



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

NOTICE AND REQUEST FOR COMMENTS

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

1. PURPOSE OF NOTICE

We, the Canadian Securities Administrators (CSA), are publishing for a 60-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, 52-109FV1, 52-109F1 – IPO/RTO, 52-109F1R, 52-109F1 – AIF, 52-109F2, 52-109FV2, 52-109F2 – IPO/RTO and 52-109F2R (together, the Proposed Forms); and
- Companion Policy 52-109CP *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Proposed Policy, and together with the Proposed Instrument and the Proposed Forms, the Proposed Materials).

The Proposed Materials are a revision of the previously proposed materials that CSA members published for comment on March 30, 2007 (the March 2007 Proposed Materials).

The comment period in connection with the March 2007 Proposed Materials expired on June 28, 2007. We received 53 comment letters, and held four roundtable discussions across the country to capture the views of smaller issuers. After extensive review and consideration of the comments received, we have decided to make significant revisions to certain aspects of the March 2007 Proposed Materials. Certain of these revisions were previously described in CSA Notice 52-319 *Status of Proposed Repeal and Replacement of Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*, released on November 23, 2007.

The Proposed Materials will, if adopted, 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 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Current Policy, and 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.

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

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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

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 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 caused the issuer to disclose their conclusions about the effectiveness of DC&P in the issuer's MD&A.

In November 2007, certain CSA jurisdictions, as indicated in the table below, issued blanket orders that had the effect of modifying the current requirements as they apply to venture issuers. As a result of these blanket orders, venture issuers in these jurisdictions may file interim and annual certificates for periods ending on or after December 31, 2007 in a form that does not require the CEO and the CFO to certify that they have designed and evaluated the effectiveness of DC&P or designed ICFR. Please refer to the following blanket orders issued by these jurisdictions for more information.

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

Similar blanket order relief is not necessary for venture issuers in Yukon and Nunavut because the Current Instrument is a policy rather than a rule in these jurisdictions. Accordingly, a venture issuer may file certificates in these jurisdictions in the form prescribed by the other CSA jurisdictions' blanket orders for financial years and interim periods ending on or after December 31, 2007.

Please refer to Ontario Securities Commission Staff Notice 52-717 *Certification of Annual and Interim Certificates – Venture Issuer Basic Certificates* for more information as to the applicable requirements in Ontario.

For further background on the March 2007 Proposed Materials refer to the CSA Staff Notice and Request for Comments published on March 30, 2007.

5. SUMMARY OF CHANGES TO THE MARCH 2007 PROPOSED MATERIALS

Significant proposed amendments

The significant proposed changes to the March 2007 Proposed Materials, as reflected in the Proposed Materials, are as follows:

- a new form of certificate for venture issuers, called a "venture issuer basic certificate" does not include representations relating to the establishment and maintenance of DC&P and ICFR;
- non-venture issuers are required to use a control framework in the design of ICFR;
- the threshold for reporting a weakness in ICFR is a "material weakness" rather than the previous concept of "reportable deficiency";
- an issuer does not have to remediate a material weakness; however, an issuer must disclose its plans, if any, to remediate a material weakness;
- an issuer may limit the scope of its design of DC&P and ICFR to exclude controls, policies and procedures of a business that the issuer acquired not more than 365 days before the end of the financial period to which the certificate relates; this compares to a 90-day period in the March 2007 Proposed Materials; and
- we have increased the extent of guidance included in the Companion Policy.

These changes are described in more detail below.

Venture Issuer Basic Certificate

We have decided to remove the requirement for venture issuers to design and evaluate DC&P and ICFR. As a result of this change:

- certifying officers of venture issuers are no longer required to include representations in their certificates relating to the establishment and maintenance of DC&P and ICFR;
- the venture issuer basic certificate includes a note to reader explaining how it differs from the full certificate required to be filed by reporting issuers other than venture issuers;

- a venture issuer filing a basic certificate is no longer required to discuss in its annual or interim MD&A the design or operating effectiveness of DC&P or ICFR. If a venture issuer files a basic certificate and chooses to discuss the design or operation of one or more components of its DC&P or ICFR, we suggest that the issuer include a discussion in its MD&A that is similar to the disclosure in the note to reader on its venture issuer basic certificate; and
- venture issuers that wish to do so may choose to file full certificates.

Control framework

A non-venture issuer must use a control framework to design the issuer’s ICFR. We believe this is appropriate now that the requirement to design ICFR only applies to non-venture issuers.

Control frameworks commonly in use include:

- (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.

A smaller issuer 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.

Material Weakness

Based on comments we received, we have decided to replace the concept of “reportable deficiency” which we proposed in the March 2007 Proposed Materials, with the concept of “material weakness”.

The definition of “material weakness” in the Proposed Instrument, which is the same as the corresponding U.S. definition, is as follows:

“material weakness” means a deficiency, or a combination of deficiencies, in ICFR such that there is a reasonable possibility that a material misstatement of the reporting issuer’s annual or interim financial statements will not be prevented or detected on a timely basis.

Under the Proposed Instrument, if a non-venture issuer determines it has a material weakness which exists as at the end of the period covered by its annual or interim filings, as the case may be, it must disclose in its annual or interim MD&A for each material weakness:

- a description of the material weakness;

- the impact of the material weakness on the issuer's financial reporting and its ICFR; and
- the issuer's current plans, if any, or any actions already undertaken, for remediating the material weakness.

Scope limitations

An issuer may limit the scope of its design of DC&P and ICFR to exclude controls, policies and procedures of a business that the issuer acquired not more than 365 days (formerly 90 days in the March 2007 Proposed Materials) before the end of the financial period to which the certificate relates.

Extent of guidance

As requested in the comments and roundtable discussions, the Companion Policy contains new guidance on various topics, including:

- Self-assessments – The guidance indicates that a certifying officer's self-assessment, in certain circumstances, would provide sufficient evidence since the certifying officer signs the certificate;
- Compensating controls & mitigating procedures – Guidance is provided to assist certifying officers in determining whether a deficiency is addressed by a compensating control or a mitigating procedure and how that determination affects their conclusions on the effectiveness of ICFR;
- Use of a service organization or specialist for an issuer's ICFR – Further guidance is provided relating to the use of service auditor reports and procedures to consider when using the work of a specialist;
- Weakness in DC&P – Guidance is provided for situations where the certifying officers identify a weakness in the design or operation of DC&P that is significant and exists as at the period end date; and
- Disclosure of an external auditor report on ICFR – Guidance is provided on filing a copy of the internal control audit report if an issuer refers, in a continuous disclosure document, to an audit report relating to the issuer's ICFR, prepared by its external auditor.

We have attached to this notice, as Appendix A, blacklines showing changes made to the March 2007 Proposed Materials.

Proposed effective date

The proposed effective date of the Proposed Instrument, which will apply to all reporting issuers other than investment funds, is December 15, 2008.

6. RELATED INSTRUMENTS AND CONSEQUENTIAL AMENDMENTS

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
- National Instrument 52-110 *Audit Committees*.

We are also publishing for comment in connection with the publication of the Proposed Materials proposed consequential amendments to Form 51-102F1 *Management's Discussion & Analysis* of National Instrument 51-102 *Continuous Disclosure Obligations*. The proposed amendment instrument for this form is attached as Appendix D.

7. 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 to 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 asset 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.

8. SUMMARY OF WRITTEN COMMENTS RECEIVED BY THE CSA

The March 2007 Proposed Materials were published for a 90-day comment period on March 30, 2007.

During the comment period, we received written submissions from 53 commenters, and held roundtable discussions across the country. 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.

9. ALTERNATIVES CONSIDERED

The proposed repeal and replacement of the Current Materials with the Proposed Materials are intended to improve the effectiveness of the current internal controls reporting regime, 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 did not consider other alternatives.

10. RELIANCE ON UNPUBLISHED STUDIES, ETC.

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

11. WITHDRAWAL OF NOTICES

The following notice is no longer required and we therefore withdraw it in all Canadian jurisdictions in which it was published:

- CSA Notice 52-319 *Status of Proposed Repeal and Replacement of Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*

12. COMMENTS

We invite interested parties to make written submissions on the Proposed Materials. We will consider submissions received by June 17, 2008. **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 Financial Services 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
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, 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.

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If you do not submit your comments by e-mail, provide a diskette containing the submissions in MS Word format.

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.

13. QUESTIONS

Please refer your questions to any of:

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April 18, 2008

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

**BLACKLINED VERSIONS OF THE PROPOSED MATERIALS
SHOWING CHANGES TO THE MARCH 2007 PROPOSED MATERIALS**

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

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- ~~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~~
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- ~~Form 52-109F2—Certification of interim filings (full interim certificate)~~
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- ~~Form 52-109F2R—Certification of refiled interim filings~~

Form 52-109F1	Certification of annual filings – full certificate
Form 52-109FV1	Certification of annual filings – venture issuer basic certificate
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Form 52-109F2R	Certification of refiled 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 [34](#) or ~~Part 5.1~~[section 6.1](#);

“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~~[individual](#) performing similar functions to a chief executive officer or chief financial officer;

~~““DC&P” means disclosure controls and procedures” or “DC&P”;~~

[“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 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;~~

~~“financial period” means a financial year or an interim period;~~

~~““ICFR” means internal control over financial reporting” or “ICFR”;~~

[“internal control over financial reporting”](#) 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) ~~(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;²
- (b) ~~(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;² and
- (c) ~~(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;

“interim certificate” means the certificate required to be filed under Part 5 or section 6.2;

“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;

“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*;

“material weakness” means a deficiency, or a combination of deficiencies, in ICFR such that there is a reasonable possibility that a material misstatement of the reporting issuer’s annual or interim financial statements will not be prevented or detected on a timely basis;

“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*;

“non-venture issuer” means a reporting issuer that is not a venture issuer;

“proportionately consolidated entity” means an entity in which an issuer has an investment interest 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 acquiree” 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~~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~~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 U.S. 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~~a reporting ~~issuers~~issuer other than an investment ~~funds~~fund.

(2) This Instrument applies in respect of annual filings and interim filings for financial ~~years beginning on or after March 31, 2005.~~periods ending on or after December 15, 2008.

~~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:~~

PART 2 – CERTIFICATION OBLIGATION

~~(a) — disclosure controls and procedures; and~~

2.1 **Certifying officers' certification obligation** – Each certifying officer must certify the matters prescribed by the required form that must be filed under Part 4 or Part 5.

PART 3 – DC&P AND ICFR

~~(b) — internal control over financial reporting.~~

3.1 **Establishment and maintenance of DC&P and ICFR** – A non-venture issuer must establish and maintain DC&P and ICFR.

~~2.2 — ICFR design accommodation for venture issuers~~3.2 **MD&A disclosure of material weakness** – Despite section ~~2.1, 3.1~~, if a non-venture issuer: ~~(a) — has a reportable deficiency relating to design~~ determines it has a material weakness 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: annual or interim MD&A for each material weakness

~~(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~~

(a) a description of the material weakness;

(b) the impact of the material weakness on the issuer's financial reporting and its ICFR; and

~~(iv) — whether the issuer has mitigated those risks and if so, how.~~

(c) the issuer's current plans, if any, or any actions already undertaken, for remediating the material weakness.

2.3.3.3 **Limitations on scope of design**

(1) Despite section ~~2.1 and subject to subsection (2)~~, an 3.1, a non-venture issuer may ~~cause its certifying officers to~~ limit the scope of their its design of DC&P ~~and or~~ 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) subject to subsection (3), a business that the issuer acquired not more than ~~90~~365 days before the end of the financial period to which the certificate relates.

- (2) An issuer ~~relying on~~ that limits its design of DC&P or ICFR under 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.

(3) An issuer must not limit its design of DC&P or ICFR under paragraph (1)(c) except in the case of

- (a) an annual certificate relating to the financial year in which the issuer acquired the business; and
- (b) an interim certificate relating to the first, second or third interim period ending on or after the date the issuer acquired the business.

3.4 Use of a control framework for the design of ICFR

(1) A non-venture issuer must use a control framework to design the issuer's ICFR.

(2) If a venture issuer files a Form 52-109F1 or Form 52-109F2 for a financial period, the venture issuer must use a control framework to design the issuer's ICFR.

PART 34 – CERTIFICATION OF ANNUAL FILINGS

3.14.1 Requirement to file

- (1) A reporting issuer must file a separate annual certificate in the wording prescribed by the required form:
- (a) for each ~~person~~ individual 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) its AIF if it is required to file an AIF under NI 51-~~102~~, its AIF 102; or
 - (b) its annual financial statements and annual MD&A.
- (3) ~~In addition to complying with subsections 3.1(1) and (2), if~~ 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 wording prescribed by the required form:
- (a) for each ~~person~~ individual 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~~ to which the certificate relates.

~~3.24.2~~ **Required form of annual certificate**

- (1) The required form of annual certificate under subsection ~~3.14.1~~ (1) is

(a) Form 52-109F1, in the case of an issuer that is a non-venture issuer; and

(b) Form 52-109FV1, in the case of an issuer that is a venture issuer.

- (2) Despite subsection (1)(b), a venture issuer may file Form 52-109F1 in the wording prescribed by that Form instead of Form 52-109FV1 for a financial year.

- (3) The required form of annual certificate under subsection ~~3.14.1~~ (3) is Form 52-109F1 – AIF.

~~3.3~~ **Required** ~~4.3~~ **Alternative form of annual certificate following certain for first financial period after initial public offering** – Despite subsection ~~3.24.2~~ (1), an issuer may file an annual certificate in Form 52-109F1 – IPO/RTO for ~~a~~ the first financial year ~~ending on or before the 90th day after it became a reporting issuer.~~ that ends after the issuer becomes a reporting issuer if

(a) the issuer becomes a reporting issuer by filing a prospectus; and

(b) the first financial period that ends after the issuer becomes a reporting issuer is a financial year.

~~3.4~~ **Required** ~~4.4~~ **Alternative form of annual certificate following for first financial period after certain reverse takeovers** – Despite subsection ~~3.24.2~~ (1), an issuer may file an annual certificate in Form 52-109F1 – IPO/RTO ~~if:~~ for (a) ~~the annual certificate is for a first~~ financial year ~~ending on or before the 90th day~~ that ends after the completion of a reverse takeover ~~to which it was a party; and~~ if

(a) the issuer is the reverse takeover acquiree in the reverse takeover;

(b) ~~(b)~~ the reverse takeover acquirer was not a reporting issuer immediately before the reverse takeover; and

~~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.

(c) the first financial period that ends after the completion of the reverse takeover is a financial year.

~~3.6~~ **Transition period for financial years ending on or before [June 29, 2008]**

~~4.5~~ **Alternative form of annual certificate for first financial period after becoming a non-venture issuer** – Despite subsection ~~3.24.2~~ (1), an issuer may file an annual certificate in Form ~~52-109FMP1 for a financial year ending on or before [June 29, 2008]~~ F1 – IPO/RTO for the first financial year that ends after the issuer becomes a non-venture issuer if the first financial period that ends after the issuer becomes a non-venture issuer is a financial year.

4.6 Exception for new reporting issuers – Despite section 4.1, a reporting issuer does not have to file an annual certificate relating to

(a) the annual financial statements required under section 4.7 of NI 51-102 for financial years that ended before the issuer became a reporting issuer; or

(b) the annual financial statements for a reverse takeover acquirer required under section 4.10 of NI 51-102 for financial years that ended before the completion of the reverse takeover.

PART 45 - CERTIFICATION OF INTERIM FILINGS

4.15.1 Requirement to file

- (1) A reporting issuer must file a separate interim certificate in the wording prescribed by the required form:
 - (a) for each ~~person~~individual 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~~to which the certificate relates.

4.25.2 Required form of interim certificate –

- (1) The required form of interim certificate under subsection 5.1(1) is ~~Form 52-109F2~~.
 - (a) Form 52-109F2, in the case of an issuer that is a non-venture issuer; and
 - (b) Form 52-109FV2, in the case of an issuer that is a venture issuer.
- (2) Despite subsection (1)(b), a venture issuer may file Form 52-109F2 in the wording prescribed by that Form instead of Form 52-109FV2 for an interim period.

~~4.3~~**Required5.3 Alternative form of interim certificate following certain for first financial period after initial public offerings** – Despite ~~section 4.2, subsection 5.2(1)~~, an issuer may file an interim certificate in Form 52-109F2 – IPO/RTO for ~~an~~the first interim period ~~ending on or before the 90th day after it~~that ends after the issuer becomes a reporting issuer: ~~if~~

(a) the issuer becomes a reporting issuer by filing a prospectus; and

(b) the first financial period that ends after the issuer becomes a reporting issuer is an interim period.

~~4.4~~**Required5.4 Alternative form of interim certificate following for first financial period after certain reverse takeovers** – Despite ~~section 4.2, subsection 5.2(1)~~, an issuer may file an

interim certificate in Form 52-109F2 – IPO/RTO ~~if~~ for the first interim period that ends after the completion of a reverse takeover 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~~

(a) the issuer is the reverse takeover acquiree in the reverse takeover;

(b) the reverse takeover acquirer was not a reporting issuer immediately before the reverse takeover; and

(c) the first financial period that ends after the completion of the reverse takeover is an interim period.

5.5 Alternative form of interim certificate for first financial period after becoming a non-venture issuer – Despite subsection 5.2(1), an issuer may file an interim certificate in Form 52-109F2 – IPO/RTO for the first interim period that ends after the issuer becomes a non-venture issuer if the first financial period that ends after the issuer becomes a non-venture issuer is an interim period.

5.6 Exception for new reporting issuers – Despite section 5.1, a reporting issuer does not have to file an interim certificate relating to

(a) the interim financial statements required under section 4.7 of NI 51-102 for interim periods that ended before the issuer became a reporting issuer; or

(b) the interim financial statements for a reverse takeover acquirer required under section 4.10 of NI 51-102 for interim periods that ended before the completion of the reverse takeover.

PART 56 – REFILED FINANCIAL STATEMENTS, MD&A OR AIF

6.1 ~~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.

6.2 ~~5.2~~ **Refiled interim financial statements and/or 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 67 – GENERAL REQUIREMENTS OF FOR CERTIFICATES

~~6.1~~7.1 **Dating of certificates** – A certifying officer must date a certificate filed under this Instrument the same date the certificate is filed.

~~6.2~~7.2 **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 78 – EXEMPTIONS

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

- (1) Subject to subsection (2), Parts 2, 3, ~~54, 6~~ and ~~67~~ do not apply to an issuer for a financial year if:
- (a) the issuer is in compliance with the ~~Sex~~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 ~~Sex~~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, ~~54, 6~~ and ~~67~~ 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 ~~Sex~~SOX 302 Rules.

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

- (1) Subject to subsection (3), Parts 2, ~~4, 53, 5, 6~~ and ~~67~~ do not apply to an issuer for an interim period if the issuer is in compliance with the ~~Sex~~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, 53, 5, 6~~ and ~~67~~ 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 ~~Sex~~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 3, 5, 6 and 7~~ 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 ~~Sex~~SOX 302 Rules.

- 7.38.3 Exemption for certain foreign issuers** – This Instrument does not apply to an issuer if it qualifies ~~for the relief contemplated by~~ under, 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~~8.4 **Exemption for certain exchangeable security issuers** – This Instrument does not apply to an issuer if it qualifies ~~for the relief contemplated by~~under, and is in compliance with the conditions set out in, subsection 13.3(2) of NI 51-102.

~~7.5~~8.5 **Exemption for certain credit support issuers** – This Instrument does not apply to an issuer if it qualifies ~~for the relief contemplated by~~under, and is in compliance with the conditions set out in, subsection 13.4(2) of NI 51-102.

~~7.6~~8.6 **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 82 – EFFECTIVE DATE

9.1 Effective date – This Instrument comes into force on December 15, 2008.

~~8.1 — **Repeal of former instrument** — This Instrument replaces the previous version of this Instrument, namely, Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, which first came into force on ~~March 30, 2004~~ ~~is repealed on [●]~~.~~

~~8.2 — **Effective date** — This Instrument comes into force on [●].~~

- (a) March 30, 2004, in all jurisdictions other than British Columbia, Quebec and New Brunswick;
- (b) June 30, 2005, in Quebec;
- (c) July 28, 2005, in New Brunswick; and
- (d) September 19, 2005, in British Columbia.

~~Form 52-109F1—Certification of annual filings (full annual certificate)~~ FORM 52-109F1
CERTIFICATION OF ANNUAL FILINGS
FULL 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~~ indicate in which of these capacities 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), as those terms are defined in National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, for the issuer.
5. **Design:** ~~Except for any qualification referred to in paragraph 5.2, paragraph 5.3 or paragraph 5.4,~~ The ~~Subject to the limitations, if any, described in paragraphs 5.2 and 5.3,~~ 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)~~ (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~~ insert the name of the control framework, as applicable. used.

