



CFO Beyond-GAAP Briefing

Forward-Looking Information

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Forward-looking information is valued by investors and is an important element of the forward-looking orientation that is the foundation of a good MD&A. By its nature, however, forward-looking information is less reliable than historical information. Recent changes to securities laws emphasize the importance of exercising appropriate due diligence when disclosing forward-looking information.

This Briefing discusses:

- the importance of providing forward-looking information;
- recent changes to securities regulation affecting the disclosure of forward-looking information; and
- steps to take advantage of the safe-harbour provisions of civil liability legislation for secondary market disclosure.

Definition of forward-looking information

Forward-looking information is defined in securities legislation 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.

This definition encompasses a wide variety of disclosures. At one end of the spectrum, forward-looking information involves little or no financial information. For example, in reviewing its strategy for the next year an entity might discuss how projected growth rates relate to general economic conditions and raw material prices, or it might discuss the number and size of its planned new retail outlets. At the other end of the spectrum, some entities provide earnings guidance for the year ahead. Other commonly reported forward-looking information disclosures include how changing industry and entity conditions are expected to cause historical trends to vary, statements about the condition of order backlogs and timing for their completion and delivery, and prospective financial information about elements of the income statement or cash flow statement, for example, planned capital expenditures.

Investors' needs

Investors need to receive information that is helpful in determining whether they should invest or continue to invest in an entity. An entity's historical performance and its financial position reveal information about how well management performed

with the assets at its disposal in the period. However, investors particularly value information that helps them assess the extent to which past results are likely to be indicative of future prospects. Management's expectations with respect to an entity's future performance at a high level are useful, but need to be accompanied by an explanation of the plans, circumstances and events which are expected to affect the entity's performance, to enable investors to reach their own conclusions.

CICA's MD&A guidance

The importance of a forward-looking orientation to MD&A is an underlying principle of CICA's MD&A guidance. That publication notes that such an orientation calls for the MD&A to explain past events, decisions, circumstances and performance in the context of whether they are reasonably likely to be indicative of, and have a material impact on, future prospects. A forward-looking orientation also calls for the MD&A to describe management's strategy and key performance drivers, as well as opportunities and risks.

Securities regulators' views about a forward-looking orientation to MD&A

The sentiment expressed in CICA's MD&A guidance is also present in the Canadian Securities Administrators' (CSA) instructions for preparing MD&A. The general instructions note that MD&A includes a narrative explanation, through the eyes of management, of a company's financial condition and future prospects. The CSA material goes on to state that MD&A should discuss important trends and risks that are reasonably likely to affect the financial statements in the future. As well, the MD&A should provide information about the quality and potential variability of a company's earnings and cash flow, to assist investors in determining if past performance is indicative of future performance. These general requirements are elaborated on in the content section of the instructions for the MD&A. For example, there should be discussion of commitments, events, risks or uncertainties that a company reasonably believes will materially affect future performance.

Reluctance to provide forward-looking information

Some entities are reluctant to provide forward-looking information. Two main reasons are cited for this reluctance: competitive issues and increased exposure to legal liability. With respect to competitiveness, there are certainly some circumstances where disclosure would jeopardize an entity's advantage in the marketplace. As well, however, there are circumstances when certain groups, such as the workforce, customers, suppliers, or competitors, are already aware of the information. In these instances, public disclosure reduces the risk of selective disclosure by providing the information to all current and potential investors and minimizes the risk of inappropriate use of undisclosed material information. Disclosure may also provide an opportunity to dispel any misconceptions that may have arisen. As regards potential liability,

there are safe-harbour provisions in civil liability legislation for secondary market disclosures of forward-looking information, provided the entity has a reasonable basis for the information and makes appropriate disclosures and updates. In any event, notwithstanding any reluctance to report forward-looking information, in some cases entities need to disclose such information to comply with securities law requirements.

Tip: Failing to disclose material forward-looking information may attract liability. Therefore, forward-looking information that is not to be disclosed because of competitive or legal liability concerns should be reviewed with the disclosure committee.

