unable to access the short form prospectus system because they failed to file a BAR.

If management is unclear about a particular reporting obligation or feels that an exemption should be provided because of unique circumstances, they should discuss these issues further with staff on a pre-filing basis. Generally, staff cannot recommend that relief be granted on arguments solely based on time and cost considerations. Since the ASC does not have the authority to grant retroactive relief, management should allow sufficient time to process requests for exemptive relief applications and pre-filing inquiries.

## 8. Other Considerations

### 8.1 Recurring Errors and Deficiencies in Commonly Filed Securities Documents.

Among other activities, the ASC's CD compliance team:

- monitors RI filings on a daily basis;
- notifies RIs of certain filing deficiencies and defaults;
- processes certain cease trade order revocation applications; and
- maintains the ASC's Reporting Issuer List.

For this year's report the CD compliance team have summarized below, some common filing errors and tips on how to avoid these errors.

Type of Error or Deficiency	Our Observations
<p>Filing NI 51-101 s.2.2 news release under the correct SEDAR category</p>	<p>Oil and gas RIs are required to file a news release concurrently with filing their NI 51-101 statement of reserves and reports of management and directors (51-101 Filings). The purpose of this news release is to announce the 51-101 Filings and to indicate where a copy of the 51-101 Filings can be found for viewing by electronic means (NI 51-101, s. 2.2).</p> <p>This news release must be filed under the SEDAR category labelled "<i>News Release (section 2.2 of NI 51-101)</i>". In various instances RIs did not file the required news release or filed it under the incorrect SEDAR category (i.e., under the typical "<i>News Release</i>" category).</p> <p>ASC CD compliance staff run automated processes to retrieve documents filed under this SEDAR category to determine whether an oil and gas RI has complied with their NI 51-101 reporting obligations. Failure to file the news release under the correct SEDAR category may result in the RI being inadvertently noted in default because staff were not able to retrieve the required information. This is particularly relevant when RIs include their 51-101 Filings in their AIF.</p>
<p>Decision to refile a CD document or restate financial information</p> <p>Filing a news release in a timely manner</p>	<p>In some cases, we observed that RIs did not file a news release at the time they made the decision to refile a CD document or restate financial information. Instead, a news release was filed only at the time that the actual restated or refiled document was filed on SEDAR.</p> <p>Pursuant to NI 51-102 s. 11.5, a news release must be <u>immediately</u> filed if an RI <u>decides</u> that they will (emphasis added):</p> <ol style="list-style-type: none"> <li>(1) refile a document under NI 51-102; or</li> <li>(2) restate financial information for comparative periods in financial</li> </ol>

<p>Providing adequate disclosure about the restatement or refilings in the news release</p>	<p>statements for reasons other than retroactive application of a change in accounting standard or adoption of a new accounting standard;</p> <p>and the information in the refiled or restated document, differs materially from the information originally filed.</p> <p>This news release must disclose the nature and substance of the changes or proposed changes. 51-102CP s. 11.2 provides guidance about the disclosure that should be included in the news release. Under this guidance, the news release should disclose:</p> <p>(1) the facts underlying the changes;</p> <p>(2) the general impact of the changes on previously filed information; and</p> <p>(3) the steps the issuer would take before filing an amended document, or filing restated financial information, if the issuer is not filing amended information immediately.</p> <p>In certain circumstances RIs did not disclose the general impact of the changes on previously filed information. In staff's view, RIs should disclose the <u>general</u> impact of the changes on previously filed information at the time they decide to restate or refile even though they may still be in the process of determining the <u>exact</u> amount of the change. We believe that management would know the general impact of the changes on previously filed information in order to make the decision to refile or restate. Therefore, we would expect that this information be disclosed at the time of filing the news release.</p> <p>In cases where the refiling or restatement involves an annual or interim filing as defined under NI 52-109, filers should also refer to NI 52-109 to identify the appropriate form of certificate to accompany the refiled or restated documents.</p>
<p>Financial statements of the reverse takeover acquirer for periods before a reverse takeover</p>	<p>During the year some RIs that completed a reverse takeover (RTO) neglected to file certain financial statements required for the RTO acquirer (accounting parent) or filed them late.</p> <p>In the circumstances where an RI completes an RTO, NI 51-102 s. 4.10 sets out the requirements for filing financial statements for the RTO acquirer. Generally, this is the reporting period(s) that follows the period for which financial statements were included in an information circular or similar document for the RTO acquirer. This requirement enables the public to access financial statements for all reporting periods even if there is a substantial time gap between the initial filing of the circular or similar document and the date that the RTO is completed.</p> <p>Preparers of CD filings, management of RIs and their advisors should also pay particular attention to the filing deadlines set out in NI 51-102 section 4.10. In some cases, the filing deadline will be ten days after the date of the RTO.</p>
<p>Reverse takeover transactions and</p>	<p>Upon completion of an RTO where the RI's year-end <u>after</u> the transaction does not match the year-end of the RTO acquirer (accounting parent/legal</p>

