CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

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

AND

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

Introduction

We, the Canadian Securities Administrators (CSA), are repealing Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, Forms 52-109F1, 52-109FT1, 52-109F2 and 52-109FT2 and withdrawing Companion Policy 52-109CP (collectively, the Current Materials) and replacing them with:

- National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the New Rule);
- Forms 52-109F1, 52-109FV1, 52-109F1 – IPO/RTO, 52-109F1R, 52-109F1 – AIF, 52-109F2, 52-109FV2, 52-109F2 – IPO/RTO and 52-109F2R (together with the New Rule, the New Instrument); and
- Companion Policy 52-109CP *Certification of Disclosure in Issuers' Annual and Interim Filings* (the New Policy, and together with the New Instrument, the New Materials).

In conjunction with the New Materials, we are also making consequential amendments to Form 51-102F1 *Management's Discussion & Analysis* of National Instrument 51-102 *Continuous Disclosure Obligations* (the Consequential Amendments).

The New Materials and Consequential Amendments are initiatives of the securities regulatory authorities in all Canadian jurisdictions. Members of the CSA in the following jurisdictions have made, or expect to make, the New Instrument and Consequential Amendments as

- rules in each of British Columbia, Alberta, Manitoba, Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, the Northwest Territories, Nunavut and Yukon;
- regulations in Québec; and
- commission regulations in Saskatchewan.

In Alberta, British Columbia and Ontario, the implementation of the New Instrument is subject to ministerial approval. The implementation of the Consequential Amendments is subject to ministerial approval in British Columbia and Ontario.

In Ontario, the New Instrument, Consequential Amendments and the other required materials were delivered to the Minister of Finance on August 15, 2008.

In Québec, the New Instrument and Consequential Amendments are regulations made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The New Instrument and Consequential Amendments will come into force on the date of publication in the *Gazette officielle du Québec* or on any later date specified in the regulation.

Provided all necessary ministerial approvals are obtained, the New Instrument and Consequential Amendments will come into force on **December 15, 2008**.

The New Policy has been, or is expected to be, adopted as a policy in all CSA jurisdictions. The New Policy has an effective date of **December 15, 2008**.

Substance and Purpose

The purpose of the New Materials is to improve the quality and reliability of reporting issuers' annual and interim disclosure. We believe that this, in turn, will help to maintain and enhance investor confidence in the integrity of our capital markets. The New 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 internal control over financial reporting (ICFR),or caused them to be designed under their supervision;
- they have caused the issuer to disclose in its MD&A any change in the issuer's ICFR that has materially affected the issuer's ICFR; and
- on an annual basis they have evaluated the effectiveness of the issuer's DC&P and ICFR and caused the issuer to disclose their conclusions about the effectiveness of DC&P and ICFR in the issuer's MD&A.

Under the New Instrument, venture issuers are not required to include representations in their certificates relating to DC&P and ICFR. Venture issuers are also not required to discuss in their annual or interim MD&A changes in ICFR or the certifying officers' conclusions about the effectiveness of DC&P or ICFR.

The New Policy describes how we intend to apply the New Instrument.

Background

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

The CSA published prior versions of the New Materials and Consequential Amendments for a 60-day comment period on April 18, 2008 (the April 2008 Materials). The April 2008 Materials were a revision of previously proposed materials that CSA members published for comment on March 30, 2007. For further background on the materials published in March 2007 and the revisions made, refer to the CSA Notice and Request for Comments published on April 18, 2008.

Summary of Written Comments Received by the CSA

The comment period for the April 2008 Materials expired on June 17, 2008. We received written submissions from 29 commenters. We have considered the comments received and thank all the commenters. The names of the commenters are contained in Appendix A of this notice and a summary of their comments, together with our responses, are contained in Appendix B of this notice.

Summary of Changes to the April 2008 Materials

After considering the comments received, we made some revisions to the April 2008 Materials that are reflected in the New Materials and Consequential Amendments. As these changes are not material, we are not republishing the New Materials or Consequential Amendments for a further comment period.

See Appendix C of this notice for a summary of notable changes made to the April 2008 Materials.

The text of the New Materials is being published concurrently with this notice.

Consequential Amendments

In order to conform with the New Instrument, we are also making the Consequential Amendments. The Consequential Amendments are contained in Appendix D of this notice.

Withdrawal of Notices and Revocation of Local Exemption Instruments

We are withdrawing the following national notices, effective December 15, 2008:

- CSA Staff Notice 52-311 *Regarding the Required Forms of Certificates under MI 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*;
- CSA Staff Notice 52-316 *Certification of Design of Internal Control Over Financial Reporting*;
- CSA Staff Notice 52-322 *Status of Proposed Repeal and Replacement of Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*; and
- CSA Multilateral Staff Notice 57-302 *Failure to File Certificates Under Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*.

