



ASSOCIATION FOR  
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31 October 2003

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario M5H 3S8  
Canada

Denise Brosseau, Secretary  
Commission des valeurs mobilières du Québec  
Tour de la Bourse  
C.O. 246, 22e étage  
Montreal, Québec H4Z 1G3  
Canada

**Re: Multilateral Instrument 52-109—Certification of Disclosure in Companies' Annual and Interim Filings**

Dear Mr. Stevenson and Ms. Brosseau:

The Canadian Advocacy Committee (CAC) of the Association for Investment Management and Research® (AIMR®)<sup>1</sup> is pleased to respond to the request for comments on the Canadian Securities Administrators' (CSA) Multilateral Instrument 52-109, *Certification of Disclosure in Companies' Annual and Interim Filings* (Proposal). The CAC represents members of AIMR and its eleven Member Societies and Chapters across Canada. The CAC membership includes portfolio managers and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada.

**Summary Position**

As discussed below, we encourage the CSA, as it formulates the final rule, to:

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<sup>1</sup> With headquarters in Charlottesville, VA and regional offices in Hong Kong and London, the Association for Investment Management and Research® is a non-profit professional association of more than 65,500 financial analysts, portfolio managers, and other investment professionals in 116 countries of which 50,607 are holders of the Chartered Financial Analyst® (CFA®) designation. AIMR's membership also includes 127 Member Societies and Chapters in 46 countries.

(1) Consider the implementation of a continuous disclosure system, whereby certification would be required for only one document which would contain or provide hyperlinks to all relevant information, such as the AIF, financial statements, and management's discussion and analysis; and

(2) Provide definitions for "internal controls" and disclosure controls and procedures" for purposes of this rule.

We also support the creation of definitions for "internal controls" and "disclosure controls and procedures" so that those providing certifications will have reasonable expectations of what is required.

We commend the CSA's efforts, through this Proposal, to send a message to investors and corporations alike that executive officers retain ultimate responsibility for the financial information that is disseminated to the public. We believe that corporate management should not only assume reasonable responsibility for certifying information and taking steps to ensure that appropriate internal systems are in place, but also must take a lead in setting the tone for an ethically responsible corporate culture. Only when investors are confident that the information contained in financial reports is complete and reliable will confidence in the financial markets be fully restored.

The CAC consistently supports efforts in the industry that increase accountability by market participants, and that ultimately help shore up the confidence of investors. Thus, we support the proposed requirements that chief executive officers and chief financial officers personally certify that their issuers' annual and interim filings do not contain any misrepresentations, and that the information contained within them fairly represents the issuers' financial condition. In addition, we agree with the requirement that senior officers should also certify that they have designed and implemented internal and disclosure controls, and that they have evaluated the effectiveness of those controls. If companies already have effective controls in place to prepare financial statements that comply with regulations and meet the needs of investors, then the implementation of this provision should require little or no additional cost.

We offer comments on specific provisions of the Proposal below.

## **Discussion**

### ***Scope of Proposal***

*(a) Auditor attestation.* As drafted, the Proposal would not require auditors to attest to, or report on corporate management's assessment of the company's internal controls. Instead, the Proposal notes that the CSA is studying this provision, as required under Sections 404(a) and (b) of the Sarbanes-Oxley Act. We recommend that the CSA consider including this requirement in the final rule.

In conducting an audit, the auditors must evaluate a company's internal controls to assess the degree to which those controls can be relied upon. This evaluation also reveals areas in which additional testing may be needed, in order to determine if items have been accounted and reported for properly. Thus, to a certain extent, auditors already assess the company's internal controls in order to complete their audit. We believe that requiring this assessment in the final rule not only is consistent with current practice, but also is appropriate in that the annual audit and the assessment of internal controls should be an integrated process, not separate engagements.

