

**Notice****Request for Comment****Proposed Rescission of National Policy 48 *Future-Oriented Financial Information*****Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*****And  
Related Consequential Amendments****Introduction**

We, the Canadian Securities Administrators (CSA), are publishing for comment proposed amendments to several national instruments and forms to implement requirements for forward-looking information, including future-oriented financial information (FOFI) and financial outlooks such as earnings guidance. We are proposing to include the requirements in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), and are also proposing related amendments to Form 51-102F1 *Management's Discussion and Analysis* (Form 51-102F1) and companion policy 51-102 CP *Continuous Disclosure Obligations* (CP 51-102). In addition, we propose to amend the following instruments to require that forward-looking information included in an offering document comply with the requirements set out in NI 51-102:

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

We propose to rescind National Policy 48 – *Future-Oriented Financial Information* (NP 48). We also propose to amend National Policy 51-201 *Disclosure Standards* (NP 51-201) to remove references to NP 48 and earnings guidance.

The proposed requirements for FOFI are similar to certain elements in NP 48. The proposed requirements for earnings guidance and other forward-looking information either previously existed as requirements in Form 51-102F1, as policy guidance in NP 51-201 or did not exist.

We are publishing the proposed amendments to the Instruments with this Notice. You can find them on websites of CSA members, including the following:

- [www.besc.bc.ca](http://www.besc.bc.ca)
- [www.albertasecurities.com](http://www.albertasecurities.com)
- [www.sfsc.gov.sk.ca](http://www.sfsc.gov.sk.ca)

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

We are publishing

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

### **Background, substance and purpose of the amendments**

NP 48 specifies how FOFI should be prepared, updated and compared to actual, and specifies when an auditor should be involved. Since NP 48 was issued in 1993, there has been confusion in the market as to the applicability of NP 48 to other types of forward-looking information, such as earnings guidance.

In 2002, the CSA issued NP 51-201, which includes best disclosure practices for earnings guidance and for updating forward-looking information. However, issuers continue to question the applicability of NP 48 to earnings guidance and other financial outlooks.

In addition to NP 48 and the material on earnings guidance in NP 51-201, Form 51-102F1 includes instructions to issuers who prepare forward-looking information in management's discussion and analysis (MD&A).

We have concluded that the provisions for FOFI currently contained in NP 48 for comparison to actual, updating and withdrawal should also apply to financial outlooks such as earnings guidance. We also propose to place all requirements for forward-looking information in one location, in NI 51-102. This will allow us to rescind NP 48, delete provisions of NP 51-201, and eliminate certain instructions in Form 51-102F1. We believe this approach will result in streamlined regulation that will simplify and clarify our expectations for issuers who prepare forward-looking information.

Forward-looking information is not currently defined in the securities legislation of all jurisdictions, although these jurisdictions expect to propose amendments to their legislation to adopt a definition. Forward-looking information will be defined as "disclosure regarding possible events, conditions or results of operations that is based on assumptions about future economic conditions and courses of action and includes future oriented financial information

with respect to prospective results of operations, financial position or cash flows that is presented either as a forecast or a projection.”

### **Summary of proposed amendments**

We have summarized the proposed amendments in Appendix A.

#### **Authority for amendments – Saskatchewan**

Appendix H sets out the provisions of *The Securities Act, 1988* that provide the Saskatchewan Financial Services Commission with authority to make the amendments with respect to forward-looking information contained in mandatory Commission filings. In addition, it will be necessary that the Commission repeal Local Policy 4.6 *Future - Oriented Financial Information – Saskatchewan Requirements* that will no longer be applicable once the proposed amendments are adopted.

#### **Alternatives considered**

We considered whether a stand-alone instrument should replace NP 48 and the material on earnings guidance in NP 51-201. However, given that the majority of forward-looking information occurs in the continuous disclosure of reporting issuers, we decided that NI 51-102 is the appropriate location for these requirements.

#### **Anticipated costs and benefits**

The CSA recognize the value of forward-looking information in many circumstances, but also recognize the serious possibility that such information may mislead investors unless it is appropriately prepared and presented with full disclosure of the underlying assumptions and the associated risks.

