

## Chapter 6

# Request for Comments

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### 6.1.1 CSA Notice and Request for Comments - Proposed Rescission of NP 48 Future-Oriented Financial Information - Proposed Amendments to NI 51-102 Continuous Disclosure Obligations - Related Consequential Amendments

#### NOTICE

#### REQUEST FOR COMMENT

#### PROPOSED RESCISSION OF NATIONAL POLICY 48 FUTURE-ORIENTED FINANCIAL INFORMATION

#### PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 51-102 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 National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), and are also proposing related amendments to Form 51-102F1 *Management's Discussion and Analysis* (Form 51-102F1) and Companion Policy 51-102CP *Continuous Disclosure Obligations* (CP 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 NI 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)

We propose to rescind National Policy 48 – *Future-Oriented Financial Information* (NP 48). 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 Instruments with this Notice. You can find them on websites of CSA members, including the following:

- [www.bcsc.bc.ca](http://www.bcsc.bc.ca)
- [www.albertasecurities.com](http://www.albertasecurities.com)
- [www.sfsc.gov.sk.ca](http://www.sfsc.gov.sk.ca)
- [www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)
- [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

- [www.lautorite.qc.ca](http://www.lautorite.qc.ca)
- [www.nbsc-cvmnb.ca](http://www.nbsc-cvmnb.ca)
- [www.gov.ns.ca/nssc](http://www.gov.ns.ca/nssc)

We are publishing

- revocation instrument for NP 48 (Appendix B)
- amending instruments for
  - NI 51-102 (Appendix C)
  - Form 51-102F1 (Appendix D)
  - CP 51-102 (Appendix E)
  - Companion Policy 44-101CP to National Instrument 44-101 – Short Form Prospectus Distributions, Form 44-101F1, Form 45-101F, Form 45-106F2 and Form 45-106F3 (Appendix F)
  - NP 51-201 (Appendix G)
  - in certain jurisdictions, amendments to local securities legislation (Appendix H)

### **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 NI 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.

### **Authority for amendments – Ontario**

Appendix H sets out the provisions of the *Securities Act* that provide the Ontario Securities Commission with authority to make the amendments with respect to forward-looking information contained in mandatory Commission filings. In addition, the Government has proposed an amendment to the *Securities Act* which would clarify the Commission's authority to make amendments that apply to forward-looking information released by reporting issuers outside of Commission filings.

### **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 NI 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 NI 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 NI 51-102. The members of the CSA may publish these local proposed changes separately in their local jurisdictions, and may also publish local changes in Appendix H to this Notice.

### **Unpublished materials**

In proposing amendments to the Instruments, 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

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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](mailto: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  
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Fax : (514) 864-8381  
e-mail : [consultation-en-cours@lautorite.qc.ca](mailto: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:

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](mailto:chait@bcsc.bc.ca)

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

Blaine Young  
Associate Director, Corporate Finance  
Alberta Securities Commission  
(403) 297-4220  
[blaine.young@seccom.ab.ca](mailto: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](mailto:imcintosh@sfsc.gov.sk.ca)

Bob Bouchard  
Director, Corporate Finance  
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Nova Scotia Securities Commission  
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slattejw@gov.ns.ca

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

December 1, 2006

APPENDIX A

SUMMARY OF PROPOSED AMENDMENTS

**Amendments to NI 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 CP 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 National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* or National Instrument 43-101 *Standards of Disclosure for Mineral Projects* or the conditions of any exemption from these instruments. Those instruments 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 NI 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 NI 51-102 itself.

***Amendments to CP 51-102***

The proposed amendments to CP 51-102 reflect the changes to NI 51-102 described above and provide guidance on how to interpret and apply the requirements for forward-looking information in NI 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 NI 51-102:

- Form 44-101F1 – *Short Form Prospectus*
- Form 45-101F – *Information Required in a Rights Offering Circular*
- Form 45-106F2 – *Offering Memorandum for Non-Qualifying Issuers* and Form 45-106F3 – *Offering Memorandum for Qualifying Issuers*

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 NI 51-102.

**APPENDIX B**

**REVOCATION OF NATIONAL POLICY 48 FUTURE ORIENTED FINANCIAL INFORMATION**

National Policy 48 *Future Oriented Financial Information* is revoked, effective ●, 2007.

