

Disclosure Review

ASC Breakfast Seminar

January 19, 2010

Speakers

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Agenda

- Overview of CD Program & Review Results
- Key Messages from the CD Report
- MD&A & Financial Statement Issues
- IFRS
- Forward-Looking Information
- NI 52-109 Certifications
- Executive Compensation
- Mining Issues
- Trust Conversions
- Other Issues

Overview of CD Program

- CD Review Program Report
 - ASC website (www.albertasecurities.com) News & Publications - Publications
- CSA Harmonized CD Review Program
 - see CSA Staff Notice 51-312 (Revised) for a description of the program
 - CSA CD Review standing committee in place
- ASC CD Review Program
 - approximately 850 AB PR issuers
- CD review types
 - full
 - issue-oriented

Overview of CD Program

- Sample selection process
 - filing of Notice of Intention under NI 44-101 *Short Form Prospectus Distributions* triggers full review
 - risk based criteria considered
 - random sample
- Review approach
 - focus on identifying and resolving material issues
 - looking for unbalanced, promotional & misleading disclosure

Overview of CD Program

- Resolving identified issues
 - comment letters - generally three types of comments
 1. significant issue identified – “please correct”
 2. need more information to assess significance of issue – “please explain”
 3. issue noted that does not require immediate action – “please consider/incorporate in future filings” (“education comment”)

Overview of CD Program

- Resolving identified issues
 - material deficiencies generally require re-filing/restatement
 - press release under 11.5 of NI 51-102 *Continuous Disclosure Obligations*
 - default notation on daily RI list
 - see ASC Policy 51-601 *Reporting Issuers List* for more information
 - CTO/Enforcement referral

Overview of CD Program

- Monitoring activities
 - review press releases, websites, investor presentations
 - focus on monitoring disclosure real time
 - goal to identify and resolve disclosure that is inaccurate or misleading

Overview of CD Program

- Tips if your Company receives a CD review letter
 - don't panic...it was bound to happen sometime
 - forward the letter to Audit Committee and advisors ASAP
 - call us if you don't understand what we are asking
 - provide a complete response
 - don't get bogged down on the "education comments"
 - respond within the timelines
 - contact us early if you have concerns with the deadline
 - review future filings in light of comments received & commitments made

CD Review Results

Type of Review	12 months ended Nov. 30/09	11 months ended Nov. 30/08
Full	127	119
Issue-oriented	99	30
Other	0	3
TOTAL	226	152

CD Review Results

Outcomes	12 mos ended Nov/09		11 mos ended Nov/08	
Re-filing	56	20%	42	21%
Prospective change	173	61%	128	65%
Default	11	4%	5	3%
Enforcement	4	1%	2	1%
No action	39	14%	19	10%
TOTAL	283		196	

Key Messages from CD Report

- Disclosure is generally good and improving each year
- Ensure disclosure is balanced
- Ensure disclosure is consistent
- Comply with more than the minimum requirements
- Disclosure should be complete

MD&A Requirements

- NI 51-102F1
- Through the eyes of management
- Balanced discussion
- Good news as well as bad news
- Without limitation

- Financial condition is a broad concept
- Selected Form requirements:
 - liquidity analysis (1.6)
 - capital resources (1.7)
 - off-balance sheet arrangements (1.8)
 - critical accounting estimates (1.12)
 - financial instruments (1.14)

Our MD&A Observations

- From year-end 2008 and 2009 interim MD&A
- Issuer focus on the “economy” – our focus as well
- Q3 2008 – some issuers did not acknowledge that the world had changed (or only passing reference)

Our MD&A Observations

- Often boilerplate discussion of the environment & economy but not related to issuer's circumstances
 - capital expenditures
 - commitments
 - revenue stream
- Specifically, what factors contributed to fluctuations in operating activities from period to period

