

**5.1.2 Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings**

**MULTILATERAL INSTRUMENT 52-109  
CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS**

**Part 1 – Definitions and Application**

**1.1 Definitions** - In this Instrument,

“AIF” has the meaning ascribed to it in NI 51-102;

“annual certificate” means the certificate required to be filed pursuant to Part 2;

“annual filings” means the issuer’s AIF, if any, and annual financial statements and annual MD&A filed under provincial and territorial securities legislation for the most recently completed financial year, including for greater certainty all documents and information that are incorporated by reference in the AIF;

“annual financial statements” means the annual financial statements required to be filed under NI 51-102;

“Canadian GAAP” has the meaning ascribed to it in NI 52-107;

“disclosure controls and procedures” means controls and other procedures of an issuer that are designed to provide reasonable assurance that information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under provincial and territorial securities legislation is recorded, processed, summarized and reported within the time periods specified in the provincial and territorial securities legislation and include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in its annual filings, interim filings or other reports filed or submitted under provincial and territorial securities legislation is accumulated and communicated to the issuer’s management, including its chief executive officers and chief financial officers (or persons who perform similar functions to a chief executive officer or a chief financial officer), as appropriate to allow timely decisions regarding required disclosure;

“interim certificate” means the certificate required to be filed pursuant to Part 3;

“interim filings” means the issuer’s interim financial statements and interim MD&A filed under provincial and territorial securities legislation for the most recently completed interim period;

“interim financial statements” means the interim financial statements required to be filed under NI 51-102;

“interim period” has the meaning ascribed to it in NI 51-102;

“internal control over financial reporting” means a process designed by, or under the supervision of, the issuer’s chief executive officers and chief financial officers, or persons performing similar functions, and effected by the issuer’s board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer’s GAAP and includes those policies and procedures that:

- (a) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer,
- (b) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with the issuer’s GAAP, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer, and
- (c) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer’s assets that could have a material effect on the annual financial statements or interim financial statements;

“investment fund” has the meaning ascribed to it in NI 51-102;

“issuer’s GAAP” has the meaning ascribed to it in NI 52-107;

“MD&A” has the meaning ascribed to it in NI 51-102;

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“NI 52-107” means National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002, Pub.L. 107-204, 116 Stat. 745 (2002);

“SEDAR” means the computer system for the transmission, receipt, acceptance, review and dissemination of documents filed in electronic format known as the System for Electronic Document Analysis and Retrieval;

“subsidiary” has the meaning ascribed to it in Section 1590 of the CICA Handbook; and

“US GAAP” has the meaning ascribed to it in NI 52-107.

**1.2 Application** – This Instrument applies to all reporting issuers other than investment funds.

## **Part 2 – Certification of Annual Filings**

2.1 Every issuer must file a separate annual certificate, in Form 52-109F1, in respect of and personally signed by each person who, at the time of filing the annual certificate:

1. is a chief executive officer;
2. is a chief financial officer; and
3. in the case of an issuer that does not have a chief executive officer or chief financial officer, performs similar functions to a chief executive officer or a chief financial officer, as the case may be.

2.2 The annual certificates must be filed by the issuer separately but concurrently with the latest of the following:

1. if it files an AIF, the filing of its AIF; and
2. the filing of its annual financial statements and annual MD&A.

## **Part 3 - Certification of Interim Filings**

3.1 Every issuer must file for each interim period a separate interim certificate, in Form 52-109F2, in respect of and personally signed by each person who, at the time of the filing of the interim certificate:

1. is a chief executive officer;
2. is a chief financial officer; and
3. in the case of an issuer that does not have a chief executive officer or chief financial officer, performs similar functions to a chief executive officer or a chief financial officer, as the case may be.

3.2 The interim certificates must be filed by the issuer separately but concurrently with the filing of its interim filings.

## **Part 4 - Exemptions**

**4.1 Exemption for Issuers that Comply with U.S. Laws –**

- (1) Subject to subsection (4), an issuer is exempt from Part 2 with respect to the most recently completed financial year if:
  - (a) the issuer is in compliance with U.S. federal securities laws implementing the annual report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and
  - (b) the issuer’s signed certificates relating to its annual report for its most recently completed financial year are filed through SEDAR as soon as reasonably practicable after they are filed with the SEC.
- (2) Subject to subsection (5), an issuer is exempt from Part 3 with respect to the most recently completed interim period if:

