

Continuous Disclosure Review Program

2008 Report

On the Review of
Financial Statements,
MD&A and Other
Materials

Alberta Securities
Commission
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Executive Summary

The Alberta Securities Commission (ASC) is commenting on the quality of continuous disclosure (CD) filings of Alberta reporting issuers (RIs) for the 2008 year. This year, we are reporting on our findings earlier to enable preparers of CD, management and advisors to consider the issues set out in this report when preparing year end filings for December 31, 2008.

As of November 30, 2008, we completed 152 CD reviews. Overall, we are satisfied with the results of our reviews. We observed that the majority of RIs we reviewed take our comments seriously, respond to our comment letters in a timely fashion and have undertaken to make improvements to future filings.

For a number of years, our reports set out concerns about boilerplate, vague and generic discussions in Management's Discussion and Analysis (MD&A). Every year, when ASC staff determines that MD&A disclosure is poor and clearly deficient, we have asked, and continue to ask, that the RI restate and refile the document. This year, we took additional measures to address poor MD&A disclosure. When MD&A was deficient but not sufficiently so to require a full restatement, we advised the RI to improve its next MD&A filing or risk having to restate and refile that subsequent disclosure. In some cases, our review of the subsequent MD&A resulted in a request for restatement.

This year's report focuses on areas where disclosure can be improved. We have provided illustrative examples of deficient disclosure and examples of disclosure that complies with the requirements and provides useful information to the reader. At the end of each section, we have also provided additional practice tips to enhance disclosure.

This year's report focuses on the following areas:

- MD&A;
- other financial statement deficiencies and disclosure lacking sufficient detail;
- forward looking information;
- the new 52-109 certification requirements;
- the new executive compensation requirements;
- disclosures about changeover to IFRS in 2011; and
- special disclosure considerations in light of current market conditions.

In an economic environment in which investors are increasingly cautious, clear and concise disclosure of operations, results, business objectives and future prospects will assist potential investors and lenders in making informed decisions as to whether to invest with or finance the RI. Disclosure should be easy

to understand. Good news and bad news should be given equal prominence. Specifically, disclosure of bad news should be readily accessible for the reader and not subtly hidden using vague explanations in the MD&A. Also readers should not have to hunt through numerous disclosure documents on www.SEDAR.com to try and piece together an understanding of what happened to the RI's business, including key transactions completed by the RI in the current period, because disclosure in MD&A is unclear or silent.

In the coming year, CD reviews will continue to be a major area of focus for ASC staff. We will continue to encourage RIs to improve the quality of their filings and discourage the use of boilerplate, vague and generic disclosure. We will likely focus our attention on a number of areas relating to the current regulatory environment including:

- disclosure of forward-looking information;
- compliance with the new 52-109 certification requirements;
- disclosure of the impact of current economic uncertainty on the RI's business;
- compliance with the new executive compensation disclosure requirements;
- disclosure of IFRS changeover plans; and
- disclosure of environmental reporting.

We encourage management of RIs and their advisors to consult with the ASC when they have questions about their continuous disclosure filing obligations. We always welcome comments on the CD Report and our approach to CD reviews. We endeavour not only to improve the process each year, but also to ensure that it continues to be relevant to the current business environment.

1. General

This is the eighteenth year that ASC is commenting on the quality of CD filings of Alberta RIs. This year, we are reporting on our findings earlier to enable preparers of CD, management and advisors to consider the issues set out in this report when preparing filings for December 31, 2008.

1.1 Our Approach

Generally, we review CD filings for:

- compliance with securities legislation and generally accepted accounting principles (GAAP);
- consistency of disclosure with information found elsewhere in the RI's CD record; and
- overall quality of disclosure; specifically we assess whether there is sufficient information for the reader to understand the issuer's financial performance, financial condition, business risks and future prospects.

In a typical CD review, we concentrate on a selection of the RI's CD from the current year and most recently completed year including:

- audited annual financial statements;
- interim financial statements;
- management's discussion and analysis (MD&A);
- information circular;
- annual information form (AIF);
- business acquisition reports (BARs);
- CFO and CEO certifications;
- annual reports;
- press releases;
- material change reports; and
- corporate websites.

We take a risk-based approach to our reviews. The sample of documents reviewed for a RI may vary according to perceived risk and issues encountered during the initial review process. During the course of a CD review, ASC staff may also involve ASC mining or oil and gas technical staff to perform a concurrent review of the RI's compliance with applicable mining or oil and gas requirements. Generally, the sample of RIs reviewed in any given period is based on a random selection of RIs that have not

been subject to a recent CD review. We also conduct CD reviews based on referrals from ASC staff working on other files in respect of the RI and referrals from the public.

We also conduct targeted reviews focusing on CD treatment of specific issues. For these “issue oriented reviews”, samples may be derived from a selection of RIs fitting a profile relevant to the subject of the issue oriented review.

In all of our CD reviews, we typically provide RIs with comments:

- to seek clarification where there appears to be a misapplication of technical requirements;
- to follow up where the disclosure is inconsistent with other information in the RI’s CD record; and
- to request more information because the disclosure does not provide sufficient insight.

Before a comment letter is sent to an RI, at least two professional ASC staff members have reviewed the disclosure. Therefore, when ASC staff seek further clarification because the disclosure is vague and/or not insightful, management should consider this to be a good indicator of how the disclosure could be perceived and understood by the typical reader.

From time to time, we will also provide suggestions to improve future filings and offer “educational” comments for the purposes of increasing RIs’ awareness of new requirements.

2. CD Review Results

For this report, we reviewed CD filings for the time period January 1, 2008 to November 30, 2008.

	11 months ended November 30, 2008	12 months ended December 2007 (as reported in our February 2008 CD Report)
Full CD reviews	119	57
High level CD reviews ¹	3	75
Issue oriented reviews ²	30	104
Number of files reviewed	152	236

Outcomes ³		
Requests for restatement	56 (involving 42 RIs)	69 (involving 55 RIs)
Nature of restatements:		
- financial statements	21%	22%
- MD&A	27%	39%
- certification	36%	23%
- other ⁴	16%	16%
Requests for prospective change	128	79
Placed in default	5	11
Referred to enforcement	2	8

¹ Details about high level CD reviews can be found in the February 2008 CD report. In 2008 we modified the CD review program eliminating the high level CD reviews in favour of more detailed full CD reviews.

² In 2007, includes a study of 68 RI's related party transaction disclosures for research purposes.

³ There is not a one-to-one correlation between the number of RIs and the number of outcomes. That is, one RI can generate a number of outcomes and others may generate no outcomes. For example, an RI generating more than one outcome may be asked to make prospective changes for some items and restatements for other items.

⁴ This includes restatements for BARs and AIFs & technical disclosure under NI 51-101.

For a number of years, our reports have set out concerns about boilerplate, vague and generic discussions in MD&A. Every year, when ASC staff determines that MD&A disclosure is poor and clearly deficient, we have asked, and continue to ask, that the RI restate and refile the document.

Last year, approximately half of the restated MD&As related to failure to include a conclusion on the effectiveness of the issuer's disclosure controls and procedures.

This year, we took additional measures to address poor MD&A disclosure. When MD&A was deficient but not sufficiently so to require a full restatement, we advised the RI to improve its next MD&A filing or risk having to restate and refile that subsequent disclosure. In some cases, our review of the subsequent MD&A resulted in a request for restatement. This contributed to the higher number of restatements set out in this year's statistics.

