

**CSA Staff Notice 51-330****Guidance Regarding the Application of Forward-looking Information Requirements under National Instrument 51-102 *Continuous Disclosure Obligations*****November 20, 2009****Purpose**

The Canadian Securities Administrators (collectively, we or staff) recently conducted continuous disclosure reviews on the application of the forward-looking information (FLI) requirements in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102 or the Rule) that came into effect on December 31, 2007 (New FLI Requirements). We looked at various documents during the course of our reviews including Annual Information Forms, Management Discussion and Analyses, news releases and investor presentations archived on company websites. Although staff requested a number of issuers to improve their disclosure in future filings, our reviews did not result in issuers having to re-file documents in order to correct identified deficiencies.

This notice focuses on areas where we identified deficiencies, as well as areas where we think disclosure of FLI can be enhanced. In addition, we also provide a reminder to issuers of the potential impact of the transition to International Financial Reporting Standards (IFRS) on disclosure of future-oriented financial information (FOFI) and “financial outlooks”.

**1. Identification of FLI**

Section 4A.3 of NI 51-102 requires reporting issuers to identify material FLI as such. The Rule does not prescribe the manner in which an issuer is required to identify material FLI. Section 4A.4 of the Companion Policy to NI 51-102 (51-102CP) provides guidance that the disclosure should be presented in a manner that allows an investor who reads the document or other material containing the FLI to be able to readily identify the material FLI.

Issuers that we reviewed took different approaches to identification. Many issuers identified the material FLI solely through a cautionary paragraph at the beginning or end of the disclosure document. Some issuers included disclosure throughout the document identifying material FLI as it was used. In some cases, issuers consolidated most of their FLI in a particular section such as an “Outlook” section or in a table and then included, in the introduction to this section or table, disclosure identifying the material FLI as such.

Where issuers identify material FLI through a cautionary paragraph at the beginning or end of a disclosure document, we encourage issuers to give readers an indication of the nature of the material FLI covered in the document. In staff’s view, this type of disclosure allows an investor to more readily identify material FLI when it is encountered in the document.

To illustrate this point, some issuers simply identified FLI by referring to the types of words that could potentially be found in a forward-looking statement. For example<sup>1</sup>:

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<sup>1</sup> Please note that the examples are based on, but are not actual examples of, disclosure we reviewed.

*This document may contain forward-looking statements. Forward-looking statements are often, but not always, identified by words such as “believes”, “may”, “likely”, “plans” or similar words.*

Other issuers identified FLI as, essentially, any disclosure relating to the future. For example:

*All statements, other than statements of historical fact, that address activities, events, or developments that Company X expects or anticipates will or may occur in the future are forward-looking statements.*

In staff’s view, disclosure such as that identified in the above two examples generally would not enable a reader to readily identify material FLI included in the document or other disclosure, if the disclosure does not also include additional more specific information identifying the material FLI.

In contrast, the following is an example of a more effective method of identifying material FLI in that it identifies the nature of the material FLI included in the document:

*Forward-looking statements included or incorporated by reference in this document include statements with respect to:*

- *the Company’s acquisition strategy, including acquisition criteria and acquisition benefits;*
- *the Company’s goal to sustain or grow production and reserves through prudent management and acquisitions;*
- *expectations regarding the ability to raise capital and continually add to reserves through acquisition and development;*
- *...*

In other circumstances, issuers stated that FLI was included in a particular disclosure document when in fact no FLI was included. We encourage issuers to avoid including statements that a document contains FLI when to the issuer’s knowledge that is not the case.

## **2. Disclosure regarding material risk factors and material factors or assumptions**

### *a) Identification of material risk factors and material factors or assumptions*

Section 4A.3 of NI 51-102 requires reporting issuers that disclose material FLI to include disclosure that identifies material risk factors that could cause actual results to differ materially from the FLI. The disclosure must also include material factors or assumptions used to develop material FLI. Section 4A.4 of 51-102CP provides guidance that this disclosure should allow an investor who reads the document or other material containing the FLI to be able to readily inform himself or herself of the material assumptions underlying the FLI and the material risk factors associated with it.