Each CSA jurisdiction other than Ontario has issued either a blanket order or local rule that has the effect of modifying the CEO and CFO certification requirements in the Current Materials as they apply to venture issuers (collectively, the Exemption Instruments). Each applicable CSA jurisdiction will revoke its Exemption Instrument effective December 15, 2008. A list of the Exemption Instruments that will be revoked is contained in Appendix E of this notice.

The following local notices, published concurrently with the corresponding local Exemption Instrument, will be withdrawn effective December 15, 2008:

- in Alberta, Alberta Securities Commission Notice *MI 52-109 Exemptive Relief, 2007 ABASC 836 Certain Certification Requirements: Relief for Venture Issuers*;
- in British Columbia, BC Notice 2007/36 *Relief for venture issuers from certain certification requirements*; and
- in Manitoba, Manitoba Securities Commission Notice 2007-43 *Relief for Venture Issuers from Certain Certification Requirement: Blanket Order No. 52-501*.

In Ontario, the CEO and CFO certification requirements in the Current Materials as they apply to venture issuers are set out in Ontario Securities Commission Staff Notice 52-717 *Certification of Annual and Interim Certificates – Venture Issuer Basic Certificates*. This staff notice will be withdrawn in Ontario effective December 15, 2008.

Questions

Please refer your questions to any of:

Ontario Securities Commission

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

Sandra Heldman
Senior Accountant, Corporate Finance
(416) 593 2355
sheldman@osc.gov.on.ca

Jason Koskela
Legal Counsel, Corporate Finance
(416) 595 8922
jkoskela@osc.gov.on.ca

British Columbia Securities Commission

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

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

Alberta Securities Commission

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

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

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

Manitoba Securities Commission

Bob Bouchard
Director, Corporate Finance
(204) 945 2555
bob.bouchard@gov.mb.ca

Autorité des marchés financiers

Sylvie Anctil-Bavas
Chef comptable
(514) 395 0337, poste 4291
sylvie.anctil-bavas@lautorite.qc.ca

Nicole Parent
Analyste, Direction des marchés des capitaux
(514) 395 0337, poste 4455
nicole.parent@lautorite.qc.ca

August 15, 2008

APPENDIX A

LIST OF COMMENTERS

Company	Name of Commenter/Commenters
Aecon Group, Inc.	Robert W. McColm
Bombardier Inc.	Daniel Desjardins and Pierre Alary
Canadian Bankers Association	Nathalie Clark
John S. Cochrane	
Canfor Corporation	Thomas Sitar
Caisse de depot et placement du Québec	Ghislain Parent
Deloitte & Touche LLP	
Ensign Energy Services Inc.	Glenn Dagenais
Ernst & Young LLP	
Fort Chicago Energy Partners	Hume D. Kyle
Glenidan Consultancy Ltd.	Philip Maguire
Grant Thornton LLP and Raymond Chabot Grant Thornton LLP	Tom Forestell and Susan Quig
High Liner Foods Incorporated	Michael Whitehead
The Institute of Internal Auditors Canada	Todd Horbasenko
International Forest Products Limited	John Horning
KPMG LLP	Laura Moschitto
Manitoba Telecom Services Inc.	Donald G. Welham
Mouvement des caisses Desjardins	Yves Morency
Parkland Income Fund	John G. Schroeder
Pembina Pipeline Corporation	Claudia D'Orazio
PricewaterhouseCoopers LLP	
Red Back Mining Inc.	Alessandro Bitelli
SNC-Lavalin Group Inc.	Gilles Laramée
Sun-Rype Products Ltd.	Gary A. Pearson
TELUS Corporation	Robert G. McFarlane
TMX Group Inc.	Richard Nadeau
West Fraser Timber Co. Ltd.	Martti Solin
WestJet Airlines Ltd.	Vito Culmone
XS Cargo GP Inc.	Michael McKenna

APPENDIX B

SUMMARY OF COMMENTS AND CSA RESPONSES

SUMMARY OF COMMENTS AND CSA RESPONSES

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

Table of Contents

General Comments

1. General Comments
    1. General support for the principles underlying the Instrument and Companion Policy as published
    2. General concern regarding the Instrument and Companion Policy as published

Instrument Comments

2. Part 1 – Definitions and Application
    1. Definitions
3. Part 3 – DC&P and ICFR
    1. Section 3.3 Limitations on scope of design
    2. Section 3.4 Use of a control framework for the design of ICFR
4. Part 4 – Certification of Annual Filings
    1. Section 4.3 Alternative form of annual certificate for first financial period after initial public offering
5. Part 9 – Effective Date
    1. General comments
6. Annual and Interim Certificates
    1. General certificate comments
    2. Annual certificates
    3. Interim certificates

Companion Policy Comments

7. Part 1 – General
8. Part 5 – Control Frameworks for ICFR
    1. Section 5.2 Scope of control frameworks
9. Part 6 – Design of DC&P and ICFR
    1. Section 6.1 General
    2. Section 6.3 Reasonable assurance
    3. Section 6.6 Risk considerations for designing DC&P and ICFR
    4. Section 6.11 ICFR design challenges
    5. Section 6.15 Documenting design

