

## Chapter 5

# Rules and Policies

---

---

### 5.1.1 Notice of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* and Repeal of Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

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

AND

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

### Introduction

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

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

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

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

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

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

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

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

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

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

## Substance and Purpose

The purpose of the New Materials is to improve the quality and reliability of reporting issuers' annual and interim disclosure. We believe that this, in turn, will help to maintain and enhance investor confidence in the integrity of our capital markets. The New Materials require an issuer's chief executive officer (CEO) and chief financial officer (CFO), or persons performing similar functions to a CEO or CFO (certifying officers), to personally certify that, among other things:

- the issuer's annual filings and interim filings do not contain any misrepresentations;
- the financial statements and other financial information in the annual filings and interim filings fairly present the financial condition, results of operations and cash flows of the issuer;
- they have designed disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR), or caused them to be designed under their supervision;
- they have caused the issuer to disclose in its MD&A any change in the issuer's ICFR that has materially affected the issuer's ICFR; and
- on an annual basis they have evaluated the effectiveness of the issuer's DC&P and ICFR and caused the issuer to disclose their conclusions about the effectiveness of DC&P and ICFR in the issuer's MD&A.

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

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

## Background

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

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

## Summary of Written Comments Received by the CSA

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

## Summary of Changes to the April 2008 Materials

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

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

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

## Consequential Amendments

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

## Withdrawal of Notices and Revocation of Local Exemption Instruments

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

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

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

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

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

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

## Questions

Please refer your questions to any of:

### *Ontario Securities Commission*

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

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

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

### *British Columbia Securities Commission*

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

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

## Rules and Policies

---

### *Alberta Securities Commission*

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

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

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

### *Manitoba Securities Commission*

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

### *Autorité des marchés financiers*

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

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

August 15, 2008

**APPENDIX A**  
**LIST OF COMMENTERS**

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

APPENDIX B

SUMMARY OF COMMENTS AND CSA RESPONSES

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

**Table of Contents**

**General Comments**

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

**Instrument Comments**

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

**Companion Policy Comments**

7. Part 1 – General
8. Part 5 – Control Frameworks for ICFR
  1. Section 5.2 Scope of control frameworks
9. Part 6 – Design of DC&P and ICFR
  1. Section 6.1 General
  2. Section 6.3 Reasonable assurance
  3. Section 6.6 Risk considerations for designing DC&P and ICFR
  4. Section 6.11 ICFR design challenges
  5. Section 6.15 Documenting design
10. Part 7 – Evaluating Operating Effectiveness of DC&P and ICFR
  1. Section 7.5 Use of external auditor or other third party
  2. Section 7.8 Walkthroughs
  3. Section 7.10 Self-assessments
  4. Section 7.11 Timing of evaluation
11. Part 8 – Use of a Service Organization or Specialist for an Issuer's ICFR
  1. Section 8.1 Use of a service organization
  2. Section 8.5 Use of a specialist
12. Part 9 – Material Weakness
  1. Section 9.1 Identifying a deficiency in ICFR
  2. Section 9.6 Disclosure of a material weakness
  3. Section 9.7 Disclosure of remediation plans and actions undertaken
13. Part 10 – Weakness in DC&P that is Significant
  1. Section 10.1 Conclusion on effectiveness of DC&P if a weakness exists that is significant
  2. Section 10.3 Certification of DC&P if a material weakness in ICFR exists
14. Part 11 – Reporting Changes in ICFR
  1. Section 11.1 Assessing materiality of a change in ICFR
15. Part 12 – Role of Board of Directors and Audit Committee
  1. Section 12.2 Audit committee
16. Part 13 – Certain Long Term Investments
  1. Section 13.3 Design and evaluation of DC&P and ICFR
17. Part 14 – Business Acquisitions
  1. Section 14.1 Access to acquired business

18. Part 15 – Venture Issuer Basic Certificates

1. General comments
2. Section 15.3 Voluntary disclosure regarding DC&P and ICFR

**Legend:**

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

#	Theme	Comments	Responses
<b>1. <u>GENERAL COMMENTS</u></b>			
1.	General support for the principles underlying the Instrument and Companion Policy as published	<p>Thirteen commenters express their general support for the approach taken.</p> <p>Four commenters express their support for the venture issuer basic certificate.</p>	We thank the commenters for their support.
2.	General concern regarding the Instrument and Companion Policy as published	<p><u>Costs of Compliance</u> One commenter believes that costs of compliance outweigh any potential gains.</p> <p><u>Absence of Attestation Requirement</u> Two commenters do not support the absence of a requirement for an external audit opinion.</p>	<p>We believe that the proposed revisions to National Instrument 52-109 adequately address the concerns raised and the benefits to the marketplace as a whole outweigh the costs.</p> <p>We continue to believe the benefits associated with requiring an issuer to obtain from its auditor an opinion on the effectiveness of ICFR do not exceed the costs.</p>
<b>INSTRUMENT COMMENTS</b>			
<b>2. <u>PART 1 – DEFINITIONS AND APPLICATION</u></b>			
1.	Definitions	<p><u>Weakness in DC&amp;P</u> Two commenters question whether the term material weakness should apply to DC&amp;P in addition to ICFR.</p> <p>Four commenters believe a definition should be provided for a weakness that is significant. One commenter requests clarification as to whether the term “significant” is a lower threshold than “material weakness”.</p> <p><u>Material Weakness</u> Four commenters express their support for aligning the definition of “material weakness” with the SEC’s definition and not requiring remediation of a material weakness.</p> <p>One commenter suggests amending the definition of material weakness to clarify what is meant by “material”.</p>	<p>We have proposed to adopt the term “material weakness” as defined by the SEC. This definition only relates to ICFR. The identification of weaknesses in DC&amp;P and their relationship to ICFR is addressed in Part 10 of the Companion Policy.</p> <p>Guidance has been added to section 10.1 of the Companion Policy to assist certifying officers in determining the effectiveness of DC&amp;P.</p> <p>We thank the commenters for their support.</p> <p>We believe the guidance in Part 9 of the Companion Policy is sufficient for the certifying officers of an issuer to determine whether a material weakness exists in the context of the issuer’s business.</p>

