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June 27, 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

Re: Request for Comment – Notice of Proposed National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

Dear Sir/Madam:

The Certified General Accountants Association of Canada (CGA-Canada) welcomes the opportunity to provide comment on the Canadian Securities Administrators' (CSA) proposed National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (Proposed Instrument or NI 52-109) and the related Companion Policy 52-109 CP (Companion Policy) and Forms.

We believe the certifications and other disclosures required under the Proposed Instrument are important features of a broader movement toward improved corporate governance and the production of quality financial reporting by reporting issuers in Canada. Achieving these objectives will only strengthen investor confidence in Canada's capital markets and improve the overall efficiency of these markets.

Representing over 68,000 CGAs and students nationally and internationally, CGA-Canada has a vested interest in ensuring that the requirements of securities regulations such as those found in NI 52-109 are balanced and effectively represent the interests of all affected stakeholders. A recent study published by CGA-Canada reflects this commitment[1].

Through this study it was discovered that SME reporting issuers, including those listed on the TSX, were overwhelmingly in opposition to the requirements proposed in MI 52-111. As a result, CGA-Canada applauds the CSA's decision not to proceed with this instrument and for

[1] Released in October 2006, the report *Tackling Compliance: Small Business and Regulation in Canada,* solicited the views of smaller and medium-sized (SMEs) reporting issuers listed on both the Toronto Stock Exchange (TSX) and the TSX Venture Exchange (TSX-V) regarding proposed National Instrument 52-109 and proposed Multilateral Instrument 52-111 *Reporting on Internal Control Over Financial Reporting* (MI 52-111). The full report can be viewed under Advocacy and Research at www.cga-online.org.

recognizing the negative impacts similar requirements have had on smaller entities in the United States.

Although it was apparent from our research that smaller-sized reporting issuers feel they are disproportionately burdened by regulation given relatively limited resources, it was nevertheless concluded that by definition of their public nature, these reporting issuers, when practical, should be subject to the same or similar requirements of all listed entities. Therefore, rather than exempting these issuers from certain securities requirements, it is felt more prudent for securities administrators to focus their efforts on lessening the burden on all issuers through the provision of quality guidance for succinct, well thought-out standards.

It is through this understanding and our ongoing commitment to improved corporate accountability and quality financial reporting that we have formed the basis our comments on the Proposed Instrument and its associated guidance. We begin our discussion with some general comments on the Proposed Instrument. These comments are then followed by our views regarding the issues CSA has requested specific comment.

General Comments

We have the following general comments regarding the Proposed Instrument and its associated Forms and Companion Policy:

- We see the inclusion of all certifications and disclosure requirements related to disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR) under a *single* National Instrument as a positive step in simplifying the process for reporting issuers;

- The new requirement for venture issuers to certify their evaluation of the effectiveness of ICFR is consistent with our general view that publicly accountable entities should generally adhere to the same or similar standards. We do, however, believe that relief in some instances is necessary for smaller issuers (for example, the ICFR design accommodation discussed in #2 below);

- The certifications and related disclosures in the MD&A effectively formalize the responsibilities of senior officers and boards (Board) for sound corporate governance and the effective operation of an issuer's internal controls;

- The CSA's recommended "top-down risk-based" approach to control design is also consistent with the view that Boards and senior management are ultimately responsible for the oversight of a reporting issuer;

- CGA-Canada also supports the principle-based approach taken with the Instrument as this approach avoids the negative consequences oftentimes associated with overly prescriptive rules-based standards;

- Provided the final version of NI 52-109 is released in a timely manner, the proposed effective date of June 30, 2008 is considered a reasonable timeframe for issuers to prepare for and comply with the instrument's added requirements.

In addition, we would also like to highlight our support for the inclusion of the requirement in the annual certificate that the:

"issuer has disclosed in its annual MD&A a statement identifying the control framework the certifying officers used to design the issuer's ICFR or a statement that they did not use a framework, as applicable."

In disclosing the framework used or whether a framework has not been used is considered useful information for users of an issuer's annual filings to make an assessment of an issuer's commitment to establishing ICFR. As has been the case with financial reporting standards, increased awareness drives best practices and the continued development and refinement of related frameworks. As the quality of these practices and standards improve, it is felt that the credibility of the process and related disclosures will also improve.

#1 Do you agree with the definition of "reportable deficiency" and the proposed related disclosures?

In our view, clarity around this definition is critical as it determines the nature of many of the disclosures required under the Proposed Instrument.

Although the term "reportable deficiency" by itself is logical and appropriately signifies a threshold by which disclosure is required, we feel that certain phrases in the definition require further explanation and/or refinement.

In particular, the phrases "reasonable person to doubt" and "reliability of financial reporting" are phrases we feel require further definition as issuers are likely unfamiliar with the intent of these terms in this context.

It is our view that a "reportable deficiency" should be defined in the context of what is considered material to the users relying on the disclosures reporting the deficiency. This approach is one that we feel issuers are familiar with through their application of GAAP, and one the CSA has appropriately considered with its inclusion in the definition of a reportable deficiency, the phrase "reasonable assurance regarding…the preparation of financial statements for external purposes in accordance with the issuer's generally accepted accounting principles (GAAP)". The companion policy supports our perspective stating that there must be "no material misstatement in the issuer's annual or interim financial statements."

Applying the materiality perspective, a "reporting deficiency" in our view could be considered as a weakness in the design or operation of an ICFR that does not provide reasonable assurance that there are no misstatements in the issuer's annual or interim financial statements or misrepresentations in the issuer's annual or interim filings that would impact the decisions of users relying on these disclosures.

The concept of materiality is also a consideration when reporting weaknesses or deficiencies that may be of potential concern to an issuer's audit committee or external auditors.