*(b) Applicability to smaller issuers.* The Proposal does not make a distinction between smaller and larger issuers in terms of the required representations. We believe that this is the appropriate approach. While certain requirements may impose a disproportionate burden on smaller issuers, we do not believe that requiring representations 4 through 6 fall in this category. Regardless of size, we believe that *all* companies should provide representations, indicating that effective internal controls for financial reporting have been established and maintained, while including proper oversight of those controls. Also, the representations should note that adequate disclosure has been provided regarding any changes in the effectiveness of the internal controls, including any actions taken to correct significant deficiencies and materials weaknesses in the issuer's internal controls.

### ***Form of Policies and Procedures***

We appreciate that the Proposal does not prescribe specific policies and procedures that an issuer must adopt, but instead defers to the company to fashion the appropriate combination, in light of its business type, size and complexity. We agree that these determinations should be left to the discretion of the company's management and board of directors, rather than mandating a "one size fits all" approach.

### ***Form of Reporting***

We believe that there is significant value in providing investors with a mechanism by which they can locate important information in a central location. Under the Proposal, certifications would be required of "annual filings", which have been defined to include an issuer's annual information form, annual financial statements, and annual MD&A. These have been most recently filed under provincial and territorial securities legislation, including the documents and information that are incorporated by reference in the annual information form.

As we have stated previously,<sup>2</sup> we support the use of a financial reporting system that requires continuously updated information. Today's technology allows issuers to update documents as material information becomes known and to incorporate and link information from previously-filed documents, without substantial added cost. This approach allows investors to view in one

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<sup>2</sup> See the CAC letter issued to the CSA dated 19 September 2002 regarding Proposed National Instrument 51-102 Continuous Disclosure Obligations, which is available on AIMR's Web site at [http://www.aimr.org/advocacy/02commltr/02nat\\_instrument.html](http://www.aimr.org/advocacy/02commltr/02nat_instrument.html).

place current and material information. We believe that this method of reporting enables investors to make well-informed and appropriate investment decisions on a timely basis.

Moreover, comparable information for the same time period, and calculated in a similar manner, is extremely useful when evaluating companies' financial condition. Instead of requiring certifications for the various filings that are defined as "annual filings," we therefore advocate the use of a single document that contains current information and links (e.g., electronic hyperlinks) to these documents, as a progressive step towards realizing a continuous disclosure system for Canada's capital markets. Moreover, companies should make information readily and widely available to investors through their Web sites as well as provide it in a timely manner to all potential and current investors, upon their request.

### ***Interim Evaluation of Controls and Procedures***

Unlike the rules adopted in the United States implementing the Sarbanes-Oxley Act, this Proposal would not require corporate officers to certify in their interim reports that they have evaluated and disclosed their conclusions about the effectiveness of the internal controls and disclosure controls and procedures. We agree that to adequately maintain the required controls, corporate management will need to conduct some form of on-going evaluation, and believe that this continuous monitoring will serve to put management on notice of shortcomings that need addressing. Such continuous evaluation would help identify problems early in the process, rather than having them revealed as surprises during the annual audit and preparation of the annual filings.

### ***Definition of Internal Controls and Disclosure Controls and Procedures***

We believe that while companies may intend to fully comply with the spirit and intent of this Proposal, without a definition for the terms "internal controls" and "disclosure controls and procedures" they may lack the understanding needed to apply the standards consistently. We therefore urge the CSA to formulate a definition for these terms, that at a minimum, provides a list of expectations/guidelines for designing and assessing adequate controls and procedures. The Proposal requires that with respect to both the annual and interim filings, officers must certify that based on their knowledge:

- The filings do not contain any untrue statement of a material fact or fail to state a material fact resulting in a misleading statement; and
- The financial statements, together with other financial information in the filing fairly present in all material respects the issuer's financial condition, results of operations, and cash flows.

With respect to only their annual filings, corporate officers are responsible not only for certifying as to their knowledge regarding the financial statements, but also that they have designed disclosure controls and procedures and internal controls for the issuer.

In order to make these certifications, officers must be able to rely on the internal controls and procedures employed by the company that produce the required information.