3. Objective of the CD Report

At a recent financial reporting conference, a CFO spoke of his changing role. In his comments, he emphasized the power of CD. He explained with a few pages of words and numbers, he must summarize what has happened in his complex business in a way that will convince investors and bankers to continue to invest and lend large sums of money to his company. In the rush of completing quarter-end and year-end close procedures and related filing requirements, management and preparers of CD should not lose sight of the purpose of CD. RIs that get the most out of CD use it as an opportunity to educate potential investors and lenders about their business with insightful disclosures and commentaries.

This year's report focuses on areas where RIs can improve disclosure to the mutual benefit of the filer and the investors. We have included illustrative examples of deficient disclosure and examples of disclosure that complies with the requirements and provides useful information to the reader.

New to 2008: Examples

While we have included examples of disclosure that meet our requirements for illustrative purposes, we express no conclusion on the overall quality of any particular RI's disclosure record. These examples are based on actual disclosures examined in our CD reviews. We have modified the content to provide anonymity. More specifically, we have changed names and locations, certain of the qualitative content, percentages and amounts.

4. Management's Discussion and Analysis (MD&A)

4.1 MD&A Lacking Sufficient Detail

A key objective of MD&A is to provide the reader with an understanding of an RI's business and to supplement the financial statements. To provide the reader with an understanding of the business, the RI should explain clearly why certain changes have occurred or why expected changes did not occur. The RI also needs to discuss important trends and risks that have affected the business as well as trends and risks that are reasonably likely to affect it in the future. In instances where an RI has done a poor job of MD&A, the MD&A appears hastily prepared, a product of a merely mechanical exercise of filling in standard templates and re-arranging the presentation of numbers from the financial statements.

Investors benefit from a disclosure package that adequately explains:

- what the RI's business is about;
- how the RI has performed historically;
- where the RI is headed in the future; and
- what distinguishes the RI from its peers.

In an economic environment in which investors are increasingly cautious, clear and concise disclosure of operations, results, business objectives and future prospects will assist potential investors and lenders in making informed decisions as to whether to invest with or finance the RI. Disclosure should be easy to understand. Good news and bad news should be given equal prominence. Specifically, disclosure of bad news should be readily accessible for the reader and not subtly hidden using vague explanations in the MD&A. Also readers should not have to hunt through numerous disclosure documents on www.SEDAR.com to try and piece together an understanding of what happened to the RI's business including key transactions completed by the RI in the current period because disclosure in MD&A is unclear or silent.

4.2 Examples of Unclear Disclosure

During the past year, we have read a number of interim and annual financial statements along with the associated MD&A and have not been able to determine the exact nature of the RI's business. We provide the following three examples of unclear disclosure:

Example 1

An oil and gas producer omitted any disclosure that would inform the reader of the products the RI produced and the RI's major producing areas. Only from reviewing the RI's NI 51-101F1 oil and gas disclosures could one determine that they produced oil in Alberta.

A sentence or two in the notes to the financial statements and a brief introductory paragraph in the MD&A would have easily provided the reader with this information. The MD&A should be able to stand on its own.

Example 2

We reviewed a venture issuer who is in the business of “widgets”. There was no further disclosure to explain the “widget” technology and related application. For example, were these components used in an industrial setting or a medical setting? There was also no discussion of the RI’s customer base.

Discussion in the MD&A also included a recalculation of the financial statement line items accompanied by meaningless statements such as “revenues went up because sales went up”.

The RI did not file an AIF so the reader could not refer to the AIF for information about the business.

Regardless of whether an AIF is filed, the MD&A should stand alone. The RI should provide an explanation of the nature of their business and customer base in the MD&A to provide the reader with some background information about their business.

To ensure that explanations in MD&A provide meaningful information, the RI should employ a “why” and “so what” test. To illustrate:

Revenues went up because sales went up.

→Why did sales go up?

Sales went up because we sold more units.

→Why did you sell more units?

We sold more units because we decided to market our product to the medical industry in an effort to diversify our customer base.

→So what?

We set a target of 5% sales growth every year for the next 3 years. We needed to expand into new markets in order to achieve this target.

Example 3

In our reviews of disclosures of oil and gas companies engaged in exploration and production activities in foreign countries, the financial statement notes and MD&A generally discuss the risk of operating in such an environment. In some cases, there is insufficient detail to enable the reader to understand the terms of company’s production sharing agreements to allow the reader to assess the nature of these activities.

RIs should clearly summarize the key features for these arrangements (e.g. revenue and cost sharing details, work commitments, related funding obligations and consequences for not meeting key terms). The RI should also disclose the expiry date of the agreement and discuss what happens at the end of the agreement (e.g. will the projects revert back to the government when the agreement expires? Is there certainty that the arrangement will be extended for another term?)

4.3 Examples of Disclosure that Provides Sufficient Information to the Reader

One of the more common arguments against providing more meaningful information in MD&A is the concern that the information is commercially sensitive. The following are three excerpts from RIs' MD&A that challenge the argument that providing more information in the MD&A results in giving up commercially sensitive information.

Example 1

Detailed disclosure on oil and gas projects in foreign regimes.

"Each of the licenses gives the Company the right to explore for oil and gas on specified blocks in Country Y. If exploration is successful, the Company can apply to the Country Y government for either a retention license or a development license. A retention license is generally applied for if gas reserves have been identified but if additional time is required to prepare a development plan or the amount of gas reserves is not of a sufficient commercial amount and additional time is required to explore for additional gas reserves. A development license is generally applied for if oil and/or gas reserves have been discovered and production is commercially viable. The Country Y government has historically granted retention or development licenses however there is a risk that a retention or development license may not be granted to the Company when, or on the terms, applied for.

The Country Y government retains a 30% back-in right at cost which can be exercised at the time a development license is granted and has a 5% royalty over any oil or gas production that may occur with respect to the licenses...No oil and gas reserves are attributed to the licenses.

Petroleum Prospecting License xxx ("PPL xxx") was originally granted on [date] and has a [number] year term that expires [date]. PPL xxx covers [amount] gross acres located in the ZZZ region of Country Y. The prospective area of PPL xxx is predominantly offshore but includes a significant onshore area that will be significant for conducting geological field work. PPL xxx is an anticipated natural gas play for the Company."

The background information provided by the RI allows the reader to assess the nature of the RIs operations in Country Y. The reader is provided with background information about the RI's exploration license (i.e.- expiry date, potential royalties, location, land size, type of product, offshore/onshore activities). The RI also discusses the types of licenses that are available (i.e. exploration, retention and development) and the likelihood for the Company to obtain a retention or development license upon the completion of their exploration phase.

Example 2

Detailed discussion of results and future prospects.

"Company Y's total production volumes for Q4 2007 averaged 40,000 boe per day which is an increase of approximately 10% from Q3 2007. Q4 2007 production volumes increased due to new production from our successful capital program and the completion of plant turnaround activities during Q3 2007.*

Q4 2007 production was comprised of 142,000 mcf per day of natural gas, 15,000 bbls per day of oil and 1,000 bbls per day of NGLs. Production for 2007 was 40,000 boe per day, an increase of 20% over the corresponding period in 2006 primarily due to corporate acquisitions and a successful capital program. This increase was weighted with natural gas production increasing 20% and oil and NGLs combined production increasing 20%. With the addition of new production volumes from our successful 2007 capital expenditures, and a 2008 capital expenditures budget of \$150 million, Company Y expects to average approximately 40,000 to 42,000 boe per day of production for fiscal 2008."*

* Author's note: Details about Company Y's successful drilling program is located in another section of the MD&A which shows the number of successful wells drilled in the current period compared to prior periods, new wells by product compared to prior periods and comparative finding and development cost data.

