

Notice

Request for Comment

Draft Regulation to repeal National Policy No. 48, Future-Oriented Financial Information

Draft Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations

And Related Consequential Amendments

Introduction

We, the Canadian Securities Administrators (CSA), are publishing for comment proposed amendments to several national instruments and forms to implement requirements for forward-looking information, including future-oriented financial information (FOFI) and financial outlooks such as earnings guidance. We are proposing to include the requirements in Regulation 51-102 respecting Continuous Disclosure Obligations (Regulation 51-102), and are also proposing related amendments to Form 51-102F1 Management's Discussion and Analysis (Form 51-102F1) and Policy Statement to Regulation 51-102 (Policy Statement 51-102). In addition, we propose to amend the following instruments to require that forward-looking information included in an offering document comply with the requirements set out in Regulation 51-102:

- Form 44-101F1, Short Form Prospectus (Form 44-101F1)
- Form 45-101F, Information Required in a Rights Offering Circular (Form 45-101F)
- Form 45-106F2, Offering Memorandum for Non-Qualifying Issuers (Form 45-106F2) and Form 45-106F3, Offering Memorandum for Qualifying Issuers (Form 45-106F3)
- Schedule 1, Information Required in a Prospectus, of Regulation Q-28 respecting General Prospectus Requirements (Schedule 1 of Regulation Q-28).

We propose to repeal National Policy No. 48, Future-Oriented Financial Information (NP 48) and, in Québec, Regulation Q-11 respecting Future-Oriented Financial Information (Regulation Q-11) and section 50 of the Securities Regulation. We also propose to amend National Policy 51-201 *Disclosure Standards* (NP 51-201) to remove references to NP 48 and earnings guidance.

The proposed requirements for FOFI are similar to certain elements in NP 48. The proposed requirements for earnings guidance and other forward-looking information either previously existed as requirements in Form 51-102F1, as policy guidance in NP 51-201 or did not exist.

We are publishing the proposed amendments to the regulations with this Notice. You can find them on websites of CSA members, including the following:

- www.bcsc.bc.ca
- www.albertasecurities.com
- www.sfsc.gov.sk.ca
- www.msc.gov.mb.ca
- www.osc.gov.on.ca
- www.lautorite.qc.ca
- www.nbsc-cvmnb.ca
- www.gov.ns.ca/nssc

We are publishing

- a regulation to repeal NP 48
- a regulation to repeal Regulation Q-11
- a regulation to amend Regulation 51-102
- amendments to Policy Statement 51-102
- a regulation to amend Regulation 44-101 respecting Short Form Prospectus Distributions

- a regulation to amend Regulation 45-101 respecting Rights Offerings
- a regulation to amend Regulation 45-106 respecting Prospectus and Registration Exemptions
- amendments to Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions
- amendments to NP 51-201
- a regulation to amend Regulation Q-28
- amendments to Companion Policy Q-28, *General Prospectus Requirements* (CP Q-28)
- a regulation to amend the Securities Regulation.

Background, substance and purpose of the amendments

NP 48 specifies how FOFI should be prepared, updated and compared to actual, and specifies when an auditor should be involved. Since NP 48 was issued in 1993, there has been confusion in the market as to the applicability of NP 48 to other types of forward-looking information, such as earnings guidance.

In 2002, the CSA issued NP 51-201, which includes best disclosure practices for earnings guidance and for updating forward-looking information. However, issuers continue to question the applicability of NP 48 to earnings guidance and other financial outlooks.

In addition to NP 48 and the material on earnings guidance in NP 51-201, Form 51-102F1 includes instructions to issuers who prepare forward-looking information in management's discussion and analysis (MD&A).

We have concluded that the provisions for FOFI currently contained in NP 48 for comparison to actual, updating and withdrawal should also apply to financial outlooks such as earnings guidance. We also propose to place all requirements for forward-looking information in one location, in Regulation 51-102. This will allow us to rescind NP 48, delete provisions of NP 51-201, and eliminate certain instructions in Form 51-102F1. We believe this approach will result in streamlined regulation that will simplify and clarify our expectations for issuers who prepare forward-looking information.

Forward-looking information is not currently defined in the securities legislation of all jurisdictions, although these jurisdictions expect to propose amendments to their legislation to adopt a definition. Forward-looking information will be defined as "disclosure regarding possible events, conditions or results of operations that is based on assumptions about future economic conditions and courses of action and includes future oriented financial information with respect to prospective results of operations, financial position or cash flows that is presented either as a forecast or a projection."

Summary of proposed amendments

We have summarized the proposed amendments in Appendix A.

