June 11, 2007

Canadian Oil Sands

VIA COURIER AND E-MAIL

To: British Columbia Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
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 Nunavut

c/o Ontario Securities Commission

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

Attention: John Stevenson, Secretary

autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3

Attention: Anne-Marie Beaudoin, Directrice du secrétariat

Alberta Securities Commission
Alberta Stock Exchange Tower
4th Floor, 300 – 5th Ave S.W.
Calgary, Alberta T2P 3C4

Attention: Kari Horn, General Counsel

Alberta Securities Commission
Alberta Stock Exchange Tower
4th Floor, 300 – 5th Ave S.W.
Calgary, Alberta T2P 3C4

Attention: Fred Snell, Chief Accountant

Dear Sir/Madam:

Re: Comments on Proposed Repeal and Replacement of Multilateral Instrument and Companion Policy 52-109: Certification of Disclosure in Issuers' Annual and Interim Filings (the "Certification Rules")

With respect to the above noted Certification Rules, Canadian Oil Sands Limited (the "Corporation") and Canadian Oil Sands Trust (the "Trust") (collectively, "Canadian Oil Sands"),

Canadian Oil Sands Limited 2500 First Canadian Centre, 350 - 7th Avenue S.W., Calgary, Alberta, T2P 3N9, Canada, Tel:(403) 218-6200 Fax:(403) 218-6201 www.cos-trust.com

would like to submit the following comments for your consideration. Both the Corporation, which manages the Trust, and the Trust itself are reporting issuers under the applicable securities legislation in Canada. The Trust has a market capitalization as at June 8, 2007 of approximately $14.6 billion but Canadian Oil Sands has a staff of only 21 individuals.

We strongly support the CSA's direction to implement a principle based rather than a rule based approach to disclosure controls and internal control over financial reporting and the certification of such controls as we believe that it is a more effective and meaningful approach. We also support allowing individual issuers to determine if they wish to employ external audit firms to assist in the certification process and the attestation of these controls rather than requiring auditor attestation, which can be a very time consuming and costly exercise. However, we have some concerns with regard to the detailed disclosure that the proposed Certification Rules require and the extent of the commentary on the control and certification process outlined in the Companion Policy.

We have responded to your specific comment requests as outlined in the CSA Notice and Request for Comments below. We have used the same numbering system as contained in the Notice for ease of reference.

5. Summary of Changes in the Proposed Instrument and Proposed Forms

Question 1

We believe that the definition of "reportable deficiency" and the proposed related disclosure needs amendment to clearly set out that a reportable deficiency only relates to a deficiency that is material. Under the Proposed National Instrument 52-109, a "reportable deficiency" means "a deficiency, or combination of deficiencies, in the design or operation of one or more controls that would cause a reasonable person to doubt *that the design or operation of internal control over financial reporting provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP*". It is unclear from this language as to what extent the "reliability" is being tested. The Companion Policy also does not clarify that there must be a level of doubt resulting in the reasonable investor being concerned with the financial statements providing a level of reliability that would impact their investment decision. In most of the securities legislation, the test as to what needs to be disclosed or not is based on *materiality* as such currently exists in the definitions of *material change* and *material fact*. We believe that the Certification Rules need to be revised to ensure that a minor issue as to the reliability of *any* part of the financial statements does not constitute a "reportable deficiency" but rather that only those items which go to the integrity of the financial statements in a material way are reported. We believe that the current language is too ambiguous and could lead to interpretations that are too broad in scope such that a host of minor deficiencies are being disclosed with the result that investors will not understand the true impact of a deficiency. Further, Form 52-109F1, paragraph 5(a)(i) and paragraph 7 both refer to "material" or "materially" as measures against which the certifying officer must consider when assessing the ICFR and disclosure. In particular, paragraph 7 requires the issuer to disclose changes that have or may materially affect its ICFR. We feel that these references in the certificate can be confusing when compared to "reportable deficiency" as required for paragraph 5.2 of the form. To avoid this issue and to prevent confusion amongst not only investors but also the "experts" who deal with the Certification Rules (e.g. the accounting firms and financial consultants) as well as management and the board, we would suggest changing the terminology from "reportable deficiency" to the terms relating to "material weakness" and "significant deficiency".

