



SECURITIES BRIEF - FORWARD-LOOKING INFORMATION

HIGHLIGHTS

- ▶ Avoid the use of "boilerplate" disclosure;
- ▶ Identify the nature of any material forward-looking information as well as material factors and in the disclosure documents;
- ▶ Avoid statements pursuant to which a reporting issuer assumes no obligation to update its statements!

The Canadian Securities Administrators ("CSA") have recently reviewed the disclosure pertaining to forward-looking information contained in National Instrument 51-102 *Continuous Disclosure Obligations*.

The CSA issued recommendations to ensure that the forward-looking information within continuous disclosure documents complies with National Instrument 51-102. Below is an overview of the key elements to consider when preparing continuous disclosure documents such as press releases, management proxy circulars and MD&As.

First of all, the CSA underlines that the disclosure should be presented in a manner that allows an investor to be able to readily identify the material forward-looking information. Thus, it is no longer sufficient to identify the material forward-looking information solely through a cautionary paragraph at the beginning or the end of the disclosure document and which merely identifies the type of words that could potentially be found in a forward-looking statement.

For instance, the following cautionary paragraph, alone, is not sufficient:

"This document may contain forward-looking statements. Forward-looking statements are often, but not always, identified by words such as "believes", "may", "likely", "plans" or similar words."

If a reporting issuer wishes to insert such a cautionary paragraph at the beginning or the end of a disclosure document, it must identify the nature of the material forward-looking information appearing thereof. An appropriate use of a proper material forward-looking information's disclosure reads as follows:

"Forward-looking statements included or incorporated by reference in this document include statements with respect to expectations regarding the ability to raise capital and continually add to reserves through acquisition and development."

The reporting issuer may also gather or consolidate the material forward-looking information within a particular section or within a table (such section may be entitled "outlook"). The reporting issuer may also insert a disclosure identifying the material forward-looking information at the beginning of every relevant section.

Further, the reporting issuers have the obligation to disclose the material factors and assumptions used to develop material forward-looking information. It is also mandatory to disclose material risk factors that could cause actual results to differ materially from the forward-looking statement.

Again, the reporting issuer shall name and identify the material factors and assumptions as well as any material risk factors relevant to a material forward-looking information.

The reporting issuers must avoid the use of “boilerplate” disclosure with respect to the disclosure of material factors, assumptions or risk factors. Reporting issuers shall ensure that each disclosure is relevant to the forward-looking statement. The same prevails with respect to material factors, assumptions and risk factors incorporated by reference to another disclosure document as the reader should always be able to readily inform himself of the material risk factors, and material factors or assumptions, associated with the material forward-looking information.

The CSA encourage the reporting issuers to adopt a user-friendly presentation such as tables that clearly link specific material risk factors and material factors and assumptions to the particular forward-looking statement. For example:

The following table outlines forward-looking information included in this MD&A:

<i>Forward-looking Information</i>	<i>Key Assumptions</i>	<i>Most Relevant Risk Factors</i>

The reporting issuers shall not state that they assume no obligation to update forward-looking statements even where management beliefs, expectations or opinions should change. Such statement is inappropriate as a reporting issuer has the obligation to update the information when a material change occurs. Thus such statement must be avoided unless the reporting issuer indicates that it is subject to the provisions of the law.

The reporting issuers shall identify clearly the purpose for which any financial information is disclosed.

Finally, a disclosure regarding targets and goals by the reporting issuers may constitute a material forward-looking information. Therefore, the elements summarized in the foregoing apply to same.

Our team in securities law possess the keen expertise required to advise any reporting issuer with respect to continuous disclosure obligations and to ensure it fully complies with the regulation. Do not hesitate to contact members of our securities law team for further information with respect to the foregoing updates or any question pertaining to continuous disclosure obligations.

You will find the contact information of all the professionals of the securities law team of our firm on our web site at <http://lavery.ca/legal-services-expertise/securities-law/>.

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