

*Statutory Civil
Liability Regime for
Secondary Market
Disclosures*

On December 31, 2005 amendments to the *Ontario Securities Act* came into effect, introducing a statutory civil liability regime for disclosures in the secondary market. These amendments apply to both oral and written disclosures of all Ontario reporting issuers and to any other issuer that has a real and substantial connection to Ontario. While this legislation does not change any disclosure requirements, it does change the potential consequences for companies that do not comply with disclosure rules.

Securities regulators require disclosure of all relevant material information to reduce information risk. Accordingly, companies should take care to evaluate their proposed MD&A disclosures to ensure that all material facts have been completely reported and that all the financial information, when viewed as a package, “fairly presents” the company’s financial condition, results of operations and cash flows. In making this determination, a company should ensure that the MD&A provides an explanation of its future prospects. This should include a discussion of trends and risks that are reasonably likely to affect the financial statements in the future, and information about the quality and potential variability of earnings and cash flow to assist in determining if past performance is indicative of future performance.

The legislation provides a safe harbour for forward-looking information. Forward-looking information encompasses all disclosure regarding possible events, conditions or results of operations that is based on assumptions about future economic conditions and courses of action. To invoke the protection of the safe harbour provision, companies should ensure that:

- there is a reasonable basis for drawing the conclusion or making the forecast or projection; and
- the document that sets out the forward-looking information must contain proximate to that information:
 - reasonable cautionary language identifying the information as forward-looking and the material factors that could cause actual results to differ materially; and
 - a statement of the material factors or assumptions that were applied in drawing such conclusion or making the forecast or projection.

The amendments to the statutory civil liability regime will make it all the more important for directors and officers, among others, to ensure that they have exercised due diligence in arriving at their public disclosures. A significant component of this process will be appropriate disclosure controls and procedures that ensure timely and complete disclosure of material information. (See below for information about the new publication *Understanding Disclosure Controls and Procedures: Helping CEOs and CFOs Respond to the Need for Better Disclosure — a Discussion Brief.*)

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Management's Discussion and Analysis

A random review of 60 companies' 2004 annual reports assessed the extent to which CICA's MD&A guidance is being followed. It also identified several areas where companies could improve disclosure (this review was not aimed at assessing compliance with the securities regulators' rules).

Strategy: While companies generally provided disclosure about strategy, few described linkages between their strategy and performance drivers, capabilities, and results, or indicated longer term quantitative targets. Accordingly, MD&As provided little insight about the company's prospects and management's ability to establish and meet performance targets. CICA's MD&A guidance encourages disclosing longer-term quantitative targets when this is meaningful, provided the underlying rationale and assumptions are discussed.

Sensitivity analysis: Few companies attempted to quantify the impact of changes in market factors or other key assumptions about future prospects, such as analyzing the impact of a change in raw material prices on profits. Information such as this is extremely valuable for investors and helps prevent analysts from making unreasonable estimates of a company's future prospects.

Linking actual results to previously disclosed goals: Few companies related their performance to previously disclosed targets. This disclosure is essential to understanding an entity's performance and is required by the securities regulations when previously disclosed targets might otherwise appear to be misleading.

Impact of risk factors: While most companies identified risks to which they were exposed, and some provided a discussion of risk management strategies, very few quantified the potential impact of their risk factors. Accordingly, few MD&As communicated the magnitude of the potential risk. For risk disclosure to be meaningful, it should focus only on principal risks, discuss risk management processes, and the potential impact of these risks on results and capabilities, including capital resources and liquidity.

Key performance measures: Few companies did a credible job of linking performance measures to performance drivers. Where performance drivers were identified, measures were often unrelated. For example, a company might explain that customer satisfaction is an important performance driver, yet report only aggregate measures, such as return on equity. In this circumstance, a more meaningful measure might be sales attributed to repeat customers or a non-financial measure such as customer satisfaction ratings.

Examples of applications of CICA's MD&A guidance can be found at www.cica.ca/mda. As well, many of CICA's 2005 Corporate Reporting Awards winners followed CICA's MD&A guidance.