The RI provides detailed explanations to support the change in operating results. In particular, the explanations met the "why" and "so what" test. The RI explains why production went up (i.e. plant turnaround, acquisitions, successful capital program and details the period's capital program successes including wells drilled in the current period) and discusses the resulting implication (i.e. anticipated exit rate for 2008).

Example 3

MD&A introduction, brief overview of the business.

"...These operating businesses are divided into two distinct business segments; Segment 1 and Segment 2. The segments are differentiated by the type of service provided...Segment 1 provides servicing and support for activity Y and activity Z in the oil and gas industry. These services include Service Type 1, Service Type 2 and Service Type 3. Segment 2 offers...a range of transportation services to customers in Location 1, Location 2 and Location 3."

This introductory paragraph provides a brief overview of the nature of the RI's business to provide context for the reader.

4.4 Other MD&A Disclosure Tips

Based on recurring comments that we have raised during the past year, we provide the following tips to improve MD&A disclosure.

- Do not simply cut and paste the related party transaction information from the financial statements into the MD&A. The instructions to 1.9 of 51-102F1 *Management's Discussion and Analysis* require more information than is set out in the financial statement notes. For example, the instructions to 1.9 require a disclosure of the business purpose of the transaction. Many filers fail to describe the business purpose for related party transactions or they fail to explain why certain consulting fees were paid.
- When providing a summary of the quarterly results, remember to explain any significant period-to-period fluctuations (Item 1.5, 51-102F1).
- Meaningful liquidity and capital resources discussions require sufficient detail to explain to the reader how the RI will fund upcoming operating and capital commitments and other obligations. Ideally, this discussion should tie back to capital budget and other information about capital spending found elsewhere in the RI's disclosure record (Item 1.6, 51-102F1).

For example, an RI issued flow through shares in the prior year with a total flow through share commitment of \$10 million. To date, the RI has expended \$4 million and must spend the remaining \$6 million before the end of this year. The RI has \$2 million in cash currently and an undrawn credit facility of \$3 million. The RI does not generate positive cash flow from operations. In this case, we would expect that the MD&A would disclose the fact that there is a \$6 million capital commitment and explain the sources of funds that will be available to finance this commitment. In particular, the MD&A would need to address how the RI expects

to fund the shortfall between available sources of cash (\$3 million + \$2 million) and the amount of the unspent commitment (\$6 million).*

**In light of current market conditions, it may become more difficult for some RIs to raise additional funds through equity offerings or to obtain further bank financing. Accordingly, we would expect the MD&A to provide detailed discussion of how current market conditions will impact the RI's liquidity and capital resources. Please refer to section 8 of this CD Report for Specific Considerations in Light of Credit Crisis and Current Market Conditions.*

- A meaningful discussion of operating results requires a detailed discussion of the reasons for the change, beyond the amount or percentage of change. The reasons for the change should include a discussion of elements related to daily operations. As discussed previously, it may be helpful to apply a “why” and “so what” test to ensure that sufficient detail has been provided to the reader.

For example, oil and gas RIs often cite that revenues went up because production volumes went up. It would be more meaningful to the reader if the RI would take this explanation one step further by discussing why production volumes went up. This may include a brief overview of wells drilled and tied in for the RI's key revenue producing areas (Item 1.4, 51-102F1 and section 1(d) 51-102F1).

- Disclosure of outstanding share data should include warrants, options and other exchangeable instruments that are convertible into voting securities of the RI. Disclosure should be based on a date as close as possible to the filing date of the MD&A rather than at the year-end or quarter-end date (NI 51-102 s. 5.4).
- For non-venture issuers, RIs should provide an explicit conclusion on disclosure controls and procedures (DC&P). For filings on or after December 15, 2008, an explicit conclusion on the effectiveness of internal control over financial reporting (ICFR) is also required. This means using concise words, in the active voice, leaving absolutely no ambiguity. For example, “Certifying Officer X has concluded that DC&P [ICFR] is effective” provides clear disclosure for the reader (Instruction to item 1.15, 51-102F1).
- If presenting non-GAAP financial measures, provide the disclosure set out in Canadian Securities Administrator (CSA) Notice 52-306 *Non-GAAP Financial Measures* (CSN 52-306), including a discussion of why the non-GAAP measure is considered to be useful to management. In particular, explain why and how management of the RI uses the non-GAAP measure.
- When presenting or discussing the results of non-GAAP financial measures in MD&A, ensure that there is equally prominent disclosure and discussion of the closest GAAP performance measure. For example, if discussing how EBITDA changed from the prior year, provide equally prominent disclosure of why net income changed from prior year (CSN 52-306).
- Ensure the MD&A provides a brief overview of the RI's business. The reader should not have to turn to other CD filings such as the AIF or oil and gas technical reserves filings to obtain a general understanding of the RI's business including where it operates and what it produces or sells.
- If the RI makes quarterly investor presentations, make note of questions received from participants. This can provide the RI with feedback about key information that is missing from the MD&A.

- Ensure the MD&A discusses the RI's IFRS changeover plans in reasonable detail. Refer to CSA Notice 52-320 *Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards* for further guidance.

As the IFRS changeover date approaches, generic statements such as: "the Company is in the process of developing a plan to assess the impact of IFRS on its financial statements" would be considered insufficient.

4.5 Other Useful Publications on MD&A

The Canadian Performance Reporting Board (CPRB) has recently published a number of commentaries on the subject of preparing MD&A, including guidance for smaller issuers, pre-2011 IFRS conversion discussions and MD&A disclosure during volatile and uncertain times. These publications are available through the CPRB Performance Reporting Resource Centre on the Canadian Institute of Chartered Accountants (CICA) website: http://www.cica.ca/index.cfm/ci_id/247/la_id/1.htm.

5. Forward-Looking Information (FLI)

The *Securities Act* (Alberta) defines FLI as: "disclosure regarding possible events, conditions or results of operations that are 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 projection."

This definition is broad and captures both quantitative and qualitative statements made about possible or future events by an RI.

On December 31, 2007 National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) was amended in respect of FLI, including future-oriented financial information (FOFI) and financial outlooks such as earnings guidance (collectively, the New FLI Requirements).

These amendments consolidate, streamline and clarify the requirements for preparation and disclosure of FLI in one location. Previous requirements were set out in a number of documents including National Policy 48 *Future-Oriented Financial Information*, National Policy 51-201 *Disclosure Standards* and instructions to 51-102F1 *Management's Discussion & Analysis*.

The New FLI Requirements apply to all forwarding-looking information that is disclosed by a reporting issuer except for oral statements (NI 51-102 subsection 4B.1).

For example, the New FLI Requirements apply whenever there is written disclosure about FLI in documents such as press releases, website presentations, and other investor relations materials.

FLI must be based on assumptions that are reasonable in the circumstances, (NI 51-102 subsection 4A.2).

Where material FLI is disclosed, the RI must:

- identify the material FLI statements as such;
- caution readers as to its use;
- state the material factors or assumptions; and
- discuss the policy for updating if RI's procedures go beyond NI 51-102 s. 5.8 (NI 51-102 subsection 4A.3).

