MD & A REGULATION IN CANADA AND THE U.S.

MD&A Best Practices and IFRS Convergence

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BACKGROUND

History of M D & A Regulation in Canada

- **Prospectus Requirements**
  - NI 41-101 ; NI 44-101
- **Continuous Disclosure Requirements**
  - Historically: OSC 5.10 (November 1989)
  - Currently: National Instrument 51-102 (all other issuers)
    - Ontario implementation by OSC Rule 51-801 which conforms financial statement filing and delivery requirements, among other changes
  - IFRS reflected in amendments to NI 51-102 effective Jan. 1, 2011
- **Future Oriented Financial Information**
  - NP 48 (1993) repealed
  - NP 51-201 (Disclosure practices) 2002 – re soft disclosure
  - Effective Jan. 2008 consolidation in NI 51-102 of both “soft disclosure” (e.g. earnings guidance) and rules re formal forecasts and projections (comparison to actual, updating and withdrawal)
  - FLI Guidance in CSA Staff Notice 51-330 (Nov. 20, 2009)
  - MD&A re “forward looking disclosure” Form 51-102F1 Part 1(g)
    - Required discussion of known trends and uncertainties
      See OSC Staff Notice 51-330
    - Must indicate FLI, describe sensitivity factors, material assumptions, appropriate risk disclosure and cautionary language
    - Uncertain common law regarding the “duty to update” clarified by revisions to NI 51-102
    - Safe harbour for FLI in OSA s. 138.4(9),(9.1),(9.2)
    - See also defence in OSC Policy 51-604

Requirements of Item 303 of Regulation S-K

- **Discuss financial condition, results of operations and changes in financial condition**
  - Include in this section a discussion of liquidity, capital resources and results of operations
  - Forward-looking information is required where there are known trends, uncertainties or other factors enumerated in the requirements that are reasonably likely to result in a material impact on liquidity, capital resources, revenues or results of operations, including income from continuing operations
  - Focus on known material events and uncertainties that would cause reported financial information not to be necessarily indicative of future operating results or future financial condition

NI 51-102

- ***MD&A is a narrative explanation, through the eyes of management, of how your company performed during the period covered by the financial statements, and of your company's financial condition and future prospects.***
- ***MD&A complements and supplements your financial statements, but does not form part of your financial statements.***
- ***“Where you were; where you are, where you are going”***

COMPONENTS OF MD&A

- **Goals:**
  - ❖Discuss historical performance and current financial condition
  - ❖Discuss trends, uncertainties and other circumstances that may have a material effect in future and attempt to quantify (sensitivity analysis)
  - ❖Risk factor disclosure
  - ❖Help reader understand “quality of earnings” and likelihood that past performance is indicative of future performance
- **SEC 1989 Interpretive Release:**

  “The MD&A requirements are intended to provide, in one section of a filing, material historical and prospective textual disclosure enabling investors and other users to assess the financial condition and results of operations of the registrant, with particular emphasis on the registrant’s prospects for the future”

M D & A Regulation in the U.S.

- **SEC sought a suitable senior issuer to demonstrate its commitment to improved MD&A disclosure**

- **Caterpillar press release June 25, 1990**
    - Reduced 1990 projections
    - 1990 results to be substantially lower than 1989
    - Main source was Brazilian subsidiary

- **<u>Press release was 4 months after management's report to Board, 6 months after change in Brazilian gov't and 2 months after change in Brazilian economic policies</u>**

M D & A Regulation in the U.S.

- **Review of Caterpillar's MD&A Disclosures for 1989 and Q1 1990 disclosed that <u>future "sales in Brazil could be hurt by post-election policies which will likely aim at curbing inflation"</u>**
- **Disclosure did not indicate contribution of Brazil to overall profit or material impact of possible decreased sales**
- **<u>14 Page decision using cease and desist power and intended to offer significant guidance even though enforcement actions are fact-specific</u>**

M D & A Regulation in the U.S.

- **Factors suggesting further disclosure:**
  - Brazil results for 1989 disproportionate and certain non-operating items
  - Significant impact (23%)
  - Consolidated Statements not comprehensible
  - Change in management's perspective
  - Non-public analytical tools
  - Availability of quantification of known uncertainties and trends

M D & A Regulation in the U.S.

- **Summary of problems with Caterpillar MD&A (1990):**
  - ✓Failure to identify significant impact of Sub
  - ✓Failure to discuss:
    - Future known uncertainties
    - Risk of material decreased earnings
    - Quantification of decrease
  - ✓Failure to have adequate procedures

M D & A Regulation in the U.S.

- **Bank of Boston Corp (December 1995)**
- **Company censured for understatement of loan loss reserve on commercial real estate portfolio**
- **Defence alleged mere "forward-looking info" and reliance on safe harbour for forecasts**
- **SEC proved "hard facts" rebutting requirement for "reasonable basis/good faith"**
  - <u>Once a "reasonable degree of certainty" is established that reserves are inadequate, the risk must be evaluated and quantified to the extent practicable</u>
- **Contrast TD Bank "special reserve" 3RD quarter 2002**
  - $600 million "sectoral" loan loss provision against telecom loan portfolio and $250 million for other U.S. corporate loans

M D & A Regulation in the U.S.

- Sony Corporation (1998)
- Acquisition of CBS Records, movie studios, theatres and television production to form Sony Music & Entertainment Inc. (late 1980's)
- Projected 5 years of losses on Sony Pictures (Guber and Peters JV) after amortization and financing
- Significant losses exceeded projections culminating in 1994 and Q1 1995 "operating loss"
- Segment reflected consolidated results of entertainment division inclusive of profitable Sony Music – sheltered over US$1 billion of losses in Filmed Entertainment since acquisition

M D & A Regulation in the U.S.

- **1994 Annual Report disclosed 58% drop in entertainment segment income "primarily" due to "disappointing performance" of certain motion pictures**
  - ❖No indication or re-thinking of sustainability of business unit
- **<u>However, other metrics stressed in positive light: box office share, Academy Award nominations and gross box office receipts</u>**
- **At issue were:**
  - ❖June 1994 6-K re 1994 results
  - ❖September 1994 6-K re Q1 1995
  - ❖Form 20-F for 1994 fiscal year
- **November 1994 press release for Q2 1995 included US$2.7 billion w/o of goodwill**

Gibson Greetings – October 1995 SEC Action

- (a). Gibson's Financial Statements Contained in its 1993 Forms 10-Q: accounting treatment for derivatives activities during 1993 failed to comply with GAAP. ……..
- (b). MD&A Disclosure: The MD&A sections in Gibson's Forms 10-Q for 1993 failed to comply with the requirements of Item 303 of Regulation S-K. Despite the significant quarter-to-quarter changes in the nature, terms, risks and fair values associated with Gibson's derivatives, the 1993 Forms 10-Q were silent on the subject of interest expense and derivatives activities. <u>Gibson failed to provide MD&A disclosure of known uncertainties caused by numerous changes in its derivatives positions, including the significant risks assumed by the company.</u> Gibson thus violated Section 13(a) of the Exchange Act and Rules 13a-13 and 12b-20.

Coca-Cola SEC Action April 2005

- Richard Wessel, District Administrator of the Commission's Atlanta District Office, stated, "MD&A requires companies to provide investors with the truth behind the numbers. Coca-Cola misled investors by failing to disclose end of period practices that impacted the company's likely future operating results."
- Katherine Addleman, Associate Director of Enforcement for the Commission's Atlanta District Office, stated, "In addition, Coca-Cola made misstatements in a January 2000 Form 8-K concerning a subsequent inventory reduction and in doing so continued to conceal the impact of prior end of period practices and further mislead investors."
- Although Coca-Cola's accounting treatment for sales made in connection with gallon pushing was found to be without issue, the Commission still found that Coca-Cola's failure to disclose the impact of gallon pushing on current and future earnings, as well as the false statements and omissions within the Form 8-K, violated the antifraud and periodic reporting requirements of the federal securities laws
- Civil securities fraud suit settled July 2008 for US$137.5 million

Other Recent SEC Enforcement Actions

- **Global Crossing (April 11, 2005)**
  - ❖ Reciprocal fibre optic capacity swaps
  - ❖ Not disclosed in a manner that allowed investors to fairly judge quality of reported results and likelihood of continuity
  - ❖ Extent of reliance on reciprocal transaction not disclosed and ability to continue questionable
  - ❖ Liquidity overstated as such transactions also included in statements of cash flows
  - ❖ Ability to integrate into business not discussed, terms not fully settled and some purchased for resale
- **Comerica, Inc. (July 15, 2005)**
  - ❖ <u>Improper loan reserve calculation and approval procedures masked deteriorating results in California subsidiary</u>
  - ❖ Failure to disclose in MD&A known uncertainties reasonably expected to have a materially unfavourable impact on revenues or income from continuing operations

