1.1.8 OSC Staff Notice 51-713 – Report on Staff's Review of MD&A

ONTARIO SECURITIES COMMISSION STAFF NOTICE 51-713 – *REPORT ON STAFF'S REVIEW OF MD&A*

The corporate collapses that have occurred around the world in recent years have highlighted the need for improved disclosure and transparency. In particular, attention worldwide has focused on the importance of greater transparency in disclosure of financial information, including both the financial statements and … Management's Discussion and Analysis ….[1]

MD&A is a narrative explanation, through the eyes of management, of how your company performed during the period covered by the financial statements, and of your company's financial condition and future prospects. MD&A complements and supplements your financial statements, but does not form part of your financial statements.

Your objective when preparing the MD&A should be to improve your company's overall financial disclosure by giving a balanced discussion of your company's results of operations and financial condition including, without limitation, such considerations as liquidity and capital resources – openly reporting bad news as well as good news. Your MD&A should

- *help current and prospective investors understand what the financial statements show and do not show;*
- *discuss material information that may not be fully reflected in the financial statements, such as contingent liabilities, defaults under debt, off-balance sheet financing arrangements, or other contractual obligations;*
- *discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future; and*
- *provide information about the quality, and potential variability, of your company's earnings and cash flow, to assist investors in determining if past performance is indicative of future performance.*[2]

I. Purpose

On March 5, 2003, the Canadian Securities Administrators (the **CSA**) announced it had launched a review to assess how well publicly-traded companies comply with their management's discussion and analysis (**MD&A**) disclosure obligations. Under this initiative, a number of CSA jurisdictions reviewed a sample of the MD&A of companies in their local jurisdictions.

In April 2003, the British Columbia Securities Commission published a special edition of its Continuous Disclosure Update to provide MD&A guidance for junior resource and non-resource sector companies. On October 30, 2003, the Quebec Securities Commission (the **QSC**) published a report on Phase I of a program to review the continuous disclosure of major Quebec issuers. Included in the QSC program was a review of MD&A. The Alberta Securities Commission (the **ASC**) reviewed MD&A filed with the ASC as part of their review of issuers' continuous disclosure. The ASC expects to release their *2003 Report on the Review of Financial Statements, MD&A and Other Continuous Disclosure* in early 2004.

Concurrent with the reviews in other jurisdictions, staff of the Ontario Securities Commission (the **OSC**) reviewed the MD&A of forty-seven companies, primarily with head offices in Ontario. This staff notice reports our findings and comments arising from these reviews.

II. Executive Summary

We have a number of general observations about how companies prepare their MD&A. We found that some companies:

- omit information that may be material to investors;
- disclose an excessive amount of immaterial information;
- disclose good news but not bad news;
- tend not to have a forward-looking orientation to their MD&A; and
- lack adequate internal policies and procedures for preparing, reviewing and approving their MD&A.

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1 Technical Committee, the International Organization of Securities Commissions, *General Principles Regarding Disclosure of Management's Discussion and Analysis of Financial Condition and Results of Operations* (2003).

2 Section 1(a), proposed Form 51-102F1 *Management's Discussion & Analysis*.

In Part IV, we discuss our views with respect to each of these observations.

Of the forty-seven companies reviewed, thirty-four (72%) filed their MD&A with one or more of the deficiencies set out in the following table. Of these thirty-four companies, three restated and refiled their MD&A and have been recorded on the Refilings and Errors list maintained on the OSC's website (*http:www.osc.gov.on.ca*). The remaining thirty-one companies committed to make prospective improvements to their MD&A.

Table 1

Area of Deficiency	**Type of Deficiency**	**Number of Companies**	**Percentage of Total**
Results of Operations and Financial Condition	Failure to quantify explanations of material variances or failure to analyze material variances.	21	45%
	Failure to disclose and analyze key value drivers.	8	17%
	Failure to analyze reportable segments.	6	13%
	Failure to analyze known trends that have had or that the company reasonably expects will have a favourable or unfavourable effect.	3	6%
	Failure to disclose and analyze items with a material impact in the fourth quarter.	1	2%
Risks and Uncertainties	Failure to disclose and analyze risks.	8	17%
	Failure to adequately analyze identified risks.	13	28%
Liquidity and Capital Resources	Failure to analyze liquidity, generally.	12	26%
	Failure to disclose and analyze breach of debt covenants.	1	2%
	Failure to disclose and analyze certain off-balance sheet arrangements.	1	2%
Selected Quarterly Financial Information	Failure to disclose and analyze selected quarterly financial information.	13	28%
Interim MD&A	Failure to comply with interim MD&A requirements.	9	19%

In Part V, we discuss each of these MD&A requirements, provide examples of how companies fail to meet these requirements, and provide our views on how companies should meet these requirements.