- (a) the issuer is in compliance with U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and
  - (b) the issuer's signed certificates relating to its quarterly report for its most recently completed quarter are filed through SEDAR as soon as reasonably practicable after they are filed with the SEC.
- (3) An issuer is exempt from Part 3 with respect to the most recently completed interim period if:
- (a) the issuer furnishes to the SEC a current report on Form 6-K containing the issuer's quarterly financial statements and MD&A;
  - (b) the Form 6-K is accompanied by signed certificates that are furnished to the SEC in the same form required by U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and
  - (c) the signed certificates relating to the quarterly report filed under cover of the Form 6-K are filed through SEDAR as soon as reasonably practicable after they are furnished to the SEC.
- (4) Notwithstanding subsection 4.1(1), Part 2 of this Instrument applies to an issuer with respect to the most recently completed financial year if the issuer files annual financial statements prepared in accordance with Canadian GAAP, unless the issuer files those statements with the SEC in compliance with U.S. federal securities laws implementing the annual report certification requirements in section 302(a) of the Sarbanes-Oxley Act.
- (5) Notwithstanding subsection 4.1(2), Part 3 of this Instrument applies to an issuer with respect to the most recently completed interim period if the issuer files interim financial statements prepared in accordance with Canadian GAAP, unless the issuer files those statements with the SEC in compliance with U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act.

**4.2 Exemption for Foreign Issuers** – An issuer is exempt from the requirements in this Instrument so long as it qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, sections 5.4 and 5.5 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

**4.3 Exemption for Certain Exchangeable Security Issuers** – An issuer is exempt from the requirements in this Instrument so long as it qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, section 13.3 of NI 51-102.

**4.4 Exemption for Certain Credit Support Issuers** – An issuer is exempt from the requirements in this Instrument so long as it qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, section 13.4 of NI 51-102.

**4.5 General Exemption –**

- (1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

**Part 5 - Effective Date and Transition**

**5.1 Effective Date** - This Instrument comes into force on March 30, 2004.

**5.2 Transition –**

- (1) **Annual Certificates –**
  - (a) Subject to paragraph (1)(b), the provisions of this Instrument concerning annual certificates apply for financial years beginning on or after January 1, 2004.
  - (b) Notwithstanding Part 2 or paragraph (1)(a), an issuer may file annual certificates in Form 52-109FT1 in respect of any financial year ending on or before March 30, 2005.

(2) **Interim Certificates –**

- (a) Subject to paragraph (2)(b), the provisions of this Instrument concerning interim certificates apply for interim periods beginning on or after January 1, 2004.
- (b) Notwithstanding Part 3 or paragraph (2)(a), an issuer may file interim certificates in Form 52-109FT2 in respect of any interim period that occurs prior to the end of the first financial year in respect of which the issuer is required to file an annual certificate in Form 52-109F1.

**Form 52-109F1 - Certification of Annual Filings**

I, *identify the certifying officer, the issuer, and his or her position at the issuer*, certify that:

1. I have reviewed the annual filings (as this term is defined in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*) of *identify issuer* (the issuer) for the period ending *state the relevant date*;
2. Based on my knowledge, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the annual filings;
3. Based on my knowledge, the annual financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date and for the periods presented in the annual filings;
4. The issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal control over financial reporting for the issuer, and we have:
  - (a) designed such disclosure controls and procedures, or caused them to be designed under our supervision, to provide reasonable assurance that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the annual filings are being prepared;
  - (b) designed such internal control over financial reporting, or caused it to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP; and
  - (c) evaluated the effectiveness of the issuer's disclosure controls and procedures as of the end of the period covered by the annual filings and have caused the issuer to disclose in the annual MD&A our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by the annual filings based on such evaluation; and
5. I have caused the issuer to disclose in the annual MD&A any change in the issuer's internal control over financial reporting that occurred during the issuer's most recent interim period that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

Date: .....

\_\_\_\_\_  
[Signature]  
[Title]

**Form 52-109FT1 - Certification of Annual Filings during Transition Period**

I, *identify the certifying officer, the issuer, and his or her position at the issuer*, certify that:

1. I have reviewed the annual filings (as this term is defined in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*) of *identify issuer* (the issuer) for the period ending *state the relevant date*;
2. Based on my knowledge, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the annual filings; and
3. Based on my knowledge, the annual financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date and for the periods presented in the annual filings.

Date: .....

\_\_\_\_\_  
[Signature]  
[Title]

**Form 52-109F2 - Certification of Interim Filings**

I *identify the certifying officer, the issuer, and his or her position at the issuer*, certify that:

1. I have reviewed the interim filings (as this term is defined in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*) of *identify the issuer*, (the issuer) for the interim period ending *state the relevant date*;
2. Based on my knowledge, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings;
3. Based on my knowledge, the interim financial statements together with the other financial information included in the interim filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date and for the periods presented in the interim filings;
4. The issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal control over financial reporting for the issuer, and we have:
  - (a) designed such disclosure controls and procedures, or caused them to be designed under our supervision, to provide reasonable assurance that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the interim filings are being prepared; and
  - (b) designed such internal control over financial reporting, or caused it to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP; and
5. I have caused the issuer to disclose in the interim MD&A any change in the issuer's internal control over financial reporting that occurred during the issuer's most recent interim period that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

Date: .....