<insert ~~paragraphs 5.2, paragraph 5.2 or 5.3 or 5.4~~ if applicable. If paragraph 5.2 or 5.3 is not applicable, insert “5.2 N/A” or “5.3 N/A” as applicable. For paragraph 5.4, 5.3, include (a)(i), (a)(ii) or (a)(iii) as applicable, and paragraph (b).>

5.2 **ICFR – ~~reportable deficiency~~material weakness relating to design:** The issuer has disclosed in its annual MD&A for ~~any reportable deficiency~~each material weakness relating to design existing at the financial year end:

(a) a description of the ~~reportable deficiency~~material weakness;

~~(b) a description of the remediation plan to address the reportable deficiency; and~~

(b) the impact of the material weakness on the issuer’s financial reporting and its ICFR; and

~~(c) the completion date or expected completion date of the remediation plan.~~

(c) the issuer’s current plans, if any, or any actions already undertaken, for remediating the material weakness.

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~~365 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;~~
 - (ii) ~~(iii)~~ a description of ~~any reportable deficiency~~ each material weakness 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.~~
 - (iii) the impact of each material weakness referred to in (ii) on the issuer's financial reporting and its ICFR; and
 - (iv) the issuer's current plans, if any, or any actions already undertaken, for remediating each material weakness referred to in (ii).

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, and the board of directors ~~and~~or 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~~ in which of these capacities 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)~~

FORM 52-109FV1
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" ~~of the issuer, whether, indicate in which of these capacities~~ the certifying officer is providing the certificate ~~in the capacity of a chief executive officer or a chief financial officer~~>*, certify ~~that~~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, ~~with respect to~~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 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 in which of these capacities 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)

NOTE TO READER

In contrast to the certificate required for non-venture issuers under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 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 NI 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 NI 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.

FORM 52-109F1 – IPO/RTO
CERTIFICATION OF ANNUAL FILINGS FOLLOWING
AN INITIAL PUBLIC OFFERING, REVERSE TAKEOVER OR
BECOMING A NON-VENTURE ISSUER

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, indicate in which of these capacities~~ the certifying officer is providing the certificate ~~in the capacity of a chief executive officer or a chief financial officer>~~, certify that>, 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, ~~with respect to~~ 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) 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) 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 in which of these capacities** the certifying officer is providing the certificate ~~in the capacity of a chief executive officer or a chief financial officer.~~> ≥*

Form 52-109F1 — IPO/RTO — 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*.~~

NOTE TO READER

In contrast to the usual certificate required for non-venture issuers under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109), namely, Form 52-109F1, this Form 52-109F1 – IPO/RTO 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 NI 52-109. In particular, the certifying officers filing this certificate are not making any representations relating to the establishment and maintenance of

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.~~

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

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.~~

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.

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.~~

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.

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:~~

Investors should be aware that inherent limitations on the ability of certifying officers of an issuer to design and implement on a cost effective basis DC&P and ICFR as defined in NI 52-109 in the first financial period following

~~(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~~

- completion of the issuer's initial public offering in the circumstances described in s. 4.3 of NI 52-109;
- completion of a reverse takeover in the circumstances described in s. 4.4 of NI 52-109; or
- the issuer becoming a non-venture issuer in the circumstances described in s. 4.5 of NI 52-109;

~~(b) — information required to be disclosed by the issuer in its may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings, interim filings or and other reports filed or submitted by it provided 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~~ **FORM 52-109F1R – Certification of refiled annual filings**
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, indicate in which of these capacities~~ the certifying officer is providing the certificate ~~in the capacity of a chief executive officer or a chief financial officer~~>*, certify ~~that~~ the following

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. If the originally filed annual certificates were in Form 52-109FV1 or Form 52-109F1 – IPO/RTO, include the "note to reader" contained in Form 52-109FV1 or Form 52-109F1 – IPO/RTO, as the case may be, in this certificate.>

Date: *<insert date of filing>*

[Signature]

[Title]

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

~~Form~~ **FORM 52-109F1 – AIF** ~~—Certification of annual filings in connection with voluntarily filed~~
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, indicate in which of these capacities~~ the certifying officer is providing the certificate ~~in the capacity of a chief executive officer or a chief financial officer~~>*, certify ~~that:~~ the following

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. If the originally filed annual certificates were in Form 52-109FV1 or Form 52-109F1 – IPO/RTO, include the “note to reader” contained in Form 52-109FV1 or Form 52-109F1 – IPO/RTO, as the case may be, in this certificate.>

Date: *<insert date of filing>*

[Signature]

[Title]

<If the certifying officer’s title is not “chief executive officer” or “chief financial officer”, indicate whether in which of these capacities 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)~~ FORM 52-109F2
CERTIFICATION OF INTERIM FILINGS
FULL 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, indicate in which of these capacities~~ the certifying officer is providing the certificate ~~in the capacity of a chief executive officer or a chief financial officer~~>*, certify ~~that:~~ the following

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), as those terms are defined in National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, for the issuer.
5. **Design:** ~~<Except for any qualification referred to in paragraph 5.2, paragraph 5.3 or paragraph 5.4,>~~ The Subject to the limitations, if any, described in paragraphs 5.2 and 5.3, 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 as~~ <insert the name of the control framework>, ~~as applicable.~~ used.

<insert ~~paragraphs 5.2, paragraph 5.2 or 5.3 or 5.4~~ if applicable. If paragraph 5.2 or 5.3 is not applicable, insert “5.2 N/A” or “5.3 N/A” as applicable. For paragraph 5.4, 5.3, include (a)(i), (a)(ii) or (a)(iii) as applicable, and paragraph (b).>

5.2 **ICFR – ~~reportable deficiency~~material weakness relating to design:** The issuer has disclosed in its interim MD&A for ~~any reportable deficiency~~each material weakness relating to design existing at the end of the interim period:

(a) a description of the ~~reportable deficiency~~material weakness;

~~(b) a description of the remediation plan to address the reportable deficiency; and~~
(b) the impact of the material weakness on the issuer’s financial reporting and its ICFR; and

~~(c) the completion date or expected completion date of the remediation plan.~~

(c) the issuer’s current plans, if any, or any actions already undertaken, for remediating the material weakness.

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~~365 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~~ in which of these capacities 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~~

FORM 52-109FV2
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" ~~of the issuer, whether, indicate in which of these capacities~~ the certifying officer is providing the certificate ~~in the capacity of a chief executive officer or a chief financial officer~~>*, certify ~~that:~~the following

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>*.

~~2-2.~~ **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.

~~3-3.~~ **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 for non-venture issuers under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 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 NI 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 NI 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.

FORM 52-109F2 – IPO/RTO
CERTIFICATION OF INTERIM FILINGS FOLLOWING
AN INITIAL PUBLIC OFFERING, REVERSE TAKEOVER OR
BECOMING A NON-VENTURE ISSUER

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 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.

Date: <insert date of filing>

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.~~

[Signature]

[Title]

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:~~
<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.>

- (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~~

NOTE TO READER

In contrast to the usual certificate required for non-venture issuers under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109), namely, Form 52-109F2, this Form 52-109F2 – IPO/RTO 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 NI 52-109. In particular, the certifying officers filing this certificate are not making any representations relating to the establishment and maintenance of

~~(b) 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 ~~by it~~ under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation; and

~~<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~~

~~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.~~

~~(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.~~

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.

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

Investors should be aware that inherent limitations on the ability of certifying officers of an issuer to design and implement on a cost effective basis DC&P and ICFR as defined in NI 52-109 in the first financial period following

[Signature]

[Title]

- completion of the issuer’s initial public offering in the circumstances described in s. 5.3 of NI 52-109;
- completion of a reverse takeover in the circumstances described in s. 5.4 of NI 52-109; or
- the issuer becoming a non-venture issuer in the circumstances described in s. 5.5 of NI 52-109;

~~<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.>~~

may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.

~~Form 52-109F2R—Certification of refiled interim filings~~ 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, indicate in which of these capacities~~ the certifying officer is providing the certificate ~~in the capacity of a chief executive officer or a chief financial officer~~>*, certify ~~that~~ the following

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. If the originally filed interim certificates were in Form 52-109FV2 or Form 52-109F2 – IPO/RTO, include the "note to reader" contained in Form 52-109FV2 or Form 52-109F2 – IPO/RTO, as the case may be, in this certificate.>

Date: *<insert date of filing>*

[Signature]

[Title]

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

Document comparison done by DeltaView on April 14, 2008 4:59:23 PM

Input:	
Document 1	file://L:/Projects/Corp_Fin/52-109 (replace 52-111)/Library/52-109 Publication Materials & Drafts/March 2007 Request for Comments/FINAL DOCUMENTS FOR PUBLICATION/Word Versions/52-109_Instrument (Mar 26_07).doc
Document 2	file://L:/Projects/Corp_Fin/52-109 (replace 52-111)/General/52-109 WINTER 2008 PUBLICATION/Bulletin April 18, 2008/52-109_Instrument v20 (April 14, 2008).doc
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	390
Deletions	399
Moved from	20
Moved to	20
Style change	0
Format changed	0
Total changes	829

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

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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~~materials that issuers file or submit under securities legislation.

~~The purpose of this~~This Companion Policy (the Policy) ~~is to help you understand~~describes how the provincial and territorial securities regulatory authorities intend to interpret ~~or~~and apply ~~certain~~the 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~~the 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 **Application to venture issuers** – Venture issuers should note that the guidance provided in Parts 5 through 14 of this Policy is intended for issuers filing Form 52-109F1 and Form 52-109F2. Under Parts 4 and 5 of the Instrument venture issuers are not required, but may elect, to use those Forms.
- 1.4 **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 ~~2.1~~ **Prescribed language** – ~~The~~wording – Parts 4 and 5 of the Instrument require the annual and interim certificates ~~must~~to be filed in the exact ~~language~~wording prescribed ~~in~~by 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 [for](#) 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~~[Certain](#) 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 AND RELIABILITY OF FINANCIAL REPORTING

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.
 - i. **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.

4.2 Reliability of financial reporting – The definition of ICFR refers to the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP. In order to have reliable financial reporting and financial statements to be

prepared in accordance with the issuer's GAAP, the amounts and disclosures in the financial statements must not contain any material misstatement.

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.~~

5.1 Requirement to use a control framework – Section 3.4 of the Instrument requires an issuer to use a control framework in order to design the issuer's ICFR. The framework used should be a suitable control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment.

~~5.2 — Types Examples of control suitable frameworks — The following control frameworks are available that an issuer could use to design ICFR are:~~

- (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~~ A smaller issuer 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, IT Control Objectives for Information and Related Technology Framework (GOBIT) Sarbanes-Oxley 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~~5.2 **Scope of control frameworks** – The control frameworks referred to in section ~~5.25.1~~ 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~~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.

[A control, policy or procedure is implemented when it has been placed in operation. An evaluation of effectiveness does not need to be performed to assess whether the control, policy or procedure is operating as intended in order for it to be placed in operation.](#)

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~~Part the term “reasonable assurance” refers to one or both of the above uses of this term.

[Reasonable assurance is a high level of assurance, but does not represent absolute assurance. DC&P and ICFR cannot provide absolute assurance due to their inherent limitations. Each involves diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human error. As a result of these limitations, DC&P and ICFR cannot prevent or detect all errors or intentional misstatements resulting from fraudulent activities.](#)

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 [Delegation permitted in certain cases](#) – Section 3.1 of the Instrument requires a non-venture issuer to establish and maintain DC&P and ICFR. [Employees or third parties, supervised by the certifying officers, may conduct the design of the issuer’s DC&P and ICFR. Such employees should individually and collectively have the necessary knowledge, skills, information and authority to design the DC&P and ICFR for which they have been assigned responsibilities. Nevertheless, certifying officers of the issuer must retain overall responsibility for the design and resulting MD&A disclosure concerning the issuer’s DC&P and ICFR.](#)

6.6 **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~~allows 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~~might 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~~assess 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, the certifying officers identify the risks that could, individually or in combination with others, reasonably result in a material misstatement in its annual filings, interim filings or other reports filed or submitted by it under securities legislation.~~ Using this approach to design ICFR, the certifying officers ~~would~~ identify ~~the~~those risks that could, individually or in combination with others, reasonably result in a material misstatement, which of the financial statements (financial reporting risks). A material misstatement 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. If an issuer has multiple locations or business units, certifying officers initially identify the risks that could reasonably result in a material misstatement and then consider the significance of these risks at individual locations or business units. If the officers identify a risk that could reasonably result in a material misstatement, but the risk is either adequately addressed by controls, policies or procedures that operate centrally or is not present at an individual location or business unit, then certifying officers do not need to focus their resources at that location or business unit to address the risk.

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 [disclosures and their](#) relevant assertions. ~~Once the risks are identified~~ [After identifying risks that could reasonably result in a material misstatement](#), 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~~ [might](#) affect risks, and what areas of the business provide opportunity for an ~~employee, or combination of employees, to commit fraud~~ [individual to commit fraud. For the purposes of this Instrument, fraud would generally include 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. Although fraud is a broad legal concept, for the purposes of this Instrument, the certifying officers should be concerned with fraud that could cause a material misstatement in the financial statements.](#)
- (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.

[6.6.7](#) **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~~ [can](#) 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~~The following documentation ~~of~~could be useful for purposes of assessing 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.

6.7.6.8 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 National Instrument 52-110 *Audit Committees* \(MNI 52-110\)](#), compliance with the instrument will also form part of the issuer's DC&P design.

6.8.6.9 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, [ICFR](#) should generally include the following components:

- (a) controls for initiating, authorizing, recording, and processing ~~and reporting~~ transactions relating to significant accounts and disclosures;
- (b) controls for initiating, authorizing, recording 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~~ 6.10 Identifying significant accounts and disclosures and their relevant assertions in the context of a top-down, risk-based approach

(1) *Significant accounts and disclosures and their relevant assertions* – As described in subsection ~~6.5~~6.6(2) of the Policy, a top-down, risk-based approach to designing ~~DC&P and~~ ICFR involves ~~identification of~~identifying significant accounts and disclosures and the relevant assertions that affect each significant account and disclosure. 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) ~~(2)~~ *Identifying significant accounts and disclosures* – 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.

A significant disclosure relating to the design of ICFR could be any form of disclosure included in the issuer's financial statements, or notes to the financial statements, that is presented in accordance with the issuer's GAAP. The identification of significant disclosures for the design of ICFR does not extend to the preparation of the issuer's MD&A or other similar financial information presented in a continuous disclosure filing other than financial statements.

(3) *Considerations for identifying significant accounts and disclosures* – A minimum threshold expressed as a percentage or a dollar amount could provide a reasonable starting point for evaluating the significance of an account or disclosure. However, certifying officers should use their judgment, taking into account qualitative factors, to assess accounts or disclosures for significance above or below that threshold. ~~Certifying officers should consider the~~The following ~~items~~factors will be relevant when determining whether an account or disclosure is significant:

- (a) the size, nature and composition of the account or disclosure;
- (b) the risk of overstatement or understatement of the account or disclosure;
- (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 or reflected in the disclosure;
- (e) the accounting and reporting complexities associated with the account or disclosure;
- (f) the likelihood (or possibility) of significant contingent liabilities in the account or disclosure;
- (g) the existence of related party transactions; and
- (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 and disclosure that presents a risk that could reasonably

result in a material misstatement in that significant account. ~~The relevance of or disclosure. For each significant account and disclosure~~ the following assertions ~~should be considered for each significant account~~ could be relevant:

- (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.

The certifying officers might consider assertions that differ from those listed above if the certifying officers determine that they have identified the pertinent risks in each significant account and disclosure that could reasonably result in a material misstatement.

- (5) ***Identifying relevant assertions for each significant account and disclosure*** – To identify relevant assertions for each significant account and disclosure, 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~~would 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~~should identify and design an appropriate combination of ~~preventive and detective~~ controls, policies and procedures to address all relevant assertions.

The certifying officers ~~should~~would consider the efficiency ~~with which~~of evaluating 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. For

example, the certifying officers would consider whether any entity-wide controls exist that adequately address more than one relevant assertion or improve the efficiency of evaluating operating effectiveness because such entity-wide controls negate the need to design and evaluate other components of ICFR at multiple locations or business units.

When designing a combination of controls, policies and procedures, the certifying officers should also consider how the components in ~~section 6.8~~subsection 6.7(2) 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~~6.11 **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 an~~ 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 An~~ 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 an~~ 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.~~ If an issuer consults on technically complex accounting matters, this consultation alone is not indicative of a deficiency relating to the design of ICFR.

~~A reporting~~ An issuer's external auditor might perform certain services (e.g., income tax, valuation or internal audit services), where permitted by auditor independence rules, 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.~~

If an issuer identifies one or more of these ICFR design challenges, additional involvement by the issuer's audit committee or board of directors could be a suitable compensating control or alternatively could mitigate risks that exist as a result of being unable to remediate a material weakness relating to the design challenge. The control framework the certifying officers use to design ICFR could include further information on these design challenges. See section 9.1 of the Policy for a discussion of compensating controls versus mitigating procedures.

- 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~~might wish to 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~~material weaknesses 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~~Certifying officers should use their judgment, acting reasonably, to determine 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 ~~6.6.7~~(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~~6.8 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, and 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~~material weakness relating to the design of ICFR exists at the end of the period;

PART 7 – ~~EVALUATION~~EVALUATING OPERATING EFFECTIVENESS OF DC&P AND ICFR

- 7.1 **General** – Most sections in this ~~part~~Part apply to both an evaluation of the operating effectiveness of DC&P (DC&P evaluation) and an evaluation of the operating effectiveness of ICFR (ICFR evaluation); however, some sections apply specifically to an ICFR evaluation.

7.2 ~~7.2~~ — **Scope of evaluation of operating effectiveness** – 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 at the date of their assessment that the components of DC&P and ICFR that they designed, or caused to be designed, are operating as intended. ~~If~~ Regardless of the approach the certifying officers ~~choose not to use to design DC&P or ICFR, they could~~ use a top-down, risk-based approach to ~~design, evaluate DC&P or ICFR in order to limit~~ the evaluation ~~could be limited~~ to those controls and procedures that are necessary to address the risks that might reasonably result in a material misstatement.

Form 52-109F1 requires disclosure of ~~any reportable deficiency~~ each material weakness 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~~ material weaknesses.

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, and 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—~~ Form 52-109F1 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. DC&P and ICFR. Employees or third parties, supervised by the certifying officers, may conduct the evaluation of the issuer’s DC&P and ICFR. Such employees should individually and collectively have the necessary knowledge, skills, information and authority to evaluate the DC&P and ICFR for which they have been assigned responsibilities. Nevertheless, certifying officers must retain overall responsibility for the evaluation and resulting MD&A disclosure concerning the issuer’s DC&P and ICFR.~~

Certifying officers should ensure that the evaluation is performed with the appropriate level of objectivity. Generally, the individuals who evaluate the operating effectiveness of specific controls or procedures should not be the same individuals who perform the specific controls or procedures. See section 7.10 for guidance on self-assessments.

7.5 **Use of external auditor or other independent third party** – The certifying officers might decide to use ~~an independent~~ a third party to assist with their DC&P or ICFR evaluations. In these circumstances, the certifying officers should ~~ensure~~ assure themselves 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.

If the issuer refers, in a continuous disclosure document, to an audit report relating to the issuer's ICFR, prepared by its external auditor, then it would be appropriate for the issuer to file a copy of the internal control audit report with its financial statements.

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. The level of risk for a component of DC&P or ICFR could change each year to reflect management's experience with a control's operation during the year and in prior evaluations.

7.7 **Certifying officers' daily interaction** – The certifying officers' daily interaction with their control systems provides them with opportunities to evaluate the operating 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** – Reperformance is the independent execution of certain components of the issuer’s DC&P or ICFR that were performed previously. Reperformance 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 reperformance 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 reperformance** – The extent of reperformance of a component of DC&P or ICFR is a matter of judgment for the certifying officers, acting reasonably. 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) **Reperformance for each evaluation** – Certifying officers might find it appropriate to adjust the nature, extent and timing of reperformance 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 Self-assessments – A self-assessment is a walk-through or reperformance of a control, or another procedure to analyze the operation of controls, performed by an individual who might or might not be involved in operating the control. A self-assessment could be done by personnel who operate the control or members of management who are not responsible for operating the control. The evidence of operating effectiveness from self-assessment activities depends on the personnel involved and how the activities are conducted.

A self-assessment performed by personnel who operate the control would normally be supplemented with direct testing by individuals who are independent from the operation of the control being tested and who have an equal or higher level of authority. In these situations, direct testing of controls would be needed to corroborate evidence from the self-assessment since the self-assessment alone would not have a reasonable level of objectivity.