The discussion and debate around these issues is apparent in the U.S. where the definitions surrounding the terms "material weakness" and "significant deficiency" are currently under scrutiny[2]. We are certain that the CSA is monitoring the developments in the U.S. and recommend that it continue to do so until the release of this instrument.

Whatever definition the CSA ultimately includes in 52-109, it is our view that the definition must be clear and should contain familiar logic and terminology. As stated, we also believe the definition should consider the needs of the users relying on the disclosures and should be sufficiently supported by guidance to help issuers make appropriate judgments under the Proposed Instrument.

To aid in this understanding we would also recommend the use of specific examples to guide issuers with their assessment of what may represent a reportable deficiency.

#2. Do you agree that the ICFR design accommodation should be available to venture issuers?

As indicated earlier, we agree there will be circumstances where it is not practical or cost effective for certain issuers to remedy a deficiency in the design of an internal control. While this will typically apply to venture issuers given their more limited resources, our experience has shown that non-venture issuers may also face the same constraints. It appears that the CSA has considered this possibility with 6.11(2) of its Companion Policy where it states that:

"a reporting issuer that is not a venture issuer may apply for relief from the securities regulatory authorities if it believes that it has a reportable deficiency relating to design that it cannot remediate without (i) incurring significant additional costs, (ii) hiring additional employees or (iii) restructuring the board of directors and audit committee"

Given that this relief is available to non-venture issuers, does it not make sense to make the accommodation available to all issuers assuming adequate disclosure is provided?

If the CSA concludes that this approach is not desirable, we would then suggest that the CSA communicate clearly what circumstances it contemplates providing relief to non-venture issuers under this policy.

#3. Do you agree that our proposal to provide a scope limitation in the design of DC&P and ICFR for an issuer's interest in a proportionately consolidated investment or variable interest entity is practical and appropriate?

We believe that this is a reasonable exclusion and that adequate disclosure would assist users in assessing the associated risks of this exclusion.

#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?

Although an assessment of DC&P and ICFR should be factored into a due diligence assessment of a potential acquisition, the issuer is typically not in a position to influence the design of these controls. Furthermore, acquisitions can vary in complexity and in some instances take significant

[2] As witnessed in the SEC's proposed rule no. 33-8811 titled "Definition of a Significant Deficiency" released for comment June 20, 2007 and the PCAOB's Auditing Standard No. 2.

time before an issuer can ensure adequate controls are in place. Consequently, 90 days is in our view not a sufficient time frame. We recommend that this timeframe be expanded.

The fact that this scope limitation will be disclosed along with the associated financial information of the acquired business, users should have sufficient information to assess the risks of the exclusion.

#5. Do you agree that our proposal not to require certifying officers to certify the design of ICFR within 90 days after an issuer has become a reporting issuer or following the completion of certain reverse takeover transactions is practical and appropriate?

The 90 day timeframe is viewed less of an issue in these circumstances than it is in the case of an acquisition contemplated in #4. In the case of an IPO, prior to becoming a reporting issuer, senior management should be in a position to influence the design of DC&P and ICFR and prepare for the anticipated filing requirements. As a result, the 90 day timeframe appears reasonable.

#6. Do you agree that the nature and extent of guidance provided in the Proposed Policy, particularly in Parts 6, 7 and 8, is appropriate?

In addition to the comments above relating to the guidance contained in the Companion Policy, we would also like to comment on Parts 6 & 7 of this policy that relate to the design and evaluation of DC&P and ICFR.

In reviewing this section of the Companion Policy, we feel that an issuer may question whether the information provided represents guidance on best practices or whether the details listed are specific requirements necessary for the issuer to be in compliance with the Instrument. For example, Part 7.2 indicates that “certifying officers *should* obtain sufficient appropriate evidence that the components of DC&P and ICFR….are operating as intended”.

Although 7.3 makes it clear that this evaluation is a judgment, it is insufficiently clear what the certifying officers must do in order to discharge their responsibilities under the Proposed Instrument. For example, if an issuer failed to disclose what is later found to be a reportable deficiency, and in exercising their judgment did not employ the evaluation tools outlined in part 7.6, has this issuer violated the requirements of this instrument?

To remove potential uncertainty, we feel that it must be made more expressly clear to certifying officers and Boards of reporting issuers what level of work, if any, is necessary for them to demonstrate that they have satisfied their responsibilities in evaluating the effectiveness of their DC&P and ICFR under the Proposed Instrument.

Closing Remarks

Drawing attention to the importance of the effective design and operation of DC&P and ICFR to those charged with governance of an organization, can only improve the quality and reliability of financial reporting. Improved disclosure helps reduce information risk and gives investors confidence that organizations are effectively managing their business risks. In addition, improved internal control can also improve organizational effectiveness through the delivery of timely information for decision making and improved control over corporate assets.

In this regard, CGA-Canada supports the efforts of CSA with the release of NI 52-109. We are also happy to see that this proposed standard is a national standard supported by *all* securities administrators in Canada. In our view, consistent, harmonized standards across all jurisdictions in Canada are important for efficient capital markets in this country.

As is the case with all regulation, we would also like to add that appropriate enforcement of these requirements is an important factor in their success. Continued efforts to ensure that issuers are meeting their requirements under NI 52-109 are strongly recommended[3].

We look forward to the final release of this instrument in the near future. In the meantime, should you wish to discuss further any of the items presented above, please feel free to contact the undersigned at rlefebvre@cga-canada.org.

Sincerely,

Rock Lefebvre, MBA, FCIS, CGA
Vice-President, Research & Standards

[3] According to CSA Staff Notice 52-315 – *Certification Compliance Review* 28% of issuers failed to provide conclusions about the effectiveness of DC&P in their annual MD&As.