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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services 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
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

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**Re: Request for comment: Proposed Repeal and Replacement of Multilateral Instrument 52–109 Certification of Disclosure in Issuers' Annual and Interim Filings**

Dear Sir/ Madame:

Grant Thornton LLP and Raymond Chabot Grant Thornton LLP (we) thank you for the opportunity to comment on proposed National Instrument (NI) 52-109, the Canadian Securities Administrators (CSA) proposed replacement of MI 52-109.

**We offer the following comments on the Instrument**

Part 3.3 indicates that a non-venture issuer may limit its design of DC&P or ICFR to exclude controls, policies and procedures of proportionately consolidated entities and VIE's in which the issuer has an interest. Part 13.3(4) of the Companion Policy appears to indicate that this scope limitation can be used only if certain conditions exist (i.e., the issuer doesn't have adequate access to the entity and there is no risk of material misstatement). In contrast, the NI does not indicate any restriction. Thus, there appears to be an inconsistency between the NI and the Companion Policy which should be addressed.

Part 6 of NI 51-102 Continuous Disclosure Obligations requires all issuers who are not venture issuers to file an AIF. Forms 51-109F1, 51-109F1–IPO/ RTO and 51-109FV1 in item 1. state "I have reviewed the AIF, if any,….." At the same time, the proposal contains Form 51-102F1-AIF, which is a form that replaces item 1 for those who want to voluntarily file an AIF. Part 4.1(3) of NI 51-109 appears to indicate that venture issuers are the only ones allowed to voluntarily file an AIF and Part 4.2(3) requires Form 51-102F1-AIF to be filed if a venture issuer voluntarily files an AIF. Should the words "AIF, if any," be removed from Forms 51-109F1, 51-109F1–IPO/ RTO and 51-109FV1? If not, we suggest that the reason for the wording in each of the forms be clarified.

**We offer the following comments on the Companion Policy**

Part 6.11 discusses services that may be performed by an issuer's auditor. Two of the example services described are prohibited under auditor independence rules. We suggest that the examples are not required. Further, the amended guidance deletes the statement that the issuer could use auditor provided services to mitigate risk. The removal of this statement raises the question of where auditor services with respect to design fit into the framework provided by the Companion Policy. Auditor services are not part of the issuer's controls but they do help mitigate risk. Thus, should the Companion Policy explicitly state that auditor procedures relating to the design of ICFR are 'mitigating procedures' that should be disclosed in the issuer's MD&A?

Part 7.5 further discusses services provided by the external auditor. We believe the intention of the second paragraph is to allow both the issuer and auditor to use the results of specified procedures performed by the auditor in the evaluation of design or operating effectiveness of controls. An example would be an engagement performed under CICA Handbook Section 9110. Further, we believe that the CSA did not intend that issuers could substitute their evaluation of the design or operation effectiveness of internal control over financial reporting by engaging their external auditor to opine on internal controls. Even though HB 5925 requires a supported assertion from management with respect to the effectiveness of ICFR, we believe that the companion policy would be strengthened by stating that an audit of internal control is not a substitute for the certifying officer's own evaluation.

Part 7.11 discusses the timing of the evaluation and the type of controls that may be evaluated after the year end. The CSA may wish to include controls that have documented attributes of their operation as an example of controls that could be tested before or after the year end.

In Part 8.1, the guidance discusses an issuer's outsourcing a "significant process" to a service organization. There is an interpretation risk associated with this term as it may be viewed broader than the CSA intended. Other literature typically links such outsourced activities to components of the entity's information system relevant to financial reporting. To narrow the

interpretation, the CSA may wish to make a similar link, perhaps to processes or controls associated with "significant accounts and disclosures" as the Companion Policy defines these and uses these terms in other parts.

Part 8.1 (c) labels controls at the user organization (i.e., the issuer) as "compensating" controls. We suggest that the terminology could be improved by eliminating the word "compensating" since the controls do not necessarily have to be compensating.

Part 9.1 (3) discusses the concept of compensating controls and mitigating procedures. Compensating controls appear to be controls that eliminate the deficiency. Mitigating procedures appear to be compensating controls that do not eliminate the deficiency. Further, based on the contents of 9.7, it appears that mitigating procedures may reduce the severity of a material weakness but cannot eliminate it. We believe that issuers will struggle with the distinction between compensating controls and mitigating procedures. The CSA may wish to expand the text in this area. One suggestion is to use mitigating procedures performed by the audit committee as an example of 9.1 (3) (b).

Part 10.1 discusses weaknesses in the design or operation of DC&P that may be significant. There is no discussion on the CSA's interpretation of significant. We recognize the practicalities of attempting to define 'significant.' However, issuers would find examples useful.

Should you have any questions on the contents of this letter, please contact one of the undersigned.

Yours truly,
Grant Thornton LLP

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