In some situations a certifying officer might perform a self-assessment and the certifying officer is involved in operating the control. Even if no other members of management independent from the operation of the control with equal or higher level of authority can perform direct testing, the certifying officer's self-assessment alone would normally provide sufficient evidence since the certifying officer signs the annual certificate.

- 7.11 **Timing of evaluation** – ~~Forms Form 52-109F1, 52-109FMP1, 52-109FM1 and 52-109F1 – IPO/RTO require 1 requires~~ 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~~ and 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.

Since some year-end procedures occur subsequent to the year end (e.g., financial reporting close process), some testing of DC&P and ICFR components could also occur subsequent to 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, and whether the components being evaluated are performed prior to, or subsequent to, year end.

- ~~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 **Extent of examination for each annual evaluation** – For each annual evaluation the certifying officers must evaluate those components of ICFR that, in combination, provide reasonable assurance regarding the reliability of financial reporting. For example, the certifying officers cannot decide to exclude components of ICFR for a particular process from the scope of their evaluation simply based on prior-year evaluation results. To have a reasonable basis for their assessment of the operating effectiveness of ICFR, the certifying officers must have sufficient evidence supporting operating effectiveness of all relevant components of ICFR as of the date of their assessment.

7.13 **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 for the certifying officers, acting reasonably.

(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

PART 1 – the certifying officers’ conclusions about ~~the following:~~

1.2.1.1.1.1 the operating effectiveness of DC&P or ICFR, as applicable; and

1.2.1.1.1.2 whether a ~~reportable deficiency in ICFR relating to operation existed as at the end of the period.~~ material weakness relating to the operation of ICFR existed as at the end of the period.

PART 8 – USE OF A SERVICE ORGANIZATION OR SPECIALIST FOR AN ISSUER’S ICFR

8.1 Use of a service organization – An issuer might outsource a significant process to a service organization. Examples include payroll, production accounting for oil and gas companies, or other bookkeeping services. Based on their assessment of risks as discussed in subsection 6.6(2) of the Policy, the certifying officers might identify the need for controls, policies and procedures relating to an outsourced process. In considering the design and evaluation of such controls, policies and procedures, the officers should consider whether:

- (a) the service organization can provide a service auditor’s report on the design and operation of controls placed in operation and tests of the operating effectiveness of controls at the service organization;
- (b) the certifying officers have access to the controls in place at the service organization to evaluate the design and effectiveness of such controls; or
- (c) the issuer performs compensating controls that might eliminate the need for the certifying officers to evaluate the design and effectiveness of the service organization’s controls relating to the outsourced process.

8.2 Service auditor’s reporting on controls at a service organization – If a service auditor’s report on controls placed in operation and tests of the operating effectiveness of controls is available, the certifying officers should evaluate whether the report provides them sufficient evidence to assess the design and effectiveness of controls relating to the outsourced process. The following factors will be relevant in evaluating whether the report provides sufficient evidence:

- (a) the time period covered by the tests of controls and its relation to the as-of date of the certifying officers’ assessment of the issuer’s ICFR;
- (b) the scope of the examination and applications covered and the controls tested; and

- (c) the results of the tests of controls and the service auditor's opinion on the operating effectiveness of controls.

8.3 Elapsed time between date of a service auditor's report and date of certificate – If a significant period of time has elapsed between the time period covered by the tests of controls in a service auditor's report and the date of the certifying officer's assessment of ICFR, the certifying officers should consider whether the service organization's controls have changed subsequent to the period covered by the service auditor's report. The service organization might communicate certain changes such as changes in its personnel or changes in reports or other data that it provides. Changes might also be indicated by errors identified in the service organization's processing. If the certifying officers identify changes in the service organization's controls, they should evaluate the effect of these changes and consider the need for additional procedures. These might include obtaining further information from the service organization, performing procedures at the service organization, or requesting that a service auditor perform specified procedures.

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

8.4 Indicators of a material weakness relating to use of a service organization – There could be circumstances in which a service auditor's report is not available, the certifying officers do not have access to controls in place at the service organization and the certifying officers have not identified any compensating controls performed by the issuer. In these circumstances the inability to assess the service organization's controls, policies and procedures might represent a material weakness since the certifying officers might not have sufficient evidence to conclude whether the components of the issuer's ICFR at the service organization have been designed or are operating as intended.

~~8.1 ICFR – reportable deficiency~~

8.5 Use of a specialist – A specialist is a person or firm possessing expertise in specific subject matter. A reporting issuer might arrange for a specialist to provide certain specialized expertise such as actuarial services, taxation services or valuation services. Based on their assessment of risks as discussed in subsection 6.6(2) of the Policy, the certifying officers might identify the need for the services provided by a specialist. The certifying officers should ensure the issuer has controls, policies or procedures in place relating to the source data and the reasonableness of the assumptions used to support the specialist's findings. The certifying officers should also consider whether the specialist has the necessary competence, expertise and integrity.

~~(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.~~

PART 9 – MATERIAL WEAKNESS

~~— 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.~~

9.1 Identifying a deficiency in ICFR

- ~~(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:~~

(1) **Deficiency relating to the design of ICFR** – A deficiency relating to the design of ICFR exists when:

- ~~(a) the design of ICFR does not include a component of ICFR that is needed to provide reasonable assurance;~~
- (a) necessary components of ICFR are missing from the design;
- (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~~the financial reporting risks would not be addressed; or
- (c) a component of ICFR has not been implemented and, as a result, the financial reporting risks have not been addressed.

Subsection 6.6(2) of the Policy provides guidance on financial reporting risks.

- ~~(4) **Reportable deficiency** ²⁾**Deficiency relating to the operation of ICFR** – A ~~reportable~~ deficiency relating to the operation of ICFR 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.~~

- (3) **Compensating controls versus mitigating procedures** – If the certifying officers identify a component of ICFR that does not operate as intended they should consider whether there is a compensating control that addresses the financial reporting risks that the deficient ICFR component failed to address. If the certifying officers are unable to identify a compensating control, then the issuer would have a deficiency relating to the operation of ICFR.

In the process of determining whether there is a compensating control, the certifying officers might identify mitigating procedures which help to reduce the financial reporting risks that the deficient ICFR component failed to address, but do not meet the threshold of being a compensating control because:

- (a) the procedures only partially address the financial reporting risks or
- (b) the procedures are not designed by, or under the supervision of, the issuer’s certifying officers, and thus may not represent an internal control.

~~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.~~

In these circumstances, since the financial reporting risks are not addressed with an appropriate compensating control, the issuer would continue to have a deficiency relating to the operation of ICFR and would have to assess the significance of the deficiency. The issuer may have one or more mitigating procedures that reduce the financial reporting risks that the deficient ICFR component failed to address and may consider disclosure of those procedures, as discussed in section 9.7 of the Policy.

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

Certifying officers evaluate the severity of a deficiency, or combination of deficiencies, by considering whether (a) there is a reasonable possibility that the issuer’s ICFR will fail to prevent or detect a material misstatement of a financial statement amount or disclosure; and (b) the magnitude of the potential misstatement resulting from the deficiency or deficiencies. The severity of a deficiency in ICFR does not depend on whether a misstatement has actually occurred but rather on whether there is a reasonable possibility that the issuer’s ICFR will fail to prevent or detect a material misstatement on a timely basis.

9.3 Factors to consider when assessing significance of deficiencies in ICFR

(1) Reasonable possibility of misstatement – Factors that affect whether there is a reasonable possibility that a deficiency, or combination of deficiencies would result in ICFR not preventing or detecting in a timely manner a misstatement of a financial statement amount or disclosure, include, but are not limited to:

- ~~(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:~~ the nature of the financial statement accounts, disclosures and assertions involved (e.g., related-party transactions involve greater risk);
- (b) the susceptibility of the related asset or liability to loss or fraud (e.g., greater susceptibility increases risk);
- (c) the subjectivity, complexity, or extent of judgment required to determine the amount involved (e.g., greater subjectivity, complexity, or judgment increases risk);
- (d) the interaction or relationship of the control with other controls, including whether they are interdependent or address the same financial reporting risks;
- (e) the interaction of the deficiencies (e.g., when evaluating a combination of two or more deficiencies, whether the deficiencies could affect the same financial statement amounts or disclosures); and
- (f) the possible future consequences of the deficiency.

(2) Magnitude of misstatement – Various factors affect the magnitude of a misstatement that might result from a deficiency or deficiencies in ICFR. These factors include, but are not limited, to the following:

- (a) the financial statement amounts or total of transactions relating to the deficiency; and
- (b) the volume of activity in the account balance or class of transactions relating to the deficiency that has occurred in the current period or that is expected in future periods.

9.4 Indicators of a material weakness – It is a matter for the certifying officers' judgment whether the following situations indicate that a deficiency in ICFR exists and, if so, whether it represents a material weakness:

- (a) ~~(i) identification of any fraud on the part of senior management~~ fraud, whether or not material, on the part of the certifying officers or other senior management who play a significant role in the issuer's financial reporting process;
- (b) restatement of previously issued financial statements to reflect the correction of a material misstatement;
 - ~~(ii) — control deficiencies that have been identified and remain unaddressed after some reasonable period of time; and~~
- (c) identification by the issuer or its external auditor of a material misstatement in the financial statements in the current period in circumstances that indicate that the misstatement would not have been detected by the issuer's ICFR; and
- (d) ~~(iii) — ineffective oversight of the issuer's external financial reporting and ICFR by the company issuer's~~ ineffective oversight of the issuer's external financial reporting and ICFR by the issuer'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

9.5 Conclusions on effectiveness if a material weakness exists – If the certifying officers identify a material weakness relating to the design or operation of ICFR existing as at the period-end date, 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. could not conclude that the issuer's ICFR is effective. Certifying officers may not qualify their assessment by stating that the issuer's ICFR is effective subject to certain qualifications or exceptions except for one of the permitted scope limitations available in section 3.3 of the Instrument. As required by paragraph 6 in Form 52-109F1, the certifying officers must ensure the issuer has disclosed in the annual MD&A the certifying officers' conclusions about the effectiveness of ICFR at the financial year end.

~~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.~~

9.6 Disclosure of a material weakness

- (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.

- (1) *Disclosure of a material weakness relating to the design of ICFR* – If the certifying officers become aware of a material weakness relating to the design of ICFR that existed at the end of the annual or interim period, the issuer's annual or interim MD&A must describe each material weakness relating to design, the impact of each material weakness on the issuer's financial

reporting and its ICFR, and the issuer's current plans, if any, or any actions already undertaken, for remediating each material weakness as required by section 5.2 of Form 52-109F1 and Form 52-109F2.

~~8.5 — Disclosure of a reportable deficiency in ICFR relating to operation~~

~~(2) Disclosure of a material weakness relating to the operation of ICFR – If the certifying officers become aware of a material weakness relating to the operation of ICFR that existed at the financial year end, the issuer's annual MD&A must describe each material weakness relating to operation, the impact of each material weakness on the issuer's financial reporting and its ICFR, and the issuer's current plans, if any, or any actions already undertaken, for remediating each material weakness as required by subparagraphs 6(b)(ii), (iii) and (iv) of Form 52-109F1.~~

~~(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.~~

If a material weakness relating to the operation of ICFR continues to exist, the certifying officers should consider whether the deficiency initially relating to the operation of ICFR has become a material weakness relating to the design of ICFR that must be disclosed in the interim, as well as the annual MD&A under sections 5.2 of Form 52-109F1 and Form 52-109F2.

~~(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.~~

~~(3) Description of a material weakness – Disclosure pertaining to an identified material weakness should provide investors with an accurate and complete picture of the material weakness, including its effect on the issuer's ICFR. Issuers should consider providing disclosure in the annual or interim MD&A that allows investors to understand the cause of the material weakness and assess the potential impact on, and importance to, the financial statements of the identified material weakness. The disclosure will be more useful to investors if it distinguishes between those material weaknesses that may have a pervasive impact on ICFR from those material weaknesses that do not.~~

9.7 Disclosure of remediation plans and actions undertaken – If an issuer commits to a remediation plan to correct a material weakness relating to the design or operation of ICFR prior to filing a certificate, the annual or interim MD&A would describe the issuer's current plans, or any actions already undertaken, for remediating each material weakness.

~~8.6 — Reporting of changes in ICFR after remediation – Once an issuer has completed its remediation it will need to would 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.~~

If an issuer is unable to, or chooses not to, remediate a material weakness, but identifies mitigating procedures that reduce the impact of the material weakness on the issuer’s ICFR, then disclosure about these mitigating procedures could provide investors with an accurate and complete picture of the material weakness, including its effect on the issuer’s ICFR. If an issuer does not plan to remediate the material weakness, regardless of whether there are mitigating procedures, the issuer would continue to have a material weakness that the issuer must disclose in the annual or interim MD&A.

- ~~(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:~~

PART 10 – WEAKNESS IN DC&P THAT IS SIGNIFICANT

- ~~(a) — a description of the reportable deficiency relating to design existing at the end of the period;~~

10.1 Conclusions on effectiveness of DC&P if a weakness exists that is significant – If the certifying officers identify a weakness in the design or operation of DC&P that is significant and exists as at the period end date, the certifying officers could not conclude that the issuer’s DC&P is effective. Certifying officers may not qualify their assessment unless the qualification pertains to one of the permitted scope limitations available in section 3.3 of the Instrument.

- ~~(b) — why the issuer cannot reasonably remediate the reportable deficiency;~~
As required by paragraph 6(a) in Form 52-109F1, the certifying officers must ensure the issuer has disclosed in its annual MD&A the certifying officers’ conclusions about the effectiveness of DC&P. The MD&A disclosure about the effectiveness of DC&P will be useful to investors if it discusses any identified weaknesses that are significant, whether the issuer has committed, or will commit, to a plan to remediate the identified weaknesses, and whether there are any mitigating procedures that reduce the risks that have not been addressed as a result of the identified weaknesses.

~~(c) — the risks the issuer faces relating to the reportable deficiency; and~~
10.2 Interim certification of DC&P design if a weakness exists that is significant – If the certifying officers identify a weakness in the design of DC&P that is significant at the time of filing an interim certificate, to provide reasonable context for their certifications of the design of DC&P, it would be appropriate for the issuer to disclose in its interim MD&A the identified weakness and any other information necessary to provide an accurate and complete picture of the condition of the design of the issuer’s DC&P.

~~(d) — whether the issuer has mitigated those risks and if so, how.~~
10.3 Certification of DC&P if a material weakness in ICFR exists – As discussed in section 6.2 of the Policy, there is a substantial overlap between the definitions of DC&P and ICFR. If the certifying officers identify a material weakness in the issuer’s ICFR, this will often represent a weakness that is significant in the issuer’s DC&P.

~~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.~~

PART 11 – REPORTING CHANGES IN ICFR

~~(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.~~

11.1 **Assessing the materiality of a change in ICFR** – Paragraph 7 of Form 52-109F1 and paragraph 6 of Form 52-109F2 require an issuer to disclose any change in the issuer's ICFR that has materially affected, or is reasonably likely to materially affect, the issuer's ICFR. A material change in ICFR might occur regardless of whether the change is being made to remediate a material weakness (e.g., a change from a manual payroll system to an automated payroll system). A change in an issuer's ICFR that was made to remediate a material weakness would generally be considered a material change in an issuer's ICFR.

PART ~~9~~12 – ROLE OF BOARD OF DIRECTORS AND AUDIT COMMITTEE

~~9.1~~12.1 **Board of directors** – ~~All of the forms other than Forms~~Form 52-109F2 and 52-109F2 – ~~IPO/RTO require~~1 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 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~~material weaknesses, 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~~material weakness (see section ~~8.29.2~~8.29.2 of the Policy).

12.2 **9.2 Audit committee** – ~~MINI~~MINI 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 ~~MINI~~MINI 52-110 should consider its specific requirements in designing and evaluating their DC&P and ICFR.

12.3 ~~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~~ or 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.~~ Subsection 6.6(3) of the Policy provides guidance on the term “fraud” for purposes of this Instrument.

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, which includes~~ omissions of amounts or disclosures in financial statements; ~~to deceive financial statement users; and (ii) misstatements resulting from misappropriation of assets.~~

PART ~~10~~ – SUBSIDIARIES, VARIABLE INTEREST ENTITIES, PROPORTIONATELY CONSOLIDATED ENTITIES, EQUITY 13 – CERTAIN LONG TERM INVESTMENTS AND PORTFOLIO INVESTMENTS

13.1 ~~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~~ 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~~ Part, the term “underlying entity” refers to one of the entities referred to in items (a) through (e) above.

13.2 ~~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.

13.3 ~~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~~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) ***Access to an underlying entity in certain indirect offering structures*** – In the case of certain indirect offering structures, including certain income trust and limited partnership offering structures, the issuer could have:

- (a) a significant equity interest in the underlying entity but not legally control the underlying entity, since legal control is retained by a third party (typically the party involved in establishing the indirect offering structure) or
- (b) an equity interest in an underlying entity that represents a significant asset of the issuer and results in the issuer providing the issuer's equity holders with separate audited annual financial statements and interim financial statements prepared in accordance with the same GAAP as the issuer's financial statements.

In these cases, we generally expect the trust indenture, limited partnership agreement or other constating documents to include appropriate terms ensuring the certifying officers will 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.

- (3) **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. material weakness exists.~~
- (4) **Disclosure of a 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 reasonable basis for the representations in the annual or interim certificates. ~~This~~

When determining whether a scope limitation exists, certifying officers must initially consider whether one, or a combination of more than one, proportionately consolidated entity or VIE includes risks that could reasonably result in a material misstatement in the issuer’s annual filings, interim filings or other reports. The certifying officers would consider such risks when the certifying officers first identify the risks faced by the issuer in order to determine the scope and necessary complexity of the issuer’s DC&P or ICFR, as discussed in subsection 6.6(2) of the Policy.

The certifying officers would disclose a scope limitation if one, or a combination of more than one, proportionately consolidated entity or VIE includes risks that could reasonably result in a material misstatement and the certifying officers do not have sufficient access to design and evaluate the controls, policies and procedures carried out by each underlying entity.

The certifying officers would not disclose a scope limitation if a proportionately consolidated entity or VIE, individually or in combination with another such entity, does not include risks that could reasonably result in a material misstatement.

The issuer must disclose in its MD&A a scope limitation and summary financial information about ~~the each~~ underlying entity ~~must be disclosed in the issuer’s MD&A~~ in accordance with section ~~2.33.3~~ of the Instrument. The summary financial information may be disclosed in aggregate or individually for each proportionately consolidated entity or VIE.

Meaningful summary financial information ~~of the underlying entity that has been proportionately consolidated or consolidated in the issuer's financial statements~~ for an underlying entity, or combination of underlying entities, that is the subject of a scope limitation would include:

- (a) sales or revenues;
- 1.2.1.1.2 income or loss before discontinued operations and extraordinary items;
- 1.2.1.1.3 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, or combination of underlying entities, 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~~ an underlying entity that is the subject of a scope limitation 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~~ If the certifying officers ~~might~~ do 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~~ 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 ~~11.14~~ – BUSINESS ACQUISITIONS

~~11.14.1~~ **Access to acquired business** – ~~Generally, in many circumstances it is difficult for certifying officers will have sufficient access to design to design or evaluate~~ 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, shortly after acquiring the business. In order to address these situations, paragraph 3.3(1)(c) of the Instrument permits an issuer to limit the scope of its design of DC&P and ICFR for a business that the issuer acquired not more than 365 days before the end of the financial period to which the certificate relates. Generally this will result in an issuer limiting the scope of its design for a business acquisition for three interim certificates and one annual certificate.~~

~~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.~~

~~11.214.2~~ **Disclosure of scope limitation** – ~~If it is not feasible for the certifying officers choose to limit the scope of their 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 of DC&P and ICFR for a recent business acquisition,~~ this scope limitation and summary financial information of the business must be disclosed in ~~an the~~ issuer's MD&A in accordance with section ~~2.33.3~~ of the Instrument and ~~paragraph 5.4~~ section 5.3 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~~15 – VENTURE ISSUER BASIC CERTIFICATES

15.1 *Venture issuer basic certificates* – Many venture issuers have **few employees and limited financial resources** which make it difficult for them to address the challenges described in section 6.11 of the Policy. As a result, many venture issuers are unable to design DC&P and ICFR without (i) incurring significant additional costs, (ii) hiring additional employees, or (iii) restructuring the board of directors and audit committee. Since these inherent limitations exist for many venture issuers, the required forms of certificate for venture issuers are Forms 52-109FV1 and 52-109FV2. These forms do not include representations relating to the establishment and maintenance of DC&P and ICFR.

Although Forms 52-109FV1 and 52-109FV2 are the required forms for venture issuers, a venture issuer may elect to file Forms 52-109F1 or 52-109F2, which include representations regarding the establishment and maintenance of DC&P and ICFR.