\_\_\_\_\_  
[Signature]  
[Title]

**Form 52-109FT2 - Certification of Interim Filings during Transition Period**

I *identify the certifying officer, the issuer, and his or her position at the issuer*, certify that:

1. I have reviewed the interim filings (as this term is defined in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*) of *identify the issuer*, (the issuer) for the interim period ending *state the relevant date*;
2. Based on my knowledge, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings; and
3. Based on my knowledge, the interim financial statements together with the other financial information included in the interim filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date and for the periods presented in the interim filings.

Date: .....

\_\_\_\_\_  
[Signature]

[Title]



**Companion Policy 52-109CP – To Multilateral Instrument 52-109  
Certification of Disclosure in Issuers' Annual and Interim Filings**

**Part 1 – General**

This Companion Policy provides information about how the provincial and territorial securities regulatory authorities interpret Multilateral Instrument 52-109, and should be read in conjunction with it.

**Part 2 – Form and Filing of Certificates**

The annual certificates and interim certificates must be filed in the exact language prescribed in Forms 52-109F1 and 52-109F2 (subject to Part 3 – Form of Certificates during Transition Period). Each certificate must be separately filed through SEDAR under the issuer's profile in the appropriate annual certificate or interim certificate filing type:

Category of Filing - Continuous Disclosure  
Folder for Filing Type - General

Filing Type - Annual Certificates

Document Type:

Form 52-109F1 - Certification of Annual Filings - CEO  
Form 52-109F1 - Certification of Annual Filings - CFO  
Form 52-109FT1 - Certification of Annual Filings - CEO  
Form 52-109FT1 - Certification of Annual Filings - CFO

or

Filing Type - Interim Certificates

Document Type:

Form 52-109F2 - Certification of Interim Filings - CEO  
Form 52-109F2 - Certification of Interim Filings - CFO  
Form 52-109FT2 - Certification of Interim Filings - CEO  
Form 52-109FT2 - Certification of Interim Filings - CFO

As indicated in Part 11, an issuer that is in compliance with U.S. federal securities laws implementing the certification requirements in section 302(a) of the Sarbanes-Oxley Act, may be able to rely upon the exemptions from the annual certificate and interim certificate requirements under section 4.1. To avail itself of these exemptions, an issuer must file through SEDAR the certificates of the chief executive officer and chief financial officer that the issuer filed with SEC as exhibits to the annual or quarterly reports with respect to the relevant reporting period. These certificates should be filed in the appropriate filing type described above.

An issuer relying on the exemptions in section 4.1 of the Instrument need not file the paper copies of the signed certificates that it filed with, or furnished to, the SEC.

**Part 3 – Certificates during Transition Period**

Section 5.2 provides for a transition period for the filing of both annual certificates and interim certificates.

Pursuant to section 2.1, an issuer is required to file its annual certificates in Form 52-109F1. Under subsection 5.2(1)(b), however, an issuer may file annual certificates in Form 52-109FT1 in respect of any financial year ending on or before March 30, 2005. Form 52-109FT1 does not require the certifying officers to make the representations set out in paragraphs 4 and 5 of Form 52-109F1 regarding the design of disclosure controls and procedures and internal control over financial reporting, the evaluation of the effectiveness of disclosure controls and procedures and any changes in the issuer's internal control over financial reporting.

Pursuant to section 3.1, an issuer is required to file its interim certificates in Form 52-109F2. Under subsection 5.2(2)(b), however, an issuer may file interim certificates in Form 52-109FT2 in respect of any interim period that occurs prior to the end of the first financial year in respect of which the issuer is required to file an annual certificate in Form 52-109F1. The representations set out in paragraphs 4 and 5 of Form 52-109F1 will serve as the basis for the corresponding representations set out in paragraphs 4 and 5 of Form 52-109F2.

Upon completion of the transition period, issuers must file annual certificates and interim certificates in Forms 52-109F1 and 52-109F2, respectively, which will include the representations in paragraph 4 of these forms. For further clarification, we do not

expect the representations in paragraph 4 to extend to the prior period comparative information included in the annual filings or interim filings if:

- (a) the prior period comparative information was previously the subject of certificates in Forms 52-109FT1 or 52-109FT2; or
- (b) the Instrument did not require an annual certificate or interim certificate in respect of the prior period to be filed.

For illustration purposes only, the table in Appendix A sets out the filing requirements for annual certificates and interim certificates of issuers with financial years beginning on the first day of a month.