APPENDIX C

AMENDMENTS TO  
NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS

1. *National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.*
2. *National Instrument 51-102 Continuous Disclosure Obligations is amended by adding the following after section 4.11,*

**PART 4A – FORWARD-LOOKING INFORMATION**

**4A.1 Application**

This Part applies to forward-looking information that is released by a reporting issuer other than forward-looking information contained in oral statements.

**4A.2 Reasonable Basis**

A reporting issuer must have a reasonable basis for forward-looking information.

**4A.3 Disclosure**

Material forward-looking information must include disclosure that

- (a) identifies forward-looking information as such;
- (b) cautions users of forward-looking information that actual results will vary from the forward-looking information and identifies material risk factors that could cause actual results to differ materially from the forward-looking information;
- (c) states the material factors or assumptions used to develop forward-looking information; and
- (d) identifies the reporting issuer's policy for updating forward-looking information if it includes procedures in addition to those described in subsection 5.8(2).

**PART 4B – FOFI AND FINANCIAL OUTLOOKS**

**4B.1 Definitions** – In this Part,

“financial outlook” means forward-looking information about prospective results of operations, financial position and/or cash flows, based on assumptions about future economic conditions and courses of action, and not presented in the format of a historical balance sheet, income statement or cash flow statement; examples include expected revenues, net income, earnings per share and R&D spending; a financial outlook relating to earnings is commonly referred to as “earnings guidance”;

“FOFI” means future-oriented financial information and is forward-looking information about prospective results of operations, financial position and/or cash flows, based on assumptions about future economic conditions and courses of action, and presented in the format of a historical balance sheet, income statement or cash flow statement.

**4B.2 Application**

- (1) Subject to subsection (2), this Part applies to FOFI or a financial outlook that is released by a reporting issuer other than forward-looking information contained in oral statements.
- (2) This Part does not apply to disclosure that is subject to
  - (a) requirements in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* or National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, or
  - (b) the conditions of any exemption from the requirements referred to in paragraph (a) that a reporting issuer received from a regulator or securities regulatory authority.

#### 4B.3 Assumptions

In addition to the requirement in section 4A.2, in preparing FOFI or a financial outlook, a reporting issuer must

- (a) use assumptions that individually, and as a whole, are reasonable and appropriate in the circumstances;
- (b) limit the period covered by the FOFI or the financial outlook to a period that is not longer than the point in time for which such information can be reasonably estimated, and
- (c) use the accounting policies the reporting issuer expects to use to prepare its historical financial statements for the period covered by the FOFI or the financial outlook.

#### 4B.4 Disclosure

In addition to the disclosure required by section 4A.3, FOFI or a financial outlook must include disclosure that

- (a) identifies the date management approves the FOFI or financial outlook;
- (b) explains the purpose of the FOFI or financial outlook and cautions readers that the information may not be appropriate for other purposes.

### 3. *Part 5 is amended by adding the following after section 5.7,*

#### 5.8 Disclosure Relating to Previously Released Forward-Looking Information

##### Application

- (1) This section applies to material forward-looking information that is released by a reporting issuer other than
  - (a) forward-looking information contained in oral statements, or
  - (b) disclosure that is subject to
    - (i) requirements in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* or National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, or
    - (ii) the conditions of any exemption from the requirements referred to in subparagraph (i) that a reporting issuer received from a regulator or securities regulatory authority.

##### Update

- (2) A reporting issuer must discuss in its MD&A or MD&A supplement if one is required under section 5.2,
  - (a) events and circumstances that occurred during the period to which the MD&A relates that are reasonably likely to cause actual results to differ materially from forward-looking information for a period that is not yet complete that the reporting issuer previously released to the public, and
  - (b) the expected differences referred to in paragraph (a).
- (3) A reporting issuer is not required to comply with subsection (2) if the reporting issuer includes the information required by paragraph (2)(a) and (b) in a news release issued and filed by the reporting issuer prior to the filing of the MD&A or MD&A supplement referred to in subsection (2).

##### Comparison to Actual

- (4) A reporting issuer must disclose and discuss in its MD&A or MD&A supplement if one is required under section 5.2, material differences between
  - (a) actual results for the annual or interim period to which the MD&A relates, and
  - (b) any FOFI or financial outlook for the period referred to in paragraph (a) that the reporting issuer previously released.