Certifying officers of a non-venture issuer are not permitted to use Forms 52-109FV1 and 52-109FV2. Although a non-venture issuer may face similar challenges in designing its ICFR, such as those described in section 6.11 of the Policy, the issuer is still required to file Forms 52-109F1 and 52-109F2 and disclose in the MD&A a description of each material weakness existing at the end of the financial period.

15.2 *Note to reader included in venture issuer basic certificates* – Forms 52-109FV1 and 52-109FV2 include a note to reader that clarifies the responsibility of certifying officers and discloses 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 may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.

15.3 *Voluntary disclosure regarding DC&P and ICFR* – If a venture issuer files Form 52-109FV1 or 52-109FV2, it is not required to discuss in its annual or interim MD&A the design or operating

effectiveness of DC&P or ICFR. If a venture issuer files Form 52-109FV1 or 52-109FV2 and chooses to discuss in its annual or interim MD&A or other regulatory filings the design or operation of one or more components of its DC&P or ICFR, it should also consider disclosing in the same document that:

- (a) the venture issuer is not required to certify the design and evaluation of the issuer's DC&P and ICFR; and
- (b) inherent limitations on the ability of the certifying officers to design and implement on a cost effective basis DC&P and ICFR for the issuer may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.

A selective discussion in a venture issuer's MD&A about one or more components of a venture issuer's DC&P or ICFR without these accompanying statements will not provide transparent disclosure of the state of the venture issuer's DC&P or ICFR.

PART 16 – CERTIFICATION REQUIREMENTS FOR A NEW REPORTING ISSUER AND AN ISSUER THAT BECOMES A NON-VENTURE ISSUER

16.1 Certification requirements after becoming a non-venture issuer – Sections 4.5 and 5.5 of the Instrument permit an issuer that becomes a non-venture issuer to file Forms 52-109F1 – IPO/RTO and 52-109F2 – IPO/RTO for the first certificate that the issuer is required to file under this Instrument, for a financial period that ends after the issuer becomes a non-venture issuer. If, subsequent to becoming a non-venture issuer, the issuer is required to file an annual or interim certificate for a period that ended while it was a venture issuer, the required form of certificate for that annual or interim filing is Form 52-109FV1 or 52-109FV2.

PART 17 – EXEMPTIONS

~~12.1~~17.1 **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~~ Some Canadian issuers that comply with U.S. laws might choose to prepare two sets of financial statements and file their Canadian GAAP statements in the applicable jurisdictions: financial statements in Canada with accounting principles that differ from those that are filed or furnished in the U.S. For example, an issuer may file U.S. GAAP financial statements in the U.S. and financial statements using another acceptable form of GAAP in Canada. In order to ensure that the ~~Canadian GAAP~~ financial statements filed in Canada are certified (under either the Instrument or ~~Sox~~SOX 302 Rules), those issuers will not have recourse to the exemptions in sections ~~7.18.1~~ and ~~7.28.2~~ of the Instrument.

PART 13.18 – LIABILITY FOR CERTIFICATES CONTAINING MISREPRESENTATIONS

~~13.1~~18.1 **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~~19 – TRANSITION

~~14.1~~ 19.1 **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.

PART 20 – CERTIFICATION OF REVISED OR RESTATED ANNUAL OR INTERIM FILINGS

20.1 **Certification of revised or restated annual or interim filings** – If an issuer files a revised or restated continuous disclosure document that was originally certified as part of its annual or interim filings, the certifying officers would need to file Form 52-109F1R or Form 52-109F2R. These certificates would be dated the same date the certificate is filed and filed on the same date as the revised or restated continuous disclosure document.

20.2 **Disclosure considerations if an issuer revises or restates a continuous disclosure document** – If an issuer determines that it needs to revise or restate previously issued financial statements, the issuer should consider whether its original disclosures regarding the design or operating effectiveness of ICFR are still appropriate and should modify or supplement its original disclosure to include any other material information that is necessary for such disclosures not to be misleading in light of the revision or restatement.

Similarly, if an issuer determines that it needs to revise or restate a previously issued continuous disclosure document, the issuer should consider whether its original disclosures regarding the design or operating effectiveness of DC&P are still appropriate and should modify or supplement its original disclosure to include any other material information that is necessary for such disclosures not to be misleading in light of the revision or restatement.

Document comparison done by DeltaView on April 15, 2008 9:45:06 AM

Input:	
Document 1	file://L:/Projects/Corp_Fin/52-109 (replace 52-111)/Library/52-109 Publication Materials & Drafts/March 2007 Request for Comments/FINAL DOCUMENTS FOR PUBLICATION/Word Versions/52-109_CP (Mar 26_07).doc
Document 2	file://L:/Projects/Corp_Fin/52-109 (replace 52-111)/General/52-109 WINTER 2008 PUBLICATION/Bulletin April 18, 2008/52-109_CP - Draft #18 (April 15_08).doc
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	311
Moved from	11
Moved to	11
Style change	0
Format changed	0
Total changes	742

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

LIST OF COMMENTERS

Company	Name of Comenter/Commenter's
Aecon Group Inc.	Robert W. McColm
Aecon Group Inc.	Tim Hutzul
Aeterna Zentaris Inc.	Emmanuel Linteau
Alex Vergeychik, MBA, CA	Alex Vergeychik, MBA, CA
Astral Media Inc.	Brigitte K. Catellier
Banque Nationale Du Canada	Jean Dagenais
Bell Canada Enterprises	Karyn Brooks
Bob Gayton	Bob Gayton
Bombardier Inc.	Daniel Desjardins & Pierre Alary
Caledon Mills	Philip Maguire
Canadian Bankers Association	Warren Law
Canadian Oil Sands Limited	Trudy M. Curran
Canadian Western Bank	Tracey C. Ball
CCL Industries Inc.	Steven W. Lancaster
Certified General Accountants Association of Canada	Rock Lefebvre
Deloitte & Touche LLP	
Desjardins, Federation des Caisses du Quebec	Yves Morency
Enerflex Systems Income Fund	J. Blair Goertzen
Ensign Energy Services Inc.	Glenn Dagenais
Epcor Utilities Inc	Mark Wiltzen & Cheryl Persson
Ernst & Young LLP	
Financial Executives International Canada	Alister Cowan
Gastem Inc.	Estelle Dufresne
Grant Thornton LLP and Raymond Chabot Grant Thornton LLP	Richard L. Wood & Susan Quig
Great West LifeCo. Inc.	W. W. Lovatt
Horwath Orenstein LLP	Robert Crawford
IGM Financial Inc.	W. Sian Burgess
Imperial Oil Limited	Paul A. Smart
Industrial Alliance Insurance and Financial Services Inc.	Francois Ricard
Inter Pipeline Fund	Scott Gerla
KPMG LLP	Laura Moschitto
Linda Hohol	Linda Hohol
Lunetterie New Look Inc.	Michel Roy
MacDonald, Dettwiler and Associates Ltd.	Anil Wirasekara
Magellan Aerospace Corporation	Ting Yeh

Manitoba Telecom Services Inc.
Maple Leaf Foods Inc.
Maple Leaf Foods Inc.

Marsulex Inc.
Metro Inc.
NAL Resources
Ogilvy Renault LLP
Osler, Hoskin & Harcourt LLP
Prospectors & Developers Association of Canada
Sepac - Small Explorers and Producers Association
of Canada
SNC-Lavalin Group Inc.

Stikeman Elliott LLP
Telus Corporation
The Institute of Internal Auditors Canada
TSX Group Inc.
Transcontinental Inc.
Trican Well Service Ltd.
Zapata Energy Corporation

Donald G. Welham
Michael H. Vels
Nick Boland
Linda M. McNeil & Lucio
Milanovich
Paul Denomee & Julie Fournie
Mark Prystajacky

Patricia Dilion

Jim Screatton
Gilles Laramée
Simon A. Romano, Ramandeep K.
Grewal
Robert G. McFarlane
Olivier Lecat
Kevan Cowan and Richard Nadeau
Daniel St-Cyr
Jennifer (Butler) MacKenzie, C.A.
W. Howard Blacker

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

**SUMMARY OF PUBLIC COMMENTS AND CSA RESPONSES
ON THE MARCH 2007 PROPOSED MATERIALS**

SUMMARY OF COMMENTS AND CSA RESPONSES

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

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 2. Availability of ICFR design accommodation for venture issuers
 3. Scope limitation for design of DC&P and ICFR for an issuer’s interest in a proportionately consolidated investment or VIE
 4. Scope limitation for design of DC&P and ICFR within 90 days of the acquisition of a business
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Legend:

ICFR: internal control over financial reporting

DC&P: disclosure controls and procedures

SOX: Sarbanes-Oxley 2002

VIE: variable interest entity

SOX 302: Section 302 of Sarbanes-Oxley 2002

SOX 404: Section 404 of Sarbanes-Oxley 2002

#	Theme	Comments	Responses
1. <u>GENERAL COMMENTS</u>			
1.	General support for the principles underlying the Instrument and Companion Policy as published	<p>Twelve commenters express their support for the principles-based approach to DC&P and ICFR and the certification of such controls. Reasons cited include:</p> <ul style="list-style-type: none"> • the approach will allow reporting issuers and their certifying officers to exercise judgment in their determination of disclosures; and • the approach is effective and meaningful. <p>Eight commenters express general support for the approach being taken, the content and principles underlying the Instrument.</p> <p>Six commenters express support for the decision not to require auditor attestation. Reasons cited include:</p> <ul style="list-style-type: none"> • external attestation can be a very time-consuming and costly exercise; and • this allows issuers and their board of directors to decide whether to obtain such a report after weighing the benefits of obtaining such comfort against the costs of doing so. 	We thank the commenters for their support.
2.	General concern regarding the Instrument and Companion Policy as published	<p><u>Absence of a control framework requirement</u></p> <p>Five commenters recommend a control framework be required. Reasons cited include:</p> <ul style="list-style-type: none"> • without a control framework, the risk of inappropriate and inconsistent judgments increases significantly; • enhanced comparability of assessments across issuers; • standardization facilitates enhanced economies of scale and scope for the development of requisite expertise to conduct ICFR compliance and assurance activities; • improved investor understandability and confidence in the evaluation process and management’s certification; and • promotes more consistent application of professional judgment. <p>One commenter recommends that any issuer who does not use a control framework be required to explain why, due to the increased risk that this poses.</p> <p>One commenter expresses concern that small issuers do not have adequate tools available to them that will enable them to comply with the enhanced certification requirements without engaging external advisors. The absence of a control framework for small and</p>	<p>After careful consideration of the feedback received, and our decision to remove DC&P and ICFR certification requirements for venture issuers in our proposal, we propose to require the use of a control framework in the design and evaluation of ICFR. We agree that the required use of a control framework should result in more consistent implementation by certifying officers and a significantly reduced risk of inappropriate or inconsistent judgments.</p> <p>We recognize that some issuers that are not venture issuers may face some of the design challenges described in section 6.11 of the Companion Policy, however, since we are no longer requiring the remediation of any material weaknesses in the design of ICFR, we believe that all issuers will be able to comply with the certification requirements for the period, including the requirement to use a control framework to design ICFR.</p>

#	Theme	Comments	Responses
		<p>medium issuers increases the uncertainty surrounding what would constitute a reasonable investigation to support a due diligence defence in the event of civil liability proceedings for secondary market disclosures. In order to address this concern the commenter requests that the CSA create or support a task force that will develop an internal control framework for small to medium size issuers.</p> <p>One commenter does not support the requirement to disclose the control framework chosen or to describe the process undertaken. The commenter believes the disclosure should be on the results of any internal control review process.</p> <p><u>Separation of “design” and “operating” effectiveness</u> Two commenters expressed concern with separating the concepts of “design” and “operating” effectiveness. Reasons cited include:</p> <ul style="list-style-type: none"> • the distinction between design and operating effectiveness is difficult to understand and may cause confusion to investors; • since design is meant to be a precursor to operating effectiveness, issuers should be allowed to assess coverage of risks without the added requirement to assess whether or not controls are placed in operation; and • the SEC’s rules under SOX 404 do not require US issuers to make disclosure on a quarterly basis whether there are material weaknesses. <p><u>Removal of attestation requirement</u> Three commenters support a mandatory audit opinion. However, one of these commenters supports an exemption from auditor attestation for TSX-V issuers. Reasons cited supporting the inclusion of a mandatory audit opinion include:</p> <ul style="list-style-type: none"> • enhances the timeliness, completeness and reporting of required information concerning ICFR; • could create negative and unfair perceptions by US investors, rating agencies and foreign regulators about the quality of management and governance in Canadian companies, and therefore be an impediment to cross-border flows of capital and trading in securities; • introducing two levels of auditor attestation in the Canadian capital markets that are highly integrated with the US is not a wise or appropriate policy decision; • the “integrated audit” based on a “top-down, risk-based” approach that is being developed in the US is a significant and cost effective solution that will benefit investors and directors and the commenter believes it will have benefits that exceed the costs involved; and 	<p>We acknowledge the comments but do not agree that the separation of these components will result in confusion since the requirement to certify design separately for DC&P and ICFR has been in effect for a significant period of time. The concept of design has been separately discussed in the SEC’s <i>Commission Guidance Regarding Management’s report on ICFR</i> and the design and operating effectiveness concepts are separated in SOX 302 requirements.</p> <p>We continue to believe the benefits associated with a requirement for the issuer to obtain from its auditor an opinion on the effectiveness of ICFR do not exceed the costs.</p>

#	Theme	Comments	Responses
		<ul style="list-style-type: none"> while we have only had one year of experience with the certification of the design of ICFR, one commenter believes that the approach taken by most Canadian companies is not nearly as rigorous as that taken by the management of interlisted companies subject to SOX 404. If this first year experience carries forward, then investors will have a false sense of comfort when management does not disclose any ICFR weaknesses in their MD&A. <p><u>Other</u> One commenter stated that there is currently a serious shortage of qualified accountants and auditors, and there are concerns that there would be a tremendous strain on qualified resources to devote to the current proposals.</p>	<p>After careful consideration we are proposing that venture issuers not be required to certify the establishment and maintenance of DC&P and ICFR, which should result in a reduction in any strain on available resources.</p>
3.	Harmonization with US internal control requirements	<p><u>General concerns</u> Three commenters believe that the CEO and CFO certification requirements within the capital markets in Canada should be harmonized with those in the U.S. to the greatest extent possible.</p> <p>One commenter believes that harmonization with the US internal control reporting requirements is very important to facilitate the significant cross-border flow of capital and to support a mutual reliance approach to securities regulation by US and Canadian regulators. The commenter identifies three major priorities to address in finalizing these proposals:</p> <ul style="list-style-type: none"> ensure there is consistency in concept and terminology between the CSA proposals for management and the SEC management guidance that was recently issued; harmonize the concepts and terminology with respect to the disclosure requirements for internal control weaknesses and deficiencies; and reassess the decision to not require auditor attestation. <p>One commenter recommends that the CSA should attain the SEC’s acceptance of the MI 52-109 certifications, or as Canadians, we risk having our rules and regulations viewed as inferior or inadequate.</p> <p>One commenter notes that, if the regulations in Canada continue to move away from those of the US, it will make it progressively more difficult for investors to determine their reliance.</p>	<p>We acknowledge the importance of avoiding regulatory differences within North America that may impede the efficiency of cross-border capital flows. We believe our revised proposals strike an appropriate balance between recognizing the specific characteristics and needs of the Canadian marketplace and achieving an appropriate level of harmonization within North America.</p> <p>We believe, with the removal of venture issuers from the full certificate requirements, it is appropriate to adopt the term “material weakness” as defined by the SEC, which will help eliminate confusion for issuers and investors. We believe these changes will allow cross-listed issuers to take advantage of the exemption in Part 8.</p>

#	Theme	Comments	Responses
		<p>One commenter requests the CSA to explain in the Companion Policy the reasons why it has elected to depart from key aspects of the SOX 302 Rules and SOX 404 Rules.</p> <p>One commenter requests clarification with respect to exemptions provided for companies who are required to certify under the US legislation as foreign private issuers.</p> <p><u>Cross-border issuer concerns</u> One commenter believes that the failure to adopt the U.S. definitions of “material weakness” and “significant deficiency” and modify the form of interim certificates could result in the situation where most Canadian cross-border issuers would elect to voluntarily comply on a quarterly basis with the certification requirements under the SOX 302 Rules in order to avail themselves of the exemption contained in 7.2(2) of the Instrument and be entirely exempt from the requirements of the Instrument.</p> <p>One commenter does not believe that Canadian MJDS issuers should be forced to choose between additional, voluntary SEC filings (i.e., voluntary filing of an interim certificate under SOX 302) and attempting to reconcile the differences between the Canadian and US certification requirements. The commenter requests the CSA to reconsider whether an exemption could be provided from the new ICFR disclosure and certification aspects of the Instrument if the issuer is in compliance with SOX 404 rules and management’s annual report on ICFR and the related independent auditor’s report is included in the issuer’s annual report filed with the SEC.</p> <p><u>Comparison of guidance in Companion Policy to US guidance</u> One commenter recommends reassessing whether there are portions of the proposals that unnecessarily differ from the guidance for management recently released by the SEC. The commenter believes that, given the number of cross-border registrants, the introduction of unnecessary differences in definitions, requirements and / or disclosure requirements may create additional requirements and analysis for many issuers with little consequent benefit to investors in terms of incremental meaningful disclosure. The commenter believes that some of the material included in this guidance/thinking included therein should be considered for inclusion in the Companion Policy.</p> <p>One commenter requests clarification, to the extent such guidance in the proposed Companion Policy differs from that of the US, why that departure has been made in order to assist issuers who are relying on US guidance.</p>	<p>We propose to adopt the term “material weakness” as defined by the SEC to replace the term “reportable deficiency”.</p> <p>We acknowledge the comments, but continue to believe that all Canadian reporting issuers should certify their interim filings. We do not agree that it would be appropriate to apply the SEC’s requirements for foreign private issuers to Canadian reporting issuers in our marketplace.</p> <p>We have considered the SEC’s <i>Commission Guidance Regarding Management’s Report on ICFR</i> in the development of our latest proposal.</p> <p>We do not believe that a comparison to US guidance in the Companion Policy is appropriate or necessary to assist Canadian reporting issuers in understanding the Instrument.</p>

#	Theme	Comments	Responses
2. SPECIFIC REQUESTS FOR COMMENT			
1.	Definition of “reportable deficiency” and the proposed related disclosures	<p><u>General</u> Nine commenters agree with the definition of reportable deficiency as published. Reasons cited include:</p> <ul style="list-style-type: none"> • reasonable business judgment is and should always be a factor in determining whether a reportable deficiency exists; • using the term “reportable deficiency” is a step in the right direction as it promotes the application of professional judgment with respect to the consideration of appropriate disclosures by the certifying officers relating to the design and operating effectiveness of ICFR; and • reportable deficiency is much more explainable and understandable to a broader range of people and hence, if more managers and directors understand it, there can be better governance. <p>Twelve commenters agree with some features of the definition of reportable deficiency.</p> <p>Thirteen commenters prefer the US definition of material weakness. Reasons cited include:</p> <ul style="list-style-type: none"> • the definition of reportable deficiency is confusing and will create significant difficulties for cross-border issuers complying with SOX 404; • the application of “material weakness” and “significant deficiency” as concepts has become well-defined in practice; and • the new definition of reportable deficiency has no existence in practice. This may cause confusion and inconsistency and will allow the use of more judgment in evaluating the facts and circumstances related to control deficiencies. <p><u>Guidance on determining a reportable deficiency</u> One commenter finds the level of guidance provided as to what represents a reportable deficiency relating to design or operation is sufficient as proposed.</p> <p>Four commenters request further guidance (in the form of examples or discussion) on how to apply judgment to determine a reportable deficiency. Suggestions include:</p> <ul style="list-style-type: none"> • indicating when a combination of deficiencies will become reportable; • providing a decision tree with a step-by-step process to determine if a deficiency is “reportable”; and • examples of items that would <u>not</u> constitute a reportable deficiency. 	<p>After careful consideration of the various arguments and the adoption of a basic venture issuer certificate, we have concluded that issuers and investors will be better served by consistent adoption of the term and related definition of “material weakness” as the basis for disclosure of weaknesses in ICFR. In making this change, we believe issuers and their certifying officers will continue to be required to exercise responsible professional judgment in determining when a weakness in ICFR should be disclosed.</p> <p>We are no longer proposing to use the term “reportable deficiency”, and instead propose to use the term and related definition of “material weakness”. As a result we have revised our guidance on determining a material weakness to be consistent with that included in the SEC’s <i>Commission Guidance Regarding Management’s Report on ICFR</i>.</p>

