

## Chapter 6

# Request for Comments

---

---

### 6.1.1 Notice and Request for Comments - Proposed Repeal and Replacement of MI 52-109, Forms 52-109F1, 52-109FT1, 52-109F2 and 52-109FT2, and Companion Policy 52-109CP *Certification of Disclosure in Issuers' Annual and Interim Filings*

#### NOTICE AND REQUEST FOR COMMENTS

#### PROPOSED REPEAL AND REPLACEMENT OF MULTILATERAL INSTRUMENT 52-109, FORMS 52-109F1, 52-109FT1, 52-109F2 AND 52-109FT2 AND COMPANION POLICY 52-109CP *CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS*

#### 1. PURPOSE OF NOTICE

We, the Canadian Securities Administrators (CSA), are publishing for a 90-day comment period the following documents:

- National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Proposed Instrument);
- Forms 52-109F1, 52-109FMP1, 52-109FM1, 52-109F1 – IPO/RTO, 52-109F1R, 52-109F1 – AIF, 52-109F2, 52-109F2 – IPO/RTO and 52-109F2R (together, the Proposed Forms); and
- Companion Policy 52-109CP (the Proposed Policy, and together with the Proposed Instrument and the Proposed Forms, the Proposed Materials).

In jurisdictions other than British Columbia, the Proposed Materials represent a republication of the previously proposed internal control reporting requirements that CSA members other than British Columbia originally published for comment on February 4, 2005.

The Proposed Materials reflect the proposed approach for additional provisions relating to internal control over financial reporting (ICFR) described in CSA Notice 52-313 *Status of Proposed Multilateral Instrument 52-111 Reporting on Internal Control Over Financial Planning and Proposed Amended and Restated Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings* (CSA Notice 52-313), released on March 10, 2006. We propose to require management to evaluate an issuer's ICFR and provide MD&A disclosure about their conclusions about the effectiveness of ICFR based on such evaluation. We do not propose requiring an issuer to obtain from its auditor an internal control audit opinion concerning management's assessment of the effectiveness of ICFR. We think our proposal will balance the costs and benefits associated with internal control reporting requirements, while increasing management's focus on, and accountability for, the quality of ICFR.

The Proposed Materials would replace the following documents currently in effect:

- Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Current Instrument);
- Forms 52-109F1, 52-109FT1, 52-109F2 and 52-109FT2 (together, the Current Forms); and
- Companion Policy 52-109CP to the Current Instrument (together with the Current Instrument and Current Forms, the Current Materials).

The Current Instrument came into force in all CSA jurisdictions except British Columbia, Quebec and New Brunswick on March 30, 2004. The Current Instrument came into force in Quebec on June 30, 2005, in New Brunswick on July 28, 2005, and in British Columbia on September 19, 2005.

#### 2. OUTLINE OF NOTICE

1. Purpose of notice
2. Outline of notice

3. Publishing jurisdictions
4. Background
5. Summary of changes in the Proposed Instrument and Proposed Forms
6. Summary of additional guidance included in the Proposed Policy
7. Related instruments
8. Authority – Ontario
9. Summary of written comments received by the CSA
10. Alternatives considered
11. Reliance on unpublished studies, etc.
12. Withdrawal of notice
13. Comments
14. Questions

Appendices

- Appendix A Summary of proposed changes to the Previously Proposed Modification of the Instrument and Previously Proposed Modification of Forms
- Appendix B List of commenters
- Appendix C Summary of comments

**3. PUBLISHING JURISDICTIONS**

The Proposed Materials are initiatives of the securities regulatory authorities in all Canadian jurisdictions. If adopted, the Proposed Instrument and the Proposed Forms are expected to be adopted as:

- a rule in each of British Columbia, Alberta, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador;
- a Commission regulation in Saskatchewan;
- a policy in each of Prince Edward Island and Yukon; and
- a code in each of the Northwest Territories and Nunavut.

We expect that the Proposed Policy, if adopted, will be adopted as a policy in all Canadian jurisdictions.

**4. BACKGROUND**

**Current certification requirements**

The Current Materials require an issuer's chief executive officer (CEO) and chief financial officer (CFO), or persons performing similar functions to a CEO or CFO (certifying officers), to personally certify that, among other things:

- the issuer's annual filings and interim filings do not contain any misrepresentations;
- the financial statements and other financial information in the annual filings and interim filings fairly present the financial condition, results of operations and cash flows of the issuer;
- they have designed disclosure controls and procedures (DC&P) and ICFR (or caused them to be designed under their supervision);

- they have evaluated the effectiveness of the issuer's DC&P and caused the issuer to disclose the conclusions about their evaluation in the issuer's MD&A; and
- they have caused the issuer to disclose certain changes in ICFR in the issuer's MD&A.

**Previously proposed internal control reporting requirements**

On February 4, 2005, members of the CSA, other than British Columbia, published for comment the following documents:

- Multilateral Instrument 52-111 *Reporting on Internal Control over Financial Reporting* (the Previously Proposed Internal Control Instrument);
- Companion Policy 52-111CP;
- Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Previously Proposed Modification of the Instrument);
- Forms 52-109F1, 52-109FVT1, 52-109FM1, 52-109F1R, 52-109F1R – AIF, 52-109F2, 52-109FT2, 52-109FM2 and 52-109F2R (together, the Previously Proposed Modification of Forms); and
- Companion Policy 52-109CP.

Together, the Previously Proposed Internal Control Reporting Requirements.

The Previously Proposed Internal Control Instrument, as it was published for comment, was substantially similar to the requirements of section 404 of the *Sarbanes-Oxley Act of 2002* (the Sox 404 Rules). The Previously Proposed Internal Control Instrument would have required management of issuers other than venture issuers and investment funds to evaluate the effectiveness of the issuer's ICFR, as at the end of the issuer's financial year, against a suitable framework. In addition, it proposed requirements for an issuer other than a venture issuer or investment fund to file the following with the securities regulatory authorities:

- a report of management on its assessment of the effectiveness of the issuer's ICFR, including statements as to the effectiveness of the issuer's ICFR; and
- a report of the issuer's auditor prepared in accordance with the CICA's auditing standard for internal control audit engagements.

The British Columbia Securities Commission did not publish the Previously Proposed Internal Control Reporting Requirements for comment. It published and sought comment on its views on internal control reporting requirements under BCN 2005/08 *BCSC Comments on Proposed Multilateral Instrument 52-111*.

**Decision not to proceed with Previously Proposed Internal Control Reporting Requirements**

On March 10, 2006, we issued CSA Notice 52-313 updating market participants on the status of proposed requirements relating to ICFR. After extensive review and consultation, and in view of recent developments, particularly the delays and the debate underway in the U.S. over the implementation of the Sox 404 Rules, we decided not to proceed with the Previously Proposed Internal Control Reporting Requirements.

Instead, CSA Notice 52-313 proposed an approach for additional provisions relating to ICFR that is the basis for the Proposed Materials. Key features of this approach, as communicated in the notice, are the following:

- the certifying officers will be required to certify in their annual certificates that they have evaluated the effectiveness of the issuer's ICFR at the financial year end. They will also be required to certify that they have caused the issuer to disclose in its annual MD&A their conclusions about the effectiveness of ICFR at the financial year end based on their evaluation;
- the issuer's annual MD&A will include disclosure about its ICFR. This disclosure will include a description of the process for evaluating the effectiveness of the issuer's ICFR and the conclusions about the effectiveness of ICFR at the financial year end;
- the requirements will apply to all reporting issuers, other than investment funds, in all Canadian jurisdictions; and

- an issuer will not be required to obtain from its auditor an audit opinion concerning management's assessment of the effectiveness of ICFR.

The Current Materials continue to be in force in all jurisdictions. If the Proposed Materials are adopted, they will repeal and replace the Current Materials.

### Recent developments in U.S. relating to internal control reporting requirements

In December 2006, the U.S. Securities Exchange Commission (SEC) published for comment its proposed interpretive guidance for management regarding its evaluation of ICFR entitled *Management's Report on Internal Control over Financial Reporting*. The proposed guidance focuses companies on (i) controls necessary for the prevention or detection of material misstatements in the financial statements and (ii) performing their evaluation in accordance with a risk-based approach. The principles-based approach emphasizes the use of judgment and provides additional guidance in the following areas:

- identifying financial reporting risks and controls;
- evaluating evidence of the operating effectiveness of ICFR;
- reporting on the overall results of management's evaluation; and
- documentation.

Also in December 2006, the Public Company Accounting Oversight Board (PCAOB) published for comment its proposed auditing standard *An Audit of Internal Control Over Financial Reporting That Is Integrated with an Audit of Financial Statements* to supersede its existing Auditing Standard No. 2. The proposed standard is designed to focus the auditor on the matters most important to internal control, eliminate unnecessary procedures, simplify and shorten the standard by reducing detail and make the audit more scalable for smaller and less complex companies.

The comment periods on both the SEC and PCAOB proposals ended on February 26, 2007.

## 5. SUMMARY OF CHANGES IN THE PROPOSED INSTRUMENT AND PROPOSED FORMS

### Significant proposed amendments

The most significant proposed changes to the Current Instrument, as reflected in the Proposed Instrument, are as follows:

- Part 1 includes a definition of "reportable deficiency" which means a deficiency, or combination of deficiencies, in the design or operation of one or more controls that would cause a reasonable person to doubt that the design or operation of ICFR provides reasonable assurance regarding the reliability of financial reporting or the preparation of financial statements for external purposes in accordance with the issuer's generally accepted accounting principles (GAAP). We developed this term to link the concept of reasonable doubt with the existing definition of ICFR, which incorporates a standard of reasonableness in assessing the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP. Any deficiency that is determined to be a reportable deficiency will be required to be disclosed in an issuer's MD&A.
- Part 2 requires an issuer to cause its certifying officers to design or supervise the design of DC&P and ICFR.
- Despite the preceding requirement, if a venture issuer cannot reasonably remediate a reportable deficiency relating to design, it must disclose in its MD&A:
  - the reportable deficiency;
  - why the issuer cannot reasonably remediate the reporting deficiency;
  - the risks the issuer faces relating to the reportable deficiency; and
  - whether the issuer has mitigated those risks and if so, how.

This provision is referred to as the "ICFR design accommodation".

- Despite the requirement that an issuer cause its certifying officers to design or supervise the design of DC&P and ICFR, an issuer may cause its certifying officers to limit the scope of their design of DC&P and ICFR to exclude controls, policies and procedures carried out by:

- a proportionately consolidated entity in which the issuer has an interest;
- a variable interest entity in which the issuer has an interest; or
- a business that the issuer acquired not more than 90 days before the end of the period to which the certificate relates.

If the scope of the issuer's design is limited due to any of these circumstances the issuer must disclose in its MD&A the scope limitation and summary financial information of the proportionately consolidated entity, variable interest entity or acquired business that has been proportionately consolidated or consolidated in the issuer's financial statements.

- Part 3 permits certifying officers to file an annual certificate in Form 52-109F1 – IPO/RTO if the issuer's first annual period (i) following its IPO ends on or before the 90<sup>th</sup> day after it became a reporting issuer, or (ii) in certain circumstances, ends on or before the 90<sup>th</sup> day after completion of a reverse takeover involving the issuer. This form permits certifying officers to exclude certifications relating to ICFR.
- Part 4 permits certifying officers to file an interim certificate in Form 52-109F2 – IPO/RTO if the issuer's first interim period (i) following its IPO ends on or before the 90<sup>th</sup> day after it became a reporting issuer, or (ii) in certain circumstances, ends on or before the 90<sup>th</sup> day after completion of a reverse takeover involving the issuer. This form permits certifying officers to exclude certifications relating to ICFR.

The most significant proposed changes to the Current Forms, as reflected in the Proposed Forms, are as follows:

- We have expanded the full annual certificate to include the following representations:
  - The certifying officers have evaluated, or caused to be evaluated under their supervision, the effectiveness of the issuer's ICFR as of the financial year end and the issuer has disclosed in its annual MD&A:
    - the certifying officers' conclusions about the effectiveness of ICFR at the financial year end based on such evaluation;
    - a description of the process they used to evaluate the effectiveness of ICFR;
    - a description of any reportable deficiency relating to operation of ICFR existing at the financial year end; and
    - the issuer's plans, if any, to remediate any such reportable deficiency relating to operation of ICFR.
  - 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.
  - If applicable, the issuer has disclosed in its annual MD&A, for any reportable deficiency relating to design of ICFR that existed at the financial year end:
    - a description of the reportable deficiency;
    - a description of the remediation plan to address the reportable deficiency; and
    - the completion date or expected completion date of the remediation plan.
  - If applicable, the issuer has disclosed in its annual MD&A the disclosure relating to the ICFR design accommodation.
  - If applicable, the issuer has disclosed in its annual MD&A (i) any limitation in the scope of the certifying officers' design of DC&P and ICFR for a proportionately consolidated investment, variable interest entity or business that the issuer acquired, and (ii) summary financial information of the proportionately consolidated entity, variable interest entity or acquired business that has been proportionately consolidated or consolidated in the issuer's financial statements.
  - Based on their most recent evaluation of ICFR, the issuer's certifying officers have disclosed to the issuer's auditors, the board of directors and audit committee of the board of directors any fraud that involves management or other employees who have a significant role in the issuer's ICFR.

## Request for Comments

---

- We have expanded the full interim certificate to include representations relating to the design of DC&P and ICFR that are also included in the full annual certificate, as described above.
- New certificate forms will apply in the following situations:
  - when an issuer refiles its annual or interim financial statements, annual or interim MD&A or AIF; and
  - when a venture issuer voluntarily files an AIF after it has filed its annual financial statements and MD&A.

Appendix A presents a summary of proposed changes to the Previously Proposed Modification of the Instrument and Previously Proposed Modification of Forms as reflected in the Proposed Materials.

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

### **Proposed effective date**

The proposed effective date of the Proposed Instrument, which will apply to all reporting issuers other than investment funds, is June 30, 2008. Since all issuers other than investment funds must certify the design of ICFR for financial years ending after June 29, 2006, issuers will have significant time between the certification of design and the certification of the evaluation of the effectiveness of ICFR to complete the evaluation. As a result, we believe issuers will have adequate time to prepare for and complete an evaluation of their ICFR.

### **6. SUMMARY OF ADDITIONAL GUIDANCE INCLUDED IN THE PROPOSED POLICY**

We have significantly expanded the Proposed Policy to assist issuers and advisors in understanding how to interpret and apply certain provisions of the Proposed Instrument. The proposed guidance includes the following:

- A list of available control frameworks that might provide certifying officers with a useful reference when designing or evaluating the effectiveness of ICFR.
- Considerations for the design of DC&P and ICFR, including:
  - the use of a top-down, risk-based approach;
  - the importance of developing and maintaining a control environment as the foundation upon which all other components of DC&P and ICFR are based;
  - the components that should generally be included in the design of DC&P and ICFR;
  - the key features of ICFR and related design challenges; and
  - the extent and form of documentation to support the certifying officers’ design of DC&P and ICFR.
- Considerations for the evaluation of DC&P and ICFR, including:

- the evaluation tools that certifying officers might use to perform their DC&P and ICFR evaluations; and
- the extent of documentation to support the certifying officers' evaluations of DC&P and ICFR.
- Guidance for determining whether a reportable deficiency exists.
- A discussion of the role of directors and audit committees in relation to DC&P and ICFR.
- A discussion of the effect on an issuer's DC&P and ICFR of various types of investments including subsidiaries, variable interest entities, proportionately consolidated entities, equity investments and portfolio investments.
- A discussion of the effect on an issuer's DC&P and ICFR of a recent acquisition of a business.

***Specific requests for comment***

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

**7. RELATED INSTRUMENTS**

The Proposed Materials are related to:

- National Instrument 51-102 *Continuous Disclosure Obligations*;
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;
- National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;
- National Instrument 52-108 *Auditor Oversight*; and
- Multilateral Instrument 52-110 *Audit Committees* and BC Instrument 52-509 *Audit Committees*.

**8. AUTHORITY – ONTARIO**

The following provisions of the *Securities Act* (Ontario) (the Act) provide the Ontario Securities Commission (the Commission) with authority to adopt the Proposed Materials:

- Paragraph 143(1) 10 authorizes the Commission to make rules prescribing requirements in respect of the books, records and other documents required by subsection 19(1) of the Act to be kept by market participants, including the form in which and the period for which the books, records and other documents are to be kept;
- Paragraph 143(1) 22 authorizes the Commission to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act;
- Paragraph 143(1) 24 authorizes the Commission make rules requiring issuers or other persons to comply, in whole or in part, with the continuous disclosure filing requirements;
- Paragraph 143(1) 25 authorizes the Commission to make rules prescribing requirements in respect of financial accounting, reporting and auditing for the purposes of the Act, the regulations and the rules;
- Paragraph 143(1) 39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including financial statements, proxies and information circulars;
- Paragraph 143(1) 39.1 authorizes the Commission to make rules governing the approval of any document described in paragraph 143(1) 39 of the Act;

- Paragraphs 143(1) 58 and 59 authorize the Commission to make rules requiring reporting issuers to devise and maintain systems of DC&P and internal controls, the effectiveness and efficiency of their operations, including financial reporting and assets control; and
- Paragraphs 143(1) 60 and 61 authorize the Commission to make rules requiring chief executive officers and chief financial officers of reporting issuers to provide certification relating to the establishment, maintenance and evaluation of the systems of DC&P and internal controls.

#### 9. SUMMARY OF WRITTEN COMMENTS RECEIVED BY THE CSA

The Previously Proposed Internal Control Requirements were published for 90-day comment on February 4, 2005. On May 27, 2005 this comment period was extended for an additional 26 days to June 30, 2005.

During the comment period, we received submissions from 64 commenters. We have considered the comments received and thank all the commenters. The names of the commenters are contained in Appendix B of this notice and a summary of their comments, together with the CSA responses, are contained in Appendix C of this notice.

#### 10. ALTERNATIVES CONSIDERED

Prior to this publication, members of the CSA other than British Columbia published the Previously Proposed Internal Control Reporting Requirements for comment on February 4, 2005. After extensive review and consultation, we determined not to proceed with the Previously Proposed Internal Control Reporting Requirements, and instead expand the Current Materials.

The proposed amendments to the Current Materials are intended to improve the effectiveness of this instrument, which we believe will better serve issuers, investors and other market participants. We believe the Proposed Materials will also contribute towards achieving our objectives to improve quality, reliability and transparency of financial reporting while balancing the costs and benefits associated with the internal control reporting requirements.

We considered no other alternatives.

#### 11. RELIANCE ON UNPUBLISHED STUDIES, ETC.

In developing the Proposed Materials, we did not rely upon any significant unpublished study, report or other written materials.

#### 12. WITHDRAWAL OF NOTICES

The following notices are no longer required and we therefore withdraw them in all Canadian jurisdictions in which they were published:

- CSA Notice 52-313 *Status of Proposed MI 52-111 Reporting on Internal Control over Financial Reporting and Proposed Amended and Restated MI 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*; and
- CSA Notice 52-317 *Timing of Proposed National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*.

#### 13. COMMENTS

We invite interested parties to make written submissions on the Proposed Materials. We will consider submissions received by June 28, 2007. **Due to timing concerns, we will not consider comments received after the deadline.**

Please address your submissions to the following securities regulatory authorities:

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

---

**Request for Comments**

---

Registrar of Securities, Department of Justice, Government of the Northwest Territories  
Legal Registries Division, Department of Justice, Government of Nunavut

Please deliver your comments to the addresses below. Your comments will be distributed to the other participating CSA members.

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario M5H 3S8  
Fax: (416) 593 8145  
E-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

Anne-Marie Beaudoin, Directrice du secrétariat  
Autorité des marchés financiers  
Tour de la Bourse  
800, square Victoria  
C.P. 246, 22e étage  
Montréal, Québec, H4Z 1G3  
Fax: (514) 864 6381  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

If you are not sending your comments by e-mail, please send a diskette containing your comments (in DOS or Windows format, preferably Word).

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

#### 14. QUESTIONS

Please refer your questions to any of:

##### *Ontario Securities Commission*

John Carchrae  
Chief Accountant  
(416) 593 8221  
[jcarchrae@osc.gov.on.ca](mailto:jcarchrae@osc.gov.on.ca)

Marion Kirsh  
Associate Chief Accountant  
(416) 593 8282  
[mkirsh@osc.gov.on.ca](mailto:mkirsh@osc.gov.on.ca)

Mark Pinch  
Accountant, Corporate Finance  
(416) 593 8057  
[mpinch@osc.gov.on.ca](mailto:mpinch@osc.gov.on.ca)

Lynne Woolcombe  
Legal Counsel, Corporate Finance  
(416) 204 8968  
[lwoolcombe@osc.gov.on.ca](mailto:lwoolcombe@osc.gov.on.ca)

##### *British Columbia Securities Commission*

Carla-Marie Hait  
Chief Accountant, Corporate Finance  
(604) 899 6726  
[chait@bcsc.bc.ca](mailto:chait@bcsc.bc.ca)

Sheryl Thomson  
Senior Legal Counsel, Corporate Finance  
(604) 899 6778  
[sthomson@bcsc.bc.ca](mailto:sthomson@bcsc.bc.ca)

##### *Alberta Securities Commission*

Kari Horn  
General Counsel  
(403) 297 4698  
[kari.horn@seccom.ab.ca](mailto:kari.horn@seccom.ab.ca)

Fred Snell  
Chief Accountant  
(403) 297 6553  
[fred.snell@seccom.ab.ca](mailto:fred.snell@seccom.ab.ca)

Patricia van de Sande  
Securities Analyst  
(403) 355 4474  
[patricia.vandesande@seccom.ab.ca](mailto:patricia.vandesande@seccom.ab.ca)

**Request for Comments**

---

*Autorité des marchés financiers*

Sylvie Anctil-Bavas  
Chef comptable et Directrice de la gouvernance  
corporative  
(514) 395 0558, ext. 4291  
[sylvie.anctil-bavas@lautorite.qc.ca](mailto:sylvie.anctil-bavas@lautorite.qc.ca)

Nicole Parent  
Analyste en valeurs mobilières  
(514) 395 0558, ext. 4455  
[nicole.parent@lautorite.qc.ca](mailto:nicole.parent@lautorite.qc.ca)

*Manitoba Securities Commission*

Bob Bouchard  
Director, Corporate Finance  
(204) 945-2555  
[bob.bouchard@gov.mb.ca](mailto:bob.bouchard@gov.mb.ca)

March 30, 2007

**APPENDIX A  
TO NOTICE AND REQUEST FOR COMMENTS**

**SUMMARY OF PROPOSED CHANGES  
TO THE PREVIOUSLY PROPOSED MODIFICATION OF THE INSTRUMENT  
AND PREVIOUSLY PROPOSED MODIFICATION OF FORMS**

This summary sets out the changes made in the Proposed Instrument and Proposed Forms when compared to the Previously Proposed Modification of Instrument and Previously Proposed Modification of Forms. We have identified and discussed below only those sections to which we have made significant changes.

**Proposed Instrument and Proposed Forms**

Part 1 – Definitions and application

- We are proposing to include a new definition of “reportable deficiency”. As a result we have removed the terms “material weakness” and “significant deficiency”.

Part 2 – DC&P and ICFR

- We are proposing to include an ICFR design accommodation available to venture issuers who cannot reasonably remediate a reporting deficiency in their design of ICFR. If a venture issuer determines that it needs to rely on the ICFR design accommodation it must include certain disclosure in its MD&A. A summary of the required disclosure is included below in the summary of changes to the annual certificates. We did not contemplate a similar accommodation in the Previously Proposed Modification of the Instrument.
- We are proposing to allow issuers to limit the scope of their design of DC&P and ICFR to exclude controls, policies or procedures carried out by (i) a proportionately consolidated entity in which the issuer has an interest; (ii) a variable interest entity in which the issuer has an interest; or (iii) a business that the issuer acquired not more than 90 days before the end of the period to which the certificate relates. If the scope of the issuer’s design is limited for any of these circumstances the issuer must disclose in its MD&A the scope limitation and summary financial information of the proportionately consolidated entity, variable interest entity, or acquired business that has been proportionately consolidated or consolidated in the issuer’s financial statements. We did not contemplate a similar scope limitation in the Previously Proposed Modification of the Instrument.

Part 3 – Certification of annual filings

- We are proposing that all reporting issuers file the same form of full annual certificate (Form 52-109F1). As a result, venture issuers will need to certify to the evaluation of the effectiveness of ICFR, a requirement from which they were exempt under the Previously Proposed Modification of the Instrument.
- We are no longer proposing a transition period for the requirement to evaluate ICFR based on aggregate market value of an issuer’s listed equity securities. Instead, all issuers will be required to comply with the full certificate requirements for the first financial year end following the effective date.
- We are proposing that certifying officers be permitted to file an annual certificate in Form 52-109F1 – IPO/RTO if the issuer’s annual period (i) following its IPO ends on or before the 90<sup>th</sup> day after it becomes a reporting issuer, or (ii) in certain circumstances, ends on or before the 90<sup>th</sup> day after completion of a reverse takeover involving the issuer. We did not contemplate a similar certificate in the Previously Proposed Modification of the Instrument.

Part 4 – Certification of Interim Filings

- We are proposing that certifying officers be permitted to file an interim certificate in Form 52-109F2 – IPO/RTO if the issuer’s interim period (i) following its IPO ends on or before the 90<sup>th</sup> day after it becomes a reporting issuer, or (ii) in certain circumstances, ends on or before the 90<sup>th</sup> day after completion of a reverse takeover involving the issuer. We did not contemplate a similar certificate in the Previously Proposed Modification of the Instrument.

Annual Certificates

- We are proposing to expand Form 52-109F1 to include the following additional certifications:
  - The certifying officers have evaluated, or caused to be evaluated under their supervision, the effectiveness of the issuer’s ICFR as of the financial year end and the issuer has disclosed in its annual MD&A:

- the certifying officers conclusions about the effectiveness of ICFR at the financial year end based on such evaluation;
  - a description of the process they used to evaluate the effectiveness of ICFR;
  - a description of any reportable deficiency relating to operation of ICFR existing at the financial year end; and
  - the issuer's plans, if any, to remediate any such reportable deficiency relating to operation of ICFR.
- 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.
  - If applicable, the issuer has disclosed the following in its annual MD&A, for any reportable deficiency relating to design of ICFR that existed at the financial year end:
    - a description of the reportable deficiency;
    - a description of the remediation plan to address the reportable deficiency; and
    - the completion date or expected completion date of the remediation plan.
  - If applicable, the issuer has disclosed in its annual MD&A the following relating to the ICFR design accommodation:
    - the reportable deficiency;
    - why the issuer cannot reasonably remediate the reporting deficiency;
    - the risks the issuer faces relating to the reportable deficiency; and
    - whether the issuer has mitigated those risks and if so, how.
  - If applicable, the issuer has disclosed in its annual MD&A any limitation in the scope of the certifying officer's design of DC&P and ICFR for a proportionately consolidated investment, variable interest entity or acquired business, which is described above under Part 2. The issuer would also disclose summary financial information of the proportionately consolidated entity, variable interest entity or acquired business that has been proportionately consolidated or consolidated in the issuer's financial statements.
- We are removing the previously proposed requirement that the certifying officers certify that they have disclosed to the issuer's auditors, board of directors and audit committee of the board of directors all significant deficiencies and material weaknesses in the design or operation of ICFR which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information.
  - Form 52-109FVT1 *Certification of annual filings for issuers not required to comply with Multilateral Instrument 52-111* is no longer required as all issuers will be required to file the same form of annual certificate.

#### Interim Certificates

- We have expanded the full interim certificate to include representations relating to the design of DC&P and ICFR that are also included in the full annual certificate, as described above.

