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April 14, 2008

Ms. Carla-Marie Hait, Chief Accountant, Corporate Finance,
British Columbia Securities Commission
Ms. Sylvie Anctil-Bavas, Chef comptable, Autorité des marchés financiers
Mr. Fred Snell, Chief Accountant, Alberta Securities Commission
Mr. John Carchrae, Chief Accountant, Ontario Securities Commission
Ms. Marion Kirsh, Associate Chief Accountant, Ontario Securities Commission

CSA Concept Paper 52-402 Possible changes to securities rules relating to International Financial Reporting Standards

We are pleased to provide our comments on the issues identified in the concept paper.

Question 1 – Do you agree we should allow a domestic issuer to adopt IFRS-IASB for a financial year beginning on or after January 1, 2009? If not, why?

We agree. In addition, we believe that if a domestic issuer wishes to adopt IFRS-IASB for a financial year beginning before January 1, 2009, and files an application for this purpose, then exemptive relief should be granted to allow such early adoption. Likewise, we believe that relief should be granted to new reporting issuers seeking to prepare their initial public offering prospectus on the basis of IFRS-IASB financial statements for financial years prior to January 1, 2009.

Question 2 – Are there additional factors, not discussed in this paper, to consider in deciding whether to allow a domestic issuer to adopt IFRS-IASB before 2011?

We believe the paper has identified the main issues and that the CSA has placed appropriate relative weight on these in reaching its tentative conclusion. Of course, Canadian companies that early-adopt IFRS-IASB may not ultimately be comparable in all respects to Canadian companies that make the transition for years beginning on or after January 1, 2011. For example, they might be affected in different ways by the transition provisions of new IFRS standards to be issued between now and 2011, or by any changes to IFRS 1 that are made between now and 2011. Also, whereas the market will have had an opportunity to prepare, educate and sensitize itself to the form, content and implications of IFRS prior to January 1, 2011 (for example, by means of MD&A disclosures over the intervening period), companies that early-adopt will be somewhat anomalous, raising some possibility of confusion on the part of users.

Even so, as noted, we believe that if Canadian companies make the judgment that early-adoption is appropriate in their circumstances, and are willing to bear the associated responsibility, then this should be facilitated by the CSA.

However, given the matters noted above, it might be appropriate for the CSA to consider and comment specifically on what degree of transparency it expects from such early-adopting companies.

For example, the CSA might comment on what would be the elements of good MD&A disclosure by such companies.

Question 3 – Do you agree we should not allow a SEC issuer to use US GAAP for financial years beginning on or after January 1, 2009, with the exception that a SEC issuer filing US GAAP financial statements in Canada for its most recent financial year ending on or before December 31, 2008, could continue doing so until 2013? If not, why do you disagree, and how, if at all, would you modify existing rules?

We understand why the CSA would reach the tentative conclusion described in the concept paper. We note however that the pending transition to IFRS-IASB does not in itself change all of the policy considerations underlying the existing provisions in NI52-107 relating to US GAAP. In particular, the intertwining of US and Canadian markets continues to provide strong competitive reasons for some Canadian companies to prepare their financial statements in accordance with US GAAP.

However, given all the factors noted, we would not disagree should the CSA seek to prevent the current population of Canadian companies that prepare financial statements on the basis of US GAAP from growing further (while noting that the CSA should continue to be sympathetic to requests for exemptive relief in this regard where warranted by the circumstances – see in particular our observations under Question 4 below). We do not believe however that it is appropriate to cause SEC issuers that have followed the existing provisions of NI 52-107 to revisit this issue, even in 2013. For many of these companies, adopting US GAAP represented a considerable investment of time and resources, and if the competitive factors that prompted that investment are unchanged, we do not believe it is fair that they be compelled within a fairly short period of time to go through a further exercise to overhaul their financial statements. Eventually this issue will be resolved as those companies leave the market for one reason or another, or reach the conclusion that reporting under IFRS-IASB would work best in their circumstances or, ultimately, by a future policy decision that the SEC may take in respect of the use of IFRS-IASB by US domestic issuers. Until then, even if these companies may come to represent something of a historical oddity, we do not believe it is necessary or appropriate to force the issue.

Question 4 – Are there additional factors, not discussed in this paper, to consider in deciding whether to allow a SEC issuer to use US GAAP?