The second part of the certification process requires corporate officers to assume responsibility for establishing and maintaining internal controls and disclosure controls and procedures and attesting to the fact that they:

- Have designed them in a way that provides reasonable assurances that material information relating to the issuer is known to them and disclosed under applicable securities legislation;
- Have designed them in a way that provides reasonable assurances that the issuer's statements are fairly presented in accordance with generally accepted accounting principles;
- Evaluated the effectiveness of the issuer's disclosure controls and procedures and internal controls for the relevant period; and
- Disclosed their conclusions about the effectiveness of the disclosure controls and procedures and internal controls, based on their evaluations.

In addition to certifications relating to the design and evaluation of these internal controls, the certifications that corporate management is required to provide with respect to the integrity of the issuer's financial statements rely on the establishment of adequate internal controls. Although the establishment and evaluation of disclosure controls and procedures and internal controls is central to the certifications required under this Proposal, nowhere are these terms expressly defined. Instead, the Proposal requires representations that define the *outcomes* of what the internal controls, and disclosure controls and procedures are designed to achieve.

We appreciate the flexibility afforded management to decide how best to achieve the outcomes intended by both types of certifications. As noted above, however, we believe that an understanding of the types of internal and disclosure controls that would be expected will provide benchmarks against which those who are seeking to comply can measure their performance. We also believe that definitions will result in more consistent application of these requirements and will help engender fuller, more transparent disclosure.

For example, guidance on internal controls provided by the Institute of Chartered Accountants in England and Wales provides a useful starting point. This guidance notes that a company's internal control system should:

- Be embedded within its operations and not be treated as a separate exercise;
- Be able to respond to changing risks within and outside the company; and
- Enable each company to apply it in an appropriate manner related to its key risks.

In its report, "Internal Control-Integrated Framework", The Committee of Sponsoring Organizations of the Treadway Commission defines internal control as:

A process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- Effectiveness and efficiency of operations;
- Reliability of financial reporting; and
- Compliance with applicable laws and regulations.

These overlapping categories are intended to address different needs, while allowing internal management to maintain a "directed focus to meet the separate needs." Thus, the internal control process is further defined as consisting of five interrelated components:

- Control Environment--which sets the tone of an organization, and is the foundation for all other components of internal control;
- Risk Assessment--which is the identification and analysis of relevant risks to achievement of the objectives, forming a basis for determining how the risks should be managed;
- Control Activities—which are the policies and procedures for ensuring that management directives are achieved, and include approvals, authorizations, verifications, reconciliations, reviews of operating performance, security of assets and segregations of duties;
- Information and Communication—which requires pertinent information to be identified, captured and communicated in a form and timeframe that enables people to carry out their responsibilities; and
- Monitoring—which is a process that assesses the quality of the system's performance over time?

We urge a similar approach to defining internal controls and procedures for purposes of this rule. Such an approach will still maintain a company's flexibility to tailor its controls and procedures in accordance with its size, its nature of business, and complexity of operations, while allowing for consistent expectations and similar application among market participants.

## **Conclusion**

We agree with the proposed measures that seek to reinforce corporate management's duty to ensure the integrity of information that is disseminated to investors through the financial reports. We thus support the CSA's Proposal to require that CEOs and CFOs provide certain certifications in their annual and interim filings. We believe that these requirements are not only

in the best interests of investors, but will also serve to remind corporate management of their responsibilities as they set the ethical tone for companies.

We appreciate the opportunity to comment on the Canadian Securities Administrators Notice of Proposed Multilateral Instrument 52-109, *Certification of Disclosure in Companies' Annual and Interim Filings*. If we can provide additional information, please do not hesitate to contact David Yu at 416.597.5416, [davidyu.cfa@sympatico.ca](mailto:davidyu.cfa@sympatico.ca), or Linda Rittenhouse at 1.434.951.5333, [linda.rittenhouse@aimr.org](mailto:linda.rittenhouse@aimr.org).

Sincerely,

*/s/ David L. Yu*

*/s/ Linda L. Rittenhouse*

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