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		<p>One commenter noted issuers should be warned that a list of indicators of a reportable deficiency cannot be inclusive of all situations which could indicate reportable deficiencies.</p> <p>Three commenters request guidance on the extent to which the definition of reportable deficiency differs from the SEC’s definition of “material weakness”.</p> <p>One commenter believes the guidance in Part 8 of the Companion Policy regarding the identification of a reportable deficiency is too high-level to be of meaningful assistance to issuers with limited internal financial reporting and control expertise.</p> <p><u>Definitions</u></p> <p>Eight commenters believe the definition of reportable deficiency should incorporate materiality or alternatively the certificates should refer to materiality in relation to ICFR design and effectiveness. Two also note that excluding the concepts of materiality and probability may result in issuers disclosing more deficiencies than intended.</p> <p>Four commenters believe the term “reasonable person” requires more clarification, including guidance as to whether a “reasonable person” refers to a “reasonable person” who is financially literate or any reasonable person?</p> <p>Two commenters believe more guidance regarding the experience of a reasonable person would be helpful. One commenter believes the concept of a “reasonable officer” or “prudent official” as defined by the SEC might be a more appropriate benchmark.</p> <p>One commenter notes the definition of reportable deficiency includes reference to operation of one or more controls and operation of ICFR; however, the certificates refer to design and evaluation of effectiveness of ICFR. The commenter finds the use of two terms – operation and effectiveness - confusing.</p> <p>One commenter believes the definitions and guidance related to reportable deficiencies appear to be inconsistent between the sec. 1(1.1) of the Instrument and sec. 3.1(3) and 3.1(4) of the Companion Policy.</p> <p><u>Reliability of Financial Reporting</u></p> <p>Five commenters note the reference to the “<i>reliability of financial reporting and the preparation of the issuer’s financial statements</i>” in the definition of ICFR suggests that the documentation and evaluation of internal controls must extend beyond those related to</p>	<p>We are no longer proposing to use the term “reportable deficiency”, and instead propose to use the term and related definition of “material weakness”. As a result we have revised our guidance to be consistent with that included in the SEC’s <i>Commission Guidance Regarding Management’s Report on ICFR</i>.</p> <p>We have provided further guidance on the meaning of “<i>reliability of financial reporting and the preparation of the issuer’s financial statements</i>” in Section 4.3 of the</p>

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		<p>financial statement preparation and will include internal controls over all continuous disclosure documents (MD&A, AIF, proxy circular, news releases, etc.). They note that it is not clear if the reference to “reliability of financial reporting” is intended to broaden the Canadian definition beyond the financial statements as compared to the US definition of material weakness which focuses on the financial statements alone.</p> <p><u>Reporting a reportable deficiency</u> One commenter believes the definition of reportable deficiency is too restrictive as it is confined to either reporting the matter in the MD&A or not at all; the commenter recommends an additional classification of weaknesses that should be reported to an appropriate level of board committee or external auditor.</p> <p>One commenter believes that any requirement to disclose a control deficiency in the MD&A should be limited to deficiencies that the issuer believes are material to a reasonable investor in the issuer’s securities.</p> <p>One commenter notes it is difficult to determine what a “reportable deficiency” is when a “deficiency” has not been defined.</p> <p>Two commenters believe the Companion Policy guidance as to what constitutes a reportable deficiency is confusing. Section 8.1(1) first states that in order to have reliable financial reporting, there must be no misrepresentation in the annual or interim filings. However, section 8.1(1) also states there must be no material misstatement. It is not clear whether “material misstatement” must be read as meaning a “misrepresentation” or something different than a “misrepresentation”.</p> <p><u>Remediation requirements</u> One commenter believes it is inconsistent to require design deficiencies to be remediated but to allow operating deficiencies to remain unremediated. They recommend deleting “if any” from Form 52-109F1 6(b)(iv).</p> <p>One commenter believes even if an issuer had previously reported in its annual MD&A that DC&P was ineffective, that it would be misleading for an issuer to sign Form 52-109F2 at an interim date indicating that they have designed DC&P to provide reasonable assurance when a deficiency in design exists unless they have taken action to remediate the deficiency. The commenter recommends issuers should be instructed that, if they are aware that DC&P is ineffective at an interim date, this fact should be disclosed in the MD&A.</p>	<p>Companion Policy.</p> <p>We are no longer proposing to use the term “reportable deficiency”, and instead propose to use the term and related definition of “material weakness”. As a result we have revised our guidance on determining a material weakness to be consistent with that included in the SEC’s <i>Commission Guidance Regarding Management’s Report on ICFR</i>.</p> <p>We are no longer proposing that material weaknesses in the design of ICFR must be remediated.</p> <p>We have revised the guidance in section 10.2 of the Companion Policy to address this comment.</p>

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		<p>One commenter believes the obligation to disclose, in the MD&A, a “reportable deficiency” (design or operation) that existed on the financial statement closing date, even if an action plan to remediate is being developed and mitigating controls were implemented prior to publication of the financial information, could needlessly increase investor concern.</p> <p>One commenter believes the audit committee must monitor remediation efforts to ensure risks are mitigated to an acceptable level, and if the remediation is not implemented there should be compelling reasons as to why not. Based on this, the 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.</p> <p><u>Evaluation</u> One commenter believes the definition in the Instrument and the Companion Policy discussion of reportable deficiency do not appear to be consistent with a top-down, risk-based approach. The commenter suggests it might be beneficial to provide issuers with more prescriptive guidance on how to evaluate weaknesses based on materiality, risk and complexity of the overall risks being addressed by their system of control than to focus on whether one or a number of independent controls were not designed or operating properly.</p> <p><u>Other</u> One commenter believes the definition of reportable deficiency implies that DC&P deficiencies are excluded; this implies that DC&P cannot have a reportable deficiency (outside of the overlap between DC&P and ICFR) as the certificate requires officers to certify design and operation of DC&P; the commenter suggests making this point explicit.</p> <p>One commenter recommends that the Instrument set out what disclosure is required to be included in the MD&A relating to a reportable deficiency in the design of ICFR and when this disclosure is required rather than including this in section 5.2 of the certificates.</p>	<p>We disagree. We believe that information about material weaknesses and remediation plans is important information for an investor.</p> <p>We do not believe there is a need for the term “significant deficiency” within the Instrument. This does not preclude an audit committee from requesting certifying officers to bring any significant deficiencies to their attention.</p> <p>We are no longer proposing to use the term “reportable deficiency”, and instead propose to use the term and related definition of “material weakness”. As a result we have revised our guidance on determining a material weakness to be consistent with that included in the SEC’s <i>Commission Guidance Regarding Management’s Report on ICFR</i>.</p> <p>We have provided a discussion of the overlap between DC&P and ICFR in section 6.2 of the Companion Policy.</p> <p>We acknowledge the comment and have clarified the disclosure requirements in section 3.2 of the Instrument.</p>
2.	Availability of ICFR design accommodation for venture issuers	<p><u>General</u> Fourteen commenters generally support the proposed design accommodation for venture issuers.</p> <ul style="list-style-type: none"> One commenter agrees with the venture issuer accommodation, assuming a reasonable challenge as to whether the issuer should avail itself of the accommodation and that this decision is reviewed by the audit committee. 	<p>We have concluded that the venture issuer design accommodation is not sufficient to allow for cost effective certification of DC&P and ICFR and provide meaningful benefits to investors and other stakeholders. We therefore propose to modify the Instrument to exclude venture issuers</p>

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		<ul style="list-style-type: none"> • One commenter supports the venture issuer accommodation, but suggests that a DC&P design accommodation should also be provided, which would be consistent with Part 5.4 of Form 52-109F1 and Part 6.2 of Companion Policy. • One commenter believes the accommodation should not be limited to venture issuers that “cannot reasonably remediate”. The requirement to disclose the existence of the reportable deficiency, the risks relating thereto and any steps taken to mitigate those risks should be sufficient to enable investors to make an informed investment decision. In addition the commenter believes the risks to be identified should be only those risks relating to ICFR. <p>Seven commenters believe that the ICFR design accommodation does not adequately address the challenges faced by venture issuers, and the proposed materials should not apply to venture issuers. Reasons cited include:</p> <ul style="list-style-type: none"> • the requirements impose too high a compliance cost without a benefit to shareholders; • the very intensive work required to evaluate and document internal controls may detract from a company’s efforts to ensure the financial statement preparation process properly states accurate financials; • some issuers will be obliged to disburse substantial amounts to retain the services of outside consultants in order to comply with the additional certification requirements; • given the nature of the smaller management team and staff size, the deficiency disclosure provisions are not appropriate since the control qualification and comparison standards are generally derived from the profile of a large issuer; • the disclosure provisions put venture issuers in the position of saying they cannot currently, and will not in the future, be in a position to comply; • because many venture issuers do not generate revenue, investors tend to rely on information other than financial statements, such as drill results and clinical trial results, in making their investment decisions; and • the venture issuers are subject to robust regulatory and exchange governance and financial reporting requirements. <p>Three commenters express concern that disclosure of deficiencies in internal controls for small companies will be perceived negatively by the markets when an issuer may in fact have very strong controls over financial reporting which are not acknowledged by the regulations based on the strict interpretation of the Instrument. If there are compensating</p>	<p>from the requirement to design and evaluate DC&P and ICFR and allow them to provide a “venture issuer basic certificate”. The basic certificate includes a note to reader which explains for investors how it differs from the full certificate required to be filed by non-venture issuers. The note to reader explains to investors 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 may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation. These basic certificates are not available to non-venture issuers.</p>

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		<p>controls such as management supervisory controls, shareholders know and accept that those controls are thoroughly dependent on trust in officer and director integrity and tone at the top.</p> <p>One commenter is not in favour of exceptions to the rules as additional effort is required to define when these exceptions are permitted with the risk that some parties may not comply with the spirit of the guidance. This commenter recommended that venture issuers follow the guidance outlined in paragraph 5.2 and report ICFR deficiencies.</p> <p>One commenter believes sending a message that a deficiency exists is not beneficial to investors or shareholders; it is how the deficiency is going to be fixed that is important.</p> <p><u>Other accommodations</u> Seven commenters believe smaller TSX issuers (based on revenue and market cap tests) should be able to use the ICFR design accommodation. One commenter notes that if the CSA does not make the design accommodation available to all issuers, then they should clearly communicate under what circumstances they contemplate providing relief to non-venture issuers under the policy.</p> <p>Two commenters believe venture issuers graduating to TSX should be exempted from the requirement to evaluate the effectiveness of ICFR (and certify and disclose) for one year from graduation to TSX.</p>	<p>Non-venture issuers are not permitted to file the venture issuer basic certificate and we do not contemplate providing relief to non-venture issuers based on measures of size such as revenue or market capitalization. We are also no longer mandating remediation of a material weakness relating to design.</p> <p>We acknowledge the comment and have proposed separate certificates which are available to venture issuers who are graduating to the TSX.</p>
3.	Scope limitation for design of DC&P and ICFR for an issuer's interest in a proportionately consolidated investment or VIE	<p><u>General</u> Twenty-three commenters generally support the proposed scope limitation. Reasons cited include:</p> <ul style="list-style-type: none"> • Three commenters believe a reporting issuer may not, based on their legal relationship, have access or influence over the controls, policies and procedures for all investments; and • The scope limitation allows the issuer to determine whether they can meet the requirement of full compliance regarding certification of entities that they do not control or whether to exclude such entities but clearly identify to investors the fact that the entity is being excluded and why. <p>One commenter does not agree with the proposed scope limitation and instead recommends a requirement for management to justify in their MD&A any scope limitations.</p>	<p>We acknowledge the support for the scope limitation as well as the comments received.</p>

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		<p><u>Application of scope limitation</u> Two commenters recommend that the scope limitation be expanded to include portfolio and equity investments. One commenter requests clarification as to the treatment of wholly or partially-owned subsidiaries and joint venture interests.</p> <p>Various commenters request that the scope limitation be clarified to include the following:</p> <ul style="list-style-type: none"> • working interests in the sense used in the oil and gas industry since only the operator in such interests usually has access and it is not practical that each joint venture partner in the oil and gas industry be given access to the operator’s systems to evaluate internal controls; • an exemption for joint ventures below specified revenue or income thresholds and that are not material to the reporting issuer; and • an exemption for VIEs that are not consolidated. <p>One commenter recommends that the guidance be clarified regarding whether scope limitations will be available for proportionately consolidated investments or VIEs created after the date that the Instrument becomes effective.</p> <p>One commenter recommends that section 2.3 be enhanced to extend the exemption to the reporting of material changes.</p> <p><u>Disclosure of summary financial information</u> Two commenters recommend that the disclosure obligations under subsection 2.3(2) only apply in respect of entities that, based on the issuer’s top-down, risk-based approach to DC&P and ICFR design, would have been within the scope of the issuer’s design of DC&P and ICFR absent the limitation.</p> <p>Five commenters recommend that the Companion Policy clarify that summary financial information does not have to be disclosed if not material in aggregate or on an individual-entity basis and that issuers are permitted to disclose such information in aggregate since many issuers have limited participations in tens or even hundreds of entities, which may not be material to investors.</p> <p>One commenter recommends that, if summary information is to be required, then it should</p>	<p>Since the applicability of the scope limitation is determined by the issuer’s access to the underlying entity, we do not think that additional guidance is needed.</p> <p>We acknowledge the comments, but do not propose to change the scope limitation to address these items. We continue to believe that a limitation based on access to the underlying entity is appropriate.</p> <p>We do not propose a distinction between proportionately consolidated investments or VIEs created before or after the effective date of the Instrument. Since there is no distinction, we do not think guidance is necessary.</p> <p>We acknowledge the comment but do not agree that the scope limitation needs to be further enhanced. If an issuer uses the scope limitation, it would not report material changes since it is limiting the scope of its design of ICFR in the investment.</p> <p>We have revised the guidance in Part 13.3(4) of the Companion Policy to address this comment.</p> <p>We have revised the guidance in subsection 13.3(4) of the Companion Policy to address this comment.</p> <p>We have revised the guidance in subsection 13.3(4) of the</p>

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		<p>be limited to key metrics which should be specified in the Instrument rather than the Companion Policy so that there is no uncertainty as whether the disclosure provided by the issuer in the MD&A meets the requirements of the Instrument.</p> <p>One commenter requests clarity on whether the continuous disclosure requirements of Form 51-102F1 are applicable to disclosures required under subsection 10.3(4) of the Companion Policy.</p> <p>Two commenters note that the financial disclosure of summary financial information in the MD&A may reflect negatively on issuers in the marketplace. One commenter believes that the additional significant cost of compliance and the forcing of private partners in joint ventures to put information in the public domain may significantly detract from the desirability of Canadian public companies as joint venture partners and recommends some form of exception to be created where a joint venture partner is a private company.</p> <p><u>Other</u> One commenter notes that if the IASB decides to eliminate the proportionate consolidation method, significant changes in accounting treatment and financial statement presentation will arise. The commenter believes that the consequences of this have not been contemplated or reflected in subsections 10.3(4) and 10.3(5) of the Companion Policy.</p>	<p>Companion Policy to address this comment but we do not agree that it is necessary to revise the Instrument.</p> <p>In our request for comments we are also recommending amendments to Form 51-102F1.</p> <p>We acknowledge the comments but do not agree that an exception for joint ventures with a private company should be provided. We continue to believe that a limitation based on access to the underlying entity is appropriate.</p> <p>The proportionate consolidation method is currently available to issuers under various types of GAAP. If the proportionate consolidation method is eliminated under various types of GAAP then we will reconsider its applicability at that time.</p>
4.	Scope limitation for design of DC&P and ICFR within 90 days of the acquisition of a business	<p><u>General</u> Forty-six commenters agree with the scope limitation but believe the 90-day period is not enough. Reasons cited include:</p> <ul style="list-style-type: none"> • Depending on the timing of the acquisition, 90 days may not allow the company the benefit of an entire quarter to evaluate the acquired company's controls. In addition, there are various matters that can only be tested on an annual basis and a 90-day period would often not allow for annual testing to be conducted; • Knowledge, transition and integration of business processes, controls, IT systems, policies and procedures take a great deal of dedicated, properly trained resources and time. To embed reasonable accuracy, consistency and completeness into management's ICFR assessment process, 90 days is too restrictive; • The shorter the period of compliance, the more expensive the compliance will be and the greater the likelihood that deficiencies will be identified out of an 	<p>We have revised our proposal to permit a scope limitation for the design of DC&P and ICFR for a business that the issuer acquired not more than 365 days before the end of the financial period to which the certificate relates.</p>

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		<p>abundance of caution due to a lack of time to properly assess or address potential deficiencies. Such identification will likely create some uncertainties in the market and Canadian issuers will be disadvantaged compared to US public companies;</p> <ul style="list-style-type: none"> • For larger acquisitions, requiring a purchaser to certify the design and effectiveness of ICFR in the first 90 days would change the sequencing of merger priorities which would be detrimental to integration activities; • In some cases, management and / or employees from the acquired business do not join the issuer. Thus, there is a loss of internal control knowledge and expertise that must be obtained by recruiting and training additional staff or retraining existing staff; • International differences in accounting standards and the challenge of language and cultural barriers between head office personnel and the business being acquired add complexity and time delay to the accomplishment of ICFR and DC&P efforts in the first days of an acquisition; • In the context of an arm’s-length acquisition, it is highly unlikely that a purchaser would be able to thoroughly access or assess the target’s corporate controls during the due diligence process. Such assessment would often require the assistance of internal and external auditors, who are generally not involved in those aspects of the due diligence; • If the business to be acquired is an entrepreneurial business, it is common for the company to have limited control systems documentation available therefore requiring additional resources by the issuer to complete the assessment of DC&P and ICFR; • Canadian GAAP allows the finalization of the purchase equation for acquisitions to occur up to a year after the acquisition, recognizing the underlying complexity of these transactions; • Many issuers change the financial systems of the acquired business to allow for integration into the consolidated operations and processes. Certifying the design of a system that is likely to change would be inefficient, uneconomical and uninformative to the reader; • It is not inconceivable that a private company, faced with competing bids involving 90-day compliance from a Canadian public company and a foreign bid with no similar rules, will place a value on not having to be compliant during a period of tremendous transition. A longer period will help alleviate this concern and potential disadvantage; and • In the course of an acquisition, many deficiencies are remediated in the first 	

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		<p>year after the acquisition as reviews and audits are completed.</p> <p>One commenter believes that the scope limitation period should be available for the two fiscal years of the issuer following the year of acquisition. If the purchased entity is an issuer already subject to the Instrument or SOX, the scope limitation period could be reduced to one full fiscal year following the year of the acquisition.</p> <p>Two commenters believe that providing a one-year exclusion for newly acquired business from the design of DC&P or ICFR of issuers is a more reasonable time frame and will be consistent with the SEC Guidance and the US PCAOB AS No.5 recommendations.</p> <p>The commenter believes that the annual requirements of the Instrument should be met for acquisitions completed in the previous year. This would give issuers anywhere from 12 to 24 months after the acquisition is made to utilize the scope limitation and exclude it from the certification process.</p> <p>One commenter does not agree with the scope limitation within the certificates and suggests that a disclosure in the MD&A is enough, without any time limit.</p>	
5.	Permit limitation for design of ICFR within 90 days after an issuer has become a reporting issuer	<p><u>General</u></p> <p>Twenty commenters agree with the scope limitation but believe the 90-day period is not enough. Reasons cited include:</p> <p>Eight commenters noted that the period following an initial public offering or the completion of a reverse takeover transaction is an intense period of activity for an issuer and represents a fundamental change to the governance structure of such issuer. The commenters believe the time period should be extended to at least a year to allow the necessary time to implement and remediate deficiencies relating to ICFR.</p> <p>One commenter recommends that issuers be exempt from DC&P and ICFR in quarterly and annual certifications for one year. The commenter notes that an issuer that does an IPO jointly in Canada and the United States would be able to obtain an ICFR exemption for up to a full year under the SEC rules as no evaluation of ICFR is required in the year of the IPO. The commenter recommends that an exemption for DC&P also be allowed given the substantial overlap between DC&P and ICFR.</p> <p>Two commenters state that, in the case of an IPO, prior to becoming a reporting issuer, senior management should be in a position to influence the design of DC&P and ICFR and</p>	<p>We acknowledge the comments and have proposed an alternative form of certificate be filed in the first financial period following certain IPOs, RTOs and when an issuer becomes a non-venture issuer. We continue to propose that certifying officers be required to certify the design of ICFR for the first annual or interim filing at least one filing after an issuer becomes a reporting issuer or following the completion of certain reverse takeover transactions. Since certifying officers have access to design ICFR prior to becoming a reporting issuer, we believe investors are entitled to expect that the certifying officers prepare for compliance with certification requirements within a relatively short period of time from the date an issuer becomes a reporting issuer.</p>