Other Recent SEC Enforcement Actions

- **McAfee, Inc. (January 4, 2006)**
  - ❖ Channel stuffing and concealment
- **Tyco International Ltd. (April 17, 2006)**
  - ❖ Acquisition accounting practices, including valuation issues and misusing purchase accounting reserves
  - ❖ Use of reserves for income smoothing
- **Fannie Mae (May 23, 2006)**
  - ❖ Various accounting and valuation practices linked to income smoothing
- **Delphi Corporation (October 30, 2006)**
  - ❖ Various schemes to increase revenue including burying $325 million in factoring revenues to artificially boost non-GAAP metrics (income statement and balance sheet)

Recent case Re “Soft Disclosure”

- ***Boliden Limited v. Liberty Mutual Insurance Company (ON. C.A. April 2008)***

- Mining disaster in Spain with release of toxic waste
- Boliden IPO less than a year earlier
- Securities Class action settled
- Boliden seeks coverage for more than $3 million of defence costs in D&O liability policy – issue was exclusion clause re environmental issues – held that Boliden entitled to 80% coverage (typical policy allocation clause)
- <u>Prospectus had contained affirmative statements regarding: (i) the importance of environmental protection and pollution protection; (ii) Boliden’s anticipated rank among the world’s zinc producers; (iii) estimated production of ore and primary metals from the Spanish operation</u>
- The statements were asserted as misrepresentations in light of alleged material facts concerning: (i) construction and maintenance of the tailings dam; (ii) stability problems with and structural defects under the tailings dam; (iii) seepage and leakage; (iv) risk of a “natural disaster because of these issues; and (v) known environmental risks due to toxicity of tailings

Another Recent Case on Soft Disclosure

- **Timminco May 2009 defendant in $520 million class action suit related to disclosures concerning its metallurgical silicon business**
- **It contends that the company, its chairman-CEO and others provided misleading information about the profit potential of its process to produce high-grade silicon for use in solar cells.**

OSC MD&A Guide – Published February 1993

- MD&A "is intended to provide accessible, analytic and explanatory disclosure about an issuer's current situation and future prospects that builds upon the information contained in the issuer's financial statements"
- Four areas in which narrative financial disclosure necessary:
  - analysis of comparative figures
  - off-balance sheet items
  - disaggregation
  - segmentation

• Analysis should identify material factors and explain relevance/expected change

• Forward-looking info is not a guarantee – just a statement about factors in management's decisions

Certification Requirement: "Presents Fairly" is Very Broad

Brian Ludmer, Sept. 19, 2012

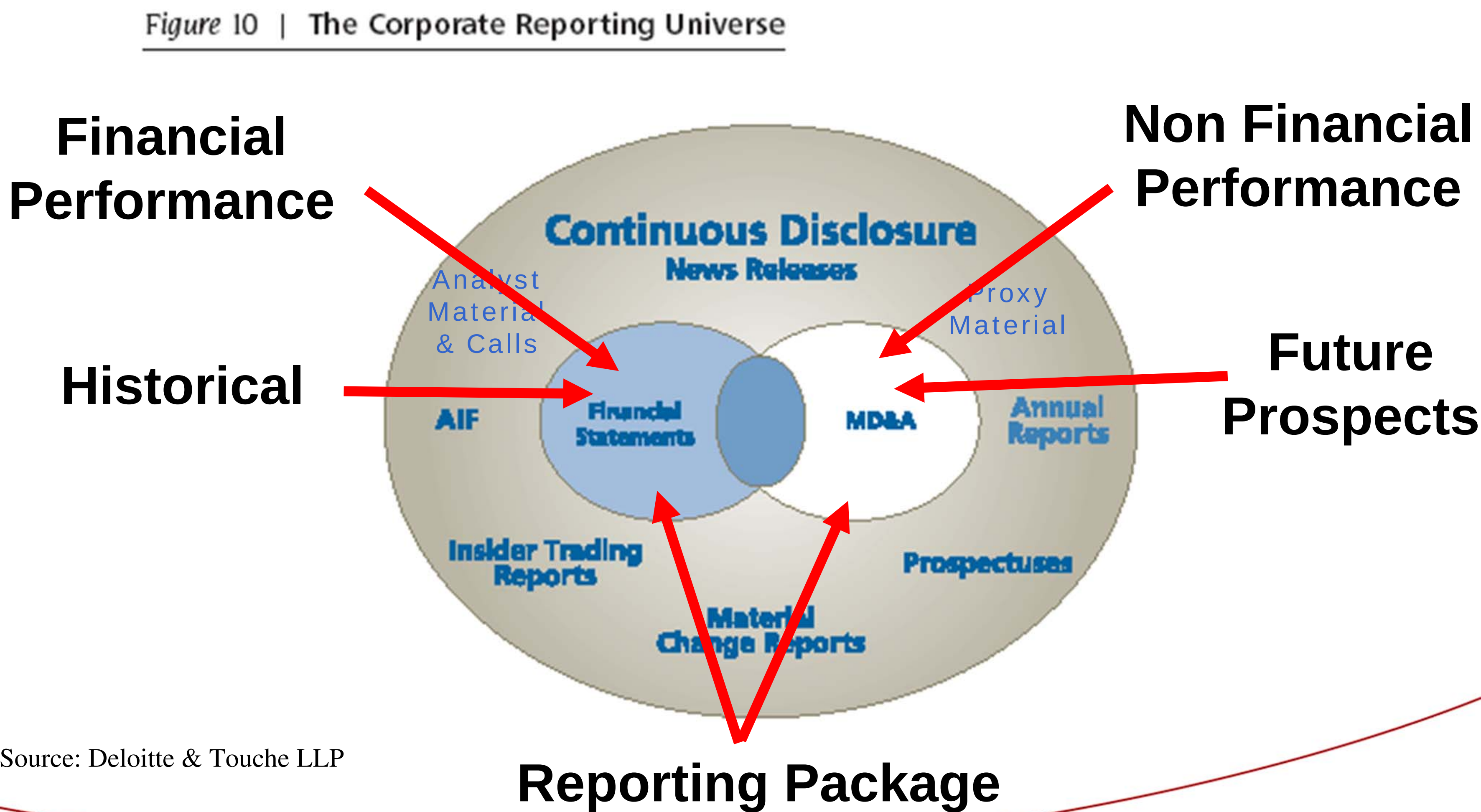
Definitions

- **"annual filings"** means the issuer's AIF, if any, and annual financial statements and annual MD&A filed under provincial and territorial securities legislation for the most recently completed financial year, including for greater certainty all documents and information that are incorporated by reference in the AIF;
- **"interim filings"** means the issuer's interim financial statements and interim MD&A filed under provincial and territorial securities legislation for the most recently completed interim period;

Financial Condition NOT Financial Position

- **Financial condition of an issuer includes, without limitation, considerations such as:**
  - liquidity
  - solvency
  - capital resources
  - overall financial health of the issuer's business
  - current and future considerations, events, risks or uncertainties that might impact the financial health of the issuer's business
- **Analytical rather than merely descriptive**
  - Including analysis of effect on continuing operations of M&A
- ***"Financial condition reflects the overall health of the company and includes your company's financial position (as shown on the balance sheet) and other factors that may affect your company's liquidity, capital resources and solvency. A discussion of financial condition should include important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future."***

Certifying the "Total Mix" of Information in Filings – But Influenced by Other Disclosure



Source: Deloitte & Touche LLP

Best Practices for Disclosure Controls

Brian Ludmer, Sept. 19, 2012

Liability for Continuous Disclosure
(Bill 198/41/149)

- **Historically primary market liability**
- **Civil liability for secondary market disclosure pursuant to new Part XXIII.1 of the *Securities Act* (Ontario), s.126.1 (fraud and market manipulation) and s. 126.2 (misleading and untrue statements) came into effect on December 31, 2005**
- **MD&A is a "core document"**
    - ❖ Burden of proof will be on <u>defendant</u> to show "reasonable investigation"
        - The existence of a continuous disclosure system is a factor in determining reasonableness
- **OSC Policy 51-604 re application of safe harbour for forward-looking statements in s. 138.4(9) of OSA**

Definitions

- **"disclosure controls and procedures" means controls and other procedures of an issuer that are designed to provide reasonable assurance that information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under provincial and territorial securities legislation is recorded, processed, summarized and reported within the time periods specified in the provincial and territorial securities legislation and include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in its annual filings, interim filings or other reports filed or submitted under provincial and territorial securities legislation is accumulated and communicated to the issuer's management, including its chief executive officers and chief financial officers (or persons who perform similar functions to a chief executive officer or a chief financial officer), as appropriate to allow timely decisions regarding required disclosure;**