Our MD&A Observations

- Clear from financials and MD&A that company was experiencing operating and/or financial problems:
 - need cash, but left to guess as to possible sources
 - is it likely or possible to access debt/equity markets? or is it unlikely? implications?
 - how likely are cash flows or sales of assets? or is it unlikely? implications?
 - excess focus on exciting prospects but understate challenges
 - how much can an issuer say?
 - disclosure of “non-impairments” or “non-events” in certain situations
- More info. around debt covenant calculations
- More info. about assumptions (e.g. impairment tests)

Our MD&A Observations

- What are you telling ASC staff in response letters?
- What have you disclosed elsewhere?
 - website
 - analyst calls
 - President's Message

Recurring Comment Areas

- Liquidity needs, commitments & obligations, sources
- Boilerplate re: economic conditions, no specific impact
- Cash to meet operating and capital needs
- Asset impairment testing

Recurring Comment Areas

- Analysis of material financing agreements
- Unbalanced disclosure; more current elsewhere
- Use of non-GAAP measures
- Related party transactions

Some 2009 MD&A Expectations

- Our comments/observations will be based on the form requirements; recurring issues
- Did we get an insight into the business – challenges, opportunities, what it really does, how it got to where it is, etc.
- How did you survive 2009?
- Impact on assets, operations, etc.

Some 2009 MD&A Expectations

- Impact on 2010 (hard to avoid FLI)
- Many issuers in precarious financial/operational condition in 2009:
 - disclosures around liquidity and capital resources still important
 - compliance with debt agreements
 - more volatility in 2010 – how will you cope?

Financial Statement Observations

- Many staff comments driven by economic conditions in 2008/09
- Many comments from complex, technical disclosures that are hard to understand – what are you really saying??
- Common areas of deficiency:
 - going concern
 - capital disclosures
 - debt and defaults
 - impairments
 - collection of receivables
 - disclosure of financial instruments risks

Some 2009 Financial Statement Expectations

- Proper application of GAAP generally
 - changes in 2009:
 - rate regulated
 - changes to HB 3855 & 3862
 - HB 3064
- Capital disclosures
- Impairments, allowances & valuations – receivables, inventory, goodwill, capital assets – key information

Some 2009 Financial Statement Expectations

- Risk areas and measurement uncertainty
- Debt covenants
- Going concern
- “Non-event” disclosures

IFRS Disclosure Requirements

- Form 51-102F1 *MD&A, section 1.13(a)*
 - *Description of new accounting standard*
 - *Methods allowed & method expected to be used*
 - *Discussion of the expected effect on issuer's F/S*
 - *Potential effects on issuer's business*

- CSA Staff Notice 52-320 *Disclosure of Expected Changes in Accounting Policies Relating to Changeover to IFRS*
 - Expected disclosures for the 3 years prior to IFRS
 - Expectations for annual 2009
 - Expectations for interim and annual 2010

IFRS Disclosure Issues

- Silence
- Boilerplate disclosure
- Impact of credit crisis

Requirements for 1st Quarter 2011

- Reference to Canadian GAAP and IFRS
- Mixed GAAP
- 30 day filing extension
- Opening IFRS statement of financial position
- Reconciliations
- IFRS 1 choices
- New and more disclosure requirements

- Revisions to securities regulations
- CSA Staff Notices
- FOFI
- Non-GAAP Financial Measures

- Canadian Performance Reporting Board
- CA firms
- CICA
- IASB
- Information Guide on Adoption of IFRS for the Canadian Upstream Oil and Gas Industry

Forward-looking Information

- New requirements in place in 2007 – CSA review in 2009
- CSA Staff Notice 51-330 issued 11/20/09 – guidance regarding application of FLI requirements
- Identification issues – vague, “may contain”, etc.
- Disclosure of risks (that undisclosed assumptions might be off)

Forward-looking Information

- Disclosure of material assumptions
- Goals and targets are usually FLI
- Too legalistic?
- Continuing focus in 2010 reviews

NI 52-109 CEO/CFO Certifications

- New rules effective December 15, 2008:
 - evaluation of ICFR
 - material weakness
 - new forms of certificates (including venture issuer)
- CSA compliance review as well as ASC CD reviews
- Many restatements by Alberta RIs

- Use of proper certificates with proper (exact) wording
- MD&A disclosure of conclusions:
 - missing
 - a weakness, but...
 - mitigating vs. compensating – segregation of duties
- Some venture issuers...