III. Objective and Scope

Our main objective was to assess compliance with the MD&A requirements of Ontario Securities Commission Rule 51-501 *AIF and MD&A* (**Rule 51-501**). Rule 51-501 generally requires Ontario reporting issuers above certain size thresholds to file annual MD&A following the form requirements of Form 44-101F2 *MD&A* (**Form 44-101F2**), and interim MD&A following the requirements of section 4.2 of Rule 51-501.

We expect these size thresholds will be eliminated in 2004, and all Canadian reporting issuers will have to file their MD&A following the adoption of proposed National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**). Proposed Form 51-102F1 *Management's Discussion & Analysis* (**Form 51-102F1**) sets out new MD&A form requirements. The new form will require additional disclosure above the form requirements of Form 44-101F2 but we believe the existing requirements will otherwise remain largely unchanged. All of the deficiencies against the Rule 51-501 requirements identified in this staff notice would also be deficiencies under NI 51-102.

Our review focused on annual and interim MD&A. To do this, we conducted reviews of the full continuous disclosure records of all selected issuers. Though other comments were raised, we limit our discussion in this staff notice to MD&A issues. Although the observations in this notice are based on a review of the MD&A filed as part of continuous disclosure, they are equally applicable to the MD&A included in prospectuses.

This staff notice is not intended to be an exhaustive summary of all our concerns regarding MD&A. We emphasize that companies will not necessarily comply with the MD&A requirements of Ontario securities law solely by following the guidance set out in this staff notice.

Companies may want to review the results of the MD&A reviews in other CSA jurisdictions, as well as the publications of other organizations like the Canadian Institute of Chartered Accountants (the **CICA**), the International Organization of Securities Commissions, and the U.S. Securities and Exchange Commission.[3]

IV. General Observations

The following is a number of general observations we found in our reviews. We believe these observations emphasize principles that all companies should follow when preparing their MD&A. Specific deficiencies against the requirements of Rule 51-501 often reflect the failure to apply one or more of these underlying principles.

1. Materiality

Instruction (4) of Form 44-101F2 generally describes materiality in an MD&A as follows:

> Materiality is a matter of judgement in particular circumstances and should generally be determined in relation to an item's significance to investors, analysts and other users of information. An item of information, or an aggregate of items, is considered material if it is probable that its omission or misstatement would influence or change an investment decision with respect to the issuer's securities.

Section 1(f) of Form 51-102F1 generally describes materiality in an MD&A as follows:

> Would a reasonable investor's decision whether or not to buy, sell or hold securities in your company likely be influenced or changed if the information in question was omitted or misstated? If so, the information is likely material.

We believe that these are objective tests. It is not sufficient for management to determine that it believes that certain information is immaterial, based solely on its own impressions and instincts. Management should determine materiality by asking whether a reasonable investor would believe in the circumstances that certain information was material.

We found that some companies omit information from their MD&A even when there may be some uncertainty as to whether the information would influence a reasonable investor's decision. Since omitting material information required to be disclosed under Rule 51-501 is a violation of Ontario securities law, we believe management should err on the side of caution when deciding what information is material. We are not suggesting that companies should disclose everything and allow readers to decide whether the disclosure is material but rather that management should exercise its judgement with a bent to caution.

This last point is important because we also found that some companies disclose an excessive amount of immaterial information. These companies tend to provide boilerplate explanations, provide explanations of immaterial changes, or simply repeat variances that can be easily calculated from the financial statements without any analysis. Companies should avoid disclosing information that users do not need or that does not provide insight into the company's past or future performance. Omitting repetitive and boilerplate information will permit companies to focus their MD&A on analyzing the material information that is most useful to investors.

2. Balance

We found that companies tend to disclose good news and avoid discussing bad news. Companies should provide a balanced picture of their operations and financial conditions in their MD&A. By disclosing an excessive amount of positive information while failing to disclose negative information, companies create an overly optimistic and misleading picture of the company. Similarly, disclosing an excessive amount of negative information may create an overly pessimistic picture.

