

CSA Staff Notice 52-305
Optional Use of US GAAP and US GAAS by SEC Issuers

CSA staff propose that, for interim and annual financial reporting periods in financial years beginning on or after January 1, 2003, SEC issuers be permitted to file financial statements prepared in accordance with US generally accepted accounting principles (GAAP) and audited in accordance with US generally accepted auditing standards (GAAS).

Background

On June 21, 2002, the CSA published for comment proposed National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102). NI 51-102 includes provisions concerning acceptable accounting principles and auditing standards that reflect CSA consideration of public comments on CSA Request for Comment 52-401 *Discussion Paper: Financial Reporting in Canada's Capital Markets*, published on March 16, 2001. Those provisions would, among other things, permit "SEC issuers" to satisfy their continuous disclosure obligations concerning accounting and auditing standards by filing: financial statements prepared in accordance with US GAAP, provided that for the first two years after exercising that option they include in those financial statements a reconciliation to Canadian GAAP; and audit reports prepared in accordance with US GAAS.

"SEC issuers" are reporting issuers that have a class of securities registered under section 12 of the *Securities Exchange Act of 1934* (the "1934 Act") or are required to file reports under section 15(d) of the 1934 Act and that are not investment companies under the US *Investment Company Act of 1940*. An SEC issuer can be incorporated or organized in Canada and have a majority of its shareholders, assets or operations in Canada.

The CSA are currently considering public comments received on NI 51-102. A summary of the comments and CSA responses will be included in the notice to the revised instrument which is expected to be published for comment in mid-2003. With respect to comments received on the proposals relating to acceptance of US GAAP and US GAAS, CSA staff have determined that no issues were raised that were not considered prior to publishing NI 51-102. Accordingly, CSA staff are prepared to recommend to the Canadian securities regulatory authorities that no substantive changes be made to this aspect of NI 51-102. This conclusion is also the basis for this Notice.

CSA staff are preparing a new proposed instrument, National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107), which we expect to publish for comment in 2003. NI 52-107 will set out which bodies of accounting principles and auditing standards will be acceptable for use in preparing and auditing financial

statements for purposes of both continuous disclosure and prospectus filing requirements. Consistent with the principles and standards currently set out in proposed NI 51-102 and proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, NI 52-107 will permit the use of US GAAP and US GAAS by SEC issuers. Some of the provisions of NI 51-102 and NI 71-102 will be replaced by references to NI 52-107.

Option to use US GAAP and US GAAS

For interim and annual financial reporting periods in financial years beginning on or after January 1, 2003, CSA staff will consider favourably requests by SEC issuers to use US GAAP and US GAAS in satisfaction of their continuous disclosure and prospectus filing obligations. SEC issuers that apply to, and obtain permission from, the Canadian securities regulatory authorities to use US GAAP and US GAAS are reminded that they remain responsible for complying with any requirements of their incorporating legislation that relate to the preparation and distribution of financial statements prepared in accordance with Canadian GAAP and audited in accordance with Canadian GAAS. In some cases, the requirements of incorporating legislation will prevent issuers from gaining the full benefits of any relief granted by the Canadian securities regulatory authorities.

SEC issuers may file an application requesting relief from the current obligation to file financial statements prepared and audited in accordance with Canadian GAAP and Canadian GAAS, respectively, on the condition that they comply with the requirements set out in sections 4.7 and 4.8 of the June 21, 2002 version of NI 51-102. Appendix A to NI 51-102 provides additional guidance. If an issuer files an application subsequent to filing financial statements prepared in accordance with Canadian GAAP for one or more interim periods for the year in which the application is made, CSA staff will recommend that, as a condition of any relief granted, the issuer re-file on SEDAR restated interim financial statements prepared in accordance with US GAAP. CSA staff will also recommend that the issuer be granted relief from the requirement to deliver to its securityholders the restated and re-filed financial statements if the issuer applies for relief.

If an issuer expects to file a prospectus in one or more jurisdictions in the future, the application may request that the relief also apply to the issuer's financial statements included in a prospectus. When an issuer files a prospectus subsequent to filing interim financial statements prepared in accordance with US GAAP, it is expected that the issuer's audited financial statements for its most recently completed year ended before January 1, 2003 that are required to be included in the prospectus will be restated in accordance with US GAAP and comply with the requirements set out in sections 4.7 and 4.8 of NI 51-102. Issuers will not be expected to re-file those annual financial statements although they may do so. Issuers who file a prospectus pursuant to National Instrument 44-101 *Short Form Prospectus Distributions* or National Instrument 44-102 *Shelf Distributions* may include the restated annual financial statements directly in the prospectus or incorporate them by reference from SEDAR.

CSA staff will also recommend as a condition of relief sought, whether in connection with continuous disclosure or prospectus filing obligations, that an issuer who restates its financial statements for more years than its most recently completed year ended before January 1, 2003 be

required to comply with subsection 4.7(3) of NI 51-102 as if it changed from Canadian GAAP to US GAAP on the first day of its most recently completed year. This condition will apply regardless of whether the restated financial statements are filed on SEDAR.

An SEC issuer may also request relief in connection with a significant acquired business for which the prospectus rules require inclusion of financial statements in the issuer's prospectus. The relief could pertain to the accounting principles used to prepare the financial statements of the acquired business or the requirement in the prospectus rules to reconcile to Canadian GAAP financial statements prepared using accounting principles other than Canadian GAAP. An issuer may include the request in the covering letter filed with the prospectus or it may submit an application in advance of filing a preliminary prospectus. Please refer to Part 9 of National Policy 43-201 for guidance on submitting pre-filing applications under the Mutual Reliance Review System (MRRS). Where relief is sought, an application should accompany each preliminary prospectus filed in which the financial statements of the acquired business are required to be included unless the issuer obtained relief after submitting an MRRS application as described above.

SEC issuers should file their applications at least three weeks in advance of the first filing obligation to which they want the requested relief to apply. Please refer to National Policy 12-201 for guidance in filing applications under the MRRS. CSA staff will generally recommend to the regulator or the securities regulatory authority that the relief requested be granted.

US GAAP Expertise

An SEC issuer that files an application requesting permission to file financial statements prepared and audited in accordance with US GAAP and US GAAS, respectively, in satisfaction of continuous disclosure or prospectus filing obligations should represent to the securities regulatory authorities, in the application, that:

- the issuer is satisfied that it has obtained and applied the necessary level of expertise in US GAAP to support the preparation of US GAAP financial statements;
- the issuer's audit committee has taken steps to ensure it has, or has access to, the necessary expertise in relation to US GAAP and that management has put in place systems to ensure that the appropriate levels and numbers of staff have and will maintain the level of expertise in US GAAP necessary to prepare reliable, high quality financial statements; and
- the issuer's audit committee has satisfied itself as to the adequacy of the expertise of the audit engagement team and the audit firm in relation to the application of US GAAP and US GAAS.

Blanket Order

The British Columbia Securities Commission (BCSC) has issued a blanket order (BCI 52-508) under which all SEC issuers will be permitted to prepare their annual and interim financial statements using US GAAP and have their annual financial statements audited in accordance with US GAAS. BCI 52-508 will save SEC issuers from having to apply to the BCSC for discretionary relief as contemplated by this CSA Staff Notice.

Similar blanket relief may be granted in other CSA jurisdictions. Please monitor their websites or contact their representatives for further information.

How to Contact Us

Questions may be referred to any of the following:

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