The US issuers and hence the current case law and precedents with respect to control processes use the terms "material weakness" and "significant deficiency". For those Canadian issuers that have already completed their design and analysis under the current rules, these terms have been used and controls have been developed based on management and the external auditor's and consultants' understanding of what those terms mean in the context of the particular issuer's business and the industry in which that issuer operates. To introduce yet another term which has no context we believe adds confusion as to what the distinction between the three terms means. It may also lead to additional costs and time for management and the external advisors/consultants to reassess if there needs to be any changes to the current design and testing process over and above the usual re-evaluation that normally occurs as transactions and changes in the business develop. For example, many of the current frameworks that you quoted as well as various accounting standards (see AS No. 2 and No. 5) use the terms "material weakness" and "significant deficiency" but have no reference to a "reportable deficiency". We believe that it would be more efficient and practical to continue with the terminology and reporting structure relating to "material weakness" and "significant deficiency", especially as we believe that several issuers may use these terms in their control framework and documentation already.

Additionally while the discussion in the Companion Policy as to various factors and examples are helpful, the language used in the Policy is too prescriptive in that a number of the sections refer to steps that issuers "should" take. Please refer to our comments under Question 6 below in this regard.

Question 2

We believe that the ICFR design accommodation should be available to all issuers, not just venture issuers. While the costs involved may make it unfeasible for the smaller capitalized companies to meet the requirements imposed by the Certification Rules without such exemption, it may also not be cost effective for certain businesses to comply even if they are not venture issuers. If each issuer was allowed the ICFR design accommodation exemption but had to clearly state that the issuer had elected to use the exemption and to explain why the issuer so chose to use this exemption, then the market could assess the risk/benefit of an issuer using this ICFR design accommodation.

Question 3

We also support the proposal to provide a scope limitation in the design of DC&P and ICFR for an issuer's interest in proportionately consolidated investments and/or variable interest entities. This allows the issuer to determine whether they can meet the requirements for full compliance regarding certification of entities that they do not control or to exclude such entities but clearly identify to the investor the fact that the entity is being excluded and why. However, further clarification is needed as to the treatment of wholly or partially owned subsidiaries and joint venture interests. For example, if a subsidiary has separately concluded and provided officers' certificates as to the internal control over financial reporting and disclosure controls, such certification should be sufficient for the parent issuer to rely upon without the need to further investigate directly as to the design and nature of the controls. This is equally true for a joint venture interests where there are officer certifications provided by the equivalent certifying officers (CEO and CFO level) of the operator and an independent auditor attestation with regard to such controls. For example, the owners of the Syncrude Joint Venture, one of which is Canadian Oil Sands, required the operator of the joint venture to design and implement controls and the operator to sign and provide to the owners a certificate of its senior officers as to the accuracy of the material information provided. In addition to the operator providing certifications as to the design and operation of the internal control over financial reporting and disclosure

controls, there was an independent auditor attestation provided. In our view, it was appropriate and reasonable that the certifying officers of Canadian Oil Sands relied on such process and documentation without having to themselves conduct an internal audit and testing of the controls at the joint venture. It would be helpful if the CSA could provide commentary on requirements under such situations to avoid a "doubling up" on the design and testing obligation for the parent certifying officers.

Question 4

We do not believe that it is practical that an issuer's certifying officers can include a material business acquisition within the design of DC&P or ICFR even in a limited form within 90 days of the acquisition. Given the nature and complexity of many businesses, we believe that a more appropriate time period is at least 180 days and perhaps even 365 days. There are various matters that can only be tested on an annual basis and therefore a 90 day period would often fail to present circumstances in which these annual testings could even be conducted. This longer time frame would allow a more practical and useful assessment and discussion as to the appropriate internal controls for the new entity. Canadian Oil Sands believes that it is more relevant that an issuer concentrate on the integration of the acquired business into the issuer's systems rather than spending critical time at the outset of an acquisition to understand and detail the acquired business' controls. To impose such a short timeline as a 90 day period erodes what should be the focus of management at the time, namely to have the business that was acquired being run effectively and integrated into the issuer's business processes.

Question 5

Again, we do not believe that the 90 day time period is sufficient to allow certification after becoming a reporting issuer or following completion of a reverse takeover for the reasons stated above under the response to Question 4.