3. Forward-Looking Orientation

We found that companies tend to focus on past variances in financial statement line items without considering future consequences. As set out in the Instructions of Form 44-101F2 and section 1(g) of Form 51-102F1, one important principle of the MD&A requirements is that disclosure should be forward looking. The discussion of historical results is more useful when it addresses items that are reasonably expected to have a material impact on future operations. A forward-looking orientation is also important in disclosing trends, risks, and other matters.

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[3] *See e.g.*, Canadian Institute of Charterted Accountants, *Management's Discussion and Analysis, Guidance on Preparation and Disclosure* (2002); Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Exchange Act Release Nos. 33-8350, 34-48960, 68 Fed. Reg. 75,056 (December 29, 2003); U.S. Securities and Exchange Commission, *Summary by the Division of Corporation Finance of Significant Issues Addressed in the Review of the Periodic Reports of the Fortune 500 Companies* (2003); Management's Discussion and Analysis of Financial Condition and Results of Operations, Exchange Act Release Nos. 33-6835, 34-26,831, 54 Fed. Reg. 22,427 (May 24, 1989).

4. Adequate Internal Policies and Procedures

We found many companies do not have adequate systems for preparing, reviewing, and approving their MD&A. A company's MD&A should be prepared by individuals with a detailed knowledge of the company's operations as well as a strategic view of the company as a whole. Senior management, the board of directors and the audit committee should review the MD&A. Senior management should perform a comprehensive review to ensure that the disclosure meets the letter and spirit of the MD&A requirements. Companies may also seek input from professional advisors who have specialized knowledge of evolving regulatory requirements.

The goal of these procedures should be to improve the overall quality of the MD&A and not just to meet the minimum requirements. These procedures should be integrated with the company's overall financial reporting process. Companies should specifically consider whether to incorporate these policies and procedures into their corporate disclosure policies.

V. Specific Areas of Non-Compliance

The examples below are hypothetical and have been included only to emphasize some of our concerns.

1. Results of Operation and Financial Condition

Twenty-four companies had one or more of the following deficiencies in their MD&A disclosure of results of operations or financial condition.

a. Material Variances

Section 1(1) of Form 44-101F2 requires companies to analyze their results of operations and financial condition in the most recently completed financial year, including a comparison against the previously completed financial year and an explanation of why these changes occurred. Companies should describe and quantify explanations of material variances.[4] Twenty-one companies failed to meet this requirement. These companies either qualitatively explained a material variance without quantifying the impact of that explanation or completely failed to provide any analysis of a material variance.

Example 1

> The company's year-to-year net sales increased X% to $X because sales of Product A and Product B increased. Both retail sales of Product A, and wholesale sales of Product A, increased because of an increase in unit sales of Product A due to a new marketing program. The annual increase in retail sales of Product A was partially offset by a decrease in fourth-quarter unit sales due to bad weather. Sales of Product B decreased marginally.

The company identifies a number of explanations for the increase in net sales but does not quantify any of these explanations. Without quantifying these explanations, investors would not be able to measure the relative impact of each explanation, understand and analyze the overall change in sales, or form an expectation of future results. The company should quantify the increases in retail and wholesale sales of Product A, and the decreases in fourth-quarter retail unit sales of Product A and sales of Product B. The company should also describe how the new marketing program increased unit sales of Product A, quantify the increase in unit sales due to the new marketing program, and quantify the cost of the new marketing program.

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4 In most cases, we believe an explanation should be quantified in financial terms by stating the financial impact of the explanation on the material variance of the financial statement line item. For example, if a company explains an increase in overall sales by an increase in sales to two major customers, the company should quantify this explanation by comparing dollar sales to these two customers in each period. Furthermore, if the increase in sales to either of these two major customers is itself material, the company should further explain this increase. Thus, if sales increased $40, sales to Customer A increased $20, sales to Customer B increased $10, and the increase in sales to Customer A is material but the increase in sales to Customer B is not, the company should further explain the increase in sales to Customer A. The company could further explain that sales to Customer A of Product A increased $10, and of Product B increased $10.

Alternatively, we believe an explanation may be quantified in non-financial terms. For example, if a company explains an increase in sales by an increase in its customer base, the company should quantify this explanation by comparing the average number of customers in each period.