Securities regulators' requirements when forward-looking information is disclosed

Recently, the CSA have revised National Instrument (NI) 51-102, Continuous Disclosure Obligations with respect to forward-looking information. The instrument deals with some general rules for any forward-looking information and additional rules for two subsets of forward-looking information: financial outlooks, and future-oriented financial information¹. The instrument requires that certain criteria be met for presenting forward-looking information, mandates disclosures that must accompany each of the three categories of information, and subsequent disclosures when actual results are or are expected to be materially different from previously disclosed material forward-looking information². The requirements apply to forward-looking information wherever it is presented, except forward-looking information contained in oral statements. So, for example, forward-looking information on a website or in a news release is subject to the same rules as that in MD&A. A summary of the CSA requirements is set out on page 8.

Tip: Review all material forward-looking information disclosures prior to publication for compliance with securities regulators' criteria and disclosure requirements, including forward-looking information presented on websites, news releases, or marketing material.

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- 1 Future-oriented financial information is rarely reported in secondary market disclosures. Accordingly, this Briefing focuses on general forward-looking information and financial outlooks.
 - 2 The criteria for forward-looking information apply in all circumstances, while the disclosure requirements are restricted to material forward-looking information. In the companion policy to NI 51-102, the CSA discuss materiality for forward-looking information as follows: "If a reasonable investor's decision whether or not to buy, sell or hold securities of the reporting issuer would be influenced or changed if the information were omitted or misstated, then the information is likely material."

Criteria for presenting forward-looking information

Forward-looking information cannot be provided unless there is a reasonable basis for it.

In assessing reasonableness, preparers should consider their assumptions, including, for example, their source, how the assumptions relate to actual past experience in the entity and/or the industry, and the changes needed in the business for the assumptions to translate to actual experience. Clearly, it will be easier to determine reasonableness when the forward-looking information relates to an entity's continuing activities as opposed to a new venture, for example, sales of a new product line. CICA Handbook Section 4250, *Future Oriented Financial Information* provides additional insights about reasonableness of assumptions and may be useful in assessing the reasonableness of forward-looking information generally.

The diligence process followed with respect to the release of forward-looking information should also be considered, for example, the senior management members who are consulted about assumptions and risk factors, the controls around the completeness and accuracy of the gathering and computation of the information, and the approval process for disclosure.

Tip: An entity's disclosure committee should review the reasonableness of assumptions and the process for preparing and reviewing the forward-looking information prior to finalizing the disclosures.

Disclosures that should accompany forward-looking information

Since forward-looking information is likely to be less reliable than historical information, cautionary language must be provided. Forward-looking information needs to be identified as such to distinguish it from historical information. As well, readers need to be able to understand the basis on which the forward-looking information was developed, and the extent of the potential for it to vary from actual results. Accordingly, related assumptions and risk factors should accompany the disclosure. In particular, the risk factors should be specific to the entity and should avoid boilerplate. Many entities avoid reporting single-point estimates that may communicate a greater sense of precision than that justified by the assumptions and risks. Instead, these entities disclose forward-looking information in terms of a range of possible outcomes.

Tip: Whenever possible, report quantitative forward-looking information disclosures as a range of possible outcomes and discuss the sensitivity of the range to changes in the various assumptions. This emphasizes the potential for variability and minimizes the need for subsequent revisions.

Disclosure about previously reported forward-looking information

MD&A disclosures are needed if it becomes apparent that previously reported material forward-looking information for a period that is not yet complete is reasonably likely to be materially different from actual results. Disclosure is also required when previously reported forward-looking information is withdrawn. Since forward-looking information is provided in a range of communications, entities may well be advised to incorporate a process to identify all forward-looking information disclosed since publication of the previous MD&A, including a review of website disclosures, news releases, and material change reports. Disclosure committees may wish to review changes in assumptions used in preparing previously disclosed forward-looking information and the effect of the changes on the information.

Tip: When it becomes apparent that actual results are reasonably likely to vary materially from previously disclosed forward-looking information, disclose the changes that have occurred in the assumptions and the expected impact on the forward-looking information.

Financial outlooks

The CSA regulations set out additional requirements when forward-looking information is characterized as a financial outlook³. A financial outlook is forward-looking information about prospective results of operations, financial position, or cash flows that is not presented in the form of a historical balance sheet, income statement, or cash flow statement. The CSA describes expected revenues, net income, earnings per share, and research and development spending as examples of a financial outlook. Accordingly, this term may also apply to expected amounts for other line items within the financial statements, for example, expected cash outflows for capital assets. The distinction between general forward-looking information and a financial outlook may be unclear at times, however. For example, a statement that “sales prices are expected to remain constant while volumes should grow by 15%” is clearly forward-looking information, but is it a financial outlook? In view of the lack of clarity in this area, it may be prudent for the disclosure committee to consider the categorization of the forward-looking information when reviewing disclosures.