10. Part 7 – Evaluating Operating Effectiveness of DC&P and ICFR
    1. Section 7.5 Use of external auditor or other third party
    2. Section 7.8 Walkthroughs
    3. Section 7.10 Self-assessments
    4. Section 7.11 Timing of evaluation
11. Part 8 – Use of a Service Organization or Specialist for an Issuer's ICFR
    1. Section 8.1 Use of a service organization
    2. Section 8.5 Use of a specialist
12. Part 9 – Material Weakness
    1. Section 9.1 Identifying a deficiency in ICFR
    2. Section 9.6 Disclosure of a material weakness
    3. Section 9.7 Disclosure of remediation plans and actions undertaken
13. Part 10 – Weakness in DC&P that is Significant
    1. Section10.1 Conclusion on effectiveness of DC&P if a weakness exists that is significant
    2. Section 10.3 Certification of DC&P if a material weakness in ICFR exists
14. Part 11 – Reporting Changes in ICFR
    1. Section 11.1 Assessing materiality of a change in ICFR
15. Part 12 – Role of Board of Directors and Audit Committee
    1. Section 12.2 Audit committee
16. Part 13 – Certain Long Term Investments
    1. Section 13.3 Design and evaluation of DC&P and ICFR
17. Part 14 – Business Acquisitions
    1. Section 14.1 Access to acquired business
18. Part 15 – Venture Issuer Basic Certificates
    1. General comments
    2. Section 15.3 Voluntary disclosure regarding DC&P and ICFR

Legend:
CICA: Canadian Institute of Chartered Accountants
DC&P: disclosure controls and procedures
ICFR: internal control over financial reporting
IFRS: International Financial Reporting Standards
PCAOB: Public Company Accounting Oversight Board
SOX: Sarbanes-Oxley Act
VIE: variable interest entity

#	Theme	Comments	Responses
	1. <u>GENERAL COMMENTS</u>		
1.	General support for the principles underlying the Instrument and Companion Policy as published	Thirteen commenters express their general support for the approach taken. Four commenters express their support for the venture issuer basic certificate.	We thank the commenters for their support.
2.	General concern regarding the Instrument and Companion Policy as published	<u>Costs of Compliance</u> One commenter believes that costs of compliance outweigh any potential gains. <u>Absence of Attestation Requirement</u> Two commenters do not support the absence of a requirement for an external audit opinion.	We believe that the proposed revisions to National Instrument 52-109 adequately address the concerns raised and the benefits to the marketplace as a whole outweigh the costs. We continue to believe the benefits associated with requiring an issuer to obtain from its auditor an opinion on the effectiveness of ICFR do not exceed the costs.
	INSTRUMENT COMMENTS		
	2. <u>PART 1 – DEFINITIONS AND APPLICATION</u>		
1.	Definitions	<u>Weakness in DC&P</u> Two commenters question whether the term material weakness should apply to DC&P in addition to ICFR. Four commenters believe a definition should be provided for a weakness that is significant. One commenter requests clarification as to whether the term "significant" is a lower threshold than "material weakness". <u>Material Weakness</u> Four commenters express their support for aligning the definition of "material weakness"	We have proposed to adopt the term "material weakness" as defined by the SEC. This definition only relates to ICFR. The identification of weaknesses in DC&P and their relationship to ICFR is addressed in Part 10 of the Companion Policy. Guidance has been added to section 10.1 of the Companion Policy to assist certifying officers in determining the effectiveness of DC&P. We thank the commenters for their support.

#	Theme	Comments	Responses
		with the SEC's definition and not requiring remediation of a material weakness. One commenter suggests amending the definition of material weakness to clarify what is meant by "material".	 We believe the guidance in Part 9 of the Companion Policy is sufficient for the certifying officers of an issuer to determine whether a material weakness exists in the context of the issuer's business.
	3. <u>PART 3 – DC&P AND ICFR</u>		
1.	Section 3.3 Limitations on scope of design	Four commenters express their support for the scope limitation of 365 days. Two commenters believe the scope limitation of 365 days for a newly acquired business is not sufficient. Reasons cited include: - acquired businesses may have significantly different processes, procedures and technologies - resources are limited and focused on integration of the business - complexities of cross-border acquisitions require additional time One commenter noted an inconsistency between the requirements of section 3.3 of the Instrument and the guidance in subsection 13.3(4) of the Companion Policy. The guidance states that the scope limitation is only available in cases where the certifying officers do not have sufficient access to design and evaluate the controls, policies and procedures carried out by the underlying entity.	We thank the commenters for their support. We do not believe a further extension of the scope limitation is necessary or appropriate. We agree and have amended section 3.3 of the Instrument.
2.	Section 3.4 Use of a Control Framework for the design of ICFR	Four commenters express their support for the requirement to use a control framework to design ICFR. One commenter believes the absence of a suitable control framework for smaller issuers will pose a significant challenge for them. The commenter suggests the CSA create or support a task force to develop a principles-based internal control framework for smaller issuers.	We thank the commenters for their support. We believe that all issuers will be able to comply with the certification requirements, including the requirement to use a control framework to design ICFR. We do not believe the CSA is the appropriate body to create a task force to develop a control framework.
	4. <u>PART 4 – CERTIFICATION OF ANNUAL FILINGS</u>		
1.	Section 4.3	One commenter expresses support for the 90-day scope limitation for IPOs and RTOs.	We thank the commenter for the support.

