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The 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

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1900, Box 55
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c/o Anne-Marie Beaudoin, Directrice due secrétariat
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Dear Sirs/Mesdames:

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

This letter is in response to the Request for Comment published at (2007) 30 OSCB 2887 concerning proposed National Instrument 52-109 "Certification of Disclosure in Issuers' Annual and Interim Filings" (NI 52-109).

Generally, we support the direction the CSA has taken in NI 52-109. We believe the changes made to the certificate forms enhance their usefulness for the Canadian investor. We observe that the requirements at times are more restrictive than requirements of the Securities Exchange Commission (SEC).

Specific requests for comment

1. Do you agree with the definition of "reportable deficiency" and the proposed related disclosures? If not, why not and how would you modify it?

We believe it will be confusing to the Canadian investor to have two different definitions of what is "reportable" in use within Canada. Many of the senior issuers' in Canada are cross-listed in the United States and cross-listed issuers represent greater than 50% of the market capitalization of this country. These cross-listed issuers' will be applying the SEC definition[1] of what is "reportable" when they comply with Section 404(a) of the Sarbanes-Oxley Act, being a material weakness.

> The term material weakness is a deficiency, or a combination of deficiencies, in ICFR, such that there is a reasonable possibility that a material misstatement of the registrant's annual or interim financial statements will not be prevented or detected on a timely basis.

It is not clear whether the Canadian definition of a reportable deficiency is a lower or higher threshold than the US reporting standard.

> A reportable deficiency is a deficiency, or combination of deficiencies that would cause a reasonable person to doubt that the design or operation of ICFR 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.

What would cause "a reasonable person to doubt" may be different that what would create a "reasonable possibility". Guidance regarding the experience of a reasonable person would be helpful if this concept is maintained. We believe the concept of a "reasonable officer" or "prudent official" as defined by the SEC might be a more appropriate benchmark. As well, it is not clear if the reference to "reliability of financial reporting" is intended to broaden the Canadian definition beyond the financial statements as compared to the US definition of material weakness which focuses on the financial statements alone.

It is reasonable for Canadian investors to expect that all Canadian issuers would provide the same disclosure given the same deficiency in the same circumstances. This can best be assured by having all issuers operating in the Canadian marketplace applying the same definition to determine whether a deficiency is "reportable".

Given that the US definition of material weakness is already broadly used and understood and is also embedded in the PCAOB Auditing Standard No. 5, we recommend that the CSA utilize the definition of material weakness indicated above. We believe it is likely that the Canadian

[1] SEC Release No. 33-8809 Amendment to Rules Regarding Management's Report on Internal Control over Financial Reporting

auditing standard on ICFR will also use the PCAOB Auditing Standard No. 5 definition of material weakness. In addition, we recommend that the CSA ensure that the final list of strong indicators of a reportable deficiency in section 8.3 of the companion policy be consistent with the SEC. This is further discussed in item 6 below.

We believe the required disclosures with respect to reportable ICFR deficiencies are appropriate.

2. Do you agree that the ICFR design accommodation should be available to venture issuers? If not, please explain why you disagree.

We support the ICFR design accommodation for venture issuers as it appropriately recognizes that it may not be economically feasible for venture issuers to invest in ICFR while informing investors that there are deficiencies in the design of ICFR. Canadian investors can use these disclosures to make informed investment decisions.

We recommend that a DC&P design accommodation also be provided. This would be consistent with the DC&P and ICFR scope exemption provided in paragraph 5.4 of Form 52-109F1.

A DC&P design accommodation would be consistent with Part 6.2 of the Companion Policy of NI 52-109 which recognized that there is substantial overlap between the definitions of DC&P and ICFR. Part 6.2 indicates "an issuer's DC&P should include those elements of ICFR that provide reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in accordance with the issuer's GAAP." If an issuer utilizes the design accommodation because it does not have the financial resources to engage qualified accounting personnel to ensure transactions are recorded in the financial statements in accordance with GAAP then we believe an issue with respect to the design of DC&P will exist which the issuer may not be able to remediate without incurring undue costs. These issuers would not be in compliance with section 2.1 (a) and (b) of the rule and section 2.2 only provides an accommodation for non-compliance with 2.1 (b).

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? If not, please explain why you disagree.

We believe that a scope limitation for existing proportionately consolidated investments or variable interest entities is practical and appropriate. We believe the guidance should be clarified regarding whether scope limitations will be available for proportionately consolidated investments or variable interest entities created after the date that the rule becomes effective.

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? If not, please explain why you disagree.

We believe that 90 days may not be an adequate length of time for the exemption as during the acquisition period various other activities to merge operations and complete purchase accounting are undertaken. We believe applying a 90 day threshold may place a financial burden on the smaller issuers who given their limited accounting resources may need to engage outside assistance to comply within 90 days while many larger issuers cross-listed in the United States will be able to utilize the more liberal exemption policies given by the SEC.