**Withdrawal**

- (5) If during the period to which its MD&A relates, a reporting issuer decides to withdraw previously released forward-looking information,
  - (a) the reporting issuer must, in its MD&A or MD&A supplement if one is required under section 5.2, disclose that decision and discuss the events and circumstances that led the reporting issuer to the decision to withdraw the forward-looking information including a discussion of the assumptions underlying the forward-looking information that are no longer valid, and
  - (b) the reporting issuer is not required to comply with subsection (4) if the reporting issuer complies with paragraph (a) in its MD&A or MD&A supplement filed before the end of the period covered by the forward-looking information.
- (6) A reporting issuer is not required to comply with paragraph (5)(a) if the reporting issuer includes the information required by paragraph (5)(a) in a news release issued and filed by the reporting issuer prior to the filing of the MD&A or MD&A supplement.

4. These amendments come into force ●, 2007.

APPENDIX D

AMENDMENTS TO  
FORM 51-102F1 MANAGEMENT'S DISCUSSION AND ANALYSIS

1. *Form 51-102F1 Management's Discussion and Analysis is amended by this Instrument.*
2. *Part 1 – General Instructions and Interpretation is amended by,*
  - (a) *repealing paragraph (g); and*
  - (b) *renaming paragraphs (h) to (o) as paragraphs (g) to (n).*
3. *These amendments come into force ●, 2007.*

**APPENDIX E**

**AMENDMENTS TO  
COMPANION POLICY 51-102CP CONTINUOUS DISCLOSURE OBLIGATIONS**

1. *Companion Policy 51-102CP Continuous Disclosure Obligations is amended by this Instrument.*
2. *Companion Policy 51-102CP Continuous Disclosure Obligations is amended by adding the following after section 4.2,*

**PART 4A – FORWARD-LOOKING INFORMATION**

**4A.1 Application**

Section 4A.1 of the Instrument indicates that Part 4A applies to forward-looking information that is released by a reporting issuer other than forward-looking information contained in oral statements. Reporting issuers should consider broadly the various instances of forward-looking information made available to the public in considering the scope of forward-looking information that is “released”. This includes, but is not limited to:

- Information that a reporting issuer files with securities regulators
- Information contained in news releases issued by a reporting issuer
- Information published on a reporting issuer’s website
- Information published in marketing materials or other similar materials prepared by a reporting issuer or distributed to the public by a reporting issuer

**4A.2 Reasonable Basis**

Section 4A.2 of the Instrument requires a reporting issuer to have a reasonable basis for any forward-looking information it releases. When interpreting “reasonable basis”, reporting issuers should consider:

- (a) the reasonableness of the assumptions underlying the forward-looking information; and
- (b) the process followed in preparing and reviewing forward-looking information.

**4A.3 Material Forward-Looking Information**

Section 4A.3 of the Instrument requires that any material forward-looking information include specified disclosure. Reporting issuers should exercise judgement when determining whether information is material. If a reasonable investor’s decision whether or not to buy, sell or hold securities of the reporting issuer would be influenced or changed if the information was omitted or misstated, then the information is likely material. This concept of materiality is consistent with the financial reporting notice of materiality contained in the Handbook.

**4A.4 Location of Disclosure**

Section 4A.3 of the Instrument requires that any material forward-looking information include specified disclosure. This disclosure should be presented in a manner that allows an investor who reads the document or other material containing the forward-looking information to be able to readily:

- (a) understand that the forward-looking information is being provided in the document or other material;
- (b) identify the forward-looking information; and
- (c) inform himself or herself of the material assumptions underlying the forward-looking information and the material risk factors associated with the forward-looking information.

**4A.5 Disclosure of Cautionary Language and Material Risk Factors**

- (1) Paragraph 4A.3(b) of the Instrument requires a reporting issuer accompany any forward-looking information with disclosure that cautions users that actual results will vary from the forward-looking information and identifies material risk factors that could cause material variation. The material risk factors identified in the

cautionary language should be relevant to the forward-looking information and the disclosure should not be boilerplate in nature.

- (2) The cautionary statements required by paragraph 4A.3(b) of the Instrument should identify significant and reasonably foreseeable factors that could reasonably cause results to differ materially from those projected in the forward-looking statement. Reporting issuers should not interpret this as requiring a reporting issuer to anticipate and discuss everything that could conceivably cause results to differ.