#### **Part 4 – Persons Performing Functions Similar to a Chief Executive Officer and Chief Financial Officer**

Where an issuer does not have a chief executive officer or chief financial officer, each person who performs similar functions to a chief executive officer or chief financial officer must certify the annual filings and interim filings. It is left to the issuer's discretion to determine who those persons are. In the case of an income trust reporting issuer (as described in proposed National Policy 41-201 *Income Trusts and Other Indirect Offerings*) where executive management resides at the underlying business entity level or in an external management company, we would generally consider the chief executive officer or chief financial officer of the underlying business entity or the external management company to be persons performing functions in respect of the income trust similar to a chief executive officer or chief financial officer. In the case of a limited partnership reporting issuer with no chief executive officer or chief financial officer, we would generally consider the chief executive officer or chief financial officer of its general partner to be persons performing functions in respect of the limited partnership reporting issuer similar to a chief executive officer or chief financial officer.

#### **Part 5 – “New” Chief Executive Officers and Chief Financial Officers**

Chief executive officers and chief financial officers (or persons performing functions similar to a chief executive officer or chief financial officer) holding such offices at the time that annual certificates and interim certificates are required to be filed are the persons who must sign those certificates. Certifying officers are required to file annual certificates and interim certificates in the specified form (without any amendment) and failure to do so will be a breach of the Instrument.

Pursuant to paragraphs 4(a) and (b) of Forms 52-109F1 and 52-109F2, the certifying officers are required to represent that they have designed (or caused to be designed under their supervision) disclosure controls and procedures and internal control over financial reporting. There may be situations where an issuer's disclosure controls and procedures and internal control over financial reporting have been designed and implemented prior to the certifying officers assuming their respective offices. We recognize that in these situations the certifying officers may have difficulty in representing that they have designed or caused to be designed these controls and procedures. In our view, where:

- (a) disclosure controls and procedures and internal control over financial reporting have been designed and implemented prior to the certifying officers assuming their respective offices;
- (b) the certifying officers have reviewed the existing controls and procedures upon assuming their respective offices; and
- (c) the certifying officers have designed (or caused to be designed under their supervision) any modifications or enhancements to the existing controls and procedures determined to be necessary following their review,

the certifying officers will have designed (or caused to be designed under their supervision) these controls and procedures for the purposes of paragraphs 4(a) and (b) of Forms 52-109F1 and 52-109F2.

#### **Part 6 – Internal Control over Financial Reporting and Disclosure Controls and Procedures**

We believe that chief executive officers and chief financial officers should be required to certify that their issuers have adequate internal control over financial reporting and disclosure controls and procedures. We believe that this is an important factor in maintaining integrity in our capital markets and thereby enhancing investor confidence in our capital markets. The Instrument defines “disclosure controls and procedures” and “internal control over financial reporting”. The Instrument does not, however, prescribe the degree of complexity or any specific policies or procedures that must make up those controls and procedures. This is intentional. In our view, these considerations are best left to management's judgement based on various factors that may be particular to an issuer, including its size, the nature of its business and the complexity of its operations.

While there is a substantial overlap between the definition of disclosure controls and procedures and internal control over financial reporting, there are both some elements of disclosure controls and procedures that are not subsumed within the definition of internal control over financial reporting and some elements of internal control over financial reporting that are not subsumed within the definition of disclosure controls and procedures. For example, disclosure controls and procedures may

include those components of internal control over financial reporting that provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in accordance with the issuer's GAAP. However, some issuers may design their disclosure controls and procedures so that certain components of internal control over financial reporting pertaining to the accurate recording of transactions and disposition of assets or to the safeguarding of assets are not included.

### Part 7 – Evaluation of Effectiveness of Disclosure Controls and Procedures

Paragraph 4(c) of Form 52-109F1 requires the certifying officers to represent that they have evaluated the effectiveness of the issuer's disclosure controls and procedures and have caused the issuer to disclose in the annual MD&A their conclusions about the effectiveness of the disclosure controls and procedures based on such evaluation. The Instrument does not specify the contents of the certifying officers' report on its evaluation of disclosure controls and procedures; however, given that disclosure controls and procedures should be designed to provide, at a minimum, reasonable assurance of achieving their objectives, the report should set forth, at a minimum, the conclusions of the certifying officers as to whether the controls and procedures are, in fact, effective at the "reasonable assurance" level.

### Part 8 – Fair Presentation

Pursuant to the third paragraph in each of the annual certificates and interim certificates, the chief executive officer and chief financial officer must each certify that their issuer's financial statements and other financial information "fairly present" the financial condition of the issuer for the relevant time period. Those representations are not qualified by the phrase "in accordance with generally accepted accounting principles" which Canadian auditors typically include in their financial statement audit reports. This qualification has been specifically excluded from the Instrument to prevent management from relying entirely upon compliance with the issuer's GAAP in this representation, particularly where the issuer's GAAP financial statements may not reflect the financial condition of an issuer (since the issuer's GAAP does not always define all the components of an overall fair presentation).

