CANADIAN WESTERN BANK

June 29, 2005

Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

John Stevenson, Secretary
Ontario Securities Commission
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Dear Sirs:

RE: Proposed Multilateral Instrument 52-111 (MI 52-111) and Multilateral Instrument 52-109 (MI 52-109)

Let me begin by stating my belief and Canadian Western Bank's belief in the importance of 1) transparent financial reporting, 2) strong internal controls, 3) the role of the external auditors, and 4) a responsive and respected regulatory environment. However, I have serious doubts, that the outcomes realized in the United States as a result of implementing the SOX 404 environment (which MI 52-111 mirrors) provide any material benefit to the stakeholders of public companies, beyond what has been and will be achieved with the certifications required by SOX 303 (which MI 52-109 mirrors). The requirement for an annual assessment and certification by management of the effectiveness of key internal controls to be relied on to produce financial reporting has got the attention of the C-suite, the directors and the auditors. To add auditor attestation to support management's assessment is overkill and implies something significantly beyond what is already required to render an opinion as to whether the financial statements present fairly in all material respects the financial performance and condition of a company for the given time period. But, in the main, shouldn't the correct objective still be fairly presented financial statements?

I was dismayed when Proposed MI 52-111 was published as a clone of SOX 404 given the obvious implementation issues in the United States and how well disseminated these issues have been. While the benefit of improved internal controls is always highlighted as a positive, I am not convinced the costs associated with auditor attestation have been worth the improvements. For example, SEC Chairman Donaldson's closing comments from the roundtable held in April 2005 were " *on the plus side many companies have experienced benefits and improvements to their internal controls as a result of implementing these requirements. The internal controls* *requirements have also led to an improved focus on internal controls by all stakeholders involved."* Frankly, I'd be flabbergasted if these changes did not occur – they are natural, but very expensive, outcomes of such an intense and detailed process. However, I do not find these statements a ringing endorsement for auditor attestation. In addition, I am not at all convinced that a SOX 404 environment will stop corporate malfeasance. Realistically, the biggest deterrent is, and always will be, enforcement. In other words, if the leaders of an organization want to manipulate financial reporting they will do so as long as they perceive the wealth to be gained as significantly more than the cost of being caught.

Another real risk emerging in this era of increasingly prescriptive regulation occurs when companies, auditors and regulators become too focused on meeting regulations and miss the big picture. I have similar concerns when looking at the environment that has developed with the introduction of complex accounting principles. The costs of being too inward looking or too risk adverse are hard to estimate in advance. However, I am not the first or last person to say that an excessive focus on rules and controls will actually lead to an atmosphere that constrains an organization's ability to grow and to develop business strategies, potentially resulting in errors and flawed business judgements.

Lastly, one of the clearly documented results of implementing the SOX 404 environment in the United States is the communications chill that has developed between the companies and their auditors. This is very unhealthy for organizations and their audit committees and fostering this type of environment should be avoided!

The ultimate goal of regulation should be to provide a strong and robust regulatory environment where financial statements and other public disclosure can be relied upon while still providing an economic environment that encourages businesses to grow and invest.

The above being said, I am pleased to have the opportunity to provide the following recommendations respecting MI 52-109 and Proposed MI 52-111 for your consideration.

Recommendations:

1) **Maintain the requirements for CEO/CFO certifications as detailed in MI 52-109.** Most companies will be compelled to establish a suitable internal control framework such as COSO in order for the CEO and CFO to meet the requirements of the full annual certification. Hence, the requirements as outlined in Part 2 of Proposed MI 52-111 up to and including 2.3 will be a natural outcome.

2) **Add to MI 52-109 the requirement for companies to report to both the audit committee and the external auditors any material weaknesses in internal control over financial reporting** identified through management's evaluation process.

3) **If the requirement for auditor attestation is not eliminated, it should be suspended** until the United States SEC's Statement and PCAOB's Guidance regarding Section 404 released on May 16, 2005 has been fully digested by SEC registrants and audit firms. This will probably take another full reporting cycle i.e. at least 12 months.

4) **If auditor attestation is not eliminated then companies should have 24 months from the release of the final instrument to comply. In addition, the attestation should be limited to entity level controls only**. Clearly, one of the major downfalls identified in the SOX 404 roundtable was the auditors use of one-size fits all checklists and frameworks, a very low threshold for materiality and little appreciation of risk areas or factors. I believe this reflects three major issues – the level of detail of internal controls that was required to be documented by the companies, the speed of which the attestations needed to be completed and, the fear of the auditors in this PCAOB/post-Enron era as to what evidence is required to support an attestation if it was ever examined. We should ensure there is enough time for implementation so this is not repeated in Canada.

5) **Complying with a requirement that includes auditor attestation of the SOX 404 type should be phased in by size of company but the proposed starting threshold of $500 million in market cap is far too low**. Small cap in Canada is considered at least $1 billion in equity. It is well documented by all participants in the U.S. that smaller public companies have suffered the greatest relative implementation cost and, in the U.S., the cutoff for large companies is those companies with revenue of greater than $5 billion! Scarcity of resources and a lack of guidance respecting internal control frameworks for smaller companies is already a clearly identified challenge. Giving companies ample time to comply will help ensure that excessive costs, which include the intangible costs stemming from inadequate training of external audit personnel and inadequate planning by companies, are avoided. In addition, the COSO body is working on finalizing guidance for the implementation of internal control frameworks in smaller companies, which is expected to be very helpful.

6) **Further consideration should be given to how typical but significant business events are to be handled.** I was pleased to see considerations listed under 2.6 and 2.7 of the MI 52-111 Companion Policy however there needs to be further thought put into exceptions. For example, I cringe when I see recommendations from major accounting firms such as "don't plan a systems conversion in the last 6 months of a year". Does this make sound business sense? This is just one very good reason why weaknesses identified should only be reported internally to the audit committee and the external auditors. They are in the best position to assess, together with management, whether the identified weaknesses have a material impact on the ability of the auditors to render a clean audit opinion respecting the financial statements. Regulation should not dictate business strategies!

I thank you again for this opportunity and am very hopeful that the comments from all the participants are carefully considered so that Canada achieves the right balance between regulation and a healthy capital market environment.

Yours truly,

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Executive Vice President and
Chief Financial Officer,
Canadian Western Bank