Disclosure Committee Best Practices

- **Strongly recommended in Reg FD (1999), CSA National Policy 51-201 and in SEC release adopting Sec. 302**
- **Permanent committee with members representing major business units, CEO, CFO, legal, compliance**
    - ❖SEC suggests that the committee include the senior accounting officer, general counsel, principal risk management officer and chief investor relations officer
- **Knowledge, ongoing training, authority**
- **Availability to deal with potential timely disclosure issues**
- **Establish procedure:**
    - ❖Composition; responsibilities; setting of disclosure timelines; responsibility for preparing drafts; process for gathering real-time information; backup documentation retention policies; distribution and collection of comments; interactions with external advisors

RECENT CANADIAN AND UNITED STATES GUIDANCE ON MD&A

Brian Ludmer, Sept. 19, 2012

Annual OSC Reviews Commencing 1991

- **They all say the same thing, with new issues being added to the list of non-compliance each year**
- **See for example:**
  - ❖ OSC Staff Notice 51-713 (January 16, 2004): *“Report of Staff’s Review of MD&A”*
  - ❖ OSC Staff Notice 52-701 (February 2001): *“Report of Staff Review of Revenue Recognition”*
  - ❖ OSC Staff Notice 52-713 (Feb. 2002): *“Report of Staff’s Review of Interim F/S and Interim MD&A”*

CSA Staff Notice 51-326 re 2008 CD Reviews

- **36% of files involved prospective changes and 19% required refilings**
- **MD&A was the main topic**
  - ✓Boilerplate disclosure
  - ✓Repeating information in the financial statements without analysis
  - ✓Inadequate disclosure of liquidity and capital resources
  - ✓Lack of quantitative analysis in results of operations
  - ✓Missing or limited disclosure of adoption of new accounting standards
  - ✓Inadequate related party transaction disclosure
  - ✓Poor risk disclosure and analysis
  - ✓Specific industry concerns

CSA Staff Notice 51-329 re 2009 CD Reviews

- **Of 4,300 trading reporting issues, 2009 saw 425 full and 629 issue-oriented reviews. Most of the issues were with MD&A or financial statements. How resolved: 20% - no change; 48% - prospective change; 14% - education and awareness; 13% refilings and 5% - enforcement**
- **MD&A issues included: repeating information from financial statements without providing sufficient analysis; inadequate disclosure of liquidity and capital resources, including insufficient disclosure of working capital requirements and circumstances that could affect an issuer's sources of financing; no or insufficient discussion about the risks and uncertainties expected to affect the issuer's future performance given the current economic conditions; insufficient discussion of critical accounting estimates, including a lack of disclosure of assumptions underlying the accounting estimate; lack of quantitative analysis in the results of operations' discussion; no or limited disclosure of the adoption of new accounting policies; inadequate related party disclosure; disclosure of non-GAAP financial measures contrary to CSA Staff Notice 52-306**

CSA Staff Notice 51-329 re 2009 CD Reviews

- **Issue-oriented reviews often involved MD&A topics:**
  - ❖ market turmoil and credit crisis reviews
    - Credit risk; credit loss; capital and liquidity; fair value assumptions
  - ❖ defined benefit pension plan disclosures
    - Funding status and funding obligations vs resources
  - ❖ forward-looking information
    - Identify material FLI; identify material factors and risks
  - ❖ material contracts
  - ❖ asset-backed commercial paper
  - ❖ financial instruments
    - Credit, liquidity and market risks; fmv methodology and assumptions
  - ❖ inventory
  - ❖ mining and oil & gas

OSC STAFF NOTICE – 51-706
November 2009 Corporate Finance Review

- **Liquidity and capital resources**

Many issuers simply provide boilerplate disclosure or repeat cash flow information readily available from their financial statements. This disclosure should provide sufficient details for investors to understand the company's financial condition and the risks associated with its principal sources of liquidity. Need to discuss:

- ❖ working capital requirements including fluctuations in operating cash flows;
- ❖ deterioration in financial ratios or other measures that could lead to defaults under credit agreements;
- ❖ significant risks of default on dividend payments, debt payments, debt covenants or other contractual obligations; and
- ❖ how the issuer intends to address any issues with refinancing.

In circumstances where a potential default referred to above is identified, the issuer should also outline its plans for remedying the deficiency

Issuers also need to provide an update in their MD&A on the use of proceeds from their most recent financing.

OSC STAFF NOTICE – 51-706
November 2009 Corporate Finance Review

- **Critical accounting estimates - non-venture issuers**

Many issuers simply repeated the description of accounting policies found in the notes to the financial statements. MD&A should supplement and build on financial statement disclosure. The analysis should include a discussion of the methodology and assumptions used to determine these estimates and their significance to the issuer's financial condition, changes in financial condition and results of operations.

The issuer should also discuss and quantify any changes in the methodology and assumptions used in determining the critical accounting estimates. Issuers generally did not disclose: (I) details about the key assumptions used to determine the estimates; (II) trends and uncertainties that could affect the estimates; (III) sensitivities of the estimates to changes in assumptions; and (IV) the range of estimates from which the final estimates were selected.

OSC STAFF NOTICE – 51-706
November 2009 Corporate Finance Reviews

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- working capital requirements including fluctuations in operating cash flows;
- deterioration in financial ratios or other measures that could lead to defaults under credit agreements;
- significant risks of default on dividend payments, debt payments, debt covenants or other contractual obligations; and
- how the issuer intends to address any issues with refinancing.

In circumstances where a potential default referred to above is identified, the issuer should also outline its plans for remedying the deficiency.

OSC STAFF NOTICE – 51-706
November 2009 Corporate Finance Review

- **Risks and uncertainties**

MD&A must include a discussion of the risk factors and uncertainties the issuer believes will materially affect its future financial performance. Avoid generic disclosure. Issuers should provide sufficient details to allow investors to understand the significance and impact that risks have on the issuer's financial position, operations and cash flows. In the current market, examples include exposure to market risk, liquidity risk, credit risk and the effects of industry and economic factors on the issuer's performance.

OSC STAFF NOTICE – 51-706
November 2009 Corporate Finance Review

- **Impairment of goodwill, intangible assets and long-lived assets**

MD&A must include an analysis of the effect of any material asset write-downs on the issuer's continuing operations. Current market conditions may increase the likelihood that the carrying values of assets are impaired. If an impairment charge is taken, issuers should include a quantitative analysis of the write-down and a meaningful discussion of the reasons for the impairment. If significant impairment indicators are present but an impairment charge has not been taken, MD&A should include a discussion explaining why the charge was not taken.

Financial instruments disclosure

Many issuers did not disclose in their MD&A key assumptions and methodologies used to determine the fair value of financial instruments. They also failed to discuss the factors management considered in determining whether financial instruments that were not classified as held for trading were, in fact, impaired.

OSC STAFF NOTICE – 51-706
November 2009 Corporate Finance Review

- **Non-GAAP financial measures**

Issuers who choose to publish non-GAAP financial measures in their MD&A should also provide the disclosure set out in CSA Staff Notice 52-306 *Non-GAAP Financial Measures. This includes clear disclosure of the calculation of the non-GAAP measure and reconciliation to the most directly comparable measure calculated in accordance with GAAP with equal or greater prominence.*

- **Related party disclosures**

The related party transactions disclosure in MD&A should not merely repeat the information found in the notes, but expand on the disclosure by including the qualitative and quantitative discussion necessary to understand the transaction's business purpose and economic substance, the identity of related parties and their relationship

OSC STAFF NOTICE – 51-706
November 2009 Corporate Finance Review

- **Selected annual information, summary of quarterly results and fourth quarter**

Issuers must provide certain summary financial data derived from their financial statements in each MD&A filing. In addition, issuers should explain any significant period-to-period variations. This provides investors with a better understanding of the general trends impacting the issuer. This year, several issuers failed to include the qualitative discussion in their MD&A.

The annual MD&A should also include a discussion and analysis of any fourth quarter events that affected the issuer's financial condition, cash flows or results of operations. Many issuers failed to include this disclosure.