#	Theme	Comments	Responses
<b>3. PART 3 – DC&amp;P AND ICFR</b>			
1.	Section 3.3 Limitations on scope of design	<p>Four commenters express their support for the scope limitation of 365 days.</p> <p>Two commenters believe the scope limitation of 365 days for a newly acquired business is not sufficient. Reasons cited include:</p> <ul style="list-style-type: none"> <li>- acquired businesses may have significantly different processes, procedures and technologies</li> <li>- resources are limited and focused on integration of the business</li> <li>- complexities of cross-border acquisitions require additional time</li> </ul> <p>One commenter noted an inconsistency between the requirements of section 3.3 of the Instrument and the guidance in subsection 13.3(4) of the Companion Policy. The guidance states that the scope limitation is only available in cases where the certifying officers do not have sufficient access to design and evaluate the controls, policies and procedures carried out by the underlying entity.</p>	<p>We thank the commenters for their support.</p> <p>We do not believe a further extension of the scope limitation is necessary or appropriate.</p> <p>We agree and have amended section 3.3 of the Instrument.</p>
2.	Section 3.4 Use of a Control Framework for the design of ICFR	<p>Four commenters express their support for the requirement to use a control framework to design ICFR.</p> <p>One commenter believes the absence of a suitable control framework for smaller issuers will pose a significant challenge for them. The commenter suggests the CSA create or support a task force to develop a principles-based internal control framework for smaller issuers.</p>	<p>We thank the commenters for their support.</p> <p>We believe that all issuers will be able to comply with the certification requirements, including the requirement to use a control framework to design ICFR. We do not believe the CSA is the appropriate body to create a task force to develop a control framework.</p>
<b>4. PART 4 – CERTIFICATION OF ANNUAL FILINGS</b>			
1.	Section 4.3 Alternative form of annual certificate for first financial period after initial public offering	<p>One commenter expresses support for the 90-day scope limitation for IPOs and RTOs.</p> <p>One commenter notes that there is a tremendous level of effort required to complete an initial public offering and permitting a delay of greater than 90 days for filing a full certificate may have some merit.</p>	<p>We thank the commenter for the support.</p> <p>We continue to propose that certifying officers be required to certify the design of ICFR for the annual or interim period that follows the first filing after an issuer becomes a reporting issuer. Since certifying officers have access to design ICFR prior to the issuer becoming a reporting issuer, we believe investors are entitled to expect that the certifying officers will be able to comply with the certification requirements within a relatively short period of time after the issuer becomes a reporting issuer.</p>

#	Theme	Comments	Responses
<b>5. PART 9 – EFFECTIVE DATE</b>			
1.	General comments	<p><u>Effective Date</u> Eighteen commenters believe the effective date should be extended. Reasons cited include:</p> <ul style="list-style-type: none"> <li>• Eleven commenters indicate that it will be difficult for them to properly plan, resource and execute an efficient and cost-effective compliance program for 2008.</li> <li>• Six commenters indicate that because of scarce resources, competing priorities and uncertainties around the finalization of NI 52-109 they have been reluctant to do all of the work necessary to comply with NI 52-109 until it is finalized.</li> <li>• Four commenters note that the transition to IFRS is a competing priority for scarce resources.</li> <li>• Two commenters raise the concern that additional effort will be required due to the requirement to use a control framework.</li> </ul> <p>One commenter suggests guidance be provided for issuers filing a certificate after the effective date for a financial period ending prior to the effective date.</p> <p><u>Early Adoption</u> One commenter believes early adoption of the instrument should be allowed.</p>	<p>We acknowledge the concerns related to timing. In response to these concerns we published CSA Staff Notice 52-322 to provide issuers with advanced notice of our intentions. In addition, we accelerated our publication timelines for the finalization of NI 52-109. We continue to propose an effective date of December 15, 2008 for the following reasons:</p> <ul style="list-style-type: none"> <li>• We expect most issuers to do the bulk of their work relating to IFRS conversion in 2009 and 2010, so it would be better for issuers to have completed the work relating to implementing NI 52-109 in 2008.</li> <li>• Certifying officers of non-venture issuers are currently required to certify that they have evaluated the effectiveness of DC&amp;P. There is substantial overlap between DC&amp;P and ICFR. NI 52-109 will close the gap in current certification requirements relating to the evaluation of DC&amp;P and ICFR.</li> <li>• We believe there is adequate time to prepare the last piece of the certification requirement between now and the first filing deadline, which will be in March 2009.</li> <li>• We published this date in April 2008 and have consistently referred to this date since then.</li> </ul> <p>We believe subsection 1.2(2) of the Instrument provides sufficient clarity regarding the effective date.</p> <p>We expect few, if any, issuers will want to adopt the new instrument early. Therefore we do not think it is appropriate to change the instrument to permit early adoption.</p>