If FOFI or financial outlooks are provided, the RI must:

- explain the purpose of the FOFI or financial outlook;
- caution as to its use; and
- disclose the date that management approved the information (NI 51-102 subsection 4B.2).

RIs must update previously disclosed material FLI (NI 51-102 section 5.8).

In our reviews we noted that RIs often failed to:

- clearly identify material FLI statements set out in their written disclosures. RIs often failed to specifically identify or differentiate the material FLI statements made in the document, choosing instead to suggest that there may be FLI statements and these statements may be identified when the words “expect, anticipate, will, may etc...” are used. The New FLI Requirements do not prescribe the format used to identify material FLI statements. On the pages to follow, we have provided examples of disclosure that complied with the New FLI Requirements and in these examples, RIs adopted different approaches to identify material FLI statements.
- state the material factors or assumptions used. While we recognize that it is impractical to provide an exhaustive list of assumptions underlying each material FLI statement, we believe for every material FLI statement there is at least one key material assumption supporting that statement. Material assumptions may be quantitative or qualitative in nature. Determining the applicable assumptions is a matter of judgement and is based on the RI’s particular set of facts and circumstances.
- separately disclose what are the material assumptions and what are the material risk factors. We noted that some RIs grouped the disclosure together, making it impossible for the reader to distinguish between the two.

We included the following three examples to demonstrate these deficiencies.

5.1 Examples of Deficient Disclosure

Example 1

Deficient disclosure: failure to specifically identify FLI and failure to comply with update requirements.

*“Certain statements contained in this MD&A constitute “forward-looking statements.” All statements, other than statements of historical fact, that address activities, events, or developments that Company X or a first party expects or anticipates will or may occur in the future are forward-looking statements.”**

*These forward-looking statements reflect our current beliefs and are based on information currently available to us and on assumptions we believe are reasonable. Actual results and developments may differ materially from the results and developments discussed in the forward-looking statements as they are subject to a number of significant risks and uncertainties, including those discussed under “Business Risks” and elsewhere in this MD&A. Certain of these risks and uncertainties are beyond our control. Consequently, all of the forward-looking statements made in this MD&A are qualified by these cautionary statements and other cautionary statements or factors contained herein, and there can be no assurance that the actual results or developments will be realized or, even if substantially realized, that they will have the expected consequences to, or effects on, Company X. These forward-looking statements are made as of the date of this MD&A, and we assume no obligation to update or revise them.** “*

* The underlined disclosure does not identify specific material FLI statements set out in the disclosure document.

** NI 51-102 section 5.8 sets out the requirement to update previously made FLI statements. The statement made by the RI contradicts this requirement.

Example 2

Deficient disclosure: failure to identify assumptions.

Advisory regarding forward looking statements.

"The Company has included in this news release certain statements and information that are forward-looking including...the production and timing of gas plays in Area 1 and Area 2...By their nature, forward looking statements involve numerous assumptions, known and unknown risks and uncertainties, both general and specific that contribute to the possibility that circumstances, events or outcomes anticipated or implied by forward-looking statements will not occur...These risks and uncertainties include, among other things: risks associated with the ability to obtain necessary approvals, volatility and assumptions regarding oil and gas prices, fluctuations in currency rates..."

In the press release, the RI made an FLI statement communicating that future potential production rates from Area 1 will be in X cubic feet per day. This appears to constitute a material increase to their daily production. Within the body of the press release, there were no further discussions of the assumptions underlying this material FLI statement.

In the disclosure underlined, the general statement that forward-looking statements involve "numerous assumptions" is not sufficient. More context should be provided to enable the reader to assess and understand the material FLI statement. There should be some reasonably detailed discussion of the specific material assumptions underlying the statement that the Company will be able to produce X cubic feet per day. These material assumptions may be either qualitative or quantitative in nature.

Example 3

Deficient disclosure: failure to clearly identify assumptions from risk factors.

*[*A number of specific FLI statements identified in a previous paragraph]*

"...The forward-looking statements are subject to known and unknown risks and uncertainties and other factors which may cause actual results, levels of activity and achievements to differ materially from those expressed or implied by such statements."

Such factors include, among others:

- market prices for oil and gas and chemical products;
- our ability to explore, develop, produce and transport crude oil and natural gas to markets;
- the results of exploration and development drilling and related activities;
- volatility in energy trading markets;
- foreign-currency exchange rates;
- economic conditions in the countries and regions in which we carry on business;
- governmental actions including changes to taxes or royalties, changes in environment and other laws and regulations;
- renegotiations of contracts;
- results of litigation, arbitration or regulatory proceedings; and
- political uncertainty, including actions by terrorists, insurgent or other groups, or other armed conflict, including conflict between states.

In paragraph [*] the RI identified a list of material FLI statements. Therefore, the reader would look to the two

paragraphs following [*] to review the material assumptions and material risk factors in support of the material FLI statements identified. However, based on the way the RI drafted the disclosure it is unclear to the reader which items constitute other factors or assumptions versus risks.

For example, it is unclear to the reader whether the RI meant to communicate that certain market prices form a material assumption in support of a specific FLI statement OR to communicate that the risk of changing market prices may cause actual results to differ from a particular FLI statement.

A frequently asked question from RIs and their advisors is whether there is a prescribed disclosure format to comply with the New FLI Requirements. More specifically, we are often asked whether the FLI disclosure should be contained in a “cautionary” opening paragraph at the beginning of the document or whether the FLI disclosure should appear elsewhere. There is no uniform or prescribed approach. In our reviews we have observed that different RIs have taken different approaches and adopted varying drafting styles.

5.2 Examples of Acceptable Disclosure

The following examples demonstrate how RIs can approach their disclosures to enable them to comply with various elements of the New FLI Requirements.

Example 1

Disclosure that specifically identifies the FLI statements in a disclosure document using an advisory paragraph at the beginning of the MD&A. (Drafting style #1)

Cautionary Statement Regarding Forward-Looking Information and Statements

“Certain statements contained in this report, including statements related to Company X’s capital expenditures, projected asset growth, view and outlook toward future commodity prices, cyclical industry fundamentals, pricing competition, future natural gas supply growth and storage levels, drilling activity in Area Z, expansion in Country Y, international market opportunities... and statements that contain words such as “could”, “should”, “can”, “anticipate”, “expect”, “believe”, “will”, “may” and similar expressions and statements relating to matters that are not historical facts constitute “forward-looking information” within the meaning of applicable Canadian securities legislation.

In particular, forward-looking information and statements include:

- *new Widgets built and expected to be commissioned;*
- *stronger than expected natural gas prices in 2008 should positively impact customer cash flows and provide incentive to resume their oil and gas exploration and development programs;*
- *estimates that \$200 million of the total capital will be incurred in 2008 with \$200 million carried forward to 2009;*
- *producer confidence in Area Z to increase oil and gas exploration and development activity;*
- *planned asset growth will generally be financed through existing debt facilities or cash retained;*

all of which are stated under the headings “Overview” and “Outlook” of this report.”

Example 2

Disclosure that specifically identifies the FLI statements in a disclosure document using an advisory paragraph at the beginning of the MD&A. (Drafting style #2)

Forward-looking Information

"This MD&A contains forward-looking statements relating to future events...

Examples of forward looking information in this document include, but are not limited to the following, each of which is subject to significant risks and uncertainties and is based on a number assumptions which may prove to be incorrect.