Latest Similar Reviews by Regulators (A)

- **CSA Staff Notice 51-328 (Jan.8, 2009):** ***"CD Considerations Related to Current Economic Conditions"***
- **CSA Staff Notice 51-330 (Nov. 20, 2009):** ***"Guidance Regarding the Application of FLI Requirements Under NI 51-102"***
- **CSA Staff Notice 51-332 (July 9, 2010):** ***"CD Review Program Activities for March 31, 2010 fiscal year"***
- **CSA Staff Notice 51-333 (Oct. 27, 2010):** ***"Environmental Reporting Guidance"*** **and OSC Staff Notice 51-716 (Feb. 29, 2008):** ***"Environmental Reporting"*** **and** ***OSC corporate sustainability reporting initiative and OSC Notice 51-717 (Dec. 18, 2009)*****(and consider the cost and implications of the BP April 2010 Gulf of Mexico oil spill)**
- **OSC Staff Notice 51-706 (Oct. 20, 2010):** ***"Corporate Finance Branch Report – Fiscal 2010"***

Latest Similar Reviews by Regulators (B)

- **OSC Staff Notice 51-334 (March 31, 2011)** ***"CD Review for Y/E March 2011"***
- **OSC Staff Notice 51-718 (May 2011)** ***"Key Considerations Relating to Auditor Involvement With Interim Financial Statements"***
- ***CSA Staff Notice 58-306*** **(Dec. 2, 2010)** ***"2010 Corporate Governance Disclosure Review"***
- ***OSC Staff Notice 52-720 (Feb. 2012) "Financial Reporting Bulletin"***
  - ❖ *Interesting discussion of critical Judgments and sources of estimation uncertainty*

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Reporting Issuers Refilings and Errors List:

The Refilings and Errors List identifies reporting issuers that were required as a result of a regulatory review to:

1. restate and refile financial statements;
2. implement accounting or disclosure changes on a retroactive basis, where the changes represent the correction of an error in the information as originally filed;
3. amend and refile other continuous disclosure documents; or
4. file documents to correct a non-filing at an earlier date.

The list gives the name of each issuer, the date of the refiling, a short description of the deficiency identified, and a link to the issuer's description of the change.

The list includes only issuers whose deficiency was identified in a review since October 25, 2002. We emphasize that it does not currently include issuers for whom the deficiencies were identified outside the context of a regulatory review. However, we may reconsider the scope of the list in the future to include these issuers as well. More information about how the list is compiled can be found in OSC Staff Notice 51-711 *Refilings and Corrections of Errors*.

Background

In 2000, the OSC created a continuous disclosure review program. Its goal was to ensure compliance with continuous disclosure requirements and to improve the quality of disclosure generally.

More information about the Reporting Issuer Continuous Disclosure Review Program can be found in OSC Staff Notice 51-703 *Implementation of Reporting Issuer Continuous Disclosure Review Program*. Results of the program for July 2000 to March 31, 2001 and for the year ending March 31, 2002, 2003 and 2004 can be found in Staff Notices 51-706, 51-708, 51-712, and 51-715 respectively.

The OSC web site has other reports about continuous disclosure issues, including
Staff Notice 52-701 *Initial Report on Staff's Review of Revenue Recognition*
Staff Notice 52-713 *Report on Staff's Review of Interim Financial Statements and Interim MD&A*
Staff Notice 53-701 *Staff Report on Corporate Disclosure Survey*
Staff Notice 51-713 *Report on Staff's Review of MD&A*

Last Updated on September 8, 2005

CSA Notice 51-322 Reporting Issuer defaults

- **Public disclosure available on BC, Alberta, Sask., Manitoba, Ontario, Quebec, N.B. and Nova Scotia securities commission websites**
- **Includes nature of default**
- **See OSC Staff Notice 51-711 (May 27, 2005): *"Refilings and Corrections of Errors"***
- **See OSC Policy 51-601 *"Reporting Issuer Defaults"***

News release via Canada NewsWire, Toronto 416-863-9350

Attention Business Editors:
CDA International Inc. announces filing of restated MD&A's on SEDAR

TSX Venture Symbol: YC

PICKERING, ON, Feb. 12 /CNW/ - CDA International Inc. announced today that, in cooperation with the Ontario Securities Commission's Continuous Disclosure Review Program, it has filed on SEDAR restated MD&A's for the fiscal year ended June 30, 2003 and each of the quarters ending December 31, 2002, March 31, 2003 and September 30, 2003. The restated MD&A's provide additional narrative on CDA's results of operations, financial condition, working capital position, capital resources, and business outlook. CDA's financial data for these periods remains unchanged.

CDA is a leading designer and manufacturer of Point-of Purchase displays, fixtures and trade show exhibits for consumer product retailers and manufacturers.

%SEDAR: 00011996E

/For further information: please contact Ms. Karima Alarakhia, Vice-President, Finance at (905) 686-7000./

(YC.)

CO: CDA International Inc.

CNW 16:57e 12-FEB-04

Excerpt from CDA International Original June 30, 2003 Y/E MD&A

SALES

Sales for fiscal 2003 were $42.1 million compared to $34.8 million in 2002, an increase of 21%. CDA is increasing sales with existing clients while searching for top business prospects. High growth retailers appear to be loosening the reins on fixtures investment that dramatically increase sales.

Excerpt from CDA International Revised June 30, 2003 Y/E MD&A

RESULTS OF OPERATIONS

Fiscal 2003 was a solid performance year for the Company. Our strategy to be more customer focused translated into improved profits and sales. We continued to make improvements to our management as well as benefiting from the existing team. Our focus remains on rationalizing costs to drive profits and to help secure new business.

Sales

Sales for fiscal 2003 were $42.1 million compared to $34.8 million in 2002, an increase of 21%. Q4-2003 sales were $10.2 million versus $8.4 million for Q4-2002, an increase of 21%. The Company was successful in efforts to increase sales with existing high profile clients while continuing to search for top new business prospects. The cause of the sales increase can be attributed to the Company's re-dedicated efforts to become more aggressive from a marketing standpoint and more customer focused from a sales and service standpoint. The Company's largest customer for the year, who represented 35.5% of total sales, accounted for approximately $11 million in incremental 2003 sales as compared to 2002. This customer has been expanding at an aggressive pace and continues to expand across the US. The Company's largest customer has differed in each

of the past three fiscal years and has typically represented between 20%-25% of sales. The Company's largest 4 customers in fiscal 2003 represented a total of 57.8% of sales versus 52.1% in 2002. Sales to high profile clients can vary dramatically from year to year given their capital expenditure programs and planned fixtures investment. While the Company hopes orders from these high profile customers will continue and the Company continues marketing efforts to gain other new large accounts, a significant reduction of the Company's business with any account representing in excess of 10% of the Company's business would have a material adverse effect on the Company unless such reduction of significant business was replaced by other significant business from other high profile customers.

RECENT UNITED STATES DEVELOPMENTS

- **February 2003 SEC Comments on Fortune 500 project**
  - Dec. 2001 announcement of review in 2002 of 10Ks of all Fortune 500
  - Comment letters sent to approx. 350
  - MD&A most common topic of comments
    - Greater <u>analysis</u> of financial condition and results of operations
      - ✓ Avoid boilerplate and superficial analysis, give true insights
    - More information about known trends, uncertainties and other factors

SEC MD&A Interpretive Release December 2003

- **Emphasizes that MD&A should not be merely a recitation of financial statements in narrative form or an otherwise uninformative series of technical responses to MD&A requirements, neither of which provides the <u>important management perspective called for by MD&A</u>.**
- **<u>Instead, the release encourages top-level management involvement in the drafting of MD&A</u>, and provides guidance regarding:**
  - the overall presentation and focus of MD&A (including through executive-level overviews, a focus on the most important information and a reduction of duplicative information);
  - emphasis on analysis of financial information;
  - known material trends and uncertainties;
  - key performance indicators, including non-financial indicators;
  - liquidity and capital resources; and
  - critical accounting estimates.

SEC Study of Off-Balance Sheet Reporting

- **Released June 15, 2005**
  - ❖ Required pursuant to Sec. 401(c) of S-ox
  - ❖ http://www.sec.gov/news/studies/soxoffbalancerpt.pdf
- **Focus on transparency of filings, particularly in light of SPE's and other Off-Balance Sheet Arrangements**
- **Key recommendations for transparency and application of existing accounting guidance to typical off-balance sheet arrangements such as:**
  - ❖ Investments in the equity of other entities
  - ❖ Transfers of financial assets with continuing involvement
  - ❖ Retirement Arrangements
  - ❖ Leases
  - ❖ Contingent Obligations and Guarantees
  - ❖ Derivatives
  - ❖ Other contractual Obligations

SPECIFIC ISSUES

COMPONENTS OF MD&A

- **General Requirement**
- **Segments**
  - ✓ Specific US guidance in Part III F. of Interpretive Release
  - ✓ OSC MD&A Guide indicates that there is still a role for discussion of overview
  - ✓ Form 51-102F1 Part 2 Item 1.2: "operating segments are reportable segments (CICA Handbook) *or other parts of your business if: (i) disproportionate effect on revenues, income or cash needs; or (ii) legal or other restrictions on flow of funds between business units;*
  - ✓ Good practice to also discuss known trends, demands, commitments, events or uncertainties within a part of the business that are reasonably likely to have an effect on the business as a whole
- **Results of Operations**
- **Financial Condition**
- **Liquidity and Capital Resources**

