

# ENERFLEX

June 25, 2007

British Columbia Securities Commission  
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  
Legal Registries Division, Department of Justice, Government of Nunavut

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**RE: COMMENT LETTER ON PROPOSED REPEAL AND REPLACEMENT OF  
MULTILATERAL INSTRUMENT 52-109, FORMS 52-109F1, 52-109FT1, 52-109F2 AND 52-  
109FT2 ("Proposed Instrument") AND COMPANION POLICY 52-109CP "CERTIFICATION  
OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS" ("Proposed Policy")**

Attached please find Enerflex Systems Income Fund's response to the Proposed Instrument and Proposed Policy. We put our key comments forward for consideration by the Canadian Securities Administrators (CSA) before the Proposed Instrument and Proposed Policy is finalized and implemented.

Enerflex Systems Income Fund is a multi-national firm involved in the oil and gas services and equipment sector. We are listed on the TSX under the symbol EFX.UN and our current market capitalization is approaching \$500 million.

We have been extensively involved in the implementation of MI-52-109 since 2004 and we have followed the guidance and other developments in both Canada and the US with Sarbanes-Oxley while developing our compliance program. Our comments herein are reflective of the experience we have had during this time.

We are providing responses below to the specific requests for comments as outlined in Chapter 6 - Request for Comments issued March 31, 2007.

**Question 1. Do you agree with the definition of 'reportable deficiency' and the proposed related disclosures?**

The definition and discussion of reportable deficiency in the companion policy does not appear to be consistent with a risk based top down approach. The focus of the document is on defining a reportable deficiency as ... "a deficiency in the design or operation of one or more controls". This is indicative of a very process or transaction centric focus on internal control weaknesses.

In applying a top down risk based approach to control we would expect to see guidance that places greater emphasis on the ability to evaluate the entity level, fraud risk and other aspects of the "system" of internal control rather than to focus on specific individual controls. The failure of a control which is designed to operate in a suite of controls does not mean that the risk of significant error in the financial statements has been improperly mitigated.

It might be more beneficial if issuers were provided with more prescriptive guidance on how to evaluate weakness based on materiality, risk and complexity of the overall risk objectives being addressed by their system of control than to focus on whether one or a number of independent controls were not designed or operating properly.

We would also take issue with section **8.3-Strong indicators of a reportable deficiency**, specifically:

- (a) (iii) ineffective oversight of the issuer's external financial reporting and ICFR by the company's audit committee
- (b) re-filing of an issuer's annual or interim filings because of a material misstatement in its filings and;
- (c) identification by the issuer's external auditor of a material misstatement

**The Audit Committee**

Although we heartily agree that an effective audit committee of the board is a very important aspect of the overall control environment of our business, it seems inappropriate to suggest that management could evaluate the effectiveness of the audit committee, as we are not in a position to control their actions. This is an impractical concept. There does not appear to be a single reported instance of audit committee ineffectiveness in any of the SOX filings and this in spite of the re-statements that have been steadily increasing. We do not think that an evaluation by management of audit committee effectiveness is a relevant or predictive indicator of the effectiveness of the internal controls.

**Re-filing of statements**

It may be very misleading to the investor community to expect that the system of ICFR in a company will have a meaningful impact on the likelihood of a restatement of the financial statements. Evidence since the advent of the SOX legislation in the US would suggest that this is not the case. Apparently, in 2006, 1 in 10 issuers had a restatement after management and the external auditors had independently certified that their ICFR was effective.

ICFR can at best only reduce the risk of material misstatement it cannot eliminate it. Furthermore there are many reasons why a company might find it necessary to do a restatement, in spite of the best due diligence in seeking advice from experts, managing new accounting pronouncements and increasing complexity of accounting treatments. These reasons would have nothing to do with control weaknesses or fraudulent practices and it is



therefore onerous to suggest otherwise by assuming that all misstatement should start out as likely 'reportable deficiencies'. An assessment of the situation needs to be made by management, its external auditors and the audit committee of the board before concluding that there was a control weakness or deficiency.

#### **External Auditors**

External auditors are involved in the audit well in advance of final statements and performance of all ICFR and DC&P controls at the period end. It is entirely possible that they might encounter an error during the course of their work and this too needs to be evaluated based on the facts.

#### **Question 4. Do you agree that our proposal to allow certifying officers to limit the scope of their design of DC&P or ICFR within 90 days of the acquisition of a business is practical and appropriate?**

We are strongly opposed to the notion that a period of 90 days is adequate to comply with the requirements to design ICFR within 90 days of the acquisition.

We have completed the evaluation and design of ICFR for several international business units and we have completed two international in-scope acquisitions during this time and it is on this basis that we make our comments.

In both instances we completed the acquisition of privately held companies that had little or no need for or awareness of the emerging North American legislation on disclosure, control and corporate governance generally. We have had to contend with a number of internal control and business integration issues, International differences in accounting methods and standards and all with the challenge of language and cultural barriers between head office personnel and the business being acquired.

The cultural integration, education of staff and the geographical hurdles add complexity and time delay to the accomplishment of ICFR and DC&P efforts in the first days of an acquisition. Additionally it may result in Canadian businesses being unfairly disadvantaged during business acquisitions when considering compliance timelines compared with US based corporations.

We would like to encourage the CSA to consider either an overall extension to one year for acquisitions as is the case in the USA or to at least allow a one year period for international businesses that have been acquired. A period of six months for domestic acquisitions would be acceptable. It might also be prudent to consider decoupling the DC&P requirements from the ICFR as we agree that it is possible to implement the existing corporate system for DC&P in a new environment earlier than the design and assessment of ICFR.

Additionally there is no clear definition of the effective date of an acquisition. We would propose that this be the closing date of the transaction. Certainly it should not be before management has control of the assets and or the operation. We would discourage the CSA from adopting definitions used by Canadian GAAP which are for accounting purposes and may result in the effective date being ahead of when management actively assumes control or influence over the control environment.

Finally, we would suggest that it be clarified that it is up to management to determine when an acquisition is in-scope and therefore needs to be disclosed in the MD&A.

**Question 7. Are there any specific topics that we have not addressed in the Proposed Policy on which you believe guidance is required?**

We would like to encourage some discussion on the appropriateness of using Control Self Assessment as a component of management's evaluation on design and operation of controls.

We strongly believe that the ability to engage control performers across the organization to regularly testify as to the operation of controls they perform is relevant and meaningful and serves to broaden the awareness and importance of maintaining good internal control for the organization. By combining Control Self Assessment with good quality internal and external audit programs we can reduce unnecessary costs and ensure that our resources are allocated strategically on the basis of risk versus cost.

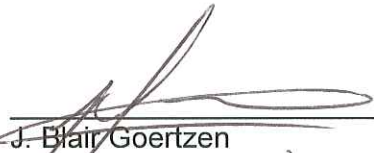
Although the principles based approach being taken with MI-52-109 will enable management to make this determination in any case, it would be useful to see some guidance on this topic.

Some guidance on the evaluation of third party service providers and use of external experts would also be helpful.

**In closing**

As mentioned previously, Enerflex has dedicated significant time and resources toward the implementation of Bill 198 over the past four years, and we are committed to the spirit and intent of this legislation. We are encouraged by the move towards a more principles, risk based approach being proposed and appreciate the opportunity to comment on the proposal.

Respectfully submitted,



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