- *The anticipated reduction of oil operating costs as a result of completing construction of multi-well battery and treating facility and drilling a salt water disposal well in the ABC area; this is subject to the risk and uncertainty that the actual operating costs of the new facility and disposal well may differ materially from what is currently anticipated or that the anticipated timing of tying in the wells is different from what is currently anticipated.*
- *The anticipated reduction of transportation and operating costs as a result of the continuing construction of a gathering system in the ABC area during the third quarter of 2008; this is subject to the risk that the project is not completed as and when anticipated and the uncertainty that the actual operating costs of the gathering system will substantially differ from expected operating costs."*

Example 3

Disclosure that provides clear disclosure of assumptions

Outlook

"For 2008, Company X is planning to invest \$400 million into its capital programs. The focus of this program will include drilling approximately 180 to 200 wells... Company X has currently identified approximately 500 drilling prospects and will consider accelerating the drilling of some of these prospects in the latter part of 2008 should commodity prices remain at attractive levels. It is anticipated that this capital program should result in 2008 production volumes averaging approximately 60,000 boe per day. This level of production factors in downtime experienced in the second quarter due to plant turnarounds. Assuming commodity prices of CDN\$8.00 per GJ of natural gas (AECO), US\$110.00 per bbl of crude oil (WTI) and CDN\$/US\$ exchange rate of \$0.99... Company X now anticipates 2008 funds from operations to increase to approximately \$500 to \$550 million."

Example 4

Disclosure that segregates disclosure of assumptions from risk factors

Advisory

"In particular, forward-looking statements included in this MD&A include, but are not limited to... future net revenues from, crude oil and natural gas reserves; the focus of capital expenditures; expectations regarding the ability to raise capital..."

These forward-looking statements are subject to numerous risks and uncertainties, certain of which are beyond the Company's control, including the impact of general economic conditions; volatility in market prices for crude oil and natural gas...

With respect to forward-looking statements contained in this MD&A, Company X has made assumptions regarding:

- *current commodity prices* and royalty regimes;*
- *availability of skilled labour; timing and amount of capital expenditures;*
- *conditions in general economic and financial markets; availability of drilling and related equipment..."*

* Author's note: The body of the MD&A includes a discussion of the period to date commodity prices received by the company accompanied by management commentary about the expected direction of prices in the near future.

5.3 FLI Tips

Write the disclosure document first, then go back and specifically highlight all the instances where material FLI statements are made. Ensure you provide the required disclosure for each material FLI statement in accordance with NI 51-102, subsection 4.A.3 that requires you to:

- identify the material FLI;
- caution users that actual results may differ;
- state the material factors and assumptions used to develop the FLI; and
- describe the RI's policy to update FLI if it includes procedures in addition to those set out in subsection 5.8(2).

For each material FLI statement, ensure there is discussion of the underlying material factors and assumptions. Ensure discussion of material assumptions is distinct and separate from disclosure of associated risk factors. The reader should be able to clearly understand the difference between risk factors and assumptions.

If the RI has publicly disclosed its plans and programs for the coming year, consider whether the assumptions supporting those plans and programs are also applicable as material assumptions for the RI's material FLI statements.

Companion Policy language in NI 51-102, subsection 4A.4, suggests that the disclosure be presented in a manner that allows the reader to readily appreciate that there is FLI in the document, specifically identify the material FLI statements made and understand material assumptions underlying these FLI statements and the associated risk factors. Ultimately, preparers of disclosure documents should aim to achieve the objective set out in the Companion Policy.

6. Other Pitfalls

We encounter recurring deficiencies in certain subject areas. We list these below to serve as a reminder for preparers of CD.

6.1 Financial Statement Note Disclosure Lacking Sufficient Insight

The following are examples of insufficient note disclosure we encountered during our CD reviews:

Example 1

Vague related party disclosure

"During the year ended December 31, 2007, the Corporation was charged \$100,000 in consulting services by a related company of the Corporation."

This note does not describe the measurement basis for the transaction (e.g., exchange amount versus fair value), does not identify the related party or discuss details of the relationship.

In identifying the related party it may not be necessary to specifically name the party in all cases (e.g., identifying the party as "the CFO's spouse" may be acceptable). However, the description should be sufficiently detailed to enable the reader to appreciate the consequences of the transaction (e.g., the description "related company" is too vague but the description "a company controlled by the CFO" may be acceptable).

In describing the transaction, the term "consulting fees" is vague. However, describing the transaction as "fees paid for engineering work or reimbursement for administration and accounting" may be acceptable.

Example 2

Failure to disclose sufficient detail about the acquisition of a business

We observed one case where the RI failed to provide business combination disclosure required by the CICA Handbook (HB) s. 1581.55. Instead, buried within the property, plant and equipment note of the annual financial statements was the following passage:

"On April X, 200X, the Company acquired interests in mineral licences and mineral projects through the acquisition of ABC Entity. These projects are known as Project 1 and Project 2, located in Country Z. The Company acquired these interests by an issuance of 25,000,000 common shares with a value of \$5,000,000 and 100,000 common share purchase warrants with a value of \$10,000."

Given the above discussion, we would expect to see CICA HB s.1581 disclosure including the purchase price equation for the acquisition of ABC Entity. However, this information was not provided by the RI.

Example 3

Incomplete discussion of key features in significant contracts (e.g. disclosure of a royalty obligation in a contract with no mention of an additional cost recovery obligation)

"Through fiscal year 1 and year 2, the Company received funding in the amount of \$300,000 from Entity A toward consulting fees and capital expenditures incurred towards the construction of Machine 1. A royalty of 0.25% of gross revenue after year 1 (maximum \$50,000 per year) is payable until Entity A has recovered double the amounts advanced to the Company. A royalty of \$300,000 has been accrued in these financial statements. The remaining royalty potentially payable is \$600,000."

The above passage illustrates the consequences of vague and incomplete disclosure. This passage reads as though there is one royalty obligation in place. However, upon further discussion with the RI, we learned that there were two obligations related to this arrangement.

The first feature was an outright obligation to repay an advance initially paid to the company regardless of future sales volumes (i.e. repay the original \$300,000 advance). The second feature was a royalty payable based on a percentage future gross revenues generated by Machine 1 (i.e. maximum royalty is \$600,000). Therefore, in total, the Company could pay up to \$900,000 for the arrangement.

It is difficult to appreciate these two key obligations from the disclosure provided. Preparers of CD filings must take care to avoid vague language and drafting to ensure it clearly and completely describes all key features within a transaction or arrangement.

Example 4

Disclosure of detailed assumptions and inputs used in fair value models where there were no observable market prices. (CICA HB s. 3862.27)

We expect to see disclosure of actual discount rates and probability factors applied in the model.

In the following example, the issuer failed to discuss the actual discount rates, credit spreads, probability factors and other specific assumptions they applied to their model. It is not sufficient to mention that assumptions were applied without disclosing the actual assumptions.

"ABCP is a financial instrument and has been classified as held for trading and therefore is recorded at fair value. The Company has recognized a decrease in fair value of \$7 million during the year, representing the difference between the original investment cost of \$50 million and the estimated fair value of \$43 million at December 31, 2007. There are no observable market prices for ABCP as at the balance sheet date. Accordingly, the Company has estimated the fair value using a probability-weighted discounted cash flow approach based on the assumed credit ratings and potential ratings actions on the applicable ABCP conduits under the proposed restructuring, observable interest rates and credit spreads for estimating future interest payments and applicable discount rates, the cost of margin call facilities (1.20% of Pool 1), the cost of the proposed restructuring (.005% in Pool 1), estimated recovery periods based on the estimated lives of the underlying assets of the proposed restructuring conduits (5 years for pooled asset in Pool 1 and 7 years for ineligible assets in Pool 1) and ranges of recoverability based on publicly available default statistics for credit-rated entities."