The Instrument requires the certifying officers to certify that the financial statements (including prior period comparative financial information) *and the other financial information* included in the annual filings and interim filings fairly present the issuer's financial condition, results of operation and cash flows. The certification statement regarding the fair presentation of financial statements and other information is not limited to a representation that the financial statements and other financial information have been presented in accordance with the issuer's GAAP. We believe that this is appropriate as the certification is intended to provide assurances that the financial information disclosed in the annual filings and interim filings, viewed in their entirety, meets a standard of overall material accuracy and completeness that is broader than financial reporting requirements under GAAP. As a result, issuers are not entitled to limit the representation to Canadian GAAP, US GAAP or any other source of generally accepted accounting principles.

We do not believe that a formal definition of fair presentation is appropriate as it encompasses a number of qualitative and quantitative factors that may not be applicable to all issuers. In our view, fair presentation includes but is not necessarily limited to:

- selection of appropriate accounting policies
- proper application of appropriate accounting policies
- disclosure of financial information that is informative and reasonably reflects the underlying transactions
- inclusion of additional disclosure necessary to provide investors with a materially accurate and complete picture of financial condition, results of operations and cash flows

The concept of fair presentation as used in the annual certificates and interim certificates is not limited to compliance with the issuer's GAAP; however, it is not intended to permit an issuer to depart from the issuer's GAAP recognition and measurement principles in the preparation of its financial statements. In the event that an issuer is of the view that there are limitations to the issuer's GAAP based financial statements as an indicator of the issuer's financial condition, the issuer should provide additional disclosure in its MD&A necessary to provide a materially accurate and complete picture of the issuer's financial condition, results of operations and cash flows.

For additional commentary on what constitutes fair presentation we refer you to case law in this area. The leading U.S. case in this area is *U.S. v. Simon* (425 F.2d 796); the leading Canadian case in this area is the B.C. Court of Appeal decision in *Kripps v. Touche Ross and Co.* [1997] B.C.J. No. 968.

## Part 9 – Financial Condition

Pursuant to the third paragraph in each of the annual certificates and interim certificates, the chief executive officer and chief financial officer must each certify that their issuer's financial statements fairly present the financial condition of the issuer for the relevant time period. The Instrument does not formally define financial condition. The term "financial condition" in the annual certificates and interim certificates is intended to be used in the same manner as the term "financial condition" is used in The Canadian Institute of Chartered Accountants' MD&A Guidelines and NI 51-102. In our view, financial condition encompasses a number of qualitative and quantitative factors which would be difficult to enumerate in a comprehensive list applicable to all issuers. Financial condition of an issuer includes, without limitation, considerations such as:

- liquidity
- solvency
- capital resources
- overall financial health of the issuer's business
- current and future considerations, events, risks or uncertainties that might impact the financial health of the issuer's business

## Part 10 – Consolidation

Issuers are required to prepare their financial statements on a consolidated basis under the issuer's GAAP. As a result the representations in paragraphs 2 and 3 of the certification will extend to consolidated financial statements. In addition, when the certifying officers provide these two representations, we expect that these representations will indicate that their issuers' disclosure controls and procedures provide reasonable assurance that material information relating to their issuers *and their consolidated subsidiaries* is made known to them.

We are of the view that regardless of the level of control that an issuer has over a consolidated subsidiary, management of the issuer has an obligation to present consolidated disclosure that includes a fair presentation of the financial condition of the subsidiary. An issuer needs to maintain adequate internal control over financial reporting and disclosure controls and procedures to accomplish this. In the event that a chief executive officer or chief financial officer is not satisfied with his or her issuer's controls and procedures insofar as they relate to consolidated subsidiaries, the chief executive officer or chief financial officer should cause the issuer to disclose in its MD&A his or her concerns regarding such controls and procedures.

An issuer's financial results and MD&A may consolidate those of a subsidiary which is also a reporting issuer. In those circumstances, it is left to the business judgment of the certifying officers of the issuer to determine the level of due diligence required in respect of the consolidated subsidiary in order to provide the issuer's certification.

## Part 11 – Exemptions

The exemptions in section 4.1 of the Instrument are based on our view that the investor confidence aims of the Instrument do not justify requiring issuers to comply with the certification requirements in the Instrument if such issuers already comply with substantially similar requirements in the U.S.

As a condition to being exempt from the annual certificate and interim certificate requirements under subsections 4.1(1) and (2) respectively, issuers must file through SEDAR the certificates of the chief executive officer and chief financial officer that they filed with the SEC in compliance with its rules implementing the certification requirements prescribed in section 302(a) of the Sarbanes-Oxley Act.