Disaggregation Required

- **OSC 1993 MD&A Guide**
- **OSC Staff Notice 51-715 (October 2004) para. 7:**
  - "Some issuers aggregate the cost of goods sold and major operating expenses and present this figure as a one line item on their income statement. Companies taking this approach generally provide no further analysis or discussion of the components of this item in their MD&A and focus the discussion on the aggregate number. While CICA 1520 lists the amount of cost of goods sold and other major operating expenses as desirable rather than prescribed disclosure, we believe that separate disclosure of these amounts is generally necessary to provide a fair presentation of an issuer's results of operations. Form F2 of National Instrument 44-101 *Short Form Prospectus Distributions* requires that an issuer "disclose any significant components of revenue or expense necessary to understand the results of operations." <u>We are of the view that regardless of the presentation of the expenses in the income statement, separate identification and discussion of cost of goods sold, gross margins and the material components of major operating expenses would generally be necessary to comply with the MD&A requirements".</u>
- **OSC Staff Notice 52-711 (March 2003) re income statement presentation of extraordinary items and discontinued operations**

Disaggregation Required

- **Amazon reports “fulfillment” and order processing costs in SG&A rather than as part of gross margin**
- **BMO combines HarrisDirect with its US private bank operations**
- **Aug. 2003 R.J. Reynolds faced an SEC probe for including costs of litigating product liability cases and other legal cases in SG&A**
- **AOL’s CDROM distributions?**
- **Salesforce.com’s Dec. 2003 IPO showed 65% of revenues spent on sales and marketing, 26% on general administration and 9% on R&D**
- **Trump Hotels 2002 SEC Enforcement action**
    - ❖ Undisclosed one-time gain included in revenues
    - ❖ Cited as first “pro forma” enforcement case but indicative of disaggregation requirement

Issues in Non-Financial Metrics

- **vs Non-GAAP Financial Measures – CSA Staff Notice 52-306 (revised Feb. 17, 2012)**
  - Income trust "distributable cash" guidance issued/coming from: (i) S&P; (ii) OSC; (iii) CICA; and (iv) CAIF
- **Non-Financial Metrics considered highly important by analysts and investors (CIRI/NIRI studies):**
  - Telco's and cable companies: # of subscribers
  - AMD/Intel and Lucent/Cisco/Nortel/Alcatel: market share in various categories
  - Apple sales of iPod units
  - Media: # of viewers/subscribers/circulation
    - *"Making marketing measure up"*, BusinessWeek Dec. 13, 2004
    - Hollinger Oct. 2004 reserve of $27 million set up for reimbursement to advertisers
    - SEC 2004 whole industry review re practices
  - Income Funds distributions: sustainability, return of capital portion, maintenance CapX, R&D, marketing, tax effectiveness, distribution history
  - Oil and gas reserve replacements (life and type: proven, probable), refinery throughput, utilization of refinery capacity (Shell scandal of 2004)
  - Peoplesoft CEO re Oracle's FUD campaign (fear, uncertainty and doubt)
  - Dexit: stores, customers, float, average spend
  - Airlines: revenue passenger miles, available seat miles, passenger load factor
  - Real Estate: occupancy rate, weighted average remaining lease term, lease expiry details/yr
  - Retail: same store sales, system sales (franchise), sales per square foot
  - <u>AOL and not every subscriber is a "true" subscriber</u>
  - <u>Google and share of online search</u>

Charter Communications – July 2004 SEC

- From the first through the fourth quarters of 2001, Charter inflated the number of customers who subscribed to its services in an attempt to meet analysts' expectations for subscriber growth and depict itself as a growing company. <u>To inflate its subscriber numbers, Charter employees stopped its usual practice of disconnecting the services of delinquent paying customers and customers who had requested the termination of their services.</u> As a result of this conduct, Charter artificially inflated its number of subscribers and subscriber growth that it reported to the Commission and to the public from the first through the fourth quarters of 2001 in its Forms 8-K, Forms 10-Q and Form 10-K.

Shell Settlement re Non-Financial Metrics

- **SEC Civil Action H-04-3359 settled 2008 for US$120 million payable to purchasers of securities April 1999 – March 17, 2004**
    - See www.shellsecsettlement.com
- **Consolidated civil class action in the US District Court of New Jersey (No. 04-374 (JAP)) settled for US$92 million**
    - See www.shellclassactionsettlement.com

Non-Financial Metrics – The Future

- **A significant focus of IASB Management Commentary project – discussed later on**
- **Great Resource:**

  ***Reporting Non-Financials**,* Kaevan Gazdar,
  John Wiley & Sons Ltd., England, 2007
  ISBN 978-0-470-01197-3   www.wiley.com

- **Another Great Resource:**

  Key Performance Indicators (KPI): Developing, Implementing, and Using Winning KPIs, David Parmenter, Wiley; 2 edition (Jan 19, 2010)
  ISBN: 978-0470545157

Trends Likely to Impact Capital Resources

- The most important factor in analyzing quality of earnings and risks to business model – empirical and real life studies
  - Wharton finance prof. Jeremy Siegel review of S&P 500 returns found that performance inverse to cap x requirements
  - Oil sands project costs skyrocketing
  - <u>Airbus A380 program breakeven point rising and production delays</u>
- Disclose industry trends and impact on cap x program
- Disclose cap x $ expected to be incurred even if not “committed” to address “trends” and “constraints”, whether regulatory, financial or otherwise
- Specify the timing of the commitments (incl. Guarantees and contracts) and the expected timing and quantity/quality of benefits
- SEC scrutinizes companies that show significant increases in cap x without having forewarned investors in the previous year’s MD&A
- Identify known sources of funding (banks lines, equity or debt offerings) and tie to disclosed cap x plan
- See: *“Corning’s LCD glass key to its future”*, Financial Post Nov. 3, 2005 p.FP15
  - Discussion of previous commitment to fibre-optic glass and planned conservative roll-out of capacity to produce LCD glass
- See: *“The Sears Catalogue of Problems”*, New York Times Nov. 6, 2005, p.BU1
  - Analytics applied to show poor Cap X reinvestment in stores compared to Wall-Mart and Target

Analysis of Risks

- **Note that risk disclosure is a line item in the AIF requirement (Form 51-102F2, Item 5.2), but <u>analysis is required in the MD&A</u>**
- **Address business risks being discussed in the press or analysts following the industry. High quality MD&A will even attempt to quantify the anticipated impact on financial condition and results of operations as well as management's assessments as to the permanence of the changes**
- **SEC scrutinizes companies that experience significant changes (particularly negative ones) in sales or income for reasons not identified in the prior year's MD&A**
- **For infrequently occurring events that are material, discuss and delineate plans to address the event and state the expected impact of the event in light of these plans**
- **<u>CICA has issued Guidance</u>**

Don’t Just Repeat Information Found in the Financial Statements

- **Excerpt from Rule 44-101 (similar to SEC Interp. Release):**
  - ✓ “Numerical data included in, or readily calculable from, the financial statements, need not be repeated in the analysis and comparison. For example, if it is clear from the comparative financial statements what the amount of increase or decrease in revenues or the respective percentage change would be from the prior year, it is not necessary to include this information in the discussion since it is readily calculable. Nonetheless, showing these increases and decreases immediately before the discussion is often useful to readers”.
- **Form 51-102F1 Part 1(d):**
  - ✓ “Explain the nature of and reasons for changes in your company’s performance. Do not simply disclose the amount of change in a financial statement item from period to period. Avoid the use of boilerplate language…”

Analysis Requires Drilling Down

- **Listen to your children: there are multiple levels of "Why"**
- **Most regulator comments will be along these lines:**
  - Explain the change in numbers (e.g.. sales increase due to volume, gross margin, change in mix, new store?)
  - Why did the cause of the change happen?
  - Will this cause repeat itself and to what extent?
  - What is management doing about it?
  - Explain burn rate and cap x spend rate and compare to budget. Go back and update the previous disclosure concerning budgets
- **See: *"Asking 'Why' Again and Again is Harder Than You Think, But it Works" Globe and Mail, May 5, 2008***

Acquisitions and Dispositions

- Serial acquirers often accused of attempting to avoid focus on core earnings growth and stability
  - (Atlas Cold Storage, Tyco, Ahold)
  - Celestica focus of 2002 articles re acquisition costs excluded from gross margin calculation
  - FASB proposal Fall 2003 to require breakdown of results between pre-existing and acquired businesses as part of merger accounting rule proposal
  - Practice adopted by GE, Moody's and Paychex
- Description of the business
  (capacity; employees; sales; locations)
- Purpose of the transaction
- Historical revenues and income and cap x
- Pro-forma financial statements reflecting the transaction
- Integration plans; spin-offs; tuck-unders
- Amortization; one-time write-offs (impairments)
- Financing and costs related thereto
- Changes to risks and uncertainties resulting (+ve/-ve)
- Timing of impact of financial effects

FORWARD-LOOKING INFORMATION

- **OSC MD&A Guide:**

  "A disclosure duty exists where a trend, commitment, event or uncertainty is both presently known to management and reasonably expected to have a material impact on the issuer's business, financial condition or results of operations"