**APPENDIX B  
TO NOTICE AND REQUEST FOR COMMENTS**

**LIST OF COMMENTERS**

Aecon Construction Group	Robert W. McColm
Agrium Inc.	Bruce G. Waterman
Atco Limited	N.C. Southern, K. M. Waton
BDO Dunwoody LLP	Kelly E. Miller
Bell Nordiq Group Inc.	André Bergevin
Bow Valley Energy Ltd.	Matthew L. Janisch
Canadian Bankers Association	R. Kelly Shaughnessy
Canadian Natural Resources Limited	Randall S. Davis, Douglas A. Proll
Canadian Oil Sands Limited	Trudy M. Curran, Allen R. Hagerman
Canadian Western Bank	Robert A. Manning
Canadian Western Bank	Tracey C. Ball
Canadian Utilities Limited	B.K. French
Canarc Resource Corp.	Bradford Cooke
CCL Industries Inc.	S.W. Lancaster
Deloitte & Touche LLP	
Ernst & Young LLP	
Far West Mining Ltd.	J. Patricio Varas
Financial Executives International	Karyn A. Brooks, Paulette Kennedy
FocusROI Inc. S	Stuart Hartley
Grant Thornton LLP	Richard L. Wood
Great-West LifeCo Inc.	W.W. Lovatt
Harry G. Schaefer	
Henry R. Lawrie	
High Liner Foods Incorporated	H.E. Demone
High Point Resources Inc.	R. James Brown
Imperial Oil Limited	Paul Smith
Institute of Chartered Accountants of Ontario and the Ontario Chamber of Commerce	Brian Hunt, Len Crispino
Intrawest Corporation	John Currie
Issues Central, Inc.	Charley Best
J. C. Smith	
Keyera Facilities Income Fund	David G. Smith
Kingsway Financial Services Inc.	W. Shaun Jackson
KPMG LLP	
Madison Group	Bruce W. Auger
Magellan Aerospace Corporation	Ting Yeh
Manulife Financial	Marianne Harrison
Maple Leaf Foods Inc.	Michael H. Vels
McCarthy Tétrault LLP	David A. Judson
Metro Inc.	Paul Dénommée, Maité Fink
National Bank of Canada	Michel Labonté
Osler, Hoskin & Harcourt LLP	
Pembina Pipeline Corporation	R.B. Michaleski, P.D. Robertson, C. Wagner
PricewaterhouseCoopers LLP	
Protiviti	Carmen Rossiter
Real Property Association of Canada	Michael Brooks
Rentcash Inc.	Gordon J. Reykdal, Michael M. Zvonkovic
Roman Corporation Limited	Helen Roman-Barber
SEPAC Securities Compliance Committee	Jim Screaton, Keith Macdonald
Small Investor Protection Association	Stan I. Buell
Stikeman Elliott LLP	Simon Romano
Telus Corporation	Robert G. McFarlane
Terasen Inc.	Gordon R. Barefoot
The Complementary Set	Allenna Leonard
The Institute of Internal Auditors	David A. Richards
Tim Leech, Parveen P. Gupta	
Torys LLP	Robert H. Karp
TransCanada PipeLines Limited	Russell K. Girling

**Request for Comments**

---

Trimin Capital Corp.  
TSX Group  
Vector Corporate Finance Lawyers  
Walter Maughan

Walter Ross  
Richard W. Nesbitt  
Stewart L. Lockwood

**APPENDIX C  
TO NOTICE AND REQUEST FOR COMMENTS**

**SUMMARY OF COMMENTS**

**Table of Contents**

1. General Comments
  1. General Support for the Principles Underlying the Instrument Substantially as Published
  2. General Support for the Principles Underlying the Instrument with Modifications
  3. General Concern Regarding the Instrument
  4. Harmonization with Sarbanes-Oxley 2002 ("SOX")
  5. Distinction between Small and Large Issuers
2. Anticipated Costs and Benefits – Proposed Internal Control Materials
  1. General Comments
  2. Other Costs or Benefits Not Identified
  3. Whether Benefits Justify the Costs
3. Alternatives Considered – Proposed Internal Control Materials
  1. Alternative #1 – No Internal Control Audit Report
  2. Alternative #2 – Less Prescriptive Auditing Standard
  3. Alternative #3 – More Limited Scope of Application
  4. Alternative #4 – Evaluation of Entity-Level Controls Only
  5. Alternative #5 – Voluntary Compliance
  6. Alternative #6 – Status Quo
  7. Agreement with Assessment of Identified Alternatives
  8. Other
4. Relationship between 52-109 and 52-111
  1. General Comments
  2. Distinction Between Disclosure Controls and Procedures and Internal Control Over Financial Reporting
5. Requirements Not Currently Contemplated by the Instrument
  1. General Comments
6. Part 1 – Definitions, Interpretation and Application
  1. Definition of "Internal Control Audit Report"
  2. Definition of "Internal Control Over Financial Reporting"
  3. Definition of "Material Interest"
  4. Definition of "Material Weakness"
  5. Definition of "Significant Deficiency"
  6. Definition of "Variable Interest Entity"
  7. Application to Issuers Exempt from 52-110
7. Part 2 – Management's Assessment of Internal Control Over Financial Reporting
  1. General Comments
  2. Disclosure
  3. Risk-based Approach
  4. Definition of Management
  5. Scope of Evaluation
  6. Scope of Evaluation – Joint Ventures
  7. Additional Control Frameworks
  8. Additional Guidance
  9. Evidence – Content
  10. Evidence – Manner of Maintaining
  11. Board Approval of Internal Control Report
  12. Limits on Disclosure – JV, VIE, Acquired Business
  13. Limits on Disclosure – JV
  14. Limits on Disclosure – Other
8. Part 3 – Internal Control Audit Report
  1. General Comments
  2. Integrated Audit
  3. Other Standards for Preparation
9. Part 5 – Delivery of Internal Control Reports and Internal Control Audit Reports
  1. General Comments
10. Part 6 – Language
  1. Translation

## Request for Comments

---

11. Part 7 – Exemptions
  1. General Comments
  2. Transition
  3. Exemptions for Issuers that Comply with U.S. Laws
  4. Exemption for Foreign Issuers
  5. Exemption for Asset-Backed Securities Issuers
  6. Other Classes of Exempt Issuers
12. Part 8 – Effective Date and Transition
  1. General Comments
  2. Appropriateness of Phased-in Implementation
  3. Phased-in Implementation and Expertise
13. Revised Certification Materials
  1. General Comments
  2. Venture Issuer to Refile Annual Certificates
  3. Timing Gap
  4. Inability to Certify Under 52-109
  5. Certification Extending to Underlying Entities
  6. Treatment of Underlying Securities
  7. Form of Certification for Asset-Backed Issuers
14. Other Comments
  1. Drafting Comments
  2. Enforcement and Compliance
  3. Directors' Liability
  4. Interaction with Short Form Prospectus Rule
  5. Linkage Between Corporate Governance Guidelines and Disclosure

**Legend:**

ICFR: internal control over financial reporting.

DC&P: disclosure controls and procedures

#	Theme	Comments	Responses
		<b>1. <u>GENERAL COMMENTS</u></b>	
1.	General Support for the Principles Underlying the Instrument Substantially as Published	<p><b>Issuers</b> Eight commenters express general support for the principles underlying 52-111. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• improves quality and reliability of financial and other continuous disclosure documentation;</li> <li>• creates potential for improvements to business processes, improved accountability of process owners, and enhancement of linkages with Enterprise Risk Management;</li> <li>• promoting a culture that emphasizes strong internal control;</li> <li>• increased level of discipline and rigor around disclosure processes and providing senior management and board with a heightened degree of comfort regarding continuous disclosure processes;</li> <li>• benefits to issuers such as focused effort on effective and efficient ICFR, promotion of an ethical environment and clear ownership and accountability for managements' actions;</li> <li>• ensures competitiveness of Canadian companies in the global market;</li> <li>• approach is consistent with similar provisions under SOX; and</li> <li>• to maintain investor confidence in our markets through an enhanced focus on ICFR and through auditor attestation requirement.</li> </ul> <p><b>Public Accountants</b> Six commenters express general support for the principles underlying 52-111. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• focus of companies on ICFR will improve performance and reduce fraudulent financial reporting;</li> <li>• strong ICFR is fundamental to reliable financial and other continuous disclosure reporting;</li> <li>• focus will prove invaluable in restoring investing public's confidence in reliability of financial statements; and</li> <li>• expands and makes more explicit auditor's responsibilities for ICFR thereby reducing investor expectation gap.</li> </ul> <p><b>Investors</b> Two commenters express general support for the principles underlying 52-111 since they address key concern areas and control points.</p> <p><b>Other</b> Two commenters express general support for the principles underlying 52-111. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• improving quality and reliability of financial reporting;</li> <li>• enhancing investor confidence; and</li> <li>• maintaining consistency with SOX requirements.</li> </ul>	After extensive review and consultation and in view of the delays and debate underway in the U.S. over the Sox 404 Rules, we have determined not to proceed with proposed Multilateral Instrument 52-111. Instead, we are proposing to expand National Instrument 52-109 to include various additional provisions in respect of ICFR.

#	Theme	Comments	Responses
2.	General Support for the Principles Underlying the Instrument with Modifications	<p><b>Issuers</b> Eight commenters express general support for the principles underlying 52-111 with suggested modifications that include:</p> <ul style="list-style-type: none"> <li>• the requirement for an internal control audit report be removed from the requirements of 52-111;</li> <li>• that the requirements not apply to smaller TSX issuers as well as TSX Venture issuers;</li> <li>• advocate a cautious and measured approach, a more efficient and effective “made-in-Canada model” should be developed with the benefit of lessons learned from the U.S. experience;</li> <li>• issuers should be permitted to conduct an assessment that is not a detailed “mechanistic, check-the-box exercise”; and</li> <li>• the proposed effective date should be no sooner than 24 months after the adoption of the final instrument.</li> </ul> <p><b>Other</b> One commenter expresses general support for the principles underlying 52-111 but only for issuers with a market capitalization of over \$500 Million.</p>	After extensive review and consultation and in view of the delays and debate underway in the U.S. over the Sox 404 Rules, we have determined not to proceed with proposed Multilateral Instrument 52-111. Instead, we are proposing to expand National Instrument 52-109 to include various additional provisions in respect of ICFR. The proposals recognize that ICFR is important for all issuers. We believe the elimination of the requirement for the issuer to obtain from its auditor an internal control audit opinion, as well as various other changes, allow for a more risk-based, cost-effective application of the requirements.
3.	General Concern Regarding the Instrument	<p>Eight commenters want 52-111 withdrawn.</p> <p><b>Issuers</b> Twenty-three commenters generally do not support 52-111. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• time spent to implement and recent concerns raised by issuers should be considered to ensure that all stakeholders benefit from 52-111;</li> <li>• regulations would give investors a false sense of security that the controls would prevent fraud;</li> <li>• the very intensive work required to evaluate internal controls, may take away from a company's efforts to ensure financial statement preparation process properly states accurate financials of particular importance for smaller companies, as they lack the resources to perform an adequate study of controls;</li> <li>• U.S. and Canadian capital markets are very different yet, proposed item is almost identical;</li> <li>• overregulation will drive smaller companies to avoid public capital markets, resulting in reduced small cap options for investors in the future;</li> <li>• any marginal improvement in business ethics resulting from the requirement to report on internal controls is not justified by the significant costs of implementation;</li> <li>• advocates the top-down, risk-based approach to the internal review and certification process, management with their external auditors should be able to leverage the risk framework already employed in an organization to determine areas and processes that have the greatest risk of a financial misstatement;</li> <li>• existing CSA initiatives have already resulted in improved investor confidence (CEO/CFO certification, audit committee, corporate</li> </ul>	After extensive review and consultation and in view of the delays and debate underway in the U.S. over the Sox 404 Rules, we have determined not to proceed with proposed Multilateral Instrument 52-111. Instead, we are proposing to expand National Instrument 52-109 to include various additional provisions in respect of ICFR. We believe the elimination of the requirement for the issuer to obtain from its auditor an internal control audit opinion, as well as various other changes, allow for a more risk-based, cost-effective application of the requirements.

#	Theme	Comments	Responses
		<p>governance, retention of auditors subject to CPAB);</p> <ul style="list-style-type: none"> <li>• excessive focus on rules and controls will lead to an atmosphere that constrains an organization's ability to grow and to develop business strategies;</li> <li>• indication that Canada does not have the infrastructure to deal with 52-111;</li> <li>• cautious and conservative interpretation by external auditors of materiality and likelihood, in order to protect themselves from potential litigation, is gradually distancing issuers from the traditional concept of materiality;</li> <li>• auditor attestation will add undue burden to the reporting and auditing effort required by public issuers in Canada;</li> <li>• guidance on the scope of work (use of judgment, concepts of risk and top-down approach) and use of work of others (a competent and independent audit function) to support certifications is constantly changing;</li> <li>• a more efficient and effective "made-in-Canada" solution should be developed with the benefit of lessons to be learned from the U.S. experience; and</li> <li>• CSA has a duty to provide <i>reasonable cost-effective</i> protection to investors in public companies, protection includes a viable, cost efficient market.</li> </ul> <p><b>Public Accountants</b> Five commenters generally do not support 52-111. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• serious doubts that the SOX "solution" will prevent "Enronitis"-type problems in the future;</li> <li>• the costs will outweigh the benefits;</li> <li>• that the pendulum of reform has swayed too far and increased the potential for financial statement errors as companies and professional accounting firms were already stretched to the limit;</li> <li>• cautioned against following the U.S. lead, rather should allow investors to decide;</li> <li>• supports the B.C. Commission's proposals where full disclosure is to be made rather than implementing detailed rules proposed in 52-111;</li> <li>• cannot legislate morality, will merely increase the cost of capital substantially for Canadian public companies, without concomitant benefit;</li> <li>• need to focus on fraudulent manipulation by senior executives; and</li> <li>• recommend a response that recognizes the types of issuers in Canada and that does not impose an undue burden on those companies.</li> </ul> <p><b>Lawyers</b> Three commenters generally do not support 52-111. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• there is very little benefit to the policy in its totality, and the cost, in financial and management time, completely outweighs any potential benefit;</li> </ul>	

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> <li>• 52-111 copies the SOX internal reporting requirements, with little thought given to the long-term effect of such policy and the actual long-term benefit to shareholders;</li> <li>• 52-111 does not provide guidance as to the purpose of requiring ICFR, and the expectation of the regulators as to how that purpose is to be achieved; and</li> <li>• balance between costs and benefits for Canada's much smaller capital market and smaller companies is questioned.</li> </ul> <p><b>Other</b> Two commenters generally do not support 52-111. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• the letter and spirit of these new requirements brings management's attention to too low a level of detail; and</li> <li>• the cost has been much higher for smaller issuers who do not have infrastructure and resources to implement the COSO framework.</li> </ul>	
4.	Harmonization with Sarbanes-Oxley 2002 ("SOX")	<p><b>Issuers</b> Six commenters agree that 52-111 should be harmonized with SOX. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• given the close market ties between Canada and the U.S., harmonization of reporting standards contributes to more consistent financial reporting for users and streamlines the process for preparation of financial reports; and</li> <li>• encourages the CSA to critically evaluate the experience of SOX implementation and to give consideration to adopting a unique Canadian solution.</li> </ul> <p>Eleven commenters identify harmonization concerns and/or make recommendations, including:</p> <ul style="list-style-type: none"> <li>• Canadian approach should build from the SOX 404 experience which revealed lack of interpretation guidelines and risk-based approach are adversely affecting cost effectiveness;</li> <li>• supports two important differences from SOX 404 (exclusion of certain issuers, staggered implementation dates);</li> <li>• supports need to be compatible with SOX 404, however, cautions against following a "lock-step" approach in achieving comparability with the U.S. rules and standards;</li> <li>• wants to ensure there is a thriving market for smaller entities in the future and that regulations such as 52-111 do not cause companies to stay private;</li> <li>• notes differences between the financial environment in Canada and the U.S. (company size and limited access to venture capital);</li> <li>• develop rules and auditing standards that focus on aspects of control and reporting that are most effective at providing protection to capital markets and providing Canadian issuers with the most effective sources of assurance (cost/ benefit</li> </ul>	After careful consideration of the feedback received and recent developments internationally, particularly in the U.S., we propose to expand MI 52-109 to include the internal control requirements. As described in our Notice, issuers will not be required to obtain an internal control audit opinion from their auditor.

#	Theme	Comments	Responses
		<p>balance); and</p> <ul style="list-style-type: none"> <li>• ensure that harmonization reflects the principles articulated in the SEC and PCAOB May 16<sup>th</sup> guidance.</li> </ul> <p>Eight commenters disagree that 52-111 should be harmonized with SOX. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• need to re-orient approach to a top down, risk-based assessment approach; and</li> <li>• leverage the U.S. experience to improve the cost-benefit relationship, rather than impose a compulsory and compliance oriented regulatory regime with punitive undertones.</li> </ul> <p><b>Public Accountants</b></p> <p>Three commenters agree that 52-111 should be harmonized with SOX. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• having two sets of rules/processes could be hugely confusing to issuers and auditors leading to incremental increases in costs; and</li> <li>• the SEC Advisory Committee on Smaller Public Companies is studying how the internal control model is to be applied to smaller companies, and their recommendations will likely alleviate some of the current concerns.</li> </ul> <p>Three commenters make specific recommendations regarding harmonization:</p> <ul style="list-style-type: none"> <li>• that the CSA and OSC establish a group to review U.S. implementation guidance and endorse the views for use by Canadian reporting issuers, and to encourage the CICA to establish a similar group to assess guidance issued by the PCAOB specific to auditors; and</li> <li>• closely monitoring developments in the U.S. will avoid significant costs experienced with SOX 404 implementation.</li> </ul> <p>One commenter disagrees that 52-111 should be harmonized with SOX. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• U.S. implementation costs much higher than expected;</li> <li>• implementation has been overdone by its attention to detail and by not using a risk-based top-down approach; and</li> <li>• smaller companies will be caught by the requirement on detail and documentation which does not address the core issue of fraudulent manipulation.</li> </ul> <p><b>Other</b></p> <p>One commenter agrees that 52-111 should be harmonized with SOX. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• to keep methodology development implementation costs to a minimum; and</li> <li>• to put Canadian business on an equal footing with American businesses.</li> </ul>	

#	Theme	Comments	Responses
5.	Distinction between Small and Large Issuers	<p>Six commenters express concerns for smaller issuers:</p> <ul style="list-style-type: none"> <li>• in the U.S. costs were multiples of expectations and the greatest burden was on smaller entities;</li> <li>• establishing a Canadian equivalent to the SEC Advisory Committee on Smaller Public Companies (develop “made-in-Canada” approach); and</li> <li>• recommends that the CSA and OSC use the time provided by the phased approach to actively investigate the smaller public company issue.</li> </ul>	<p>We do not propose to distinguish between non-venture issuers and venture issuers, so issuers will have to comply with the additional internal control requirements regardless of where their securities may be listed or quoted. Our proposals recognize that ICFR is important for all reporting issuers, regardless of their size or listing. The concern of small issuers was a key reason for eliminating the requirement for an internal control audit opinion. We have also included a design accommodation in our proposals. This recognizes that certain venture issuers cannot reasonably overcome all the challenges in designing ICFR and allows these issuers to disclose a reportable deficiency in their design without having to remediate it.</p>
<b>2. <u>ANTICIPATED COSTS AND BENEFITS – PROPOSED INTERNAL CONTROL MATERIALS</u></b>			
1.	General Comments	<p>One commenter notes that commentary from various U.S. public issuers, including those at the SEC Roundtable on May 10, 2006, have indicated that U.S. issuers have spent an average of 0.5% (larger companies) to 2.5% (smaller companies) of their revenues in complying with SOX attestation rules. As Canadian issuers have a smaller market cap, it appears that there will be an even higher cost for Canadian issuers. These high costs are not justified.</p> <p>One commenter refers to a survey conducted at Policy Forum 2005 held on May 26, 2005 by the CICA and the Institute of Corporate Directors where 80% of participants indicated that in “Year 1” of SOX 404 compliance, they expected the costs to exceed the improvement or benefit in the disclosure or control processes. Even in the second year, 2/3 of those surveyed indicated that there was no clear benefit which would outweigh the costs.</p> <p>One commenter notes that, as a “small” U.S. company is much larger than most companies on the TSX, companies with less than a \$500 million market cap will have a more difficult and costly process.</p>	<p>We believe that elimination of the requirement for the issuer to obtain from its auditor an internal control audit opinion concerning management’s assessment of the effectiveness of ICFR will address some of the cost concerns experienced in the U.S.</p>
2.	Other Costs or Benefits Not Identified	<p><b>Issuers</b></p> <p>Eight commenters note various costs and concerns, including:</p> <ul style="list-style-type: none"> <li>• impairment of the competitiveness of our capital market as an additional cost burden (compared to the UK that has less regulation);</li> <li>• redirection of capital from growing smaller Canadian enterprises to compliance costs for which there is no demonstrated benefit;</li> <li>• issuers are spending disproportionate amount of resources to meet new compliance initiatives, affecting issuers’ ability to spend on profit generating investments in growth initiatives;</li> </ul>	<p>We believe that the proposed revisions to National Instrument 52-109 adequately address the additional concerns raised while attempting to realize the maximum benefits.</p>

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> <li>• may take away time management would normally devote to strategic sales and business development;</li> <li>• an increase in the external audit fees, audit related services, and consulting costs to prepare for SOX 404;</li> <li>• estimates would likely be significantly higher (than the Charles River estimates) given the increased demand for auditors and the rising costs to execute SOX 404; and</li> <li>• hidden costs may include staff hiring requirements, increased salary levels, management focus on internal controls rather than strategic management of the organization, and external audit firms staffing challenges.</li> </ul> <p>Two commenters note that an advantage is the creation of structured risk and control documentation which should reduce the risk related to turnover rate and facilitate staff succession and training.</p> <p><b>Public Accountants</b> One commenter encourages the exercise of caution when examining the U.S. experience because of regulatory staff increases, legal costs of litigation arising from these requirements (regulatory, civil) and the diversion of talent to these requirements when it could be used for better purposes.</p> <p>Three commenters note additional benefits of 52-111 and the Sox 404 Rules, including:</p> <ul style="list-style-type: none"> <li>• increased awareness and skills of company personnel to assess risks and implement controls to mitigate those risks;</li> <li>• will lead to a lower cost of borrowing and reduced litigation risk for larger public companies;</li> <li>• upgraded membership of board of directors and audit committee;</li> <li>• positive impact on company-wide or entity-wide controls; and</li> <li>• improved financial statement close process.</li> </ul> <p>One commenter notes the following considerations when examining the U.S. experience:</p> <ul style="list-style-type: none"> <li>• existing weaknesses in corporate practice;</li> <li>• time crunch caused by underestimating the size of the projects and the delays in making appropriate plans and taking timely actions;</li> <li>• unclear expectations of management and auditors (a lot of the guidance did not get published until late in the year);</li> <li>• one time cost investments (e.g. documentation of systems); and</li> <li>• the scarcity of expertise.</li> </ul> <p>One commenter notes that quantitative analysis is incomplete because of significant assumptions that must be made and difficulty quantifying benefits. The following cannot be easily quantified: cost of internal control failures, related impact on cost of capital and benefits to investors,</p>	

#	Theme	Comments	Responses
		the increased ability of issuers to produce reliable financial statements without significant audit adjustments given management has assessed and remediated their ICFR.	
3.	Whether Benefits Justify the Costs	<p><b>Issuers</b> Two commenters believe that the benefits will justify the costs. However, the position is contingent on application of proposed rules in a cost effective and responsible manner that takes into account the commercial and business imperatives of the issuer.</p> <p>Nineteen commenters indicate that the benefits will not justify the costs. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• competent controlled system audits will not result simply by requiring that they be performed;</li> <li>• costs will be disproportionately higher for smaller companies and those with complex or decentralized operations;</li> <li>• the non-quantifiable benefits from 52-111 do not justify imposing such a cost burden on shareholders of these small issuers for the sake of harmonization;</li> <li>• support found in the modest number of material weaknesses reported under the SOX 404 Rules;</li> <li>• auditor review and reporting represents an unnecessary duplication of effort and cost; and</li> <li>• will not provide any material benefit to stakeholders of public companies beyond what will be achieved by 52-109.</li> </ul> <p><b>Public Accountants</b> Two commenters contend that the benefits will not justify the costs of compliance.</p> <p>Five commenters indicate that the benefits will likely outweigh the costs in the long-term. Factors referred to include:</p> <ul style="list-style-type: none"> <li>• likely be two more years before there is sufficient stability in issuers' and auditors' processes to enable a fair assessment; and</li> <li>• costs are expected to be lower when Canadian companies implement 52-111, as issuers learn from U.S. experience and audit firms develop an improved integrated audit methodology.</li> </ul> <p>One commenter supports measuring costs and benefits, but believes that any conclusion will have to be largely a judgmental determination made by the securities commissions in light of proposed objectives.</p> <p><b>Lawyers</b> One commenter contends that the costs will completely outweigh the benefits, that 52-111 is unnecessary and not cost-effective. Commenter represents the perspective of junior companies and smaller TSX issuers with a market cap below \$250 million.</p> <p>One commenter recommends that Canada achieve a better balance between costs and benefits. Less convinced that 52-111 is appropriate for Canada's much smaller capital market and much smaller public companies.</p>	We believe the proposed additional internal control reporting requirements will contribute towards achieving our objectives while balancing the associated costs and benefits. To minimize the costs of implementing the proposed internal control reporting requirements, we have eliminated the requirement that an issuer obtain from its auditors an internal control audit opinion. We have also provided guidance for management which should assist management in avoiding undue costs of implementation for issuers of all sizes. Further, our proposals include a design accommodation. This recognizes that certain venture issuers cannot reasonably overcome all the challenges in designing ICFR and allows these issuers to disclose a reportable deficiency in their design without having to remediate it.