6. Summary of Additional Guidance Included in the Proposed Policy

Question 6

Canadian Oil Sands believes that the discussion of the various factors and consideration is useful but only if the language is changed to be more informative and less prescriptive. The current approach uses terms such as "should" and lends a "rule based" approach to the Certification Rules which is not helpful. The Companion Policy, which requires all CSA members' agreement for amendment, has terminology that would suggest failure to follow such rules is not in accordance with the regulators' views as to what processes should be implemented. This could result in issuers implementing certain approaches even though their business does not support or require the particular steps on the fear that failure to follow these steps may impose additional liability on the issuer and its certifying officers. Rather the test should be one where management decides what is appropriate in the circumstances given the size and nature of the business and the number of employees that can undertake these compliance steps. Under a principle based approach, the decision should lie with the board of directors and management as to what processes are implemented and followed. If the language was changed to be more permissive (less use of the term "should") and perhaps put into more of a guidance framework, this would clarify that the items suggested are just that: suggestions, not rules.

For example, in Subsection 6.6 (2) of the Companion Policy, the words "certifying officers *should* consider the following elements. . . ." is too prescriptive and potentially will cause certifying officers to feel that they must consider and document such items in their disclosure

process to avoid potential liability when in fact the circumstances and fact situation for that particular issuer only warrant a consideration of a few of those items listed under that provision. Similar *should* language appears throughout the Companion Policy: see further examples of this in Subsections 6.6 (3), 6.7, and 6.8. In particular, in Subsection 6.9 (3) there is recognition of the certifying officers needing to assess their situation but immediately following the statement reads "Certifying officers ***should consider*** the following items when determining . . .". In our opinion, this second sentence completely removes the ability of the certifying officers to choose what factors and considerations are relevant for their business in designing and assessing the control process. Section 1.1 of the Companion Policy states that the purpose of such Policy is to assist in how the regulators will interpret certain requirements. This statement in the context of all the "should" language implies that even if the business circumstances do not warrant a particular process, the regulators will want to see certain steps and documentation; a position directly counter to a principle based approach and which does not allow a practical analysis of the nature of the business and the relevant risks to financial reporting and disclosure accuracy. We believe that the context of the Companion Policy should be to provide some general examples and guidelines, some of which may be relevant but none of which should be required. By changing the terminology from "should" to "may wish to" in several cases as well as reinforcing in the language throughout the Policy that the commentary is a range of examples, only some of which may be relevant to a particular issuer, could alleviate this concern.

Each business and organization should individually assess and apply those steps and rules and create the documentation that management and the board of such entity believes is necessary in the context of such business. As evidenced by the responses in the US, there has been a huge amount of effort resulting in arguably unproductive documentation on process testing that does not improve the overall running and control of the business. The perception by many is that the rule based US approach created massive amounts of documentation and testing of irrelevant matters just so that there was a "paper trail" protection should any investigation or potential area of liability arise. Instead, the focus of the legislation should be that an issuer and its management carefully consider and review the financial information and processes that lead to the reporting and disclosure of matters that impact the financial results with a view to providing proper disclosure and reporting of financial results. Rules or legislation that prescribe "checklists" focus more on the process than the importance of management asking what steps are followed in reporting material financial information, what processes or transactions have the potential to cause errors or misrepresentations in the results and what steps have been implemented or should be implemented to the extent reasonably possible, to prevent such errors. As an example, the "should" consider language under Subsection 6.6 (3) of the Companion Policy reads like a requirement to have "training manuals" and "flow of information" charts, something that is not practical or arguably at all effective for entities which have a small staff. Each issuer and its certifying officers, board of directors and management should look at what items are appropriate for them. In an organization with a small workforce, creating flow charts and manuals does not make economic sense and does not address the real issue of controls. Again, we believe that the Policy should provide examples only, without using prescriptive language such as "should". Canadian Oil Sands believes that the better approach is to qualify the suggestions "as potential considerations, some of which may be relevant to certain issuers depending on the size and nature of their business". Part of this concept is already in the Policy, such as in Section 6.7 where the terminology is "might choose" rather than "should choose", but the predominant use of "should" and the detailed level of advice appears to erode the general principle that was set out in the initial statements of the Policy.

Question 7

We would appreciate further clarification with regard to the extent that certifying officers can rely upon sub-certifications and independent auditor attestations for internal subsidiaries and joint ventures.

