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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 Nunuvut

Dear Sirs/Mesdames:

Re: Proposed National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings

Thank you for the opportunity to respond to the proposed National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109). The Small Explorers and Producers Association of Canada ("SEPAC") has not historically been involved in securities regulations in Canada, aside from most recently commenting on Proposed Multilateral Instrument 52-111 Reporting on Internal Control over Financial Reporting. SEPAC expects to become more involved as it is clear to our members that capital market regulation has become overly burdensome for smaller oil and gas companies in Canada.

Background on SEPAC and the Junior Oil and Gas Sector in Canada

Our Association, established in 1986, represents approximately 450 corporate members. 75% are junior oil and gas companies and the remainder is companies who supply goods and services to the upstream petroleum industry. Over 100 of our member companies are publicly traded and listed on the TSX (34 companies) or TSX Venture Exchange (72 companies).

The petroleum industry is extremely capital intensive, and the junior sector particularly does not fund its growth from internal cash flow but needs to continually raise money to explore and produce the oil and gas Canada requires. In fact, a typical junior invests an additional two dollars (raised through debt and equity) for each dollar of internally generated cash flow. The industry faced many uncertainties in 2006 and 2007 that have made raising capital difficult, especially for smaller companies. Challenges included sharply reduced margins caused by rapidly escalating operating and capital costs and the declining size of oil and gas discoveries. On top of this, more uncertainty over the future of our industry is being created by government regulatory initiatives both at the federal and provincial level such as royalty reviews and greenhouse gas emission reduction goals. It is important that regulators of Canada's capital markets not put up needless barriers to investment in the country's energy sector, as we are a major contributor to the strength of the country's economy.

Until recently, it had been relatively easy for junior producers to access capital; however, capital for smaller public companies has all but dried up, with the exception of flow through shares. A survey of 85 junior oil and gas companies by Iradesso Communications indicated the average junior petroleum producer lost 32% of its share value in 2006 and another 13% in the first quarter of 2007. Based on a survey by SEPAC of its own public company members, 69% reported losses on their first quarter 2007 income statements, a significant increase from the previous year. The junior sector is clearly not enjoying the benefits of high commodity prices and is working hard to increase share values.

In conversations with our members, SEPAC has determined that many new start-up companies are choosing to remain private. One of the prime reasons mentioned is the over-regulation of public companies in Canada. It has become increasingly difficult for companies, especially with market caps of less than $100 million to comply with the over-abundance of regulations. Companies at one time were able to access the public markets with as little as $10 million of capital. SEPAC certainly supports, as do our members, regulation that supports investor confidence in the capital markets through adherence to the highest ethical standards and timely, accurate and complete disclosure to shareholders. However, many of our members now find that the cost, time and distraction caused by overly burdensome reporting and disclosure requirements have made it increasingly difficult to justify going the public route.

In particular, SEPAC believes that NI 52-109, is inappropriate for small public companies and imposes too high a compliance cost without a corresponding benefit to shareholders.

Western Canada has been the birthplace of a junior oil and gas sector that is unique in the world. To illustrate how unique: there are more publicly traded oil and gas companies listed on the TSX and TSX Venture Exchanges than the combined totals on all the other recognized stock exchanges in the world. The vast majority of these listed companies are junior and intermediate sized companies. We believe the current corporate governance and disclosure standards of the TSX and TSX Venture exchanges are second to none in the world, and the proposed enhanced certification and disclosure requirements are not necessary for smaller companies. The current requirement to have the CEO and CFO provide a certification document is appropriate for Venture Exchange companies as it allows the CEO and CFO to use their judgement in assessing the risks in determining that they can sign the certificate.

SEPAC's Comments on NI 52-109

We would like to comment on the specific nature of the proposed enhanced certification and disclosure requirements of NI 52-109. First, we will discuss the conceptual issues of the proposal relating to smaller oil and gas companies, and then we will list some specific concerns we have with certain aspects of the proposal.