Executive compensation

- First year of compliance tested and the results published in CSA Staff Notice 51-331 *Report on Staff's Review of Executive Compensation*
- Generally positive results with some key areas of focus going forward:
 - Compensation Disclosure and Analysis
 - Benchmarking
 - Performance graph
 - Termination payments

- Number of Alberta mining RIs increasing
- MD&A issues:
 - discussion of plans and progress (and consistency with press releases)
 - lack of meaningful discussion as to how plans will be financed
 - significant gaps between current financial condition and resources needed
 - RPTs are common – disclosure of purpose and terms
 - sometimes unbalanced, promotional
- AcG-11 compliance issues
- Laundry list of “technical report” compliance issues (NI 43-101 *Mineral Project Disclosure*)

Trust Conversions

- Typical trust conversion scenario:
 - trust effects business combination with Loss Co.
 - Loss Co. has no assets/liabilities except for tax losses
 - business, directors and Mgmt remain unchanged
- Information Circular disclosure considerations
 - prospectus level disclosure required for certain entities in the transaction (see part 14.2 of Form 51-102F5)
 - could require 3 years of historical f/s (i.e. for Loss Co.)
- Regulators have granted relief from requirement to include historical f/s in certain circumstances (see Trilogy Energy Trust decision Dec 10, 2009)

Trust Conversions

- Key considerations if applying for relief:
 - ensure **no** assets or liabilities exist for Loss Co. (except tax losses)
 - apply well in advance of info circ filing deadline
 - retroactive relief cannot be granted
- BAR filing requirement could be triggered

- MD&A disclosure considerations
- CD filings
 - for period before issuer became RI (s.4.7 of NI 51-102)
 - ensure filings under SEDAR profile are complete
 - change in corporate structure notice

- Press releases for restatement/re-filings

Timeliness

- 11.5 of NI-51-102 requires immediate disclosure when issuer decides to restate/re-file for material deficiency
 - applies to all CD documents – not just f/s
- “immediate” – implies prompt, vigorous action, without delay
- issuers should prepare to comply before Mgmt meeting where re-filing /restatement decision is to be made
- filing press release exclusively at time documents are re-filed only appropriate if documents are also re-filed “immediately”

- Press releases for restatement/re-filings

Content

- press release must disclose nature and substance of change
- issuers should disclose (see 51-102CP(11.2)):
 - facts underlying the changes
 - general impact of changes on previously filed info
 - steps before re-filing if documents not filed immediately

Other Issues

- Change in Corporate Structure/Change in Year-End notices (4.8 & 4.9 of NI 51-102) - common issues
 - not filed
 - filed late
 - inadequate description of transaction
 - inappropriate filing periods chosen

Other Issues

- Evidencing documentation not filed on SEDAR when transaction results in RI dissolving, terminating or amalgamating (CSA Staff Notice 12-307)
- Financial statements for periods before issuer became RI not filed on time (4.7 & 4.10 of NI 51-102)

Other Issues

- Confidential Material Change Reports – filing considerations
 - required to be filed immediately - not within 10 days
 - must meet “unduly” detrimental test
 - filing out of an abundance of caution

- Filing documents on SEDAR
 - ensure that press release required under 2.2 of 51-101 filed under correct SEDAR category (see below)
 - coding correct period-end and quarterly info
 - default implications

[News release \(section 2.2 of NI 51-101\)](#)

In Conclusion

- While we see improvements....
- Push for balanced disclosure, consistency, more than the minimum, insightful
- “Why?” and “so what?”
- 2010 some areas of focus:
 - IFRS readiness
 - FLI and certifications
 - liquidity and capital resources
 - compliance with GAAP – judgments, estimates, etc.

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Questions