#	Theme	Comments	Responses
		<p><b>Other</b></p> <p>One commenter recommends alternative approach to ensure costs are reasonable for small companies and do not deter them from adopting risk management principles.</p> <p>One commenter contends that without proper guidance and implementation of the regulations, costs quickly begin to erode the potential benefits.</p> <p>One commenter notes that long-term benefits will probably justify the costs involved but in the short term, the cost benefit balance will be much more challenging (cites IIA research).</p> <p>One commenter contends that the costs do not justify the benefits. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• many private companies will delay or defer going public based on the excessive costs and other issues driven by these requirements; and</li> <li>• additional audit costs could result in a significant reduction in market capitalization, detrimental to shareholder value.</li> </ul>	
<b>3. ALTERNATIVES CONSIDERED – PROPOSED INTERNAL CONTROL MATERIALS</b>			
1.	Alternative #1 – No Internal Control Audit Report	<p>Twelve commenters oppose the auditor attestation requirement. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• additional costs associated with layering yet another audit requirement on issuers would not be justified with any perceived or actual increased benefit to investors;</li> <li>• requirement will do more to hinder than promote timely and accurate reporting;</li> <li>• existing regulations are sufficient to govern corporate internal control practices of small companies;</li> <li>• concern over auditor attestation is particularly acute for smaller issuers;</li> <li>• existing requirements in 52-109 are sufficient to provide the requisite assurances for investors that accurate and timely financial information is being disseminated and that senior management has instituted internal control processes and fostered an attitude of open, timely disclosure of all material information;</li> <li>• issuers not required to comply with Sox 302 and 404 Rules would provide only the CEO/CFO certifications; marketplace should decide whether there is any added value in having issuers go through an internal control attestation process;</li> <li>• management should decide on the nature and extent of any audit work on the internal control certification that is appropriate in the circumstances;</li> <li>• sufficient to have a brief paragraph in the MD&amp;A or financials, setting out steps that management has taken and their comments on its overall effectiveness; and</li> </ul>	<p>We agree and have eliminated the requirement for the issuer to obtain from its auditor an internal control audit opinion. The board of directors and its audit committee, in consultation with the certifying officers, may choose to consider whether they wish to engage the issuer's auditor to assist in discharging their respective responsibilities for the issuer's ICFR and review and approval of the issuer's annual MD&amp;A. We have also provided additional guidance that should help issuers apply a top-down, risk-based approach.</p>

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> <li>similar wording in the financial statement certificates would also provide greater comfort to the regulators.</li> </ul> <p>One commenter suggests that the capital markets would be adequately protected by a combination of:</p> <ul style="list-style-type: none"> <li>management's report and evaluation of ICFR; and</li> <li>an external opinion on management's process to arrive at its self-assessment.</li> </ul> <p>One commenter recommends a model including alternatives #1 and #4. Reasons cited include:</p> <ul style="list-style-type: none"> <li>would reduce costs to acceptable levels yet still provide a reasonably high level of comfort to investors; and</li> <li>takes into account that the major financial reporting frauds have been committed top-down.</li> </ul> <p>Auditor attestation should not be required because auditor involvement has contributed significantly to the cost-benefit mismatch. Auditors legitimately fear second-guessing by regulators and auditing oversight bodies and have been unwilling to apply professional judgment, leading to overkill in the internal control auditing process. Auditor's role should be restricted to providing negative assurance on management's report on internal control (similar to MD&amp;A review).</p> <p>One commenter recommends waiving the requirement for an internal control audit report in the first year of adoption. This would enhance focus on ICFR and would lower compliance costs.</p>	
2.	Alternative #2 – Less Prescriptive Auditing Standard	One commenter recommends less guidance for issuers and more guidance for auditors who should be permitted and encouraged to apply professional judgment in their audits.	As noted above, we have eliminated the requirement for the issuer to obtain from their auditor an internal control audit opinion.
3.	Alternative #3 – More Limited Scope of Application	<p>Eleven commenters agree with the scope of application.</p> <p>Four commenters disagree with scope of application, reasons cited include:</p> <ul style="list-style-type: none"> <li>compliance should be limited to issuers that because of size, type of business and number of employees rely extensively on internal controls;</li> <li>should apply to future large cap venture issuers;</li> <li>requirements should only apply to the largest issuers;</li> <li>costs of compliance are disproportionately higher for smaller companies; and</li> <li>rules do not recognize that some entity-level controls and auditing procedures are particularly effective at determining the reliability of financial reporting in smaller enterprises.</li> </ul> <p>Four commenters make recommendations on the scope of application, which include:</p> <ul style="list-style-type: none"> <li>application to future large cap criteria in year after meeting large cap criteria (certification of design effectiveness, followed by certification of operating effectiveness);</li> </ul>	We do not propose to distinguish between non-venture issuers and venture issuers, with the result that issuers will have to comply with the additional internal control requirements regardless of where their securities may be listed or quoted. Our proposals recognize that ICFR is important for all reporting issuers, regardless of their size or listing. The concern of small issuers was a key reason for eliminating the requirement for an internal control audit opinion and as a result of the change. We have also included a design accommodation in our proposals. This recognizes that certain venture issuers cannot reasonably overcome all the challenges in designing ICFR and allows these issuers to disclose a reportable deficiency in their design without having to remediate it.

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> <li>• application to venture issuers in the longer term to reap benefits of internal control reporting;</li> <li>• companies listed on the equivalent of the venture exchange in other countries, that are not SEC issuers, should not be subject to 52-111; and</li> <li>• extending exemption to include non-venture issuers with market capitalization of less than \$75 million (cost-benefit equation is much harder to demonstrate).</li> </ul> <p>Nine commenters disagree with the exemption for venture issuers. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• all issuers should be required to disclose known material weaknesses in their ICFR, and disclose fraud, whether or not material, that involves management or other employees who have a significant role in issuer's ICFR;</li> <li>• there should not be a difference in disclosures of material weaknesses known to management, the external auditors or the directors;</li> <li>• will lead to further "ghettoization" of small issuers and that variation is not good for investors, issuers, or general perception of Canadian markets;</li> <li>• 52-109 applies to venture issuers, therefore CEOs and CFOs will be required to acknowledge responsibility for ICFR and certify that they have designed such controls;</li> <li>• goal to improve investor confidence and enhance the quality and reliability of financial disclosure is lost; and</li> <li>• venture issuers can be at a high risk of weaker controls over financial reporting.</li> </ul> <p>One commenter disagrees with exemption for investment funds. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• investment funds are widely held by consumers who are outsourcing investment to professional fund managers;</li> <li>• investors could be largely unsophisticated and deserving of additional care; and</li> <li>• if income trusts are considered investment funds, widespread conversion into income trusts means exemption would apply even though underlying control risks remain the same for corporations.</li> </ul> <p>Six commenters stated their views on minimum market capitalization thresholds for application. The views cited include:</p> <ul style="list-style-type: none"> <li>• the benefits do not justify the costs of compliance for market capitalization below \$75 million.</li> <li>• larger companies have a broader scope for error, therefore consider a market cap of \$100 million or more;</li> <li>• not in favour of a lower 'cap' since the majority of companies, let alone TSX-V juniors, cannot afford the financial burden of 52-111;</li> <li>• application of 52-111 should be limited to the largest (market cap exceeding \$500 million) issuers and agrees with exemption for venture</li> </ul>	<p>We believe that governance issues respecting investment funds give rise to unique concerns, and thus are beyond the scope of this project.</p>

#	Theme	Comments	Responses
		<p>issuers;</p> <ul style="list-style-type: none"> <li>• set a market cap of \$1 billion. Solution would capture majority of marketplace and recognize differences between Canadian and U.S. markets; and</li> <li>• limiting application to issuers with market cap of \$500 million or more. This would address 92% of market value traded and spares 2/3 of issuers the disproportionate expense of full compliance by their companies.</li> </ul> <p>One commenter argues that 52-111 should not apply to subsidiary issuers which do not have equity securities trading on a marketplace and whose parent company is subject to and complies with 52-111 (parallel 52-110 and 58-101).</p> <p>One commenter recommends that venture issuers report on overall corporate governance approach, ethics guidelines and oversight of financial reporting.</p> <p>One commenter recommends clarifying whether 52-111 only applies to issuers with listed equity securities (Section 1.2 and Part 7).</p>	
4.	Alternative #4 – Evaluation of Entity-Level Controls (ELC) Only	<p>Five commenters support ELC. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• could save a mandatory diversion of effort to focus on essential corporate controls;</li> <li>• an adequate level of assurance can be achieved, particularly if coupled with a focus on strong corporate governance and robust enforcement procedures;</li> <li>• ELC can be part of a top-down risk-based approach; and</li> <li>• ELC can be used as a risk assessment filter to identify which accounts and processes pose the most risk.</li> </ul> <p>One commenter recommends requiring management to evaluate ELCs relating to financial reporting as at financial year end and requiring the issuer to file a report of management that assessment of such controls aligns with its ethics, code of conduct and “tone at the top”.</p> <p>One commenter recommends that this alternative be implemented at little cost for a five year trial period. Reporting on ICFR should remain voluntary for Canadian reporting issuers for this trial period.</p> <p>One commenter notes that an alternative would be to focus the external audit on higher risk areas such as ELCs. Notes that within many issuers there is a commonly held view that ELCs are most significant in protecting the capital markets, and cynicism that so much of the effort required to fulfill the rules becomes focused on the relatively less significant process level controls.</p>	<p>We believe that the evaluation of ELC only would not result in an assessment that achieves our objective of improving the reliability and transparency of financial reporting. Although ELCs are important components of ICFR that should be evaluated, we believe that a further evaluation of the underlying controls over financial reporting from a risk-based perspective is needed for an issuer’s management to increase its focus on, and accountability for, the quality of financial reporting.</p>
5.	Alternative #5 – Voluntary Compliance	<p>One commenter rejected this alternative.</p>	<p>We believe that ICFR is important for all reporting issuers, regardless of size or listing. Therefore, all issuers will have to comply with the additional internal control reporting requirements regardless of where their securities</p>

Request for Comments

#	Theme	Comments	Responses
6.	Alternative #6 – Status Quo	One commenter rejected this alternative.	<p>may be listed or quoted.</p> <p>We believe that ICFR is important for all reporting issuers, regardless of size or listing. Therefore, all issuers will have to comply with the additional internal control reporting requirements regardless of where their securities may be listed or quoted.</p>
7.	Agreement with Assessment of Identified Alternatives	<p>Six commenters generally agree with CSA’s assessment of identified alternatives. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• U.S. rules coupled with recent SEC and PCAOB guidance create an effective model if embraced by the regulators, standard setters, public companies &amp; independent auditors; and</li> <li>• decision not to adopt formal reporting over ICFR with auditor attestation could create negative and unfair perceptions by investors, rating agencies and foreign regulators about the quality of management and governance in Canadian companies.</li> </ul> <p>One commenter notes that the list of alternatives is reasonable. However, consideration should be given to a combination of alternatives such as combining the status quo with voluntary or entity-level compliance to allow issuers discretion based on particular priorities.</p> <p>One commenter disagrees with the assessment of identified alternatives.</p>	<p>We acknowledge these comments and in light of recent events, comments received, and various consultations, we have decided not to require issuers to obtain from their auditors an internal control audit opinion. Instead, we are proposing to require issuers to describe their process for evaluating the effectiveness of ICFR.</p>
8.	Other	<p>One commenter notes that given the objective of improving reputation of the Canadian market, disclosure of additional control related information including disclosure of remediation plans should be considered. Disclosure by venture issuers of known material weaknesses in ICFR and of any known fraud, whether or not material, involving management or other employees who have a significant role in the issuer’s ICFR is consistent with this objective and should be required.</p> <p>One commenter recommends that management be required to implement policies and procedures to enhance the overall control environment. Approach will be specific dealing with the broader control environment/culture issues helping to enhance investor confidence.</p> <p>One commenter proposes that 52-111 be changed to allow all issuers or at least those under a certain size, to disclose those “standard” internal controls they have chosen NOT to adopt and say why and what they do instead. The exemption should apply for one year.</p> <p>One commenter calls for a new proposal based on the following principles:</p> <ul style="list-style-type: none"> <li>• top-down risk-based approach;</li> <li>• greater emphasis on entity controls;</li> <li>• further staging delay to permit U.S. experiences to</li> </ul>	<p>Our current proposals require issuers to disclose any changes in ICFR during the reporting period that materially affect ICFR and information about an issuer’s remediation plans, if any.</p> <p>We believe our proposals will result in an overall enhancement of the control environment.</p> <p>Although we do not agree that the adoption of “standard” internal controls should be optional, we recognize that certain venture issuers cannot reasonably overcome all the challenges in designing ICFR. Our proposals allow these issuers to disclose a reportable deficiency in their design without having to remediate it.</p> <p>After extensive review and consultation, we have determined that we will not require the issuer to obtain from its auditor an internal control audit opinion, but leave the engagement of</p>

#	Theme	Comments	Responses
		<p>be solidified and to recognize the current U.S. timetables for foreign private issuers; and</p> <ul style="list-style-type: none"> <li>• staging for smaller entities to accommodate additional work being done on control framework for smaller entities.</li> </ul> <p>One commenter notes that interpretations are very broad and significantly impact the levels of documentation requirements. Suggestions include:</p> <ul style="list-style-type: none"> <li>• enhance and be more specific on the requirements for and reliance on company level controls;</li> <li>• clarify testing requirements for low risk but material processes;</li> <li>• introduce a measurement for the promotion of an ethical environment;</li> <li>• training in the areas of ethics and ethics policies, financial reporting and entity governance should be a top priority from the entry level employee to the board of directors; and</li> <li>• implementation of an ethics hotline that is safe and confidential to use.</li> </ul> <p>One commenter supports the U.K. framework (put forward by Ken Rushton). Believes that the U.K. framework and a less rule-based policy, which gives companies flexibility to modify such policies based on their size and requirements, is the only workable solution if internal controls are 'deemed' necessary for political reasons.</p> <p>One commenter recommends a top-down, risk-based approach, using sound professional judgment to improve financial reporting and balance of costs and benefits. Assurances of fair treatment at the outset will help increase the comfort level of Ontario-based auditors in the absence of protective legislation found in other jurisdictions.</p> <p>One commenter proposes the following process to evaluate and test key internal controls:</p> <ul style="list-style-type: none"> <li>• include assessment of key controls that should be in place for the specific company in the financial statement audit;</li> <li>• auditors to provide management and the audit committee with their assessments;</li> <li>• incumbent on the audit committee to act on these recommendations as part of their corporate governance; and</li> <li>• CEO and CFO would review results in their assessments regarding the accuracy of the financial statements.</li> </ul> <p>One commenter proposes that an issuer be allowed to opt out of 52-111 with the express approval of a majority of shareholders. This opt out process could be required to be repeated not less than every three years and should be prominently disclosed.</p>	<p>the auditors to the discretion of the board and/or audit committee. We have also provided additional guidance that should help issuers apply a top-down, risk-based approach.</p>

#	Theme	Comments	Responses
<b>4. <u>RELATIONSHIP BETWEEN 52-109 AND 52-111</u></b>			
1.	General Comments	<p>One commenter makes recommendations regarding the relationship between 52-109 and 52-111:</p> <ul style="list-style-type: none"> <li>• there are substantive and meaningful penalties for not maintaining effective disclosure controls and ICFR; and</li> <li>• CICA Corporate Performance Reporting Board with the CSA develops guidance for a separate section of the MD&amp;A dealing with the various disclosures related to both disclosure control and ICFR.</li> </ul>	We acknowledge the comments.
2.	Distinction Between DC&P and ICFR	Six commenters note overlap between DC&P and ICFR.	We have considered the overlap between DC&P and ICFR and we believe our proposals address concerns relating to the overlap.
<b>5. <u>REQUIREMENTS NOT CURRENTLY CONTEMPLATED BY THE INSTRUMENT</u></b>			
1.	General Comments	<p>Two commenters make the following recommendations:</p> <ul style="list-style-type: none"> <li>• the CSA and OSC launch (or encourage SEC) study on DC&amp;P to develop guidance around what is a desirable control structure;</li> <li>• the CSA and OSC undertake to provide guidance on the role of audit committees in an audit of ICFR;</li> <li>• audit committee to review the management report over ICFR and propose to the board for approval or CSA should clarify (amendment to 52-108); and clarify role of audit committee and board of directors (separate oversight responsibilities for certification process and ICFR).</li> </ul> <p>One commenter questions whether the audit committee should review the internal control report and make a recommendation to the board as to whether or not the board should approve the report.</p>	<p>We acknowledge the comments but have decided that design of ICFR is best left to the judgment of certifying officers, acting reasonably, based on factors that may be particular to the issuer and that we will not mandate the use of a particular control framework.</p> <p>Based on the proposals, the issuer's MD&amp;A is required to include conclusions about the effectiveness of ICFR, the control framework used, if any, the process for evaluating the effectiveness of ICFR and any reportable deficiencies. The issuer's MD&amp;A is required to be approved by the board of directors and audit committee before being filed in accordance with existing continuous disclosure and audit committee rules.</p>
<b>6. <u>PART 1 – DEFINITIONS, INTERPRETATION AND APPLICATION</u></b>			
1.	Definition of "Internal Control Audit Report"	One commenter notes that the definition includes a report that "states that an opinion cannot be expressed". Consideration should be given whether issuers should be allowed to file a denial of opinion.	The term is no longer used because issuers will not be required to obtain an internal control audit opinion from their auditor.
2.	Definition of "Internal Control Over Financial Reporting"	One commenter recommended that the words "policies and procedures that" should be replaced by "policies and procedures that are designed to".	We have made this change in paragraphs (b) and (c) of the definition.
3.	Definition of "Material Interest"	One commenter notes "material interest" is not defined.	We do not believe that material interest needs to be defined.
4.	Definition of "Material Weakness"	<p>Two commenters make the following recommendations regarding the definition of material weakness:</p> <ul style="list-style-type: none"> <li>• clarify that if a reporting issuer has a material weakness in ICFR that they would conclude that</li> </ul>	"Material weakness" is no longer used and has been replaced with the concept of a "reportable deficiency". A reportable deficiency is a deficiency, or

#	Theme	Comments	Responses
		<p>internal control is ineffective; and</p> <ul style="list-style-type: none"> <li>including definition of “material weakness” rather than reference to the auditing standard.</li> </ul> <p>One commenter notes that using the attestation standard set out by the CICA would set the standard so high that it would ultimately be unmet (costs outweigh benefits). This standard’s definition of material weakness is unrealistic.</p> <p>One commenter notes that casting the test as “more than a remote likelihood” will result in matters being treated as material weaknesses even though a reasonable person would think that the risk of a misstatement occurring is not material.</p>	<p>combination of deficiencies, in the design or operation of one or more controls that would cause a reasonable person to doubt that the design or operation of internal control over financial reporting 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.</p>
5.	Definition of “Significant Deficiency”	<p>Three commenters raise points regarding the definition of “significant deficiency”, which include:</p> <ul style="list-style-type: none"> <li>recommend a definition of “significant deficiency” rather than reference to the auditing standard;</li> <li>query the definitional concern regarding significant deficiency; and</li> <li>recommend additional guidance on what constitutes a “significant deficiency” and how to apply materiality when it relates to internal control reporting and extent of coverage required (checkbox approach is not helpful).</li> </ul>	<p>“Significant deficiency” is no longer used and has been replaced with the concept of “reportable deficiency” discussed above.</p>
6.	Definition of “Variable Interest Entity”	<p>One commenter suggests that a definition of “variable interest entity” be added to the rule.</p>	<p>We have defined “variable interest entity” to have the meaning ascribed to the term under the issuer’s GAAP.</p>
7.	Application to Issuers Exempt from 52-110	<p>One issuer and two lawyers suggest that subsidiary entities should also be exempt from 52-111 if they meet the requirements set out in 52-110 (s. 1.2(e)).</p>	<p>We continue to believe controls over subsidiaries that are consolidated are relevant since the subsidiary entities have a risk profile that is different from the issuer.</p>
<b>7. PART 2 - MANAGEMENT’S ASSESSMENT OF INTERNAL CONTROL OVER FINANCIAL REPORTING</b>			
1.	General Comments	<p>One commenter suggests that 52-111 or the 52-111CP should contain a clear statement as to when management cannot conclude that ICFR is effective. Reasons cited include:</p> <ul style="list-style-type: none"> <li>SOX 404 Rules state management cannot conclude that ICFR is effective if there are any material weaknesses; and</li> <li>although the CICA Standard prohibits an auditor from concluding ICFR is effective if there are any material weaknesses, 52-111 and 52-111CP lack a similar statement for management’s assessment.</li> </ul> <p>Four commenters support requirement that management certify the effectiveness of ICFR. Reasons cited include:</p> <ul style="list-style-type: none"> <li>management should be required to publicly report on all internal controls (entity and bottom level);</li> <li>internal auditing can contribute significantly to an organization’s efforts to improve ICFR; and</li> <li>internal auditor should support management in carrying out its responsibilities but not take on management’s responsibilities for documenting controls or implementing systems of internal controls.</li> </ul>	<p>We continue to believe that certifying officers, acting reasonably, should determine if there is a reportable deficiency in ICFR. We have included additional guidance in the companion policy regarding the evaluation of ICFR.</p> <p>We acknowledge that certifying officers should evaluate the effectiveness of ICFR and disclose their conclusions, describe the process used in their evaluation and disclose any reportable deficiencies.</p>

#	Theme	Comments	Responses
2.	Disclosure	<p>One commenter agrees that all issuers identified in 52-111 should be required to prepare the internal control report.</p> <p>Three commenters disagree with requiring management to prepare an internal control report. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• it will be fruitless to perform a financial reporting control check when the crucial decisions are made by a small group who can circumvent financial reporting;</li> <li>• certification by CEOs and CFOs is more than adequate;</li> <li>• concern over criminal responsibility of a CEO or CFO for something beyond their professional training (i.e. engineer); and</li> <li>• disclosure of weaknesses identified should only be reported internally to the audit committee and the external auditors.</li> </ul> <p>One commenter expresses concerns over the internal control report. Reasons cited:</p> <ul style="list-style-type: none"> <li>• letter and spirit of requirements brings management's attention to too low a level of detail;</li> <li>• few executives can be effective evaluators of ICFR if emphasis is on control procedures; and</li> <li>• 'information technology general controls' (52-111CP 2.3(2)(e)) and 'control over procedures used to enter transaction totals' (52-111CP 2.3(2)(f)) are items on which management can only take the word of associates.</li> </ul> <p>One commenter notes that the management report required by Accounting Guideline 7 <i>The Management Report</i> has become a perfunctory piece of disclosure, not subjected to any formal audit requirement or governance review and is not supported by any standardized or consistent assessment or evaluation of internal controls to support the statements made in such reports.</p> <p>One commenter recommends that management's annual report be filed as a separate document. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• 52-109 contemplates that statements of effectiveness of DC&amp;P and management's report on effectiveness of ICFR would be included in the MD&amp;A; and</li> <li>• to maintain consistency with SEC's flexible approach.</li> </ul>	<p>We have determined not to proceed with an internal control report. Instead, we propose to require that issuers disclose their conclusions about the effectiveness of ICFR in their annual MD&amp;A. To achieve our objective of transparency in financial reporting, we believe identified reportable deficiencies should be disclosed publicly, including any changes made to ICFR which may have been made in response to previously identified reportable deficiencies. We further believe that the potential market reaction by investors to reportable deficiency disclosure will increase management's focus on ICFR.</p>
3.	Risk-based approach	<p>One commenter recommends that only internal controls considered primary should warrant documentation, assessment, and testing. Assessment and testing of ICFR should focus more on acceptability of residual risk as opposed to inferring an absolute state of effectiveness.</p> <p>One commenter expresses concern that the requirements in 2.5(3) of 52-111 will cause an inordinate amount of work to be done within a relatively short period of time.</p> <p>One commenter advocates risk-based approach to process controls. Refers to the SEC and PCAOB May 16<sup>th</sup> guidance, commenter believes more reliance should be placed on:</p>	<p>We believe an evaluation of the effectiveness of ICFR should take into account the particular risks of the issuer. We have also provided additional guidance that should help issuers apply a top-down, risk-based approach.</p>

Request for Comments

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> <li>• company level controls;</li> <li>• a risk-based approach to process and control identification and testing; and</li> <li>• a focus on an “ethical environment”.</li> </ul> <p>The commenter also notes that the application of associated testing of SOX 404 and 52-111 should be based on an assessment of risk and not a quantitative only approach. 52-111 guidance should build on SEC May 16<sup>th</sup> SOX 404 interpretations and where possible, provide additional guidance to allow for an effective and efficient application.</p>	
4.	Definition of Management	<p>Nine commenters agree that a definition of management is not required.</p> <p>Three commenters recommend a definition of management be included or guidance be provided.</p>	<p>The term “management” is no longer used. Requirements for certification relate to each “certifying officer”, which is defined in the instrument.</p>
5.	Scope of Evaluation	<p>Four commenters agree with the scope of evaluation and recommend consideration of the following:</p> <ul style="list-style-type: none"> <li>• contemplation of unusual circumstances and provide the equivalent of a BAR with less than 75 days for an acquisition;</li> <li>• ordering of s. 2.3(2) of 52-111CP as emphasis is fundamental to the “top-down” approach recommended by the SEC and PCAOB;</li> <li>• guidance in s. 2.3 of 52-111CP is complete, however, recent guidance suggests that controls that have a pervasive impact (i.e. control environment) should be considered first; and</li> <li>• nature and extent of evaluation (management and auditor) should be based on assessment of inherent risk.</li> </ul> <p>Two commenters recommend emphasis on top-down, risk-based approach to the internal review and certification process. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• guidelines in the CP with respect to scope of evaluation of ICFR are not adequate;</li> <li>• provision of “reasonable” assurance and which approach allows use of a reasonable person’s judgment having regard to the size and nature of operations of the issuer and the risks associated with such issuer;</li> <li>• only material risks should be the focus of attestation; and</li> <li>• management with their auditors should be able to leverage the risk framework already employed in an organization to determine areas and processes that have the greatest risk of a financial misstatement.</li> </ul> <p>Four commenters express the following concerns regarding the scope of evaluation:</p> <ul style="list-style-type: none"> <li>• enquiry is referred to only briefly (52-111CP 2.3(3));</li> <li>• management can only take the word of associates on IT general controls (52-111CP 2.3(2)(e)) and control over procedures used to enter transaction totals (52-111CP 2.3(2)(f));</li> <li>• companies have been compelled by their audit firms to document and assess controls at a very</li> </ul>	<p>We acknowledge the comments and have included discussion in our guidance about the use of a top-down, risk-based approach and the importance of an effective control environment.</p>

#	Theme	Comments	Responses
		<p>detailed level which resulted in spending a disproportionately high level of resources to document low impact and low risk processes;</p> <ul style="list-style-type: none"> <li>• audit firms have required management to attain coverage with less regard to risk (i.e. perceived “requirement” to obtain at least 80% coverage across significant accounts);</li> <li>• queries how an internal or external auditor would be able to practically assess the ethical stance of senior management and/or the board of directors;</li> <li>• scope of evaluation in 52-111 is similar to PCAOB AS 2, point 40 - it is vague on significant account and does not include controversial aspects such as assessing the likelihood of a deficiency, determining the entities to cover and the use of work of internal audit;</li> <li>• brief description will not make it possible to adequately restrict scope of work recommended by external audit firms when interpreting the more detailed recommendations of the PCAOB;</li> <li>• issuers will face the same difficulties (as in the U.S.) if an effort is not made to more precisely define materiality, scope of work, and the use of work of the internal audit function to support certificates; and</li> <li>• in the banking industry the single concept of materiality, calculated using a percentage of pre-tax net earnings, results in coverage in excess of 80% for all balance sheet items and coverage in excess of 99% for 75% of items (due to the lack of precision in the scope of evaluation and the conservative stance adopted by external audit firms).</li> </ul> <p>Three commenters recommend that more emphasis should be placed on entity-level controls in financial reporting and disclosure. Reasons cited:</p> <ul style="list-style-type: none"> <li>• approach will direct management and auditor efforts to a more risk-based approach and reliance on company level controls which are more difficult to test;</li> <li>• implementation and ongoing compliance costs including consulting and auditing costs could be reduced;</li> <li>• company level controls and risk based approach are essential to 52-111 being implemented in an effective and efficient manner;</li> <li>• more time needs to be spent on reliance on tone at the top and assessing and testing financial statement impacting processes based on risk by management that can be relied on by the company’s auditor; and</li> <li>• scoping should not be done by formula, but should be risk-based and not based on arbitrary mandated percentages (professional judgment).</li> </ul> <p>Six commenters make various recommendations regarding the scope of evaluation, which include:</p> <ul style="list-style-type: none"> <li>• 52-111 should allow management and audit firms to use professional judgment in determining scope</li> </ul>	

#	Theme	Comments	Responses
		<p>and coverage;</p> <ul style="list-style-type: none"> <li>• guidance on the level of coverage necessary to support assessment by management of the effectiveness of the issuers ICFR;</li> <li>• clarification on implementation of requirements, the level of documentation, assessment and testing of controls over financial reporting throughout an organization and how to effectively utilize a risk based approach with more reliance on entity level controls;</li> <li>• clearly defining “all significant accounts ... in the financial statements” in the 52-111CP; and</li> <li>• additional guidance regarding industry-specific entities.</li> </ul> <p>One commenter recommends more guidance on tone at the top and recommends several factors to consider which include:</p> <ul style="list-style-type: none"> <li>• transparency;</li> <li>• establishing a reward and compensation system that does not discourage people to manipulate short term results to obtain their bonuses; and</li> <li>• listening to what everyone in the organization has to say.</li> </ul> <p>One commenter recommends CSA affirm focus on top-down, risk-based approach to the evaluation of ICFR. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• ensures effort and resources are directed to right areas in proportion to risk;</li> <li>• leads to focus on most significant issues which will yield greater net benefits and to a more efficient and effective compliance process; and</li> <li>• ensures a sharper focus when determining nature and extent of process documentation, selecting controls to evaluate and test the nature, timing and extent of controls testing.</li> </ul> <p>One commenter is concerned that there is insufficient guidance regarding the scope of internal control evaluation for smaller TSX issuers (those issuers with limited formal structures for internal control over financial reporting).</p> <p>One commenter supports management certification of internal controls, if it is based on a risk-based, and not absolute, approach to the assessment of controls.</p>	
6.	Scope of Evaluation – Joint Ventures	<p>One commenter requests deleting s. 2.6 of 52-111. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• the oil and gas industry is based on reliance on an operator’s processes for JV and partnerships;</li> <li>• it is inappropriate for regulators to interfere with the business negotiations and industry practice; and</li> <li>• investors should derive comfort from the certifications and attestations of the operator without forcing JV partners to replicate the oversight already undertaken by the operator.</li> </ul>	<p>We agree and have provided a scope limitation from the requirement to design DC&amp;P and ICFR extending into the JV if the scope limitation is appropriately disclosed in the annual MD&amp;A.</p>
7.	Additional Control Frameworks	<p>Four commenters note that they are not aware of any additional established frameworks.</p>	<p>Certifying officers are not required to design ICFR using a control framework or evaluate the effectiveness of ICFR</p>