Pursuant to NI 52-107 certain Canadian issuers are able to satisfy their requirements to file financial statements prepared in accordance with Canadian GAAP by filing statements prepared in accordance with US GAAP. However, it is possible that some Canadian issuers may still continue to prepare two sets of financial statements and continue to file their Canadian GAAP statements in the applicable jurisdictions. In order to ensure that the Canadian GAAP financial statements are certified (pursuant to either the Sarbanes-Oxley Act or the Instrument) those issuers will not have recourse to the exemptions in subsections 4.1(1) and (2).

## Part 12 – Liability for False Certification

An officer providing a false certification potentially could be subject to quasi-criminal, administrative or civil proceedings under securities law.

Officers providing a false certification could also potentially be subject to private actions for damages either at common law or, in Québec, under civil law, or under the *Securities Act* (Ontario) when amendments which create statutory civil liability for misrepresentations in continuous disclosure are proclaimed in force. The liability standard applicable to a document required to be filed with the Ontario Securities Commission, including an annual certificate or interim certificate, will depend on whether the document is a “core” document as defined under Part XXIII.1 of the *Securities Act* (Ontario). Annual certificates and interim certificates are currently not included in the definition of “core document” but would be caught by the definition of “document”.

In any action commenced under Part XXIII.1 of the *Securities Act* (Ontario) a court has the discretion to treat multiple misrepresentations having common subject matter or content as a single misrepresentation. This provision could permit a court in appropriate cases to treat a misrepresentation in an issuer’s financial statements and a misrepresentation made by an officer in an annual certificate or interim certificate that relate to the underlying financial statements as a single misrepresentation.

**Appendix A – Annual Certificate and Interim Certificate Filing Requirements**

For illustration purposes only, the following table sets out the filing requirements for annual certificates and interim certificates for issuers with financial years beginning on the first day of a month.

Financial Year Beginning On	Financial Period	Annual Certificate Required	Interim Certificate Required	Form of Certificate <sup>1</sup>
<b>January 1</b> <b>(i.e. year end of December 31)</b>	Financial year January 1, 2003 to December 31, 2003	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>
	Interim period January 1, 2004 to March 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate <sup>2</sup>
	Interim period April 1, 2004 to June 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period July 1, 2004 to September 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year January 1, 2004 to December 31, 2004	Yes	Not Applicable	"Bare" Annual Certificate <sup>3</sup>
	Interim period January 1, 2005 to March 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate <i>(If an issuer voluntarily filed its annual certificate for financial year January 1, 2004 to December 31, 2004 as a "Full" Annual Certificate<sup>4</sup>, the issuer should file its interim certificate as a "Full" Interim Certificate.<sup>5</sup>)</i>
	Interim period April 1, 2005 to June 30, 2005	Not Applicable	Yes	"Bare" Interim Certificate <i>(If an issuer voluntarily filed its annual certificate for financial year January 1, 2004 to December 31, 2004 as a "Full" Annual Certificate, the issuer should file its interim certificate as a "Full" Interim Certificate.)</i>
	Interim period July 1, 2005 to September 30, 2005	Not Applicable	Yes	"Bare" Interim Certificate <i>(If an issuer voluntarily filed its annual certificate for financial year January 1, 2004 to December 31, 2004 as a "Full" Annual Certificate, the issuer should file its interim certificate as a "Full" Interim Certificate.)</i>

<sup>1</sup> Where the form requirement specified is a "bare" annual certificate, issuers may voluntarily choose to file a "full" annual certificate. Where the form requirement specified is a "bare" interim certificate, issuers may voluntarily choose to file a "full" interim certificate.

<sup>2</sup> For the purposes of Appendix A, "bare" interim certificate" means a certificate in Form 52-109FT2.

<sup>3</sup> For the purposes of Appendix A, "bare" annual certificate" means a certificate in Form 52-109FT1.

<sup>4</sup> For the purposes of Appendix A, "full" annual certificate" means a certificate in Form 52-109F1.

<sup>5</sup> For the purposes of Appendix A, "full" interim certificate" means a certificate in Form 52-109F2.