Alternatives considered

We considered whether a stand-alone instrument should replace NP 48 and the material on earnings guidance in NP 51-201. However, given that the majority of forward-looking information occurs in the continuous disclosure of reporting issuers, we decided that Regulation 51-102 is the appropriate location for these requirements.

Anticipated costs and benefits

The CSA recognize the value of forward-looking information in many circumstances, but also recognize the serious possibility that such information may mislead investors unless it is appropriately prepared and presented with full disclosure of the underlying assumptions and the associated risks.

We expect that the proposed amendments will result in improved quality and consistency of forward-looking information regardless of where it is presented and how it is released. Issuers will benefit from the fact that the requirements will now be in one location and will apply to all forward-looking information,

regardless of where it is presented. The costs of compliance with the proposed amendments relate primarily to the involvement of management in the preparation, review and, where required, updating of forward-looking information. The proposed amendments substantially maintain requirements for FOFI currently in NP 48 except that the proposed amendments do not require an auditor's report to accompany any FOFI included in a prospectus or circular. The proposed requirements will therefore result in an overall savings for an issuer that discloses FOFI in an offering document. The requirement for an auditor's report was removed as investors may place inappropriate reliance on an auditor's report with respect to forward-looking information, and as protection to investors exists through prospectus liability provisions. The focus of the requirements relating to forward-looking information should instead be on appropriate preparation and disclosure.

The proposed amendments substantially maintain requirements currently in Regulation 51-102 for forward-looking information included in MD&A and therefore do not impose any additional costs to issuers providing forward-looking information in MD&A. The proposed amendments may impose additional cost for issuers releasing forward-looking information outside of MD&A. This additional cost is not, however, expected to be significant, and will relate primarily to the involvement of management in the preparation, review and, where required, updating of forward-looking information.

Based on its experience to date under NP 48 and the local policies that preceded it, the CSA believe that the benefits of the proposed amendments justify the costs of compliance.

Local Amendments

We are proposing to amend or repeal elements of local securities legislation in conjunction with implementing the proposed amendments to Regulation 51-102. The members of the CSA may publish these local proposed changes separately in their local jurisdictions. In Québec, we propose to repeal Regulation Q-11 and we propose to amend CP Q-28 and Schedule 1 of Q-28. In addition, we propose to repeal section 50 of the Securities Regulation.

Unpublished materials

In proposing amendments to the regulations, we have not relied on any significant unpublished study, report, or other written materials.

Request for comments

We welcome your comments on the proposed amendments.

Please submit your comments on the proposed amendments in writing on or before March 1, 2007. If you are not sending your comments by email, you should also forward a diskette containing the submissions (in Windows format, Word).

Address your submission to all of the CSA member commissions, as follows:

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

Deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

Cameron McInnis, Chair of the National Policy 48 *Future-Oriented Financial Information* Reformulation Committee

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax: (416) 593-8244
e-mail : cmcinnis@osc.gov.on.ca

Anne-Marie Beaudoin, Secretary
Autorité des marchés financiers
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montréal, Québec
H4Z 1G3
Fax : (514) 864-8381
e-mail : consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Questions

Please refer your questions to any of:

Louis Auger
Analyste
Autorité des marchés financiers
(514) 395-0558 ext. 4383
louis.auger@lautorite.qc.ca

Rosetta Gagliardi
Conseillère en réglementation
Autorité des marchés financiers
(514) 395-0558 ext. 4462
rosetta.gagliardi@lautorite.qc.ca

Carla-Marie Hait
Chief Accountant, Corporate Finance
British Columbia Securities Commission
(604) 899-6726 or (800) 373-6393 (if calling from B.C. or Alberta)
chait@bcsc.bc.ca

Fred Snell
Chief Accountant
Alberta Securities Commission
(403) 297-6553
fred.snell@seccom.ab.ca

Blaine Young
Associate Director, Corporate Finance

Alberta Securities Commission
(403) 297-4220
blaine.young@seccom.ab.ca

Ian McIntosh
Deputy Director, Corporate Finance
Saskatchewan Financial Services Commission – Securities Division
(306) 787-5867
imcintosh@sfsc.gov.sk.ca

Bob Bouchard
Director, Corporate Finance
Manitoba Securities Commission
(204) 945-2555
bbouchard@gov.mb.ca

Cameron McInnis
Manager, Corporate Finance
Ontario Securities Commission
(416) 593-3675
cmcinnis@osc.gov.on.ca

David Coultice
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
(416) 204-8979
dcoultice@osc.gov.on.ca

Pierre Thibodeau
Securities Analyst
New Brunswick Securities Commission
(506) 643-7751
Pierre.Thibodeau@nbsc-cvmnb.ca

Bill Slattery
Deputy Director, Corporate Finance and Administration
Nova Scotia Securities Commission
(902) 424-7355
slattejw@gov.ns.ca

The text of the proposed amendments follows or can be found elsewhere on a CSA member website.