#	Theme	Comments	Responses
	Alternative form of annual certificate for first financial period after initial public offering	One commenter notes that there is a tremendous level of effort required to complete an initial public offering and permitting a delay of greater than 90 days for filing a full certificate may have some merit.	We continue to propose that certifying officers be required to certify the design of ICFR for the annual or interim period that follows the first filing after an issuer becomes a reporting issuer. Since certifying officers have access to design ICFR prior to the issuer becoming a reporting issuer, we believe investors are entitled to expect that the certifying officers will be able to comply with the certification requirements within a relatively short period of time after the issuer becomes a reporting issuer.
	5. <u>PART 9 – EFFECTIVE DATE</u>		
1.	General comments	<u>Effective Date</u> Eighteen commenters believe the effective date should be extended. Reasons cited include: • Eleven commenters indicate that it will be difficult for them to properly plan, resource and execute an efficient and cost-effective compliance program for 2008. • Six commenters indicate that because of scarce resources, competing priorities and uncertainties around the finalization of NI 52-109 they have been reluctant to do all of the work necessary to comply with NI 52-109 until it is finalized. • Four commenters note that the transition to IFRS is a competing priority for scarce resources. • Two commenters raise the concern that additional effort will be required due to the requirement to use a control framework.	We acknowledge the concerns related to timing. In response to these concerns we published CSA Staff Notice 52-322 to provide issuers with advanced notice of our intentions. In addition, we accelerated our publication timelines for the finalization of NI 52-109. We continue to propose an effective date of December 15, 2008 for the following reasons: • We expect most issuers to do the bulk of their work relating to IFRS conversion in 2009 and 2010, so it would be better for issuers to have completed the work relating to implementing NI 52-109 in 2008. • Certifying officers of non-venture issuers are currently required to certify that they have evaluated the effectiveness of DC&P. There is substantial overlap between DC&P and ICFR. NI 52-109 will close the gap in current certification requirements relating to the evaluation of DC&P and ICFR. • We believe there is adequate time to prepare the last piece of the certification requirement between now and the first filing deadline, which will be in March 2009.

#	Theme	Comments	Responses
			• We published this date in April 2008 and have consistently referred to this date since then.
		One commenter suggests guidance be provided for issuers filing a certificate after the effective date for a financial period ending prior to the effective date.	We believe subsection 1.2(2) of the Instrument provides sufficient clarity regarding the effective date.
		<u>Early Adoption</u> One commenter believes early adoption of the instrument should be allowed.	We expect few, if any, issuers will want to adopt the new instrument early. Therefore we do not think it is appropriate to change the instrument to permit early adoption .
	6. <u>ANNUAL AND INTERIM CERTIFICATES</u>		
1.	General Certificate Comments	<u>Modification to Certificates</u> One commenter believes paragraph 5(b) of Forms 52-109F1 and 52-109F2 should refer to accounting standards as opposed to GAAP in preparation for Canada's convergence to IFRS.	Paragraph 5(b) of Forms 52-109F1 and 52-109F2 refers to the "issuer's GAAP" which is a defined term that is broad enough to include IFRS.
		One commenter questions why Forms 52-109F1, 52-109F1-IPO/RTO and 52-109FV1 contain the phrase "AIF, if any" when only venture issuers have the option to file an AIF and would then file Form 52-109F1-AIF.	A venture issuer may voluntarily file Form 52-109F1 even if it does not prepare an AIF. Form 52-109F1-AIF is only used if a venture issuer voluntarily files an AIF after filing its annual financial statements, MD&A and certificates.
		<u>Reporting Changes in ICFR</u> One commenter believes that changes in ICFR that have no material impact on ICFR should not be disclosed in the MD&A.	Under paragraph 7 of Form 52-109F1 and paragraph 6 of Form 52-109F2, "Reporting changes in ICFR", the certifying officers are only required to report a change that has "materially affected or is reasonably likely to materially affect the issuer's ICFR".
		One commenter believes a material change in ICFR should not be reported where the risk is low or non-existent that a material misstatement will not be prevented or detected on a timely basis.	
2.	Annual Certificates	One commenter suggests that an issuer with no material weaknesses should be able to mark subsections (ii), (iii) and (iv) of paragraph 6(b) in Form 52-109F1 as "n/a".	We agree with the comment and have amended Form 52-109F1.
3.	Interim Certificates	One commenter notes that SOX does not require disclosure of material weaknesses on an interim basis. The commenter believes interim disclosure of material weaknesses in the	We believe the disclosure requirements in paragraph 5.2 of Form 52-109F2 are a logical extension of the requirement