#	Theme	Comments	Responses
<b>6. ANNUAL AND INTERIM CERTIFICATES</b>			
1.	General Certificate Comments	<p><u>Modification to Certificates</u> One commenter believes paragraph 5(b) of Forms 52-109F1 and 52-109F2 should refer to accounting standards as opposed to GAAP in preparation for Canada's convergence to IFRS.</p> <p>One commenter questions why Forms 52-109F1, 52-109F1-IPO/RTO and 52-109FV1 contain the phrase "AIF, if any" when only venture issuers have the option to file an AIF and would then file Form 52-109F1-AIF.</p> <p><u>Reporting Changes in ICFR</u> One commenter believes that changes in ICFR that have no material impact on ICFR should not be disclosed in the MD&amp;A.</p> <p>One commenter believes a material change in ICFR should not be reported where the risk is low or non-existent that a material misstatement will not be prevented or detected on a timely basis.</p>	<p>Paragraph 5(b) of Forms 52-109F1 and 52-109F2 refers to the "issuer's GAAP" which is a defined term that is broad enough to include IFRS.</p> <p>A venture issuer may voluntarily file Form 52-109F1 even if it does not prepare an AIF. Form 52-109F1-AIF is only used if a venture issuer voluntarily files an AIF after filing its annual financial statements, MD&amp;A and certificates.</p> <p>Under paragraph 7 of Form 52-109F1 and paragraph 6 of Form 52-109F2, "Reporting changes in ICFR", the certifying officers are only required to report a change that has "materially affected or is reasonably likely to materially affect the issuer's ICFR".</p>
2.	Annual Certificates	One commenter suggests that an issuer with no material weaknesses should be able to mark subsections (ii), (iii) and (iv) of paragraph 6(b) in Form 52-109F1 as "n/a".	We agree with the comment and have amended Form 52-109F1.
3.	Interim Certificates	One commenter notes that SOX does not require disclosure of material weaknesses on an interim basis. The commenter believes interim disclosure of material weaknesses in the design of ICFR will be onerous for inter-listed issuers.	We believe the disclosure requirements in paragraph 5.2 of Form 52-109F2 are a logical extension of the requirement to certify design in paragraph 5.
<b>COMPANION POLICY COMMENTS</b>			
<b>7. PART 1 – GENERAL</b>			
1.		One commenter believes the guidance in section 1.3 of the Companion Policy should be clarified so that venture issuers electing to file a Form 52-109F1 or 52-109F2 know they should follow the guidance in Parts 5 through 14 of the Companion Policy.	We believe the guidance is sufficiently clear.
2.		One commenter recommends there be specific guidance requiring the implementation of an ethics hot line as a cost effective way to promote and enforce accountability within an organization.	We believe this concern is addressed by subsection 2.3(7) of NI 52-110 <i>Audit Committees</i> which states "an audit committee must establish procedures for (a) the receipt, retention and treatment of complaints received by the issuer regarding accounting, internal controls, or auditing matters; and (b) the confidential anonymous submission by employees of the issuer of concerns regarding questionable

#	Theme	Comments	Responses
			accounting or auditing matters”.
3.		One commenter believes that issuers should clearly state in the MD&A that “Management’s report on internal control over financial reporting was not subject to audit by the Company’s external auditor”. The commenter believes this will help reduce confusion in the marketplace as cross-listed issuers will be subject to an audit.	We believe the Canadian marketplace is well aware that a Canadian company that is not cross-listed is not required to obtain an audit of internal control over financial reporting.
<b>8. PART 5 – CONTROL FRAMEWORKS FOR ICFR</b>			
1.	Section 5.2 Scope of control frameworks	One commenter believes the guidance in section 5.2 of the Companion Policy should make reference to principle 14 and the tools found in COSO’s guidance for smaller public companies and believes too much prominence has been given to the publication from IT Governance Institute.	Section 5.1 of the Companion Policy includes a reference to the COSO’s guidance for smaller public companies.
<b>9. PART 6 – DESIGN OF DC&amp;P AND ICFR</b>			
1.	Section 6.1 General	One commenter recommends that the Companion Policy indicate where internal audit could assist with the design and evaluation of DC&P and ICFR.	We do not believe additional guidance is needed. Consideration of the internal audit function is noted in paragraph 6.13(c) of the Companion Policy.
2.	Section 6.3 Reasonable assurance	One commenter recommends expanding the guidance in section 6.3 of the Companion Policy relating to reasonable assurance.	With the adoption of “material weakness” we have revised our guidance to be similar to that included in the SEC’s <i>Commission Guidance Regarding Management’s Report on ICFR</i> . We believe the guidance relating to reasonable assurance in section 6.3 of the Companion Policy is sufficiently clear.
3.	Section 6.6 Risk considerations for designing DC&P and ICFR	<p>One commenter believes the guidance provided in section 6.6 of the Companion Policy only focuses on the regulatory requirements rather than designing controls.</p> <p>One commenter suggests that further guidance should be provided relating to fraud risk to include all information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities regulation.</p> <p>One commenter continues to believe guidance around an adequate assessment of fraud would be helpful to issuers.</p>	<p>We disagree. The guidance was developed using various auditing standards, including CICA handbook section 5925 and PCAOB Auditing Standards No. 2 and No. 5. In addition, section 6.14 of the Companion Policy discusses how to enhance the efficiency and effectiveness of the designs.</p> <p>We agree and have amended the guidance in subsection 6.6(3) 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 using a top-down, risk-based</p>

#	Theme	Comments	Responses
			approach.
4.	Section 6.11 ICFR design challenges	<p>One commenter suggests that two of the examples provided in section 6.11 of the Companion Policy are prohibited by the auditor independence rules.</p> <p>One commenter does not see the value in providing the guidance in section 6.11 of the Companion Policy on ICFR design challenges. If retained the commenter does not agree with the statement in paragraph 6.11(d) relating to the auditor’s expert advice that states “this type of arrangement should not be considered a component of ICFR”. Another commenter suggests that the removal of guidance relating to an auditor providing services to mitigate risks raises the question of whether auditor services with respect to design are part of an issuer’s controls, or alternatively, mitigating procedures.</p>	<p>We disagree. In some instances the auditor independence rules allow for auditor involvement depending on the size of the issuer.</p> <p>We disagree with the commenter. We have clarified one sentence in section 6.11 of the Companion Policy by deleting the word “compensate” and inserting “provide” to avoid any confusion between the guidance in section 6.11 and the concept of compensating controls discussed in subsection 9.1(3) of the Companion Policy. Even though independence rules may permit an external auditor to perform certain services, we do not believe that this should be considered a component of the issuer’s ICFR.</p>
5.	Section 6.15 Documenting design	<p>One commenter believes the guidance provided in subsection 6.15(4) of the Companion Policy should focus on the risk of misstatement as opposed to the process or flow. In addition the commenter believes some guidance should be provided on adapting the extent of documentation to the situation.</p> <p>One commenter believes it is not necessary to distinguish controls over safeguarding of assets in paragraph 6.15(4)(g) of the Companion Policy.</p>	<p>We agree, and have amended the guidance in subsection 6.15(1) of the Companion Policy to provide further information on adapting the extent of documentation.</p> <p>We disagree with the commenter. We believe the controls over safeguarding of assets form a part of the issuer’s ICFR, as indicated by the definition of ICFR.</p>
<b>10. PART 7 – EVALUATING OPERATING EFFECTIVENESS OF DC&amp;P AND ICFR</b>			
1.	Section 7.5 Use of an external auditor or other third party	<p>One commenter believes that the Companion Policy should include a statement that an audit of internal control is not a substitute for the certifying officer’s own evaluation.</p> <p>One commenter suggests expanding the guidance in section 7.5 of the Companion Policy to clarify the roles of management and the auditors. The commenter suggested wording similar to that used by the SEC.</p>	<p>We believe the guidance in section 7.5 of the Companion Policy clearly indicates that the certifying officers have responsibility for their own evaluation regardless of the auditor’s involvement.</p> <p>We do not believe that additional disclosure regarding the use of an external auditor is necessary or appropriate in the Companion Policy.</p>
2.	Section 7.8 Walkthroughs	One commenter suggests that including a section on walkthroughs makes it appear as a requirement when the commenter believes it would be more efficient for an issuer to proceed directly to testing.	The guidance in section 7.8 of the Companion Policy clearly states that walkthroughs are a tool that “can assist” a certifying officer.
3.	Section 7.10 Self-assessments	Two commenters believe further guidance should be provided relating to self-assessments.	We agree and have amended the guidance in section 7.10 of the Companion Policy to indicate that, where one certifying officer performs a self-assessment, it is appropriate for