December 1st, 2006

Appendix A

Summary of proposed amendments

Amendments to Regulation 51-102

The following is a summary of the proposed requirements for forward-looking information.

(i) Preparation and disclosure required upon initial publication.

We will require issuers to have a reasonable basis for forward-looking information. We also propose broad disclosure requirements for material forward-looking information; specifically, an issuer should:

- identify forward-looking information as such,
- caution users that actual results will vary,
- disclose the material factors or assumptions used to develop the information, and
- disclose the issuer's policy for updating the information if it includes procedures in addition to those described below.

We propose some additional requirements for the assumptions used to prepare FOFI and financial outlooks and disclosure provided upon initial publication of FOFI or a financial outlook. These requirements are consistent with requirements in NP 48 and Section 4250 *Future-Oriented Financial Information* of the Handbook of the Canadian Institute of Chartered Accountants (CICA Handbook). We note in the proposed amendments to Policy Statement 51-102 that Section 4250 of the CICA Handbook is relevant to reporting issuers who release FOFI.

(ii) Updating

We propose to require an issuer to discuss in its MD&A events and circumstances that occurred during the MD&A period that are reasonably likely to cause actual results to differ materially from previously released material forward-looking information, including earnings guidance.

This approach compares to the existing NP 48 requirement that issuers report material changes in the events or assumptions used to prepare FOFI in the same way they report a material change. This approach is also consistent with our current MD&A form which requires issuers to "discuss any forward-looking information disclosed in MD&A for a prior period which, in light of intervening events and absent further explanation, may be misleading."

We propose additional guidance on this topic. Specifically, an issuer should consider whether the events and circumstances that are reasonably likely to cause actual results to differ materially from previously released forward-looking information trigger the material change reporting requirements.

(iii) Comparing to actual

We propose to require an issuer to disclose in its MD&A material differences between actual results and previously released FOFI or financial outlooks for the period to which the MD&A relates. This approach is the same as in NP 48, however we have extended the requirement to earnings guidance.

(iv) Withdrawal

We propose to require an issuer to discuss in its MD&A a decision made during the MD&A period to withdraw previously released material forward-looking information. This would include a discussion of the assumptions underlying the forward-looking information that are no longer valid.

We propose additional guidance on this topic. Specifically, an issuer should consider whether the events and circumstances relating to a withdrawal decision trigger the material change reporting requirements. As well, in order to properly effect a withdrawal, we believe an issuer should promptly communicate its withdrawal decision.

Our proposed approach is similar to the provision in NP 48 that when an issuer withdraws previously issued FOFI, the reasons for the withdrawal should be promptly disclosed in a manner identical to that followed when a material change occurs.

(v) **No audit report on FOFI in an offering document**

NP 48 specified that an auditors' report must accompany any FOFI included in a prospectus or circular. We propose to remove this requirement.

(vi) **Carve-out for oil and gas and mining issuers**

As in NP 48, our proposed requirements for FOFI, financial outlooks and disclosure in MD&A relating to updating, comparison to actual and withdrawal would not apply to disclosure that is subject to requirements in Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities or Regulation 43-101 respecting Standards of Disclosure for Mineral Projects or the conditions of any exemption from these regulations. Those regulations contain the requirements applicable to oil and gas and mining issuers who release such information, and it is not necessary to require such issuers to also comply with many of the requirements in Regulation 51-102.

Amendments to Form 51-102F1 Management's Discussion and Analysis

We propose to amend the Form 51-102F1 to reflect the fact that the requirements for forward-looking information will now be in Regulation 51-102 itself.

Amendments to Policy Statement 51-102

The proposed amendments to Policy Statement 51-102 reflect the changes to Regulation 51-102 described above and provide guidance on how to interpret and apply the requirements for forward-looking information in Regulation 51-102.

Amendments to Other Instruments

We propose to amend the following forms to require that forward-looking information included in an offering document (prospectus, rights offering circular and offering memorandum) comply with the preparation and disclosure requirements set out in Regulation 51-102:

- Form 44-101F1
- Form 45-101F
- Form 45-106F2 and Form 45-106F3
- Schedule 1 of Regulation Q-28.

We propose to repeal sections 5.5, 5.6 and 6.9 of NP 51-201 as the subject matter of these sections will now be included in Regulation 51-102.