



NOTICE AND REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 52-109 *CERTIFICATION OF DISCLOSURE IN ISSUERS’ ANNUAL AND INTERIM FILINGS* AND COMPANION POLICY 52-109CP *TO NATIONAL INSTRUMENT 52-109 CERTIFICATION OF DISCLOSURE IN ISSUERS’ ANNUAL AND INTERIM FILINGS*

September 25, 2009

Introduction

We, the Canadian Securities Administrators (CSA), except the Autorité des marchés financiers and the New Brunswick Securities Commission, are publishing for a 90 day comment period proposed amendments (the Certification Amendments) to:

- National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* (NI 52-109) and
- Companion Policy 52-109CP *to National Instrument 52-109 Certification of Disclosure in Issuers’ Annual and Interim Filings* (52-109CP).

This notice forms part of a series of CSA notices which address proposed changes to securities legislation arising from the upcoming changeover to International Financial Reporting Standards (IFRS).

Appendix A provides a summary of certain changes to accounting terms and phrases. Other proposed amendments are described in this notice.

Proposed Text

Appendix B sets out the proposed amendments to NI 52-109 and 52-109CP (the “proposed amendments”).

We invite comment on the proposed amendments. As the proposed amendments relate primarily to the upcoming changeover to IFRS in Canada and need to be in place before January 1, 2011, we are not inviting comment on the provisions of the rules and policies that will not be affected by the changeover to IFRS.

Background

NI 52-109 sets out disclosure and filing requirements for all reporting issuers, other than investment funds. The objective of these requirements is to improve the quality, reliability and transparency of annual filings, interim filings and other materials that issuers file or submit under securities legislation.

NI 52-109 refers to and relies on references to existing Canadian generally accepted accounting principles (GAAP), which are established by the Canadian Accounting Standards Board (AcSB) and published in the CICA (Canadian Institute of Chartered Accountants) Handbook. Following a period of public consultation, the AcSB adopted a strategic plan to move financial reporting for Canadian publicly accountable enterprises to IFRS as issued by the International Accounting Standards Board (IASB). For financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook.

Substance and Purpose of the Proposed Amendments

The primary purpose of these changes is to accommodate the transition to IFRS. We are proposing to update the accounting terms and phrases in NI 52-109 to reflect the fact that, for financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook.

Summary of the Proposed Amendments

The proposed amendments are a result of amendments to National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (to be renamed *Acceptable Accounting Principles and Auditing Standards*) (NI 52-107) proposed to require domestic issuers to comply with IFRS. NI 52-107 sets out the accounting principles and auditing standards that apply to financial statements filed in a jurisdiction.

The proposed amendments will replace existing Canadian GAAP terms and phrases with IFRS terms and phrases.

Accounting Terms and Phrases

The proposed amendments include new terms and phrases that are consistent with those used in IFRS and replace terms and phrases used in existing Canadian GAAP.

The proposed amendments do not reflect the impact of exposure drafts or discussion papers from the IASB prior to their adoption into IFRS. The proposed definition of IFRS in National Instrument 14-101 *Definitions* (NI 14-101) would take into account amendments made from time to time.

The proposed amendments are not intended to substantively alter securities law requirements. For example, we are proposing to replace the existing Canadian GAAP term “results of operations” with the corresponding IFRS term “financial performance”. This is intended to be a change in terminology only.

The proposed amendments also include a number of new or revised definitions. For example, we have included a definition of “financial statements” to clarify that interim financial reports should be considered when interpreting references to financial statements.

Issuers that prepare financial statements in accordance with acceptable accounting principles other than IFRS may interpret any reference in the rules to a term or provision defined, or referred to, in IFRS as a reference to the corresponding term or provision in the other acceptable accounting principles. This is clarified in section 1.6 of 52-109CP.

A detailed list of the changes to accounting terms and phrases is set out in Appendix A to this notice.

Amendments from NI 52-107

Proposed changes to other CSA rules, including NI 52-107 and NI 14-101, are being published for comment concurrently with this notice.