- **Contrast "optional forward-looking information":**

  Anticipating a future trend or event or anticipating a less predictable impact of a known event, trend or uncertainty

- **Concerns about liability misplaced:**

  Not mandating a prediction or guarantee, merely identification of key factors for management decisions

Forward-Looking Info – CSA Staff Notice 51-330

- **Note changes to NI 51-102 effective January 2008 consolidate all rules regarding “financial outlook” and FOFI, including pursuant to offerings**
- Need a reasonable basis for FLI
- Must identify FLI as such, caution users of forward-looking information that actual results may vary from the forward-looking information, identify material risk factors that could cause actual results to differ materially from the forward-looking information; state the material factors or assumptions used to develop forward-looking information; and describe the reporting issuer's policy for updating forward-looking information
- FLI must be based on reasonable assumptions; be limited to a period for which the information in the FOFI or financial outlook can be reasonably estimated; and use the accounting policies the reporting issuer expects to use to prepare its historical financial statements for the period covered by the FOFI or the financial outlook
- Issuer must include disclosure that (a) states the date management approved the FOFI or financial outlook, if the document containing the FOFI or financial outlook is undated; and (b) explains the purpose of the FOFI or financial outlook and cautions readers that the information may not be appropriate for other purposes
- Requirements specified for (I) updating; (II) comparison to actual; and (III) withdrawal for material written FLI (through MD&A and/or press releases)

FORWARD-LOOKING INFO

- **SEC definition of "voluntary": Similar to OSC**
- **Safe Harbours**
  - ❖ Rule 175 of the 1933 Act and Rule 3b-6 of the 1934 Act
    - Criteria 1: FLI contained in an SEC filing
    - Criteria 2: Reasonable basis exists for the information
    - Criteria 3: Disclosure made in good faith
  - ❖ Private Securities Litigation Reform Act of 1995
    - Extends to written documents (even if not filed) and oral statements if accompanied by meaningful cautionary statements + made in good faith
    - July 2004 decision of U.S. Court of Appeals for 7th Circuit in *Asher v. Baxter International* could limit ability of defendants to invoke safe harbour at the motion to dismiss stage
      - While extensive cautionary language used that addressed unique aspects of Baxter's business, may need evidence that cautionary statements identified relevant risks
  - ❖ SEC Off-Balance Sheet Disclosure Rule (FR-67 Jan. 27, 2003) contains a safe harbour for forward-looking statements in the MD&A (except IPO)
  - ❖ New safe harbour for forward-looking stmts (OSA s. 138.4(9)) is similar to PSLRA, which is to apply to continuous disclosure and prospectuses
  - ❖ OSC Policy 51-604 *"Defence for Misrepresentations in FLI"*

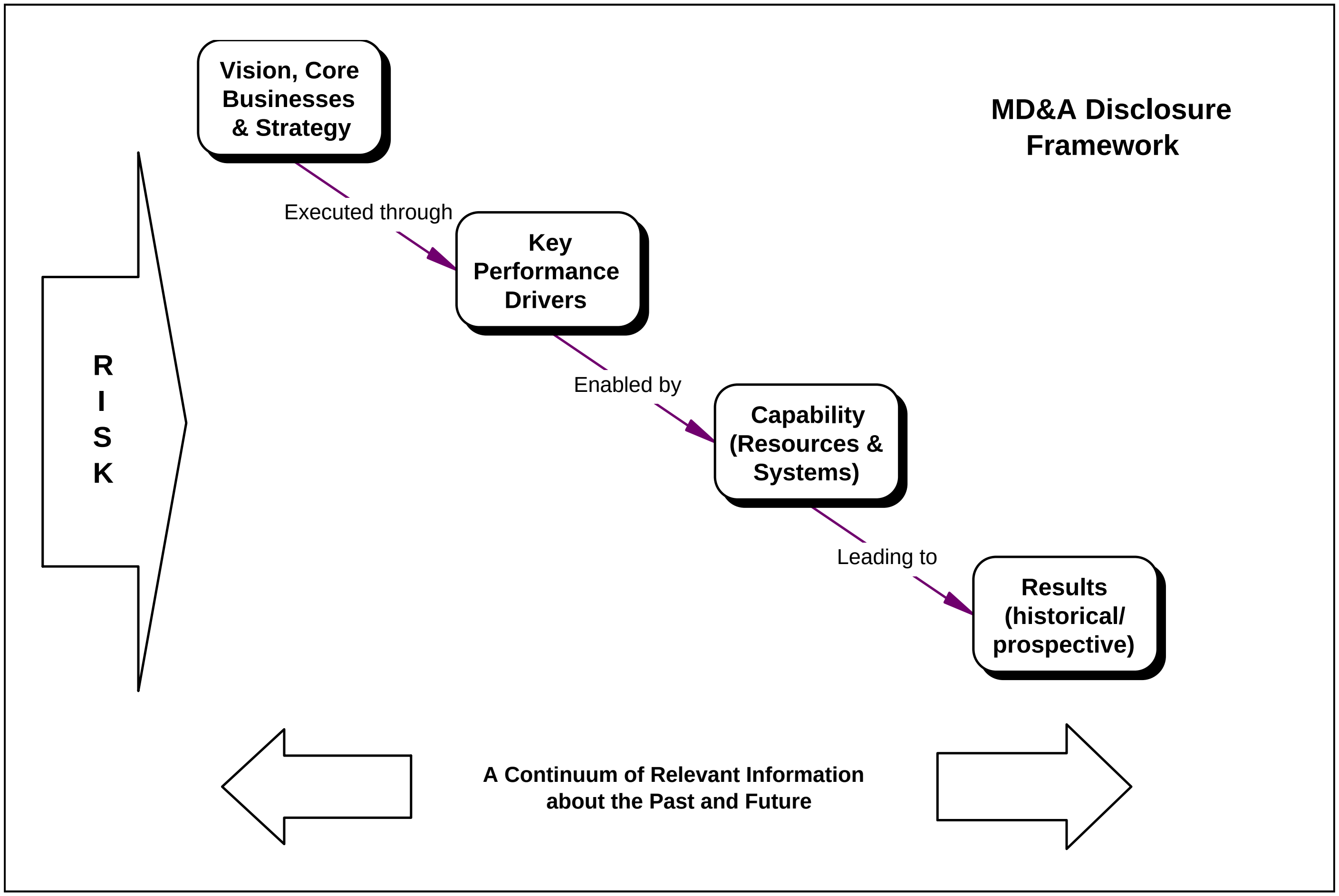
CSA Staff Notice 51-328 CD re 2008/2009 Economy

- **MD&A, including:**
    - ❖- general considerations
    - ❖- liquidity and capital resources
    - ❖- distributed cash
    - ❖- critical accounting estimates
    - ❖- forward-looking information
- **going concern**
- **impairment of goodwill, intangible assets and long-lived assets**
- **financial instruments**
- **capital disclosures**
- **defined benefit pension plans**
- **non-GAAP financial measures**
- **additional considerations for junior resource companies**

GUIDANCE FOR DIRECTORS

Brian Ludmer, Sept. 19, 2012

Proposed Framework for MD&A (CICA)



Guidebook Series Released Including Questions Directors Should Ask About MD&A

1. **Do the MD&A disclosures comply with regulatory requirements?**
2. **To what extent has CICA guidance been followed? Explain the differences**
3. **Has mgt. provided a representation re reliability of the underlying systems and processes on which the MD&A is based?**
4. **What has been mgt.'s approach to determining materiality in preparing the MD&A?**
5. **Any information omitted due to competitive concerns? Explain and justify.**

Questions for Directors to Ask About Risk (CICA)

1. How do we integrate risk management with the corporation's strategic direction and plan?
2. What are our principal business risks?
3. Are we taking the right amount of risk?
4. How effective is our process for identifying, assessing and managing business risks?
5. Do people have a common understanding of the term "risk"?
6. How do we ensure that risk management is an integral part of the planning and day-to-day operations of individual business units?