#	Theme	Comments	Responses
		design of ICFR will be onerous for inter-listed issuers.	to certify design in paragraph 5.
	COMPANION POLICY COMMENTS		
	7. PART 1 – GENERAL		
1.		One commenter believes the guidance in section 1.3 of the Companion Policy should be clarified so that venture issuers electing to file a Form 52-109F1 or 52-109F2 know they should follow the guidance in Parts 5 through 14 of the Companion Policy.	We believe the guidance is sufficiently clear.
2.		One commenter recommends there be specific guidance requiring the implementation of an ethics hot line as a cost effective way to promote and enforce accountability within an organization.	We believe this concern is addressed by subsection 2.3(7) of NI 52-110 *Audit Committees* which states "an audit committee must establish procedures for "(a) the receipt, retention and treatment of complaints received by the issuer regarding accounting, internal controls, or auditing matters; and (b) the confidential anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters".
3.		One commenter believes that issuers should clearly state in the MD&A that "Management's report on internal control over financial reporting was not subject to audit by the Company's external auditor". The commenter believes this will help reduce confusion in the marketplace as cross-listed issuers will be subject to an audit.	We believe the Canadian marketplace is well aware that a Canadian company that is not cross-listed is not required to obtain an audit of internal control over financial reporting.
	8. PART 5 – CONTROL FRAMEWORKS FOR ICFR		
1.	Section 5.2 Scope of control frameworks	One commenter believes the guidance in section 5.2 of the Companion Policy should make reference to principle 14 and the tools found in COSO's guidance for smaller public companies and believes too much prominence has been given to the publication from IT Governance Institute.	Section 5.1 of the Companion Policy includes a reference to the COSO's guidance for smaller public companies.
	9. PART 6 – DESIGN OF DC&P AND ICFR		
1.	Section 6.1 General	One commenter recommends that the Companion Policy indicate where internal audit could assist with the design and evaluation of DC&P and ICFR.	We do not believe additional guidance is needed. Consideration of the internal audit function is noted in paragraph 6.13(c) of the Companion Policy.

#	Theme	Comments	Responses
2.	Section 6.3 Reasonable assurance	One commenter recommends expanding the guidance in section 6.3 of the Companion Policy relating to reasonable assurance.	With the adoption of "material weakness" we have revised our guidance to be similar to that included in the SEC's *Commission Guidance Regarding Management's Report on ICFR*. We believe the guidance relating to reasonable assurance in section 6.3 of the Companion Policy is sufficiently clear.
3.	Section 6.6 Risk considerations for designing DC&P and ICFR	One commenter believes the guidance provided in section 6.6 of the Companion Policy only focuses on the regulatory requirements rather than designing controls. One commenter suggests that further guidance should be provided relating to fraud risk to include "all information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities regulation. One commenter continues to believe guidance around an adequate assessment of fraud would be helpful to issuers.	We disagree. The guidance was developed using various auditing standards, including CICA handbook section 5925 and PCAOB Auditing Standards No. 2 and No. 5. In addition, section 6.14 of the Companion Policy discusses how to enhance the efficiency and effectiveness of the designs. We agree and have amended the guidance in subsection 6.6(3) of the Companion Policy. We do not propose to include additional guidance since these are decisions that would be made by the certifying officers based on the issuer's facts and circumstances using a top-down, risk-based approach.
4.	Section 6.11 ICFR Design Challenges	One commenter suggests that two of the examples provided in section 6.11 of the Companion Policy are prohibited by the auditor independence rules. One commenter does not see the value in providing the guidance in section 6.11 of the Companion Policy on ICFR design challenges. If retained the commenter does not agree with the statement in paragraph 6.11(d) relating to the auditor's expert advice that states "this type of arrangement should not be considered a component of ICFR". Another commenter suggests that the removal of guidance relating to an auditor providing services to mitigate risks raises the question of whether auditor services with respect to design are part of an issuer's controls, or alternatively, mitigating procedures.	We disagree. In some instances the auditor independence rules allow for auditor involvement depending on the size of the issuer. We disagree with the commenter. We have clarified one sentence in section 6.11 of the Companion Policy by deleting the word "compensate" and inserting "provide" to avoid any confusion between the guidance in section 6.11 and the concept of compensating controls discussed in subsection 9.1(3) of the Companion Policy. Even though independence rules may permit an external auditor to perform certain services, we do not believe that this should be considered a component of the issuer's ICFR.