#### 4A.6 Disclosure of Material Factors or Assumptions

Paragraph 4A.3(c) of the Instrument requires a reporting issuer to disclose the material factors or assumptions used to develop forward-looking information. This requires the factors or assumptions to be relevant to the forward-looking information. Disclosure of material factors or assumptions does not require an exhaustive statement of every factor or assumption applied – a materiality standard applies.

#### 4A.7 Date of Assumptions

Management of a reporting issuer who releases forward-looking information should satisfy itself that the assumptions are appropriate as of the date management approves the forward-looking information even though the information may have been accumulated over a period of time.

#### 4A.8 Time Period

Paragraph 4B.3(b) of the Instrument requires a reporting issuer to limit the period covered by FOFI or a financial outlook to a period that does not extend beyond the point in time for which information can be reasonably estimated. In most cases that point in time will not extend beyond the end of the reporting issuer's next fiscal year. Some of the factors a reporting issuer should consider include the reporting issuer's ability to make appropriate assumptions, the nature of the reporting issuer's industry, and the reporting issuer's operating cycle.

#### 4A.9 FOFI

Section 4250 *Future-Oriented Financial Information* (Section 4250) of the CICA Handbook is relevant to reporting issuers who release FOFI. If a reporting issuer determines that it has a reasonable basis for FOFI prepared using a hypotheses, as that term is defined in CICA Handbook Section 4250, the hypotheses should be consistent with the courses of action that the reporting issuer intends to adopt.

### 3. **Part 5 is amended by adding the following after section 5.4,**

#### 5.5 Forward-looking information

- (1) Subsection 5.8(2) of the Instrument requires a reporting issuer to discuss events and circumstances that occurred during the period to which its MD&A relates that are reasonably likely to cause actual results to differ materially from forward-looking information for a period that is not yet complete that the reporting issuer previously released to the public. Subsection 5.8(2) also requires a reporting issuer to discuss the expected differences.

For example, assume a reporting issuer published FOFI for the current year assuming no change in the prime interest rate, but by the end of the second quarter the prime interest rate went up by 2%. In its MD&A for the second quarter, the reporting issuer should discuss the interest rate increase and its expected effect on results compared to those indicated in the FOFI.

A reporting issuer should consider whether the events and circumstances that trigger MD&A disclosure under subsection 5.8(2) of the Instrument might also trigger material change reporting requirements under Part 7 of the Instrument.

- (2) Subsection 5.8(4) of the Instrument requires a reporting issuer to disclose and discuss material differences between actual results for the annual or interim period to which its MD&A relates and any FOFI or financial outlook for that period that the reporting issuer previously released to the public. A reporting issuer should disclose and discuss material differences for material individual items included in the FOFI or financial outlook including assumptions.

For example, if the actual dollar amount of revenue approximates forecasted revenue but the sales mix or sales volume differs materially from what the reporting issuer expected, the reporting issuer should explain the differences.

- (3) Subsection 5.8(5) of the Instrument addresses a reporting issuer's decision to withdraw previously released forward-looking information. The subsection requires the reporting issuer to disclose that decision and discuss the events and circumstances that led the reporting issuer to the decision to withdraw the forward-looking information, including a discussion of the assumptions included in the forward-looking information that are no longer valid. A reporting issuer should consider whether the events and circumstances that trigger MD&A disclosure under subsection 5.8(5) of the Instrument might also trigger material change reporting requirements under Part 7 of the Instrument. In all cases, to properly effect a withdrawal, a reporting issuer should promptly communicate to the market its decision to withdraw forward-looking information.

**4. *These amendments come into force •, 2007.***

APPENDIX F

AMENDMENTS TO  
COMPANION POLICY 44-101CP TO  
NATIONAL INSTRUMENT 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS

1. *This Instrument amends Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions.*
2. *Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions is amended by adding the following after section 4.13:*

4.14 Dissemination of Forward-Looking Information - During the course of a distribution of securities, the dissemination of any material forward-looking information that is not contained in the prospectus could indicate a failure to provide in the prospectus full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and result in the prospectus constituting a misrepresentation. Where an extract of FOFI (as defined in National Instrument 51-102 *Continuous Disclosure Obligations*) is disseminated, the extract or summary must be reasonable and balanced and shall have a cautionary note in bold face stating that the information presented is not complete and that complete FOFI is included in the prospectus.