#	Theme	Comments	Responses
		<p>One commenter notes that outlined frameworks present solid foundations and will be appropriate in many circumstances.</p> <p>One commenter notes that s. 2.4(4) of the 52-111CP indicates that 52-111 does not encompass elements of control frameworks relating to operational or compliance concerns "with the exception of compliance with applicable laws ...". If comment remains, note that ICFR may achieve multiple control objectives.</p> <p>Ten commenters make various recommendations regarding the development and identification of appropriate frameworks, which include:</p> <ul style="list-style-type: none"> <li>• industry or similar organizations should be asked to develop frameworks using diverse taskforces;</li> <li>• there should be an identified framework that is constructed with the specific nature of smaller issuers in mind and compliance should be deferred for small TSX issuers until a suitable framework is identified (i.e. COSO);</li> <li>• a reference was made to a report written with W.A. Bradshaw for the CICA in 1991 regarding the assessment of management control;</li> <li>• should identify suitable IT control frameworks (i.e. COBIT) because the required controls include IT controls;</li> <li>• recommend adding the anticipated COSO framework for smaller issuers;</li> <li>• COSO, CoCo and Turnbull should be the only acceptable standards;</li> <li>• a comprehensive review of CoCo and COSO should be considered as complexity of business and internal controls has evolved since frameworks were developed; and</li> <li>• recommend adapting traditional internal control models to smaller issuers.</li> </ul> <p>One commenter believes it is inappropriate to determine the control frameworks that should be identified in an internal attestation policy.</p>	<p>against a control framework. However, control frameworks may provide a useful tool for organizing the evaluation. On July 11, 2006, COSO published guidance for applying the COSO framework to smaller companies. In addition to the control frameworks previously identified, the Control Objectives for Information and Related Technology Framework (COBIT) published by the IT Governance Institute may be a useful tool for applying a control framework to the issuer's information technology systems.</p>
8.	Additional Guidance	<p>One commenter submits the following recommendations to avoid the consequences resulting from the interpretation and implementation of SOX 302:</p> <ul style="list-style-type: none"> <li>• require that registrants and auditors focus on the acceptability of residual risk;</li> <li>• retain the requirement to develop and maintain control design documentation;</li> <li>• require companies update control design documentation quarterly;</li> <li>• provide flexibility to management to determine level of control testing necessary to support its assessment conclusion; and</li> <li>• provide guidance for management on how to assess and report on control effectiveness.</li> </ul> <p>Five commenters indicate that issuers and/or auditors would welcome the following further guidance:</p> <ul style="list-style-type: none"> <li>• guidance for the application of control frameworks;</li> </ul>	<p>We have considered the comments and have provided some additional high-level guidance. We believe that the approach certifying officers take in designing and evaluating ICFR should be left to their judgment, acting reasonably, so we have limited the amount of guidance to allow for flexibility. We anticipate that industry-specific guidance and practices will develop.</p>

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> <li>• guidance for management on testing of controls, scope of documentation, how entity level controls affect the nature, timing and extent of transaction level tests of controls, and to what extent management may rely on is entity level controls as a basis for its assertions;</li> <li>• guidance to assist management in moving from a “limited formal structure” to effective ICFR to minimize compliance costs;</li> <li>• when sufficient documentation and an appropriate body of knowledge exist to support conclusion on effectiveness of ICFR; and</li> <li>• clarifying what constitutes “effective internal control” and “reasonable assurance.”</li> </ul> <p>One commenter recommends that a committee be established in Canada to address the concerns of smaller public companies that are unique to the Canadian business environment.</p> <p>One commenter recommends the following implementation and application guidance:</p> <ul style="list-style-type: none"> <li>• focus companies on entity-wide risk using a “top-down”, risk-based approach to plan and set priorities for the evaluation exercise; and</li> <li>• guidance on issuers’ best practices will create consistency in approach taken by all companies and reduce uncertainty for expectations of Canadian regulators.</li> </ul> <p>One commenter recommends further guidance concerning entity level controls, risk assessment and application to smaller companies. Guidance should address:</p> <ul style="list-style-type: none"> <li>• disclosure controls and ICFR;</li> <li>• requirement for a “scope” paragraph in the management report on ICFR describing nature and extent of assessment of ICFR and types of procedures performed to evaluate and test internal controls;</li> <li>• recognition that there can be differences in the scope of work performed by management and auditor (audit efficiencies/costs and competency/objectivity of client personnel); and</li> <li>• explicit requirement that management perform a meaningful assessment, regardless of the control framework utilized in their assessment, of inherent risk for both disclosure controls and ICFR before evaluation and testing is performed.</li> </ul> <p>Nature and extent of evaluation should be based on assessment of inherent risk so that the majority of testing performed is focused on controls over specific risks or high risk areas. Areas of high risk include recording of transactions or events that are not subject to a formal structured process (manual entries, non-routine/non-systematic transactions) and accounting estimates requiring high degree of judgment.</p> <p>Six commenters recommend additional guidance for management in the following areas:</p>	

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> <li>• stressing importance of qualitative factors to balance out quantitative criteria, resulting in resources being devoted to more risky areas;</li> <li>• 52-111 should make reference to the documents the financial market authorities deem pertinent regarding COSO and COBIT;</li> <li>• how to assess effectiveness of ICFR, alternatively outline that management can adopt standards and guidance followed by auditors (consider application to management);</li> <li>• a more defined view of what “top-down” approach means and how it can be aligned to the auditors’ approach;</li> <li>• what reliance can be placed on entity versus transactional controls with an effective reliance on a risk-based approach rather than a quantitative materiality calculation;</li> <li>• ensure that the assessments are focused on the financial reporting elements of the core framework and that they are cost-effective; and</li> <li>• whether certain joint ventures are included.</li> </ul> <p>One commenter recommends that the CSA work with the CICA to assist in creating guidance for smaller issuers.</p> <p>One commenter requests that guidance for management come from the CSA and not the CICA.</p> <p>One commenter makes the following recommendations regarding guidance for management:</p> <ul style="list-style-type: none"> <li>• consider the importance of enterprise-risk management and controls other than financial reporting to ensure all aspects of strong governance are addressed by issuers;</li> <li>• considering the UK approach of “comply or explain” where fairly detailed guidelines are provided to management; and</li> <li>• include a definition of “key controls” and “materiality”.</li> </ul>	
9.	Evidence – Content	<p>Four commenters agree that the content of evidence is accurate and appropriate</p> <p>One commenter recommends the following changes to 52-111CP:</p> <ul style="list-style-type: none"> <li>• 2.5(1) - referring to management’s evaluation of design and operating effectiveness (i.e. management evaluates, auditors test);</li> <li>• 2.5(1)(a) - “financial disclosure” should read “financial statements”;</li> <li>• 2.5(2(a) - clarify phrase “the evidence should include ... the design of controls” and starting bullet (a) with “documentation of”;</li> <li>• 2.5(3) – clarification of “written or non-written form” is confusing including an example.</li> </ul> <p>Seven commenters express concern regarding guidance on the content of evidence. The issues mentioned include:</p> <ul style="list-style-type: none"> <li>• indicate how much ‘documentation’ needs to be created in providing the necessary evidence (particularly for smaller issuers);</li> </ul>	<p>We acknowledge the comments and have eliminated the detailed evidence requirements. We have included guidance dealing with the extent and form of documentation that should generally be maintained to provide reasonable support for the certification of design and evaluation of DC&amp;P and ICFR.</p>

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> <li>• evidence required to support management’s assessment is account and process focused and would result in detailed documentation of a considerable number of processes, reasons cited include;                             <ul style="list-style-type: none"> <li>○ definition of ICFR;</li> <li>○ 52-111CP s. 2.3(2) (a), (b), (e) describe broad scope;</li> <li>○ s. 2.2 of 52-111 and CoCo contemplate detailed transaction level controls; and</li> <li>○ CICA Standard contemplates a detailed approach that limits professional judgment;</li> </ul> </li> <li>• the detailed emphasis on processes and transaction level controls, applied without judgment filters, is ineffective because it lacks focus on risk;</li> <li>• guidance in 52-111 regarding the type of evidence which must be maintained being evidence sufficient to provide reasonable support for management’s assessment and not all evidence that provides reasonable support for management’s assessment;</li> <li>• focus of section 2.5 of 52-111CP appears to be on design and documentation of processes and controls and recommends shifting the focus to risk-based approach; and</li> <li>• evidence may vary depending on issuer’s size, nature of business and complexity of operations.</li> </ul> <p>One commenter recommends the following as to the levels of documentation requirements:</p> <ul style="list-style-type: none"> <li>• enhance and specify requirements and reliance on company level controls;</li> <li>• clarify testing requirements for low risk but material processes; and</li> <li>• introduce a measurement for promotion of an ethical environment.</li> </ul> <p>Two commenters recommend that the requirement in s. 2.5(2)(b) of 52-111CP refer only to “how significant transactions are recorded, processed or reported” because in many cases, initiation and authorization will have no impact on financial statements.</p> <p>One commenter notes that the guidance is not adequate for issuers that have limited formal structures for ICFR. Issuers lacking formal structures tend to rely heavily on management supervisory types of controls to achieve ICFR. It is considerably more difficult to document testing of management supervisory types of controls, which can be stored and retrieved upon request.</p>	
10.	Evidence – Manner of Maintaining	<p>Eight commenters agree and one disagrees that the manner in which evidence must be maintained is adequate and appropriate.</p> <p>One commenter expresses concern that the prescribed time period may not be appropriate and eight commenters agree with the time during which the evidence must be maintained.</p>	<p>We acknowledge the comments and have eliminated the detailed evidence requirements.</p>

#	Theme	Comments	Responses
		One commenter recommends that the requirement to maintain evidence should be adjusted for non-Canadian issuers.	
11.	Board Approval of Internal Control Report	<p>One commenter recommends that internal control reports should be considered with the financial statements but should not require specific board approval.</p> <p>Three commenters make recommendations regarding approval of the internal control report in s. 2.6:</p> <ul style="list-style-type: none"> <li>• clarifying that if a board refuses to approve an internal control report whether they are in violation of s. 2.6;</li> <li>• the board of directors should be able to delegate approval of the internal control report to the audit committee; and</li> <li>• clarifying whether the audit committee should review the internal control report and make a recommendation to the board regarding approval.</li> </ul>	We have determined not to proceed with an internal control report. Instead, we propose to require that issuers disclose their conclusions about the effectiveness of ICFR in their annual MD&A. Since the MD&A must be approved by the board of directors before being filed, management's disclosure of their conclusions about the effectiveness of ICFR must be approved by the board of directors. Consistent with the review of MD&A by the board of directors, this approval cannot be delegated.
12.	Limits on Disclosure – JV, VIE, Acquired Business	<p>Ten commenters agree that it is appropriate to disclose any limitations on management's assessment of effectiveness of ICFR.</p> <p>One commenter recommends the following regarding disclosure of limitations by management:</p> <ul style="list-style-type: none"> <li>• exempt management from assessing the controls over portfolio and equity investments (s. 2.6(3));</li> <li>• check references in s. 2.6(4)(b) as they should refer to 5.6(5)(d)(ii) only; and</li> <li>• clarify the last sentence in s. 2.6(5) regarding the implications if management has the ability to evaluate ICFR but not the ability to design.</li> </ul> <p>One commenter requests further clarification of the scope of evaluation of ICFR extending to a JV or VIE and if the issuer can rely on the JV or VIE being in compliance with 52-111.</p> <p>One commenter recommends that where there are limitations, disclosure should include a description of the reasons for the limitation and management's action plan and expected timetable to deal with the limitation presented.</p> <p>One commenter recommends that the word "significant" be added when referring to interest in an entity to avoid work on insignificant entities. (52-111CP s. 2.6(3) and 52-111CP s. 2.6(5)).</p> <p>Two commenters agree with disclosure if the business is material and there are actual limitations in management's assessment of the effectiveness of ICFR in those businesses.</p>	We continue to believe that DC&P and ICFR should be designed to extend into underlying entities to the extent necessary to provide reasonable assurance that material information about the entity is made known to the issuer on a timely basis and regarding the reliability of the information. We expect certifying offices to take all reasonable steps to design those controls. Where sufficient access to the underlying entity is not reasonably possible to design controls, the issuer is required to disclose the scope limitation in its MD&A together with summary financial information of the entity that has been consolidated in the issuer's financial statements.
13.	Limits on Disclosure – JV	<p>One commenter recommends disclosure of how management can conclude they have joint control but do not have access to the underlying entity (s. 2.6(3)).</p> <p>One commenter requests further clarification of the scope of evaluation of ICFR extending to a JV and if the issuer can rely on the JV being in compliance with 52-111.</p>	We have provided a scope limitation from the requirement to design DC&P and ICFR extending into the JV if the scope limitation is appropriately disclosed in the annual MD&A.

#	Theme	Comments	Responses
		<p>Five commenters express concern regarding disclosure of any limitations on management's assessment of the effectiveness of ICFR. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• requirement is more onerous than the SOX 404 as JVs are accounted for using the equity method under U.S. GAAP and can be scoped out;</li> <li>• could result in a very costly effort to assess internal controls and yet an inability to remediate any weaknesses or deficiencies that are identified;</li> <li>• one of the JV partners may not have a reporting requirement or where the company who is required to report has no effective control over the JV;</li> <li>• disclosure requirements would erode management's ability to focus on implementing strategies and managing business risks; and</li> <li>• if JV is material to issuer, then the internal controls will be appropriately addressed if management and auditors take a risk-based approach to review of internal controls.</li> </ul> <p>One commenter recommends revising s. 2.6 where one of the partners is not bound by 52-111. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• JV agreements entered into where the issuer is not the sponsor and does not manage financial records of JV;</li> <li>• difficult for issuer to force partner to comply (cost borne by issuer);</li> <li>• absorbing full cost of compliance will significantly impact issuer's return from JV project; and</li> <li>• JV partners not required to comply with 52-111 will choose not to work with issuer if compliance costs are to be borne by the JV.</li> </ul> <p>One commenter recommends that the attestation rules should allow for reliance on the operator of a JV and certification by the operator's auditors regarding the operator's internal control process. Reasons cited for the recommendation include:</p> <ul style="list-style-type: none"> <li>• the cost would be exponentially higher as each JV partner would have its own auditor engaged in the attestation of the JV operations oil and gas industry; and</li> <li>• inefficient use of business personnel time and potential impact to overall profitability and operations.</li> </ul> <p>One commenter disagrees with disclosing any limitations on management's assessment of the effectiveness of ICFR. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• it is not practical that each JV partner be given access to the operator's systems to evaluate ICFR;</li> <li>• it is not possible or practical to request access to a major energy company's systems to audit/evaluate controls;</li> <li>• certain service providers would push back in providing access, as they are very concerned over privacy issues;</li> </ul>	

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> <li>many oil and gas companies outsource accounting functions significant coordination effort required to review ICFR of various entities;</li> <li>materiality thresholds of a large JV partner and a small JV partner make application of 52-111 unfair between them; and</li> <li>companies identifying limitations may be perceived poorly by the markets.</li> </ul>	
14.	Limits on Disclosure – Other	<p>Three commenters agree with disclosing any limitations in management’s assessment of the effectiveness of ICFR.</p> <p>Two commenters recommend additional areas for disclosure:</p> <ul style="list-style-type: none"> <li>that a subsidiary that has gone into bankruptcy protection;</li> <li>circumstances giving rise to scope limitation;</li> <li>governance and controls in place; and</li> <li>significance/materiality of excluded businesses.</li> </ul> <p>One commenter disagrees with disclosure of limits on management’s assessment where management is acting in good faith and with the agreement of its auditors and if there are extenuating circumstances that practically limit its assessment (i.e. extreme imbalance between cost and benefit).</p> <p>One commenter recommends limiting the assessment of an acquisition or merger for two years as of the acquisition or merger date.</p> <p>One commenter recommends that disclosure of weaknesses identified should only be reported internally to the audit committee and the external auditors.</p> <p>One commenter makes the following recommendations regarding disclosure:</p> <ul style="list-style-type: none"> <li>management should be able to rely on assessment of subsidiaries subject to similar obligations of internal control certification and/or reporting without having to duplicate review of the subsidiary’s systems; and</li> <li>management should disclose any limitations in its assessment, regardless of the reasons s. 2.5(1)(f) beyond JV and VIE.</li> </ul> <p>One commenter recommends considering limits imposed upon issuers subject of a merger, amalgamation, arrangement, or take-over (or reverse take-over), particularly where the management and board of the resulting issuer are new/different to the resulting entity.</p>	<p>We agree with the comments that disclosure of any limitations on management’s assessment should be required and, as noted above, if sufficient access to the underlying entity is not reasonably possible to design controls, the scope limitation should be disclosed in the issuer’s MD&amp;A together with summary financial information of the entity that has been consolidated in the issuer’s financial statements.</p> <p>If issuers face specific challenges in designing and evaluating DC&amp;P and ICFR into underlying entities, the issuer should seek relief which may be provided based on the specific facts on a case-by-case basis.</p> <p>We have considered the comments received on recent acquisitions and our proposals acknowledge that it may not be feasible to design DC&amp;P and ICFR to include controls, policies and procedures carried out by a business that was recently acquired by an issuer. Where it is not feasible to design controls, policies and procedures carried out by a business that the issuer acquired within 90 days before the end of the period to which a certificate relates, the issuer is required to disclose this scope limitation in its MD&amp;A together with summary financial information of the portion of the acquired business that has been consolidated in the issuer’s financial statements.</p>
	<b>8. PART 3 – INTERNAL CONTROL AUDIT REPORT</b>		
1.	General comments	<p>Three commenters agree with the auditor attestation requirement. Reasons cited include:</p> <ul style="list-style-type: none"> <li>without auditor attestation there would be little integrity and consistency in the certification process;</li> <li>auditor involvement is key to accurate and complete internal control disclosures;</li> </ul>	<p>We acknowledge the comments, but have decided not to require an issuer to obtain an internal control audit report from its auditor. Our proposals focus on the responsibilities of management and on the expectation that management will take a vigorous approach to the design and evaluation</p>

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> <li>• audit of ICFR will help ensure objectivity and consistency of management's assessment process; and</li> <li>• auditor involvement is one of the significant reasons underlying the increased disclosures of material weaknesses in U.S. filings.</li> </ul> <p>One commenter recommends the following areas where a more risk-based approach could be beneficial:</p> <ul style="list-style-type: none"> <li>• ability to rotate testing of key controls based on risk assessment;</li> <li>• ability to perform tests of controls during the year for lower risk processes as opposed to performing the tests substantially at year end;</li> <li>• ability to vary the extent of testing between routine low-risk processes; and</li> <li>• the use of internal auditors to provide principal evidence in certain areas.</li> </ul> <p>One commenter recommends that the AASB in consultation with the PCAOB encourage use of professional judgment and that the AASB initiate a project to revise GAAS to improve existing standards for reporting on internal control, annual financial statements, and interim reviews of quarterly annual reports.</p> <p>One commenter calls for additional guidance to auditors emphasizing the use of a risk-based approach to auditing ICFR to learn from "Year One" experiences with the SOX 404 Rules.</p> <p>One commenter recommends placing reliance on the work performed by internal auditors. Suggests that PCAOB AS No. 2 greatly restricts auditor's level of professional judgment, resulting in duplication of evaluation and testing of controls.</p> <p>One commenter notes that over the long-term, independent confirmation of management's assessment of ICFR will provide greater comfort and assurance to investors and stakeholders.</p>	of ICFR.
2.	Integrated Audit	Six commenters support an integrated audit.	We will not require an issuer to obtain an internal control audit report from its auditor.
3.	Other Standards for Preparation	<p>One commenter expresses concern that proposed CICA Handbook in section "Identifying significant accounts" (para. .060-.064) will not allow the same level of professional judgment for auditors. Without any changes, will result in different scoping criteria for management's assessment and auditor's assessment. Commenter agrees guidance in s. 5 is adequate and appropriate.</p> <p>Two commenters specifically support a top-down, risk-based approach. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• costs of compliance for Canadian issuers;</li> <li>• refers to recent SEC guidance in respect of the standard for auditor review; and</li> <li>• provisions in 52-111CP will only accentuate bias for a detailed, risk-averse approach by auditors.</li> </ul>	We agree with the comments relating to the top-down, risk-based approach and have included guidance in the companion policy focusing management's attention on this approach.

#	Theme	Comments	Responses
		<p>One commenter recommends a more defined view of “top-down” approach and how it aligns with the auditor’s approach. The following questions require some guidance:</p> <ul style="list-style-type: none"> <li>• what reliance can be based on company level controls?</li> <li>• how does the identification and testing of company level controls impact the requirements for more specific transactional process control documentation, assessment and testing?</li> <li>• what account risk profile requires detailed process assessment and testing? and</li> <li>• how is materiality used in determining account identification and testing sizes when you have already considered risk, past experience and company level controls?</li> </ul> <p>One commenter suggests two alternative standards of preparation consistent with a top-down risk-based approach. The first is an engagement to express an opinion on the design and existence of control procedures, would be reasonable and of equivalent value for investors. Alternatively, a limited scope of engagement of entity level controls (combined with a management assessment of controls identified through a risk analysis of entity level controls). Auditor should not be required to review controls underlying the entity level controls unless entity level controls are found to be inadequate.</p> <p>One commenter strongly recommends that the CSA consider issuing additional guidance that allows for risk-based approach to scoping beyond a pure quantitative approach.</p> <p>One commenter notes that, considering the depth and complexity of the COSO and COBIT assessments, it is questionable whether the cost of undertaking comprehensive annual updates would outweigh the benefits unless there is a material change in the business environment.</p> <p>One commenter recommends modifying the scope of auditors work to cycle through the internal controls over a 3-year period. It still provides the appropriate check and balance to the management evaluation of internal controls. The cycle approach need not be systematic to ensure the element of choice remains with the auditor.</p> <p>One commenter urges the CSA provide guidance to the CICA in setting the CICA Standard. Notes the terms “material” and “remote” in para. .017 of the proposed CICA Standard requires comprehensive review and extensive testing. CSA guidance is necessary to avoid difficulties created by PCAOB AS No. 2. Contends that this will enable the auditor to perform its work within a top-down risk-based framework.</p> <p>One commenter notes that concern over auditor attestation is particularly acute for smaller issuers. Important that smaller issuers not be overwhelmed with additional costs and efforts that are proportionately much larger and more disruptive.</p>	

#	Theme	Comments	Responses
		One commenter recommends encouraging external auditor's reliance on the use of work of a competent and independent internal audit function (i.e. IIA's <i>International Standards for the Professional Practice of Internal Auditing</i> ). Using the work of internal auditors, where appropriate, would increase efficiencies in testing and reduce costs.	
<b>9. PART 5 – DELIVERY OF INTERNAL CONTROL REPORTS AND INTERNAL CONTROL AUDIT REPORTS</b>			
1.	General Comments	One commenter recommends clarification of section 5.1 when it states that an issuer must send an internal control report when it "must" send its annual financial statements and MD&A under 51-102. Section 4.6 of 51-102 requires issuers to send financial statements to anyone who requests them except where financial statements were filed more than two years before the issuer received the request. Suggests rephrasing s. 5.1 as follows: "When an issuer sends its annual financial statements and annual MD&A for a financial year to a person pursuant to Section 4.6 of 51-102 it must also send to the person or company, concurrently and without charge, a copy of its internal control report and internal control audit report, if any, prepared for that financial year."	We acknowledge the comment, however, since our proposals require disclosure only in the issuer's MD&A, the delivery requirements are dealt with in NI 51-102.
<b>10. PART 6 - LANGUAGE</b>			
1.	Translation	One commenter queried whether section 6.1(3) would require translation of the reports into French.  One commenter recommends s. 6.1(1) should be rephrased as "an issuer required to file internal control reports and internal control audit reports under this Instrument may file them in French or in English" and notes that it is not clear what obligation 6.1(3) is intended to impose upon an issuer.	Since our proposals require disclosure only in the issuer's MD&A, the translation requirements are dealt with in NI 51-102.
<b>11. PART 7 – EXEMPTIONS</b>			
1.	General Comments	Seven commenters agree with the proposed exemptions.  One commenter disagrees with the exemptions noting that size tests based on market cap or similar dollar measures often do not recognize the problem. Commenter recommends more exemptions.  One commenter notes division on whether there should be differing levels of compliance based on a measure such as company size. Concern that smaller companies would face a disproportionate increase in costs to comply and that the requirements should be reduced for smaller companies.	We propose that the additional internal control reporting requirements apply to all reporting issuers, other than investment funds, consistent with the current scope of MI 52-109. Our proposals recognize that ICFR is important for all reporting issuers, regardless of their size or listing. We recognize that certain venture issuers cannot reasonably overcome all the challenges in designing ICFR and our proposals allow these issuers to disclose a reportable deficiency in their design without having to remediate it.
2.	Transition	One commenter recommends adjusting the exemption transition levels to the following: <ul style="list-style-type: none"> <li>• Transition 1 issuers – market cap of \$500 million or more, but less than \$1 billion;</li> <li>• Transition 2 issuers – market cap of \$250 million</li> </ul>	We believe that ICFR is important for all reporting issuers, regardless of their size or listing. Therefore, we are not proposing staggered implementation dates.

Request for Comments

#	Theme	Comments	Responses
		<p>or more but less than \$500 million; and</p> <ul style="list-style-type: none"> <li>• Transition 3 issuers – market cap of \$75 million or more but less than \$250 million.</li> </ul> <p>One commenter recommends widening scope of exemption given to transition 1 issuers from \$250 million to \$1 billion. Reasons cited: to provide companies with benefit of learning from U.S. experience and to provide auditors with more time to evaluate the issues relating to scope of their audits.</p>	
3.	Exemption for Issuers that Comply with U.S. Laws	Three commenters support the proposed exemption for issuers that comply with SOX 404.	We have maintained the exemption for issuers that comply with the Sox 302 and Sox 404 Rules.
4.	Exemption for Foreign Issuers	One commenter recommends that the rules under this regulation be conformed to the SOX 404 specific foreign issuer rules. Specifically, foreign issuers in Canada should comply but be given extra time to implement.	We acknowledge the comments and continue to provide an exemption for issuers that comply with U.S. laws.
5.	Exemption for Asset-Backed Securities Issuers	One commenter questions appropriateness of requiring issuers of asset-backed securities to file the full annual certification in Form 52-109F1. It may be more appropriate for these issuers to file the same form of annual certification to be filed by venture issuers (also exempt from 52-111).	We believe that ICFR is important for all reporting issuers and, subject to the design accommodation discussed in our proposals, are proposing that the requirements apply to all issuers other than investment funds. ABS issuers are subject to the continuous disclosure requirements set out in NI 51-102, however, some ABS issuers have obtained relief from certain continuous disclosure requirements. ABS issuers that have obtained relief from certain continuous disclosure requirements may apply for relief which will be considered on a case-by-case basis.
6.	Other Classes of Exempt Issuers	<p>Various commenters recommend:</p> <ul style="list-style-type: none"> <li>• compliance be limited to those issuers that must, because of size, type of business and number of employees rely extensively on internal controls;</li> <li>• allow issuers under a certain size to have an exemption to disclose those “standard” internal controls that they have chosen to NOT adopt and to say why and what they do instead;</li> <li>• companies listed on the equivalent venture exchanges in other countries, other than SEC issuers, should not be subject to 52-111;</li> <li>• extend exemption to issuers with market capitalization of less than \$75 million.;</li> <li>• subsidiary entities should also be exempt from 52-111 if meet the requirements in s. 1.2(e) of 52-110;</li> <li>• use of bright line tests to determine exclusion for smaller TSX issuers. Suggests that the size test be consistent with an existing test, such as the current size of U.S. \$75 million public float currently applied to issuers using MJDS;</li> <li>• exemptions provided in the application sections of MI 52-110 and NI 58-101 be extended and apply to the final version of proposed 52-111. Alternatively, an exemption should be added to allow issuers who have exemptive relief orders</li> </ul>	We believe that ICFR is important for all reporting issuers, regardless of their size or listing, thus our proposals apply to all reporting issuers other than investment funds. However, in recognition of the unique challenges that certain venture issuers face in designing ICFR, we have included in our proposals the design accommodation.