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		<p>prepare for the anticipated filing requirements. As a result, the 90 day timeframe appears reasonable. However, they will need time to adjust for their new public reporting requirements; accordingly the commenter believes that the 90 day exemption would be appropriate for new issuers.</p> <p>One commenter does not agree with the proposals and believes that certifying officers should be able to certify on the design of ICFR from day one of becoming a reporting issuer.</p> <p><u>Other</u> Two commenters state that an additional definition is required within the Companion Policy in respect of the “date” to be used in the event of an IPO or reverse takeover.</p> <p>One commenter notes that, in order to file Form 52-109F1-IPO/RTO or Form 52-109F2-IPO/RTO, the reverse takeover acquirer (which is the legal subsidiary in the RTO) cannot have been a reporting issuer immediately prior to the RTO. This means that if both parties to the RTO are issuers, then the certifying officers of the new combined entity have to be in a position to immediately provide all certifications relating to ICFR of the combined entity. The commenter believes the fact that the certifying officers of each separate company were in a position to make certifications regarding the ICFR in their respective companies prior to the RTO does not mean that certifying officers of the combined company will be in a position to make the same certifications regarding the ICFR of the combined company. Accordingly, the commenter suggests that the ability to file a certification on either Form 52-109F1-IPO/RTO or Form 52-109F2-IPO/RTO be extended to those situations where the reverse takeover acquirer is an issuer immediately prior to the RTO.</p>	<p>We do not agree that a definition is needed.</p> <p>We acknowledge the comment but do not agree that a scope limitation is needed. We believe the certifying officers in this scenario should have the information necessary to be in a position to certify for the combined entity.</p>
6.	Appropriateness of nature and extent of guidance in the Companion Policy	<p><u>General comments on nature of guidance</u> Twelve commenters agree that the nature and extent of guidance is appropriate.</p> <p>Eight commenters have a general concern that some language in the Companion Policy is too prescriptive, and lends to a “rule-based approach” rather than a “principles-based” approach. Various commenters have indicated that the current language could:</p> <ul style="list-style-type: none"> • suggest that failure to follow such rules is not in accordance with the regulators’ views as to what processes should be implemented; • imply that even if the business circumstances do not warrant a particular process, the regulators will want to see certain steps and documentation; • potentially cause certifying officers to feel they must consider and document a number of items in their disclosure process to avoid potential liability; and 	<p>We acknowledge the comments and do not believe the Companion Policy is overly prescriptive. All materials included in the Companion Policy are guidance provided to assist certifying officers with determining the level of work needed to support their DC&P and ICFR certifications. This guidance should not be viewed as requirements.</p>

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		<ul style="list-style-type: none"> • potentially be read to be a requirement. <p>Specific language in the Companion Policy cited by commenters that lends to a “rule-based approach” rather than a “principles-based” approach is as follows:</p> <ul style="list-style-type: none"> • references to steps or items that certifying officers “should consider”; • references indicating what DC&P or ICFR “should generally include”; • reference that certifying officers “should” use their judgment; and • references to “will generally require”, “generally include” or “will likely require”. <p>Two commenters believe that the guidance in Parts 6, 7 and 8 does not support a top-down, risk-based approach and one believes that the guidance does not address the concept of managing and assessing residual risk.</p> <p>One commenter believes that, while the Companion Policy states in various places that it is not meant to be prescriptive, the overall effect is the opposite with respect to DC&P compared to the current guidance and the SEC’s approach that does not require any particular procedures for conducting the required review and evaluation of DC&P. The commenter recommends that the guidance in the Companion Policy focus on ICFR and revert to the previous, more general approach to DC&P.</p> <p>One commenter is of the view that the guidance is written at a very high level. In order to be meaningful to issuers, the principles articulated should be fleshed out with examples or other indicators.</p> <p><u>General comments on extent of guidance</u> One commenter believes that the Companion Policy should be amended to clearly state that it only provides guidance and does not prescribe any mandatory actions because there are concerns that the guidance may have the effect of unnecessarily increasing the disclosure made by issuers.</p>	<p>We do not propose to include additional guidance since these are decisions that would be made by the certifying officers based on the issuers’ facts and circumstances and the issuers’ top-down, risk-based approach.</p> <p>All materials included in the Companion Policy are guidance provided to assist certifying officers with determining the level of work needed to support their DC&P and ICFR certifications. This guidance should not be viewed as requirements. Since the top-down, risk-based approach is equally applicable to DC&P as it is to ICFR, and since there is an overlap between DC&P and ICFR (as discussed in section 6.2 of the Companion Policy), we believe that the guidance provided will assist issuers with their certifications relating to DC&P.</p> <p>In our view, the guidance provided will allow certifying officers to design and evaluate DC&P and ICFR based on their facts and circumstances. Providing detailed examples could inappropriately be viewed as adding prescriptive requirements.</p> <p>Section 1.1 of the Companion Policy states that the Companion Policy is to help an issuer understand how securities regulatory authorities interpret or apply certain provisions of the Instrument.</p> <p>We believe that the guidance in noted sections provides an</p>

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		<p>One commenter notes that Parts 6, 7 and 8 of the Companion Policy were useful but perhaps provide too much information. It appears to the commenter that the CSA is attempting to define a compliance methodology for management which may be beyond the scope of this requirement.</p> <p><u>Nature and extent of guidance regarding documentation</u> Three commenters believe that the guidance respecting the documenting of ICFR and DC&P is unduly prescriptive, and that a principled-based approach should be used. Reasons cited include:</p> <ul style="list-style-type: none"> • determination of what is or is not documented must rest with those that know the business and the issuer best, namely the board of directors and management; and • certain ICFR at the head office or regional head offices could be sufficient in design and operation to adequately address and manage many of the material risks to reliable financial reporting irrespective of the underlying transaction flow. <p>One commenter agrees that to provide reasonable support for the certifying officers’ design and evaluation of ICFR, maintenance of documentation is necessary. However, the commenter questions the prescribed documentation that the issuers must maintain in order to provide reasonable support for the design of ICFR and whether creation and maintenance of such documentation would add value.</p> <p>One commenter believes that the use of the word “generally” is problematic as the guidance should provide a clear requirement for documentation and then provide leeway over the nature and or extent of the documentation.</p> <p>One commenter recommends that a number of provisions dealing with documentation be removed and instead repeat the intent and purpose of the certification process, namely to have controls around accurate and timely reporting.</p>	<p>appropriate amount of information to assist certifying officers with the design and evaluation of DC&P and ICFR. This guidance should not be viewed as a compliance methodology or control framework.</p> <p>We acknowledge the comments but have not made any changes to the nature and extent of guidance regarding documentation. As stated in section 6.15 of the Companion Policy the extent of documentation supporting the certifying officers’ design of DC&P and ICFR will vary depending on the size and complexity of the issuer’s DC&P and ICFR. The documentation might take many forms and can be presented in a number of ways. The extent and form of documentation is a matter of judgment.</p>
7.	Identification of specific topics not addressed in the Companion Policy	<p><u>Additional guidance for specific terms</u> One commenter notes that the Proposed Policy refers to “misstatements” in several places. The commenter recommends highlighting “misstatement” as a defined term because the commenter believes the concept of what is included in the term “misstatement”, particularly disclosure omissions, may not be well understood in the marketplace.</p>	<p>We do not believe that “misstatement” needs to be defined and that sufficient guidance has been provided in subsection 6.6(2) of the Companion Policy.</p>

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		<p><u>Financial statements and financial information</u> One commenter recommends the inclusion of a clear and specific definition of what constitutes financial information.</p> <p>One commenter recommends guidance regarding whether ICFR and DC&P procedures need extend to separately filed GAAP reconciliations.</p> <p><u>Guidance on risks and the risk assessment process</u> Two commenters recommend that further guidance be provided on IT risks and controls.</p> <p><u>Multi-locations</u> One commenter recommends the guidance include factors for management to consider when making risk-based multi-location judgments because the commenter believes that issuers may have difficulty in determining whether and how to test controls at locations that are neither quantitatively significant nor otherwise pose location-specific risks.</p> <p>One commenter requests clarity on whether evaluation procedures can be performed rotationally or performed homogenously in multiple locations.</p> <p><u>Clarity with regards to overlap of DC&P and ICFR</u> One commenter requests additional clarity regarding the overlap of DC&P and ICFR since this distinction has more relevance in the proposed and existing Canadian regulation, in comparison to regulation in the United States, as an issuer’s certification of operating effectiveness of DC&P depends on which ICFR controls are included in the scope of DC&P. For example, the examples in Part 6.2 of the Companion Policy imply almost a complete overlap between ICFR and disclosure controls.</p> <p>One commenter recommends clarifying that ICFR is a sub set of DC&P and therefore a weakness in ICFR is also a weakness in DC&P.</p> <p><u>Guidance regarding internal audit</u> Two commenters recommend that the Companion Policy indicate where internal audit could have a role to assist with the design and evaluation of DC&P and ICFR.</p> <p><u>Control Framework</u></p>	<p>We do not agree that a definition is needed.</p> <p>A separately filed GAAP reconciliation that is not required by NI 52-107 would not be part of an issuer’s financial statements. However, it would be financial information. We do not believe further clarification is necessary.</p> <p>We do not believe that additional guidance is needed since we have made reference to a relevant IT framework in section 5.1 of the Companion Policy.</p> <p>We have provided additional guidance in subsection 6.6(2) of the Companion Policy.</p> <p>We have provided additional guidance in section 7.12 of the Companion Policy.</p> <p>We believe section 6.2 of the Companion Policy adequately discusses the overlap between DC&P and ICFR.</p> <p>We have provided additional guidance in section 10.3 of the Companion Policy.</p> <p>We do not believe additional guidance is needed. The consideration of internal audit is noted in paragraph 6.13(c) of the Companion Policy.</p>

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		<p>One commenter recommends guidance on how entity-level controls affect the design and evaluation of DC&P and ICFR.</p> <p>One commenter requests further details concerning the types of risk to which an entity is exposed because, for instance, too broad an interpretation of the financial risk might prompt issuers to considerably expand the scope of their work.</p> <p><u>Guidance on timing of evaluation</u> Two commenters note that differences in interpretation may arise when considering key controls relating to a year-end which are actually used in the first quarter of the following year. The commenters recommend clarification since many of the processes that contribute the highest degree of risk in financial reporting typically occur after a period-end has closed.</p> <p>One commenter recommends that guidance be clarified to address whether a control that was working effectively throughout the year needs to be reassessed for effectiveness proximate to or on the “as at” date, or whether a period of time prior to that date would be acceptable (i.e., within 60 days prior to the reporting date).</p> <p><u>Use of service organizations</u> Six commenters recommend guidance on how the use of a service organization would affect the design and evaluation procedures to be performed by management in its ICFR certification activities. One commenter in particular noted that, if guidance is not provided this would create a risk that issuers will be inconsistent in application, resulting in confusing investors, or that issuers would be placed in a situation that they would not be able to certify at all. In particular guidance is requested for the following areas:</p> <ul style="list-style-type: none"> • how management can attain comfort if a SAS 70 report is unavailable and access to the service provider is not permitted under contract; • how management should assess the sufficiency and findings in SAS 70 reports; • what management should do when the date of the SAS 70 report, or the period covered by the report, differs significantly from management’s certification date; • if the company is a service provider itself, why the company cannot rely on the SAS 70 it provides to others for SOX 404 purposes for its own assessment and certification; and • what would happen if the SAS 70 report contained control deficiencies. <p>One commenter recommends that management be given the flexibility to assess the risk of</p>	<p>We do not believe additional guidance is needed. Since we are proposing the required use of a control framework for the design of ICFR, additional information on entity-level controls may be found in these control frameworks.</p> <p>We are now proposing a requirement to use a control framework to design ICFR. The control framework an issuer uses will provide further guidance concerning the types of risk to which an entity is exposed.</p> <p>We acknowledge the comment and have provided additional guidance in Section 7.11 of the Companion Policy.</p> <p>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 and the issuer’s top-down, risk-based approach.</p> <p>We acknowledge the comments and have included additional guidance in part 8 of the Companion Policy.</p>

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		<p><u>Guidance regarding the identification of reportable deficiencies</u> One commenter believes that further guidance should be provided with regard to the trial period required for the functioning of a new control that has been put in place or for modifications to the existing control before being able to assert that the issuer has corrected the reportable deficiency.</p> <p>One commenter recommends guidance with respect to what considerations issuers need to make regarding original conclusions regarding effectiveness of ICFR and DC&P when the issuer has refiled financial statements as a result of a material misstatement.</p> <p><u>Guidance on “any change in the issuer’s ICFR”</u> Three commenters recommend that guidance be given on the definition of “change in the issuer’s ICFR” as to what constitutes a change and as to applicable materiality.</p> <p>One commenter recommends that guidance be provided on whether issuers need to report material changes that have occurred within a scoped out entity.</p> <p>One commenter recommends eliminating the requirement to disclose in the MD&A “...any change in the issuer’s ICFR that occurred during the period...that has materially affected” because it is too vague to be meaningful in practice.</p> <p><u>Guidance regarding fraud</u> Two commenters believe that a clear definition of fraud accompanied by guidance for management on the nature and extent of work to be performed in the area of documentation and assessment of anti-fraud measures is needed.</p> <p>One commenter recommends increased guidance on what a company should do to assess and mitigate fraud risks, especially the risks related to fraudulent manipulation by senior executives since many detrimental financial statement frauds have been perpetrated by senior management.</p> <p>One commenter requests further clarity with respect to the statement, in the certification of annual filings, on reporting to the issuer’s auditors and board of directors or audit committee on any fraud involving management or other employees who have a significant role in the issuer’s ICFR. For example, further clarity is needed on what would be</p>	<p>the extent of reliance is appropriate. Certifying officers are ultimately responsible for the accuracy of the representations in the certificates.</p> <p>We acknowledge the comment but do not believe additional guidance is needed. Appropriate trail periods will vary depending on the nature of the control.</p> <p>We have provided additional guidance in Part 20.2 of the Companion Policy.</p> <p>We have proposed additional guidance on what constitutes a “change in the issuer’s ICFR” in Part 11 of the Companion Policy.</p> <p>We acknowledge the comments but do not think that further guidance is necessary.</p>

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		<p>considered a “significant role”.</p> <p><u>Guidance regarding disclosure</u> Three commenters recommend guidance detailing the minimum requirements for the disclosure of “a description of the process [management] used to evaluate the effectiveness of ICFR” in order to comply with paragraph 6(b) of Form 52-109F1. This would assist companies in preparing an adequate and useful disclosure as well as increase consistency among issuers and therefore decrease investor confusion.</p> <p>One commenter believes that any requirement to disclose information in an issuer’s MD&A should be subject to the general disclosure standard of paragraph 1(e) of Form 51-102F1, which provides that issuers should “focus your disclosure on material information”.</p> <p>One commenter recommends requiring a separate “control” section of the MD&A in which an issuer would provide its disclosures in accordance with a prescribed control framework, which could include items such as:</p> <ul style="list-style-type: none"> • a description of the issuer’s control structure and design; • an outline of how the board monitors the code of business conduct and the organization’s culture of integrity, and how the CEO and CFO assessed the effectiveness of DC&P and ICFR; and • conclusions of the effectiveness of DC&P and ICFR, including remediation plans and actions taken to ensure that ICFR and DC&P weaknesses have not produced material errors in financial statements or filings. <p><u>DC&P</u> One commenter recommends that further guidance be provided for DC&P with regard to continuous reporting versus timely reporting.</p> <p>One commenter requests that the Instrument recognize that the securities requirements for disclosure (material facts and material changes) must be considered.</p> <p><u>Audit of ICFR</u> One commenter recommends providing guidance for disclosing the report of the auditor when an issuer chooses to voluntarily engage its auditor to perform an audit of ICFR. The commenter also believes that disclosure of attest reports by the auditor on elements of a</p>	<p>We are no longer proposing a description of the process since we are now requiring the use of a control framework to design ICFR.</p> <p>The MD&A disclosure requirements referred to in the certificates, in our view, would generally be material, therefore we see no conflict with the general disclosure standard in paragraph 1(e) of Form 51-102F1.</p> <p>In our request for comments we are also recommending amendments to Form 51-102F1 which includes disclosure of conclusion of the effectiveness of DC&P and ICFR.</p> <p>We acknowledge the comment but do not think that further guidance is necessary. National Policy 51-201 Disclosure Standards provides guidance to assist issuers in satisfying their timely disclosure obligations.</p> <p>We do not believe that additional clarification is necessary since these requirements clearly fall within the definition of DC&P.</p> <p>The issuer, with consent from its auditor, would need to decide whether the issuer would choose to disclose attest information based on its facts and circumstances. We have</p>

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		<p>business or specific components of internal controls should not be disclosed as this would create confusion and could lead to situations where investors place inappropriate reliance on the related auditor’s report.</p> <p><u>Sufficiency and retention of evidence</u> Two commenters request guidance in respect of the level of reliance, if any, management may reasonably place upon its prior years’ results in performing their current year evaluations. For example, can a portion of management’s comfort be derived from:</p> <ul style="list-style-type: none"> • their cumulative knowledge and experience of the processes and controls, in particular those processes and controls for which there have been no significant changes since their last evaluation; and • evaluation procedures performed on a rotational basis, in particular those processes and controls assessed as lower-risk or performed homogeneously in multiple locations. <p>One commenter requests guidance with respect to what constitutes sufficient evidence to support management’s annual evaluation of the design and effectiveness of both DC&P and ICFR.</p> <p>Four commenters request guidance on the appropriate nature, extent and form of the documents the CSA would expect management to retain as its evidence supporting its interim and annual evaluations of design and effectiveness of ICFR and the appropriate period of time management would be expected to retain its evidence. One commenter also asked for clarification on whether Part XXII section 138(14) of the Securities Act should be used to infer that management should retain its documentation supporting its certification disclosures for at least a three year period after the disclosure has been made.</p> <p><u>Other</u> One commenter believes that the CSA should consider whether some additional guidance concerning the COSO components concerning monitoring of information and communications would be desirable.</p>	<p>provided additional guidance in section 7.5 of the Companion Policy.</p> <p>We have included additional guidance in section 7.12 of the Companion Policy. The revised guidance states that certifying officers cannot decide to exclude components of ICFR for a particular process from the scope of their evaluation simply based on prior years evaluation results.</p> <p>We acknowledge the comments but do not believe the additional guidance is necessary because the sufficiency of evidence will depend on the facts and circumstances of the issuer.</p> <p>We acknowledge the comments but believe that retention policies are a management decision based on the facts and circumstances of the issuer.</p> <p>We acknowledge the comment. We have not provided additional guidance since we are now requiring the use of a control framework to design ICFR.</p>
INSTRUMENT COMMENTS			
<u>3. PART 1 – DEFINITIONS AND APPLICATION (OTHER THAN DEFINITION OF “REPORTABLE DEFICIENCY”)</u>			
1.	General	<u>Definitions</u>	

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	comments	<p>One commenter recommends a definition for “business acquisition” to prevent or reduce inconsistent interpretation and reporting by issuers.</p> <p>Three commenters recommend a clear definition be provided for “date of acquisition” in the context of a business acquisition. One commenter recommends that it be defined as the date that management attains the ability to influence or alter the policies, procedures and otherwise exert control over the daily operations of the acquired company.</p> <p>Two commenters believe that the discussion of the term “reasonable” in the second paragraph of sec. 6.3 of the Companion Policy is not adequate and recommend that a definition of “reasonable assurance” be added to the Proposed Materials. One commenter believes the CSA should adopt the SEC definition of this term.</p> <p><u>Other</u></p> <p>One commenter notes that the scope limitation available in paragraph 2.3(1)(c) of the Instrument is limited to “a business that the issuer acquired...”. The commenter raises concern that this may cause some confusion in the case of an RTO on whether the scope limitation is available. The commenter recommends that a definition of the term “acquired” be included based on an accounting definition of the term.</p> <p>One commenter recommends definitions for “remediation” and “mitigation” since the commenter has found that these terms are used interchangeably by certifying officers, directors, business process owners and staff employees without consideration to what they really mean.</p>	<p>We do not believe that definitions for “business acquisition”, “date of acquisition” and “reasonable assurance” are necessary because those terms are used in a manner consistent with their use in other national instruments and are generally understood.</p> <p>We acknowledge the comments but do not believe additional guidance is necessary. Paragraph 3.3(1)(c) does not apply to an RTO. An issuer that becomes a reporting issuer through an RTO may use the IPO/RTO form of certificate.</p> <p>We have provided additional guidance in subsection 9.1(3) of the Companion Policy.</p>
2.	Definition of “ICFR”	<p>One commenter notes that the definition of ICFR utilizes in part the words “regarding the reliability of financial reporting <i>and</i> [emphasis added] the preparation of financial statements in accordance with the issuer’s GAAP”. The commenter recommends that the CSA clearly indicate that ICFR be limited to the preparation of financial statements in accordance with GAAP and does not include financial information in reports or filings outside the financial statements.</p> <p>One commenter disagrees with the inclusion and references to “unauthorized expenditures” and “unauthorized acquisition, use and disposition of assets” and believe that these aspects should be removed from the Instrument and Companion Policy since financial transactions can be appropriately accounted for irrespective of whether they were properly approved. Ensuring approvals are in accordance with financial authorities, and safeguarding assets are stewardship concerns, not risks to reliable financial reporting.</p>	<p>We have provided additional guidance in section 4.3 of the Companion Policy.</p> <p>We do not agree that the noted references should be removed from the Instrument or Companion Policy. The definition of ICFR, consistent with the use of the term in other literature, includes reference to policies and procedures designed to prevent and detect unauthorized acquisition, use, or disposal of assets.</p>