3. *These amendments come into force on ●, 2007.*

AMENDMENTS TO  
FORM 44-101F1 SHORT FORM PROSPECTUS OF  
NATIONAL INSTRUMENT 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS

1. *This Instrument amends Form 44-101F1 Short Form Prospectus.*
2. *Form 44-101F1 Short Form Prospectus is amended by adding the following after paragraph (12) under the heading "Instructions":*

(13) Forward-looking information included in a prospectus must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook (each, as defined in NI 51-102) included in a prospectus must comply with Part 4B of NI 51-102.

3. *This amendment comes into force on ●, 2007.*

AMENDMENTS TO  
FORM 45-101F INFORMATION REQUIRED IN A RIGHTS OFFERING CIRCULAR OF  
NATIONAL INSTRUMENT 45-101 RIGHTS OFFERINGS

1. *This Instrument amends Form 45-101F Information Required in a Rights Offering Circular.*
2. *Form 45-101F Information Required in a Rights Offering Circular is amended by adding the following after item 16.1:*

Item 17 – Forward-Looking Information

17.1 – Forward-Looking Information

Forward-looking information included in a rights offering circular must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook (each, as defined in NI 51-102) included in a rights offering circular must comply with Part 4B of NI 51-102.

3. *This amendment comes into force on ●, 2007.*

AMENDMENTS TO  
FORM 45-106F2 OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS OF  
NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS

1. *This Instrument amends Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers.*
2. *Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is amended by,*

- (a) **adding the following after item A.10 under the heading "Instructions for Completing Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers":**

11. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. Where an extract of FOFI (as defined in National Instrument 51-102 Continuous Disclosure Obligations) is disseminated, the extract or summary must be reasonable and balanced and shall have a cautionary note in bold face stating that the information presented is not complete and that complete FOFI is included in the offering memorandum., **and**

- (b) **striking** "Refer to National Policy 48 *Future Oriented Financial Information* if future oriented financial information is included in the offering memorandum." **in item B.12 under the heading "Instructions for Completing Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers" and substituting** "Forward-looking information included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook (each, as defined in NI 51-102) included in an offering memorandum must comply with Part 4B of NI 51-102."

3. **These amendments come into force on ●, 2007.**

**AMENDMENTS TO  
FORM 45-106F3 OFFERING MEMORANDUM FOR QUALIFYING ISSUERS OF  
NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS**

1. **This Instrument amends Form 45-106F3 Offering Memorandum for Qualifying Issuers.**

2. **Form 45-106F3 Offering Memorandum for Qualifying Issuers is amended by,**

- (a) **adding the following after item A.11 under the heading "Instructions for Completing Form 45-106F3 Offering Memorandum for Qualifying Issuers"**

12. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. Where an extract of FOFI (as defined in National Instrument 51-102 Continuous Disclosure Obligations) is disseminated, the extract or summary must be reasonable and balanced and shall have a cautionary note in bold face stating that the information presented is not complete and that complete FOFI is included in the offering memorandum., **and**

- (b) **striking** "Refer to National Policy 48 *Future Oriented Financial Information* if future oriented financial information is included in the offering memorandum." **in item B.2 under the heading "Instructions for Completing Form 45-106F3 Offering Memorandum for Qualifying Issuers" and substituting** "Forward-looking information included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook (each, as defined in NI 51-102) included in an offering memorandum must comply with Part 4B of NI 51-102."

3. **These amendments come into force on ●, 2007.**

APPENDIX G

AMENDMENTS TO  
NATIONAL POLICY 51-201 DISCLOSURE STANDARDS

1. *This Instrument amends National Policy 51-201 Disclosure Standards.*
2. *National Policy 51-201 Disclosure Standards is amended by,*
  - (a) *repealing sections 5.5 and 5.6;*
  - (b) *renumbering section 5.7 as section 5.5;*
  - (c) *repealing section 6.9; and*
  - (d) *renumbering sections 6.10 to 6.14 as sections 6.9 to 6.13.*
3. *These amendments come into force on ●, 2007.*

**APPENDIX H**  
**RELATED AMENDMENTS TO ONTARIO SECURITIES REGULATION**  
**AND**  
**ADDITIONAL INFORMATION REQUIRED IN ONTARIO**

This Appendix:

- contains amendments to Companion Policy 41-501CP to Ontario Securities Commission Rule 41-501 *General Prospectus Requirements* and Form 41-501F1 *Information Required in a Prospectus*
- contains amendments to Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*;
- contains changes to Ontario Regulation 1015 (the Regulation); and
- lists the authority in the *Securities Act* (Ontario) (the Act) which permits the Ontario Securities Commission (the Commission) to adopt the proposed amendments.