In various instances, issuers either neglected to discuss the underlying factors or assumptions or stated that there were factors or assumptions without identifying them. In our view, this practice does not comply with section 4A.3 of the Rule.

*b) Incorporation by reference of relevant material risk factors and material factors or assumptions*

The New FLI Requirements do not preclude an issuer from incorporating by reference material risk factors and material factors or assumptions contained in another document. However, issuers should consider whether incorporation by reference, in the circumstances, enables a reader to readily inform himself or herself of the material risk factors, and material factors or assumptions, associated with the material FLI.

*c) Avoiding “boilerplate” disclosure*

During the course of our reviews we noted that issuers often included identical or nearly identical risk factor/factors and assumptions disclosure in each of their disclosure documents or other material despite differences in the nature of the FLI contained in the particular document or material. Issuers should avoid “boilerplate” disclosure and should disclose material risk factors and material factors and assumptions that are relevant to the FLI (see sections 4A.5(1) and 4A.6 of 51-102CP).

*d) User-friendly presentation*

We encourage issuers to consider using tables and other methods of presentation that clearly link specific material risk factors and material factors and assumptions to the particular FLI. For example:

*The following table outlines forward-looking information included in this MD&A:*

<i>Forward-looking Information</i>	<i>Key Assumptions</i>	<i>Most Relevant Risk Factors</i>
<i>2009 capital spending program</i>		
<i>Ability to finance announced projects</i>		
...	...	...

**3. Updating practices**

Some issuers included a statement similar to the following in their disclosure:

*The Company does not assume any obligation to update forward-looking statements if management beliefs, expectations or opinions should change.*

This type of statement is inappropriate as section 5.8(2) of NI 51-102 provides that issuers must update previously disclosed FLI in certain circumstances. Issuers should ensure that their policy for updating FLI is in compliance with the New FLI Requirements.

#### **4. Explanation of purpose of, and cautionary language related to, financial outlook or FOFI**

Section 4B.3(b) of NI 51-102 requires reporting issuers that disclose FOFI or a financial outlook, to also disclose the purpose of the information and caution readers that the information may not be appropriate for other purposes. We remind issuers that this requirement is in addition to the material risk factors and material factors or assumptions disclosure required by section 4A.3 of the Rule. Disclosure of material risk factors and material factors or assumptions contained in a cautionary paragraph at the beginning or end of a document generally will not satisfy this requirement.

#### **5. Disclosure regarding goals or targets**

During our reviews, staff considered whether disclosure regarding a goal or target constitutes FLI as defined in securities legislation.

Under securities legislation in all Canadian<sup>2</sup> jurisdictions, FLI means:

*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.*

In order to constitute FLI, the achievement of the target or goal would have to be “possible” based on assumptions about future economic conditions and courses of action. We would generally expect a reporting issuer to disclose a target or goal only if it is “possible” to achieve. Consequently, in staff’s view, a disclosed target or goal can constitute FLI and, if material, the document containing the FLI should include disclosure regarding this goal or target that complies with the New FLI Requirements. This would include disclosure required under Part 4B of NI 51-102 in the circumstances that a disclosed target or goal also constitutes a financial outlook.

If management determines that a material target or goal that is disclosed does not constitute material FLI, management should consider including additional disclosure explaining the purpose of the information.

#### **6. Impact of the transition to IFRS on FOFI or financial outlooks**

Section 4B.2(2)(b) of NI 51-102 requires that FOFI or a financial outlook be based on the accounting policies that the reporting issuer expects to use to prepare its historical financial statements for the period covered by the FOFI or the financial outlook. In light of the fact that the Canadian Accounting Standards Board has confirmed that IFRS will replace Canadian Generally Accepted Accounting Principles for publicly accountable enterprises for fiscal years beginning on or after January 1, 2011, issuers should ensure that FOFI or financial outlooks that cover their 2011 fiscal year are based on the appropriate accounting policies.

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<sup>2</sup> In Québec, the wording of the definition of "forward-looking information" differs slightly, but in substance this definition is harmonized in all jurisdictions.

## **Contact information**

For more information, contact any of the following:

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