We expect that the proposed amendments will result in improved quality and consistency of forward-looking information regardless of where it is presented and how it is released. Issuers will benefit from the fact that the requirements will now be in one location and will apply to all forward-looking information, regardless of where it is presented. The costs of compliance with the proposed amendments relate primarily to the involvement of management in the preparation, review and, where required, updating of forward-looking information. The proposed amendments substantially maintain requirements for FOFI currently in NP 48 except that the proposed amendments do not require an auditor’s report to accompany any FOFI included in a prospectus or circular. The proposed requirements will therefore result in an overall savings for an issuer that discloses FOFI in an offering document. The requirement for an auditor’s report was removed as investors may place inappropriate reliance on an auditor’s report with respect to forward-looking information, and as protection to investors exists through prospectus liability provisions. The focus of the requirements relating to forward-looking information should instead be on appropriate preparation and disclosure.

The proposed amendments substantially maintain requirements currently in NI 51-102 for forward-looking information included in MD&A and therefore do not impose any additional costs to issuers providing forward-looking information in MD&A. The proposed amendments may impose additional cost for issuers releasing forward-looking information outside of MD&A. This additional cost is not, however, expected to be significant, and will relate primarily to the

involvement of management in the preparation, review and, where required, updating of forward-looking information.

Based on its experience to date under NP 48 and the local policies that preceded it, the CSA believe that the benefits of the proposed amendments justify the costs of compliance.

### **Local Amendments**

We are proposing to amend or repeal elements of local securities legislation in conjunction with implementing the proposed amendments to NI 51-102. The members of the CSA may publish these local proposed changes separately in their local jurisdictions, and may also publish local changes in Appendix H to this Notice.

### **Unpublished materials**

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

### **Request for comments**

We welcome your comments on the proposed amendments.

Please submit your comments on the proposed amendments in writing on or before March 1, 2007. If you are not sending your comments by email, you should also forward a diskette containing the submissions (in Windows format, Word).

Address your submission to all of the CSA member commissions, as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission – Securities Division  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Newfoundland and Labrador Securities Commission  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunavut

Deliver your comments **only** to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

Cameron McInnis, Chair of the National Policy 48 *Future-Oriented Financial Information*  
Reformulation Committee  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto, Ontario  
M5H 3S8  
Fax: (416) 593-8244  
e-mail : cmcinnis@osc.gov.on.ca

Anne-Marie Beaudoin, Secretary  
Autorité des marchés financiers  
Stock Exchange Tower  
800 Victoria Square  
P.O. Box 246, 22nd Floor  
Montréal, Québec  
H4Z 1G3  
Fax : (514) 864-8381  
e-mail : consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

### **Questions**

Please refer your questions to any of:

Carla-Marie Hait  
Chief Accountant, Corporate Finance  
British Columbia Securities Commission  
(604) 899-6726 or (800) 373-6393 (if calling from B.C. or Alberta)  
chait@bcsc.bc.ca

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

Blaine Young  
Associate Director, Corporate Finance  
Alberta Securities Commission  
(403) 297-4220  
blaine.young@seccom.ab.ca

Ian McIntosh  
Deputy Director, Corporate Finance  
Saskatchewan Financial Services Commission – Securities Division  
(306) 787-5867  
imcintosh@sfsc.gov.sk.ca

Bob Bouchard  
Director, Corporate Finance  
Manitoba Securities Commission  
(204) 945-2555  
bbouchard@gov.mb.ca

Cameron McInnis  
Manager, Corporate Finance  
Ontario Securities Commission  
(416) 593-3675  
cmcinnis@osc.gov.on.ca

David Coultice  
Senior Legal Counsel, Corporate Finance  
Ontario Securities Commission  
(416) 204-8979  
dcoultice@osc.gov.on.ca

Louis Auger  
Analyste  
Autorité des marchés financiers  
(514) 395-0558 ext. 4383  
louis.auger@lautorite.qc.ca

Rosetta Gagliardi  
Conseillère en réglementation  
Autorité des marchés financiers  
(514) 395-0558 ext. 4462  
rosetta.gagliardi@lautorite.qc.ca

Pierre Thibodeau  
Securities Analyst  
New Brunswick Securities Commission  
(506) 643-7751  
Pierre.Thibodeau@nbsc-cvmnb.ca

Bill Slattery  
Deputy Director, Corporate Finance and Administration  
Nova Scotia Securities Commission  
(902) 424-7355

slattejw@gov.ns.ca

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

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