#	Theme	Comments	Responses
		allowing them to rely on the financial statements of another issuer to also rely on that issuer's internal control report.	
<b>12. PART 8 – EFFECTIVE DATE AND TRANSITION</b>			
1.	General Comments	<p>Twenty-two commenters recommend delaying implementation for at least one year. The reasons cited include:</p> <ul style="list-style-type: none"> <li>• implementation experience of the SOX 404 Rules shows that compliance exercise is time consuming and a costly diversion of resources away from the core business;</li> <li>• SEC delay for foreign private issuers creates additional pressures on resources (same timeline for 52-111) to ensure consistency;</li> <li>• Canadian issuers are smaller than Canadian SEC registrants and do not have the same financial and human capacity or flexibility;</li> <li>• deferral would provide opportunity to more effectively deal with resource constraints;</li> <li>• ensure Canadian companies benefit from U.S. experience and the adoption of clear and complete auditing guidelines (PCAOB) to achieve effective and sustained change within the issuer's organization;</li> <li>• to determine how to provide guidance for companies attempting to implement changes required by 52-111;</li> <li>• enables issuers to have more time to review internal controls and implement improvements that could benefit operations and bring additional value;</li> <li>• current standards used by external audit firms require internal controls be effective for 6 months to be positively assessed – issuers would be left with a short time period to adjust to the new requirements (less than 1 year across the world);</li> <li>• effect on the business (bank) of carrying out this work simultaneously with the work required by the Basel Accord;</li> <li>• fraud detection and prevention requirements in the SOX 404 Rules have been causing significant difficulties in the U.S., recommend that the equivalent provisions in 52-111 be deferred until SEC has resolved this issue;</li> <li>• required changes to IT have to be planned 12 to 18 months in advance; and</li> <li>• change in culture requires careful planning, insufficient time would result in unnecessary tension and strain on management.</li> </ul>	We believe the process of evaluating the effectiveness of ICFR will be a significant undertaking for many issuers. Therefore, we have allowed for a significant lead time for issuers to plan and implement efficiently the activities required to support the additional certifications and disclosure related to ICFR.
2.	Appropriateness of Phased-in Implementation	<p>Sixteen commenters support phased-in implementation. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• reduces the impact of having all issuers fighting for limited skilled resources in the same period to support on-time compliance;</li> <li>• allows for more guidance to be available to smaller issuers, based on the experiences of larger issuers;</li> </ul>	We believe that ICFR is important for all reporting issuers, regardless of their size or listing. We are no longer proposing staggered implementation dates because we believe our proposals address the concerns about limited resources being available to implement ICFR, which initially led us

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> <li>• allows for costs of compliance to be spread out over time;</li> <li>• facilitates orderly implementation;</li> <li>• provides smaller issuers and non-venture issuers with a lower market capitalization reasonable time to comply;</li> <li>• compliance requires a significant effort and resources are very limited for smaller companies; and</li> <li>• allows more studies to be performed on the application of internal control frameworks to smaller companies.</li> </ul> <p>Three commenters disagree with phased-in implementation since it does not adequately address cost and limited expertise and concerns with a long transition period between management's certification of design effectiveness and management certification and auditor attestation of ICFR.</p> <p>One commenter expresses the phase-in period is too long for smaller issuers (&lt; \$250 million market cap). Reasons cited include:</p> <ul style="list-style-type: none"> <li>• exposes investors to a greater degree of risk and provides too large a time lag for management; and</li> <li>• discussions reveal that many smaller issuers are starting the process earlier than expected, and do not expect significant resistance to reducing the phase-in period.</li> </ul> <p>One commenter recommends time frame from implementation between transition issuers should be extended to 24 months from 12 months.</p> <p>One commenter agrees that a requirement including auditor attestation should be phased-in by size of company. However, the proposed threshold of \$500 million is too low. Scarcity of resources and lack of guidance respecting internal control frameworks for smaller companies is a challenge.</p> <p>One commenter recommends breaking down implementation phases further. Aim is to have a more even distribution of issuers based on market cap comply with requirements each year.</p> <p>One commenter disagrees with phased-in implementation, suggesting that 52-111 be restricted to Canada's largest issuers. Following completion of "Year 1", the CSA should examine such issuers' implementation experience to make an informed decision regarding application to smaller issuers.</p>	<p>to consider staggering implementation of the requirements.</p>
3.	Phased-in Implementation and Expertise	<p>Five commenters disagree with the approach because the proposed timeframe requires all issuers to compete for scarce resources.</p> <p>Four commenters agree that phased-in implementation helps address the concerns regarding the costs and limited availability of appropriate expertise.</p>	<p>We believe that ICFR is important for all reporting issuers, regardless of their size or listing. We are no longer proposing staggered implementation dates because we believe our proposals address the concerns about limited resources being available to implement ICFR, which initially led us to consider staggering implementation</p>

#	Theme	Comments	Responses
		<p>Five commenters express concern regarding limited availability of appropriate expertise both within issuers and auditors to undertake and complete the evaluation requirements.</p> <p>Two commenters noted the following constraints on resources:</p> <ul style="list-style-type: none"> <li>• many recent regulatory changes (Basel Accord, CICA);</li> <li>• delay in application of SOX to FPI results in recruiting difficulties for issuers and auditors;</li> <li>• operating in a French environment limits recruiting abilities.</li> </ul> <p>One commenter notes that phased-in implementation does not adequately address the cost and limited resource concerns, and will not sufficiently ease the burden on smaller issuers. The commenter recommends delaying compliance for Canadian issuers who are not already complying with SOX 404, until the CSA has sufficient time to study and digest the impact of SOX on SEC registrants.</p>	of the requirements.
<b>13. REVISED CERTIFICATION MATERIALS</b>			
1.	General Comments	<p>One commenter recommends that smaller companies exempt from 52-111 should still be required to certify ICFR. Possible legal ramifications of making such certifications without appropriate due diligence should encourage signing authorities to ensure their internal control processes are appropriate for the scale and scope of their operations.</p> <p>One commenter notes that the revised certification materials require management to focus on internal controls and ensure the appropriate control environment is instituted. The additional responsibility on the CEO and CFO to sign these certificates will require such officers to ensure there is an environment from the top of the organization downward to have proper accounting and disclosure processes in place.</p> <p>Two commenters request adding to 52-109 the requirement for management to disclose any material weaknesses to the audit committee and auditors.</p> <p>One commenter recommends maintaining the requirements of CEO/CFO certifications in 52-109. Most companies will be compelled to establish a suitable internal control framework (i.e. COSO) to meet the requirements of full annual certification. Hence, the requirements in Part 2 of 52-111 (up to and incl. 2.3) will be a natural outcome.</p> <p>One commenter endorses exemption provided in 7.1 of 52-109 for issuers that comply with the certification requirements of SOX 302.</p> <p>One commenter notes that the certifying officers would not necessarily be involved in the design of internal controls and procedures and ICFR. Requests review of wording in Form 52-109 to this effect. Notes that in most circumstances, benefit from internal control processes are put in place over the years by their predecessors.</p>	We agree that all issuers should be required to certify ICFR since we believe ICFR is important for all issuers, regardless of size. We believe our proposals will increase managements focus on, and accountability for, the quality of ICFR. We have also included a requirement that reportable deficiencies existing at the end of the period to which a certificate relates be disclosed in the issuer's MD&A.

#	Theme	Comments	Responses
2.	Venture Issuer to Refile Annual Certificates	<p>One commentator disagrees with the requirement of a venture issuer to refile its annual certificates for a financial year when it voluntarily files an AIF for that financial year after it has filed its annual financial statements, MD&amp;A and certificates for that financial year.</p> <p>One commenter notes that it is not appropriate to require refiling because of timing gap. Although AIF is filed with respect to a financial year, it should take into account subsequent events. Certificate will also bear a later date. However, annual financial statements and MD&amp;A, since they have already been filed, will not have been updated. It may be difficult to still conclude financial statements and MD&amp;A “fairly present” matters without taking into account events subsequent to year end.</p> <p>Three commenters believe it is appropriate for venture issuer to refile annual certificates. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• If issuer is relying on the AIF as a document incorporated by reference in order to raise capital, or as part of its continuous disclosure record, it will need to be protected by the certifications. Otherwise, there may be a gap in identifying reliance by investors and corresponding liability by the issuer and its CEO and CFO</li> <li>• serves to confirm that there have been no material changes to the related financial statements and annual MD&amp;A.</li> </ul>	<p>We acknowledge the comments but continue to believe that the subsequently filed AIF may include more current information than is included in the annual financial statements and MD&amp;A that must also be certified. The refiled annual certificate relates to the annual filing, which consists of the annual financial statements, MD&amp;A and AIF, not to each of the individual documents. If a venture issuer is concerned with refiling its annual certificates, it may be possible to reorganize its affairs to file its AIF together with its annual financial statements and MD&amp;A.</p>
3.	Timing Gap	<p>One commenter notes timing gap may be problematic, but needs to be addressed by companies. Certificates should cover up to the last of filing documents.</p> <p>One commenter believes that AIF should clearly set forth any material changes to the information presented in related financial statements and annual MD&amp;A. Assuming this is the case, the proposed certificates would be appropriate and desirable as the “annual filings” referred to in the certificates should collectively be “certifiable” using the proposed certificate wording.</p> <p>One commenter does not see the timing gap as problematic. Any subsequent information obtained including updates on ICFR would need to be looked at if it impacted the financial statements already issued and what appropriate actions, if any, would need to be taken. Assessment of significant deficiencies and material weaknesses disclosures required would be taken into consideration.</p> <p>One commenter notes that a significant timing gap may create confusion. It must be clear from the revised certificate that the representations relating to previously filed documents remain unchanged and that the certificate has been filed solely to cover the voluntarily filed AIF. This can occur if a separate certificate covering the voluntarily filed AIF must be filed.</p>	<p>We acknowledge the comments and agree that issuers need to address the issues. It may be possible for the issuer to reorganize its affairs to file its AIF together with its annual financial statements and MD&amp;A.</p>
4.	Inability to Certify Under 52-109	<p>One commenter notes that one should be able to expressly qualify one’s certification, with an explanation, without putting the issuer and others off-side and thus liable to penalties for not filing the certificates in the form required.</p>	<p>Our proposals allow management of an issuer, in certain circumstances, to disclose scope limitations in their certification, if the issuer makes appropriate disclosure in its annual</p>

#	Theme	Comments	Responses
			MD&A.
5.	Certification Extending into Underlying Entities	<p>Three commenters note the following:</p> <ul style="list-style-type: none"> <li>• expectation that management will have sufficient access to a subsidiary to evaluate issuer's ICFR in the subsidiary will not be true in all cases, especially where the subsidiary is a public company;</li> <li>• most companies are complex, with subsidiaries, equity interests and venture investments. The guidance on the boundaries cannot override judgment and applying the risk-based approach; and</li> <li>• generally the guidance is adequate and appropriate. The phrase "all reasonable steps" is open to interpretation.</li> </ul>	Our proposals allow management of an issuer, in certain circumstances, to disclose scope limitations in their certification, if the issuer makes appropriate disclosure in its annual MD&A. We may consider granting relief in other situations where certification is not feasible, on a case-by-case basis.
6.	Treatment of Underlying Securities	One commenter finds that the guidance regarding the treatment of underlying entities set out in the Revised Certification Policy is inadequate and inappropriate.	We have revised the guidance regarding the treatment of certain underlying entities in our proposals.
7.	Form of Certification for Asset-Backed Issuers	One commenter questions appropriateness of requiring issuers of asset-backed securities to file full annual certification in Form 52-109F1.	We believe that ICFR is important for all reporting issuers and, subject to the design accommodation discussed in our proposals, are proposing that the requirements apply to all issuers other than investment funds. ABS issuers are subject to the continuous disclosure requirements set out in NI 51-102, however, some ABS issuers have obtained relief from certain continuous disclosure requirements. ABS issuers that have obtained relief from certain continuous disclosure requirements may apply for relief, which will be considered on a case-by-case basis.
<b>14. OTHER COMMENTS</b>			
1.	Drafting Comments	One commenter recommends that 52-111, 52-111CP and 52-109 be amended [particularly definition of ICFR, s. 2.3(2) (a)(b)(e) & 2.4 of 52-111CP, 52-111 s. 2.2 & 3.2(1)(a)] to permit issuers to conduct an assessment that is not a "mechanistic, check-the-box exercise".	We have not amended the definition of ICFR, but we have provided guidance that encourages issuers to adopt a risk-based approach.
2.	Enforcement and Compliance	<p>One commenter makes the following recommendations in respect of the compliance and enforcement of 52-111:</p> <ul style="list-style-type: none"> <li>• CSA and OSC should publicly commit to the same standards of compliance and enforcement that the SEC and PCAOB committed to on May 16, 2005 (i.e. proactive communication);</li> <li>• CSA and OSC should specifically commit to high-level principles that will help define the assessment process under 52-111 for all concerned (to avoid implementation problems experienced in the U.S.); and</li> <li>• Establish a Canadian equivalent to the SEC Advisory Committee on Smaller Public Companies (develop "made-in-Canada" approach).</li> </ul>	We intend to monitor the implementation of our proposed approach as part of our continuous disclosure reviews. As part of that process, we may enquire into the procedures that support the disclosure and certifications, particularly where the continuous disclosure filings contain material misstatements or apparent errors.

**Request for Comments**

#	Theme	Comments	Responses
3.	Directors' Liability	One commenter refers to Part 6 of 52-111CP regarding liability of officers for misrepresentations that may be contained in an internal control report and of audit firms with respect to internal control audit reports. Recommends adding reference to potential exposure of directors respecting internal control report and, possibly, the issuer.	We acknowledge the comment, but we believe that directors and officers should be aware of potential liability exposure and a discussion is not necessary in our proposals.
4.	Interaction with Short Form Prospectus Rule	One commenter states that the internal control report and the internal control audit report will not be incorporated by reference into a short form prospectus under 44-101. CSA should provide guidance on extent to which material weaknesses in internal control will have to be disclosed in a prospectus to meet "full, true and plain disclosure."	We believe that if an issuer has identified a reportable deficiency in its ICFR, the prospectus requirements would already require disclosure of this risk factor.
5.	Linkage Between Corporate Governance Guidelines and Disclosure	One commenter recommends that the CSA communicate linkages and interrelationships of various policies and instruments so that boards of directors, management and auditors can understand and ensure that all components are implemented in a cost effective manner.	Although we believe an issuer should obtain this type of interpretation from its legal counsel, we have provided some guidance on board and audit committee involvement in our proposals.

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

**TABLE OF CONTENTS**

**PART 1 – DEFINITIONS AND APPLICATION**

- 1.1 Definitions
- 1.2 Application

**PART 2 – DISCLOSURE CONTROLS AND PROCEDURES AND INTERNAL CONTROL OVER FINANCIAL REPORTING**

- 2.1 Design of DC&P and ICFR
- 2.2 ICFR design accommodation for venture issuers
- 2.3 Limitations on scope of design

**PART 3 – CERTIFICATION OF ANNUAL FILINGS**

- 3.1 Requirement to file
- 3.2 Required form of annual certificate
- 3.3 Required form of annual certificate following certain initial public offerings
- 3.4 Required form of annual certificate following certain reverse takeovers
- 3.5 Transition period for financial years ending on or before June 29, 2006
- 3.6 Transition period for financial years ending on or before [June 29, 2008]

**PART 4 – CERTIFICATION OF INTERIM FILINGS**

- 4.1 Requirement to file
- 4.2 Required form of interim certificate
- 4.3 Required form of interim certificate following certain initial public offerings
- 4.4 Required form of interim certificate following certain reverse takeovers

**PART 5 – REFILED FINANCIAL STATEMENTS, MD&A OR AIF**

- 5.1 Refiled annual financial statements, annual MD&A or AIF
- 5.2 Refiled interim financial statements and interim MD&A

**PART 6 – GENERAL REQUIREMENTS OF CERTIFICATES**

- 6.1 Dating of certificates
- 6.2 French or English

**PART 7 – EXEMPTIONS**

- 7.1 Exemption from annual requirements for issuers that comply with U.S. laws
- 7.2 Exemption from interim requirements for issuers that comply with U.S. laws
- 7.3 Exemption for certain foreign issuers
- 7.4 Exemption for certain exchangeable security issuers
- 7.5 Exemption for certain credit support issuers
- 7.6 General exemption

**PART 8 – EFFECTIVE DATE**

- 8.1 Repeal of former instrument
- 8.2 Effective date

**FORMS**

**Form 52-109F1** – Certification of annual filings (full annual certificate)

**Form 52-109FMP1** – Certification of annual filings for financial years ending on or before [June 29, 2008] (modified plus annual certificate)

**Form 52-109FM1** – Certification of annual filings for financial years ending on or before June 29, 2006 (modified annual certificate)

**Form 52-109F1 – IPO/RTO** – Certification of annual filings for financial years ending within 90 days of an initial public offering or reverse takeover

**Form 52-109F1R** – Certification of refiled annual filings

**Form 52-109F1 – AIF** – Certification of annual filings in connection with voluntarily filed AIF

**Form 52-109F2** – Certification of interim filings (full interim certificate)

**Form 52-109F2 – IPO/RTO** – Certification of interim filings for first interim period following certain initial public offerings and reverse takeovers

**Form 52-109F2R** – Certification of refiled interim filings

**NATIONAL 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;

“accounting principles” has the meaning ascribed to it in NI 52-107;

“annual certificate” means the certificate required to be filed under Part 3 or Part 5.1;

“annual filings” means an issuer’s AIF, if any, its annual financial statements and its annual MD&A filed under securities legislation for a 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;

“asset-backed security” has the meaning ascribed to it in NI 51-102;

“certifying officer” means each chief executive officer and each chief financial officer of an issuer, or in the case of an issuer that does not have a chief executive officer or a chief financial officer, each person performing similar functions to a chief executive officer or chief financial officer;

“disclosure controls and procedures” or “DC&P” 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 securities legislation is recorded, processed, summarized and reported within the time periods specified in the securities legislation and include 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 securities legislation is accumulated and communicated to the issuer’s management, including its certifying officers, as appropriate to allow timely decisions regarding required disclosure;

“interim certificate” means the certificate required to be filed under Part 4 or Part 5.2;

“interim filings” means an issuer’s interim financial statements and its interim MD&A filed under securities legislation for an 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” or “ICFR” means a process designed by, or under the supervision of, an issuer’s certifying officers, 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) are designed to 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) are designed to 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;

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

“marketplace” has the meaning ascribed to it in National Instrument 21-101 *Marketplace Operation*;

“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*;

“proportionately consolidated entity” means an entity in which an issuer has an investment that is accounted for by combining on a line-by-line basis the issuer’s *pro rata* share of each of the assets, liabilities, revenues and expenses of the entity with similar items in the issuer’s financial statements;

“reportable deficiency” means a deficiency, or combination of deficiencies, in the design or operation of one or more controls that would cause a reasonable person to doubt that the design or operation of internal control over financial reporting 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;

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

“reverse takeover acquirer” has the meaning ascribed to it in NI 51-102;

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

“Sox 302 Rules” means U.S. federal securities laws implementing the annual report certification requirements in section 302(a) of the Sarbanes-Oxley Act;

“Sox 404 Rules” means U.S. federal securities laws implementing the internal control report requirements in sections 404(a) and (b) of the Sarbanes-Oxley Act;

“U.S. marketplace” has the meaning ascribed to it in NI 51-102;

“variable interest entity” has the meaning ascribed to it in the issuer’s GAAP; and

“venture issuer” means a reporting issuer that, as at the end of the period covered by the annual or interim filings, as the case may be,

- (a) in the case of a reporting issuer that has distributed only debt securities to the public, other than an issuer of asset-backed securities, had total assets of less than \$25 million, and
- (b) in the case of
  - (i) a reporting issuer other than a reporting issuer that has distributed only debt securities to the public, and
  - (ii) a reporting issuer that is an issuer of asset-backed securities,

did not have any of its securities listed or quoted on any of: the Toronto Stock Exchange; a marketplace in the United States of America; or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

## 1.2 **Application**

- (1) This Instrument applies to all reporting issuers other than investment funds.
- (2) This Instrument applies for financial years beginning on or after March 31, 2005.

## **PART 2 – DISCLOSURE CONTROLS AND PROCEDURES AND INTERNAL CONTROL OVER FINANCIAL REPORTING**

- 2.1 **Design of DC&P and ICFR** – A reporting issuer must cause its certifying officers to design or supervise the design of:
  - (a) disclosure controls and procedures; and
  - (b) internal control over financial reporting.

- 2.2 **ICFR design accommodation for venture issuers** – Despite section 2.1, if a venture issuer:
- (a) has a reportable deficiency relating to design which exists as at the end of the period covered by its annual or interim filings, as the case may be; and
  - (b) cannot reasonably remediate the reportable deficiency, it must disclose in its MD&A:
    - (i) the reportable deficiency;
    - (ii) why the issuer cannot reasonably remediate the reportable deficiency;
    - (iii) the risks the issuer faces relating to the reportable deficiency; and
    - (iv) whether the issuer has mitigated those risks and if so, how.
- 2.3 **Limitations on scope of design**
- (1) Despite section 2.1 and subject to subsection (2), an issuer may cause its certifying officers to limit the scope of their design of DC&P and ICFR to exclude controls, policies and procedures of:
- (a) a proportionately consolidated entity in which the issuer has an interest;
  - (b) a variable interest entity in which the issuer has an interest; or
  - (c) a business that the issuer acquired not more than 90 days before the end of the period to which the certificate relates.
- (2) An issuer relying on subsection (1) must disclose in its MD&A:
- (a) the scope limitation; and
  - (b) summary financial information of the proportionately consolidated entity, variable interest entity or business that the issuer acquired that has been proportionately consolidated or consolidated in the issuer's financial statements.

### **PART 3 – CERTIFICATION OF ANNUAL FILINGS**

- 3.1 **Requirement to file**
- (1) A reporting issuer must file a separate annual certificate in the required form:
- (a) for each person who, at the time of filing the annual certificate, is a certifying officer; and
  - (b) signed by the certifying officer.
- (2) A reporting issuer must file a certificate required under subsection (1) on the same date that the issuer files the later of the following:
- (a) if it is required to file an AIF under NI 51-102, its AIF; or
  - (b) its annual financial statements and annual MD&A.
- (3) In addition to complying with subsections 3.1(1) and (2), if a venture issuer voluntarily files an AIF for a financial year after it has filed its annual financial statements, annual MD&A and annual certificates for the financial year, the venture issuer must file on the same date that it files its AIF a separate annual certificate in the required form:
- (a) for each person who, at the time of filing the annual certificate, is a certifying officer; and
  - (b) signed by the certifying officer.
- (4) A reporting issuer must file a certificate required under subsection (1) or (3) separately from the documents it purports to certify.

**3.2 Required form of annual certificate**

(1) The required form of annual certificate under subsection 3.1(1) is Form 52-109F1.

(2) The required form of annual certificate under subsection 3.1(3) is Form 52-109F1 – AIF.

**3.3 Required form of annual certificate following certain initial public offerings** – Despite subsection 3.2(1), an issuer may file an annual certificate in Form 52-109F1 – IPO/RTO for a financial year ending on or before the 90th day after it became a reporting issuer.

**3.4 Required form of annual certificate following certain reverse takeovers** – Despite subsection 3.2(1), an issuer may file an annual certificate in Form 52-109F1 – IPO/RTO if:

- (a) the annual certificate is for a financial year ending on or before the 90th day after the completion of a reverse takeover to which it was a party; and
- (b) the reverse takeover acquirer was not a reporting issuer immediately before the reverse takeover.

**3.5 Transition period for financial years ending on or before June 29, 2006** – Despite subsection 3.2(1), an issuer may file an annual certificate in Form 52-109FM1 for a financial year ending on or before June 29, 2006.

**3.6 Transition period for financial years ending on or before [June 29, 2008]** – Despite subsection 3.2(1), an issuer may file an annual certificate in Form 52-109FMP1 for a financial year ending on or before [June 29, 2008].

**PART 4 - CERTIFICATION OF INTERIM FILINGS**

**4.1 Requirement to file**

(1) A reporting issuer must file a separate interim certificate in the required form:

- (a) for each person who, at the time of filing the interim certificate, is a certifying officer; and
- (b) signed by the certifying officer.

(2) A reporting issuer must file a certificate required under subsection (1) on the same date that the issuer files its interim filings.

(3) A reporting issuer must file a certificate required under subsection (1) separately from the documents it purports to certify.

**4.2 Required form of interim certificate** – The required form of interim certificate is Form 52-109F2.

**4.3 Required form of interim certificate following certain initial public offerings** – Despite section 4.2, an issuer may file an interim certificate in Form 52-109F2 – IPO/RTO for an interim period ending on or before the 90th day after it becomes a reporting issuer.

**4.4 Required form of interim certificate following certain reverse takeovers** – Despite section 4.2, an issuer may file an interim certificate in Form 52-109F2 – IPO/RTO if:

- (a) the interim certificate is for the first interim period after the completion of a reverse takeover to which it was a party when the issuer has not been required to file an annual certificate; and
- (b) the reverse takeover acquirer was not a reporting issuer immediately before the reverse takeover.

**PART 5 – REFILED FINANCIAL STATEMENTS, MD&A OR AIF**

**5.1 Refiled annual financial statements, annual MD&A or AIF** – If an issuer refiles its annual financial statements, annual MD&A or AIF for a financial year, it must file separate annual certificates for that financial year in Form 52-109F1R on the date that it refiles the annual financial statements, annual MD&A or AIF, as the case may be.

**5.2 Refiled interim financial statements and interim MD&A** – If an issuer refiles its interim financial statements or interim MD&A for an interim period, it must file separate interim certificates for that interim period in Form 52-109F2R on the date that it refiles the interim financial statements or interim MD&A, as the case may be.

## PART 6 – GENERAL REQUIREMENTS OF CERTIFICATES

- 6.1 **Dating of certificates** – A certifying officer must date a certificate filed under this Instrument the same date the certificate is filed.
- 6.2 French or English
- (1) A certificate filed by an issuer under this Instrument must be in French or in English.
  - (2) In Québec, an issuer must comply with linguistic obligations and rights prescribed by Québec law.

## PART 7 – EXEMPTIONS

### 7.1 Exemption from annual requirements for issuers that comply with U.S. laws

- (1) Subject to subsection (2), Parts 2, 3, 5 and 6 do not apply to an issuer for a financial year if:
- (a) the issuer is in compliance with the Sox 302 Rules and the issuer files signed certificates relating to its annual report under the 1934 Act separately but concurrently as soon as practicable after they are filed with or furnished to the SEC; and
  - (b) the issuer is in compliance with the Sox 404 Rules, and the issuer files management's annual report on internal control over financial reporting and the attestation report on management's assessment of internal control over financial reporting included in the issuer's annual report under the 1934 Act for the financial year, if applicable, as soon as practicable after they are filed with or furnished to, the SEC.
- (2) Despite subsection (1), Parts 2, 3, 5 and 6 apply to an issuer for a financial year if the issuer's annual financial statements, annual MD&A or AIF that comprise the issuer's annual filings differ from those filed with, furnished to the SEC or included as exhibits to other documents, and certified in compliance with the Sox 302 Rules.