Conceptual issues concerning NI 52-109

1) Broadly speaking, it has become clear from certain well publicized corporate cases there may not have been enough focus on internal controls and their importance in timely and accurate financial reporting from the larger companies. SEPAC acknowledges and supports the need for more emphasis on internal controls, from both the auditors' perspective and also that of senior management and the audit committee and board of directors. SEPAC companies continue to focus on the controls required to run their business. This primarily includes the "top-down" controls including a strong oversight of transactions by senior officers such as the CEO and CFO. In SEPAC member companies, the CEO and CFO typically co-sign all cheques and have a very clear knowledge of all transactions of significance. An active board and audit committee also provide the necessary oversight. SEPAC is concerned that deficiencies in internal controls will be perceived negatively by the markets, when in fact, an issuer may have very strong controls over financial reporting which are not properly acknowledged by the regulations based on the strict interpretation of NI 52-109.

2) SEPAC is concerned that Canada is trying to emulate the United States which established its regulations in response to widespread abuse at Enron et al. Our concern is that many of these abuses were not created by problems with internal controls. Rather, it appears that top level employees circumvented existing key controls. We therefore do not believe that a focus on the detailed internal controls would have prevented these types of scandals.

3) The primary concern that SEPAC believes must be addressed is the need to ensure the financial statements present fairly the financial position of the company. This should be the ultimate objective. We are troubled the very intensive work required to evaluate and document internal controls may detract from a company's efforts to

ensure the financial statement preparation process properly states accurate financials. This is very important for smaller companies, as they lack the resources to perform an adequate study of controls. In effect, the CFO and Controller (if any), are the same people responsible for the internal control study as well as accurate financial statements. It is very difficult to maintain the proper focus on preparing complete, accurate, and timely financial statements, as well as proper documentation of internal controls without the necessary internal resources.

4) The United States is a very different capital market than Canada. The US has hundreds of large companies with more than $1 billion of market capitalization. These larger entities rely on internal controls to ensure proper accounting. In Canada, less than five percent of the companies have a market capitalization of greater than $500 million, and in fact these five percent comprise more than 90% of the total market capitalization in Canada. The Canadian public markets have hundreds of smaller companies, many with less than 50 employees. SEPAC members want to ensure there is a thriving market for smaller entities in the future and that regulations such as NI 52-109 do not cause more harm than good.

5) Given the nature of TSX Venture issuers, in particular the smaller management team and staff size, the deficiency disclosure provisions are not appropriate. These disclosure provisions put Venture issuers in the position of saying they cannot currently, and will not in the future, be in a position to comply. Investors understand that different markets have different risks, and therefore most investors we have spoken with look at the strength and integrity of the management team in deciding whether to invest. Because of the unique character of the Venture Exchange, SEPAC recommends that the proposed enhanced certification and disclosure requirements should not apply to TSX Venture companies.

6) As many oil and gas companies start on the TSX Venture (which we propose would be exempt from the new provisions) and then "graduate" to the TSX, we would need to develop some form of transition phase for NI 52-109 disclosure. In fact, it can be argued that smaller issuers on the TSX itself may have difficulty in complying and should be eligible for a similar exemption based on market cap.

Specific issues of concern in the proposed enhanced certification and disclosure requirements of NI 52-109

The majority of SEPAC companies have five to 25 staff members, including part time employees or consultants. To keep administrative costs low, many services and systems are outsourced. Most companies are involved in numerous joint ventures. Any time an oil and gas company plans to drill a well, it often will find several partners to spread the risk of drilling wells that may cost anywhere from $250,000 to over $2,000,000 per well. The oil industry in Western Canada has developed over the decades through establishment of joint ventures, and as more companies are established, it has resulted in thousands of active joint ventures. As part of the joint venture agreement, the partners will pick an operator of the joint venture. The other joint venture partners have the ability to audit the specific costs and revenues of the specific venture upon adequate notice, but not the ability to review the operators systems. Given the number of joint ventures, and the different sizes of the joint venture partners, audits of operators would be

unmanageable, especially given the different levels of financial materiality of the partners. Imagine a small company with annual expenses of under $25,000,000 auditing a very large company such as Encana Corporation or Shell Canada, with a complex corporate structure and a much larger materiality threshold.