Even though the proposed amendments replace existing Canadian GAAP terms and phrases with IFRS terms and phrases, the proposed amendments include references to “Canadian GAAP”. This is because NI 14-101 will continue to define “Canadian GAAP” to mean generally accepted accounting principles determined with reference to the CICA Handbook. Once the AcSB incorporates IFRS into the Handbook, the Handbook will contain two versions of Canadian GAAP for publicly accountable enterprises:

- IFRS for financial years beginning on or after January 1, 2011 (the mandatory effective date) (proposed Part I of the Handbook), and
- the standards constituting Canadian GAAP before the mandatory effective date (proposed Part IV of the Handbook).

Transition

After the IFRS changeover date on January 1, 2011, non calendar year-end issuers will continue to prepare financial statements in accordance with existing Canadian GAAP until the start of their new financial year. To accommodate for this, we are proposing to include transition provisions in NI 52-109 and the amendment instrument that provide that the proposed amendments only apply to periods relating to financial years beginning on or after January 1, 2011. Thus, during the transition period,

- issuers filing financial statements prepared in accordance with existing Canadian GAAP will be required to comply with the version of NI 52-109 that contains existing Canadian GAAP terms and phrases.
- issuers filing financial statements that comply with IFRS will be required to comply with the version of NI 52-109 that contains IFRS terms and phrases.

After the transition period all issuers will be required to comply with the version of NI 52-109 that contains IFRS terms and phrases.

To further assist issuers and their advisors and to increase transparency, during the transition period certain jurisdictions will post two different unofficial consolidations of NI 52-109 on their websites

- The existing version of NI 52-109 that contains existing Canadian GAAP terms and phrases, which applies to reporting issuers in respect of periods relating to financial years beginning before January 1, 2011.

- The new version of NI 52-109 that contains IFRS terms and phrases, which applies to reporting issuers in respect of periods relating to financial years beginning on or after January 1, 2011.

Alternatives Considered

Instead of proposing these amendments, we considered leaving the existing Canadian GAAP terms and phrases in NI 52-109 and issuing a notice to the effect that, if an issuer is required or permitted under NI 52-107 to file financial statements that comply with IFRS, then the issuer may interpret any reference in the rules to a term or provision defined, or referred to, in existing Canadian GAAP as a reference to the corresponding term or provision in IFRS.

We decided not to proceed with this option for several reasons. Leaving the existing Canadian GAAP terms and phrases in the rules raises the potential for significant confusion as these terms will become less well known as time passes. In addition, the use of different terminology in securities legislation and accounting rules detracts from the goal of moving to a global accounting language.

Impact on Investors

The proposed amendments, which are not intended to substantively alter securities law requirements, will achieve a greater level of consistency in the terms and phrases used in a reporting issuer's continuous disclosure documents and the certificates filed in respect of such documents than would be the case if the proposed amendments were not implemented. This heightened level of consistency should improve investors' understanding of the matters being certified.

Anticipated Costs and Benefits

A description of the anticipated costs and benefits of adopting IFRS as the basis for financial reporting in Canada is included in the notice accompanying the proposed changes to NI 52-107 (the NI 52-107 notice).

NI 52-109 refers to and relies on references to Canadian GAAP as most reporting issuers currently prepare their financial statements in accordance with Canadian GAAP. For financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook. As a result, the proposed Certification Amendments are necessary to adapt our rules to the new IFRS environment.

Although there are costs contemplated under the NI 52-107 notice relating to the transition to IFRS, the preparation of all continuous disclosure filings using the same terminology as used in the financial statements provides more meaningful information to investors. Issuers and their advisors will benefit by having a version of NI 52-109 that refers to current accounting terms.

Unpublished materials

In proposing these amendments we have not relied on any significant unpublished study, report, or other written materials.

Local Notices and Amendments

Certain jurisdictions will publish other information required by local securities legislation in Appendix C to this notice.

Publications in Quebec and New Brunswick

The Autorité des marchés financiers and the New Brunswick Securities Commission are publishing for comment today a staff notice that sets out the substantive proposed changes reflected in the proposed amendments published in the other CSA jurisdictions. Because of the legal obligation to publish amending instruments simultaneously in French and English in Québec and New Brunswick, and because the French IFRS terminology is still in a state of flux, publication for comment of proposed amendments in these provinces is presently not feasible. It is expected that the Autorité des marchés financiers and the New Brunswick Securities Commission will publish for comment corresponding proposed amendments, in French and in English, during the first quarter of 2010. However, market participants in Québec and New Brunswick are encouraged to comment on the substantive proposed changes presented in the staff notices and on the amendments published by the other CSA jurisdictions.

