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Alberta Securities Commission  
400  
300 Fifth Avenue S.W.  
Calgary, Alberta  
T2P 3C4

Attention: Mr. Stephen Murison

**Proposed Form 52-109F1-Certification of Annual Filings**

**“Fairness is an empty box.**

1. Item 3 of the above certification requires the writer to state that “ the annual financial statements...fairly present ...the financial condition, results of operations and cash flow...”

**No standard is provided as to what is meant by “fairly”.**

2. The standards committees of the Canadian Institute of Chartered Accountants struggled with this for many years, as did the American Institute of Certified Public Accountants. The conclusion was that a standard is essential. The standard used is “generally accepted accounting principles (GAAP)”. In most cases courts have accepted this.

3. Recent cases of misleading financials have not established that the underlying GAAP were deficient. Rather the application of GAAP was deficient. There is therefore no reason to depart from using GAAP as the standard and substituting “fairly” standing alone.

4. Anyone who believes GAAP, properly applied, do not result in financials that are not misleading, should be asked to provide an example. One of the CICA committees tried to do so and the only example they could think of was the fact that GAAP does not recognize current values but relies on historical costs. Subsequent efforts to adopt current value accounting were made but were unsuccessful; current value accounting was considered impractical.

5. There has been at least one case where the issuer believed GAAP did not result in financials that “presented fairly” and chose to not follow GAAP. The case involved future income taxes and the issuer did not book any on the basis that the present value of such taxes was immaterial given the issuer’s investment plans. The issuer was sanctioned and the taxes were recorded in accordance with GAAP.

6. Requiring issuers to state the financials “fairly present” without reference to the standard will, or should, result in many situations where the issuer questions whether GAAP do “fairly present”. The issuer will be left with the alternative of making a statement he/she does not believe or not providing the certification as required.

7. For all their faults, GAAP are the best solution intelligent, informed, independent, dedicated individuals have been able to devise. The care and due diligence applied in writing GAAP is perhaps without equal. Over time GAAP have served investors and others well. Leaving it up to a relatively few inexperienced regulators or courts to determine what’s “fair” is highly undesirable. The costs will far exceed the most optimistically anticipated benefits and the perceived cure will not occur.

8. Corporations and securities acts require financials to be provided. Those same acts require that the financials “present fairly in accordance with GAAP”. The proposed certification requirement tends to denigrate not only the CICA standards but the requirements of the acts as well.

9. “In those rare circumstances where following a Handbook Recommendation would result in misleading financial statements, generally accepted accounting principles encompass appropriate alternative principles. .... The identification of these circumstances is a matter of professional judgement. However, there is a strong presumption that adherence to Handbook Recommendations results in appropriate presentation and that a departure from such Recommendations represents a departure from generally accepted accounting principles.” (CICA Handbook 1000.61)

It should be noted that such circumstances have rarely, if ever, occurred in public reporting in Canada. They are easy to identify because a qualified audit report would be required and such qualified reports are extremely rare or non-existent.

If there are virtually no circumstances when following GAAP would result in misleading financial statements, surely the additional “fairly present” requirement not tied to GAAP is unnecessary.

If the counter argument is that both the issuer and the auditor missed such misrepresentation, there is virtually no evidence to support this.

10. There is another problem with the proposed wording of the certification. The reference is to financial “condition”, not “position”. GAAP-based financials do not pretend to present financial “condition”; they do present financial position. Even adding the “together with the other financial information included in the annual filings” does not result, in most cases, in someone being able to discern the financial “condition” of the issuer. To imply otherwise is misleading.

In order for the interim financials to even approach the goal of fairly presenting the financial condition and results, the information included in the annual filings must also be considered. The interims are not “stand-alone” documents. (It’s either a typo or demonstrates the author did not understand- that is, the reference to “financial conditions”.)

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**I do realize the Canadian material is virtually the same as the U.S. material. I would usually be inclined to support this “copy-cat” approach, particularly when the U.S. material had gone through the normal FASB or AICPA due diligence. However, this was not the case here and I would recommend that Canadian regulators not blindly copy the U.S. or rely on the public to provide the essential due diligence. I recommend that a Canadian task force be formed to critically review and revise the U.S. material. Such a task force should be made up of individuals with extensive, diverse, experience in public reporting, investing and standard setting. As it is, you will have issued a requirement that no one can reasonably be expected to follow in a consistent manner and you will be holding out a promise that you cannot keep from a compliance standpoint.**

**Finally, and assuming the above recommendations are not followed, please at least add something to the effect that:**

**“The appropriate application of generally accepted accounting principles will be presumed to result in financial position, results of operations and cash flows being fairly presented. However, this is a refutable presumption and issuers should make every reasonable effort to consider situations where the application of generally accepted accounting principles might not so result and, if so, to provide appropriate supplemental information.”**

**“ The appropriate application of the requirements for “Management Discussion and Analysis” and for prospectus and related disclosure as outlined in securities regulation, will be presumed to result in financial condition being fairly presented. However, this is also a refutable presumption and issuers should make every reasonable effort to consider situations where the application of such requirements might not so result and, if so, to provide appropriate supplemental information.”**

Please don't hesitate to call if you have any questions regarding the above.

Sincerely,

Henry R. Lawrie