We believe that companies should also identify and analyze known trends with respect to each explanation. For example, if sales to specific customers or if the average number of customers has been steadily increasing from prior periods and management expects this trend to continue, the company should say so. Alternatively, if the increase in sales to specific customers is an anomaly and is not expected to continue, the company should say so.

b. *Key Value Drivers*

Section 4(3) of Form 44-101F2 requires companies to discuss the extent to which any changes in net sales or revenues are attributable to changes in selling prices, to changes in the volume or quantity of goods or services being sold, or to the introduction of new products or services. Companies should disclose their key value drivers and analyze any impact of changes in these key drivers on net sales or revenues. Eight companies failed to disclose and analyze key value drivers.

Example 2

> The company operates divisions in two industries: retailing and telecommunications. Revenue of the company increased X% to $X because sales of the retail division increased X% to $X and revenue of telecommunications division increased X% to $X. The company acquired the telecommunications division in the prior year. The increase in revenue in the telecommunications division is the result of this division generating revenue for a full year.

The company identifies a number of explanations for the increase in overall revenue. The company also quantifies these explanations but fails to identify and analyze the key drivers of net sales and revenue in the retail and telecommunications divisions. The company should identify and analyze the key value drivers in both divisions. For example, the key value drivers in the retail division might include same store sales, gross margins, and market share; and the key value drivers in the telecommunications division might include competitive landscape, customer churn rate, and regulatory environment.

c. *Segments*

Subsection 1(1)(b) of Form 44-101F2 requires companies to include an analysis and comparison of each reportable segment, as well as the company as a whole, if necessary to understand the analysis and comparison of the company's results of operations. Six companies failed to analyze material information about a reportable segment. Some of these companies had no disclosure in their MD&A, while others provided minimal disclosure that did not give readers a complete picture of how various segments contributed to the results or position of the overall company.

Example 3

> The company has two reportable segments: Canada and the United States. Overall earnings before interest, taxes, depreciation and amortization (**EBITDA**) increased X% to $X.[5] The company expects EBITDA to increase next year due to expected volume increases in both reportable segments.

The company does not discuss each reportable segment's impact on EBITDA. The company should disclose EBITDA and explain the expected EBITDA increase, including the expected volume increases, for each of its reportable segments. This holds whether the company's reportable segments are based on geographic areas of operations, or on other factors relating to operations or management structure.

d. *Trends*

Section 4(2) of Form 44-101F2 requires companies to describe any known trends that have had or that they reasonably expect will have a favourable or unfavourable effect on results of operations and financial condition. Three companies failed to identify and adequately analyze these trends.

Example 4

> The company has two divisions. Overall revenue decreased X% to $X. Division A revenue decreased $X and Division B revenue decreased $X. Revenue in both divisions is expected to improve next year.

The company does not explain why it expects revenue to improve next year. Given the decrease in revenue of both divisions, this expectation appears to be a reversal of a known trend. The company fails to describe and analyze this known trend. The company should identify and analyze the downward trend in revenue of each division, and explain why it expects revenue to improve in future periods despite this year's declines.

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[5] As set out in Revised CSA Staff Notice 52-306 *Non-GAAP Financial Measures* (**CSA Staff Notice 52-306**), we are concerned about the use of financial measures, like EBITDA, that are not prescribed by Generally Accepted Accounting Principles (**GAAP**). Nevertheless, we acknowledge that discussion of non-GAAP financial measures in the MD&A may be a useful means of providing additional information to investors, so long as the disclosure of these measures in the MD&A is consistent with the expectations set out in CSA Staff Notice 52-306. Once a company decides to disclose a non-GAAP financial measure like EBITDA in its MD&A, the company should disclose the financial measure for each reportable segment.

e. Fourth Quarter

Section 1(2) of Form 44-101F2 requires companies to describe and quantify any events or items that have had a material impact on the issuer's results of operations or financial condition for the fourth quarter of their most recently completed financial year. Companies are not required to produce separate interim MD&A for the fourth quarter. When events or items that have had a material impact occur in the fourth quarter, the analysis required by this section may be the only disclosure investors receive. Accordingly, companies must include this disclosure in their annual MD&A. One company failed to disclose and analyze an item with a material impact in the fourth quarter.

2. Risks and Uncertainties

Twenty-one companies had inadequate disclosure of risks and uncertainties.