#	Theme	Comments	Responses
			the other certifying officer to perform direct testing of the control.
4.	Section 7.11 Timing of evaluation	One commenter suggests providing examples of controls that could be tested before or after year end, such as controls that have documented attributes.	We believe the guidance in section 7.11 of the Companion Policy is clear.
<b>11. PART 8 – USE OF A SERVICE ORGANIZATION OR SPECIALIST FOR AN ISSUER’S ICFR</b>			
1.	Section 8.1 Use of a service organization	<p>One commenter believes the example in section 8.1 of the Companion Policy should not be payroll as the commenter believes this is a low risk area and the example isn’t consistent with a risk-based approach.</p> <p>One commenter suggests clarifying the definition of “significant process” within section 8.1 of the Companion Policy as the term may be viewed in a broader context than was intended.</p> <p>One commenter suggests eliminating the word “compensating” in paragraph 8.1(c) of the Companion Policy as the controls do not need to be compensating.</p>	<p>We believe certifying officers need to determine the risks within their own organization. Payroll may be an area of significant risk to an organization based on its facts and circumstances. We believe the reference in subsection 6.6(2) of the Companion Policy appropriately focuses on the relevance of risk assessment in determining the scope of an issuer’s DC&amp;P and ICFR.</p> <p>We agree and have modified the guidance in paragraph 8.1(c) of the Companion Policy.</p>
2.	Section 8.5 Use of a specialist	One commenter recommends adding guidance indicating that management accepts responsibility for the results of the service expert’s work. If an error is found in the specialist’s work, management must evaluate the severity of the deficiency and consider whether it represents a material weakness.	We believe that the guidance in section 8.5 of the Companion Policy regarding use of a specialist is clear.
<b>12. PART 9 – MATERIAL WEAKNESS</b>			
1.	Section 9.1 Identifying a deficiency in ICFR	Two commenters believe the distinction between compensating controls and mitigating procedures is confusing. The commenters recommend that additional examples be provided in paragraph 9.1(3)(b) of the Companion Policy. One commenter recommends clarifying that a control deficiency that has been compensated for remains a control deficiency.	We have included additional guidance in subsection 9.1(3) of the Companion Policy to clarify the distinction between compensating controls and mitigating procedures and the fact that mitigating procedures do not eliminate the existence of a material weakness.
2.	Section 9.6 Disclosure of a material weakness	<p>One commenter recommends that, due to the overlap between design and operation of ICFR, the guidance should state that all material weaknesses should be disclosed.</p> <p>One commenter suggests that disclosure of a material weakness relating to design should focus on material information as required by Part 1(e) of NI 51-102F1 <i>Management’s Discussion and Analysis</i>.</p>	<p>We believe the guidance in subsections 9.6(1) and (2) of the Companion Policy makes it sufficiently clear that either a material weakness in design or a material weakness in operation would have to be disclosed.</p> <p>We do not believe that additional guidance is necessary.</p>
3.	Section 9.7 Disclosure of remediation plans and actions	One commenter believes the guidance in section 9.7 of the Companion Policy discussing mitigating procedures in the case where an issuer is not remediating a material weakness might be misleading. The commenter recommends deleting this guidance.	We have added guidance to subsection 9.1(3) of the Companion Policy that states if an issuer discusses mitigating procedures in its MD&A, the issuer should not imply

#	Theme	Comments	Responses
	undertaken	One commenter expects management to have a plan for remediation otherwise the auditor would be unable to issue an unreserved audit opinion.	that the procedures eliminate the existence of a material weakness.  We believe an auditor plans its audit considering but not necessarily relying on the control environment and would refer to CICA Handbook Section 5220 in the case of a weakness in internal control.
<b>13. PART 10 – WEAKNESS IN DC&amp;P THAT IS SIGNIFICANT</b>			
1.	Section 10.1 Conclusions on effectiveness of DC&P if a weakness exists that is significant	Two commenters believe additional guidance should be provided in section 10.1 of the Companion Policy to help issuers apply the standard consistently.	Guidance has been added to section 10.1 of the Companion Policy to assist certifying officers in determining the effectiveness of DC&P.
2.	Section 10.3 Certification of DC&P if a material weakness in ICFR exists	One commenter suggests that given the overlap between DC&P and ICFR the term “often” in section 10.3 of the Companion Policy should be replaced with “always” or “almost always” and an issuer should be required to explain if they concluded DC&P is effective if ICFR is not effective.	We agree and have amended the guidance in section 10.3 of the Companion Policy to say “almost always”.
<b>14. PART 11 – REPORTING CHANGES IN ICFR</b>			
1.	Section 11.1 Assessing materiality of a change in ICFR	One commenter recommends providing further guidance to assist reporting issuers with assessing the materiality of a change in ICFR. The commenter recommends that the guidance include consideration of selected factors, such as context and materiality when assessing changes in ICFR to be disclosed and that the example of a payroll conversion be removed.	We believe the guidance in section 11 of the Companion Policy is appropriate. The certifying officers would assess the materiality of a change in ICFR based on the issuer’s facts and circumstances.
<b>15. PART 12 – ROLE OF THE BOARD OF DIRECTORS AND AUDIT COMMITTEE</b>			
1.	Section 12.2 Audit committee	One commenter feels the CSA should not have removed the requirement that certifying officers must disclose to the audit committee all significant deficiencies in the design or operation of ICFR.	The lack of a requirement to report to the audit committee does not preclude an audit committee from requesting that certifying officers bring any significant deficiencies to its attention.
<b>16. PART 13 – CERTAIN LONG TERM INVESTMENTS</b>			
1.	Section 13.3 Design and evaluation of DC&P and ICFR	One commenter believes the disclosure in subsection 13.3(4) of the Companion Policy would be enhanced by the addition of “that will not be prevented or detected on a timely basis” after each instance of “material misstatement”.  One commenter believes certifying officers should consider whether portfolio investments and equity investments referred to in subsection 13.3(5) of the Companion Policy include risks that could reasonably result in a material misstatement in the issuer’s annual	We do not believe the Companion Policy would be enhanced by this addition.  We have amended subsection 13.3(5) of the Companion Policy to clearly indicate that an issuer should address controls over its disclosure of material information. Although subsection 13.3