In addition to meeting the criteria for general forward-looking information, a financial outlook must be based on assumptions that are reasonable “in the circumstances” and the information must be limited to a period for which it can be reasonably estimated. As well, it must use accounting policies that are expected to be used in the preparation of the historical financial statements for the period covered by

³ In the companion policy to NI 51-102, the CSA state that they consider FOFI and most financial outlooks to be material forward-looking information.

the outlook. This latter requirement may pose some challenges as Canada migrates to International Financial Reporting Standards.

Tip: When preparing a forward-looking information disclosure that may constitute a financial outlook, consider changes in GAAP that are expected to occur by the time the actual results are expected to be reported.

Additional disclosures are required around financial outlooks. The date of management's approval of the outlook must be provided if the outlook is set out in an undated document. As well, the purpose of the information must be disclosed, together with a caution that it may not be appropriate for other purposes. In an MD&A, the purpose may often be no more than to provide information to assist investors in assessing future prospects. In other circumstances, more detail may be necessary. For example, a prospectus might explain it sets out two financial outlooks that compare and contrast the consequences of two possible courses of action.

Finally, material differences between a financial outlook and subsequent actual results must be disclosed and discussed in the MD&A for the period which includes the actual results. This is in addition to the requirement to disclose events and circumstances that are reasonably likely to cause actual results to differ materially from previously disclosed forward-looking information.

Civil liability for secondary market disclosures – safe-harbour for forward-looking information

As noted above, in those provinces that have implemented civil liability legislation for secondary market disclosures, there is a safe-harbour provision for forward-looking information. Complying with the CSA requirements about disclosure of forward-looking information should satisfy most of the conditions to be met when seeking the protection of the civil liability legislation's safe-harbour provisions for written forward-looking information. One additional provision in the civil liability regime requires that the cautionary language and the disclosures of material factors or assumptions related to the forward-looking information be "proximate" to the information. To date, there have been no legal cases that have examined what is meant by "proximate". In the absence of a definition for this term, we understand that some lawyers are advising their clients to cross-reference individual material forward-looking disclosures to the cautionary statement about forward-looking information that typically appears at the beginning of an MD&A.

It should be noted that it is possible to attract civil liability for public oral secondary market forward-looking information disclosures. Accordingly, when making oral statements, the safe-harbour provisions for public oral statements containing forward-looking information should be observed. This involves making a caution that the

statement contains forward-looking information, that actual results could differ materially from the forward-looking information, and that the statement involves certain material factors or assumptions. As well, the oral statement must identify a readily available public document that provides additional information about the material factors that could cause actual results to be materially different, and the material factors or assumptions underlying the information.

Tip: Civil liability legislation for secondary market disclosures applies to public oral statements as well as written information. Accordingly, ensure all forward-looking information, oral and written, takes advantage of civil liability safe-harbour provisions for secondary market disclosures.

Oversight of forward-looking information disclosures

Prior to publishing forward-looking information, entities will want to ensure that they have conducted an appropriate due diligence process. Disclosures, together with the basis and process for developing assumptions, may benefit from review with the disclosure committee. The audit committee in discharging its oversight responsibilities needs to review forward-looking information in the MD&A (the board's process to approve MD&A will likely also involve review of forward-looking disclosures). As well, the audit committee may wish to commission periodic reviews of the systems and processes for developing and disclosing forward-looking information, for example, through the entity's internal audit department. Prior to publishing any forward-looking information, it may be prudent to review the proposed disclosures with legal counsel.

Tip: As well as following the entity's established processes for the disclosure and audit committees' review of forward-looking information, ensure it is also subjected to appropriate review prior to disclosure by internal or external legal counsel.

Conclusion

Many leading public entities have revised forward-looking information disclosure practices to take advantage of the safe-harbour provisions in civil liability legislation for secondary market disclosures. Similar practices are now required for all material forward-looking disclosures to comply with the changes to NI 51-102. Notwithstanding these additional requirements, entities should remain confident that they can continue to provide meaningful forward-looking information to their investors.