#	Theme	Comments	Responses
5.	Section 6.15 Documenting design	One commenter believes the guidance provided in subsection 6.15(4) of the Companion Policy should focus on the risk of misstatement as opposed to the process or flow. In addition the commenter believes some guidance should be provided on adapting the extent of documentation to the situation. One commenter believes it is not necessary to distinguish controls over safeguarding of assets in paragraph 6.15(4)(g) of the Companion Policy.	We agree, and have amended the guidance in subsection 6.15(1) of the Companion Policy to provide further information on adapting the extent of documentation. We disagree with the commenter. We believe the controls over safeguarding of assets form a part of the issuer's ICFR, as indicated by the definition of ICFR.
	10. PART 7 – EVALUATING OPERATING EFFECTIVENESS OF DC&P AND ICFR		
1.	Section 7.5 Use of an external auditor or other third party	One commenter believes that the Companion Policy should include a statement that an audit of internal control is not a substitute for the certifying officer's own evaluation. One commenter suggests expanding the guidance in section 7.5 of the Companion Policy to clarify the roles of management and the auditors. The commenter suggested wording similar to that used by the SEC.	We believe the guidance in section 7.5 of the Companion Policy clearly indicates that the certifying officers have responsibility for their own evaluation regardless of the auditor's involvement. We do not believe that additional disclosure regarding the use of an external auditor is necessary or appropriate in the Companion Policy.
2.	Section 7.8 Walkthroughs	One commenter suggests that including a section on walkthroughs makes it appear as a requirement when the commenter believes it would be more efficient for an issuer to proceed directly to testing.	The guidance in section 7.8 of the Companion Policy clearly states that walkthroughs are a tool that "can assist" a certifying officer.
3.	Section 7.10 Self-assessments	Two commenters believe further guidance should be provided relating to self-assessments.	We agree and have amended the guidance in section 7.10 of the Companion Policy to indicate that, where one certifying officer performs a self-assessment, it is appropriate for the other certifying officer to perform direct testing of the control.
4.	Section 7.11 Timing of evaluation	One commenter suggests providing examples of controls that could be tested before or after year end, such as controls that have documented attributes.	We believe the guidance in section 7.11 of the Companion Policy is clear.
	11. PART 8 – USE OF A SERVICE ORGANIZATION OR SPECIALIST FOR AN ISSUER'S ICFR		
1.	Section 8.1 Use of a service	One commenter believes the example in section 8.1 of the Companion Policy should not be payroll as the commenter believes this is a low risk area and the example isn't consistent	We believe certifying officers need to determine the risks within their own organization. Payroll may be an area of

#	Theme	Comments	Responses
	organization	with a risk-based approach. One commenter suggests clarifying the definition of "significant process" within section 8.1 of the Companion Policy as the term may be viewed in a broader context than was intended. One commenter suggests eliminating the word "compensating" in paragraph 8.1(c) of the Companion Policy as the controls do not need to be compensating.	significant risk to an organization based on its facts and circumstances. We believe the reference in subsection 6.6(2) of the Companion Policy appropriately focuses on the relevance of risk assessment in determining the scope of an issuer's DC&P and ICFR. We agree and have modified the guidance in paragraph 8.1(c) of the Companion Policy.
2.	Section 8.5 Use of a specialist	One commenter recommends adding guidance indicating that management accepts responsibility for the results of the service expert's work. If an error is found in the specialist's work, management must evaluate the severity of the deficiency and consider whether it represents a material weakness.	We believe that the guidance in section 8.5 of the Companion Policy regarding use of a specialist is clear.
	12. <u>PART 9 – MATERIAL WEAKNESS</u>		
1.	Section 9.1 Identifying a deficiency in ICFR	Two commenters believe the distinction between compensating controls and mitigating procedures is confusing. The commenters recommend that additional examples be provided in paragraph 9.1(3)(b) of the Companion Policy. One commenter recommends clarifying that a control deficiency that has been compensated for remains a control deficiency.	We have included additional guidance in subsection 9.1(3) of the Companion Policy to clarify the distinction between compensating controls and mitigating procedures and the fact that mitigating procedures do not eliminate the existence of a material weakness.
2.	Section 9.6 Disclosure of a material weakness	One commenter recommends that, due to the overlap between design and operation of ICFR, the guidance should state that all material weaknesses should be disclosed. One commenter suggests that disclosure of a material weakness relating to design should focus on material information as required by Part 1(e) of NI51-102F1 *Management's Discussion and Analysis.*	We believe the guidance in subsections 9.6(1) and (2) of the Companion Policy makes it sufficiently clear that either a material weakness in design or a material weakness in operation would have to be disclosed. We do not believe that additional guidance is necessary.
3.	Section 9.7 Disclosure of remediation plans and actions	One commenter believes the guidance in section 9.7 of the Companion Policy discussing mitigating procedures in the case where an issuer is not remediating a material weakness might be misleading. The commenter recommends deleting this guidance.	We have added guidance to subsection 9.1(3) of the Companion Policy that states if an issuer discusses mitigating procedures in its MD&A, the issuer should not imply that the procedures eliminate the existence of a

