

1.1.5 OSC Staff Notice 52-717 - Certification of Annual and Interim Filings - Venture Issuer Basic Certificates

**ONTARIO SECURITIES COMMISSION
STAFF NOTICE 52-717**

**CERTIFICATION OF ANNUAL AND INTERIM FILINGS
VENTURE ISSUER BASIC CERTIFICATES**

Purpose

On November 23, 2007, the Canadian Securities Administrators (the CSA) issued CSA Notice 52-319 *Status of Proposed Repeal and Replacement of Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings* (the CSA Notice).

The CSA issued the CSA Notice to update market participants on the status of the initiative to repeal and replace Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) and the related forms and companion policy.

Staff of the Ontario Securities Commission are issuing this notice in conjunction with the CSA Notice to describe certain changes to current administrative staff practice in relation to filings by Venture Issuers (as described below) of a Basic Annual Certificate or a Basic Interim Certificate (as described below) instead of the current form of certificate required by MI 52-109.

Interpretation

In this notice,

- (a) "Basic Annual Certificate" means the annual certificate in the form set out in Appendix A to this notice;
- (b) "Basic Interim Certificate" means the interim certificate in the form set out in Appendix B to this notice; and
- (c) "Venture Issuer" means an issuer that, as at the end of the period covered by the annual or interim filings, as the case may be, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. Marketplace (as defined in National Instrument 51-102 *Continuous Disclosure Obligations*), 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.

Proposed amended certificate requirements for Venture Issuers

As described in the CSA Notice, in March 2007 the CSA published for comment proposed materials that were intended to repeal and replace the current version of MI 52-109 and the related forms and companion policy. After extensive review and consideration of the comments received, the CSA have decided to make significant revisions to certain aspects of the proposal.

Among other changes, the amended version of the proposed materials, when published for comment, will no longer include the requirement that the CEO and the CFO of a Venture Issuer certify that they have designed and evaluated the effectiveness of disclosure controls and procedures and internal control over financial reporting. The resulting certificate will be accompanied by an explanation for investors of how it differs from the full certificate required to be filed by reporting issuers other than Venture Issuers.

In view of this decision, certain members of the CSA have issued, or are expected shortly to issue, orders providing that Venture Issuers that file Basic Annual Certificates and Basic Interim Certificates for financial years and interim periods ending on or after December 31, 2007 are exempt from the requirement to file the full annual certificates and full interim certificates, as required by MI 52-109, for such years and periods, respectively.

In this notice, we describe how Ontario staff will, as an administrative matter, treat filings by Venture Issuers of Basic Certificates.

Ontario staff position relating to Venture Issuer Basic Certificates

The Commission has decided to propose the repeal of the current certificate requirement for Venture Issuers and propose instead that Venture Issuers file a Basic Annual Certificate substantially in the form set out in Appendix A or a Basic Interim Certificate substantially in the form set out in Appendix B for a financial year or interim period ending on or after December 31, 2007.

Accordingly, Commission staff have concluded that, in these circumstances, it would not be appropriate or in the public interest for staff to consider a Venture Issuer that files a Basic Annual Certificate or a Basic Interim Certificate for a financial year or interim period ending on or after December 31, 2007 to be in default under OSC Policy 51-601 *Reporting Issuer Defaults* (OSC Policy 51-601). Staff are publishing this notice since this staff position represents a departure from OSC Policy 51-601.

This staff position applies only to Venture Issuers, as described in this notice, that file a Basic Annual Certificate in the form set out in Appendix A or a Basic Interim Certificate in the form set out in Appendix B for a financial year or interim period ending on or after December 31, 2007.

Questions

Please refer your questions to any of the following individuals:

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November 23, 2007

Appendix A

CERTIFICATION OF ANNUAL FILINGS

VENTURE ISSUER BASIC 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", indicate in which of these capacities the certifying officer is providing the certificate>*, certify the following:

1. **Review:** I have reviewed the 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.

Date: *<insert date of filing>*

[Signature]
[Title]

<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate in which of these capacities the certifying officer is providing the certificate.>

NOTE TO READER

In contrast to the certificate required under Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109), this Venture Issuer Basic Certificate does not include representations relating to the establishment and maintenance of disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR), as defined in MI 52-109. In particular, the certifying officers filing this certificate are not making any representations relating to the establishment and maintenance of:

- i) controls and other procedures 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 under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation; and
- ii) a process 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.

The issuer's certifying officers are responsible for ensuring that processes are in place to provide them with sufficient knowledge to support the representations they are making in this certificate.

Investors should be aware that inherent limitations on the ability of certifying officers of a venture issuer to design and implement on a cost effective basis DC&P and ICFR as defined in MI 52-109 may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.

Appendix B

CERTIFICATION OF INTERIM FILINGS

VENTURE ISSUER BASIC 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", indicate in which of these capacities the certifying officer is providing the certificate>*, certify the following:

1. **Review:** I have reviewed the interim financial statements and interim MD&A (together the interim filings) of *<identify issuer>* (the issuer) for the interim period ending *<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, for 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.

Date: *<insert date of filing>*

[Signature]

[Title]

<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate in which of these capacities the certifying officer is providing the certificate.>

NOTE TO READER

In contrast to the certificate required under Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109), this Venture Issuer Basic Certificate does not include representations relating to the establishment and maintenance of disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR), as defined in MI 52-109. In particular, the certifying officers filing this certificate are not making any representations relating to the establishment and maintenance of:

- i) controls and other procedures 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 under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation; and
- ii) a process 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.

The issuer's certifying officers are responsible for ensuring that processes are in place to provide them with sufficient knowledge to support the representations they are making in this certificate.

Investors should be aware that inherent limitations on the ability of certifying officers of a venture issuer to design and implement on a cost effective basis DC&P and ICFR as defined in MI 52-109 may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.