1) Joint ventures

The provisions of 52-109 provide an exemption for entities that are proportionately consolidated. As we discussed earlier, SEPAC member companies are involved in numerous joint ventures to conduct their business. In some cases, the issuer will operate the venture and in many cases the issuer will be a partner in a joint venture operated by a third party. It appears this specific component of the recommendation is geared towards manufacturing or real estate joint ventures, and not to the oil and gas sector in terms of a proportionately consolidated entity. It is not practical that each joint venture partner in the oil and gas industry be given access to the operator's systems to evaluate internal controls. Nor is it practical for a non-operator to try and get access to numerous operator's systems and records to audit their internal controls. Each company will have its own systems and differing materiality that make this unworkable. In addition, we know that it is not possible or practical to request access to a major energy companies systems to audit / evaluate them, as the answer will certainly be 'no'.

The issue of oil and gas joint ventures does not fit well into the internal control framework that is proposed. We request that the policy be clarified to ensure that the design and evaluation of internal controls be excluded from the certification, similar to other proportionately consolidated entities. The CEO and CFO will assess the controls specific to their company in determining whether they can sign the general certification currently present in 52-109.

2) Outsourcing of service providers

Many oil and gas companies outsource many functions relating to the accounting function. These can include:

i) Financial accounting systems and support.
ii) Production accounting systems -- many companies have a consultant prepare information on their own system or spreadsheet.
iii) Land system, which is required to determine the ownership interest in a well or facility.
iv) Calculation of various royalty interests related to a well or facility.
v) Other computer-related systems that may be required.
vi) Marketing services, which determine how much the issuer, is to be paid for selling its products.
vii) Engineering and project management of significant capital expenditures projects.

This would require a significant coordination effort to review internal controls of these various entities. SEPAC already is aware that certain service providers would "push

back" in providing access, as they are very concerned over privacy issues. This issue needs to be clarified, and we recommend that management be given the flexibility to assess the risk of the outsourced function and not report a deficiency if there are sufficient high level controls in place. The CEO and CFO will assess the controls specific to their company in determining whether they can sign the general certification currently present in 52-109.

3) Available staffing

In Calgary, there is currently a serious shortage of qualified accountants and auditors. We have observed the time and effort and accounting staff required for companies to meet Sarbanes-Oxley 404, and we are very concerned there would be a tremendous strain on qualified staff resources to devote to this internal control documentation project.

4) Timing

The 90 day limit on new acquisitions is too short. During the first 90 days it is likely that the systems previously used by the acquired company will be continued as they are while the business matters of the acquired entity are brought under the control of the new management. In addition, an acquisition near the end of a quarterly reporting period means the next 90 days are spent on preparing the quarterly financial statements, which usually involves a major effort to consolidate the acquisition. We would suggest a time period of at least six months.

Conclusion

SEPAC believes the costs of compliance with the proposed enhanced certification and disclosure requirements of NI 52-109 far outweigh the benefits and therefore should not apply to TSX Venture companies.

In addition, SEPAC recommends:

- Transitional rules need to be developed for companies moving from the TSX Venture to the TSX. These companies may need some time to ensure full compliance so the natural progression of companies migrating from the TSX Venture to the TSX is not obstructed.
- The oil and gas industry is underpinned by complex joint ventures and multiple partners, both large and small. Additional clarification is needed to address the unique situation of joint ventures in the oil and gas industry.
- Ongoing, regular review of the policy while soliciting feedback from smaller market capital companies and the investors in this sector.

Thank you for the opportunity to comment on this vitally important issue for Canada's capital markets. We would be pleased to discuss our position further with you.

Yours truly,

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