#	Theme	Comments	Responses
	undertaken	One commenter expects management to have a plan for remediation otherwise the auditor would be unable to issue an unreserved audit opinion.	material weakness. We believe an auditor plans its audit considering but not necessarily relying on the control environment and would refer to CICA Handbook Section 5220 in the case of a weakness in internal control.
	13. PART 10 – WEAKNESS IN DC&P THAT IS SIGNIFICANT		
1.	Section 10.1 Conclusions on effectiveness of DC&P if a weakness exists that is significant	Two commenters believe additional guidance should be provided in section 10.1 of the Companion Policy to help issuers apply the standard consistently.	Guidance has been added to section 10.1 of the Companion Policy to assist certifying officers in determining the effectiveness of DC&P.
2.	Section 10.3 Certification of DC&P if a material weakness in ICFR exists	One commenter suggests that given the overlap between DC&P and ICFR the term "often" in section 10.3 of the Companion Policy should be replaced with "always" or "almost always" and an issuer should be required to explain if they concluded DC&P is effective if ICFR is not effective.	We agree and have amended the guidance in section 10.3 of the Companion Policy to say "almost always".
	14. PART 11 – REPORTING CHANGES IN ICFR		
1.	Section 11.1 Assessing materiality of a change in ICFR	One commenter recommends providing further guidance to assist reporting issuers with assessing the materiality of a change in ICFR. The commenter recommends that the guidance include consideration of selected factors, such as context and materiality when assessing changes in ICFR to be disclosed and that the example of a payroll conversion be removed.	We believe the guidance in section 11 of the Companion Policy is appropriate. The certifying officers would assess the materiality of a change in ICFR based on the issuer's facts and circumstances.
	15. PART 12 – ROLE OF THE BOARD OF DIRECTORS AND AUDIT COMMITTEE		
1.	Section 12.2 Audit committee	One commenter feels the CSA should not have removed the requirement that certifying officers must disclose to the audit committee all significant deficiencies in the design or operation of ICFR.	The lack of a requirement to report to the audit committee does not preclude an audit committee from requesting that certifying officers bring any significant deficiencies to its attention.

#	Theme	Comments	Responses
	16. PART 13 – CERTAIN LONG TERM INVESTMENTS		
1.	Section 13.3 Design and evaluation of DC&P and ICFR	One commenter believes the disclosure in subsection 13.3(4) of the Companion Policy would be enhanced by the addition of "that will not be prevented or detected on a timely basis" after each instance of "material misstatement". One commenter believes certifying officers should consider whether portfolio investments and equity investments referred to in subsection 13.3(5) of the Companion Policy include risks that could reasonably result in a material misstatement in the issuer's annual filings, interim filings or other reports.	We do not believe the Companion Policy would be enhanced by this addition. We have amended subsection 13.3(5) of the Companion Policy to clearly indicate that an issuer should address controls over its disclosure of material information. Although subsection 13.3 (5) of the Companion Policy does not specifically refer to risks, certifying officers must consider risks when addressing the issuer's controls over its disclosure relating to its portfolio investments and equity investments. Section 6.6 of the Companion Policy gives guidance for the identification of risks that could reasonably result in a material misstatement.
	17. PART 14 – BUSINESS ACQUISITIONS		
1.	Section 14.1 Access to acquired business	Two commenters believe that section 14.1 of the Companion Policy should be clarified to indicate that the scope limitation for a business acquisition should only be taken subject to materiality. One commenter also suggests that, subject to materiality, aggregated summary financial information for business combinations should be allowed as it is for proportionately consolidated entitles and VIEs.	We agree and have amended the guidance in section 14.2 of the Companion Policy to clarify that the scope limitation is only relevant for material business acquisitions. We have revised the Companion Policy to indicate that summary information may be disclosed for related businesses in the case of an acquisition of related businesses, as that term is used in NI 51-102 *Continuous Disclosure Obligations*.
	18. PART 15 – VENTURE ISSUER BASIC CERTIFICATES		
1.	General comments	One commenter believes more emphasis should be given to the general expectations for management of all issuers regarding their certification obligations, particularly the "no misrepresentations" requirements.	We believe that Parts 1 and 4 of the Companion Policy appropriately address the purpose of the certification requirements, including representations relating to fair presentation, financial condition and reliability of financial reporting.

#	Theme	Comments	Responses
2.	Section 15.3 Voluntary disclosure regarding DC&P and ICFR	One commenter believes it would be beneficial to provide venture issuers with additional guidance on their disclosure expectations. The commenter suggested guidance on the following: • What should be disclosed in the MD&A? • Should material weaknesses be disclosed? • If disclosing a material weakness, should the venture issuer's disclosure be the same as the disclosure requirements of section 5.2 and 6(b) of Form 52-109F1? One commenter suggests "and has not completed such an evaluation" should be added to the venture issuer's qualifying statement in the MD&A which currently states "the venture issuer is not required to certify the design and evaluation of the issuer's DC&P and ICFR".	We believe the guidance in section 15.3 of the Companion Policy clearly states that a venture issuer filing a basic certificate "is not required to discuss in its annual or interim MD&A the design or operating effectiveness of DC&P or ICFR". We agree and have added the suggested phrase to the guidance in section 15.3 of the Companion Policy.

