

September 25, 2003

Ontario Securities Commission
Commission des valeurs mobilières du Québec
Alberta Securities Commission
The Manitoba Securities Commission
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Securities Commission of Newfoundland and Labrador
Nova Scotia Securities Commission
Saskatchewan Financial Services Commission
Office of the Attorney General, Prince Edward Island
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Department of Justice, Securities Administration Branch, New Brunswick

SENT TO:

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Dear Sirs/Mesdames:

Re: Notice of Proposed Multilateral Instrument 52-109

We are pleased to provide the following comments with respect to the Notice of Proposed Multilateral Instrument 52-109, Companion Policy 52-109CP, and Forms 52-109F1 and 52-109F2.

— **Transition Period**

When comparing the proposed instrument to the similar rules promulgated by the SEC, we note that the transition period differs in that paragraph 6, disclosure of significant changes, is to be included in all certifications filed after January 1, 2005, whether interim or annual. For consistency with the SEC, we request that inclusion of paragraph 6 be delayed until the certification following the first annual certification that includes paragraph 4's evaluation of the effectiveness of internal controls.

We agree with your observation that all reporting issuers should, and most typically already have, a reasonable process of internal and disclosure controls in place. However, an extension of the transition period to June 30, 2005 would permit a more manageable implementation.

■ **Interim Evaluation of Internal Controls and Disclosure Controls and Procedures**

We agree with the position that only the Annual Report should be required to state that the controls have been evaluated and disclose the effectiveness of the issuer's internal controls and disclosure controls, and procedures.

■ **Concept of Fair Presentation**

The proposed instrument requires certification that the issuer's financial statements "fairly present" the financial condition of the issuer for the relevant time period. This representation is not qualified by the phrase "in accordance with Canadian generally accepted accounting principles" to which Canadian auditors attest in their financial statement audit report.

One of the fundamental premises of audited financial statements is that they are prepared so as to present fairly the financial position and results of operations of the reporting entity against an identified standard, that being generally accepted accounting principles. The fundamental tenet of generally accepted accounting principles is the proper accounting and reporting of any matter which could affect the overall financial condition of a company. In our view, the concept of fair presentation under Canadian generally accepted accounting principles includes consideration of the appropriateness of the policy chosen, as well as the application.

The introduction in the proposed instrument of a certification of "fair presentation" without a clear standard against which to make this statement, we believe, leaves this certification open to uncertain interpretation.

A certification of fair presentation against a known standard, i.e. generally accepted accounting principles, can be made independently and is consistent with the responsibilities of management for the selection and implementation of the appropriate accounting policies. We are concerned

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as to what this statement "fair presentation" will mean and we are troubled by the range of possible interpretations by the users of this report.

We would encourage you to change the requirement to being "presented fairly in accordance with Canadian generally accepted accounting principles".

Internal Controls and Disclosure Controls, and Procedures

The proposed instrument does not contain an express definition of internal controls. We understand the reason you consider a formal definition unnecessary is that the certificates, in effect, define the outcome that internal controls are designed to achieve.

Irrespective of this view, it is our recommendation that the reference to a recognized internal control framework model, such as that developed by The Committee of Sponsoring Organizations (COSO) of the Treadway Commission, would be helpful to ensure that a consistent standard is applied in the certification and would clearly provide guidance to all entities reporting.

We very much appreciate your careful consideration of the foregoing comments and look forward to your response thereto.

Yours very truly,

EMPIRE COMPANY LIMITED

Paul V. Beesley
Senior Vice President
Chief Financial Officer and Secretary