6.2 Accounting for Share Purchase Warrants

If there is a change to the conversion terms for outstanding warrants, we expect to see an adjustment to previously recorded values for these warrants.

If the RI issues a unit which includes a common share plus a warrant, we expect to see amounts separately recorded for each of the common shares and the applicable warrants issued.

6.3 New Financial Instruments Disclosure

New CICA HB s. 3862 requires more detailed disclosure for financial instruments. Paragraph 3862.01 states that the objective of this new Handbook section is to require “entities to provide disclosures...that enable users to...evaluate the significance of financial instruments for the entity’s financial position and performance...and the nature and extent of risks arising from financial instruments to which the entity is exposed...and how the entity manages those risks.”

During our reviews we noted the following deficiencies:

- failure to identify and provide meaningful discussion of the types of risks facing the RI (paragraphs 3862.32 -.33);
- failure provide sensitivity analysis for market risks applicable to the RI’s business (paragraphs 3862.40-42); and
- failure to provide disclosure that enables a comparison of carrying values to fair values for each class of financial assets and liabilities (paragraph 3862.25).

6.4 New Capital Disclosures

New CICA HB s. 1535 requires qualitative and quantitative disclosures about what the RI manages as capital. We observed that a number of RIs failed to provide quantitative disclosures set out in paragraph 1535.03. The following example is one acceptable approach to provide quantitative disclosures.

Example 1

Capital disclosures

“The Company monitors capital using a number of key financial metrics, including: net-debt to net-debt-plus-equity; and interest coverage ratio: earnings before interest; and taxes (EBIT) to interest expense. Both of these metrics have no standardized meanings prescribed by GAAP and, therefore, are unlikely to be comparable to similar measures of other companies.

The calculations for these key financial metrics are as follows:

Net-debt to net-debt-plus-equity

Net debt, which is a non-GAAP measure, is the sum of long-term debt, long-term debt maturing within one year and short-term borrowing, less cash and cash equivalents. This sum is divided by total net debt plus total shareholders' equity as presented on our Consolidated Balance Sheet.

Interest coverage ratio

EBIT, which is a non-GAAP measure that is calculated on a twelve month rolling basis, as earnings before interest and taxes, divided by interest expense.

The following table illustrates the financial metrics and their corresponding guidelines currently in place:

\$ million	guidelines	<u>2008</u>	<u>2007</u>
long-term debt		100	120
current portion of long-term debt		50	60
short-term credit facilities		10	5
less			
cash and cash equivalent		<u>(5)</u>	<u>(2)</u>
= net debt (a)		155	183
shareholder's equity (b)		200	200
net debt plus equity		355	383
net debt to net debt plus equity	not more than 55%	42%	47%
earnings before interest and tax		10	11
interest expense		2	3
interest coverage ratio	not less than 3	5	3.6

...The Company is also subject to financial covenants in the bridge financing agreement obtained for the acquisition of Project 1 and revolving loan agreements. Net-debt to net-debt-plus-equity and interest coverage ratio are two financial metrics that provide indicators as to whether the Company will be in compliance with its financial covenants. The Company is presently in compliance with all financial covenants."

6.5 Going Concern 1400 (January 2008 changes)

New CICA HB paragraphs 1400.08A and 1400.08B require management to make an assessment of whether the going concern assumption is appropriate, taking into account all available information about the future, including 12 months from the balance sheet date. Where a going concern

assumption is questioned, we expect that the RI will also discuss in the MD&A the detailed assumptions used by management to support this conclusion (MD&A form NI 51-102F1, item 1.6 - liquidity).

6.6 Compliance With Particular NI 51-102 Continuous Disclosure Requirements

During the year, we observed a number of recurring deficiencies involving certain aspects of NI 51-102.

- BARs

The most frequently recurring deficiencies with respect to BARs are:

- Failure to provide a subsequently audited period with an unqualified opinion where there was an inventory qualification for the most recently completed annual audited financial statements included in a BAR.
- Failure to provide interim financial statements for an appropriate period in the BAR. Unless the RI qualifies for the exemption in NI 51-102 subsection 8.3(4), the BAR must include interim financial statements of the acquired business for the most recently completed interim period before the date of acquisition (NI 51-102 subsection 8.3(4)).
- Failure to provide interim financial statements that meet the requirements of CICA HB s. 1751.
- Failure to file a BAR for significant acquisitions.

In our 2007 CD Report (published February 2008), we cited the provision in NI 51-102 subsection 8.10(3) which indicated that RIs wishing to use the exemption to present operating statements for the acquisition of oil and gas properties should provide pro-forma operating statements of the RI. During the year, a number of RIs and their advisors sought further clarification of this issue from ASC staff. As long as the presentation clearly distinguishes that it is a pro-forma addition of select line items on the RI's income statement to the acquired business' operating statement, ASC staff has determined that it is acceptable to add the income statement of the RI to the operating statement for the acquired business. Use of appropriate subtotals is required to achieve this presentation.

The BAR requirements are complex and we urge preparers and their advisors to seek further clarification from ASC staff where necessary. A deficient CD record can result from deficient BAR filings, which in turn, may cause delays for RIs wishing to access the short form prospectus system.

- Reverse takeovers and resulting financial statement filings

NI 51-102 subsection 4.10(2) sets out the requirements for the filing of financial statements for the reverse takeover acquirer (i.e. accounting parent) following a reverse takeover transaction. Further, NI 51-102CP section 3.8 sets out a reminder that the reverse takeover acquiree (i.e. accounting subsidiary) needs to ensure their reporting obligations are fulfilled despite completing the reverse takeover transaction. More specifically, the reverse takeover acquiree's last set of interim or annual financial statements prior to the reverse takeover transaction still needs to be filed under NI 51-102 even if the filing deadline occurs after the date of the reverse takeover transaction.

- Change of year end

NI 51-102 section 4.8 sets out the change of year end disclosure requirements and the applicable presentation for the new financial year, the transition year and the old financial year. RIs are reminded that a transition year must not exceed 15 months (NI 51-102 subsection 4.8(4)).

- Material contracts

On March 17, 2008, NI 51-102 section 12.2 was amended to further clarify the material contract filing requirements. While the definition of material contract has not changed, the amendments clarify the types of contracts we consider to be outside the ordinary course of business. In situations where the RI is substantially dependent on a particular arrangement, it is likely that a material contract exists. NI 51-102CP subsection 12.3(5) provides further guidance on this concept.

7. New Requirements

7.1 National Instrument 52-109 Certification of Disclosure in Issuer's Annual and Interim Filings (NI 52-109)

On August 15, 2008 the CSA published a new version of NI 52-109 (New 52-109). New 52-109 is effective for annual and interim periods ending on or after December 15, 2008. We have highlighted some of the more notable changes in New 52-109 below. However, this is not an exhaustive summary of all of the new requirements. Preparers of disclosure documents, management and their advisors should review the New 52-109 requirements carefully as this will impact filings on or after December 15, 2008.

Under New 52-109, venture issuers are not required to include representations in their certificates relating to DC&P and ICFR. While the Venture Issuer Basic Certificate does not include representations on the establishment and maintenance of controls, the certifying officer must ensure they are still able to certify that the applicable CD filings contain no misrepresentations and that there is fair presentation.

