

THE MANITOBA SECURITIES COMMISSION
MSC RULE 2004-3
(Section 149.1, The Securities Act)

Multilateral Instrument 52-109
Certification Of Disclosure In Issuers' Annual And Interim Filings

PART 1 – DEFINITIONS AND APPLICATION

Definitions

1.1 In this Instrument,

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

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

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

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

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

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

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

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

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

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

(a) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer,

(b) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with the issuer’s GAAP, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer, and

(c) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer’s assets that could have a material effect on the annual financial statements or interim financial statements;

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

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

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

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

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

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

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

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

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

Application

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

PART 2 – CERTIFICATION OF ANNUAL FILINGS

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

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

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

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

PART 3 – CERTIFICATION OF INTERIM FILINGS

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

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

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

PART 4 – EXEMPTIONS

Exemption for issuers that comply with U.S. laws

4.1(1) Subject to subsection (4), an issuer is exempt from Part 2 with respect to the most recently completed financial year if:

(a) the issuer is in compliance with U.S. federal securities laws implementing the annual report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and

(b) the issuer's signed certificates relating to its annual report for its most recently completed financial year are filed through SEDAR as soon as reasonably practicable after they are filed with the SEC.

4.1(2) Subject to subsection (5), an issuer is exempt from Part 3 with respect to the most recently completed interim period if:

(a) the issuer is in compliance with U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and

(b) the issuer's signed certificates relating to its quarterly report for its most recently completed quarter are filed through SEDAR as soon as reasonably practicable after they are filed with the SEC.

4.1(3) An issuer is exempt from Part 3 with respect to the most recently completed interim period if:

(a) the issuer furnishes to the SEC a current report on Form 6-K containing the issuer's quarterly financial statements and MD&A;

(b) the Form 6-K is accompanied by signed certificates that are furnished to the SEC in the same form required by U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and

(c) the signed certificates relating to the quarterly report filed under cover of the Form 6-K are filed through SEDAR as soon as reasonably practicable after they are furnished to the SEC.

4.1(4) Notwithstanding subsection 4.1(1), Part 2 of this Instrument applies to an issuer with respect to the most recently completed financial year if the issuer files annual financial statements prepared in accordance with Canadian GAAP, unless the issuer files those statements with the SEC in compliance with U.S. federal securities laws

implementing the annual report certification requirements in section 302(a) of the Sarbanes-Oxley Act.

4.1(5) Notwithstanding subsection 4.1(2), Part 3 of this Instrument applies to an issuer with respect to the most recently completed interim period if the issuer files interim financial statements prepared in accordance with Canadian GAAP, unless the issuer files those statements with the SEC in compliance with U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act.

Exemption for foreign issuers

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

Exemption for certain exchangeable security issuers

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

Exemption for certain credit support issuers

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

General exemption

4.5(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.

4.5(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

PART 5 – EFFECTIVE DATE, TRANSITION AND CITATION

Effective date

5.1 This Instrument comes into force on March 30, 2004.

Transition

5.2(1) Annual Certificates

(a) Subject to paragraph (1)(b), the provisions of this Instrument concerning annual certificates apply for financial years beginning on or after January 1, 2004.

(b) Notwithstanding Part 2 or paragraph (1)(a), an issuer may file annual certificates in Form 52-109FT1 in respect of any financial year ending on or before March 30, 2005.

5.2(2) Interim Certificates

(a) Subject to paragraph (2)(b), the provisions of this Instrument concerning interim certificates apply for interim periods beginning on or after January 1, 2004.

(b) Notwithstanding Part 3 or paragraph (2)(a), an issuer may file interim certificates in Form 52-109FT2 in respect of any interim period that occurs prior to the end of the first financial year in respect of which the issuer is required to file an annual certificate in Form 52-109F1.

Citation

5.3 This National Instrument may be cited as MSC Rule 2004-3.