### 7.2 Exemption from interim requirements for issuers that comply with U.S. laws

- (1) Subject to subsection (3), Parts 2, 4, 5 and 6 do not apply to an issuer for an interim period if the issuer is in compliance with the Sox 302 Rules and the issuer files signed certificates relating to its quarterly report under the 1934 Act for the quarter separately but concurrently as soon as practicable after they are filed with or furnished to the SEC.
- (2) Subject to subsection (3), Parts 2, 4, 5 and 6 do not apply to an issuer for an interim period if:
- (a) the issuer files with or 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 filed with or furnished to the SEC in the same form required by the Sox 302 Rules; and
  - (c) the issuer files signed certificates relating to the quarterly report filed or furnished under cover of the Form 6-K as soon as practicable after they are filed with or furnished to the SEC.
- (3) Despite subsections (1) and (2), Parts 2, 4, 5 and 6 apply to an issuer for an interim period if the issuer's interim financial statements and interim MD&A that comprise the issuer's interim filings differ from those filed with, furnished to the SEC, or included as exhibits to other documents, and certified in compliance with the Sox 302 Rules.

7.3 **Exemption for certain foreign issuers** – This Instrument does not apply to an issuer if it qualifies for the relief contemplated by, and is in compliance with the conditions set out in, sections 5.4 and 5.5 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

7.4 **Exemption for certain exchangeable security issuers** – This Instrument does not apply to an issuer if it qualifies for the relief contemplated by, and is in compliance with the conditions set out in, subsection 13.3(2) of NI 51-102.

7.5 **Exemption for certain credit support issuers** – This Instrument does not apply to an issuer if it qualifies for the relief contemplated by, and is in compliance with the conditions set out in, subsection 13.4(2) of NI 51-102.

7.6 **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.
- (3) In Québec, this exemption is granted pursuant to section 263 of the *Securities Act* (R.S.Q., c. V-1.1).
- (4) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

**PART 8 – EFFECTIVE DATE**

- 8.1 **Repeal of former instrument** – Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings which came into force on March 30, 2004 is repealed on [●].
- 8.2 **Effective date** – This Instrument comes into force on [●].

FORM 52-109F1 – CERTIFICATION OF ANNUAL FILINGS  
(FULL ANNUAL CERTIFICATE)

I, *<identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer's title is not "chief executive officer" or "chief financial officer" of the issuer, whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer>*, certify the following:

1. **Review:** I have reviewed the issuer's AIF, if any, annual financial statements and annual MD&A, including for greater certainty all documents and information that are incorporated by reference in the AIF (together the annual filings) of *<identify issuer>* (the issuer) for the financial year ended *<state the relevant date>*.
2. **No misrepresentations:** Based on my knowledge, having exercised reasonable diligence, 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, for the period covered by the annual filings.
3. **Fair presentation:** Based on my knowledge, having exercised reasonable diligence, 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 of and for the periods presented in the annual filings.
4. **Responsibility:** The issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR) for the issuer.
5. **Design:** *<Except for any qualification referred to in paragraph 5.2, paragraph 5.3 or paragraph 5.4,>* The issuer's other certifying officer(s) and I have, as at the financial year end:
  - (a) designed DC&P, or caused it to be designed under our supervision, to provide reasonable assurance that:
    - (i) material information relating to the issuer is made known to us by others, particularly during the period in which the annual filings are being prepared; and
    - (ii) information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation; and
  - (b) designed ICFR, 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.
- 5.1 **Control framework:** The issuer has disclosed in its annual MD&A a statement identifying the control framework the issuer's other certifying officer(s) and I used to design the issuer's ICFR or a statement that we did not use a framework, as applicable.

*<insert paragraphs 5.2, 5.3 or 5.4 if applicable. For paragraph 5.4, include (a)(i), (a)(ii) or (a)(iii) as applicable, and paragraph (b):>*

- 5.2 **ICFR – reportable deficiency relating to design:** The issuer has disclosed in its annual MD&A for any reportable deficiency relating to design existing at the financial year end:
  - (a) a description of the reportable deficiency;
  - (b) a description of the remediation plan to address the reportable deficiency; and
  - (c) the completion date or expected completion date of the remediation plan.
- 5.3 **ICFR design accommodation:** The issuer has disclosed in its annual MD&A for any reportable deficiency relating to design existing at the financial year end:
  - (a) a description of the reportable deficiency;
  - (b) why the issuer cannot reasonably remediate the reportable deficiency;

- (c) the risks the issuer faces relating to the reportable deficiency; and
- (d) whether the issuer has mitigated those risks and if so, how.

**5.4 Limitation on scope of design:** The issuer has disclosed in its annual MD&A:

- (a) the fact that the issuer's other certifying officer(s) and I have limited the scope of our design of DC&P and ICFR to exclude controls, policies and procedures of:
  - (i) a proportionately consolidated entity in which the issuer has an interest;
  - (ii) a variable interest entity in which the issuer has an interest; or
  - (iii) a business that the issuer acquired not more than 90 days before the issuer's financial year end; and
- (b) summary financial information of the proportionately consolidated entity, variable interest entity or business that the issuer acquired that has been proportionately consolidated or consolidated in the issuer's financial statements.

**6. Evaluation:** The issuer's other certifying officer(s) and I have:

- (a) evaluated, or caused to be evaluated under our supervision, the effectiveness of the issuer's DC&P at the financial year end and the issuer has disclosed in its annual MD&A our conclusions about the effectiveness of DC&P at the financial year end based on such evaluation; and
- (b) evaluated, or caused to be evaluated under our supervision, the effectiveness of the issuer's ICFR at the financial year end and the issuer has disclosed in its annual MD&A:
  - (i) our conclusions about the effectiveness of ICFR at the financial year end based on such evaluation;
  - (ii) a description of the process we used to evaluate the effectiveness of ICFR;
  - (iii) a description of any reportable deficiency relating to operation existing at the financial year end; and
  - (iv) the issuer's plans, if any, to remediate any such reportable deficiency relating to operation.

**7. Reporting of changes in ICFR:** The issuer has disclosed in its annual MD&A any change in the issuer's ICFR that occurred during the period beginning on **<insert the date immediately following the end of the period in respect of which the issuer made its most recent interim or annual filing, as applicable>** and ended on **<insert the last day of the financial year>** that has materially affected, or is reasonably likely to materially affect, the issuer's ICFR.

**8. Reporting to the issuer's auditors and board of directors or audit committee:** The issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of ICFR, to the issuer's auditors, the board of directors and the audit committee of the board of directors any fraud that involves management or other employees who have a significant role in the issuer's ICFR.

Date: **<insert date of filing>**

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

**<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer.>**

**FORM 52-109FMP1 – CERTIFICATION OF ANNUAL FILINGS FOR FINANCIAL YEARS  
ENDING ON OR BEFORE [JUNE 29, 2008] (MODIFIED PLUS ANNUAL CERTIFICATE)**

I, *<identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer's title is not "chief executive officer" or "chief financial officer" of the issuer, whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer>*, certify that:

1. **Review:** I have reviewed the issuer's AIF, if any, annual financial statements and annual MD&A, including for greater certainty all documents and information that are incorporated by reference in the AIF (together the annual filings) of *<identify issuer>* (the issuer) for the financial year ended *<state the relevant date>*.
2. **No misrepresentations:** Based on my knowledge, having exercised reasonable diligence, 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. **Fair presentation:** Based on my knowledge, having exercised reasonable diligence, 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 of and for the periods presented in the annual filings.
4. **Responsibility:** The issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR) for the issuer.
5. **Design:** *<Except for any qualification referred to in paragraph 5.2, paragraph 5.3 or paragraph 5.4,>* The issuer's other certifying officer(s) and I have as at the financial year end:
  - (a) designed DC&P, or caused it to be designed under our supervision, to provide reasonable assurance that:
    - (i) material information relating to the issuer is made known to us by others, particularly during the period in which the annual filings are being prepared; and
    - (ii) information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation; and
  - (b) designed ICFR, 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.
- 5.1 **Control framework:** The issuer has disclosed in its annual MD&A a statement identifying the control framework the issuer's other certifying officer(s) and I used to design the issuer's ICFR or a statement that we did not use a framework, as applicable.

*<insert paragraphs 5.2, 5.3 or 5.4 if applicable. For paragraph 5.4, include (a)(i), (a)(ii) or (a)(iii) as applicable, and paragraph (b):*

- 5.2 **ICFR – reportable deficiency relating to design:** The issuer has disclosed in its annual MD&A for any reportable deficiency relating to design existing at the financial year end:
  - (a) a description of the reportable deficiency;
  - (b) a description of the remediation plan to address the reportable deficiency; and
  - (c) the completion date or expected completion date of the remediation plan.
- 5.3 **ICFR design accommodation:** The issuer has disclosed in its annual MD&A for any reportable deficiency relating to design existing at the financial year end:
  - (a) a description of the reportable deficiency;
  - (b) why the issuer cannot reasonably remediate the reportable deficiency;

**Request for Comments**

---

- (c) the risks the issuer faces relating to the reportable deficiency; and
- (d) whether the issuer has mitigated those risks and if so, how.

5.4 **Limitation on scope of design:** The issuer has disclosed in its annual MD&A:

- (a) the fact that the issuer's other certifying officer(s) and I have limited the scope of our design of DC&P and ICFR to exclude controls, policies and procedures of:
  - (i) a proportionately consolidated entity in which the issuer has an interest;
  - (ii) a variable interest entity in which the issuer has an interest; or
  - (iii) a business that the issuer acquired not more than 90 days before the issuer's financial year end; and
- (b) summary financial information of the proportionately consolidated entity, variable interest entity or business that the issuer acquired that has been proportionately consolidated or consolidated in the issuer's financial statements.

6. **Evaluation:** The issuer's other certifying officer(s) and I have evaluated, or caused to be evaluated under our supervision, the effectiveness of the issuer's DC&P at the financial year end and the issuer has disclosed in its annual MD&A our conclusions about the effectiveness of the DC&P at the financial year end based on such evaluation.

7. **Reporting of changes in ICFR:** The issuer has disclosed in its annual MD&A any change in the issuer's ICFR that occurred during the period beginning on **<insert the date immediately following the end of the period in respect of which the issuer made its most recent interim or annual filing, as applicable>** and ended on **<insert the last day of the financial year>** that has materially affected, or is reasonably likely to materially affect, the issuer's ICFR.

Date: **<insert date of filing>**

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

[Title]

**<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer.>**

FORM 52-109FM1 – CERTIFICATION OF ANNUAL FILINGS FOR FINANCIAL YEARS  
ENDING ON OR BEFORE JUNE 29, 2006 (MODIFIED ANNUAL CERTIFICATE)

I, *<identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer's title is not "chief executive officer" or "chief financial officer" of the issuer, whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer>*, certify that:

1. **Review:** I have reviewed the issuer's AIF, if any, annual financial statements and annual MD&A, including for greater certainty all documents and information that are incorporated by reference in the AIF (together the annual filings) of *<identify issuer>* (the issuer) for the financial year ended *<state the relevant date>*.
2. **No misrepresentations:** Based on my knowledge, having exercised reasonable diligence, 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. **Fair presentation:** Based on my knowledge, having exercised reasonable diligence, 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 of and for the periods presented in the annual filings.
4. **Responsibility:** The issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (DC&P) for the issuer.
5. **Design:** *<Except for the qualification referred to in paragraph 5.1,>* The issuer's other certifying officer(s) and I have, as at the financial year end, designed DC&P, or caused it to be designed under our supervision, to provide reasonable assurance that:
  - (a) material information relating to the issuer is made known to us by others, particularly during the period in which the annual filings are being prepared; and
  - (b) information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation.

*<insert paragraph 5.1(a)(i), (a)(ii) or (a)(iii) as applicable, and paragraph (b):*

- 5.1 **Limitation on scope of design:** The issuer has disclosed in its annual MD&A:
  - (a) the fact that the issuer's other certifying officer(s) and I have limited the scope of our design of DC&P to exclude controls, policies and procedures of:
    - (i) proportionately consolidated entity in which the issuer has an interest;
    - (ii) a variable interest entity in which the issuer has an interest; or
    - (iii) a business that the issuer acquired not more than 90 days before the issuer's financial year end; and
  - (b) summary financial information of the proportionately consolidated entity, variable interest entity or business that the issuer acquired that has been proportionately consolidated or consolidated in the issuer's financial statements.
6. **Evaluation:** The issuer's other certifying officer(s) and I have evaluated, or caused to be evaluated under our supervision, the effectiveness of the issuer's DC&P at the financial year end and the issuer has disclosed in its annual MD&A our conclusions about the effectiveness of the DC&P at the financial year end based on such evaluation.

Date: *<insert date of filing>*

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

*<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer.>*

FORM 52-109F1 – IPO/RT0 – CERTIFICATION OF ANNUAL FILINGS FOR FINANCIAL YEARS  
ENDING WITHIN 90 DAYS OF AN INITIAL PUBLIC OFFERING OR REVERSE TAKEOVER

I, *<identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer's title is not "chief executive officer" or "chief financial officer" of the issuer, whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer>*, certify that:

1. **Review:** I have reviewed the issuer's AIF, if any, annual financial statements and annual MD&A, including for greater certainty all documents and information that are incorporated by reference in the AIF (together the annual filings) of *<identify issuer>* (the issuer) for the financial year ended *<state the relevant date>*.
2. **No misrepresentations:** Based on my knowledge, having exercised reasonable diligence, 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. **Fair presentation:** Based on my knowledge, having exercised reasonable diligence, 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 of and for the periods presented in the annual filings.
4. **Responsibility:** The issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (DC&P) for the issuer.
5. **Design:** *<Except for any qualification referred to in paragraph 5.1,>* The issuer's other certifying officer(s) and I have, as at the financial year end, designed DC&P, or caused it to be designed under our supervision, to provide reasonable assurance that:
  - (a) material information relating to the issuer is made known to us by others, particularly during the period in which the annual filings are being prepared; and
  - (b) information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation.

*<insert paragraph 5.1(a)(i), (a)(ii) or (a)(iii) as applicable, and paragraph (b):*

- 5.1 **Limitation on scope of design:** The issuer has disclosed in its annual MD&A:
  - (a) the fact that the issuer's other certifying officer(s) and I have limited the scope of our design of DC&P to exclude controls, policies and procedures of:
    - (i) a proportionately consolidated entity in which the issuer has an interest;
    - (ii) a variable interest entity in which the issuer has an interest; or
    - (iii) a business that the issuer acquired not more than 90 days before the issuer's financial year end; and
  - (b) summary financial information of the proportionately consolidated entity, variable interest entity or business that the issuer acquired that has been proportionately consolidated or consolidated in the issuer's financial statements.
6. **Evaluation:** The issuer's other certifying officer(s) and I have evaluated, or caused to be evaluated under our supervision, the effectiveness of the issuer's DC&P at the financial year end and the issuer has disclosed in its annual MD&A our conclusions about the effectiveness of the DC&P at the financial year end based on such evaluation.

Date: *<insert date of filing>*

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

*<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer.>*

FORM 52-109F1R – CERTIFICATION OF REFILED ANNUAL FILINGS

This certificate is being filed on the same date that *<identify the issuer>* (the issuer) has refiled *<identify the filing(s) that have been refiled>*.

I, *<identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer's title is not "chief executive officer" or "chief financial officer" of the issuer, whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer>*, certify that:

1. I have reviewed the issuer's AIF, if any, and annual financial statements and annual MD&A, including for greater certainty all documents and information that are incorporated by reference in the AIF (together the annual filings) of *<identify issuer>* (the issuer) for the financial year ended *<state the relevant date>*.

*<Insert all paragraphs included in the annual certificates originally filed with the annual filings, other than paragraph 1.>*

Date: *<insert date of filing>*

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

[Title]

*<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer.>*

**FORM 52-109F1 – AIF – CERTIFICATION OF ANNUAL FILINGS IN CONNECTION WITH VOLUNTARILY FILED AIF**

This certificate is being filed on the same date that **<identify the issuer>** (the issuer) has voluntarily filed an AIF.

I, **<identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer's title is not "chief executive officer" or "chief financial officer" of the issuer, whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer>**, certify that:

1. I have reviewed the issuer's AIF, annual financial statements and annual MD&A, including for greater certainty all documents and information that are incorporated by reference in the AIF (together the annual filings) of **<identify issuer>** (the issuer) for the financial year ended **<state the relevant date>**.

**<Insert all paragraphs included in the annual certificates originally filed with the annual filings, other than paragraph 1.>**

Date: **<insert date of filing>**

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

[Title]

**<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer.>**

FORM 52-109F2 – CERTIFICATION OF INTERIM FILINGS (FULL INTERIM CERTIFICATE)

I, *<identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer's title is not "chief executive officer" or "chief financial officer" of the issuer, whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer>*, certify that:

1. **Review:** I have reviewed the issuer's interim financial statements and interim MD&A (together the interim filings) of *<identify the issuer>* (the issuer) for the interim period ended *<state the relevant date>*.
2. **No misrepresentations:** Based on my knowledge, having exercised reasonable diligence, 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. **Fair presentation:** Based on my knowledge, having exercised reasonable diligence, 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 of and for the periods presented in the interim filings.
4. **Responsibility:** The issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR) for the issuer.
5. **Design:** *<Except for any qualification referred to in paragraph 5.2, paragraph 5.3 or paragraph 5.4,>* The issuer's other certifying officer(s) and I have, as at the end of the period covered by the interim filings:
  - (a) designed DC&P, or caused it to be designed under our supervision, to provide reasonable assurance that:
    - (i) material information relating to the issuer is made known to us by others, particularly during the period in which the interim filings are being prepared; and
    - (ii) information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation; and
  - (b) designed ICFR, 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.
- 5.1 **Control framework:** The issuer has disclosed in its interim MD&A a statement identifying the control framework the issuer's other certifying officer(s) and I used to design the issuer's ICFR or a statement that we did not use a framework, as applicable.

*<insert paragraphs 5.2, 5.3 or 5.4 if applicable. For paragraph 5.4, include (a)(i), (a)(ii) or (a)(iii) as applicable, and paragraph (b):*

- 5.2 **ICFR – reportable deficiency relating to design:** The issuer has disclosed in its interim MD&A for any reportable deficiency relating to design existing at the end of the interim period:
  - (a) a description of the reportable deficiency;
  - (b) a description of the remediation plan to address the reportable deficiency; and
  - (c) the completion date or expected completion date of the remediation plan.
- 5.3 **ICFR design accommodation:** The issuer has disclosed in its interim MD&A for any reportable deficiency relating to design existing at the end of the interim period:
  - (a) a description of the reportable deficiency;
  - (b) why the issuer cannot reasonably remediate the reportable deficiency;
  - (c) the risks the issuer faces relating to the reportable deficiency; and

(d) whether the issuer has mitigated those risks and if so, how.

5.4 **Limitation on scope of design:** The issuer has disclosed in its interim MD&A:

(a) the fact that the issuer's other certifying officer(s) and I have limited the scope of our design of DC&P and ICFR to exclude controls, policies and procedures of:

(i) a proportionately consolidated entity in which the issuer has an interest;

(ii) a variable interest entity in which the issuer has an interest; or

(iii) a business that the issuer acquired not more than 90 days before the last day of the period covered by the interim filings; and

(b) summary financial information of the proportionately consolidated entity, variable interest entity or business that the issuer acquired that has been proportionately consolidated or consolidated in the issuer's financial statements.

6. **Reporting of changes in ICFR:** The issuer has disclosed in its interim MD&A any change in the issuer's ICFR that occurred during the period beginning on **<insert the date immediately following the end of the period in respect of which the issuer made its most recent interim or annual filing, as applicable>** and ended on **<insert the last day of the period covered by the interim filings>** that has materially affected, or is reasonably likely to materially affect, the issuer's ICFR.

Date: **<insert date of filing>**

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

[Title]

**<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer.>**

FORM 52-109F2 – IPO/RTO – CERTIFICATION OF INTERIM FILINGS FOR FIRST INTERIM PERIOD  
FOLLOWING CERTAIN INITIAL PUBLIC OFFERINGS AND REVERSE TAKEOVERS

I, *<identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer's title is not "chief executive officer" or "chief financial officer" of the issuer, whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer>*, certify that:

1. **Review:** I have reviewed the issuer's interim financial statements and interim MD&A (together the interim filings) of *<identify the issuer>* (the issuer) for the interim period ended *<state the relevant date>*.
2. **No misrepresentations:** Based on my knowledge, having exercised reasonable diligence, 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. **Fair presentation:** Based on my knowledge, having exercised reasonable diligence, 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 of and for the periods presented in the interim filings.
4. **Responsibility:** The issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (DC&P) for the issuer.
5. **Design:** *<Except for any qualification referred to in paragraph 5.1,>* The issuer's other certifying officer(s) and I have, as at the end of the period covered by the interim filings, designed DC&P, or caused it to be designed under our supervision, to provide reasonable assurance that:
  - (a) material information relating to the issuer is made known to us by others, particularly during the period in which the interim filings are being prepared; and
  - (b) information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation.

*<insert paragraph 5.1(a)(i), (a)(ii) or (a)(iii) as applicable, and paragraph (b):*

- 5.1 **Limitation on scope of design:** The issuer has disclosed in its interim MD&A:
  - (a) the fact that the issuer's other certifying officer(s) and I have limited the scope of our design of DC&P to exclude controls, policies and procedures of:
    - (i) a proportionately consolidated entity in which the issuer has an interest;
    - (ii) a variable interest entity in which the issuer has an interest; or
    - (iii) a business that the issuer acquired not more than 90 days before the last day of the period covered by the interim filings; and
  - (b) summary financial information of the proportionately consolidated entity, variable interest entity or business that the issuer acquired that has been proportionately consolidated or consolidated in the issuer's financial statements.

Date: *<insert date of filing>*

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

*<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer.>*

FORM 52-109F2R – CERTIFICATION OF REFILED INTERIM FILINGS

This certificate is being filed on the same date that *<identify the issuer>* (the issuer) has refiled *<identify the filing(s) that have been refiled>*.

I, *<identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer's title is not "chief executive officer" or "chief financial officer" of the issuer, whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer>*, certify that:

1. I have reviewed the interim financial statements and interim MD&A (together the interim filings) of *<identify the issuer>* (the issuer) for the interim period ended *<state the relevant date>*.

*<Insert all paragraphs included in the interim certificates originally filed with the interim filings, other than paragraph 1.>*

Date: *<insert date of filing>*

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

[Title]

*<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer.>*

**COMPANION POLICY 52-109CP TO  
NATIONAL INSTRUMENT 52-109 CERTIFICATION OF DISCLOSURE  
IN ISSUERS' ANNUAL AND INTERIM FILINGS**

**TABLE OF CONTENTS**

**PART 1 – GENERAL**

- 1.1 Introduction and purpose
- 1.2 Application to non-corporate entities
- 1.3 Definitions

**PART 2 – FORM OF CERTIFICATES**

- 2.1 Prescribed language

**PART 3 – CERTIFYING OFFICERS**

- 3.1 One individual acting as chief executive officer and chief financial officer
- 3.2 Individuals performing the functions of a chief executive officer or chief financial officer
- 3.3 Delegation permitted
- 3.4 “New” certifying officers

**PART 4 – FAIR PRESENTATION AND FINANCIAL CONDITION**

- 4.1 Fair presentation of financial condition, results of operations and cash flows
- 4.2 Financial condition

**PART 5 – CONTROL FRAMEWORKS FOR ICFR**

- 5.1 No requirement to use a control framework
- 5.2 Types of control frameworks
- 5.3 Scope of control frameworks

**PART 6 – DESIGN OF DC&P AND ICFR**

- 6.1 General
- 6.2 Overlap between DC&P and ICFR
- 6.3 Reasonable assurance
- 6.4 Judgment
- 6.5 Risk considerations for designing DC&P and ICFR
- 6.6 Control environment
- 6.7 Controls, policies and procedures to include in DC&P design
- 6.8 Controls, policies and procedures to include in ICFR design
- 6.9 Identification of significant accounts and relevant assertions in the context of a top-down, risk-based approach
- 6.10 ICFR design challenges
- 6.11 ICFR design accommodation
- 6.12 Corporate governance for internal controls
- 6.13 Maintaining design
- 6.14 Efficiency and effectiveness
- 6.15 Documenting design

**PART 7 – EVALUATION OF DC&P AND ICFR**

- 7.1 General
- 7.2 Scope of evaluation
- 7.3 Judgment
- 7.4 Knowledge, supervision and objectivity
- 7.5 Use of external auditor or other independent third party
- 7.6 Evaluation tools
- 7.7 Certifying officers' daily interaction
- 7.8 Walkthroughs
- 7.9 Reperformance
- 7.10 Timing of evaluation
- 7.11 Scope of evaluation for venture issuers relying on the ICFR design accommodation
- 7.12 Documenting evaluations

**PART 8 – IDENTIFICATION AND DISCLOSURE OF A REPORTABLE DEFICIENCY**

- 8.1 ICFR – reportable deficiency
- 8.2 Assessing significance of deficiencies in ICFR

- 8.3 Strong indicators of a reportable deficiency
- 8.4 Disclosure of a reportable deficiency in ICFR relating to design
- 8.5 Disclosure of a reportable deficiency in ICFR relating to operation
- 8.6 Reporting of changes in ICFR after remediation
- 8.7 Disclosure for venture issuers relying on the ICFR design accommodation

**PART 9 – ROLE OF BOARD OF DIRECTORS AND AUDIT COMMITTEE**

- 9.1 Board of directors
- 9.2 Audit committee
- 9.3 Reporting of fraud

**PART 10 – SUBSIDIARIES, VARIABLE INTEREST ENTITIES, PROPORTIONATELY CONSOLIDATED ENTITIES, EQUITY INVESTMENTS AND PORTFOLIO INVESTMENTS**

- 10.1 Underlying entities
- 10.2 Fair presentation
- 10.3 Design and evaluation of DC&P and ICFR

**PART 11 – BUSINESS ACQUISITIONS**

- 11.1 Access to acquired business
- 11.2 Disclosure of scope limitation

**PART 12 – EXEMPTIONS**

- 12.1 Issuers that comply with U.S. laws

**PART 13 – LIABILITY FOR CERTIFICATES CONTAINING MISREPRESENTATIONS**

- 13.1 Liability for certificates containing misrepresentations

**PART 14 – TRANSITION**

- 14.1 Representations regarding DC&P and ICFR following the transition periods

**COMPANION POLICY 52-109CP TO  
NATIONAL INSTRUMENT 52-109 CERTIFICATION OF DISCLOSURE  
IN ISSUERS' ANNUAL AND INTERIM FILINGS**

**PART 1 – GENERAL**

- 1.1 **Introduction and purpose** – National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Instrument) sets out disclosure and filing requirements for all reporting issuers, other than investment funds. The objective of these requirements is to improve the quality, reliability and transparency of annual filings, interim filings and other reports that issuers file or submit under securities legislation.

The purpose of this Companion Policy (the Policy) is to help you understand how the securities regulatory authorities interpret or apply certain provisions of the Instrument.

- 1.2 **Application to non-corporate entities** – The Instrument applies to both corporate and non-corporate entities. Where the Instrument or the Policy refers to a particular corporate characteristic, such as an audit committee of the board of directors, the reference should be read to also include any equivalent characteristic of a non-corporate entity.
- 1.3 **Definitions** – For the purposes of the Policy, “DC&P” means disclosure controls and procedures (as defined in the Instrument) and “ICFR” means internal control over financial reporting (as defined in the Instrument).