Section 1(3) of Form 44-101F2 requires companies to disclose information on risks and uncertainties necessary to understand their financial condition, changes in financial condition and results of operations. Section 1(4) of Form 44-101F2 requires companies to analyze material risks, events, and uncertainties that could cause reported financial information to not necessarily be indicative of future operating results or of future financial position, including a qualitative and quantitative discussion of factors that could have an effect in the future but that have not had an effect in the past, and that have had an effect in the past but are not expected to have an effect in the future. Section 5.2 of proposed Form 51-102F2 *Annual Information Form* will require disclosure of general risk factors in the annual information form (the **AIF**) but we believe Form 51-102F1 will also require MD&A disclosure of risks and uncertainties necessary to make the MD&A complete and understandable. Companies will still be required to identify and analyze risks and uncertainties as discussed in this staff notice but this disclosure may be in the AIF, in the MD&A, or in both.

Eight companies failed to disclose any risks at all while thirteen failed to adequately analyze identified risks. Several of the latter simply disclosed a list of risks with no analysis. Some of these companies expressed the view that they only needed to disclose unusual business risks. We believe that companies are required to disclose all material risks and uncertainties that are reasonably expected to have a material impact on the company's financial condition, changes in financial condition, and results of operations.

Example 5

> The company is a retailer. The retail industry is exposed to a wide range of risks that are reasonably expected to have a material impact on future operations. These risks include: occupancy risk, credit risk, foreign exchange exposure, bad debts exposure, interest rate risk, inventory in-stock and flow of goods risk, buying and pricing risk, and competitive risk. The company's competitors provide substantial disclosure of these risks in their MD&A.
>
> The company does not identify any of these risks in its MD&A. The company believes that all retailers have similar risks, that these risks are known and understood by investors, are not considered unusual risks, and do not need to be disclosed in its MD&A.

The company should describe all material risks. The company should also explain how each risk has affected results of operations and financial condition in the past or how each risk is expected to affect future results of operations and financial condition. The company should also quantify, if possible, the past and expected future impact of each risk to facilitate the analysis of each risk's relative impact. Finally, the company should disclose any steps it has taken, or plans to take, to mitigate the impact of any risk.

3. Liquidity and Capital Resources

Fourteen companies had inadequate disclosure of liquidity and capital resources.

a. Generally

Subsection 3(1)(a) of Form 44-101F2 requires companies to discuss their ability to generate adequate amounts of cash and cash equivalents. Subsection 3(1)(b) requires companies to identify any known trends or expected fluctuations in their liquidity and if a short- or long-term deficiency is identified, to indicate the course of action that has been taken or is proposed to be taken to remedy the deficiency. This disclosure is required for all companies but is particularly important for companies with negative cash flow from operations (as defined in the Handbook of the CICA), with material declines in cash flow from operations, or with positive cash flow from operations only because of favourable working capital variances. Twelve companies failed to disclose and analyze potential liquidity problems.

Example 6

> The company had $X of liquid investments, net of bank indebtedness. Cash of $X was deployed in operating activities. Cash of $X was deployed in capital expenditures. Cash of $X was raised from a private placement. The company's future obligations include a capital lease of $X and an amount due to shareholders of $X

The company's disclosure on liquidity mostly repeats information that investors could easily calculate themselves from the financial statements. The company should describe whether it expects negative cash flow from operations in the coming year and, if so, how it intends to finance its operations. The company also fails to discuss how it intends to reverse its negative cash flow from operations.

Example 7

> The company's non-cash working capital increased $X. This was the result of a decrease in accounts receivable of $X and an increase in trade payables $X, offset by an increase in inventory $X. The increase in non-cash working capital, offset by losses from operations, resulted in net positive cash flow from operations of $X.

The company would have negative cash flow from operations if not for a favourable variance in non-cash working capital yet the company's disclosure of non-cash working capital merely repeats information that investors could easily calculate themselves from the financial statements. The company should analyze the changes in each of its non-cash working capital accounts. For example, the company should explain why accounts receivable decreased, accounts payable increased, and inventory increased. If accounts receivable decreased because collections improved, the company should say so. If trade payables increased because the company has more overdue payables at year end, the company should say so. If ending inventory was higher because of a decline in fourth-quarter sales, the company should say so.

b. Debt Covenants

Subsection 3(1)(f) of Form 44-101F2 requires companies to disclose information concerning any default on any debt covenants and the method or anticipated method of curing the default. Companies should also discuss the nature and duration of any waiver received from creditors with respect to the breach. One company failed to disclose and analyze a breach of a debt covenant.

c. Off-Balance Sheet Arrangements

Subsection 3(1)(a) of Form 44-101F2 requires companies to discuss their ability to generate adequate amounts of cash and cash equivalents. Companies should disclose and analyze information about certain off-balance sheet arrangements, like pension obligations, minimum payments on operating leases, and encumbered assets, if these arrangements will likely have a material impact on the company's future liquidity. One company failed to disclose and analyze a material off-balance sheet arrangement. More detailed disclosure of off-balance sheet arrangements will be required under Item 1.8 of Form 51-102F1.