Comments

We request your comments on the proposed amendments outlined above. Please provide your comments in writing by December 24, 2009. If you are not sending your comments by email, an electronic file containing the submissions should also be provided (Windows format, Word).

Address your submission to the following Canadian securities regulatory authorities:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Deliver your comments **only** to the address that follows. Your comments will be distributed to the other participating CSA member jurisdictions.

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-8145
E-mail: jstevenson@osc.gov.on.ca

Please note that comments received will be made publicly available and posted at www.osc.gov.on.ca and the websites of certain other securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

Please refer your questions to any of:

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Appendix A

**Summary of
Changes to
Accounting Terms and Phrases
for NI 52-109**

Accounting Terms or Phrases

We replaced the following terms or phrases used in NI 52-109 with IFRS terms or phrases.

Original term or phrase	IFRS term or phrase
balance sheet	statement of financial position
impairment charge	impairment loss
income/net income	profit or loss
interim financial statements	interim financial report
results of operations	financial performance
sales/net sales/revenues	revenue
variable interest entity	special purpose entity

Other Changes to Accounting References

financial statements	Since a definition of “financial statements” was added to National Instrument 51-102, a reference to the definition was added to NI 52-109.
use of accounting terms	Language was added to section 1.5 of 52-109CP to clarify the use of accounting terms and when the accounting or the legal meaning should apply.
cost method	We removed references to the “cost method” in the 52-109CP as that term does not exist in IFRS and replaced it with a description of “an interest in an entity that is not accounted for by consolidation or the equity method”.
extraordinary items	We removed references to “extraordinary items” as IFRS does not permit the presentation of any items of income or expense as extraordinary items in the financial statements.

Appendix B

Proposed Amendments to National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* and Companion Policy

Schedule B-1

Proposed Amendment Instrument for National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

Although this amendment instrument amends section headers in National Instrument 52-109, section headers do not form part of the instrument and are inserted for ease of reference only

1. ***National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings is amended by this instrument.***
2. ***Section 1.1 of National Instrument 52-109 is amended by***
 - (a) ***after the definition of “financial period”, adding the following definition:***

“financial statements” has the same meaning as in section 1.1 of NI 51-102,;
 - (b) ***in the definition of “internal control over financial reporting”, in paragraph (c), striking out “interim financial statements” and substituting “interim financial reports”,***
 - (c) ***in the definition of “interim filings”, striking out “interim financial statements” and substituting “interim financial report”,***
 - (d) ***repealing the definition of “interim financial statements” and substituting the following:***

“interim financial report” means the interim financial report required to be filed under NI 51-102,;
 - (e) ***in the definition of “material weakness”, striking out “annual or interim financial statements” and substituting “annual financial statements or interim financial report”,***
 - (f) ***in the definition of “NI 52-107”, striking out “Acceptable Accounting Principles, Auditing Standards and Reporting Currency” and substituting “Acceptable Accounting Principles and Auditing Standards”,***

- (g) *in the definition of “proportionately consolidated entity”, striking out “revenues” and substituting “revenue”,*
 - (h) *after the definition of “Sarbanes-Oxley Act”, adding the following definition:*
“special purpose entity” has, in respect of an issuer, the meaning ascribed to that term in the issuer’s GAAP;
 - (i) *in the definition of “U.S. marketplace”, adding “and” after “NI 51-102;”,*
 - (j) *repealing the definition of “variable interest entity”.*
3. *Section 3.3 of National Instrument 52-109 is amended by striking out “variable interest entity” wherever it occurs and substituting “special purpose entity”.*
 4. *Section 5.6 of National Instrument 52-109 is amended by striking out “interim financial statements” wherever it occurs and substituting “interim financial reports”.*
 5. *Section 6.2 of National Instrument 52-109 is amended by*
 - (a) *in the title, striking out “interim financial statements” and substituting “interim financial report”, and*
 - (b) *striking out “interim financial statements” wherever it occurs and substituting “interim financial report”.*
 6. *Subsection 8.2(3) of National Instrument 52-109 is amended by striking out “interim financial statements” wherever it occurs and substituting “interim financial report”.*
 7. *Part 9 of National Instrument 52-109 is amended by adding the following after section 9.2:*