APPENDIX C

SUMMARY OF CHANGES

New Rule

Part 3 – DC&P and ICFR

We have conformed section 3.3 of the New Rule with the guidance in the New Policy to clarify the circumstances where a non-venture issuer may limit its design of DC&P or ICFR to exclude controls, policies and procedures of a proportionately consolidated entity or variable interest entity in which it has an interest. This change is consistent with the discussions of scope limitations in the companion policies published for comment on April 18, 2008 and March 30, 2007. Subsection 3.3(3) of the New Rule indicates that an issuer must not limit its design of DC&P or ICFR except in circumstances where the certifying officers would not have a reasonable basis for making the representations in the annual or interim certificates because they do not have sufficient access to a proportionately consolidated entity or variable interest entity, as applicable, to design and evaluate controls, policies and procedures carried out by that entity.

New Policy

The New Policy contains expanded guidance on various topics including:

- Compensating controls versus mitigating procedures – Further guidance is provided to indicate that mitigating procedures can reduce financial reporting risks but do not eliminate the existence of the material weakness.

- Weakness in DC&P – Guidance is provided to assist issuers in determining when a weakness in DC&P is significant.

- Self-assessments – Guidance is provided to indicate that, where one certifying officer performs a self-assessment, it is appropriate for the other certifying officer to perform direct testing of the control to enable each officer to have a basis for signing the certificate.

- Business acquisitions – Guidance is provided to indicate that, when determining whether a scope limitation exists for a business acquisition, certifying officers must initially consider whether an acquired business includes risks that could reasonably result in a material misstatement in the issuer's annual filings, interim filings or other reports. The guidance also clarifies that an issuer may present summary financial information on a combined basis in the case of related businesses.

APPENDIX D

CONSEQUENTIAL AMENDMENTS

THE MANITOBA SECURITIES COMMISSION
MSC RULE 2008-19
(Section 149.1, *The Securities Act*)

AMENDMENT INSTRUMENT FOR
FORM 51-102F1 *MANAGEMENT'S DISCUSSION & ANALYSIS* OF
NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. This Instrument amends Form 51-102F1 *Management's Discussion & Analysis*.

2. Item 1.15 is amended by striking out the following instruction:

"INSTRUCTION

Your company may also be required to provide additional disclosure in its MD&A as set out in Form 52-109F1 Certification of Annual Filings *and Form 52-109F2* Certification of Interim Filings*."*

3. Item 1.15 is amended by adding the following paragraph after paragraph 1.15(b):

"(c) Your MD&A must include the MD&A disclosure required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* and, as applicable, Form 52-109F1 *Certification of Annual Filings – Full Certificate*, Form 52-109F1R *Certification of Refiled Annual Filings*, or Form 52-109F1 *AIF Certification of Annual Filings in Connection with Voluntarily Filed AIF.*"

4. Item 2 is amended by adding the following section after section 2.2:

"*2.3 – Other Interim MD&A Requirements*

Your interim MD&A must include the interim MD&A disclosure required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* and, as applicable, Form 52-109F2 *Certification of Interim Filings – Full Certificate* or Form 52-109F2R *Certification of Refiled Interim Filings.*"

5. This amendment comes into force on December 15, 2008.

6. This Instrument may be cited as MSC Rule 2008-19.

APPENDIX E

EXEMPTION INSTRUMENTS

Jurisdiction	Instrument	Effective Date
BC	BCI 52-511 *Relief for venture issuers from certain certification requirements*	November 23, 2007
AB	MI 52-109 Exemptive Relief, 2007 ABASC 836 *Certain Certification Requirements: Relief for Venture Issuers*	November 23, 2007
SK	GRO 52-905 *Relief from Certification Requirements in National Instrument 52-109*	November 27, 2007
MB	Blanket Order No. 52-501 *Relief for Venture Issuers from Certain Certification Requirement*	November 23, 2007
QC	DÉCISION N° 2007-PDG-0203 *Règlement 52-109 sur l'attestation de l'information présentée dans les documents annuels et intermédiaires des émetteurs*	November 23, 2007
NL	Blanket Order 55 *In the Matter of Certain Certification Requirements: Relief for Venture Issuers*	December 17, 2007
NB	Blanket Order 52-501 *In the Matter of Certification Requirements: Relief for Venture Issuers*	November 26, 2007
NS	Blanket Order No. 52-501 *In the Matter of Certification Requirements: Relief for Venture Issuers*	December 10, 2007
PE	Blanket Order No. 52-501 *In the Matter of Certain Certification Requirements: Relief for Venture Issuers*	March 17, 2008
NT	Blanket Order No. 10 *In the Matter of Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*	January 23, 2008
NU	Blanket Order No. 10 *In the Matter of Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*	August 6, 2008
YK	Superintendent's Order 2008/07 *(52-109 Certain Certification Requirements: Relief for Venture Issuers)*	August 8, 2008