#	Theme	Comments	Responses
		filings, interim filings or other reports.	(5) of the Companion Policy does not specifically refer to risks, certifying officers must consider risks when addressing the issuer's controls over its disclosure relating to its portfolio investments and equity investments. Section 6.6 of the Companion Policy gives guidance for the identification of risks that could reasonably result in a material misstatement.
<b>17. PART 14 – BUSINESS ACQUISITIONS</b>			
1.	Section 14.1 Access to acquired business	<p>Two commenters believe that section 14.1 of the Companion Policy should be clarified to indicate that the scope limitation for a business acquisition should only be taken subject to materiality.</p> <p>One commenter also suggests that, subject to materiality, aggregated summary financial information for business combinations should be allowed as it is for proportionately consolidated entities and VIEs.</p>	<p>We agree and have amended the guidance in section 14.2 of the Companion Policy to clarify that the scope limitation is only relevant for material business acquisitions.</p> <p>We have revised the Companion Policy to indicate that summary information may be disclosed for related businesses in the case of an acquisition of related businesses, as that term is used in NI 51-102 <i>Continuous Disclosure Obligations</i>.</p>
<b>18. PART 15 – VENTURE ISSUER BASIC CERTIFICATES</b>			
1.	General comments	One commenter believes more emphasis should be given to the general expectations for management of all issuers regarding their certification obligations, particularly the “no misrepresentations” requirements.	We believe that Parts 1 and 4 of the Companion Policy appropriately address the purpose of the certification requirements, including representations relating to fair presentation, financial condition and reliability of financial reporting.
2.	Section 15.3 Voluntary disclosure regarding DC&P and ICFR	<p>One commenter believes it would be beneficial to provide venture issuers with additional guidance on their disclosure expectations. The commenter suggested guidance on the following:</p> <ul style="list-style-type: none"> <li>• What should be disclosed in the MD&amp;A?</li> <li>• Should material weaknesses be disclosed?</li> <li>• If disclosing a material weakness, should the venture issuer’s disclosure be the same as the disclosure requirements of section 5.2 and 6(b) of Form 52-109F1?</li> </ul> <p>One commenter suggests “and has not completed such an evaluation” should be added to the venture issuer’s qualifying statement in the MD&amp;A which currently states “the venture issuer is not required to certify the design and evaluation of the issuer’s DC&amp;P and ICFR”.</p>	<p>We believe the guidance in section 15.3 of the Companion Policy clearly states that a venture issuer filing a basic certificate “is not required to discuss in its annual or interim MD&amp;A the design or operating effectiveness of DC&amp;P or ICFR”.</p> <p>We agree and have added the suggested phrase to the guidance in section 15.3 of the Companion Policy.</p>

**APPENDIX C**  
**SUMMARY OF CHANGES**

***New Rule***

Part 3 – DC&P and ICFR

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

***New Policy***

The New Policy contains expanded guidance on various topics including:

- Compensating controls versus mitigating procedures – Further guidance is provided to indicate that mitigating procedures can reduce financial reporting risks but do not eliminate the existence of the material weakness.
- Weakness in DC&P – Guidance is provided to assist issuers in determining when a weakness in DC&P is significant.
- Self-assessments – Guidance is provided to indicate that, where one certifying officer performs a self-assessment, it is appropriate for the other certifying officer to perform direct testing of the control to enable each officer to have a basis for signing the certificate.
- Business acquisitions – Guidance is provided to indicate that, when determining whether a scope limitation exists for a business acquisition, certifying officers must initially consider whether an acquired business includes risks that could reasonably result in a material misstatement in the issuer's annual filings, interim filings or other reports. The guidance also clarifies that an issuer may present summary financial information on a combined basis in the case of related businesses.

APPENDIX D

CONSEQUENTIAL AMENDMENTS

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

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

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

*"INSTRUCTION*

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

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

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

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

*"2.3 – Other Interim MD&A Requirements*

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

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

## APPENDIX E

## EXEMPTION INSTRUMENTS

<b>Jurisdiction</b>	<b>Instrument</b>	<b>Effective Date</b>
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
NU	Blanket Order No. 10 <i>In the Matter of Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings</i>	August 6, 2008
YK	Superintendent's Order 2008/07 <i>(52-109 Certain Certification Requirements: Relief for Venture Issuers)</i>	August 8, 2008

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

**TABLE OF CONTENTS**

**PART 1 – DEFINITIONS AND APPLICATION**

- 1.1 Definitions
- 1.2 Application

**PART 2 – CERTIFICATION OBLIGATION**

- 2.1 Certifying officers' certification obligation

**PART 3 – DC&P AND ICFR**

- 3.1 Establishment and maintenance of DC&P and ICFR
- 3.2 MD&A disclosure of material weakness
- 3.3 Limitations on scope of design
- 3.4 Use of a control framework for the design of ICFR

