

ASC Breakfast Seminar MD&A Tune-up

December 4, 2008

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Agenda

- Forward-looking Information
- MD&A matters:
 - ASC CD review process
 - MD&A reviews, the regulator's perspective
 - Common disclosure deficiencies
 - illustrative examples
 - Focus of MD&A in the coming months
 - What's new in MD&A for 2008
 - IFRS changeover
 - New 52-109

Forward-Looking Information (FLI)

- Changes made to NI 51-102 effective December 2007 to cover FLI
- Purpose – all FLI requirements in one place – simpler and clearer
- Confusion as applicability of old NP 48 and guidance in NP 51-201
- Civil liability provisions and safe harbours introduced

- FLI defined in S.1(w.1) of Securities Act
 - “Disclosure about 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 projection.”
- Very broad – not just dollar amounts
- In the context of the issuer

FLI Preparation Requirements

- Oral statements excluded
- Reporting issuers must have a reasonable basis for all FLI
 - reasonableness of assumptions underlying
 - process for preparing and reviewing
- Additional preparation requirements for FOFI and financial outlooks (defined terms):
 - assumptions must be reasonable in the circumstances
 - limit time period
 - use accounting policies expected to be used

FLI Disclosure Requirements

- No specific disclosure requirements for non-material FLI
- For all material FLI:
 - Identify FLI as such
 - caution users and identify material risk factors
 - disclose material factors or assumptions used to develop
 - describe updating policy if more than required by NI 51-102
- Additional disclosure for FOFI and financial outlooks:
 - date of management approval if in undated document, and
 - explain purpose of FOFI or outlook and caution readers

Updating FLI

- Applicable to material FLI released
- Discuss in MD&A (or earlier news release) events and circumstances that occurred during MD&A period that are reasonable likely to cause actual to differ materially from the FLI
- Discuss the expected differences
- Discuss in MD&A the material differences between actual and FOFI or outlook

Withdrawal of FLI

- Applicable to withdrawals of previously disclosed material FLI during the period to which its MD&A relates
- Disclose decision
- Discuss events and circumstances leading to decision including assumptions no longer valid
- Include in earlier news release or MD&A

Companion Policy

- We consider FOFI and most outlooks to be material FLI
- Location of disclosure – allow an investor to be able to readily:
 - understand that FLI is in document
 - identify the FLI
 - inform of material assumptions and risk factors
- “Disclosure of material factors or assumptions does not require an exhaustive statement of every factor or assumption – a materiality standard applies.”
- Events and circumstances causing update or withdrawal – material change?

What Are We Seeing?

- No changes to disclosures
- No differentiation of material FLI or is it all material?
- Identification of material FLI:
 - we may have FLI
 - documents with no FLI
- Caution and risk factors generally always included
- Material factors or assumptions used rarely included
- Some say will not update
- Boilerplate language

What Are We Seeing? (cont'd.)

- Risk factors assumed to be factors or assumptions used to prepare
- Very broad assumption comments – “made assumptions as to price” – not very helpful
- Intent is to highlight material FLI and give reader understanding of what is behind the FLI and the risks
- Further comments in 2008 Continuous Disclosure Review Report

Continuous Disclosure Program

- 11 months ended November 30 – 152 reviews
- Report on the results of reviews – publish earlier
- Key of area of focus is MD&A:
 - In CD reviews
 - In our report
- Opportunity to tell your story
- 28% of 2008 restatements are MD&A
- Our report will focus on how to improve
- Comments through the eyes of Jennifer and Jonathan

CD Reviewer's Key Points

- Nature of the business
- Why operating results have changed, including what drives the changes
- For material transactions - key terms, commitments and obligations
- Inconsistencies in MD&A versus elsewhere in the CD record
- Where business is headed
- Sufficient funds to meet needs
- FLI – what are the material FLI statements and the basis (context) behind those statements

Common Deficiencies

- Common areas of deficient MD&A disclosure
 - Liquidity and capital resources
 - Analysis of results of operations
 - Consistency with other disclosure
 - Outlook for the issuer
 - Other

Common Deficiencies – Liquidity and Capital Resources

- Don't:
 - simply repeat numbers and discuss changes in the balance sheet and cash flow statement
 - focus on the past without mentioning the future
- Do discuss:
 - sources of funding for operations, obligations, commitments, and development activities and circumstances that could affect those sources
 - trends or expected fluctuations in liquidity

Example – Liquidity & Capital Resources - deficient

- Material debt agreement
 - Completeness of disclosure
 - Key terms in debt covenants not identified in MD&A but discussed in webcast.

Common Deficiencies – Analysis of Results of Operations

- Don't:
 - simply repeat information evident from the f/s
 - simply crunch the numbers
- Do:
 - discuss the “why” & “so what” for:
 - significant changes
 - expected changes that have not occurred
 - discuss whether past results are indicative of future results

Example – Analysis of Results of Operations - Deficient

- “Revenues went up because production went up”

Example – Analysis of Results of Operations – More Detailed

- “Revenues went up because production went up”
 - WHY did production go up?
- analysis of the results of current year drilling program
 - SO WHAT if revenues went up?
- discussion of how this lends itself to expected exit rates and cash flows for the remainder of the year

Example – Analysis of Results of Operations Insufficient Detail

- “the company has written off \$7 representing the difference between the book value of \$50 and the estimated fair value of \$43. There are no observable market prices for ABCP...the company estimated fair value using probability weighted discounted cash flow approach based on assumed ratings, estimated interest rates, credit spreads, recovery periods and ranges of recoverability based on publicly available information...”

