

Christopher Loucks email of December 13, 2004

Dear Mr. Stevenson, Mdme Beaudoin and Participating CSA members,

With respect to the recently proposed amendments to Multilateral Instrument 52-109 and Companion Policy 52-109CP I have the following comments.

First, let me state that I am working with a company on a project designed to assist them with implementation of 52-109. I am also working with a smaller US registrant on a similar engagement for Sarbanes Oxley compliance. My comments could be interpreted as having some bias, but at the same time I also have some direct knowledge of the field.

The stated purpose of the Certification process is to improve the quality and reliability of financial and other continuous disclosure reporting by issuers. This in turn is meant to maintain and enhance investor confidence. I submit that it is also a measure to keep Canadian regulations on par with US regulations and to keep those capital markets open to Canadian issuers.

The crisis which precipitated the perceived decline in investor confidence happened several years ago now. It remains to be seen whether investor confidence will be enhanced by the measures taken by security regulators in both the United States and Canada, because the measures are not yet in place. Even at the current implementation dates the measurement of investor confidence will not be able to be taken until early 2006. This is due to the already rolled-back implementation dates for Sarbanes-Oxley compliance and the current effective dates for full 52-109 compliance.

I submit that any further delay in Canadian regulatory change is a failure. We have already allowed ourselves extra time, and followed rather than lead the process. Recently Governor Dodge of the Bank of Canada has stated that Canadian securities markets need to improve their efficiency. He also indicated that we are moving in the right direction, but have not yet achieved strong enough enforcement of regulations. He clearly indicates that Canadians have a greater hurdle to overcome than we care to admit if we are to maintain or enhance our access to foreign capital investment. His comments refer to a broad range of confidence inspiring and efficiency boosting activities that are beyond the 52-109 initiative. But his point is clear - we already fall behind our competition in terms of external investor confidence.

He also said, "But while Canada has been studying and analyzing, the rest of the world has been acting. It's time for us to act, too." He made several valid points about the relative size and complexity of Canadian issuers. He implies that we could have different rules that recognize the

realities of our registrants and allow us to focus on improved reporting. He implies, and I concur, that we are instead trying to offer a mimicry of the the US system.

I shouldn't have to repeat the list of Canadian reporting failures that have also contributed to the lack of confidence that we all know is present. I don't see how further delays are helpful or even neccessary.

The best explanation that I have heard for why the current proposal is being put forward is that since the US regulators saw fit to delay full implementation of SOX, Canadian regulators should allow a similar delay. But is this really what we want to say to the investment world about existing Canadian internal control standards? Do we really need to imitate the US example. Is it relevant to Canadian issuers?

Can we not take a look at what is happening and see if we can alter that instead?

Are Canadian companies really so far behind US companies in our internal controls systems that we need to keep following the US timetable? Can we not achieve the timetable that we originally accepted - and if not - why? What are the surveys or other data that are supporting the delay?

The SOX projects in the US are huge, and many are behind schedule, but is this relevant to the majority of Canadian issuers? The majority of Canadian issuers are smaller than even mid-market cap companies in the US.

In my opinion we are in danger of losing sight of the goal -the desired improvement in Canadian financial reporting. That objective is becoming secondary to the desire of some Canadian companies to mimic the project management process of documenting systems and testing controls as per the US SOX compliance industry. That process has become a huge, and probably unsustainable, industry in the US. Most thoughtful commentators, like Dodge, have recognized this. But so far we have not adopted anything in Canada that would prevent or mitigate this process from becoming the norm in Canada. In fact by extending deadlines I see that we are really encouraging this "follow the leader" attitude, at a huge cost to Canadian industry and investor confidence.

How many reporting companies are stating that they cannot comply because they do not have the internal resources to accomplish what is being asked of them? How many are stating that they need to source qualified staff but that they cannot do so in a timely manner? But do they need to do the projects that they anticipate, or is it too much?

Are we challenging these company's control project plans to determine if this level of work is actually required and if so, why? If their existing controls are really not documented, or else unable to be evaluated to an acceptable level now - what are securities regulators doing about this now? Are we going to continue to accept registrant's published financial statements knowing that they cannot state their controls are adequate, more than 4 years after Sarbanes-Oxley was enacted? And I might add, long, long after the Dey Report, CoCo, etc.

These initiatives should not be a surprise to Canadian CEO's and CFO's, but unbelievably I am still finding companies that have not even started on their compliance projects. A delay just plays into the hands of the procrastinators. It also penalizes the companies that have started already and will be able to report within the original deadlines.

How many are just delaying in the hope that this will eventually go away? Who are we rewarding with this delay?

Why is the Canadian initiative being delayed, when it was already implemented after SOX, and already had due dates that were later than those imposed by SOX?

On a second point, if we grant the supposition that a delay is justified, why are we extending this so far into the future? The delay is much longer than I can understand. Why so much extra time? Why not just a year?

On a third point, why are we delaying the "representation that the certifying officers are responsible for establishing and maintaining control over financial reporting"? This particular representation has always been slightly ridiculous in my opinion. It is self-evident, or it should be. Why can't it be said now? The CEO and CFO are indeed responsible. Why not have them state it?

Point four. I believe it is required for participants to know whether auditor attestation of internal controls over financial reporting is required for Canadian issuers. We should have known this long before now. Certainly we need to know before we decide whether a delay is justified. In Staff Bulletin CSA 52-308, issued in October, we were advised that no conclusion has yet been drawn on this issue. We were also informed that the earliest implementation of auditor attestation would be for year-ends ending after June 30, 2006. I do not see the point of creating a delay in the process prior to knowing whether this additional requirement will even be imposed.

In my experience all parties are working under the reasonable assumption that auditor attestation will be required for almost all registrants. I believe that auditor attestation is required to enhance confidence in both reporting issuers and in the audit profession.

If the audit profession states that it cannot provide attestation services within the current deadline, due to resource constraints, then I still do not feel that a delay in full internal control certification by CEO's/CFO's is justified. This should still be able to be done for fiscal years starting after January 2005. However a concurrent start for the attestation process would likely be unmanageable, particularly if we don't know about it now. Auditor attestation does not have to begin at the same time as full certification from CEO/CFO. That would be a pity but I could understand this, even if investors at large won't.

By the way, I regard it as a complete abdication of responsibility on the part of the CSA that we still do not have an answer regarding auditor attestation in Canada. Not even for the largest companies.

As a last point, if we allow an extension of time, I believe we should have something like the following added to the certificates issued in the meantime. " despite the fact that we are presenting financial statements to the shareholders, the certifying officer is not in a position to offer the full certification as anticipated within the original timeframe and intent of 52-109 and has taken advantage of the delayed implementation timetable being offered by security regulators. We will eventually do something if and when forced to".

If there is another large reporting or fraud failure within the next year or so, what do you intend to tell the investors? How about, "Well, we couldn't be expected to do better than the Americans"... could we?

With respect,

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