**PART 4 – CERTIFICATION OF ANNUAL FILINGS**

- 4.1 Requirement to file
- 4.2 Required form of annual certificate
- 4.3 Alternative form of annual certificate for first financial period after initial public offering
- 4.4 Alternative form of annual certificate for first financial period after certain reverse takeovers
- 4.5 Alternative form of annual certificate for first financial period after becoming a non-venture issuer
- 4.6 Exemption for new reporting issuers

**PART 5 – CERTIFICATION OF INTERIM FILINGS**

- 5.1 Requirement to file
- 5.2 Required form of interim certificate
- 5.3 Alternative form of interim certificate for first financial period after initial public offering
- 5.4 Alternative form of interim certificate for first financial period after certain reverse takeovers
- 5.5 Alternative form of interim certificate for first financial period after becoming a non-venture issuer
- 5.6 Exemption for new reporting issuers

**PART 6 – REFILED FINANCIAL STATEMENTS, MD&A OR AIF**

- 6.1 Refiled annual financial statements, annual MD&A or AIF
- 6.2 Refiled interim financial statements or interim MD&A

**PART 7 – GENERAL REQUIREMENTS FOR CERTIFICATES**

- 7.1 Dating of certificates
- 7.2 French or English

**PART 8 – EXEMPTIONS**

- 8.1 Exemption from annual requirements for issuers that comply with U.S. laws
- 8.2 Exemption from interim requirements for issuers that comply with U.S. laws
- 8.3 Exemption for certain foreign issuers
- 8.4 Exemption for certain exchangeable security issuers
- 8.5 Exemption for certain credit support issuers
- 8.6 General exemption

**PART 9 – EFFECTIVE DATE AND REPEAL**

- 9.1 Effective date
- 9.2 Repeal

**FORMS**

Form 52-109F1	Certification of annual filings – full certificate
Form 52-109FV1	Certification of annual filings – venture issuer basic certificate
Form 52-109F1 – IPO/RTO	Certification of annual filings following an initial public offering, reverse takeover or becoming a non-venture issuer
Form 52-109F1R	Certification of refiled annual filings

---

**Rules and Policies**

---

Form 52-109F1 – AIF	Certification of annual filings in connection with voluntarily filed AIF
Form 52-109F2	Certification of interim filings – full certificate
Form 52-109FV2	Certification of interim filings – venture issuer basic certificate
Form 52-109F2 – IPO/RTO	Certification of interim filings following an initial public offering, reverse takeover or becoming a non-venture issuer
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 4 or 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;

“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 individual performing similar functions to those of a chief executive officer or chief financial officer;

“DC&P” means disclosure controls and procedures;

“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;

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

“ICFR” means internal control over financial reporting;

“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) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;
- (b) are designed to provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with the issuer’s GAAP, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and
- (c) are designed to provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer’s assets that could have a material effect on the annual financial statements or interim financial statements;

“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 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;

“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), as amended from time to time;

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

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

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

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

“venture issuer” means a reporting issuer that, as at the end of the period covered by the annual or interim filings, as the case may be, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, 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 a reporting issuer other than an investment fund.
- (2) This Instrument applies in respect of annual filings and interim filings for financial periods ending on or after December 15, 2008.

## PART 2 – CERTIFICATION OBLIGATION

- 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

- 3.1 **Establishment and maintenance of DC&P and ICFR** – A non-venture issuer must establish and maintain DC&P and ICFR.
- 3.2 **MD&A disclosure of material weakness** – Despite section 3.1, if a non-venture issuer determines that 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) a description of the material weakness;

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

**3.3 Limitations on scope of design**

- (1) Despite section 3.1, a non-venture issuer may limit its design of DC&P or ICFR to exclude controls, policies and procedures of
  - (a) subject to subsection (3), a proportionately consolidated entity or a variable interest entity in which the issuer has an interest; or
  - (b) subject to subsection (4), a business that the issuer acquired not more than 365 days before the end of the financial period to which the certificate relates.
- (2) An issuer that limits its design of DC&P or ICFR under subsection (1) must disclose in its MD&A
  - (a) the limitation; and
  - (b) summary financial information about 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)(a) except where the certifying officers would not have a reasonable basis for making the representations in the annual or interim certificates because they do not have sufficient access to a proportionately consolidated entity or variable interest entity, as applicable, to design and evaluate controls, policies and procedures carried out by that entity.
- (4) An issuer must not limit its design of DC&P or ICFR under paragraph (1)(b) 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 4 – CERTIFICATION OF ANNUAL FILINGS**

**4.1 Requirement to file**

- (1) A reporting issuer must file a separate annual certificate in the wording prescribed by the required form
  - (a) for each 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 later of the dates on which it files the following:
  - (a) its AIF if it is required to file an AIF under NI 51-102; or
  - (b) its annual financial statements and annual MD&A.
- (3) 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 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 to which the certificate relates.

#### 4.2 Required form of annual certificate

- (1) The required form of annual certificate under subsection 4.1(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 4.1(3) is Form 52-109F1 – AIF.

#### 4.3 Alternative form of annual certificate for first financial period after initial public offering – Despite subsection 4.2(1), an issuer may file an annual certificate in Form 52-109F1 – IPO/RTO for the first financial year 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.

#### 4.4 Alternative form of annual certificate for first financial period after certain reverse takeovers – Despite subsection 4.2(1), an issuer may file an annual certificate in Form 52-109F1 – IPO/RTO for the first financial year that ends after the completion of a reverse takeover if

- (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 a financial year.

#### 4.5 Alternative form of annual certificate for first financial period after becoming a non-venture issuer – Despite subsection 4.2(1), an issuer may file an annual certificate in Form 52-109F1 – 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 5 - CERTIFICATION OF INTERIM FILINGS

#### 5.1 Requirement to file

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

#### 5.2 Required form of interim certificate

- (1) The required form of interim certificate under subsection 5.1(1) is
  - (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.

#### 5.3 Alternative form of interim certificate for first financial period after initial public offering – 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 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.