One relevant issue is raised by the March 4, 2008 meeting of the US Center for Audit Quality's SEC Regulations Committee's International Practices Task Force, and documented as follows in the meeting highlights:

> Q13. The Release (Release No. 33-8879) amended S-X 4-01 *Form, Order and Terminology*, by adding guidance on the application of Regulation S-X for financial statements of FPIs. The new S-X 4-01(a)(2) states the following:

> In all filings of foreign private issuers ("FPI") (see §230.405 of this chapter), except as stated otherwise in the applicable form, the financial statements may be prepared according to a comprehensive set of accounting principles, other than those generally accepted in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, if a reconciliation to U. S. Generally Accepted Accounting Principles and the provisions of Regulation S-X of the type specified in Item 18 of Form 20-F (§249.220 of this chapter) is also filed as part of the financial statements. Alternatively, the financial statements may be prepared according to U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards as issued by the International Accounting Standards Board. [Emphasis added]

The SEC forms used by domestic filers (e.g., Form 10-K) do not explicitly state that U.S. GAAP should be used. However, the adopting release does state that the elimination of the U.S. GAAP reconciliation is not extended to FPIs that do not file their annual report on Form 20-F (Page 29). Can an FPI that files with the SEC using domestic forms present its financial statements in accordance with IFRS as issued by the IASB?

A. No. The amendments adopted apply only to FPIs that file on the F Forms (e.g., F-1, 20-F).

As the CSA is aware, numerous Canadian companies that are SEC issuers do in fact file with the SEC using domestic forms 10-K and 10-KSB. Some of these may do so voluntarily; others, while being Canadian companies, may fail to meet the SEC's definition of a foreign private issuer and thus may be compelled to use its domestic forms. This latter group, in particular, if required by the CSA to prepare financial statements under IFRS-IASB, would seem to have no option under current SEC requirements but to prepare a second full set of financial statements in accordance with US GAAP, for purposes of their SEC filing obligations.

We believe that this would be an onerous result, and represents a fact pattern in which the CSA should be willing to grant exemptive relief from the tentative conclusion discussed under Question 3 above, to allow affected Canadian companies to prepare their financial statements in accordance with US GAAP. We believe that the intertwining of Canadian and US markets places some Canadian companies in an unusual situation, and that such relief could be granted on a defined and principled basis.

Question 5 – Is the proposed transitional period of five years from 2009 to 2013 appropriate?

As set out in our response to Question 3, we do not believe that the proposed transitional period is necessary or appropriate because we do not believe that a "sunset" date for US GAAP is appropriate at this time.

Question 6 – Do you agree that we should require a domestic issuer to prepare its financial statements in accordance with IFRS-IASB and require an audit report on such annual financial statements to refer to IFRS-IASB? If not, why?

As the concept paper discusses, this question raises competing concerns. The greatest weight should likely be placed on avoiding any possible ambiguity on the part of users as to what post-transition financial statements represent. Referring to IFRS-IASB removes any doubt that the financial statements might represent some local variation on those standards. On the other hand, most users will not be particularly preoccupied by that possibility, and would respond more positively to a clear communication that financial statements reflect the appropriate Canadian standards (albeit aligned to international standards).

We agree that securities laws should be amended to refer to IFRS-IASB since this will clarify regulatory obligations and remove any room for ambiguity about the CSA`s expectations for reporting issuers. With that accomplished, we are not so sure that it is necessary that an audit report refer only to IFRS-IASB. We believe it is at least worth investigating whether the market as a whole might respond more positively if an audit report were to refer to Canadian GAAP, accompanied by clear disclosure in the financial statements that those statements comply with IFRS-IASB. We do note however that foreign private issuers will only be eligible to omit reconciling its financial statements to US GAAP for US filing purposes when the independent auditor opines in its report that those annual financial statements comply with IFRS as issued by the IASB.

One advantage of the CSA`s tentative conclusion is that it would reduce ambiguity about companies that early-adopt in accordance with the approach proposed under Question 1. During 2009 and 2010, it might be confusing for users if all audit reports referred to Canadian GAAP, even when the underlying financial statements were prepared in accordance with IFRS-IASB. However, such short-term considerations should not unduly influence a policy decision that carries significant long-term implications.

Question 7 – Are there additional factors, not discussed in this paper, to consider deciding whether securities rules should refer to IFRS-IASB rather than Canadian GAAP?

We have no additional significant observations.

We very much appreciate the opportunity to provide our comments on the questions posed in the concept paper. If you would like to discuss any of the matters contained in this letter, please contact Karen Higgins at 416-601-6238 or John Hughes at 416-874-3519.

Yours very truly,

Karen Higgins, FCA
Licensed Public Accountant