New 52-109 also introduces a requirement for non-venture issuers to conclude on the effectiveness of ICFR in the MD&A.

To improve the transparency of filings, New 52-109 introduces a series of new certificates to be tailored to the RI's specific filing situation. There are now new certificates to accompany:

- restated and refiled documents;
- first annual or interim filings following an initial public offering, a reverse takeover, or becoming a non-venture issuer; and
- voluntary filings of AIFs (for venture issuers).

New NI 52-109 section 3.3 now provides scope limitations regarding the design of ICFR and DC&P for significant acquisitions. These scope limitations apply for periods not more than 365 days from the end of the financial period to which the certificate relates. RIs using the scope limitations must also disclose information in respect of the scope limitation and provide summary financial information about the entity that it acquired.

New 52-109 section 7.1 now specifies that the date of the certificate must be the same date that the certificate is filed.

Other Considerations for Venture Issuers

On November 23, 2007 the ASC issued Blanket Order ABASC 836 which exempts venture issuers from filing a full certificate if a Venture Issuer Basic Certificate is filed. Since that time, we have noted a number of venture issuers filing a Venture Issuer Basic Certificate with a Note to Reader stating that they are not making any representations relating to the establishment and maintenance of DC&P and ICFR. However, the corresponding MD&A disclosures continue to include a paragraph that concludes on the effectiveness of DC&P and provides representations on the state of the RI's ICFR. The two documents appear to contain contradicting statements.

Companion Policy to New 52-109 section 15.3 provides guidance to venture issuers that choose to provide voluntary disclosure of DC&P and ICFR. The companion policy suggests that RIs disclose:

- they are not required to certify the design and evaluation of DC&P and ICFR and have not completed such and evaluation; and
- inherent limitations on the ability of the certifying officers to design and implement DC&P and ICFR on a cost effective basis may result in additional risks to the quality, reliability, transparency and timeliness of the interim and annual filings provided.

Selective disclosure about one or more components of a RI's DC&P and ICFR without the above noted statements should be avoided.

7.2 Executive Compensation

In September 2008, CSA staff provided notice to:

- adopt Form 51-102F6 *Statement of Executive Compensation (in respect of financial years ending on or after December 31, 2008)* (the New Form); and
- adopt consequential amendments (the Consequential Amendments) to National Instrument 51-102 *Continuous Disclosure Obligations (NI 51-102)*, Form 51-102F5 *Information Circular* (Form 51-102F5) of NI 51-102, and the existing Form 51-102F6 *Statement of Executive Compensation*, which came into force on March 30, 2004, as amended (the Old Form).

These changes require RIs to disclose all compensation awarded to certain executive officers and directors and to provide this disclosure in a new format. Preparers of CD filings should note that the new requirements are in force for their 2008 year end filings. The Old Form reflected substantially the same executive compensation disclosure requirements introduced in 1994. Since 1994, compensation practices have evolved. The New Form has been updated to better reflect current practices.

7.3 IFRS Matters

Effective January 1, 2011, Canada will adopt International Financial Reporting Standards (IFRS) for publicly accountable entities. A successful transition to IFRS includes comprehensive disclosure that:

- provides detailed and concise financial statement note disclosure of assumptions on key transactions or accounts;
- discusses areas where management exercises judgement; and
- sets out the reasons to support the application of accounting policy choices made where an accounting standard allows more than one choice.

A number of studies have been completed on the European transition to IFRS. One of the notable observations in these studies is the general lack of meaningful financial statement note disclosures. Studies reported that in many cases, financial statement notes were a verbatim cut and paste out of the accounting standards without discussion of an RI's specific facts and circumstances. To avoid a repeat of the European experience, preparers of CD filings in Canada must move beyond the current mindset of providing minimal, generic, boilerplate and vague discussions.

Prior to the IFRS changeover date, management of RIs and their advisors should be aware of the following current developments on the topic of IFRS:

- IFRS preparedness disclosure in MD&A

CSA Staff Notice 52-320 – *Disclosure of Expected Changes in Accounting Policies Relating to Changeover of International Financial Reporting Standards* (CSN 52-320) published May 2008, sets out expectations of MD&A disclosure of an RI's preparedness for IFRS changeover 3 years, 2 years and the year before adoption of IFRS. RIs and advisors should familiarize themselves with the expectations in CSN 52-320 and ensure their filings comply.

- Early adoption

Issuers contemplating early adoption of IFRS should refer to CSA Notice 52-321 – *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB* (CSN 52-321) published in June 2008. This Notice sets out our expectations about an RI's readiness to early adopt IFRS from the perspective of accounting and reporting processes, communication to stakeholders and understanding the impact of early adoption on the RI's continuing ability to comply with securities laws (which is written from the perspective of Canadian GAAP). We expect RIs who contemplate early adoption will also accelerate their IFRS preparedness disclosures (CSN 52-320).

CSN 52-321 communicates our intention to maintain the US GAAP option for Canadian SEC issuers. This Notice discusses our ongoing work to determine the naming convention for applicable accounting standards in 2011; namely, whether we will continue to refer to these standards as Canadian GAAP or IFRS-IASB.

- Proposed changes to securities law

While RIs are reviewing their own businesses for issues in advance of IFRS changeover, CSA staff are reviewing securities laws for issues caused by, or wording changes resulting from, the changeover. Revisions to securities laws to address changes introduced by IFRS will need to be in effect for January 1, 2011.

Therefore, given our rule-making timetable, we anticipate exposing proposed changes for comment during late 2009. RIs and their advisors should "stay tuned" to the ASC website for these publications. The comment letter process continues to be an invaluable tool in our rule-making and we encourage interested stakeholders to study the proposed changes carefully and provide candid feedback.

8. Special Considerations in Light of the Credit Crisis and Current Market Considerations

Given the current economic situation, RIs and their management must be responsive to the consequences of economic slowdown, scarcity of credit and volatile capital markets. Accordingly, we expect that MD&A and financial statement disclosure will discuss the consequences of these developments in reasonable detail for the benefit of the reader.

8.1 Applicable MD&A Requirements

- A discussion of the impact of the current economic conditions on the business including its current and future operating results and financial position (51-102F1, item 1.2). Are there any important risks and trends that may be reasonably expected to affect future financial statements that should be communicated to the reader (51-102F1, instruction (ii) to item 1.2)? Accordingly, will current operating results be indicative of future results? If past results are not indicative for the future, management should consider providing forward-looking results guidance.
- An update of previously issued forward-looking information (NI 51-102 s. 5.8). If the economic environment has changed, it is likely that material assumptions supporting previously disclosed material forward-looking information has changed.