#### 5.4 Alternative form of interim certificate for first financial period after certain reverse takeovers – 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 completion of a reverse takeover if

- (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 6 – REFILED FINANCIAL STATEMENTS, MD&A OR AIF

- 6.1 **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 **Refiled interim financial statements 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 7 – GENERAL REQUIREMENTS FOR CERTIFICATES

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

**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 8 – EXEMPTIONS**

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

- (1) Subject to subsection (2), Parts 2, 3, 4, 6 and 7 do not apply to an issuer for a financial year if
  - (a) the issuer is in compliance with the SOX 302 Rules and the issuer files signed certificates relating to its annual report under the 1934 Act separately, but concurrently, and as soon as practicable after they are filed with or furnished to the SEC; and
  - (b) the issuer is in compliance with the SOX 404 Rules, and the issuer files management's annual report on internal control over financial reporting and the attestation report on management's assessment of internal control over financial reporting included in the issuer's annual report under the 1934 Act for the financial year, if applicable, as soon as practicable after they are filed with or furnished to the SEC.
- (2) Despite subsection (1), Parts 2, 3, 4, 6 and 7 apply to an issuer for a financial year if the issuer's annual financial statements, annual MD&A or AIF, that together comprise the issuer's annual filings, differ from the annual financial statements, annual MD&A or AIF filed with or furnished to the SEC, or included as exhibits to other documents filed with or furnished to the SEC, and certified in compliance with the SOX 302 Rules.

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

- (1) Subject to subsection (3), Parts 2, 3, 5, 6 and 7 do not apply to an issuer for an interim period if the issuer is in compliance with the SOX 302 Rules and the issuer files signed certificates relating to its quarterly report under the 1934 Act for the quarter separately, but concurrently, and as soon as practicable after they are filed with or furnished to the SEC.
- (2) Subject to subsection (3), Parts 2, 3, 5, 6 and 7 do not apply to an issuer for an interim period if
  - (a) the issuer files with or furnishes to the SEC a report on Form 6-K containing the issuer's quarterly financial statements and MD&A;
  - (b) the Form 6-K is accompanied by signed certificates that are filed with or furnished to the SEC in the same form required by the SOX 302 Rules; and
  - (c) the issuer files signed certificates relating to the quarterly report filed or furnished under cover of the Form 6-K as soon as practicable after they are filed with or furnished to the SEC.
- (3) Despite subsections (1) and (2), Parts 2, 3, 5, 6 and 7 apply to an issuer for an interim period if the issuer's interim financial statements or interim MD&A, that together comprise the issuer's interim filings, differ from the interim financial statements or interim MD&A filed with or furnished to the SEC, or included as exhibits to other documents filed with or furnished to the SEC, and certified in compliance with the SOX 302 Rules.

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

**8.4 Exemption for certain exchangeable security issuers** – This Instrument does not apply to an issuer if it qualifies under, and is in compliance with, subsection 13.3(2) of NI 51-102.

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

**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) 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 9 – EFFECTIVE DATE AND REPEAL**

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

9.2 **Repeal** – Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, which came into force on

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

is repealed.

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

1. **Review:** I have reviewed the AIF, if any, annual financial statements and annual MD&A, including, for greater certainty, all documents and information that are incorporated by reference in the AIF (together, the "annual filings") of *<identify issuer>* (the "issuer") for the financial year ended *<state the relevant date>*.
  2. **No misrepresentations:** Based on my knowledge, having exercised reasonable diligence, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, for the period covered by the annual filings.
  3. **Fair presentation:** Based on my knowledge, having exercised reasonable diligence, the annual financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date of and for the periods presented in the annual filings.
  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:** 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) 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 control framework the issuer's other certifying officer(s) and I used to design the issuer's ICFR is *<insert the name of the control framework used>*.
- <insert paragraph 5.2 or 5.3 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 5.3, include (a)(i), (a)(ii) or (a)(iii) as applicable, and subparagraph (b).>*
- 5.2 **ICFR – material weakness relating to design:** The issuer has disclosed in its annual MD&A for each material weakness relating to design existing at the financial year end
    - (a) a description of the material weakness;
    - (b) the impact of the material weakness on the issuer's financial reporting and its ICFR; and
    - (c) the issuer's current plans, if any, or any actions already undertaken, for remediating the material weakness.
  - 5.3 **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 365 days before the issuer's financial year end; and
- (b) summary financial information about 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.

**<insert subparagraph 6(b)(ii) if applicable. If subparagraph 6(b)(ii) is not applicable, insert "(ii) N/A".>**

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 that 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 that evaluation; and
    - (ii) for each material weakness relating to operation existing at the financial year end
      - (A) a description of the material weakness;
      - (B) the impact of the material weakness on the issuer's financial reporting and its ICFR; and
      - (C) the issuer's current plans, if any, or any actions already undertaken, for remediating the material weakness.
7. **Reporting 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 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 in which of these capacities the certifying officer is providing the 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", indicate in which of these capacities the certifying officer is providing the certificate>**, certify the following:

1. **Review:** I have reviewed the AIF, if any, annual financial statements and annual MD&A, including, for greater certainty, all documents and information that are incorporated by reference in the AIF (together, the "annual filings") of **<identify issuer>** (the "issuer") for the financial year ended **<state the relevant date>**.
2. **No misrepresentations:** Based on my knowledge, having exercised reasonable diligence, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, for the period covered by the annual filings.
3. **Fair presentation:** Based on my knowledge, having exercised reasonable diligence, the annual financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date of and for the periods presented in the annual filings.

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

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

[Title]

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

**NOTE TO READER**

In contrast to the certificate required 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", indicate in which of these capacities the certifying officer is providing the certificate>*, certify the following:

1. **Review:** I have reviewed the AIF, if any, annual financial statements and annual MD&A, including, for greater certainty, all documents and information that are incorporated by reference in the AIF (together, the "annual filings") of *<identify issuer>* (the "issuer") for the financial year ended *<state the relevant date>*.
2. **No misrepresentations:** Based on my knowledge, having exercised reasonable diligence, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, for the period covered by the annual filings.
3. **Fair presentation:** Based on my knowledge, having exercised reasonable diligence, the annual financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date of and for the periods presented in the annual filings.