**PART 2 – FORM OF CERTIFICATES**

- 2.1 **Prescribed language** – The annual and interim certificates must be filed in the exact language prescribed in the required form (including the form number and form title) without any amendment. Failure to do so will be a breach of the Instrument.

**PART 3 – CERTIFYING OFFICERS**

- 3.1 **One individual acting as chief executive officer and chief financial officer** – If only one individual is serving as the chief executive officer and chief financial officer of an issuer, or is performing functions similar to those performed by such officers, that individual may either:

- (a) provide two certificates (one in the capacity of the chief executive officer and the other in the capacity of the chief financial officer); or
- (b) provide one certificate in the capacity of both the chief executive officer and chief financial officer and file this certificate twice, once in the filing category for certificates of chief executive officers and once in the filing category for certificates of chief financial officers.

3.2 **Individuals performing the functions of a chief executive officer or chief financial officer**

- (1) **No chief executive officer or chief financial officer** – If an issuer does not have a chief executive officer or chief financial officer, each individual who performs functions similar to those performed by a chief executive officer or chief financial officer must certify the annual filings and interim filings. If an issuer does not have a chief executive officer or chief financial officer, in order to comply with the Instrument the issuer will need to identify at least one individual who performs functions similar to those performed by a chief executive officer or chief financial officer, as applicable.
- (2) **Management resides at underlying business entity level or external management company** – In the case of a reporting issuer where executive management resides at the underlying business entity level or in an external management company such as an income trust (as described in National Policy 41-201 *Income Trusts and Other Indirect Offerings*), the chief executive officer and chief financial officer of the underlying business entity or the external management company should generally be identified as individuals performing functions for the reporting issuer similar to a chief executive officer and chief financial officer.
- (3) **Limited partnership** – In the case of a limited partnership reporting issuer with no chief executive officer and chief financial officer, the chief executive officer and chief financial officer of its general partner should generally be identified as individuals performing functions for the limited partnership reporting issuer similar to a chief executive officer and chief financial officer.

- 3.3 **Delegation permitted** – Section 2.1 of the Instrument requires issuers to cause their certifying officers to design, or cause to be designed under their supervision, the issuer's DC&P and ICFR. Paragraph 6 of the annual certificates requires the certifying officers to evaluate the effectiveness of the issuer's DC&P, and in the case of Form 52-109F1

the effectiveness of ICFR. Employees or third parties, supervised by the certifying officers, may conduct the design and evaluation of the issuer's DC&P and ICFR. Such employees should individually and collectively have the necessary knowledge, skills, information and authority to design or evaluate, as applicable, the DC&P and ICFR for which they have been assigned responsibilities. Nevertheless, certifying officers must retain overall responsibility for the design, evaluation and resulting MD&A disclosure concerning the issuer's DC&P and ICFR.

- 3.4 **"New" certifying officers** – An individual who is the chief executive officer or chief financial officer at the time that an issuer files annual and interim certificates is the individual who must sign a certificate.

The forms included in the Instrument require each certifying officer to certify that he or she has designed, or caused to be designed under his or her supervision, the issuer's DC&P and ICFR. If an issuer's DC&P and ICFR have been designed prior to a certifying officer assuming office, the certifying officer would:

- (a) review the design of the existing DC&P and ICFR after assuming office; and
- (b) design any modifications to the existing DC&P and ICFR determined to be necessary following his or her review,

prior to certifying the design of the issuer's DC&P and ICFR.

#### **PART 4 – FAIR PRESENTATION AND FINANCIAL CONDITION**

- 4.1 *Fair presentation of financial condition, results of operations and cash flows*

- (1) **Fair presentation not limited to issuer's GAAP** – The forms included in the Instrument require each certifying officer to certify that an issuer's financial statements (including prior period comparative financial information) and other financial information included in the annual or 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.

This certification is not qualified by the phrase "in accordance with generally accepted accounting principles" which is typically included in audit reports accompanying annual financial statements. The forms specifically exclude this qualification to prevent certifying officers from relying entirely on compliance with the issuer's GAAP in this representation, particularly as the issuer's GAAP financial statements might not fully reflect the financial condition of the issuer. Certification is intended to provide assurance that the financial information disclosed in the annual filings or interim filings, viewed in its entirety, provides a materially accurate and complete picture that may be broader than financial reporting under the issuer's GAAP. As a result, certifying officers cannot limit the fair presentation representation by referring to the issuer's GAAP.

Although the concept of fair presentation as used in the annual and interim certificates is not limited to compliance with the issuer's GAAP, this does not permit an issuer to depart from the issuer's GAAP in preparing its financial statements. If a certifying officer believes that the issuer's financial statements do not fairly present the issuer's financial condition, the certifying officer should ensure that the issuer's MD&A includes any necessary additional disclosure.

- (2) **Quantitative and qualitative factors** – The concept of fair presentation encompasses a number of quantitative and qualitative factors, including:

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

- 4.2 **Financial condition** – The Instrument does not formally define financial condition. However, the term "financial condition" in the annual certificates and interim certificates reflects the overall financial health of the issuer and includes the issuer's financial position (as shown on the balance sheet) and other factors that may affect the issuer's liquidity, capital resources and solvency.

## PART 5 – CONTROL FRAMEWORKS FOR ICFR

5.1 **No requirement to use a control framework** – The Instrument does not require certifying officers to design ICFR using a control framework or to evaluate the effectiveness of ICFR against a control framework. However, certifying officers might find it useful to refer to a control framework when designing or evaluating the effectiveness of ICFR. Regardless of the certifying officers' decision to use a control framework, paragraph 5.1 in the annual certificates requires the issuer's annual MD&A to include 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.

5.2 **Types of control frameworks** – The following control frameworks are available:

- (a) the *Risk Management and Governance: Guidance on Control* (COCO Framework), formerly known as *Guidance of the Criteria of Control Board*, published by The Canadian Institute of Chartered Accountants;
- (b) the *Internal Control – Integrated Framework* (COSO Framework) published by The Committee of Sponsoring Organizations of the Treadway Commission (COSO); and
- (c) the *Guidance on Internal Control* (Turnbull Guidance) published by The Institute of Chartered Accountants in England and Wales.

These frameworks were designed with larger issuers in mind; however, these frameworks include elements that apply to smaller issuers. Smaller issuers can also refer to *Internal Control over Financial Reporting – Guidance for Smaller Public Companies* published by COSO, which provides guidance to smaller public companies on the implementation of the COSO Framework.

In addition, *Control Objectives for Information and Related Technology Framework* (COBIT) published by the IT Governance Institute, might provide useful guidance for the design and evaluation of information technology controls that form part of an issuer's ICFR.

5.3 **Scope of control frameworks** – The control frameworks referred to in section 5.2 include in their definition of "internal control" three general categories: effectiveness and efficiency of operations, reliability of financial reporting and compliance with applicable laws and regulations. ICFR is a subset of internal controls relating to financial reporting. ICFR does not encompass the elements of these control frameworks that relate to effectiveness and efficiency of an issuer's operations or an issuer's compliance with applicable laws and regulations, except for compliance with the applicable laws and regulations directly related to the preparation of financial statements.

## PART 6 – DESIGN OF DC&P AND ICFR

6.1 **General** – Most sections in this part apply to the design of both DC&P (DC&P design) and ICFR (ICFR design); however, some sections provide specific guidance relating to DC&P design or ICFR design. The term "design" in this context generally includes both developing and implementing the controls, policies and procedures that comprise DC&P and ICFR. This Policy often refers to such controls, policies and procedures as the "components" of DC&P and ICFR.

6.2 **Overlap between DC&P and ICFR** – There is a substantial overlap between the definitions of DC&P and ICFR. However, some elements of DC&P are not subsumed within the definition of ICFR and some elements of ICFR are not subsumed within the definition of DC&P. For example, 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. However, the issuer's DC&P might not include certain elements of ICFR, such as those pertaining to the safeguarding of assets.

6.3 **Reasonable assurance** – The definition of DC&P includes reference to 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 securities legislation is recorded, processed, summarized and reported within the time periods specified in the securities legislation. The definition of ICFR includes the phrase "reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP". In this part the term "reasonable assurance" refers to one or both of the above uses of this term.

The terms "reasonable", "reasonably" and "reasonableness" in the context of the Instrument do not imply a single conclusion or methodology, but encompass a range of potential conduct, conclusions or methodologies upon which certifying officers may base their decisions.

6.4 **Judgment** – The Instrument does not prescribe specific components of DC&P or ICFR or their degree of complexity. Certifying officers should design the components and complexity of DC&P and ICFR using their judgment, acting reasonably, giving consideration to various factors particular to an issuer, including its size, nature of business and complexity of operations.

6.5 **Risk considerations for designing DC&P and ICFR**

(1) **Approaches to consider for design** – The Instrument does not prescribe the approach certifying officers should use to design the issuer's DC&P or ICFR. However, we believe that a top-down, risk-based approach is an efficient and cost-effective approach that certifying officers should consider. This approach will allow certifying officers to avoid unnecessary time and effort designing components of DC&P and ICFR that are not required to obtain reasonable assurance. Alternatively, certifying officers may use some other approach to design, depending on the issuer's size, nature of business and complexity of operations.

(2) **Top-down, risk-based approach** – Under a top-down, risk-based approach to designing DC&P and ICFR certifying officers first identify and understand risks faced by the issuer in order to determine the scope and necessary complexity of the issuer's DC&P or ICFR. A top-down, risk-based approach helps certifying officers to focus their resources on the areas of greatest risk and avoid expending unnecessary resources on areas with little or no risk.

Under a top-down, risk-based approach, certifying officers would initially consider risks without considering any existing controls of the issuer. Using this approach to design DC&P and ICFR, the certifying officers would identify the risks that could reasonably result in a material misstatement, which includes misstatements due to error, fraud or omission in disclosure. Identifying risks involves considering the size and nature of the issuer's business and the structure and complexity of business operations. For the design of DC&P, the certifying officers would assess risks for various types and methods of disclosure. For the design of ICFR, identifying risks also involves identifying significant accounts and relevant assertions. Once the risks are identified the certifying officers would then ensure that the DC&P and ICFR designs include controls, policies and procedures to address each of the identified risks.

(3) **Fraud risk** – When identifying risks, certifying officers should explicitly consider the vulnerability of the entity to fraudulent activity (e.g., fraudulent financial reporting and misappropriation of assets). Certifying officers should consider how incentives (e.g., compensation programs) and pressures (e.g., meeting analysts' expectations) may affect risks, and what areas of the business provide opportunity for an employee, or combination of employees, to commit fraud.

(4) **Designing controls, policies and procedures** – If the certifying officers choose to use a top-down, risk-based approach, they would design specific controls, policies and procedures that, in combination with an issuer's control environment, appropriately address the risks discussed in subsections (2) and (3).

If certifying officers choose to use an approach other than a top-down, risk-based approach, they should still consider whether the combination of the components of DC&P and ICFR that they have designed are a sufficient basis for the representations about reasonable assurance required in paragraph 5 of the certificates.

6.6 **Control environment**

(1) **Importance of control environment** – An issuer's control environment is the foundation upon which all other components of DC&P and ICFR are based and influences the tone of an organization. An effective control environment contributes to the reliability of all other controls, processes and procedures by creating an atmosphere where errors or fraud are either less likely to occur, or if they occur, more likely to be detected. An effective control environment also supports the flow of information within the issuer, thus promoting compliance with an issuer's disclosure policies.

An effective control environment alone will not provide reasonable assurance that any of the risks identified will be addressed and managed. An ineffective control environment however, may undermine an issuer's controls, policies and procedures designed to address specific risks and could create systemic problems which are difficult to resolve.

(2) **Elements of a control environment** – A key element of an issuer's control environment is the attitude towards controls demonstrated by the board of directors, audit committee and senior management through their direction and actions in the organization. An appropriate tone at the top can help to develop a culture of integrity and accountability at all levels of an organization which support other components of DC&P and ICFR. The tone at the top should be reinforced on an ongoing basis by those accountable for the organization's DC&P and ICFR.

In addition to an appropriate tone at the top, certifying officers should consider the following elements of an issuer's control environment:

- (a) *organizational structure of the issuer* – a centralized structure which relies on established and documented lines of authority and responsibility may be appropriate for some issuers, whereas a decentralized structure which allows employees to communicate informally with each other at all levels may be more appropriate for some smaller issuers;
  - (b) *management's philosophy and operating style* – a philosophy and style that emphasises managing risks with appropriate diligence and demonstrates receptiveness to negative as well as positive information will foster a stronger control environment.
  - (c) *integrity, ethics, and competence of personnel* – preventive and detective controls, policies and procedures are more likely to be effective if they are carried out by ethical, competent and adequately-supervised employees;
  - (d) *external influences that affect the issuer's operations and risk management practices* – these could include global business practices, regulatory supervision, insurance coverage and legislative requirements; and
  - (e) *human resources policies and procedures* – an issuer's hiring, training, supervision, compensation, termination and evaluation practices can affect the quality of the issuer's workforce and its employees' attitudes towards controls.
- (3) **Sources of information about the control environment** – Certifying officers should consider the following documentation of an issuer's control environment:
- (a) written codes of conduct or ethics policies;
  - (b) procedure manuals, operating instructions, job descriptions and training materials;
  - (c) evidence that employees have confirmed their knowledge and understanding of items (a) and (b);
  - (d) organizational charts that identify approval structures and the flow of information; and
  - (e) written correspondence provided by an issuer's external auditor regarding the issuer's control environment.
- 6.7 **Controls, policies and procedures to include in DC&P design** – In order for DC&P to provide reasonable assurance that information required by securities legislation to be disclosed by an issuer is recorded, processed, summarized and reported within the required time periods, DC&P should generally include the following components:
- (a) written communication to an issuer's employees and directors of the issuer's disclosure obligations, including the purpose of disclosure and DC&P and deadlines for specific filings and other disclosure;
  - (b) assignment of roles, responsibilities and authorizations relating to disclosure;
  - (c) guidance on how authorized individuals should assess and document the materiality of information or events for disclosure purposes; and
  - (d) a policy on how the issuer will receive, document, evaluate and respond to complaints or concerns received from internal or external sources regarding financial reporting or other disclosure issues.

An issuer might choose to include these components in a document called a disclosure policy. Part 6 of National Policy 51-201 *Disclosure Standards* encourages issuers to establish a written disclosure policy and discusses in more detail some of these components. For issuers that are subject to Multilateral Instrument 52-110 *Audit Committees* (MI 52-110), compliance with the instrument will also form part of the issuer's DC&P design.

- 6.8 **Controls, policies and procedures to include in ICFR design** – In order for ICFR 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, it should generally include the following components:
- (a) controls for initiating, authorizing, recording, processing and reporting transactions relating to significant accounts and disclosures;
  - (b) controls for initiating and processing non-routine transactions and journal entries, including those requiring judgments and estimates;

- (c) procedures for selecting and applying appropriate accounting policies that are in accordance with the issuer's GAAP;
- (d) controls to prevent and detect fraud;
- (e) controls on which other controls are dependent, such as information technology general controls; and
- (f) controls over the period-end financial reporting process, including controls over entering transaction totals in the general ledger, controls over initiating, authorizing, recording and processing journal entries in the general ledger and controls over recording recurring and non-recurring adjustments to the financial statements (e.g., consolidating adjustments and reclassifications).

6.9 **Identification of significant accounts and relevant assertions in the context of a top-down, risk-based approach**

- (1) **Significant accounts and assertions** – As described in subsection 6.5(2), a top-down, risk-based approach to designing DC&P and ICFR involves identification of significant accounts and the relevant assertions that affect each significant account. This method assists certifying officers in identifying the risks that could reasonably result in a material misstatement in the issuer's financial statements, and not all possible risks the issuer faces.
- (2) **Identifying significant accounts** – A significant account could be an individual line item on the issuer's financial statements, or part of a line item. For example, an issuer might present "net sales" on the income statement, which represents a combination of "gross sales" and "sales returns", but might identify "gross sales" as a significant account. By identifying part of a line item as a significant account, certifying officers might be able to focus on balances that are subject to specific risks that can be separately identified.
- (3) **Considerations for identifying significant accounts** – A minimum threshold expressed as a percentage or a dollar amount could provide a reasonable starting point for evaluating the significance of an account. However, certifying officers should use their judgment, taking into account qualitative factors, to assess accounts for significance above or below that threshold. Certifying officers should consider the following items when determining whether an account is significant:
  - (a) the size, nature and composition of the account;
  - (b) the risk of overstatement or understatement of the account;
  - (c) the susceptibility to misstatement due to errors or fraud;
  - (d) the volume of activity, complexity and homogeneity of the individual transactions processed through the account;
  - (e) the accounting and reporting complexities associated with the account;
  - (f) the likelihood (or possibility) of significant contingent liabilities;
  - (g) the existence of related party transactions;
  - (h) the impact of the account on existing debt covenants; and
  - (i) changes in the account characteristics since the certifying officers last certified the ICFR design.
- (4) **Assertions** – Using a top-down, risk-based approach, the certifying officers identify those assertions for each significant account that presents a risk that could reasonably result in a material misstatement in that significant account. The relevance of the following assertions should be considered for each significant account:
  - (a) *existence or occurrence* – whether assets or liabilities exist and whether transactions and events that have been recorded have occurred and pertain to the reporting issuer;
  - (b) *completeness* – whether all assets, liabilities and transactions that should have been recorded have been recorded;
  - (c) *valuation or allocation* – whether assets, liabilities, equity, revenues and expenses have been included in the financial statements at appropriate amounts and any resulting valuation or allocation adjustments are appropriately recorded;

- (d) *rights and obligations* – whether assets are legally owned by the issuer and liabilities are the obligations of the issuer; and
- (e) *presentation and disclosure* – whether particular components of the financial statements are appropriately presented and described and disclosures are clearly expressed.

- (5) **Identifying relevant assertions for each significant account** – To identify relevant assertions for each significant account the certifying officers determine the source of potential misstatements for each significant account balance or disclosure. When determining whether a particular assertion is relevant, the certifying officers should consider the nature of the assertion, the volume of transactions or data related to the assertion and the complexity of the underlying systems supporting the assertion. If an assertion does not present a risk that could reasonably result in a material misstatement in a significant account, it is likely not a relevant assertion.

For example, valuation might not be relevant to the cash account unless currency translation is involved; however, existence and completeness are always relevant. Similarly, valuation might not be relevant to the gross amount of the accounts receivable balance, but is relevant to the related allowance accounts.

- (6) **Identifying controls, policies and procedures for relevant assertions** – Using a top-down, risk-based approach, the certifying officers design components of ICFR to address each relevant assertion. The certifying officers do not need to design all possible components of ICFR to address each relevant assertion, but would identify and design an appropriate combination of preventive and detective controls, policies and procedures to address all relevant assertions.

The certifying officers should consider the efficiency with which an issuer's ICFR design could be evaluated when designing an appropriate combination of ICFR components. If more than one potential control, policy or procedure could address a relevant assertion, certifying officers could select the control, policy or procedure that would be easiest to evaluate (e.g., automated control vs. manual control). Similarly, if a control, policy or procedure can be designed to address more than one relevant assertion then certifying officers could choose it rather than a control, policy or procedure that addresses only one relevant assertion.

When designing a combination of controls, policies and procedures, the certifying officers should also consider how the components in section 6.8 of the Policy interact with each other. For example, the certifying officers should consider how information technology general controls interact with controls, policies and procedures over initiating, authorizing, recording, processing and reporting transactions.

6.10 **ICFR design challenges – Key features of ICFR and related design challenges are described below.**

- (a) *Segregation of duties* – The term “segregation of duties” refers to one or more employees or procedures acting as a check and balance on the activities of another so that no one individual has control over all steps of processing a transaction or other activity. Assigning different people responsibility for authorizing transactions, recording transactions, reconciling information and maintaining custody of assets reduces the opportunity for any one employee to conceal errors or perpetrate fraud in the normal course of his or her duties. Segregating duties also increases the chance of discovering inadvertent errors early. If a reporting issuer has few employees, a single employee may be authorized to initiate, approve and effect payment for transactions and it might be difficult to re-assign responsibilities to segregate those duties appropriately. If an issuer has a limited ability to segregate duties the certifying officers should consider whether other controls adequately address the risk of errors or fraud associated with incompatible activities. For example, extensive board or audit committee oversight of the incompatible activities could compensate for the lack of segregation of duties among staff.
- (b) *Board expertise* – An effective board objectively reviews management's judgments and is actively engaged in shaping and monitoring the issuer's control environment. An issuer might find it challenging to attract directors with the appropriate financial reporting expertise, objectivity, time, ability and experience.
- (c) *Controls over management override* – A reporting issuer might be dominated by a founder or other strong leader who exercises a great deal of discretion and provides personal direction to other employees. Although this type of individual can help a reporting issuer meet its growth and other objectives, such concentration of knowledge and authority could allow the individual an opportunity to override established policies or procedures or otherwise reduce the likelihood of an effective control environment. In these circumstances the certifying officers should consider whether they can design compensating controls to prevent or detect management override and whether elements of the control environment assist in preventing or detecting management override. For example, directors with appropriate financial expertise and objectivity might be able to perform some compensating procedures to deter or detect an override. Such procedures could include

reviewing adjusting entries that are made as part of the period-end financial reporting process or reviewing critical estimates or judgments with which the dominant individual is involved.

- (d) *Qualified personnel* – Sufficient accounting and financial reporting expertise is necessary to ensure reliable financial reporting and the preparation of financial statements in accordance with the issuer's GAAP. Some issuers might be unable to obtain qualified accounting personnel or outsourced expert advice on a cost effective basis. Even if an issuer obtains outsourced expert advice, the issuer might not have the internal expertise to understand or assess the quality of the outsourced advice. In either of these circumstances the certifying officers might conclude that the issuer lacks qualified personnel. However, additional involvement by the issuer's audit committee or board of directors, with appropriate financial expertise, could provide a suitable control to address a lack of qualified personnel.

A reporting issuer's external auditor might perform certain services (e.g., income tax, valuation or internal audit services) that compensate for skills which would otherwise be addressed by hiring qualified personnel or outsourcing expert advice from a party other than the external auditor. This type of arrangement should not be considered to be a component of the issuer's ICFR. However, it could be one way for certifying officers to mitigate risks related to a reportable deficiency in ICFR due to a lack of qualified personnel.

#### 6.11 **ICFR design accommodation**

- (1) **Venture issuers** – In designing ICFR, most venture issuers will be able to address the challenges described in section 6.10 of the Policy. However, some smaller venture issuers with few employees and limited financial resources might be unable to remediate a reportable deficiency relating to design without (i) incurring significant additional costs, (ii) hiring additional employees, or (iii) restructuring the board of directors and audit committee. In these circumstances, the venture issuer may rely on the ICFR design accommodation in section 2.2 of the Instrument provided it includes the disclosure in its MD&A that is required by subsection 2.2(b) of the Instrument. Section 8.7 of the Policy discusses the disclosure for venture issuers using the ICFR design accommodation.
- (2) **Non-venture issuers** – Although only venture issuers may rely on the ICFR design accommodation in section 2.2 of the Instrument, 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.

6.12 **Corporate governance for internal controls** – As noted in National Policy 58-201 *Corporate Governance Guidelines*, the board of directors of an issuer is encouraged to consider adopting a written mandate to explicitly acknowledge responsibility for the stewardship of the issuer, including responsibility for internal control and management information systems. Issuers should consider this guideline in developing their ICFR.

6.13 **Maintaining design** – Following their initial development and implementation of DC&P and ICFR, and prior to certifying design each quarter, certifying officers should consider the following:

- (a) whether the issuer faces any new risks and whether each design continues to provide a sufficient basis for the representations about reasonable assurance required in paragraph 5 of the certificates;
- (b) the scope and quality of ongoing monitoring of DC&P and ICFR, including the extent, nature and frequency of reporting the results from the ongoing monitoring of DC&P and ICFR to the appropriate levels of management;
- (c) the work of the issuer's internal audit function;
- (d) communication, if any, with the issuer's auditors in connection with an audit of financial statements; and
- (e) the incidence of weaknesses in DC&P or reportable deficiencies in ICFR that have been identified at any time during the financial year.

6.14 **Efficiency and effectiveness** – In addition to the considerations set out in this Part that will assist certifying officers in appropriately designing DC&P and ICFR, other steps that certifying officers could take to enhance the efficiency and effectiveness of the designs are:

- (a) embedding DC&P and ICFR in the issuer's business processes;
- (b) implementing consistent policies and procedures and issuer-wide programs at all locations and business units;

- (c) including processes to ensure that DC&P and ICFR are modified to adapt to any changes in business environment; and
- (d) including procedures for reporting immediately to the appropriate levels of management any identified issues with DC&P and ICFR together with details of any action being undertaken or proposed to be undertaken to address such issues.

#### 6.15 Documenting design

- (1) **Extent and form of documentation for design** – The certifying officers should generally maintain documentary evidence sufficient to provide reasonable support for their certification of design of DC&P and ICFR. The extent of documentation supporting the certifying officers' design of DC&P and ICFR for each interim and annual certificate will vary depending on the size and complexity of the issuer's DC&P and ICFR. The documentation might take many forms (e.g., paper documents, electronic, or other media) and could be presented in a number of different ways (e.g., policy manuals, process models, flowcharts, job descriptions, documents, internal memoranda, forms, etc). The extent and form of documentation is a matter of judgment.
- (2) **Documentation of the control environment** - To provide reasonable support for the certifying officers' design of DC&P and ICFR the certifying officers should generally document the key elements of an issuer's control environment, including those described in subsection 6.6(2) of the Policy.
- (3) **Documentation for design of DC&P** – To provide reasonable support for the certifying officers' design of DC&P the certifying officers should generally document:
  - (a) the processes and procedures that ensure information is brought to the attention of management, including the certifying officers, in a timely manner to enable them to determine if disclosure is required; and
  - (b) the items listed in section 6.7 of the Policy.
- (4) **Documentation for design of ICFR** – To provide reasonable support for the certifying officers' design of ICFR the certifying officers should generally document:
  - (a) the issuer's ongoing risk assessment process and those risks which need to be addressed in order to conclude that the certifying officers have designed ICFR;
  - (b) how significant transactions, and significant classes of transactions, are initiated, authorized, recorded, processed and reported;
  - (c) the flow of transactions to identify when and how material misstatements or omissions could occur due to error or fraud;
  - (d) a description of the controls over relevant assertions related to all significant accounts and disclosures in the financial statements;
  - (e) a description of the controls designed to prevent or detect fraud, including who performs the controls and, if applicable, how duties are segregated;
  - (f) a description of the controls over period-end financial reporting processes;
  - (g) a description of the controls over safeguarding of assets; and
  - (h) the certifying officers' conclusions on whether a reportable deficiency in ICFR relating to design exists at the end of the period;

#### PART 7 – EVALUATION OF DC&P AND ICFR

- 7.1 **General** – Most sections in this part apply to both an evaluation of the effectiveness of DC&P (DC&P evaluation) and an evaluation of the effectiveness of ICFR (ICFR evaluation); however, some sections apply specifically to an ICFR evaluation.
- 7.2 **Scope of evaluation** – The purpose of the DC&P and ICFR evaluations is to determine whether the issuer's DC&P and ICFR designs are operating as intended. To support a conclusion that DC&P or ICFR is effective, certifying officers should obtain sufficient appropriate evidence that the components of DC&P and ICFR that they designed, or caused to

be designed, are operating as intended. If the certifying officers choose not to use a top-down, risk-based approach to design, the evaluation could be limited to those controls that are necessary to address the risks that might reasonably result in a material misstatement.

Form 52-109F1 requires disclosure of any reportable deficiency relating to the operation of the issuer's ICFR. Therefore, the scope of the ICFR evaluation must be sufficient to identify any such reportable deficiencies.

7.3 **Judgment** – The Instrument does not prescribe how the certifying officers should conduct their DC&P and ICFR evaluations. Certifying officers should exercise their judgment, acting reasonably and should apply their knowledge and experience in determining the nature and extent of the evaluation.