MD&A Disclosure About the Financial Impact of Climate Change and Other Environmental Issues — a Discussion Brief

Climate change and other environmental issues can materially affect a company's financial performance and prospects. The MD&A often needs to address these issues so that investors can understand their impact. This discussion brief is intended to raise awareness and enhance understanding of related performance reporting issues. It discusses:

- types of climate change and other environmental issues that may have a financial impact on an entity;
- considerations in deciding what to disclose;
- existing applicable regulatory disclosure requirements;

*Understanding Disclosure
Controls and Procedures:
Helping CEOs and CFOs
Respond to the Need for
Better Disclosure
— a Discussion Brief*

- applying CICA's MD&A disclosure framework to disclosure; and
- considerations in overseeing the integrity of disclosure.

The discussion brief can be downloaded from CICA's web site at www.cica.ca/mda.

For most companies, December 31, 2005 is the first time that the CEO and CFO are required to evaluate disclosure controls and procedures (DCP) and report their conclusions from those evaluations in the MD&A. As well, in approving the annual MD&A and other core documents, the board of directors will want to ensure that their company has implemented appropriate controls and procedures to surface all material information that should be reported for public dissemination.

The CICA's Risk Management and Governance Board (RMGB) has developed this discussion brief to raise the awareness of CEOs, CFOs, and directors of Canadian public companies with respect to the regulatory requirements for DCP and the role of DCP in improving disclosure.

This discussion brief can be accessed at www.rmgb.ca/dcp.

*Centre for Enhanced
Corporate Reporting*

The School of Business at the University of Alberta and the CICA have partnered to form the Centre for Enhanced Corporate Reporting. The Centre's mission is to help shape policy and behaviour in corporate reporting beyond the financial statements, and provide value to the accounting and related research communities and professional and business communities. The Centre will concentrate on:

- connecting academic and business perspectives;
- advancing academic and applied research; and
- communicating through publications, conferences and research digests.

A focus of the Centre will be on value created by enhanced reporting, both for preparers and users of information.

The Centre will be holding focus groups for CFOs in Edmonton and Calgary in mid-January to discuss several aspects of the MD&A and other enhanced reporting and provide advice to the Centre about useful research projects.

Mike Gibbins, PhD, FCA, Winspear Distinguished Professor at the University of Alberta, is the Centre director. If you are interested in contributing to either focus group or would like to receive information about the Centre's activities, contact Mike at michael.gibbins@ualberta.ca.

*Management Commentary
— a Discussion Paper*

The International Accounting Standards Board (IASB) has published a discussion paper on management commentary (management's discussion and analysis). CICA was one member of a four-country project team that developed this material, the others being the German and UK accounting standards boards and the Institute of Chartered Accountants of New Zealand. This paper examines the potential for the IASB to develop standards or guidance for management commentary.

The IASB has requested comments on the paper. Comments on all aspects of the document are encouraged, although the IASB is particularly interested in observations about the following issues addressed in the paper:

- the need for standards or guidance for management commentary;
- the objective for management commentary, its principles, qualitative characteristics and content; and

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**CSA Staff Notice 52-311 —
Required Forms of Certificates
under MI 52-109 Certification
of Disclosure in Issuers'
Annual and Interim Filings**

**CSA Staff Notice 51-316
— Continuous Disclosure
Review of Smaller Issuers**

Projects in process

- criteria for determining whether information should appear in the financial statements or the management commentary.

The deadline for receipt of comments is April 28, 2006. The discussion paper can be accessed at www.cica.ca/mc.

This staff notice, released on December 15, is intended to assist certifying officers in determining what form of certificate should be filed for various financial years and interim periods. The notice also sets out samples of the various types of certificate. It can be accessed on at the securities commissions' web sites, for example www.osc.gov.on.ca.

This recently released notice addresses common deficiencies in small business issuers' continuous disclosures. It includes comments about:

- financial statement disclosure;
- MD&A disclosure;
- disclosures in the mining and oil and gas industries;
- insiders' compliance with *System for Electronic Disclosure by Insiders* (SEDI); and
- timely disclosure.

The staff notice can be accessed at the securities commissions' web sites, for example www.osc.gov.on.ca.

CICA's Canadian Performance Reporting Board (CPRB) has three projects in process:

- MD&A examples provided in the Resource Centre at www.cica.ca/mda are continually being enhanced. Additional examples of risk disclosures by risk category and industry are expected to be available by mid January 2006;
- Guidance on what to disclose about risk in an MD&A is being developed, planned to be available in Fall 2006;
- An interim MD&A self-assessment tool that will complement the existing annual self-assessment tool should be available by the end of January 2006. As well, guidance on disclosures in interim MD&A is planned for Fall 2006.

CPR Alert is also available on CICA's website at www.cica.ca/mda.

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