Common Deficiencies - Consistency with other Disclosure

- Don't:
 - selectively disclose information – ie. President's message/website
 - think of MD&A as simply relating to the financial statements
- Do:
 - ensure disclosure is consistent with all disclosure documents (AIF, news releases, other public statements)
 - look at the requirements for forward-looking information

Example – Consistent with Other CD But Need to Stand Alone

- MD&A needs to stand on its own.
 - Example – Oil and gas RI. No further information about the business in MD&A. Had to look in 51-101 disclosure to determine what was produced and location of producing areas.

Common Deficiencies – Outlook for the Issuer

- Don't:
 - ignore trends
 - focus on good news and ignore the bad
 - ignore previously disclosed goals, objectives and targets
- Do:
 - discuss where you were, where you are and where you are going
 - ask yourself: will the reader have any idea what the company plans to do next year?
 - be balanced

Common Deficiencies – Other

- Common disclosure omissions:
 - “business purpose” for related party transactions
 - discussion of period-to-period fluctuations when providing summary of quarterly results
 - analysis of 4th quarter results
 - outstanding share data as at date as close as possible to filing date
 - equally prominent disclosure of GAAP measure when using non-GAAP measures
 - Key elements of general provisions (Part 1)

Common Deficiencies – Other Practice Tip

- Plan ahead – don't leave it to the end of the reporting cycle.
- Research disclosure of other RIs
- Remove outdated information from template
- Ensure template picks up new requirements.

Current Market Conditions and the Impact on Disclosures

Focus of CD Reviews in the Coming Months

- frank and upfront discussions, no surprises
- good and bad news with equal prominence, bad news not buried or hinted at
- discussion should be clear, no vague explanations, people should not have to dig for more information if your MD&A is unclear or silent on an issue

Focus of CD Reviews in the Coming Months (cont'd)

- upfront and transparent disclosure on material agreements, not buried in SEDAR.com
- an update previously disclosed FLI statements and how the current economic conditions may impact these statements

Focus of CD Reviews in the Coming Months – Key Questions

- do you have enough capital?
- how will you preserve capital, where are you cutting back?
- how will the scarcity of available capital and credit impact on your ability to raise sufficient funds to complete major projects:
 - as a result of current conditions, will the corporate strategy be changing?
- are you in compliance with debt covenants?

Focus of CD Reviews in the Coming Months - Key Questions

- do you have any issues around near term debt maturities?
- where will your cash flow come from? if your business is not cash flow positive, this becomes an even more critical question!!
- where do you see counterparty risk?
- will past results be indicative of future results?
- have current events impacted your efforts towards IFRS conversion for 2011?

- CSA Staff Notice 52-320
 - Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards
- At this stage, disclosure can be narrative
 - Not necessary to quantify the effects
- ASC staff reviews of filings to date.

Three Years Before Changeover

- Accounting policies, choices permitted, and implementation decisions
 - retrospective or prospective basis
- IT and data systems
- Internal control over financial reporting
- Disclosure controls and procedures,
 - includes investor relations and external communication plans

Three Years Before Changeover

(cont'd)

- Financial reporting expertise,
 - includes staff training
- Business activities that may be impacted by GAAP measures
 - debt covenants, hedging contracts, compensation arrangements, etc...
- Other items specific to your company

NI 52-109 – MD&A Impact for Non-venture Issuers

- MI 52-109 repealed and replaced by NI 52-109
- Effective date – annual and interim periods ended on or after December 15, 2008.
- Additional MD&A disclosure considerations

NI 52-109 – MD&A Impact for Non-venture Issuers

MD&A Disclosure Requirements	Period
Material weaknesses in <u>design</u> of ICFR	Interim or Annual
Limitations on scope of design of DC&P or ICFR	Interim or Annual
Changes in issuer's ICFR	Interim or Annual
Conclusions about effectiveness of DC&P	Annual
Conclusions about effectiveness of ICFR	Annual
Material weakness in <u>operation</u> of ICFR	Annual

NI 52-109 – Other MD&A Considerations

- DC&P and ICFR conclusions should be explicit
- Poor Example:

NI 52-109 – Other MD&A Considerations

Extract from Certifying Officer's Certificate

“Certifying Officer...caused the issuer to disclose in the annual MD&A our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by the annual filings based on such evaluation...”

Extract from Annual MD&A of ABC Corp. – Conclusion on DC&P

“Although ABC Corp’s disclosure policy is believed to be effective, it cannot provide more than reasonable assurance that its objectives have been realized...”

NI 52-109 – Other MD&A Considerations

Issues

- reference should be made to disclosure controls and procedures not something else (i.e. disclosure policy)
- language should be direct, concise and clear

Best Practice

“The Company’s Chief Executive Officer and Chief Financial Officer have concluded that the disclosure controls and procedures are effective [to provide reasonable assurance that material information related to the issuer is made known to them by others within the Company]”

NI 52-109 – Other MD&A Considerations

- MD&A wording still okay?
- restatements – consider need to refile MD&A to update “effective” conclusions on DC&P and ICFR

Questions?

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