Summary of CSA Continuous Disclosure Rules for Forward-Looking Information¹

	All Forward-Looking Information²	Financial Outlook and Future-Oriented Financial Information (FOFI)^{2,3}
Definitions	Forward-looking information is 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.	A financial outlook means forward-looking information about prospective results of operations, financial position or cash flows that is based on assumptions about future economic conditions and courses of action and that is not presented in the format of a historical balance sheet, income statement or cash flow statement.
		FOFI or “future-oriented financial information” means forward-looking information about prospective results of operations, financial position or cash flows, based on assumptions about future economic conditions and courses of action, and presented in the format of a historical balance sheet, income statement or cash flow statement.
Criteria for disclosure	There must be a reasonable basis for any forward-looking information. In deciding whether a reasonable basis exists, the entity should consider the reasonableness of the assumptions underlying the information and the process followed in preparing and reviewing it.	Forward-looking information that is a financial outlook or FOFI must meet additional criteria: <ul style="list-style-type: none"> • the information must be based on assumptions that are reasonable in the circumstances; • the information must be limited to a period for which it can be reasonably estimated; and • the information must use accounting policies that are expected to be used to prepare the historical financial information for the period covered by the forward-looking information.

1 Forward-looking information is defined in provincial securities legislation. The definitions of a financial outlook and future-oriented financial information, together with the criteria for reporting forward-looking information, the disclosures that should accompany the information, and disclosures related to previously released forward-looking information are set out in National Instrument (NI) 51-102, Continuous Disclosure Obligations, Parts 4A, 4B, and Part 5, Section 5.8.

2 The CSA continuous disclosure rules for forward-looking information do not apply to oral statements.

3 Does not apply to disclosure that is subject to requirements in NI 51-101, Standards of Disclosure for Oil and Gas Activities or disclosure that is subject to requirements in NI 43-101, Standards of Disclosure for Mineral Projects, or disclosure made to comply with the conditions of any exemption from the requirements referred to in NI 51-101 or NI 43-101 that were received from a regulator or securities regulatory authority unless that body orders otherwise.

	All Forward-Looking Information²	Financial Outlook and Future-Oriented Financial Information (FOFI)^{2,3}
Disclosure	All material forward-looking information must be accompanied by disclosure that: <ul style="list-style-type: none"> • identifies the information as forward-looking; • cautions that actual results may vary from the forward-looking information; • identifies material risk factors that could cause actual results to differ materially from the forward-looking information; and • states the material factors or assumptions used to develop the forward-looking information. 	When the forward-looking financial information is a financial outlook or FOFI, additional disclosures are required: <ul style="list-style-type: none"> • the purpose of the information together with a caution that the information may not be appropriate for other purposes; and • the date of management's approval of the information if the document that contains the information is undated.
Disclosure related to previously released forward-looking information	There must be disclosure of events and circumstances that occurred during the period to which the MD&A relates that are reasonably likely to cause actual results to differ materially from previously disclosed material forward-looking information for a period that is not yet complete, together with the expected differences. ^{3,4,5}	In addition to the disclosure for general forward-looking information, the MD&A or MD&A supplement must disclose and discuss material differences between actual results for the period to which the MD&A relates and previously disclosed financial outlooks or FOFI related to the period. ⁶
	When an entity decides to withdraw previously disclosed material forward-looking information, there must be disclosure of the decision and a discussion of the events and circumstances that led to the decision, including a discussion of the assumptions underlying the forward-looking information that are no longer valid. ^{3,7}	

- 4 This information must be provided in the MD&A or MD&A supplement unless it is published in a previously filed news release and the MD&A or MD&A supplement identifies and states the date of the news release, and states that the news release is available on www.sedar.com
- 5 When the entity's policy for updating forward-looking information includes procedures in addition to these, they must be identified.
- 6 This disclosure is not required when the information is withdrawn and the issuer complies with disclosure requirements for withdrawn forward-looking information, provided the MD&A or MD&A supplement that discloses the withdrawal is filed before the end of the period covered by the forward-looking information.
- 7 This information must be provided in the MD&A or MD&A supplement for the period that includes the decision to withdraw the information unless the information has been included in a previously filed news release and the MD&A or MD&A supplement identifies and states the date of the news release, and states that the news release is available on www.sedar.com



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