**Amendment to Companion Policy 41-501CP to Ontario Securities Commission Rule 41-501 General Prospectus Requirements**

1. ***This Instrument amends Companion Policy 41-501CP to Ontario Securities Commission Rule 41-501 General Prospectus Requirements.***
2. ***Companion Policy 41-501CP to Ontario Securities Commission Rule 41-501 General Prospectus Requirements is amended by adding the following after section 2.9:***

2.10 Dissemination of Forward-Looking Information - During the course of a distribution of securities, the dissemination of any material forward-looking information that is not contained in the prospectus could indicate a failure to provide in the prospectus full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and result in the prospectus constituting a misrepresentation. Where an extract of FOFI (as defined in National Instrument 51-102 *Continuous Disclosure Obligations*) is disseminated, the extract or summary must be reasonable and balanced and shall have a cautionary note in bold face stating that the information presented is not complete and that complete FOFI is included in the prospectus.

3. ***This amendment comes into force on ●, 2007.***

**Amendment to Form 41-501F1 Information Required in a Prospectus**

1. ***This Instrument amends Ontario Securities Commission Form 41-501F1 Information Required in a Prospectus.***
2. ***Ontario Securities Commission Form 41-501F1 Information Required in a Prospectus is amended by adding the following after paragraph (11) under the heading "Instructions":***

(12) Forward-looking information included in a prospectus must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook (each, as defined in NI 51-102) included in a prospectus must comply with Part 4B of NI 51-102.

3. ***This amendment comes into force on ●, 2007.***

**Amendment to Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions**

1. ***This Instrument amends Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions.***
2. ***Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions is amended by adding the following after section 6.4:***

6.5 Forward-looking information in offering memorandum – If an offering memorandum is provided to a prospective purchaser, any forward-looking information included in the offering memorandum must comply with section 4A.2 of NI

51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook (each, as defined in NI 51-102) included in an offering memorandum must comply with Part 4B of NI 51-102.

**3. This amendment comes into force on ●, 2007.**

**Provisions of Regulation to be Amended**

The Commission proposes to make a regulation that amends a provision of the Regulation made under the Act (R.R.O. 1990, Reg. 1015, as am.). This regulation is necessary or advisable to effectively implement the proposed amendments to NI 51-102. The regulation is subject to the approval of the Minister of Government Services.

The Commission proposes to revoke section 60 of the Regulation.

If approved by the Minister, the regulation will come into force on the day that the proposed amendments to NI 51-102 come into force.

**Authority for Amendments**

The following provisions of the Act provide the Commission with rule-making authority with respect to forward-looking information contained in Commission filings:

- Paragraph 143(1)22 authorizes the Commission to prescribe requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of (i) an annual report, (ii) an annual information form and (iii) supplemental analysis of financial information.
- Paragraph 143(1)25 authorizes the Commission to prescribe requirements in respect of financial accounting, reporting and auditing for purposes of the Act, the regulations and the rules, including financial reporting requirements for the preparation and dissemination of future-oriented financial information and pro forma financial statements.
- Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including ... preliminary prospectuses and prospectuses; interim financial statements and financial statements; information circulars; and take-over bid circulars, issuer bid circulars and directors' circulars.

In addition on October 18, 2006, the Government introduced the *Budget Measures Act, 2006 (No. 2)* (Bill 151) which proposes various amendments to the *Securities Act*, including an amendment which would clarify the Commission's rule-making authority to make a rule that applies to disclosures of forward-looking information made by reporting issuers outside of mandatory Commission filings. In particular, proposed new paragraph 22.1 of subsection 143(1) will, if passed, give the Commission authority to make rules "respecting the preparation, form and content requirements applicable to the public dissemination of forward-looking information by reporting issuers where the dissemination is not part of a required filing".