The Institute of Internal Auditors Canada | Institut des vérificateurs internes Canada

16 June 2008

BY FACSIMILE AND REGULAR MAIL

RECEIVED
JUN 17 2008
Ontario Securities Commission
SECRETARY'S OFFICE

Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Mr. Stevenson and Me Beaudoin:

Re : Written Submission on Proposed Materials – Proposed Repeal and Replacement of Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

Further to our written submission dated May 28, 2007 (copy attached) and to this new proposed version of the National Instrument 52-109 released on April 18, 2008, we are pleased to respond to the CSA's request for comments.

In our previous submission, we made several suggestions for enhancing the instrument and the companion policy to better provide the necessary guidance to reporting issuers. We are satisfied that one of our key recommendations was retained, i.e. that the issuers will be required to use a framework in the design of internal controls over financial reporting (ICFR). It recognizes the importance of such frameworks as the COSO, developed jointly by five preeminent organizations, including The Institute of Internal Auditors. As noted in our 2007 letter, the experience of our membership indicates that without a framework, the risk of inappropriate and inconsistent judgments significantly increases.

We are generally satisfied with the improvements made in this new release of NI 52-109, including the proposed new form of certificate for venture issuers (venture issuer basic certificate), recourse to the "material weakness" concept rather than "reportable deficiency", and the increased extent of guidance in the Companion Policy. However, we note that potential roles for Internal Audit remain absent from the policy itself and its companion policy.

In particular, section 7.5 of the Companion Policy refers to the use of external auditor or other third party without any reference to the most often sought after group of independent, objective professionals, to perform the task of evaluating operating effectiveness of controls: namely, internal auditors. Since internal auditors are mandated to review the internal controls of the organizations they serve, they are very knowledgeable about an issuer's business and operations, including the financial reporting

Phone/Téléphone: +1-450-671-2228 / Toll-free/Ligne sans frais: +1-888-671-2228 / Fax/Télécopieur: +1-450-671-4443
Canadian Web site/Site internet canadien: www.iiacanada.ca / Global Web Site/Site internet mondial: www.theiia.org

processes. Internal auditors have all the necessary knowledge, skills, information, and authority to evaluate the disclosure controls and procedures (DC&P) and the ICFR. An internal audit function preferably reporting to the Chair of the Audit Committee or of the Board of a corporation and following the Standards for the Professional Practice of Internal Auditing of The Institute of Internal Auditors is well positioned to provide the independence and objectivity sought by the certifying officers, the board, and the shareholders.

Also, we maintain that written reports from internal audit remain a key source of information on the control environment, especially management's attitude and approach to internal controls. This is one of the areas where internal audit can contribute the most in preventing another ICFR disaster and, consequently, it should be reflected in section **6.7 (3) Sources of information about the control environment** of the Companion Policy, as element (f) in the list, as suggested last year in our comment letter. This new item could read like this:
*(f) reports issued by the Internal Audit function regarding the issuer's controls, risk management and governance processes and, in particular, reports regarding the control environment, especially management's attitude and approach to internal controls.*

Please note that, where applicable, we maintain our other comments made in the 2007 letter in relation with the suggestions to include internal auditing in different sections of the Companion Policy.

**Additional specific comments on Companion Policy**

Definition of "material weakness":
While we commend the CSA for adopting this concept rather than the concept of "reportable deficiency", we note that "material weakness" has been defined solely regarding ICFR. Does the concept of a material weakness also apply to DC&P? We believe that it would help reporting issuers to provide more examples of what may constitute a material weakness and further guidance for determining whether a weakness is material.

Reference to "significant weakness" in section 10.1:
The term "significant weakness" is used within that section only in relation to the effectiveness of DC&P. No definition of the term "significant weakness", or guidance on how to determine whether a weakness is significant has been provided.

Proposed effective date:
Initial feed back received seems to indicate that meeting the proposed effective date of December 15, 2008 may be a challenge for some issuers, given that the final rule is going to be finalized late in the year.

Definition of self-assessment:
We recommend changing the definition of self-assessment as it does not exactly reflect what is self-assessment. Self-assessment is not typically defined as a walk through or reperformance of a control and is generally performed by an individual who is involved in operating the control. In fact, SEC guidance[1]

[1] See p. 28 footnote in *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*

includes a footnote on page 28 indicating that "COSO's 1992 framework defines self-assessments as "evaluations where persons responsible for a particular unit or function will determine the effectiveness of controls for their activities."

*Self-assessment is ~~a walk-through or reperformance of a control, or another procedure to analyze the operation of controls,~~ an evaluation performed by an individual who is ~~might or might not be~~ involved in designing or operating the control. ~~A self assessment could be done by personnel who operate the control or members of management who are not responsible for operating the control.~~ The evidence of operating effectiveness from self-assessment activities depends on the personnel involved and how the activities are conducted.*

*A self-assessment ~~performed by personnel who operate the control~~ would normally be supplemented with direct testing by individuals who are independent from the operation of the control being tested and who have an equal or higher level of authority. In these situations, direct testing of controls would be needed to corroborate evidence from the self-assessment since the self-assessment alone would not have a reasonable level of objectivity.*

*In some situations a certifying officer might perform a self-assessment and the certifying officer is involved in operating the control. Even if no other members of management independent from the operation of the control with equal or higher level of authority can perform direct testing, the certifying officer's self-assessment alone would normally provide sufficient evidence since the certifying officer signs the annual certificate.*

Further to these proposed changes to the definition of self-assessment, we suggest that the definition incorporates elements related to the level of risk (as proposed in the same SEC Guidance (page 29)). Self-assessment without direct testing by individuals who are independent from the operation of the control being tested is generally applicable in lower risk areas only.

We would very much appreciate an opportunity to discuss further the specifics of our views and recommendations.

Todd Horbasenko, CIA, CCSA
Chair, Canadian Council