Example 8

> The company funds a defined benefit pension plan for the benefit of its employees. The present value of expected future pension obligations (not necessarily the pension liability on the balance sheet) exceeds the value of plan assets. The difference is material and the company did not discuss or analyze the difference in its MD&A.

The company should identify the difference between pension obligations and plan assets and explain how and when the difference will be addressed in future periods. For example, if the company expects to fund the difference out of operating profits or expects that the difference will be addressed through return on plan assets, it should say so. It should also discuss the risk and uncertainty associated with this item as required by sections 1(3) and (4) of Form 44-101F2.

4. Other Deficiencies

a. Selected Quarterly Finaical Information

Section 2(1) of Form 44-101F2 requires companies to disclose selected quarterly financial information for each of the past eight quarters. Selected quarterly financial information must be disclosed in the MD&A, notwithstanding that this information is also disclosed in the AIF. Thirteen companies failed to disclose this information in their MD&A. To the extent that a material trend can be identified in the selected quarterly information, companies should also identify and analyze the trend. Section 1.5 of Form 51-102F1 will require disclosure of selected quarterly financial information in the MD&A but NI 51-102 will not generally require this disclosure in the AIF.

b. Interim MD&A

Companies that are required to file annual MD&A under Rule 51-501 are also required to file interim MD&A that complies with section 4.2 of Rule 51-501. Companies should update the analysis of their financial condition in the annual MD&A for the most recently completed financial year and analyze their results from operations and cash flows for the most recently completed interim period.[6] We also encourage companies to provide an update in their interim MD&A of their annual MD&A disclosure of known trends, and risks and uncertainties, as recommended by section 2.3 of Companion Policy 51-501CP *To Ontario Securities Commission Rule 51-501 AIF and MD&A*. Nine companies had deficient interim MD&A disclosure. The deficiencies were similar to the annual MD&A deficiencies discussed above.

VI. Conclusion

We will continue to review MD&A as part of our continuous disclosure review program, focusing in particular on the new requirements of NI 51-102. These include disclosure of:

- certain off-balance sheet arrangements;
- transactions with related parties;
- tabular presentation of contractual obligations;
- for companies that are not venture issuers (as defined in NI 51-102), analysis of critical accounting estimates; and
- for venture issuers without significant revenues, additional matters.

We may also raise comments about:

- proposed transactions, including the impact of major acquisitions;
- changes in accounting policies including initial adoption;
- the impact of reversals of prior period accounting treatments (for example, material sales of previously written-off inventory);
- financial instruments;
- the use of pro-forma or non-GAAP financial information;
- the issuance of stock options or other securities that dilute shareholders' equity; and
- the impact of income taxes.

Proposed Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings* (**MI 52-109**) is scheduled to become effective on March 30, 2004. MI 52-109 will require reporting issuers, other than investment funds, to file separate annual and interim certificates signed by their chief executive officers and chief financial officers, or persons who perform similar functions.

Each certificate will state, among other things, that the certifying officer has reviewed the annual and interim filings (which include the MD&A), that the annual and interim filings do not contain misrepresentations, and that the filings fairly present the financial condition of the issuer. We believe that meaningful MD&A will be an important element of how an issuer achieves this fair presentation.

We believe that the MD&A requirements are clear. Nevertheless, our review suggests that many companies are not meeting these requirements. Though in this review we often accepted commitments to make prospective changes, it is increasingly likely that we will ask companies to restate and refile their MD&A if they fail to meet the MD&A requirements. We will provide further guidance as appropriate.

Questions may be referred to:

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6 Interim MD&A was also reviewed in Ontario Securities Commission Staff Notice 52-713 *Report on Staff's Review of Interim Financial Statements and Interim Management's Discussion and Analysis – February 2002.*

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