Financial Year Beginning On	Financial Period	Annual Certificate Required	Interim Certificate Required	Form of Certificate <sup>1</sup>
	Financial year January 1, 2005 to December 31, 2005 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate
	Interim period January 1, 2006 to March 31, 2006 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate
<b>February 1</b> <b>(i.e. year end of January 31)</b>	Financial year February 1, 2003 to January 31, 2004	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>
	Interim period February 1, 2004 to April 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period May 1, 2004 to July 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period August 1, 2004 to October 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year February 1, 2004 to January 31, 2005	Yes	Not Applicable	"Bare" Annual Certificate
	Interim period February 1, 2005 to April 30, 2005	Not Applicable	Yes	"Bare" Interim Certificate <i>(If an issuer voluntarily filed its annual certificate for financial year February 1, 2004 to January 31, 2005 as a "Full" Annual Certificate, the issuer should file its interim certificate as a "Full" Interim Certificate.)</i>
	Interim period May 1, 2005 to July 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate <i>(If an issuer voluntarily filed its annual certificate for financial year February 1, 2004 to January 31, 2005 as a "Full" Annual Certificate, the issuer should file its interim certificate as a "Full" Interim Certificate.)</i>
	Interim period August 1, 2005 to October 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate <i>(If an issuer voluntarily filed its annual certificate for financial year February 1, 2004 to January 31, 2005 as a "Full" Annual Certificate, the issuer should file its interim certificate as a "Full" Interim Certificate.)</i>
	Financial year February 1, 2005 to January 31, 2006 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate

Financial Year Beginning On	Financial Period	Annual Certificate Required	Interim Certificate Required	Form of Certificate <sup>1</sup>
	Interim period February 1, 2006 to April 30, 2006 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate
<b>March 1</b> <b>(i.e. year end of February 28/29)</b>	Interim period September 1, 2003 to November 30, 2003	Not Applicable	No	<i>The Instrument does not apply to interim periods beginning before January 1, 2004.</i>
	Financial year March 1, 2003 to February 29, 2004	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>
	Interim period March 1, 2004 to May 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period June 1, 2004 to August 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period September 1, 2004 to November 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year March 1, 2004 to February 28, 2005	Yes	Not Applicable	"Bare" Annual Certificate
	Interim period March 1, 2005 to May 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate <i>(If an issuer voluntarily filed its annual certificate for financial year March 1, 2004 to February 28, 2005 as a "Full" Annual Certificate, the issuer should file its interim certificate as a "Full" Interim Certificate.)</i>
	Interim period June 1, 2005 to August 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate <i>(If an issuer voluntarily filed its annual certificate for financial year March 1, 2004 to February 28, 2005 as a "Full" Annual Certificate, the issuer should file its interim certificate as a "Full" Interim Certificate.)</i>
	Interim period September 1, 2005 to November 30, 2005	Not Applicable	Yes	"Bare" Interim Certificate <i>(If an issuer voluntarily filed its annual certificate for financial year March 1, 2004 to February 28, 2005 as a "Full" Annual Certificate, the issuer should file its interim certificate as a "Full" Interim Certificate.)</i>
Financial year March 1, 2005 to February 28, 2006 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate	



Financial Year Beginning On	Financial Period	Annual Certificate Required	Interim Certificate Required	Form of Certificate <sup>1</sup>
	Interim period March 1, 2006 to May 31, 2006 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate
<b>April 1</b> <b>(i.e. year end of March 31)</b>	Interim period October 1, 2003 to December 31, 2003	Not Applicable	No	<i>The Instrument does not apply to interim periods beginning before January 1, 2004.</i>
	Financial year April 1, 2003 to March 31, 2004	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>
	Interim period April 1, 2004 to June 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period July 1, 2004 to September 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period October 1, 2004 to December 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year April 1, 2004 to March 31, 2005 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate
	Interim period April 1, 2005 to June 30, 2005 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate
<b>May 1</b> <b>(i.e. year end of April 30)</b>	Interim period November 1, 2003 to January 31, 2004	Not Applicable	No	<i>The Instrument does not apply to interim periods beginning before January 1, 2004.</i>
	Financial year May 1, 2003 to April 30, 2004	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>
	Interim period May 1, 2004 to July 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period August 1, 2004 to October 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period November 1, 2004 to January 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year May 1, 2004 to April 30, 2005 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate

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Financial Year Beginning On	Financial Period	Annual Certificate Required	Interim Certificate Required	Form of Certificate <sup>1</sup>
	Interim period May 1, 2005 to July 31, 2005 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate
<b>June 1</b> (i.e. year end of May 31)	Interim period September 1, 2003 to November 30, 2003	Not Applicable	No	<i>The Instrument does not apply to interim periods beginning before January 1, 2004.</i>
	Interim period December 1, 2003 to February 29, 2004	Not Applicable	No	<i>The Instrument does not apply to interim periods beginning before January 1, 2004.</i>
	Financial year June 1, 2003 to May 31, 2004	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>
	Interim period June 1, 2004 to August 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period September 1, 2004 to November 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period December 1, 2004 to February 28, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year June 1, 2004 to May 31, 2005 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate
	Interim period June 1, 2005 to August 31, 2005 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate
<b>July 1</b> (i.e. year end of June 30)	Interim period October 1, 2003 to December 31, 2003	No	Not Applicable	<i>The Instrument does not apply to interim periods beginning before January 1, 2004</i>
	Interim period January 1, 2004 to March 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year July 1, 2003 to June 30, 2004	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004</i>
	Interim period July 1, 2004 to September 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period October 1, 2004 to December 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period January 1, 2005 to March 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate

Financial Year Beginning On	Financial Period	Annual Certificate Required	Interim Certificate Required	Form of Certificate <sup>1</sup>
	Financial year July 1, 2004 to June 30, 2005 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate
	Interim period July 1, 2005 to September 30, 2005 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate
<b>August 1</b> <b>(i.e. year end of July 31)</b>	Interim period November 1, 2003 to January 31, 2004	Not Applicable	No	<i>The Instrument does not apply to interim periods beginning before January 1, 2004.</i>
	Interim period February 1, 2004 to April 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year August 1, 2003 to July 31, 2004	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>
	Interim period August 1, 2004 to October 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period November 1, 2004 to January 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period February 1, 2005 to April 30, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year August 1, 2004 to July 31, 2005 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate
	Interim period August 1, 2005 to October 31, 2005 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate
<b>September 1</b> <b>(i.e. year end of August 31)</b>	Interim period September 1, 2003 to November 30, 2003	Not Applicable	No	<i>The Instrument does not apply to interim periods beginning before January 1, 2004.</i>
	Interim period December 1, 2003 to February 29, 2004	Not Applicable	No	<i>The Instrument does not apply to interim periods beginning before January 1, 2004.</i>
	Interim period March 1, 2004 to May 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year September 1, 2003 to August 31, 2004	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>

Financial Year Beginning On	Financial Period	Annual Certificate Required	Interim Certificate Required	Form of Certificate <sup>1</sup>
	Interim period September 1, 2004 to November 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period December 1, 2004 to February 28, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period March 1, 2005 to May 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year September 1, 2004 to August 31, 2005 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate
	Interim period September 1, 2005 to November 30, 2005 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate
<b>October 1</b> <b>(i.e. year end of September 30)</b>	Interim period October 1, 2003 to December 31, 2003	Not Applicable	No	<i>The Instrument does not apply to interim periods beginning before January 1, 2004.</i>
	Interim period January 1, 2004 to March 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period April 1, 2004 to June 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year October 1, 2003 to September 30, 2004	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>
	Interim period October 1, 2004 to December 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period January 1, 2005 to March 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period April 1, 2005 to June 30, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year October 1, 2004 to September 30, 2005 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate
	Interim period October 1, 2005 to December 31, 2005 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate

Financial Year Beginning On	Financial Period	Annual Certificate Required	Interim Certificate Required	Form of Certificate <sup>1</sup>
<b>November 1</b> <b>(i.e. year end of October 31)</b>	Financial year November 1, 2002 to October 31, 2003	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>
	Interim period November 1, 2003 to January 31, 2004	Not Applicable	No	<i>The Instrument does not apply to interim periods beginning before January 1, 2004.</i>
	Interim period February 1, 2004 to April 30, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period May 1, 2004 to July 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year November 1, 2003 to October 31, 2004	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>
	Interim period November 1, 2004 to January 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period February 1, 2005 to April 30, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period May 1, 2005 to July 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year November 1, 2004 to October 31, 2005 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate
	Interim period November 1, 2005 to January 31, 2006 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate
<b>December 1</b> <b>(i.e. year end of November 30)</b>	Financial year December 1, 2002 to November 30, 2003	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>
	Interim period December 1, 2003 to February 29, 2004	Not Applicable	No	<i>The Instrument does not apply to interim periods beginning before January 1, 2004.</i>
	Interim period March 1, 2004 to May 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period June 1, 2004 to August 31, 2004	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year December 1, 2003 to November 30, 2004	No	Not Applicable	<i>The Instrument does not apply to financial years beginning before January 1, 2004.</i>

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<b>Financial Year Beginning On</b>	<b>Financial Period</b>	<b>Annual Certificate Required</b>	<b>Interim Certificate Required</b>	<b>Form of Certificate<sup>1</sup></b>
	Interim period December 1, 2004 to February 28, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period March 1, 2005 to May 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Interim period June 1, 2005 to August 31, 2005	Not Applicable	Yes	"Bare" Interim Certificate
	Financial year December 1, 2004 to November 30, 2005 and each successive financial year	Yes	Not Applicable	"Full" Annual Certificate
	Interim period December 1, 2005 to February 28, 2006 and each successive interim period	Not Applicable	Yes	"Full" Interim Certificate