In addition to the foregoing responses to the CSA's specific request for comments, we would make the following comments on particular provisions of the draft Certification Rules:

1. Time period for implementation of the Certification Rules

   We believe that it would be more appropriate to implement the new Certification Rules for years ended after June 30, 2009 rather than June 30, 2008, assuming that the final rules will likely not be available until early 2008 such that if changes are necessary to existing certification processes then such changes can be implemented at the start of the fiscal year to which the new rules apply.

2. Certificates and the required disclosure in the applicable management's discussion and analysis ("MD&A")

   We believe that the level of disclosure that the Certification Rules requires regarding the scope and description of the control framework as well as the description regarding a reportable deficiency and the remediation work being undertaken is too lengthy and does not provide any meaningful information to investors. Lengthy descriptions about the type of controls that an issuer uses is something that Canadian Oil Sands believes does not enhance the reliability of the financial information nor does it provide investors with any real insight into the process. A more workable approach is to require a general description. Such description could highlight the areas considered and nature of the testing in a manner that investors will read. If descriptions are too long and detailed, investors often indicate that they will not read it, therefore defeating the purpose of having any description. The key to useful disclosure is not the process but rather the conclusion and the focus on the public disclosure should be on that conclusion.

3. Design of DC&P and ICFR

   We strongly support the CSA's approach outlined in Sections 6.3 and 6.4 of the Companion Policy in that the terms "reasonable", "reasonably" and "reasonableness" are recognized as not being prescriptive. The CSA's specific reference to each certifying officer and the issuer using their judgement, acting reasonably, to give consideration to various factors particular to the issuer, including the size, nature of the business and complexity of operations is excellent and allows issuers to effectively and efficiently focus on the control aspects of their particular business and circumstances. However, we do not support the requirement to disclose the framework chosen or to describe the process undertaken. Rather, the disclosure should be on the results of any internal control review process.

4. Subsection 6.7 (c) of the Policy should avoid specific guidelines that read like rules and instead provide qualitative considerations, such as a discussion of matters among senior officers to ensure that there is a disclosure of any item which is material or which would impact the financial reporting. Similarly, it would be useful to clarify that Subsection 6.7 (d) is meant to refer to designing and implementing a general "whistleblower" policy rather than a detailed step by step policy on how to report any disclosure issue.

5. Section 6.8 of the Policy is too prescriptive (again the use of "should" needs to be changed) and there also needs to be a level of materiality introduced into the Policy. For example, the reference to procedures implies a level of granularity that is too cumbersome and costly. This comment also applies to Subsections 6.9 (3), (4) and (6) of the Policy. The general focus of management and the audit committee should be on the overall nature of accounting policies and a discussion of material items that are a "grey" area as to which accounting policy to apply in a particular type of circumstance. Management should focus on the significant transactions or risks rather than spending hours debating internally or with external auditors the "list" of assertions that apply.

6. In relation to Subsection 6.10 (b), please clarify what is meant by the board being "actively engaged in shaping and monitoring" the issuer's control environment. We believe that management needs to discuss the general approach and framework undertaken with the board and to discuss items that were raised as potential significant deficiencies or material weaknesses but that the board's role is not to design or test the controls. Rather the board is to provide oversight of the process which ensures that the right tone at the top is applied in the recording of transactions and reporting of material information in the disclosure documents and financial statements. Again references to the role of the board and board members in Subsections 6.10 (c) and (d) need to reflect an oversight role rather than the active design and testing role that board members have. Board members have a duty to perform due diligence in their review of management's design and testing of the controls but members should not usurp the role of the certifying officers in the day to day designing or testing of these controls.

7. In Section 6.15 and throughout a large portion of the Policy, there appears to be an emphasis on "documentation" rather than focusing on what the entire control process is about: accurate and timely disclosure of information. We believe that there needs to be a more practical and effective approach in which the CSA emphasizes the importance of "thinking" about the risks and inherent areas for error rather than spending the time using a set checklist set out in the Companion Policy and on just documenting steps. In that regard, we would suggest that the CSA remove a number of the provisions in the Policy which deal with the type of documentation that certifying officers "should consider" and instead repeat the intent and purpose of the certification process, namely to have controls around accurate and timely reporting. Subsection 6.15 (4) and Section 7.6, which refers to documenting "daily interactions" with the control systems, are examples of provisions which we believe should be deleted.