9.3 Transition - Application of Amendments – The amendments to this Instrument that came into force on January 1, 2011 only apply to periods relating to financial years beginning on or after January 1, 2011.
 8. *Section 3 of Form 52-109F1 Certification of annual filings – full certificate is amended by striking out “results of operations” and substituting “financial performance”.*
 9. *Section 5.3 of Form 52-109F1 Certification of annual filings – full certificate is amended by striking out “variable interest entity” wherever it occurs and substituting “special purpose entity”.*

10. ***Section 3 of Form 52-109FV1 Certification of annual filings – venture issuer basic certificate is amended by striking out “results of operations” and substituting “financial performance”.***
11. ***Section 3 of Form 52-109F1 – IPO/RTO Certification of annual filings following an initial public offering, reverse takeover or becoming a non-venture issuer is amended by striking out “results of operations” and substituting “financial performance”.***
12. ***Section 1 of Form 52-109F2 Certification of interim filings – full certificate is amended by striking out “interim financial statements” and substituting “interim financial report”.***
13. ***Section 3 of Form 52-109F2 Certification of interim filings – full certificate is amended by***
 - (a) ***striking out “interim financial statements” and substituting “interim financial report”, and***
 - (b) ***striking out “results of operations” and substituting “financial performance”.***
14. ***Section 5.3 of Form 52-109F2 Certification of interim filings – full certificate is amended by striking out “variable interest entity” wherever it occurs and substituting “special purpose entity”.***
15. ***Section 1 of Form 52-109FV2 Certification of interim filings – venture issuer basic certificate is amended by striking out “interim financial statements” and substituting “interim financial report”.***
16. ***Section 3 of Form 52-109FV2 Certification of interim filings – venture issuer basic certificate is amended by***
 - (a) ***striking out “interim financial statements” and substituting “interim financial report”, and***
 - (b) ***striking out “results of operations” and substituting “financial performance”.***
17. ***Section 1 of Form 52-109F2 – IPO/RTO Certification of interim filings following an initial public offering, reverse takeover or becoming a non-venture issuer is amended by striking out “interim financial statements” and substituting “interim financial report”.***
18. ***Section 3 Form 52-109F2 – IPO/RTO Certification of interim filings following an initial public offering, reverse takeover or becoming a non-venture issuer is amended by***
 - (a) ***striking out “interim financial statements” and substituting “interim financial report”, and***

- (b) *striking out* “results of operations” *and substituting* “financial performance”.
19. *Section 1 of Form 52-109F2R Certification of refiled interim filings is amended by striking out* “interim financial statements” *and substituting* “interim financial report”.
20. *This instrument only applies to periods relating to financial years beginning on or after January 1, 2011.*
21. *This instrument comes into force on January 1, 2011.*

Appendix B-2

Proposed Amendments to Companion Policy 52-109CP to National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings

1. *Companion Policy 52-109CP to National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings is amended.*
2. *Part 1 is amended by adding the following after section 1.4,*
 - 1.5 **Accounting terms** – The Instrument uses accounting terms that are defined, or referred to, in Canadian GAAP. In certain cases, some of those terms are defined differently in securities legislation. In deciding which meaning applies, you should consider that National Instrument 14-101 *Definitions* provides that a term used in the Instrument and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern continuous disclosure; or (b) the context otherwise requires.
 - 1.6 **Acceptable accounting principles other than Canadian GAAP** – If an issuer is permitted under NI 52-107 to file financial statements in accordance with acceptable accounting principles other than Canadian GAAP, then the issuer may interpret any reference in the Instrument to a term or provision defined, or referred to, in Canadian GAAP as a reference to the corresponding term or provision in the other acceptable accounting principles.
3. *Section 4.1 is amended by*
 - (a) *in the title, striking out* “results of operations” *and substituting* “financial performance”.
 - (b) *striking out* “results of operations” *wherever it occurs and substituting* “financial performance”.
4. *Section 4.2 is amended by striking out* “balance sheet” *and substituting* “statement of financial position”.
5. *Section 6.10 is amended by*
 - (a) *in subsection (2),*
 - (i) *striking out* “net sales” *and substituting* “net revenue”,
 - (ii) *striking out* “on the income statement”,