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4. PART 7 – EXEMPTIONS			
1.	General comments	<p>One commenter recommends that subsidiary reporting issuers which do not have equity securities trading on a marketplace and whose parent company is subject to and complies with the Instrument should be exempt. Reasons cited:</p> <ul style="list-style-type: none"> • exemption would parallel the existing exemptions in MI 52-110 and NI 58-101; and • requiring certificates for these types of reporting issuers which do not have equity investors would result in considerable implementation costs with no corresponding benefit for investors. <p>One commenter recommends an exemption for companies, regardless of size, that issue only debt securities. Reasons cited include:</p> <ul style="list-style-type: none"> • holders of debt securities generally focus on a company’s solvency and primarily rely on trustees and rating agencies; and • the role that rating agencies play in valuing risk are regularly updated. <p>One commenter recommends an exemption for asset-back securities issuers given the nature and purpose of these types of issuers. The commenter further noted that this would be consistent with the US approach.</p> <p>One commenter recommends that the Instrument include an “existing exemptions” part similar to the one contained in Part 13.2 of NI 51-102.</p>	<p>We acknowledge the comments and believe that the changes to the requirements for venture issuers, which includes debt only issuers, addresses these comments.</p> <p>We do not agree that an exemption should be provided.</p> <p>We do not agree that an exemption for issuers of asset-backed securities (ABS issuers) should be included in the instrument. We will consider applications by ABS issuers for relief from the continuous disclosure requirements contained in NI 51-102 on a case-by-case basis. If an ABS issuer is granted relief from the requirements in NI 51-102, we will generally recommend corresponding relief from the certification requirements in NI 52-109. The relief will generally include a condition that the ABS issuer file alternative forms of certificate, similar to the certificates filed in the US. For an example of this type of relief, please see <i>In the Matter of Falcon Trust/Fiducie Falcon</i> dated October 17, 2005.</p> <p>We do not believe an “existing exemptions” provision is necessary. If an issuer has previously received an exemption order relating to MI 52-109, the issuer may</p>

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			continue to rely on the order in accordance with its terms. The repeal and replacement of MI 52-109 with NI 52-109 will not to affect the validity of existing exemption orders.
5. PART 8 – EFFECTIVE DATE			
1.	General comments	<p><u>Effective Date</u></p> <p>Two commenters support the proposed effective date of June 30, 2008, as long as the final version of the Instrument is published by the end of 2007. If the final Instrument is published later than December 31, 2007, one commenter recommends delaying the effective date to December 31, 2008.</p> <p>Two commenters recommend the implementation date be for years ended after June 30, 2009. Reasons cited include:</p> <ul style="list-style-type: none"> • the extension would allow issuers to undertake effective compliance activities to be based on final certification requirements instead of engaging valuable time and limited resources to comply with proposed requirements that may be further amended. <p>Reasons cited for later implementation dates are as follows:</p> <ul style="list-style-type: none"> • if, based on final rules, changes are necessary to existing certification processes then such changes can be implemented at the start of the fiscal year to which the new rules apply. <p>One commenter believes it may be more appropriate if the effective date is for years ending after December 31, 2008 since the proposal is still in the comments stage and there may not be sufficient time to make the appropriate adjustments required once finalized.</p> <p><u>Staggered Implementation</u></p> <p>Two commenters recommend that a staggered implementation date for the Instrument would be a more appropriate way to reduce the requirements. Reasons cited include:</p> <ul style="list-style-type: none"> • recognizes the varying resources and expertise of different issuers in complying with the rules; and • smaller issuers have fewer dedicated resources to undertake these activities. 	<p>We are proposing a new effective date of December 15, 2008.</p> <p>We acknowledge the comments but do not agree that there is a need for staggered implementation.</p>

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6. ANNUAL AND INTERIM CERTIFICATES			
1.	General certificate comments	<p><u>Situational modifications to certificates</u> One commenter supports the proposal that CEOs and CFOs amend their certificates in an “except for” manner when weaknesses in DC&P and ICFR are disclosed in the MD&A.</p> <p>One commenter requested one master form that assigns a number to each requirement and then delete numbers/ requirements not required in subsequent forms.</p> <p>One commenter believes the forms should be more flexible and allow for modifications that will more adequately reflect a CEO and CFO’s assessment of ICFR and DC&P design and effectiveness.</p> <p><u>Disclosure about changes in ICFR</u> One commenter recommends that the Form requirement to report changes in ICFR in the MD&A should also be embedded in the Instrument as the commenter believes that it is inappropriate to embed disclosure requirements within forms.</p> <p>Three commenters note that paragraph 5.2 of the annual and interim certificate seems to require a positive obligation to identify and disclose all reportable deficiencies in the design of ICFR on an interim basis. The commenters do not believe that this interim obligation is consistent with the approach adopted by the SEC which does not require an evaluation of the effectiveness of the design of ICFR on an interim basis even for its domestic issuers. The commenters feel that this proposed approach is unreasonable as a quarter review or evaluation would impose considerable additional costs and burdens on issuers. The commenters recommend that clarification be made that the requirement to provide the disclosure in paragraph 5.2 of the annual certificate does not require an issuer to evaluate the effectiveness of the design of its ICFR on an interim basis.</p> <p>Two commenters note the paragraph titled, Reporting of changes in ICFR, requires the issuer to disclose in the MD&A “any change in the issuer’s ICFR that occurred during the period ... that has materially affected, or is reasonably likely to materially affect, the issuer’s ICFR.” The commenters believe clear guidelines and examples of what should be disclosed should be provided.</p> <p><u>Other</u> One commenter recommends guidance on whether the paragraphs within the certificates</p>	<p>We acknowledge the comments but do not propose to allow any changes to the certificates.</p> <p>We acknowledge the comment but do not believe a change is required as the Forms represent a part of the Instrument.</p> <p>Disclosure of the material weakness is required for both interim and annual periods. We do not agree that further clarification is necessary.</p> <p>We acknowledge the comment and have provided additional guidance in Part 11 of the Companion Policy.</p> <p>We have amended the Instrument to clarify that paragraphs</p>

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		<p>can, or should be, renumbered when an issuer utilizes one of the various exemptions.</p> <p>Two commenters believe the wording of the certificates should be changed from “I have reviewed the issuer’sstatements ...for the financial period ended.” to “I have reviewed the issuer’sstatements ...relevant to the financial period ended.”. The commenter believes confusion will arise when officers must certify operating effectiveness whether they should be testing controls that have occurred during the fiscal year or the controls that have been performed after the period close but pertain to the fiscal year.</p> <p>One commenter believes the wording in paragraphs 6(b)(iii) & (iv) should be changed from “relating to operation” to “relating to effectiveness”.</p> <p>Two commenters believe the proposed certification form is too long and complex and that paragraphs 5.2 to 5.4 should be removed. They believe conclusions should not be in the certificate as they can be found in the MD&A.</p> <p>One commenter believes it should be clear on the certificate which paragraphs (of Paragraphs 5.2-5.4) relate to the design accommodation for venture issuers and which are available as optional paragraphs for all issuers.</p>	<p>within the certificates should not be renumbered when an issuer utilizes various exemptions.</p> <p>We acknowledge the comments but do not agree a change is needed. We have provided additional guidance in section 7.11 of the Companion Policy.</p> <p>We acknowledge the comment but do not agree.</p> <p>We acknowledge the comment but do not propose any changes as conclusions regarding evaluation are not provided in the certificate. Management can explain their assessment in the MD&A.</p> <p>Paragraph 5.3 has been removed because of the proposed venture issuer basic certificate. The remaining optional paragraphs will be available to any issuer filing a full certificate.</p>
2.	Annual certificates	<p>Two commenters believe it is inconsistent to require design deficiencies to be remediated but to allow operating deficiencies to remain unremediated. The commenter recommends deleting “if any” from Form 52-109F1 6b(iv).</p> <p>One issuer believes that paragraph 7 of Form 52-109F1 should refer to reportable deficiency.</p> <p>One commenter noted that in paragraph 8 of the certificate one sentence says board of directors and audit committee and another says board of directors or audit committee. The commenter recommends the certificate use “or” as it is closer to the SOX 302 requirements.</p>	<p>We are no longer proposing to require remediation of material weaknesses relating to design.</p> <p>We acknowledge the comment but do not propose a change. Under NI 51-102 the board must approve the MD&A and would therefore be aware of any material weakness.</p> <p>We acknowledge the comment and propose to modify the certificate.</p>

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3.	Interim certificates	<p>One commenter believes that the disclosure in the interim MD&A about the control framework is not necessary because it should be assumed the reader has access to this discussion in your annual MD&A.</p> <p>One commenter notes that Form 52-109F2 does not require certification that any fraud has been reported to the auditors, board of directors or audit committee. The commenter believes that it is possible for management to become aware of a fraud between annual evaluations of ICFR and suggests that Form 52-109F2 should require disclosure of any fraud.</p>	<p>We are now requiring disclosure of the control framework used in the annual and interim certificates.</p> <p>The fraud disclosure in the annual certificate pertains to information obtained from the evaluation of the effectiveness of ICFR. Since there is no evaluation of ICFR on an interim basis a similar requirement is not included in Form 52-109F2. This does not preclude an audit committee from requesting certifying officers to notify them of any fraud identified between annual evaluations of ICFR.</p>
COMPANION POLICY COMMENTS			
7. <u>PART 3 – CERTIFYING OFFICERS</u>			
1.	Section 3.3 Delegation permitted	<p>One commenter recommends that a sentence be included in this part that references to the certifying officers and their actions and judgment in the Companion Policy include those employees and third parties to whom responsibility has been delegated under the supervision of the certifying officers.</p> <p>One commenter recommends that the fourth sentence in Part 3.3 be deleted since it should be left to the certifying officers’ judgment as to what skills an employee need have since the certifying officers have responsibility for design and evaluation of DC&P and ICFR.</p> <p>One commenter recommends that in each instance the Companion Policy states “the certifying officers should or shall”, a qualification or cross-reference to Part 3.3 <i>Delegation permitted</i> should be included.</p>	<p>We believe the last sentence of section 6.5 of the Companion Policy addresses this comment.</p> <p>We acknowledge the comment but believe the sentence is useful in reminding officers to consider what skills an employee has when determining whether delegation of assigned responsibility can occur.</p> <p>We acknowledge the comment, but do not believe that a cross-reference is necessary.</p>
8. <u>PART 5 – CONTROL FRAMEWORKS FOR ICFR</u>			
1.	General comments	<p><u>General</u></p> <p>One commenter thinks the guidance on applicable “control framework” is misleading considering that issuers are not required to adopt a specific control framework while at the same time requiring disclosure if one is used.</p>	<p>We acknowledge the comments. We are proposing the required use of a control framework to design ICFR and disclosure of the name of the control framework used.</p>

#	Theme	Comments	Responses
		<p>One commenter recommends more specific guidance in Part 5.3 tailored to the three control framework types mentioned in the Companion Policy.</p> <p>One commenter recommends additional terms and conditions regarding the use of a control framework for companies with foreign subsidiaries.</p> <p><u>Disclosure about use of a control framework</u> Two commenters believe that the disclosure in the MD&A of a statement identifying the control framework the certifying officers used to design the issuer’s ICFR or a statement that a control framework was not used is unnecessary.</p> <p>One commenter is concerned that issuers may not be comfortable disclosing that they have not adopted a control framework, nor would most small issuers have the expertise or desire to assume the responsibility for determining the sufficiency of control criteria to be used in the design and evaluation of ICFR.</p> <p>One commenter recommends that an issuer be required to certify only that an internal control framework has been used because the requirement to disclose the control framework used may cause small companies to do more work than necessary as certain areas of a control framework may not apply to all companies.</p> <p>One commenter believes that since there is no requirement to employ a control framework, a negative confirmation is inappropriate as it may attract a negative perception in the mind of readers and may indirectly “suggest” that a control framework should be used.</p> <p>One commenter believes disclosing the control framework used or whether a control framework has not been used is considered useful information for users of an issuer’s annual filings to make an assessment of an issuer’s commitment to establishing ICFR.</p> <p>One commenter believes the MD&A disclosure requiring the scope and description of the control framework as well as the description of the reportable deficiency and the remediation work is too lengthy. The commenter believes a more general description focusing on the conclusion rather than the process would be more meaningful for investors.</p> <p><u>Guidance regarding information technology controls</u> One commenter suggest the addition of a reference to guidance on information technology developed by the Institute of Internal Auditors and another thought it would be useful to</p>	<p>We acknowledge the comments. We are proposing the required use of a control framework to design ICFR, and disclosure of the name of the control framework used.</p> <p>We acknowledge that there may be other suitable control frameworks available, however, we have not made reference to all that are available.</p>

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		<p>specify the value that can be given to the IT Governance Institute recommendations on this matter</p> <p>One commenter believes that the reference in Part 5.2 to COBIT was intended to be a reference to IT Control Objectives for SOX, and recommends that this reference be changed.</p> <p>One commenter believes that the Companion Policy fails to attribute to IT the value it deserves, and more specific guidance in this regard should be given, including some with respect to the COBIT framework in order to ensure adequate IT coverage by issuers.</p>	<p>We agree with the comment and have made a corresponding change in the Companion Policy.</p> <p>We acknowledge the comment but do not believe additional guidance is needed. We think that it is appropriate to let management use their judgment, based on the issuers' facts and circumstances, to determine which IT controls will be included in the scope of their design of DC&P and ICFR.</p>
9. PART 6 – DESIGN OF DC&P AND ICFR			
1.	Section 6.1 General	<p>One commenter recommends that the term “design” should not include “implementing the controls policies and procedures that comprise DC&P and ICFR.” Reasons cited include:</p> <ul style="list-style-type: none"> • the term “design” that is proposed is different than the dictionary definition; • Part 6.15 of the Companion Policy does not refer to evidentiary documentation to support the “implementation” of controls; and • under Part 8.4(2) of the Companion Policy the issuer only needs to have committed to a remediation plan, as opposed to actively implemented the remediation. <p>If “design” continues to include implementation then guidance should be provided with regard to what it means to implement a control and each section in the Companion Policy should be revised so that it is readily apparent from the headings that design includes implementation.</p> <p>One commenter recommends the Companion Policy clarify that “implementation” does not mean that the controls have been adhered to or work as designed.</p> <p>One commenter recommends that the definition of “design” should be included in Part 1.1 of the Instrument.</p>	<p>We acknowledge the comment but do not agree with the commenter. We continue to believe that implementation of the design is necessary in order to certify that the issuer has “designed” DC&P or ICFR. We have provided additional guidance on what implementation means in section 6.1 of the Companion Policy.</p> <p>We have provided additional guidance on what implementation means in section 6.1 of the Companion Policy.</p> <p>We acknowledge the comment but do not believe that a formal definition is needed. The term “design” is discussed in Part 6 of the Companion Policy.</p>
2.	Section 6.3 Reasonable	<p>One commenter recommends that the term “reasonable assurance” be clarified. The commenter notes that the SEC has interpreted the term as not meaning absolute assurance</p>	<p>We have considered the comments and have provided additional guidance regarding reasonable assurance in</p>

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	assurance	<p>but rather such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs. The commenter recommends that this standard be adopted, which is for all intent and purposes the Canadian corporate law standard applicable to the conduct of directors.</p> <p>One commenter recommends that it be clear that the certification rules and internal control process and certifications are not guarantees to investors that there will be no errors or deficiencies. The intent is to provide “reasonable but not absolute” assurances with regard to errors occurring in the disclosure.</p> <p>One commenter requests clarity on the intention of the guidance regarding “reasonable assurance”.</p>	section 6.3 of the Companion Policy.
3.	Section 6.5 Risk considerations for designing DC&P and ICFR	<p><u>Top-down, risk-based approach</u></p> <p>One commenter would prefer that Part 6.5(2) state that certifying officers first identify and “assess” risks faced by the issuer, rather than use the word “understand”.</p> <p>One commenter believes that the risks identified in Part 6.5(2) should only be financial reporting risks.</p> <p>One commenter recommends deleting the last sentence in Part 6.5(2) because they do not think it is accurate as stated.</p> <p><u>Fraud risk</u></p> <p>One commenter believes that including “a combination of employees” in the definition of areas where fraud could occur in Part 6.5(3) significantly increases scope. Since segregation of duties is a primary fraud prevention control, the inclusion of “a combination of employees” perhaps makes it impossible for many issuers, particularly smaller issuers, to design controls to the standard implied by including this concept in the policy.</p> <p>One commenter recommends further guidance in Part 6.5(3) regarding fraud. In particular, since misappropriation of assets must be covered, it should take into account employee theft and fraud that would have the impact of reducing the company’s profitability without necessarily causing a misleading or erroneous disclosure of financial information.</p> <p>One commenter believes that assessing the effectiveness of an internal control system that must take into account the risk of collusion among employees is not realistic.</p>	<p>We have enhanced the guidance in subsection 6.6(2) of the Companion Policy to address this comment.</p> <p>We disagree with this comment since this guidance pertains to DC&P and ICFR.</p> <p>We have enhanced the guidance in subsection 6.6(2) of the Companion Policy to address this comment.</p> <p>We have amended our guidance to remove the reference to “a combination of employees”.</p> <p>We acknowledge the comment but do not believe additional guidance is necessary.</p> <p>We acknowledge the comment but we do not agree.</p>

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4.	Section 6.6 Control environment	<p>One commenter states that Part 6.6(3)(b) should be removed because the noted items do not have a place in the certification requirements.</p> <p>Two commenters recommend that Part 6.6(3)(c) be limited to those persons related to DC&P, ICFR, the financial reporting process, executive management and others that a reasonable official would expect to contribute to the risk of material misstatement in the external-use financial statements.</p> <p>One commenter recommends further guidance on how controls at the environment level impact controls at the process level.</p>	<p>We acknowledge the comments but have decided not to make any changes to our previously proposed guidance.</p>
5.	Section 6.8 Controls, policies and procedures to include in ICFR design	<p>Two commenters recommend deleting “reporting transactions” in 6.8(a) as typically individual transactions are not publicly reported.</p> <p>One commenter recommends including “authorizing and recording” of journal entries and non-routine transactions in Part 6.8 of the Companion Policy.</p>	<p>We have amended our guidance to remove the word “reporting” in this section.</p> <p>We have enhanced the guidance to address this comment.</p>
6.	Section 6.9 Identification of significant accounts and relevant assertions in the context of a top-down, risk-based approach.	<p><u>General</u></p> <p>One commenter questions the utility of the approach adopted that requires the identification and design of ICFR design components to address every relevant assertion for every significant account of an issuer because it does not seem to be a “top-down, risk-based approach. The commenter thinks the use of the term “assertions” is potentially confusing.</p> <p><u>Considerations for identifying significant accounts</u></p> <p>One commenter recommends that in paragraph 6.9(3) there should be a reference to significant process changes that could make a previously insignificant account significant in the current year.</p> <p>One commenter recommends that 6.9(3)(i) be deleted since any change in accounts should be captured when considering items (a) through (h).</p> <p><u>Assertions</u></p> <p>One commenter notes that Part 6.9(4) identifies assertions that are financial statement assertions used by their external auditors in the annual financial statement audits and are different from the COSO assertions. The commenter states that the purpose of the COSO</p>	<p>Since the guidance refers to the identification of accounts that are significant and only assertions that are relevant, this guidance is consistent with a top-down, risk-based approach.</p> <p>We refer the commenter to section 6.13 of the Companion Policy which provides guidance on maintaining design.</p> <p>We have removed this guidance from the Companion Policy.</p> <p>We have provided additional guidance in subsection 6.10(4) of the Companion Policy to address these comments.</p>