7.4 **Knowledge, supervision and objectivity** – Forms 52-109F1, 52-109FMP1, 52-109FM1 and 52-109F1 – IPO/RTO require the certifying officers to certify that they have evaluated, or supervised the evaluation of, the issuer's DC&P. Form 52-109F1 also requires the certifying officers to certify that they have evaluated, or supervised the evaluation of the issuer's ICFR. The individuals performing the evaluation should have the appropriate knowledge and ability to complete the evaluation procedures they perform.

Certifying officers should ensure that the evaluation is performed with the appropriate level of objectivity. 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.

7.5 **Use of external auditor or other independent third party** – The certifying officers might decide to use an independent third party to assist with their DC&P or ICFR evaluations. In these circumstances, the certifying officers should ensure that the individuals performing the agreed-upon evaluation procedures have the appropriate knowledge and ability to complete the procedures. The certifying officers should be actively involved in determining the procedures to be performed, the findings to be communicated and the manner of communication.

If an issuer chooses to engage its external auditor to assist the certifying officers in the DC&P and ICFR evaluations, the certifying officers should determine the procedures to be performed, the findings to be communicated and the manner of communication. The certifying officers should not rely on ICFR-related procedures performed and findings reported by the issuer's external auditor solely as part of the financial statement audit. However, if the external auditor is separately engaged to perform specified ICFR-related procedures, the certifying officers might use the results of those procedures as part of their evaluation even if the auditor uses those results as part of the financial statement audit.

7.6 **Evaluation tools** – Certifying officers can use a variety of tools to perform their DC&P and ICFR evaluations. These tools include:

- (a) certifying officers' daily interaction with the control systems;
- (b) walkthroughs;
- (c) interviews of individuals who are involved with the relevant controls;
- (d) observation of procedures and processes, including adherence to corporate policies;
- (e) reperformance; and
- (f) review of documentation that provides evidence that controls, policies or procedures have been performed.

Certifying officers should use a combination of tools for the DC&P and ICFR evaluations. Although inquiry and observation alone might provide an adequate basis for an evaluation of an individual control with a lower risk, they will not provide an adequate basis for the evaluation as a whole.

The nature, timing and extent of evaluation procedures necessary for certifying officers to obtain reasonable support for the effective operation of a component of DC&P or ICFR depends on the level of risk the component of DC&P or ICFR is designed to address.

7.7 **Certifying officers' daily interaction** – The certifying officers' daily interaction with their control systems provides them with opportunities to evaluate the effectiveness of the issuer's DC&P and ICFR during a financial year. This daily interaction could provide an adequate basis for the certifying officers' evaluation of DC&P or ICFR if the operation of controls, policies and procedures is centralized and involves a limited number of personnel. Reasonable support of

such daily interaction would include memoranda, e-mails and instructions or directions from the certifying officers to other employees.

7.8 **Walkthroughs** – A walkthrough is a process of tracing a transaction from origination, through the issuer's information systems, to the issuer's financial reports. A walkthrough can assist certifying officers to confirm that:

- (a) they understand the components of ICFR, including those components relating to the prevention or detection of fraud;
- (b) they understand how transactions are processed;
- (c) they have identified all points in the process at which misstatements related to each relevant financial statement assertion could occur; and
- (d) the components of ICFR have been implemented.

7.9 **Reperformance**

(1) **General** – Repformance is the independent execution of certain components of the issuer's DC&P or ICFR that were performed previously. Repformance could include inspecting records whether internal (e.g., a purchase order prepared by the issuer's purchasing department) or external (e.g., a sales invoice prepared by a vendor), in paper form, electronic form or other media. The reliability of records varies depending on their nature, source and the effectiveness of controls over their production. An example of repformance is inspecting whether the quantity and price information in a sales invoice agree with the quantity and price information in a purchase order, and confirming that an employee previously performed this procedure.

(2) **Extent of repformance** – The extent of repformance of a component of DC&P or ICFR is a matter of judgment. Components that are performed more frequently (e.g., controls for recording sales transactions) will generally require more testing than components that are performed less frequently (e.g., controls for monthly bank reconciliations). Components that are manually operated will likely require more rigorous testing than automated controls. Certifying officers could determine that they do not have to test every individual step comprising a control in order to conclude that the overall control is operating effectively.

(3) **Repformance for each evaluation** – Certifying officers might find it appropriate to adjust the nature, extent and timing of repformance for each evaluation. For example, in "year 1", certifying officers might test information technology controls extensively while in "year 2", they could focus on monitoring controls that identify changes made to the information technology controls. Certifying officers should consider the specific risks the controls address when making these types of adjustments. It might also be appropriate to test controls at different interim periods, increase or reduce the number and types of tests performed or change the combination of procedures used in order to introduce unpredictability into the testing and respond to changes in circumstances.

7.10 **Timing of evaluation** – Forms 52-109F1, 52-109FMP1, 52-109FM1 and 52-109F1 – IPO/RTO require certifying officers to certify that they have evaluated the effectiveness of the issuer's DC&P, and Form 52-109F1 also requires them to certify that they have evaluated the effectiveness of ICFR, as at the financial year end. Certifying officers might choose to schedule testing of some DC&P and ICFR components throughout the issuer's financial year. However, since the evaluation is at the financial year end, the certifying officers will have to perform sufficient procedures to evaluate the operation of the components at year end. The timing of evaluation activities will depend on the risk associated with the components being evaluated and the tools used to evaluate the components.

7.11 **Scope of evaluation for venture issuers relying on the ICFR design accommodation** – If a venture issuer cannot reasonably remediate a reportable deficiency relating to design and relies on the ICFR design accommodation in section 2.2 of the Instrument, the issuer is still required to evaluate whether the other components of its ICFR are operating as intended.

For example, although a venture issuer could conclude that it has a reportable deficiency relating to design because it cannot achieve appropriate segregation of duties, it would still need to assess if the other components of its ICFR are working as intended. This would include an evaluation of the effectiveness of the issuer's control environment, whether the issuer has appropriate board expertise or accounting personnel and an evaluation of other components that are not directly affected by the lack of segregation of duties.

7.12 Documenting evaluations

- (1) **Extent of documentation for evaluation** – The certifying officers should generally maintain documentary evidence sufficient to provide reasonable support for their certification of a DC&P and ICFR evaluation. The extent of documentation used to support the certifying officers' evaluations of DC&P and ICFR for each annual certificate will vary depending on the size and complexity of the issuer's DC&P and ICFR. The extent of documentation is a matter of judgment.
- (2) **Documentation for evaluations of DC&P and ICFR** – To provide reasonable support for a DC&P or ICFR evaluation the certifying officers should generally document the following:
  - (a) a description of the process the certifying officers used to evaluate DC&P or ICFR;
  - (b) how the certifying officers determined the extent of testing of the components of DC&P or ICFR;
  - (c) a description of, and results from applying, the evaluation tools discussed in sections 7.6 and 7.7 of the Policy or other evaluation tools; and
  - (d) the certifying officers' conclusions about the following:
    - (i) the effectiveness of DC&P or ICFR, as applicable; and
    - (ii) whether a reportable deficiency in ICFR relating to operation existed as at the end of the period.

**PART 8 – IDENTIFICATION AND DISCLOSURE OF A REPORTABLE DEFICIENCY**

8.1 ICFR – reportable deficiency

- (1) **Definition** – The definition of reportable deficiency refers to a deficiency in the design or operation of one or more controls. If the certifying officers identify more than one reportable deficiency, the issuer should provide a description of each reportable deficiency in the interim or annual MD&A.

The definitions of ICFR and reportable deficiency refer to the reliability of financial reporting and the preparation of an issuer's financial statements in accordance with the issuer's GAAP. The Instrument does not define these phrases. In order to have reliable financial reporting, there must be no misrepresentation in the annual or interim filings. In order for an issuer's financial statements to be prepared in accordance with the issuer's GAAP, there must be no material misstatement in the issuer's annual or interim financial statements.
- (2) **Conclusions of effectiveness if a reportable deficiency exists** – If the certifying officers identify a reportable deficiency relating to design or operation existing at the period end date, the certifying officers could not conclude that the issuer's ICFR is effective.
- (3) **Reportable deficiency relating to design** – A reportable deficiency relating to design exists when the certifying officers determine that a deficiency, or combination of deficiencies, in the design of one or more controls would cause a reasonable person to doubt that the design 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. A reportable deficiency relating to design will exist as at the period end if:
  - (a) the design of ICFR does not include a component of ICFR that is needed to provide reasonable assurance;
  - (b) an existing component of ICFR is designed so that, even if the component operates as designed, ICFR as a whole does not provide reasonable assurance; or
  - (c) a component of ICFR has not been implemented.
- (4) **Reportable deficiency relating to operation** – A reportable deficiency relating to operation exists when a properly designed component of ICFR does not operate as intended, and therefore would cause a reasonable person to doubt that 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. For example, if an issuer's ICFR design requires two individuals to sign a cheque in order to authorize a cash disbursement and the certifying officers conclude that this process is not being followed consistently, the control may be designed properly but is deficient in its operation.

If a reportable deficiency relating to operation continues to exist, the certifying officers should consider whether the deficiency initially relating to operation has become a reportable deficiency relating to design.

8.2 **Assessing significance of deficiencies in ICFR** – If a deficiency or combination of deficiencies in the design or operation of one or more controls is identified, certifying officers should assess the significance of the deficiency, or combination of deficiencies, to determine if a reportable deficiency exists. Their assessment should generally include both qualitative and quantitative analyses. Among other things, a qualitative analysis of deficiencies involves assessing:

- (a) the nature of each deficiency or combination of deficiencies;
- (b) the cause of each deficiency or combination of deficiencies;
- (c) the relevant assertion the component of ICFR was designed to address, if applicable;
- (d) the relationship of each deficiency or combination of deficiencies to elements of the control environment, including tone at the top, assignment of authority and responsibility, consistent policies and procedures and issuer-wide programs that apply to all locations and business units;
- (e) whether any other controls effectively compensate for the deficiency or combination of deficiencies; and
- (f) the potential effect of each deficiency or combination of deficiencies on annual and interim financial statements.

8.3 **Strong indicators of a reportable deficiency** – Certifying officers should use their judgment to determine whether a reportable deficiency exists. Strong indicators of a reportable deficiency include:

- (a) an ineffective control environment. Circumstances that may indicate that the issuer's control environment is ineffective include:
  - (i) identification of any fraud on the part of senior management;
  - (ii) control deficiencies that have been identified and remain unaddressed after some reasonable period of time; and
  - (iii) ineffective oversight of the issuer's external financial reporting and ICFR by the company's audit committee;
- (b) refiling of an issuer's annual or interim filings because of a material misstatement in its filings;
- (c) identification by the issuer's external auditor of a material misstatement; and
- (d) for complex entities in highly regulated industries, an ineffective regulatory compliance function. This relates solely to those aspects of the ineffective regulatory compliance function in which associated violations of laws and regulations could have a material effect on the reliability of financial reporting.

8.4 **Disclosure of a reportable deficiency in ICFR relating to design**

(1) **Disclosure of a reportable deficiency in ICFR relating to design** – If the certifying officers become aware of a reportable deficiency relating to the design of ICFR that existed at the end of the annual or interim period and the issuer is not able to rely on the ICFR design accommodation for venture issuers in section 2.2 of the Instrument, the certifying officers might be able to certify that they have designed ICFR if the issuer has committed to a remediation plan to address the reportable deficiency relating to design prior to filing the certificate.

In these circumstances, the certifying officers should include paragraph 5.2 in Form 52-109F1, 52-109FMP1 or 52-109F2, as applicable. In accordance with subparagraphs 5.2(b) and 5.2(c), the issuer's annual or interim MD&A should describe the reportable deficiency, the remediation plan to address any reportable deficiency relating to design that existed at the end of the annual or interim period, and the completion date or expected completion date of such plan. The certifying officers would only be in a position to provide the required certificates if the issuer has committed to a remediation plan to address the reportable deficiency relating to design before the date the certifying officers sign the certificates.

- (2) **Disclosure of effectiveness of ICFR if the issuer has committed to a remediation plan to address a reportable deficiency relating to design** – The certifying officers might determine that they are able to certify the design of ICFR because the issuer has committed to a remediation plan prior to filing the certificate; however the issuer would still have a reportable deficiency relating to design existing at the period end date. If the certifying officers are also required to evaluate the effectiveness of the issuer's ICFR at the financial year end and disclose their conclusions in the issuer's MD&A, as required by subparagraph 6(b)(i) of Form 52-109F1, they could not conclude that the issuer's ICFR are **effective since a reportable deficiency relating to design existed at the financial year end.**

8.5 **Disclosure of a reportable deficiency in ICFR relating to operation**

- (1) **Disclosure of a reportable deficiency in ICFR relating to operation** – If the certifying officers become aware of a reportable deficiency relating to the operation of ICFR that existed at the financial year end, the issuer's annual MD&A should describe the reportable deficiency and the issuer's plans, if any, to remediate the reportable deficiency as required by subparagraphs 6(b)(iii) and (iv) of Form 52-109F1.
- (2) **Satisfaction of disclosure requirements in annual MD&A** – If the certifying officers are able to conclude they can certify the design of ICFR because the issuer has committed to a remediation plan to address the reportable deficiency relating to design prior to filing the certificate, then the issuer would have a reportable deficiency relating to operation since the component, or combination of components, included in the remediation plan to address the reportable deficiency relating to design were not operating as intended at the financial year end. In such a case, the disclosure required by paragraph 5.2 of Form 52-109F1 to be included in the issuer's annual MD&A will also satisfy the issuer's disclosure requirements in subparagraphs 6(b)(iii) and 6(b)(iv) of the Form.

8.6 **Reporting of changes in ICFR after remediation** – Once an issuer has completed its remediation it will need to disclose information about the resulting change in the issuer's ICFR in its next annual or interim MD&A as required by paragraph 7 of Form 52-109F1 or 52-109FMP1, as applicable, and paragraph 6 of Form 52-109F2.

8.7 **Disclosure for venture issuers relying on the ICFR design accommodation**

- (1) **ICFR design accommodation** – If the certifying officers of a venture issuer become aware of a reportable deficiency relating to design that exists at the end of the applicable period and the venture issuer determines that it cannot reasonably remediate the reportable deficiency, it may rely on the ICFR design accommodation for venture issuers in section 2.2 of the Instrument. The ICFR design accommodation enables a venture issuer to disclose a reportable deficiency relating to design but does not eliminate an issuer's obligation to design ICFR.
- (2) **Required disclosure** – If the venture issuer relies on the ICFR design accommodation, the certifying officers are required to include paragraph 5.3 in Form 52-109F1, 52-109FMP1 or 52-109F2, as applicable, which states that the issuer's annual or interim MD&A discloses:
- (a) a description of the reportable deficiency relating to design existing at the end of the period;
  - (b) why the issuer cannot reasonably remediate the reportable deficiency;
  - (c) the risks the issuer faces relating to the reportable deficiency; and
  - (d) whether the issuer has mitigated those risks and if so, how.

When describing why it cannot reasonably remediate the reportable deficiency the issuer should explain what steps would be required to remediate the deficiency and why it cannot reasonably perform these steps, as discussed in subsection 6.11(1) of the Policy.

If a venture issuer identifies a reportable deficiency relating to design it might mitigate the risks associated with that reportable deficiency by having its directors expand their general inquiries with management to specific areas of financial reporting. The additional inquiries might not be sufficient to represent a control, however this form of additional oversight could be a mitigating strategy. A venture issuer could also mitigate the risks associated with a reportable deficiency by having its external auditor perform additional procedures, for example a review of the issuer's interim financial statements. Other services performed by an external auditor that could mitigate risks related to a reportable deficiency are discussed in subsection 6.10(d) of the Policy.

- (3) **Ongoing disclosure if reportable deficiency relating to design continues to exist** – When a venture issuer relies on the ICFR design accommodation the certifying officers are required to include paragraph 5.3 in Form 52-109F1, 52-109FMP1 or 52-109F2, as applicable, for each period that the reportable deficiency relating to design exists. The issuer should make the disclosure relating to the ICFR design accommodation in each annual or interim MD&A. A reference

to previous disclosure about the ICFR design accommodation would not be sufficient to meet the disclosure requirements.

## **PART 9 – ROLE OF BOARD OF DIRECTORS AND AUDIT COMMITTEE**

- 9.1 **Board of directors** – All of the forms other than Forms 52-109F2 and 52-109F2 – IPO/RTO require the certifying officers to represent that the issuer has disclosed in its annual MD&A certain information about the certifying officers' evaluation of the effectiveness of DC&P. Form 52-109F1 also requires the certifying officers to represent that the issuer has disclosed in its annual MD&A certain information about the certifying officers' evaluation of the effectiveness of ICFR. Under NI 51-102, the board of directors must approve the issuer's annual MD&A, including the required disclosure concerning DC&P and ICFR, before it is filed. To provide reasonable support for the board of directors' approval of an issuer's MD&A disclosure concerning ICFR, including any reportable deficiencies, the board of directors should understand the basis upon which the certifying officers concluded that any particular deficiency or combination of deficiencies did or did not constitute a reportable deficiency (see section 8.2).
- 9.2 **Audit committee** – MI 52-110 requires the audit committee to review an issuer's financial disclosure and to establish procedures for dealing with complaints and concerns about accounting or auditing matters. Issuers subject to MI 52-110 should consider its specific requirements in designing and evaluating their DC&P and ICFR.
- 9.3 **Reporting of fraud** – Paragraph 8 of Form 52-109F1 requires certifying officers to disclose to the issuer's auditors, the board of directors and the audit committee of the board of directors any fraud that involves management or other employees who have a significant role in the issuer's ICFR. The term "fraud" refers to an intentional act by one or more individuals among management, other employees, those charged with governance or third parties, involving the use of deception to obtain an unjust or illegal advantage.

Two types of intentional misstatements are (i) misstatements resulting from fraudulent financial reporting and (ii) misstatements resulting from misappropriation of assets. Fraudulent financial reporting involves intentional misstatements, including omissions of amounts or disclosures in financial statements, to deceive financial statement users.

## **PART 10 – SUBSIDIARIES, VARIABLE INTEREST ENTITIES, PROPORTIONATELY CONSOLIDATED ENTITIES, EQUITY INVESTMENTS AND PORTFOLIO INVESTMENTS**

- 10.1 **Underlying entities** – An issuer might have a variety of long term investments that affect how the certifying officers design and evaluate the effectiveness of the issuer's DC&P and ICFR. In particular, an issuer could have any of the following interests:
- (a) an interest in an entity that is a subsidiary which is consolidated in the issuer's financial statements;
  - (b) an interest in an entity that is a variable interest entity (a VIE) which is consolidated in the issuer's financial statements;
  - (c) an interest in an entity that is proportionately consolidated in the issuer's financial statements;
  - (d) an interest in an entity that is accounted for using the equity method in the issuer's financial statements (an equity investment); or
  - (e) an interest in an entity that is accounted for using the cost method in the issuer's financial statements (a portfolio investment).

In this part, the term entity is meant to capture a broad range of structures, including, but not limited to, corporations. The terms "consolidated", "subsidiary", "VIE", "proportionately consolidated", "equity method" and "cost method" have the meaning ascribed to such terms under the issuer's GAAP. In this part, the term "underlying entity" refers to one of the entities referred to in items (a) through (e) above.

- 10.2 **Fair presentation** – As discussed in section 4.1 of the Policy, the concept of fair presentation is not limited to compliance with the issuer's GAAP. If the certifying officers believe that an issuer's financial statements do not fairly present its financial condition insofar as it relates to an underlying entity, the certifying officers should cause the issuer to provide additional disclosure in its MD&A.

10.3 **Design and evaluation of DC&P and ICFR**

- (1) **Access to underlying entity** – The nature of an issuer's interest in an underlying entity will affect the certifying officer's ability to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

*Subsidiary* – Subject to Part 11 of the Policy, in the case of an issuer with an interest in a subsidiary, as the issuer controls the subsidiary, certifying officers will have sufficient access to the subsidiary to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

*Proportionately consolidated entity or VIE* – In the case of an issuer with an interest in a proportionately consolidated entity or a VIE, certifying officers might not always have sufficient access to the underlying entity to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

Whether the certifying officers have sufficient access to a proportionately consolidated entity or a VIE to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity is a question of fact. The sufficiency of their access could depend on, among other things:

- (a) the issuer's percentage ownership of the underlying entity;
- (b) whether the other underlying entity owners are reporting issuers;
- (c) the nature of the relationship between the issuer and the operator of the underlying entity if the issuer is not the operator;
- (d) the terms of the agreement(s) governing the underlying entity; and
- (e) the date of creation of the underlying entity.

*Portfolio investment or equity investment* – In the case of an issuer with a portfolio investment or an equity investment, certifying officers will generally not have sufficient access to the underlying entity to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

- (2) **Reasonable steps to design and evaluate** – Certifying officers should take all reasonable steps to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity that provide the certifying officers with a basis for the representations in the annual and interim certificates. However, it is left to the discretion of the certifying officers, acting reasonably, to determine what constitutes "reasonable steps".
- (3) **Remediation** – If the certifying officers have access to the underlying entity to design the controls, policies and procedures for ICFR discussed in subsection (2) and they are not satisfied with those controls, policies and procedures, the certifying officers should consider whether a reportable deficiency exists. If the issuer cannot reasonably remediate the reportable deficiency and is eligible to rely on the ICFR design accommodation under section 2.2 of the Instrument, the issuer is not required to have a remediation plan but must provide the disclosure required by paragraph 5.3 of Form 52-109F1, 52-109FMP1 or 52-109F2. If the issuer cannot rely on the ICFR design accommodation and does not have sufficient time to complete remediation prior to filing the annual or interim certificate the certifying officers might be able to certify the design of ICFR if the issuer has committed to a remediation plan to address the outstanding reportable deficiency and discloses information about the remediation plan as required by paragraph 5.2 of Form 52-109F1, 52-109FMP1 or 52-109F2, as applicable.
- (4) **Disclosure of scope limitation relating to a proportionately consolidated entity or VIE** – A scope limitation exists if the certifying officers do not have sufficient access to a proportionately consolidated entity or VIE to design and evaluate the controls, policies and procedures carried out by the underlying entity that would provide the certifying officers with a basis for the representations in the annual or interim certificates. This scope limitation and summary financial information about the underlying entity must be disclosed in the issuer's MD&A in accordance with section 2.3 of the Instrument. Meaningful summary financial information of the underlying entity that has been proportionately consolidated or consolidated in the issuer's financial statements would include:
- (a) sales or revenues;
  - (b) income or loss before discontinued operations and extraordinary items;
  - (c) net income or loss for the period; and

unless (i) the accounting principles used to prepare the financial statements of the underlying entity permit the preparation of its balance sheet without classifying assets and liabilities between current and non-current, and (ii) the MD&A includes alternative meaningful financial information about the underlying entity which is more appropriate to the underlying entity's industry,

- (d) current assets;
- (e) non-current assets;
- (f) current liabilities; and
- (g) non-current liabilities.

Meaningful disclosure about the underlying entity would also include the issuer's share of any contingencies and commitments for the proportionately consolidated entity or VIE, and the issuer's responsibility for any other interest holder's share of the contingencies for the proportionately consolidated entity or VIE.

(5) **Limited access to the underlying entity of a portfolio investment or equity investment** – Where the certifying officers might not have access to design and evaluate controls, policies and procedures carried out by the underlying entity of a portfolio investment or equity investment the issuer's DC&P and ICFR should address the issuer's disclosure relating to:

- (a) the carrying amount of the investment;
- (b) any dividends the issuer receives from the investment;
- (c) any required impairment charge related to the investment; and
- (d) if applicable, the issuer's share of any income/loss from the equity investment.

(6) **Reliance on financial information of underlying entity** – We recognize that, in most cases, certifying officers will have to rely on the financial information reported by a proportionately consolidated entity, VIE or the underlying entity of an equity investment. In order to certify an issuer's annual or interim filings that include information regarding the issuer's investment in these underlying entities, the certifying officers should perform the following minimum procedures:

- (a) ensure that the issuer receives the underlying entity's financial information on a timely basis;
- (b) review the underlying entity's financial information to determine whether it has been prepared in accordance with the issuer's GAAP; and
- (c) review the underlying entity's accounting policies and evaluate whether they conform to the issuer's accounting policies.

## PART 11 – BUSINESS ACQUISITIONS

11.1 **Access to acquired business** – Generally, certifying officers will have sufficient access to design controls, policies and procedures carried out by an acquired business. We acknowledge however, that it might not be feasible to design or evaluate such controls, policies and procedures for a business acquired during the last 90 days of an issuer's annual or interim period.

Whether it is feasible for certifying officers to design or evaluate the controls, policies and procedures carried out by a business acquired during the last 90 days of an issuer's annual or interim period is a question of fact. It could depend on, among other things:

- (a) whether the business acquired has been subject to (i) the Instrument or substantially similar requirements regarding an evaluation of internal controls, or (ii) the Sox 302 Rules and the Sox 404 Rules;
- (b) the size and complexity of the business acquired;
- (c) the terms of the acquisition agreement;

- (d) the length of time between the date of the acquisition agreement, the closing date of the acquisition and the end of the issuer's annual or interim period; and
- (e) whether the business was acquired under a hostile take-over bid.

11.2 **Disclosure of scope limitation** – If it is not feasible for the certifying officers to design the controls, policies and procedures carried out by a business acquired within the last 90 days of an issuer's annual or interim period that would provide the certifying officers with a basis for the representations in the annual or interim certificate, this scope limitation and summary financial information of the business must be disclosed in an issuer's MD&A in accordance with section 2.3 of the Instrument and paragraph 5.4 in Form 52-109F1, 52-109FMP1 or 52-109F2, or paragraph 5.1 in Form 52-109FM1, 52-109F1 – IPO/RTO or 52-109F2 – IPO/RTO, as applicable. Meaningful summary financial information of the acquired business would include:

- (a) sales or revenues;
- (b) income or loss before discontinued operations and extraordinary items;
- (c) net income or loss for the period; and

unless (i) the accounting principles used to prepare the financial statements of the acquired business permit the preparation of its balance sheet without classifying assets and liabilities between current and non-current, and (ii) the MD&A includes alternative meaningful financial information about the acquired business which is more appropriate to the acquired business' industry,

- (d) current assets;
- (e) non-current assets;
- (f) current liabilities; and
- (g) non-current liabilities.

Meaningful disclosure about the acquired business would also include the issuer's share of any contingencies and commitments, which arise as a result of the acquisition.

## PART 12 – EXEMPTIONS

12.1 **Issuers that comply with U.S. laws** – Under National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, certain Canadian issuers may prepare their financial statements in accordance with accounting principles other than Canadian GAAP. However, some Canadian issuers might choose to prepare two sets of financial statements and file their Canadian GAAP statements in the applicable jurisdictions. In order to ensure that the Canadian GAAP financial statements are certified (under either the Instrument or Sox 302 Rules), those issuers will not have recourse to the exemptions in sections 7.1 and 7.2 of the Instrument.

## PART 13 – LIABILITY FOR CERTIFICATES CONTAINING MISREPRESENTATIONS

13.1 **Liability for certificates containing misrepresentations** – A certifying officer providing a certificate containing a misrepresentation potentially could be subject to quasi-criminal, administrative or civil proceedings under securities law.

A certifying officer providing a certificate containing a misrepresentation could also potentially be subject to private actions for damages either at common law or, in Québec, under civil law, or under the statutory civil liability regimes in certain jurisdictions.

## PART 14 – TRANSITION

14.1 **Representations regarding DC&P and ICFR following the transition periods** – If an issuer files an annual certificate in Form 52-109F1, 52-109FM1, 52-109FMP1 or 52-109F1 – IPO/RTO or an interim certificate in Form 52-109F2 or 52-109F2 – IPO/RTO that includes representations regarding DC&P or ICFR, these representations would not 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 that did not include these representations; or
- (b) no certificate was required for the prior period.