- (iii) *striking out* “gross sales” *wherever it occurs and substituting* “gross revenue”, *and*
 - (iv) *striking out* “sales returns” *and substituting* “returns”.
 - (b) *in subparagraph (3)(f), adding* “conditions that will give rise to” *after* “the likelihood (or possibility) of”, *and*
 - (c) *in subsection (4), by striking out* “revenues” *and substituting* “revenue”.
- 6. **Subsection 7.9(2) is amended by striking out “sales” and substituting “revenue”.**
- 7. **Section 13.1 is amended by**
 - (a) *in paragraph (b),*
 - (i) *striking out* “variable interest entity” *and substituting* “special purpose entity”, *and*
 - (ii) *striking out* “VIE” *and substituting* “SPE”,
 - (b) *in paragraph (e), striking out* “accounted for using the cost method in the issuer’s financial statements” *and substituting* “not accounted for by consolidation or the equity method”, *and*
 - (c) *in the last paragraph,*
 - (i) *striking out* “VIE” *and substituting* “SPE”, *and*
 - (ii) *striking out* “The terms “consolidated”, “subsidiary”, “VIE”, “proportionately consolidated”, “equity method” and “cost method” have the meaning ascribed to such terms under the issuer’s GAAP.” *and substituting* “The terms “consolidated”, “subsidiary”, “SPE”, “proportionately consolidated”, and “equity method” have the meaning ascribed to such terms under the issuer’s GAAP.”.
- 8. **Section 13.3 is amended by**
 - (a) *in subsection (1), striking out* “VIE” *wherever it occurs and substituting* “SPE”,
 - (b) *in subparagraph (2)(b),*
 - (i) *striking out* “interim financial statements” *and substituting* “interim financial reports”, *and*

- (ii) *striking out* “GAAP” *and substituting* “accounting principles”,
- (c) *in subsection (4)*,
 - (i) *striking out* “VIE” *wherever it occurs and substituting* “SPE”,
 - (ii) *striking out* “sales or revenues” *and substituting* “revenue”,
 - (iii) *striking out* “income or loss before discontinued operations and extraordinary items” *and substituting* “profit or loss before discontinued operations”,
 - (iv) *striking out* “net income or loss for the period” *and substituting* “profit or loss for the period”,
 - (v) *striking out* “balance sheet” *and substituting* “statement of financial position”, *and*
 - (vi) *striking out* “contingencies” *and substituting* “contingent liabilities”,
- (d) *in subsection (5)*,
 - (i) *in paragraph (c)*, *striking out* “any required impairment charge related to the investment” *and substituting* “any impairment loss in the investment”, *and*
 - (ii) *in paragraph (d)*, *striking out* “income/loss” *and substituting* “profit or loss”, *and*
- (e) *in subsection (6)*, *striking out* “VIE” *and substituting* “SPE”,

9. *Section 14.2 is amended by*

- (a) *striking out* “sales or revenues” *and substituting* “revenue”,
- (b) *striking out* “income or loss before discontinued operations and extraordinary items” *and substituting* “profit or loss before discontinued operations”,
- (c) *striking out* “net income or loss for the period” *and substituting* “profit or loss for the period”,
- (d) *striking out* “balance sheet” *and substituting* “statement of financial position”, *and*
- (e) *striking out* “contingencies” *and substituting* “contingent liabilities”.

10. Section 17.1 is amended by striking out “acceptable form of GAAP” and substituting “acceptable form of accounting principles”.

11. Part 19 is amended by adding the following after section 19.1:

19.2 Application of Amendments – The amendments to this Policy which came into effect on January 1, 2011 only apply to periods relating to financial years beginning on or after January 1, 2011.

12. These amendments only apply to periods relating to financial years beginning on or after January 1, 2011.

13. These amendments become effective on January 1, 2011.