OFF-BALANCE SHEET DISCLOSURE

Brian Ludmer, Sept. 19, 2012

Off Balance Sheet Arrangements

- **Pre-Revised 51-102 (Canada)**
  - ❖ Disclosure required in discussion of financial instruments and liquidity and capital resources (which includes off-balance sheet arrangements expected to provide financial resources), but no specific guidance
- **Pre-S-OX (U.S.)**
  - ❖ Required disclosure of matters necessary to an understanding of a registrant's financial condition, changes in financial condition or results of operations
  - ❖ "any known material trends, favourable or unfavourable, in the registrant's capital resources, including any expected material changes in the mix and relative cost of capital resources, considering changes between debt and any off-balance sheet financing arrangements"
  - ❖ Issue highlighted in GAO March 1988 Briefing Report on Off-Balance-Sheet activities of commercial banks

51-102: Off Balance Sheet Disclosures

- ✓ Discuss any off balance sheet arrangements <u>that have, or are reasonably likely to have, a current or future effect on financial condition, results of operations, liquidity or capital resources</u> (separate section exempts non-material disclosures)
- ✓ Discuss their business purpose and activities, economic substance and risks
- ✓ Include in the discussion: description, effects of terminating, accounts receivable/payable and revenues/expenses resulting from the arrangement and know events, trends commitments and uncertainties
- ✓ Off balance sheet items are to be included in a table of contractual obligations, such as operating leases and unconditional purchase obligations
- ✓ Off balance sheet financing arrangements are to be included in a table of contractual capital commitments, such as guarantees and standby purchase obligations
- ✓ See From 51-102F1 Part 1(a), Part 1(b) (materiality), Part 2 Secs. 1.6 (liquidity), 1.7 (capital resources) and 1.8 (off balance sheet arrangements)

RECENT UNITED STATES INITIATIVES

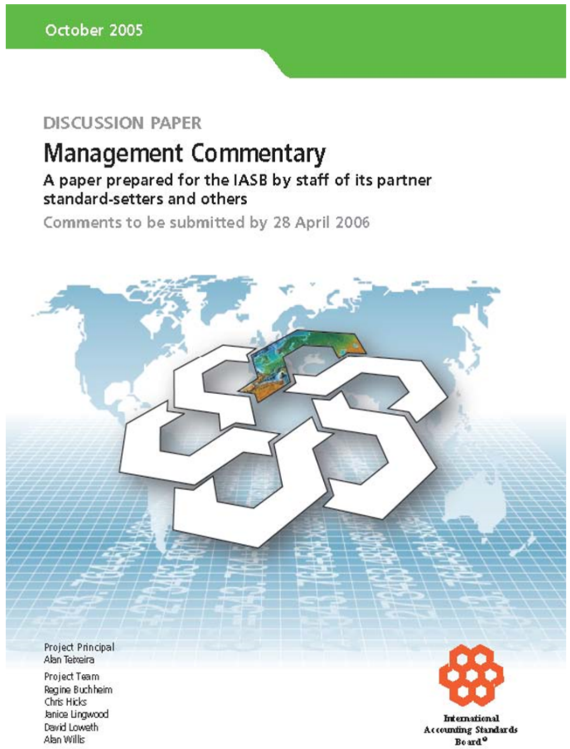
- **January 2003: SEC Adopts Final Rules for Disclosure of Off-Balance Sheet Arrangements and Aggregate Contractual Obligations**

Section 401(a) of the Act requires the SEC to issue rules providing that periodic reports “shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.”

Recent SEC Study on Off Balance Sheet Arrangements, Special Purpose Entities and Related issues

- **Released June 15, 2005 - Staff report mandated by SOX**
  - ❖ www.sec.gov/news/studies/soxoffbalancerpt.pdf
- **Points out challenges faced by issuers in communicating in a transparent manner information and <u>analysis</u> important to investment decisions**
- **Identifies several goals for issuers:**
  - ❖ Discourage transactions and transaction structures motivated primarily and largely by accounting considerations, rather than economics
  - ❖ Expand the use of objectives-oriented standards
  - ❖ Improve the consistency and relevance of disclosures
  - ❖ Focus financial reporting on communication with investors, rather than just compliance with rules
- **Recommends changes in accounting standards related to pensions and benefits, lease accounting, financial instruments, consolidation and presentation**

International Financial Reporting Standards and the MD&A



✓*Link off of CICA MD&A site or visit www.ifrs.org and search*

IASB Discussion Paper on Management Commentary – October 2005

✓Comment Period expired April 2006; Two Canadian project members

✓Reviewed existing IOSCO, Canadian, U.S., E.U., New Zeland, U.K., Australian and German approaches and requirements

✓Has adopted a CICA-like "framework" approach, supplemented by "illustrative examples" of best practices for certain items along the lines of the UK ASB RS-1 and PWC Trends publications

✓Proposes a MC Standard (with optional adoption in the short term due to issues in jurisdictions with no history of MC) as well as some ideas of what MC would look like in practice – refers to slow adoption of UK "guidance" to justify a standard

✓Contemplates future guidance re non-GAAP financial measures (such as ROC) and non-financial metrics, to ensure consistency and comparability

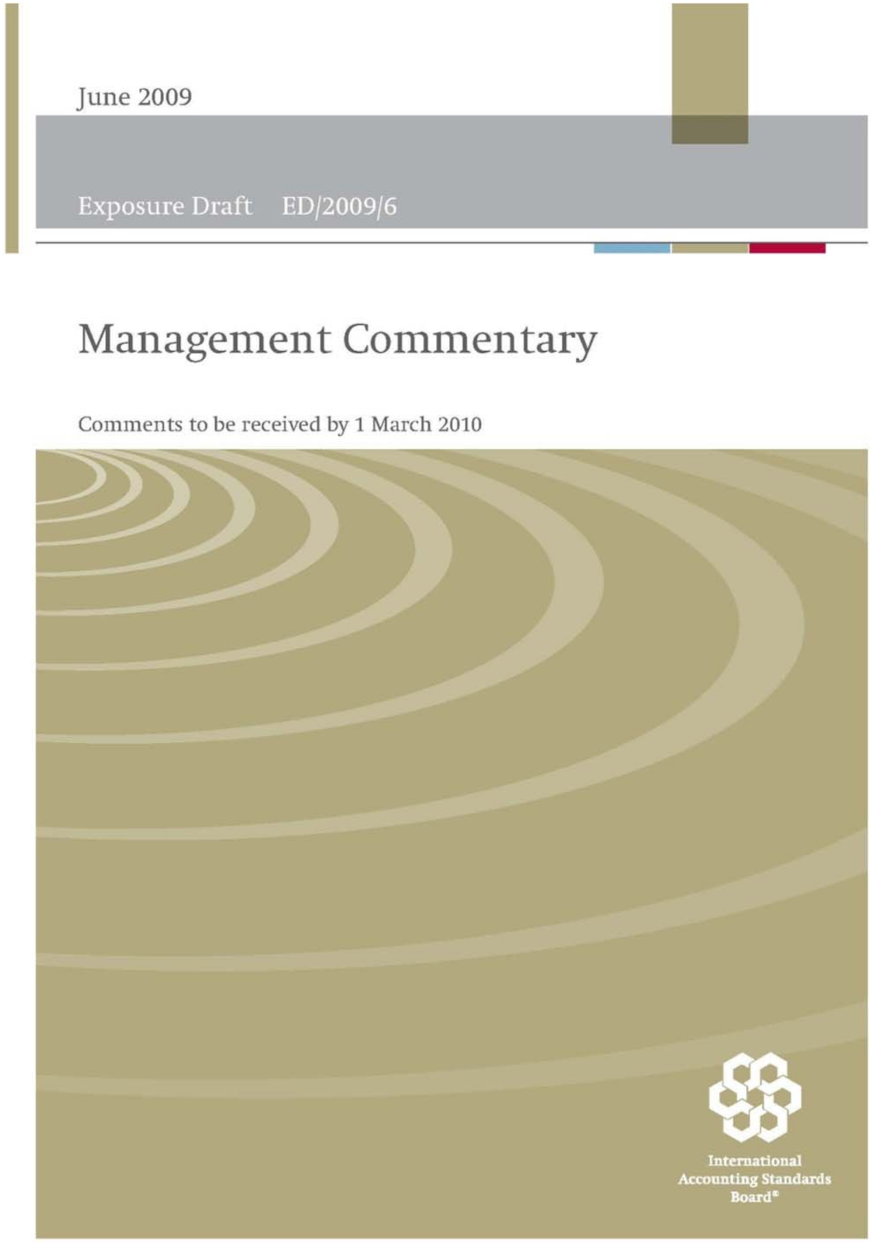
✓Discusses different models of assurance standards related to MD&A and FLI but does not recommend a model

IASB Management Commentary

- ***Management commentary is information that accompanies financial statements as part of an entity's financial reporting. It explains the main trends and factors underlying the development, performance and position of the entity's business during the period covered by the financial statements. It also explains the main trends and factors that are likely to affect the entity's future development, performance and position.***
- **We believe that the objective of MC has three elements: it is to provide information to help investors:**
  - to interpret and assess the related financial statements in the context of the environment in which the entity operates;
  - to assess what management views as the most important issues facing the entity and how it intends to manage those issues; and
  - to assess the strategies adopted by the entity and the likelihood that those strategies will be successful.
- ***Fulfilling this objective may mean that MC contains non-IFRS financial and non-financial measures, as well as narrative explanations.***

IASB Management Commentary

- **MC should:**
    - ❖ (a) supplement and complement financial statement information;
    - ❖ (b) provide an analysis of the entity through the eyes of
    - ❖ management; and
    - ❖ (c) have an orientation to the future.
- **MC should also possess the attributes that make the information useful to investors, which this DP refers to as qualitative characteristics; namely: <u>understandability, relevance, supportability, reliability, balance and comparability over time.</u>**