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		<p>assertions versus financial statement assertions is quite different. The commenter requests clarity on whether the CSA would be imposing the use of the financial statement assertions rather than the COSO internal control assertions, or would there be flexibility on the use of assertions taking into consideration the reporting issuer’s choice of control framework for use in its internal controls review and evaluation.</p> <p>One commenter notes that the assertions provided in 6.9(4) does not include all assertions in section 5300.21 of the CICA Handbook (for example, accuracy is omitted) and believes that more judgment needs to be given to the certifying officers to determine what may be relevant assertions.</p> <p><u>Identifying controls, policies and procedures for relevant assertions</u> One commenter believes that the reference to “an appropriate combination” in Part 6.9(6) should be removed because this will require issuers to design and test preventive controls when a detective control may provide sufficient assurance that there is no deficiency in ICFR.</p> <p>One commenter requests clarification for the third paragraph in Part 6.9(6) to explain why the certifying officers should consider the interaction of components in Part 6.8 of the Companion Policy.</p>	<p>We have amended our discussion in subsection 6.10(6) of the Companion Policy to address this comment.</p> <p>We believe the example provided in subsection 6.10(6) of the Companion Policy is sufficient in explaining how interaction of components is considered.</p>
7.	Section 6.10 ICFR design challenges	<p><u>Board expertise</u> Two commenters request clarification on what is meant by the board being “actively engaged in shaping and monitoring” the issuer’s control environment. The commenters indicate that references to the role of the board need to reflect an oversight role rather than the active design and test role, and that board members should not usurp the role of the certifying officers in the day to day designing or testing of these controls.</p> <p>One commenter states their view that the role of the board of directors and the audit committee appear to be overstated in the Companion Policy. For example the commenter notes the following:</p> <ul style="list-style-type: none"> • the last sentence of Part 6.10(a), the word “extensive” should be replaced with “increased”; and • the statement in Part 6.10(c) that directors with appropriate expertise and objectivity might be able to perform some compensating procedures overstates the board’s role. 	<p>We acknowledge the comments, but do not believe that clarification is necessary. The components of a control environment identified in subsection 6.7(2) are areas where the board of directors should be actively engaged in shaping and monitoring. The amount of oversight needed by a board of directors at an issuer would depend on the issuers’ facts and circumstances.</p> <p>We acknowledge the comment and we have removed the noted items from section 6.11 of the Companion Policy</p>

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		<p><u>Qualified personnel</u> One commenter notes that 6.10(d) states that if an issuer uses its external auditor to “compensate for skills which would otherwise be addressed by hiring qualified personnel or outsourcing expert advice” that this is a mitigating activity. The commenter requests clarification because it is not clear from this statement whether the CSA believes an issuer who needs to consult on most technically complex accounting matters should be disclosing a reporting deficiency. The SEC has indicated that consultation in and of itself is not deemed an ICFR deficiency.</p> <p>One commenter recommends that the last sentence in the first paragraph in Part 6.10(d) be redrafted to state “could provide a similar <u>review of the</u> control to address a lack of qualified personnel” because the sentence as currently drafted appears to contradict the last sentence of the second paragraph in 7.4.</p> <p><u>Auditor independence</u> One commenter recommends a reference in Part 6.10(d) to the need to consider the impact on the auditor’s independence of engaging the auditors to perform such services.</p> <p>One commenter recommends redrafting or eliminating the examples in Part 6.10(d) because some of the examples of services that might be performed by an issuer’s external auditor are specifically prohibited under auditors’ rules of professional conduct</p> <p>One commenter recommends reconsidering the material in Part 6.10(d) and / or reference auditor independence requirements and the size limitation for the utilization of auditors that are not independent. The commenter also observes that where auditors are not independent that this might well represent a “reportable deficiency” as defined.</p>	<p>We have provided additional guidance in paragraph 6.11(d) of the Companion Policy.</p> <p>We have removed this sentence in paragraph 6.11(d) of the Companion Policy.</p> <p>We have amended paragraph 6.11(d) in the Companion Policy to refer to auditor independence rules.</p>
8.	Section 6.13 Maintaining design	<p>One commenter disagrees that the scope and quality of monitoring should be considered by the certifying officers, rather it should be the results of such monitoring that should be considered.</p> <p>One commenter recommends ending the sentence in 6.13(d) at “auditors”, as an issuer’s auditor may perform other services such as quarterly reviews or an audit of ICFR.</p>	<p>We do not agree. No change has been made to the guidance.</p> <p>We have provided additional guidance in section 6.13 of the Companion Policy to address this comment.</p>
9.	Section 6.15 Documenting design	<p>One commenter recommends that the items listed in Part 6.15(4) be expanded to include a listing of all deficiencies in design and operational effectiveness identified.</p>	<p>We acknowledge the comments but do not believe any changes are necessary. Paragraph 6.15(4)(h) refers to the certifying officer’s conclusions on whether a material</p>

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		<p><i>* General comments about the nature and extent of guidance relating to documentation are included in “Specific Requests for Comments” section under the theme “Appropriateness of nature and extent of guidance in the Companion Policy”.</i></p>	weakness relating to design exists at the end of the period.
10. PART 7 – EVALUATION OF DC&P AND ICFR			
1.	General comments	<p>One commenter recommends that the heading of Part 7 be changed to “Evaluating Effectiveness of DC&P and ICFR” since it deals with evaluating effectiveness rather than of design.</p> <p>One commenter recommends that it be made more clear to certifying officers and boards of reporting issuers what level of work, if any, is necessary for them to demonstrate that they have satisfied their responsibilities in evaluating the effectiveness of their DC&P and ICFR under the Instrument.</p>	<p>We have amended the heading to address this comment.</p> <p>We acknowledge the comments but have not provided any additional guidance since the level of work will depend on the facts and circumstances for each issuer.</p>
2.	Section 7.2 Scope of evaluation	<p>One commenter states that the term “evaluation” is not appropriate because evaluation is occurring in all phases. The commenter recommends that this phase be referred to as the “performance” or “operation” phase.</p> <p>Three commenters recommend that the third sentence should have the word “not” removed. One commenter notes that the current wording implies that not employing a top-down approach gives more flexibility.</p>	<p>We have amended the heading to address this comment.</p> <p>We have provided additional guidance in section 7.2 of the Companion Policy to address this comment.</p>
3.	Section 7.3 Judgment	<p>One commenter recommends that additional emphasis be provided that not all evaluation tools are appropriate for each control and that DC&P and ICFR evaluations can be conducted in different manners with different levels of documentation.</p>	<p>We acknowledge this comment but do not agree that additional emphasis is necessary.</p>
4.	Section 7.4 Knowledge, supervision and objectivity	<p>One commenter requests clarity on whether the needs for objectivity only apply to individuals under the certifying officers’ supervision but not to the certifying officers themselves in Part 7.4. The commenter also questions whether the objectivity expectations in Part 7.4 are achievable with the smaller size of many Canadian domestic issuers</p> <p>One commenter agrees with the statement “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”. However, the commenter believes that issuers could struggle with how to apply this concept as there will be situations (i.e., the financial</p>	<p>We acknowledge the comments. We have included an enhanced discussion in section 7.10 of the Companion Policy.</p>

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		reporting process), where the certifying officers perform the control. The commenter recommends guidance on the activities of the audit committee or the board of directors where senior management are the people that perform DC&P and ICFR functions. Such guidance could be similar to the last paragraph of Part 8.7(2).	
5.	Section 7.5 Use of external auditor or other independent third party	<p>One commenter recommends that the use of external auditor be disclosed in a separate section due to its importance and emphasize the following key points:</p> <ul style="list-style-type: none"> • the work of external auditors’ can be used to corroborate the certifying officers’ conclusions on the effectiveness of disclosures on DC&P and ICFR, but not replace their responsibility for the process; and • a robust, independent and objective review process conveys to investors that the certifying officers, board of directors and the audit committee are committed to the process, which in turn enhances the company’s corporate governance process. <p>One commenter recommends deleting the word “independent” since third parties, other than the auditor, do necessarily need to be independent.</p> <p>One commenter recommends that references be deleted relating to certifying officers having to “ensure” and be “actively involved” in setting the procedures that an independent auditor or consultant uses.</p> <p>One commenter believes that section 7.5 appears to contain an error in logic. If management separately engages the external auditor to perform specified ICFR related procedures, the certifying officers should be able to use the results of those procedures irrespective and without consideration of whether or not the external auditor uses those results as part of their statutory audit.</p>	<p>We acknowledge the comment but do not believe that additional disclosure regarding the use of an external auditor is necessary or appropriate in the Companion Policy.</p> <p>We have provided additional guidance in section 7.5 of the Companion Policy to address this comment.</p> <p>We disagree with the commenter. No changes have been made to the guidance.</p> <p>We have provided additional guidance in section 7.5 of the Companion Policy to address this comment.</p>
6.	Section 7.6 Evaluation tools	One commenter believes that many of the evaluation tools outlined in section 7.6 of the Companion Policy are not applicable to DC&P evaluations. For example, the commenter believes that reperformance is not an appropriate tool for evaluating a control that is generally considered a DC&P.	We acknowledge the comments but disagree since any of the tools outlined may be applicable to a DC&P evaluation depending on the facts and circumstances of the issuer.
7.	Section 7.9 Reperformance	Two commenters state that there are two approaches to the evaluation of ICFR – testing (reperformance) and management evaluation. Management evaluation involves the documentation by the control owner that the control was executed as it should have been or escalation of the control was not properly executed. The commenters recommend this part be redrafted so as not to appear to exclude the management evaluation process as an appropriate method to evaluate the effectiveness of ICFR.	We have provided additional guidance in section 7.9 of the Companion Policy to address this comment.

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8.	Section 7.12 Documenting evaluations	<i>* General comments about the nature and extent of guidance relating to documentation are included in “Specific Requests for Comments” section under the theme “Appropriateness of nature and extent of guidance in the Companion Policy”.</i>	
11. PART 8 – IDENTIFICATION AND DISCLOSURE OF A REPORTABLE DEFICIENCY			
1.	General comments	<p>One commenter recommends that the CSA emphasize that disclosure of information on control weaknesses are intended to be leading indicators of potential deficiencies in DC&P and ICFR. The commenter has seen management take the view that disclosure of material weaknesses in DC&P and ICFR should only be made when there is evidence of an actual error or control breakdown, such as a restatement.</p> <p>One commenter states that the level of guidance provided under Part 8 with respect to what represents a reportable deficiency relating to design, and a reportable deficiency relating to operation, is sufficient as proposed.</p>	<p>We are no longer proposing to use the term “reportable deficiency”, and instead propose to use the term and related definition of “material weakness”. As a result we have revised our guidance to be similar to that included in the SEC’s Commission Guidance Regarding Management’s Report on ICFR. We further note that section 9.2 of the Companion Policy clarifies that the severity of a deficiency in ICFR does not depend on whether a misstatement actually occurred but rather on whether there is a reasonable possibility that ICFR will fail to prevent or detect a misstatement.</p>
2.	Section 8.1 ICFR – reportable deficiency	<p>One commenter interprets the second sentence in the first paragraph to imply that if an issuer only has one reportable deficiency, the issuer does not have to provide a description of this deficiency in its interim or annual MD&A. The commenter recommends that this be clarified since this is inconsistent with other statements in the Companion Policy.</p> <p>One commenter recommends providing an example in Part 8.1(3) if a reportable deficiency relating to design to enhance the guidance.</p>	<p>We acknowledge the comment and have amended Part 9 of the Companion Policy to clarify this point.</p> <p>The identification of a material weakness is different for each issuer based on their facts and circumstances. We believe that an example could unintentionally be viewed as prescriptive.</p>
3.	Section 8.2 Assessing significance of deficiencies in ICFR	One commenter recommends expanding this part to provide a discussion of compensating controls for control deficiencies including examples.	We acknowledge the comment but do not believe that discussion of specific compensating controls is appropriate since it will depend on the facts and circumstances of each issuer.
4.	Section 8.3 Strong indicators of a reportable	Two commenters recommend that the final list of strong indicators of a reportable deficiency be consistent with the SEC’s list of indicators of a material weakness.	We are no longer proposing to use the term “reportable deficiency”, and instead propose to use the term and related definition of “material weakness”. As a result we have

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	deficiency	<p>Three commenters indicate that, although an effective audit committee of the board is a very important aspect of the overall control environment, it seems inappropriate to suggest that management could evaluate the effectiveness of the audit committee since they are not in a position to control their actions.</p> <p>One commenter disagreed that the refiling of an issuer’s annual or interim filings because of a material misstatement in its filings is a strong indicator of a reportable deficiency. ICFR can at best only reduce the risk of material misstatement, it cannot eliminate it.</p> <p>Two commenters disagreed that identification by the issuer’s external auditor of a material misstatement is a strong indicator of a reportable deficiency.</p> <p>Two commenters recommend the removal of “control deficiencies that have been identified and remain unaddressed after some reasonable period of time” as this is an extremely low threshold and may result in unintended deficiencies requiring remediation.</p> <p>One commenter recommends removing “for complex entities in highly regulated industries, an ineffective regulatory compliance function” as this is not useful.</p> <p>One commenter requests clarification on what is meant by “regulated industry”.</p> <p>One commenter recommends that the policy clearly state that a list of indicators of a reportable deficiency cannot be inclusive of all situations which could indicate reportable deficiencies.</p> <p>One commenter recommends that section 8.3 should be removed in its entirety because selecting these few factors and attaching a strong presumption of deficiency of a company’s ICFR is inconsistent with the application of judgment</p> <p>One commenter believes there is confusion amongst issuers and investors as to the factors to be considered in determining deficiencies that require disclosure (“reportable deficiencies”).</p> <p>One commenter believes the issuer should only have to disclose a reportable deficiency and not have to provide a completion date for their remediation plan.</p> <p>One commenter believes in the case where an issuer has not completed a remediation plan an issuer should still be able to file a certificate as long as they describe the steps taken to</p>	<p>revised our guidance to be similar to that included in the SEC’s Commission Guidance Regarding Management’s Report on ICFR.</p>

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		address the reportable deficiency, even if a remediation plan hasn't been decided upon.	
5.	Section 8.7 Disclosure by venture issuers relying on the ICFR design accommodation	<p>One commenter notes that section 7050.04 of the CICA Handbook prohibits referencing the interim review unless the interim review report is included in the public document (which is a rare occurrence). The commenter recommends eliminating this inconsistency.</p> <p>One commenter recommends adding the concept of “another service provider” to the penultimate and last sentence in Part 8.7(2).</p>	We have removed this section from the guidance.
12. <u>PART 9 – ROLE OF DIRECTORS AND AUDIT COMMITTEE</u>			
1.	General comments	<p>One commenter recommends a stronger linkage and connection between the Instrument and NP 58-201. The commenter also suggests that the CSA state that the activities performed by the board in monitoring compliance with its code of business conduct, or if the board does not monitor business compliance, the explanation on how the board satisfies itself regarding compliance with its code, should be a key part of the assessment of ICFR design and effectiveness and a disclosable weakness if it is not done effectively.</p>	<p>We acknowledge the comment but do not believe a stronger linkage to NP 58-201 is necessary. A reference to NP 58-201 was already included in section 6.12 of the Companion Policy.</p> <p>We acknowledge the comment regarding the board monitoring compliance with its code of business conduct, but do not agree that this is a key part of the assessment of ICFR for all issuers, or that specific guidance on this topic is necessary or appropriate.</p>
2.	Section 9.1 Board of directors	<p>One commenter recommends clearly stating that the board is responsible for:</p> <ul style="list-style-type: none"> • a culture of integrity flowing from the CEO and CFO; • risk identification and management; and • internal control and management information systems. <p>One commenter expresses concern with the CSA prescribing the actions of directors and senior officers who are already the subject of fiduciary and other legal duties under corporate legislation.</p>	<p>While we acknowledge that the board will have a role in the areas noted, this guidance focuses on the certifying officers' responsibilities.</p> <p>Our guidance, while not prescriptive, is meant to assist market participants in interpreting the associated rules. Canadian securities legislation imposes duties and obligations on a variety of market participants, including issuers and their officers and directors, with a view to protecting investors and fostering fair and efficient capital markets. While we acknowledge that, in some cases, the duties and obligations imposed on officers and directors under Canadian securities legislation may be comparable to the duties and obligations that may exist under corporate</p>

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		<p>One commenter suggests that the board of directors be able to delegate to its audit committee the requirements for grasping the basis on which the certifying officers concluded that a specific deficiency or combination of deficiencies did or did not constitute a reportable deficiency.</p> <p>One commenter recommends that Part 9.1 of the Companion Policy be amended to contain language similar to 9.2 <i>Audit committee</i>.</p>	<p>legislation, the duties and obligations may differ significantly in the case of certain non-corporate issuers. Ultimately, we believe that market participants that wish to access Canadian capital markets should be subject to appropriate regulatory standards without regard to the issuer's choice of corporate form.</p> <p>Under NI 51-102, the board of directors must approve the issuer's annual financial statements and the annual MD&A and is not permitted to delegate the approval of such statements or MD&A to the audit committee. Therefore, 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 material weakness.</p> <p>NI 51-102 does permit the board to delegate the approval of an issuer's interim financial statements and interim MD&A to the audit committee. Accordingly, to the extent that an issuer's interim MD&A includes disclosure relating to ICFR, including disclosure relating to material weaknesses, the approval of such interim MD&A and the need to understand the basis for the conclusions contained within the interim MD&A may be delegated to the audit committee.</p> <p>We disagree with the commenter. No changes have been made to the guidance.</p>
3.	Section 9.2 Audit committee	<p>One commenter recommends clearly stating that the audit committee is responsible for:</p> <ul style="list-style-type: none"> • reviewing the disclosures provided in the MD&A; • assessing the reasonableness of the processes followed by the CEO and CFO to evaluate DC&P and ICFR; and • reviewing the issues raised in the evaluations performed by the CEO and CFO, the work of internal audit and the reports of external auditors. 	<p>We acknowledge the comment but do not agree that this information should be included in the Companion Policy since the guidance focuses on the certifying officers' responsibilities. Staff will review the issues raised as part of our ongoing review of corporate governance issues.</p>

#	Theme	Comments	Responses
4.	Section 9.3 Reporting of fraud	One commenter believes that it is unclear as to the intent of this guidance and requests further clarity. If the guidance is intended to ensure that both financial reporting fraud and misappropriation of assets are reported to the audit committee and board of directors, perhaps the paragraphs should be reversed and then the purpose clearly stated.	We have amended section 12.3 of the Companion Policy to address this comment.
13. <u>PART 10 – SUBSIDIARIES, VIE’S, PROPORTIONATELY CONSOLIDATED ENTITIES, EQUITY INVESTMENTS AND PORTFOLIO INVESTMENTS</u>			
1.	Section 10.2 Fair presentation	One commenter expresses concern that the proposed guidance could provide some certifying officers with an excuse to use the MD&A discussion to undermine their GAAP based financial statements when they don’t like the outcome of the application of GAAP.	We acknowledge the comment but believe that the guidance in sections 4.1(1) and 13.2 of the Companion Policy is clear.
2.	Section 10.3 Design and evaluation of DC&P and ICFR	<p>One commenter is concerned that it is not possible to meet the requirements in Part 10.3(6) because (i) certifying officers cannot ensure that the underlying entity’s financial statements are received on a timely basis since the certifying officer may have little or no influence over the timing, and (ii) the certifying officers may have little or no knowledge of the underlying entity’s accounting policies.</p> <p>One commenter recommends providing guidance in Part 10.3(6) to consider the significance of the underlying entity as some entities may not be significant to an issuer’s ICFR.</p>	<p>In our view, if an issuer is unable to perform the underlying procedures referred to in subsection 13.3(6) for a significant underlying entity, then the issuer may not be able to present its financial statements in accordance with GAAP.</p> <p>We have amended the discussion in subsection 13.3(6) to address this comment.</p>
14. <u>PART 13 – LIABILITY FOR CERTIFICATES CONTAINING MISREPRESENTATIONS</u>			
1.	General comments	<p>One commenter recommends that this section explicitly state liability for the board of directors. Reasons cited include:</p> <ul style="list-style-type: none"> • the board of directors’ approval of the issuer’s annual MD&A connects them directly to the certificates filed by the CEO and CFO and would introduce civil and/or criminal liability if misrepresentations were contained in these respective certificates; and • 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 and auditing matters. 	We acknowledge the comment but do not think additional discussion is necessary since Part 18 refers to existing securities law requirements and existing legal liability.

APPENDIX D

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) Except for an issuer that files certificates on Form 52-109FV1 *Certification of Annual Filings Venture Issuer Basic Certificate* and Form 52-109FV2 *Certification of Interim Filings Venture Issuer Basic Certificate*, your MD&A must also provide the information required in the following sections of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* and the following paragraphs of Form 52-109F1 *Certification of Annual Filings – Full Certificate*, if applicable:
- (i) *Section 3.2 of NI 52-109 and paragraph 5.2 of Form 52-109F1 – MD&A disclosure of material weakness;*
 - (ii) *Section 3.3 of NI 52-109 and paragraph 5.3 of Form 52-109F1 – Limitations on scope of design;*
 - (iii) *Paragraph 6 of Form 52-109F1 – Evaluation; and*
 - (iv) *Paragraph 7 of Form 52-109F1 – Reporting changes in ICFR;”*

4. **This amendment comes into force December 15, 2008.**