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1 hot issues

New Canadian Disclosure Rules in 2008 for Earnings Guidance and Other Forward-Looking Information

Effective January 1, 2008, new revisions were made to NI 51-102 replacing NP 48.

Key changes to the new disclosure requirements:

- “Future-oriented financial information” (FOFI) is information about **prospective** results of operations, financial positions or cash flows presented in the form of a historical balance sheet, income statement or statement of cash flows.
- A “financial outlook” is, like FOFI, prospective in nature, but, unlike FOFI, it is not presented in the form of a historical financial statement. An example would be Earnings Guidance.

The rules include a basic prohibition on disclosing any kind of forward-looking information without a reasonable basis, whether it is FOFI, a financial outlook or any other type of forward-looking information. Oral disclosure of forward-looking information is not captured by these new disclosure rules, but they could still be subject to civil liability under Ontario’s Bill 198.

The most significant changes under the new rules are that they apply not only to FOFI but also to earnings guidance and other financial outlooks.

For example they apply to:

- Prospectuses, rights offering circulars or offering memoranda
- Continuous disclosure or other regulatory filings, and
- News releases and websites

Disclosure Requirements for:

Material Forward-Looking Information

If material forward-looking information is disclosed (including FOFI, a financial outlook or any other material with forward-looking information), the disclosure must identify the forward-looking information as such and include a caution that actual results may vary from predictions. *Material risk factors that specific to the issuer*, and not boilerplate must be identified.

FOFI and Financial Outlooks

All FOFI and financial outlooks must be based on assumptions that are reasonable in the circumstances. The information must use the same accounting policies as the financial statements and must be limited to a period that can reasonably be estimated (which the regulators have indicated will not usually extend beyond the issuer’s **next fiscal year-end**).

Requirements for MD&A

Issuers must disclose in the MD&A (or in a news release published beforehand) any events or circumstances that occurred during the period and that are reasonably likely to cause future results to differ materially from any previously disclosed material forward-looking information. The expected differences must be stated.

CESR takes baby step to European EDGAR

The **Committee of European Securities Regulators** (CESR) has announced that it will take the first step towards creating a pan-European regulatory database network of issuer disclosures as required under the Transparency Directive.

The move will be made as part of improvements to the **MiFID share database** that was established last year to provide a public list of all shares admitted for trading on EU regulated markets.

The current database, which includes only the names of listed companies along with basic trading and regulator information, will be updated with better search capabilities and additional information by **March 5** based on input from market participants.

In the coming update, the CESR will also provide **links from the name of the shares** in the MiFID database to the websites of the relevant country disclosure databases, known as Officially Appointed Mechanisms (OAMs). For shares listed in countries with more than one OAM, such as the UK, the links will go to an intermediary page with a list of all the OAM's in the country.

The CESR said the move would “implement a first version of the EU network of storage mechanisms.”

It remains to be seen just how useful the initial network will be to investors as each of the country OAMs uses different technologies and approaches. The European Commission has been considering legislation to move forward towards creating a more unified network.