8. We believe that there is a typo in the third sentence in Section 7.2 of the Policy in that the word "not" should be removed so that it reads "If the certifying officers choose to use a top-down". Otherwise, the current wording implies that not employing a top down approach gives more flexibility; a premise which we don't believe is what was intended.

9. Section 7.4 of the Policy needs to recognize that the ability to segregate these duties will be a function of the size of the employee base and therefore there are limitations on an issuer's ability to have such segregation in circumstances where there is a smaller workforce. Additionally, in a number of the sections of the Policy the terms "the certifying officers should or shall" should be qualified or cross referenced to Section 3.3 of the Policy which allows some level of delegation on certain design and testing aspects for the certifying officers.

10. Section 7.5 should be amended to delete the reference to "ensure" and "actively involved" as such relates to the certifying officers setting the procedures that an independent auditor or consultant uses. If the certifying officers effectively direct specific actions to be undertaken by an external audit firm, then one questions whether there is any third party objectivity that investors would expect from such an independent auditor. Rather, the certifying officers should be responsible for engaging the independent party but you would not expect that they would question the qualification of the individuals employed by an external audit firm who appeared to have the general expertise and who represented that they had such expertise.

11. In relation to Subsection 8.3 (d) please clarify what is meant by "regulated industry". In today's world, every business is regulated. Did you mean an industry that is required to provide financial data to a governmental body such as a member of the banking industry?

12. Section 9.1 should be amended to contain language similar to Section 9.2 in that there should be reporting and discussion with the board but not detailed analysis and discussion of each "basis upon which the certifying officers concluded that any particular deficiency or combination of deficiencies did or did not constitute a reportable deficiency".

In closing, Canadian Oil Sands applauds and supports the CSA's principle based approach to disclosure controls and internal control over financial reporting and the certification of such controls. The CSA's decision to not require auditor attestation allows Canadian issuers with limited resources to determine what is necessary and most appropriate for the particular issuer and its investors in the context of the Canadian market and hopefully will avoid many of the issues that have occurred in the US based SOX certification process. Central to having a framework that addresses the uniqueness of the Canadian capital markets and the range of complexity and size of Canadian issuers is an approach that focuses on the principle of internal control over financial reporting and disclosure controls being a top down approach which allows reasonable assurances that the financial information is accurate and not misleading. This approach must also allow management and the board of directors of a particular Canadian issuer to consider a number of items or processes, including possible ones outlined in the Companion Policy, but ultimately empowers management and the board of directors, in each issuer's case, to consider its own circumstances and resources when determining what should or should not be reviewed and the procedures used for such review.

Canadian Oil Sands also supports the general concept of the regulators trying to provide some guidance to issuers as to what matters should be considered. However, we believe that the determination of what is or is not considered or implemented and what is or is not documented in terms of DC&P and ICFR must rest with those that know the business and the issuer the best, namely the board of directors and management of the particular issuer. Additionally, disclosure regarding the process by which the certifying officers have reached their conclusions regarding certification needs to be clear and concise such that investors understand at a high level (or in a summarized form) the process involved and what the conclusions are. A readable description on the conclusions is more useful and is more likely to be read by the investor. Long narratives as to the process undertaken will, in our opinion, not improve an investor's understanding of the internal controls but rather would confuse them. The cost both in external

fees for consultants and printing as well as management time to provide readable disclosure must also be considered. Finally, the National Instrument and Companion Policy should be clear in stating that the Certification Rules and the internal control process and certifications are not guarantees to investors that there will be no errors or deficiencies. The intent is to provide "reasonable but not absolute" assurances with regard to errors occurring in the disclosure.

We would be pleased to answer any questions, or to provide further clarification on any of these matters should you so require. You can contact the undersigned at (403) 218-6240 or our Chief Financial Officer, Ryan Kubik, at (403) 218-6202.

CANADIAN OIL SANDS LIMITED,
on its own behalf and as manager of
CANADIAN OIL SANDS TRUST

Per: 
Trudy M. Curran
General Counsel and Corporate Secretary

Cc: Marcel R. Coutu, President and Chief Executive Officer
Ryan M. Kubik, Chief Financial Officer
Allen R. Hagerman, Executive Vice President
C. E. (Chuck) Shultz, Chairman of the Board
Wesley R. Twiss, Chairman of the Audit Committee