June 2009

Exposure Draft ED/2009/6

Management Commentary

Comments to be received by 1 March 2010

International Accounting Standards Board®

IASB Management Commentary Exposure Draft

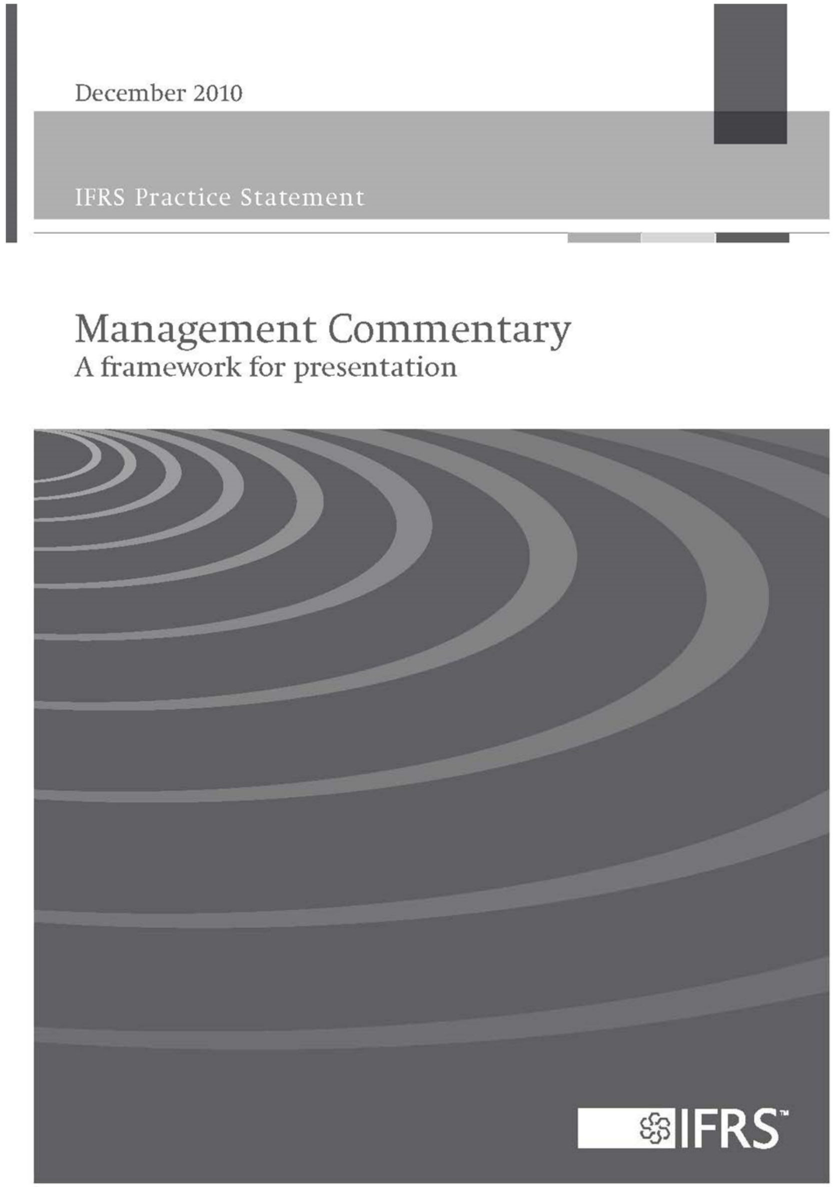
- **This exposure draft presents the IASB's proposals for a broad framework for the preparation and presentation of management commentary to accompany financial statements prepared in accordance with International Financial Reporting Standards (IFRSs). It is for the management of an entity to decide how best to apply this framework in the particular circumstances of its business.**
- **The proposals presented in this exposure draft will not result in an IFRS. <u>Accordingly, it would not be a requirement for an entity to comply with the framework for the preparation and presentation of management commentary as a condition for asserting compliance with IFRS</u>. It is a guidance document which could be adapted to the legal and economic circumstances of individual jurisdictions.**

IASB Management Commentary Exposure Draft

- **Note that IFRS is a more complete reporting model and includes matters such as market risk disclosure, critical accounting policies, litigation, loss development tables for insurance companies etc. which are not currently part of US financial statements and implications can include:**
  - ❖Loss of safe harbour protections
  - ❖Additional internal control burden
  - ❖Restatements
  - ❖Additional audit work

IASB Management Commentary Exposure Draft

- The Board does not intend to include application guidance or illustrative examples in the final management commentary guidance document. The Board is concerned that such detailed guidance could be interpreted as either a floor (minimum requirements for content) or a ceiling (the only disclosures for inclusion in management commentary). The Board believes that the development of application guidance or illustrative examples to help management apply the proposed framework for management commentary is best left to other organisations.


December 2010

IFRS Practice Statement

Management Commentary
A framework for presentation

IFRS

IFRS PRACTICE STATEMENT RELEASED DECEMBER 2010

- ***Management Commentary*** **is a broad, non-binding framework for the presentation of narrative reporting to accompany financial statements prepared in accordance with IFRSs.**
- **Management commentary fulfils an important role by providing users of financial statements with a historical and prospective commentary on the entity's financial position, financial performance and cash flows. It serves as a basis for understanding the management's objectives and strategies for achieving those objectives.**
- **The Practice Statement permits entities to adapt the information provided to particular circumstances of their business, including the legal and economic circumstances of individual jurisdictions, the most important resources, risks and relationships that can affect an entity's value, and how they are managed.**
- **The Practice Statement is not an IFRS. Consequently, an entity need not comply with the Practice Statement to comply with IFRSs.**

MD&A Disclosures Relating to IFRS Conversion

- **NI 51-102 amendments effective January 1, 2011**
- **Changing to IFRS may materially affect an issuer's reported financial position, results of operations and other business functions. *CSA Staff Notice 52-320 Disclosure of Expected Changes in Accounting Policies Relating to Changeover* to International Financial Reporting Standards. Incremental Approach prescribed**
- **May 2011 OSC Notice regarding initial deficiencies in IFRS Disclosure**

MD&A Disclosures Relating to IFRS Conversion

- **Fiscal 2009 - More detailed information about the expected effects of IFRS and a progress update on their conversion plan, along with describing the major identified differences between the issuer's current accounting policies and those the issuer requires or expects to apply when preparing its IFRS financial statements**
- **Fiscal 2010 - Significant details of conversion plan and information about key decisions on policy choices under IFRS 1 *First-time Adoption of International Financial Reporting Standards* (IFRS 1). Quantified information about the impact of IFRS accounting policy choices on financial statements information should be disclosed**

MD&A Disclosures Relating to IFRS Conversion

- OSC is completing a targeted review of the IFRS disclosures in issuers' fiscal 2008 and 2009 MD&As. Preliminary results indicate that many issuers are providing boilerplate IFRS transition disclosure, which makes it difficult to assess the status of an issuer's changeover plan and the possible impact the adoption of IFRS will have on the issuer's financial statements.
- OSC plans to issue a staff notice that will summarize the final results of its review and provide additional guidance for issuers in filing future MD&A

MD&A In The News

RECENT UNITED STATES INITIATIVES

- **Capital markets are now imposing a penalty on cost of capital where there is a perception of lack of transparency**
- **This has had an immediate effect:**
    - ❖ Tyco abandons acquisition strategy and plans a spin-off
    - ❖ General Electric volunteers more details on revenue and operating profits for individual businesses, including a number of units within GE Capital
    - ❖ IBM takes heat for including gains from sale of business in operating earnings and promises changes
    - ❖ Cendant now details off-balance-sheet entities
    - ❖ Marriott details write-offs of loan guarantees it gives to hotels using its brands and services
- **Other companies are facing specific demands for additional disclosures specific to their industry and business model**

Review of MD&A in the News (1)

- Third party Dependency
- Capital Expenditures and Capital Resources
- Competition
- Corporate Social Responsibility
- Credit Ratings and Credit Relationships
- External Environment
- Financing Issues
- Forward-Looking Information
- Hedging
- Innovation
- Litigation

Review of MD&A in the News (2)

- M&A
- Non-Financial metrics
- Non-GAAP Earnings Measures
- Off-Balance Sheet Disclosure
- Operations
- People
- Pricing Power
- Product Segmentation
- Quality of Earnings
- Regulatory Approvals
- Related Party Transactions

Review of MD&A in the News (3)

- R&D
- Revenue recognition
- Risk factors
- Segmentation
- Strategy
- Tax
- Time to Market
- Transparency

MD & A REGULATION IN CANADA AND THE U.S.

MD&A Best Practices and IFRS Convergence

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Presentation to
Infonex OSC-SEC 2012

Toronto, September 19, 2012