<p>resulting change of year-end</p>	<p>subsidiary) <u>before</u> the transaction, the RI is required to file a notice of change in year-end under 4.8 of NI 51-102.</p> <p>The filing of a change in year-end notice can be triggered even if the year end of the RI has not changed.</p> <p>For example:</p> <table border="1" data-bbox="597 417 1427 573"> <thead> <tr> <th>Entity</th> <th>Description</th> <th>Y/E before RTO</th> <th>Y/E after RTO</th> </tr> </thead> <tbody> <tr> <td>RI</td> <td>RTO acquiree</td> <td>Dec. 31</td> <td rowspan="2">Dec. 31</td> </tr> <tr> <td>Private co.</td> <td>RTO acquirer</td> <td>Mar. 31</td> </tr> </tbody> </table> <p>In the above example, the RI's year-end did not change. However, the year-end of the RTO acquirer <u>before</u> the transaction does not match RI's year-end <u>after</u> the transaction. Therefore, NI 51-102 s. 4.10(1) triggers the RI to file a change in year-end notice in accordance with s.4.8 of NI 51-102.</p> <p>This change in year-end notice is necessary because GAAP requires that the comparative information presented in the RI's financial statements on a go forward basis be that of the RTO acquirer.</p>	Entity	Description	Y/E before RTO	Y/E after RTO	RI	RTO acquiree	Dec. 31	Dec. 31	Private co.	RTO acquirer	Mar. 31
Entity	Description	Y/E before RTO	Y/E after RTO									
RI	RTO acquiree	Dec. 31	Dec. 31									
Private co.	RTO acquirer	Mar. 31										
<p>Revocation of cease trade order application</p>	<p>The RI should file their CD documents for all the required reporting periods prior to submitting an application to revoke a cease trade order. The required CD filings are considered a critical component of the revocation application package. One reason for the delay in processing revocation applications is due to the submission of an incomplete application.</p> <p>Once staff have issued comments to the filer, the filer should also ensure that staff comments are responded to and resolved on a timely basis. One common delay on revocation applications results from the requirement to file additional CD documents for subsequent periods while the revocation application is still under review. These subsequent filings are also subject to staff review. Therefore, filers may receive multiple staff comment letters because the number of reporting periods subject to staff's review increases with the passage of time.</p> <p>National Policy 12-202 <i>Revocation of a Compliance-Related Cease Trade Order</i> and ASC Policy 12-601 <i>Applications to the ASC</i> sets out the requirements for a revocation of a cease trade order application. Both publications can be found on the ASC website. Filers should refer to these publications for further information.</p>											

## 9. Priorities for the Coming Year

In the coming year, CD reviews will continue to be a high priority. RIs should endeavour to improve the quality of their CD and avoid the use of boilerplate, vague and generic disclosure. Staff will review CD with an emphasis to ensure that:

- Disclosure is timely.
- There is balanced disclosure of both favourable and unfavourable events.
- Disclosure is not overly promotional. Disclosure should be factually balanced with relevant risks sufficiently highlighted.
- If material forward-looking statements are disclosed, these statements are properly identified and there is sufficient discussion of assumptions and risks. We will also continue to monitor whether RIs provide a discussion of actual results against previously disclosed FLI where there are material differences.
- In areas where significant judgement is applied, a thorough discussion of the underlying assumptions and areas of measurement uncertainty is provided.
- There is sufficient information to assess the RI's ability to continue to operate the business in the near term and ability to obtain required funding for operating and capital needs.
- Disclosure is provided in enough detail to enable the reader to understand how uncertain economic conditions could impact the RI's business.
- Financial statements are prepared in accordance with GAAP.
- Staff will continue to monitor MD&A and AIF filings to ensure that disclosure of environmental matters complies with securities legislation and provides investors with meaningful information about the RI's exposure to environmental risks, environmental protection regulations and related obligations and commitments<sup>20</sup>.

Each year we monitor new changes in the accounting and regulatory environment as well as current developments in the capital markets. This information may be used to determine future reviews.

As the 2011 IFRS changeover date approaches, we will continue to scrutinize disclosure about an RI's preparedness for IFRS changeover.

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<sup>20</sup> MD&A requires disclosure of any resulting commitments and other obligations that arise from environmental regulations, including anticipated amounts and timing to fund these commitments or obligations and any critical accounting estimates arising from this (51-102F1 item 1.6 (instructions) and item 1.12).

AIF disclosure:

- Relevant risk factors particular to the environment that are common to the industry (Form NI 51-102F2 item 5.2.); and
- Environmental protection requirements and policies that the business may be subject to (Form NI 51-102F2 Annual Information Form item 5.1).

## 10. Conclusion

Generally, we are satisfied with the results of our reviews. We have observed incremental improvements to CD over time. We are encouraged that management of RIs and their advisors take our comments seriously. With the increasing complexity of the business environment and further uncertainties brought on by volatile commodity prices and capital markets, it is critical for the RI to find ways to help the reader to understand their business. RIs should strive to continuously improve the quality of disclosure by providing clear and insightful analysis, detailed discussion and useful explanations in their CD.

## 11. Contact Personnel

### Feedback on Reviews

We welcome comments on the CD Report. Staff endeavour to give practical and relevant guidance to assist RIs in providing meaningful disclosure to the public. With numerous changes to securities legislation and more complex accounting principles, filers should consult with our staff when they have questions about their filing obligations. To facilitate a thorough discussion of the issues, we expect that the inquirer will have researched the matter prior to contacting staff.

From time to time, the ASC will also host “breakfast seminars” on various topics related to securities requirements including CD matters. A breakfast seminar on CD reviews is scheduled for January 19, 2010. Details about this seminar and future seminars can be found on the ASC website. In addition to hosting in-person presentations, staff will also consider developing web-based presentations in the future. Archived presentation slides and related reference materials from past seminars are also available on the ASC website<sup>21</sup>.

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<sup>21</sup> Archived presentation materials are available on the ASC website under the “news and publications, events and presentations” section.

Comments about this report may be directed to the following individuals<sup>22</sup>:

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### **Secondment to the ASC**

In the past, public accounting firms have seconded staff to the ASC. We thank them for their invaluable contributions. Any public accounting firm or public corporation that is interested in having a senior professional accountant obtain valuable experience with the ASC in the areas of financial reporting including accounting, financial reporting, MD&A analysis and securities legislation (e.g., CD rules, prospectus rules and participation in policy setting committees) should contact any of the above noted individuals to discuss details of our secondment program.

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<sup>22</sup> One of the primary writers of this report, Jennifer Wong is presently away on maternity leave. Questions about this report can also be directed to her attention upon her return in May 2010. Contact information: Jennifer Wong, CA, Senior Securities Analyst, Corporate Finance (403) 297-3617, jennifer.wong@asc.ca