- A discussion of the RI's ability to generate sufficient cash for its current operating needs and obligations (51-102F1, item 1.6 and instructions to 1.6). A discussion of obligations should include a discussion of anticipated debt maturities, upcoming commitments (e.g., unexpended flow-through share commitments, construction/project funding commitments etc). These obligations should be compared to available cash flow from operating activities, other potential sources of funds (e.g., undrawn credit facility lines) and current leverage and debt levels. Explain whether the RI has sufficient cash to meet its needs for the short and medium term and discuss any measures taken by the RI to preserve capital.
- For RIs embarking on significant capital projects, a discussion on whether the current economic environment will cause project delays or curtailments (51-102F1, item 1.4, instructions to item 1.4, item 1.7 and instructions to item 1.7). Where there may be a project delay or curtailment, there should be a discussion of the impact of this on the RI's overall project standing. For example, will the RI forfeit the exploration license if further work is curtailed?
- A discussion about how an RI plans to cure debt covenant violations and manage working capital deficiencies. In an environment where credit and capital is scarce and economic downturns may have a material impact on the RI's ability to sufficiently generate cash flow, RIs should provide a frank discussion of these matters (51-102F1, item 1.6).
- For RIs with material defined benefit pension plans, detailed disclosure on how the current environment impacts the current funded status of the pension plan may be necessary. Where the RI has a material unfunded pension liability reported in previous financial statements, there should also be a discussion of the anticipated impact of current market developments on the unfunded pension liability status. Such discussion may include the impact on the RI's financial position and any additional funding obligations that may arise (51-102F1 instruction (ii A) to item 1.6).
- If there is a shortfall of available capital resources to meet the RI's operating and capital needs, a detailed discussion of how management intends to respond (51-102F1, item 1.7). Discussions should include a frank assessment about the RI's ability to obtain funds through capital raising activities or bank financing sources.
- Discuss material debt maturities coming due in the near term and how these obligations will be funded.
- A discussion on whether the current economic crisis has had an impact on the RI's IFRS changeover preparations (CSA Notice 52-320). This may include a discussion of whether management attention and resources has been diverted to deal with the current economic conditions, has had an impact on or delayed the RI's IFRS changeover activities.
- For income trust RIs, provide disclosure that compares cash distributions paid to cash flow from operating activities and net income. Where cash distributions paid exceeds cash flow from operating activities and net income, discussion of how the resulting shortfall is funded and whether cash distributions will continue to exceed net income or cash flow from operating activities in the foreseeable future. Also discuss whether this level of cash distribution is sustainable. (NP 41-201 item 6.5.2)

8.2 Applicable Financial Reporting Disclosure Requirements

- RIs should consider appropriate accounting for reclassifications of financial instruments. For example, reclassification of amounts previously accounted for as held for trading to loans and

receivables. We expect reclassifications to comply with CICA HB guidance for accounting for financial instruments.

- For RIs with existing going concern disclosures, it is important for management to provide a detailed assessment of the RI's continued assumption for going concern in light of current market conditions.
- RIs should provide timely and relevant CICA HB s. 3862 disclosure on market risks and resulting sensitivities due to fluctuations in risk elements such as interest rates, commodity prices and exchange rates.
- RIs with material accounts receivable should discuss the impact of credit risk on the business including the timely collection of customer receivables.
- RIs should discuss the resulting measurement uncertainty and estimates with respect to amounts reported on the financial statements. This is especially crucial in times of economic uncertainty and volatile market conditions. In such environments, management may have to exercise more judgement in making assessments on fair values, collectability of receivables, going concerns, ability to obtain financing etc. Accordingly, detailed disclosure of assumptions and other considerations used in the application of judgement provides insightful information for the reader.
- RIs should ensure there is insightful disclosure of management's assessment of indicators of impairment for goodwill and intangibles, particularly if such balances originated from recent acquisitions.
- RIs should provide a detailed discussion of assumptions used for determining fair market value in illiquid markets when no observable market prices are present. Over the past year, the Accounting Standards Board (AcSB) has issued guidance on this subject, and while the guidance is focused primarily on non-bank sponsored asset backed commercial paper, certain of the principles set out in this guidance may provide useful information for preparers of financial statements, particularly in cases where RIs hold other forms of financial instruments impacted by the current economic crisis.
- Consistent with Accounting Guideline 16 – Oil and Gas Accounting Full Cost (AcG-16), RIs should clearly disclose benchmark prices used for each of the first five years in applying the impairment test and describe any adjustments to prices made to arrive at revenue.
- In respect of CICA HB s. 1535 capital disclosures, RIs should also include a detailed discussion of how current economic conditions have impacted the RI's objectives, policies and processes for managing its capital.
- RIs with derivative contracts should consider the implications of counterparty risk. For example, as part of determining fair value, the RI would need to consider credit risk.

For RIs applying hedge accounting, the deterioration of the creditworthiness of the counterparty will likely impact the effectiveness of the hedge.

When assessing counterparty risk, the RI should consider the effect of netting agreements, collateral or other forms of guarantees or credit support.

9. Priorities for the Coming Year

In the coming year, CD reviews will continue to be a high priority and a major area of focus for staff at the ASC. We will continue to encourage RIs to improve the quality of their filings and discourage the use of boilerplate, vague and generic disclosure.

In addition, each year, we assess new changes in the accounting and regulatory environment as well as current developments in the capital markets. Often, these assessments are used to plan the focus for our CD reviews and “issue oriented reviews” for the upcoming year.

This year, we will likely be interested in a number of key areas relating to the current regulatory environment including:

- forward-looking information;
- New 52-109 certification requirements;
- disclosure of the impact of current economic uncertainty on the RI’s business;
- changes to executive compensation disclosure;
- discussions of IFRS changeover plans (CSA Notice 52-320); and
- environmental reporting in disclosure documents such as the AIF and MD&A. (i.e. environmental protection requirements, policies and risk factors (51-102F2 s. 5.1 and 5.2), resulting commitments and other long term obligations, if any (51-102F1 instructions to item 1.6) and associated critical accounting estimates, if any (51-102F1 item 1.12).

10. Conclusion

Overall, we are satisfied with the results of our reviews. We observed that the majority of RIs we reviewed take our comments seriously, respond to our comment letters in a timely fashion and have undertaken to make improvements to future filings. Where we have not received satisfactory responses to issues, RIs are asked to rectify outstanding matters by a specified deadline or face the consequences of being placed in default. We encourage management of RIs and their advisors to consult with the ASC when they have questions about their continuous disclosure filing obligations.

11. Contact Personnel

Feedback on Reviews

We always welcome comments on the CD Report and our approach to CD reviews. We endeavour not only to improve the process each year, but also to ensure that it continues to be relevant to the current business environment.

Comments with respect to this report should be directed to:

<p>Office of the Chief Accountant</p> <p>Fred Snell, FCA, Chief Accountant, (403) 297-6553, fred.snell@asc.ca.</p> <p>Lara Gaede, CA, CFA, Associate Chief Accountant (403) 297-4223, lara.gaede@asc.ca.</p> <p>Jennifer Wong, CA, Senior Securities Analyst (acting Associate Chief Accountant for November 2007 to November 2008) (403) 297-3617, jennifer.wong@asc.ca.</p>	<p>Corporate Finance</p> <p>Tom Graham, CA, Director, Corporate Finance, (403) 297-5355, tom.graham@asc.ca.</p> <p>Agnes Lau, CA, Associate Director, Corporate Finance, (403) 297-8049, agnes.lau@asc.ca</p> <p>Jonathan Taylor, CA, Manager, CD Compliance and Market Analysis, (403) 297-4770, jonathan.taylor@asc.ca</p>
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Secondment to the Office of the Chief Accountant

In the past, public accounting firms have seconded staff to the Office of the Chief Accountant to participate in our CD reviews. We thank them for their invaluable contributions. Any public accounting firm or public corporation that is interested in having a senior professional accountant obtain valuable experience with the ASC in the areas of financial reporting including accounting, auditing, valuations, MD&A analysis and securities legislation (e.g., continuous disclosure rules, prospectus rules and participation in policy setting committees) should contact the Office of the Chief Accountant to discuss details of our secondment program.