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June 26, 2007

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
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Email: jstevenson@osc.gov.on.ca

Dear Mr. Stevenson:

In connection with your request for comments on the Proposed Repeal and Replacement of MI 52-109, the Current Forms and Companion Policy 52-109CP Certification of Disclosure in Issuers' Annual and Interim Filings and the Proposed National Instrument # 52-109 (the "Proposed Instrument") contained in your March 30, 2007 Notice and Request for Comments, I summarize below, on behalf of Aecon Group Inc., some of our concerns and comments regarding the Proposed Instrument:

1. **Definition of "reportable deficiency"** – We have no further comments on the definition of "reportable deficiency" which, in our opinion, appropriately utilizes the "reasonable person test". We believe that reasonable business judgment is and should always be a factor in determining whether a reportable deficiency exists. Therefore, the language is acceptable as drafted. Given the importance of reasonable business judgment, we would not be supportive of implementing a more rigorous definition. We also find that that the level of guidance provided under Part 8 of the Companion Policy with respect to what represents a reportable deficiency relating to design and what represents a reportable deficiency relating to operation is sufficient as proposed. We believe that no additional disclosures in the MD&A should be included for a reportable deficiency.

2. **Scope Limitations for Certain Investments** – The Proposed Instrument provides that if the scope of control design is limited due to circumstances such as lack of "sufficient access", the certifying officers should disclose in the annual MD&A the scope limitation and summary financial information of proportionately consolidated entities or variable interest entities. Joint ventures are common in the construction industry and, as the largest public construction company in Canada and a major industry sector employer, Aecon has significant concerns about this particular provision of the Proposed Instrument. Our primary concern centers on the issue of financial disclosure and the potential impact on Canadian public companies. While we do not disagree that disclosing a scope limitation may be appropriate in protecting the interests of investors, we are concerned that the disclosure of such information in the MD&A may put Canadian public

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companies at a disadvantage in the global economy and also be detrimental to Canadian institutions and individual investors who invest in Canada. It is our view that, both the additional significant cost of compliance and the forcing of private partners in joint ventures to put information in the public domain, may significantly detract from the desirability of Canadian public companies as joint venture partners. The potential impact of such costs and increased regulation from a competitive standpoint are not insignificant as the United States has discovered with respect to SOX, leading many leading US commentators to question whether regulation should be relaxed. As such, we ask that global competitiveness and cost (at a time when many Canadians are justifiably concerned about the impact of foreign takeovers of Canadian corporations and the ability of Canadian corporations to compete in M&A activity within Canada) be given proper consideration in drafting a policy that balances the needs of various stakeholders. As such, we would recommend some form of exception be created where a joint venture partner is a private company. Consideration should also be given to exempting joint ventures below specified revenue or income thresholds.

3. **Scope Limitations on Design for Recently Acquired Business** – Section 2.3 (1) of the Proposed Instrument provides that "an issuer may cause its certifying officers to limit the scope of their design of DC&P and ICFR to exclude controls, policies and procedures of a business that the issuer acquired not more than 90 days before the end of the period to which the certificate relates". The proposed rule will require such scope limitation and summary information of the acquired business to be disclosed in an issuer's MD&A. While we agree that disclosing the scope limitation is appropriate from a public disclosure perspective, we question the practicality of the 90-day requirement. We believe that the 90-day period is not long enough to allow a company to perform a design review of an acquired business's DC&P and ICFR. As in any acquisitions, there are numerous transition issues to address, which could easily consume the bulk of the 90-day period, especially in cases in which the new business being acquired is a private company. Again, we respectfully suggest that due consideration and weight be given to the impact of rules which may unintentionally place Canadian public companies at a disadvantage in the ultra-competitive world of global M&A. It is not inconceivable in our opinion (based on almost 100 years of M&A experience in the Canadian marketplace) that a private company faced with competing bids involving 90 day compliance from a Canadian public company and a foreign bid with no similar rules will place a value on not having to be compliant during a period of tremendous transition. A longer period will help alleviate this concern and potential disadvantage. As such, we believe that it would be more practical to prescribe an extended timeframe, e.g. 365 days instead of the proposed 90 days.

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4. **Guidance for Design & Evaluation of DC&P and ICFR provided in Proposed Companion Policy:**

   a) **Top-down, risk-based approach** – Part 6 of the Companion Policy of the Proposed Instrument included guidance on how a top-down, risk based approach can be implemented. We agree with the practicality and appropriateness of this approach. We also believe that the level of guidance is sufficient for implementing such approach.

   b) **Assertions** – In the Companion Policy, Section 6.9 (4), the CSA identified the assertions related to significant accounts as follows: "existence or occurrence", "valuation or allocation", "rights and obligations", "presentation and disclosure" and "completeness". These are the financial statement assertions used by our external auditors in their annual financial statement audits and are different from the COSO assertions of "completeness, accuracy, validity, and restricted access" (CAVR) used to validate the design of internal controls. The purpose of COSO assertions versus financial statement assertions is quite different. There is no one-to-one match between these two sets of assertions. When we started our Bill 198 compliance work, we adopted the COSO framework and have therefore used the COSO assertions of CAVR which were agreed to by our external auditors. Would the CSA or Commission be imposing the use of the financial statement assertions rather than the COSO internal control assertions? Would there be some flexibility on the use of assertions taking into consideration the reporting issuer's choice of control framework for use in its internal controls review and evaluation? Further guidance with respect to the above would be greatly appreciated.

   c) **Third party controls** – The Companion Policy of the Proposed Instrument did not provide guidance on how the reporting issuer will review and evaluate controls established by certain third party service providers (such as in the case of payroll) and as to what is acceptable to CSA or OSC (such as SAS 70 or CICA Section 5970) in order for certifying officers to rely on those controls and to sign off on the annual certificates.

We trust that the above makes our position clear and proves to be useful in your formulation of the final instrument. The comments are often specific in nature and highly technical. Therefore, in closing we would also like to urge the Commission to keep in mind the impact of changes and potential changes on the bottom line of Canadian public companies. While we agree that investor protection is an important goal and recognize the importance of appropriate regulation, Canadian companies do not operate in a vacuum. Instead they compete in a highly competitive global environment. Regulatory cost, as the United States has discovered, can impose significant burdens that impact

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competitiveness. Maintaining strong Canadian companies able to compete on the global stage is also in the interests of the Canadian public (including share holders). Finding the right balance between regulation and competitiveness is a difficult but necessary task in the best interests of all stakeholders.

We appreciate the opportunity to express our views on this new proposed instrument and welcome further discussion at any time.

Yours truly,

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