We recommend that issuers be exempt from DC&P and ICFR in quarterly and annual certifications for one year. This would reduce the risk that domestic only Canadian issuers would be forced to incur financial costs by engaging outsides assistance when issuers cross-listed in the United States would not for a similar acquisition.

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? If not, please explain why you disagree.

We believe that 90 days may not be an adequate length of time for the exemption. In addition, we recommend that an exemption for DC&P also be allowed given the substantial overlap between DC&P and ICFR as discussed in our comments under item 2. An issuer that did an IPO jointly in Canada and the United States would be able to obtain an ICFR exemption for up to a full year under the SEC rules as no evaluation of ICFR is required in the year of the IPO.

We recommend that issuers be exempt from DC&P and ICFR in quarterly and annual certifications for one year. This would reduce the risk that domestic only Canadian issuers would be forced to incur financial costs by engaging outsides assistance after doing an IPO when similar issuers also cross-listed in the United States would not as they would have additional time to comply with the rules.

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? If not, please explain why and how it should be modified.

Generally, we are in agreement with the nature and extent of the guidance provided. Some specific comments are provided below:

- 6.8(a) We recommend deleting "reporting transactions" as typically individual transactions are not publicly reported.

- 6.8(b) We recommend include authorizing and recording of journal entries and non-routine transactions as in item 6.8 (a) and 6.8(f).

- 6.9(3)(i) We recommend deleting item (i) as any changes in accounts should be captured when considering items (a) through (h).

- 6.9(4) We recommend more judgment be allowed for the issuer to determine the relevant assertions. We note that the list of assertions provided does not include all assertions in the CICA Hb section 5300.21 (for example, accuracy is omitted).

  This section states that if an issuer uses its external auditor to "compensate for skills which would otherwise be addressed by hiring qualified personnel or outsourcing expert advice" that this is a mitigating activity. It is not clear from this statement whether the CSA believes an issuer who needs to consult on most technically complex accounting matters should be disclosing a reportable deficiency. The SEC[2] has indicated that consultation in of itself is not deemed an ICFR deficiency as noted below:

[2] SEC statement May 16, 2005 release 2005-74

> Management of all companies - large and small - should not fear that a discussion of internal controls with, or a request for assistance or clarification from, the auditor will, itself, be deemed a deficiency in internal control. Moreover, as long as management determines the accounting to be used and does not rely on the auditor to design or implement the controls, we do not believe that the auditor's providing advice or assistance, in itself, constitutes a violation of our independence rules. Both common sense and sound policy dictate that communications must be ongoing and open in order to create the best environment for producing high quality financial reporting and auditing; communications must not be so restricted or formalized that their value is lost.

We believe clarification of when consultation is appropriate and when it represents a reportable deficiency would be beneficial. Further, if the CSA agrees with the views set forth by the SEC we would encourage these views to be included in the Companion Policy

- 7.4 This section indicates "generally, the individuals who evaluate the effectiveness of specific controls or procedures should not be the same individuals who perform the specific controls or procedures". Section 7.7 indicates certifying officers daily interactions with control systems "could provide an adequate basis for the certifying officers' evaluation of DC&P and ICFR". These two statements appear to be contradictory. Can you clarify if the need for objectivity only applies to individuals under the certifying officers' supervision but not to the certifying officers themselves? These requirements appear stricter than the requirements imposed by the SEC and we question whether this is achievable with the smaller size of many Canadian domestic issuers.

- 8.3 We recommend that the CSA ensure that the final list of strong indicators of a reportable deficiency in section 8.3 is consistent with the final SEC guidance to management. As such, we recommend the removal of "control deficiencies that have been identified and remain unaddressed after some reasonable period of time" as this is an extremely low threshold and may result in unintended deficiencies requiring remediation. In additional, we recommend removing "for complex entities in highly regulated industries, an ineffective regulatory compliance function" as this is not useful.

- 8.7(2) This section indicates that issuers are required to disclose in MD&A whether risks from a reportable deficiency have been mitigated and indicates a possible mitigating activity could be having the external auditor perform additional procedures such as a review of the issuer's interim financial statements. CICA Handbook Section 7050.54 prohibits referencing the interim review unless the interim review report is included in the public document (which is a rare occurrence). We recommend eliminating this inconsistency.

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

- DC&P Deficiencies

  We observe that there is no requirement to report and describe deficiencies in the design of DC&P at an interim or annual date as the definition of reportable deficiency only refers to deficiencies with respect to ICFR. On an annual basis, MD&A will at least include a conclusion on effectiveness or non-effectiveness of DC&P. On a quarterly basis, no disclosures on effectiveness of DC&P are required.

We believe that even if an issuer had previously reported in its annual MD&A that DC&P was ineffective, that it would be misleading for an issuer to sign Form 52-109F2 at an interim date indicating that they have designed DC&P to provide reasonable assurance when a deficiency in design exists unless they have taken action to remediate the deficiency. Any actions to remediate a deficiency would not require disclosure as a change in DC&P is not required to be disclosed, only a change in ICFR. We recommend that issuer's should be instructed that if they are aware that DC&P is ineffective at an interim date that this fact should be disclosed in MD&A.

- Changes in ICFR

  Issuers are required to report changes in ICFR in MD&A that has materially affected, or is reasonably likely to materially affect the issuer's ICFR based on the required Forms. We recommend this requirement be embedded in the rule as we believe it is inappropriate to embed disclosure requirements within Forms.

  We recommend providing guidance regarding what constitutes a material changes.

  We believe it is not clear whether issuer's need to report material changes that have occurred within a scoped out entity. Paragraph 2.3 only appears to exempt the issuer from the requirement to design DC&P and ICFR in section 2.1 and not the requirement to disclose material changes in ICFR. We recommend extending the exemption to the reporting of material changes.

- Remediation of Operating Deficiencies

  NI 52-109 is clear that certifying officers must appropriately design ICFR or have a plan to remediate design weaknesses (unless the design accommodation is being used). NI 52-109 appears to imply that operating deficiencies in ICFR may not need to be remediated as Form 52-109F1 6(b)(iv) indicates that an issuer should disclose plans, if any, to remediate operating deficiencies. We believe it is inconsistent to require design deficiencies to be remediated but to allow operating deficiencies to remain unremediated. We recommend deleting "if any" from Form 52-109F1 6(b)(iv).

- Restatements

  We believe issuers should be provided guidance with respect to what considerations they need to make regarding original conclusions regarding effectiveness of ICFR and DC&P when the issuer has refiled financial statements as a result of material misstatement. For example, are issuers required to refile prior MD&A to conclude that DC&P was ineffective if a material misstatement occurred.

- IT Controls

  We recommend that the companion policy provide some guidance to management regarding the IT general controls and application controls that would be appropriate. We recommend language similar to what the SEC used in their proposed management guidance[3] be included in the Companion Policy.

[3] SEC Release No. 33-8810 Commission Guidance Regarding Management's Report on Internal Control over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934

Controls that management identifies as addressing financial reporting risks may be automated (e.g., application controls that perform automated matching, error checking or edit checking functions) or dependent upon IT functionality (e.g., consistent application of a formula or performance of a calculation and posting correct balances to appropriate accounts or ledgers) or a combination of both manual and automated procedure (e.g., a control that manually investigates items contained in a computer generated exception report). In these situations, management's evaluation process generally considers the design and operation of the automated or IT dependent application controls and the relevant IT general controls over the applications provided the IT functionality. While IT general controls alone ordinarily do not adequately address financial reporting risks, the proper and consistent operation of automated or IT functionality often depends upon effective IT general controls. The identification of risks and controls within IT should not be a separate evaluation. Instead, it should be an integrated part of management's top-down, risk-based approach to identifying risks and controls and in determining evidential matter necessary to support the assessment. Aspects of IT general controls that may be relevant to the evaluation of ICFR will vary depending upon a company's facts and circumstances. For purposes of the evaluation of ICF, management only needs to evaluate those IT general controls that are necessary for the proper and consistent operation of other controls designed to adequately address financial reporting risks. For example, management might consider whether certain aspects of IT general control areas, such as program development, program changes, computer operations, and access to programs and data, apply to its facts and circumstances. Specifically, it is unnecessary to evaluate IT general controls that primarily pertain to efficiency or effectiveness of a company's operations, but which are not relevant to addressing financial reporting risks.

- GAAP Reconciliations

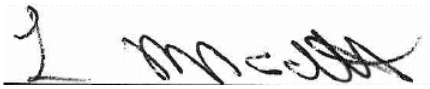
  Guidance should be provided regarding whether ICFR and DC&P procedures need extend to separately filed generally accepted accounting principle (GAAP) reconciliations. For example, if a Canadian issuer reconciles its Canadian GAAP financial statements to IFRS GAAP in a report separately filed with the Canadian regulators and a material weakness in the creation of this IFRS GAAP reconciliation is detected but no material weakness with respect to the primary Canadian financial statements exists would a reportable deficiency need to be disclosed.

- Renumbering of Forms

  Part 2 of the Companion policy indicates that annual and interim certificates must be filed in the exact language prescribed in the required form. It was not clear when issuer's were utilizing one of various exemptions whether the certificate could be renumbered. For example, in Form 52-109FI if only the 5.3 ICFR design accommodation applied, would the issuer:
  - indicate 5.2 not applicable then use 5.3 and exclude 5.4
  - renumber 5.3 as 5.2
  - only insert 5.3 and have the reader wonder what happened why the certificate jumped from 5.1 to 5.3

Thank you for the opportunity to comment on NI 52-109. We look forward to its implementation, and your consideration of our comments above. Should you wish to discuss them in more detail, I would be pleased to respond.

Yours truly,



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