Date: *<insert date of filing>*

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

[Title]

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

**NOTE TO READER**

In contrast to the 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

- 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 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

- 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;

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 52-109F1R  
CERTIFICATION OF REFILED ANNUAL FILINGS

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

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

1. **Review:** I have reviewed the AIF, if any, annual financial statements and annual MD&A, including, for greater certainty, all documents and information that are incorporated by reference in the AIF (together, the "annual filings") of 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 in which of these capacities the certifying officer is providing the certificate.>*

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

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

I, **<identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer’s title is not “chief executive officer” or “chief financial officer”, indicate in which of these capacities the certifying officer is providing the certificate>**, certify the following:

1. **Review:** I have reviewed the 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 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 in which of these capacities the certifying officer is providing the 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", 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.
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:** 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 control framework the issuer's other certifying officer(s) and I used to design the issuer's ICFR is *<insert the name of the control framework used>*.

*<insert paragraph 5.2 or 5.3 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 5.3, include (a)(i), (a)(ii) or (a)(iii) as applicable, and subparagraph (b).>*
- 5.2 **ICFR – material weakness relating to design:** The issuer has disclosed in its interim MD&A for each material weakness relating to design existing at the end of the interim period
  - (a) a description of the material weakness;
  - (b) the impact of the material weakness on the issuer's financial reporting and its ICFR; and
  - (c) the issuer's current plans, if any, or any actions already undertaken, for remediating the material weakness.
- 5.3 **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;

**Rules and Policies**

---

- (ii) a variable interest entity in which the issuer has an interest; or
  - (iii) a business that the issuer acquired not more than 365 days before the last day of the period covered by the interim filings; and
- (b) summary financial information about 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 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 in which of these capacities the certifying officer is providing the certificate.>**

**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", 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>**

\_\_\_\_\_  
[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>*

\_\_\_\_\_

[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 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

- 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 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

- 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;

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**

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", 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 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 in which of these capacities the certifying officer is providing the certificate.>*

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

**TABLE OF CONTENTS**

**PART 1 – GENERAL**

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

**PART 2 – FORM OF CERTIFICATES**

- 2.1 Prescribed wording

**PART 3 – CERTIFYING OFFICERS**

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

**PART 4 – FAIR PRESENTATION, FINANCIAL CONDITION AND RELIABILITY OF FINANCIAL REPORTING**

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

**PART 5 – CONTROL FRAMEWORKS FOR ICFR**

- 5.1 Requirement to use a control framework
- 5.2 Scope of control frameworks

**PART 6 – DESIGN OF DC&P AND ICFR**

- 6.1 General
- 6.2 Overlap between DC&P and ICFR
- 6.3 Reasonable assurance
- 6.4 Judgment
- 6.5 Delegation permitted in certain cases
- 6.6 Risk considerations for designing DC&P and ICFR
- 6.7 Control environment
- 6.8 Controls, policies and procedures to include in DC&P design
- 6.9 Controls, policies and procedures to include in ICFR design
- 6.10 Identifying significant accounts and disclosures and their relevant assertions
- 6.11 ICFR design challenges
- 6.12 Corporate governance for internal controls
- 6.13 Maintaining design
- 6.14 Efficiency and effectiveness
- 6.15 Documenting design

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

- 7.1 General
- 7.2 Scope of evaluation of operating effectiveness
- 7.3 Judgment
- 7.4 Knowledge and supervision
- 7.5 Use of external auditor or other third party
- 7.6 Evaluation tools
- 7.7 Certifying officers’ daily interaction
- 7.8 Walkthroughs
- 7.9 Reperformance
- 7.10 Self-assessments
- 7.11 Timing of evaluation
- 7.12 Extent of examination for each annual evaluation
- 7.13 Documenting evaluations

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

- 8.1 Use of a service organization
- 8.2 Service auditor’s reporting on controls at a service organization

- 8.3 Elapsed time between date of a service auditor's report and date of certificate
- 8.4 Indicators of a material weakness relating to use of a service organization
- 8.5 Use of a specialist

**PART 9 – MATERIAL WEAKNESS**

- 9.1 Identifying a deficiency in ICFR
- 9.2 Assessing significance of deficiencies in ICFR
- 9.3 Factors to consider when assessing significance of deficiencies in ICFR
- 9.4 Indicators of a material weakness
- 9.5 Conclusions on effectiveness if a material weakness exists
- 9.6 Disclosure of a material weakness
- 9.7 Disclosure of remediation plans and actions undertaken

**PART 10 – WEAKNESS IN DC&P THAT IS SIGNIFICANT**

- 10.1 Conclusion on effectiveness of DC&P if a weakness exists that is significant
- 10.2 Interim certification of DC&P design if a weakness exists that is significant
- 10.3 Certification of DC&P if a material weakness in ICFR exists

**PART 11 – REPORTING CHANGES IN ICFR**

- 11.1 Assessing the materiality of a change in ICFR

**PART 12 – ROLE OF BOARD OF DIRECTORS AND AUDIT COMMITTEE**

- 12.1 Board of directors
- 12.2 Audit committee
- 12.3 Reporting fraud

**PART 13 – CERTAIN LONG TERM INVESTMENTS**

- 13.1 Underlying entities
- 13.2 Fair presentation
- 13.3 Design and evaluation of DC&P and ICFR

**PART 14 – BUSINESS ACQUISITIONS**

- 14.1 Access to acquired business
- 14.2 Disclosure of scope limitation

**PART 15 – VENTURE ISSUER BASIC CERTIFICATES**

- 15.1 Venture issuer basic certificates
- 15.2 Note to reader included in venture issuer basic certificates
- 15.3 Voluntary disclosure regarding DC&P and 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

**PART 17 – EXEMPTIONS**

- 17.1 Issuers that comply with U.S. laws

**PART 18 – LIABILITY FOR CERTIFICATES CONTAINING MISREPRESENTATIONS**

- 18.1 Liability for certificates containing misrepresentations

**PART 19 – TRANSITION**

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

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

- 20.1 Certification of revised or restated annual or interim filings
- 20.2 Disclosure considerations if an issuer revises or restates a continuous disclosure document

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

This Companion Policy (the Policy) describes how the provincial and territorial securities regulatory authorities intend to interpret and apply 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 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 **Prescribed wording** – Parts 4 and 5 of the Instrument require the annual and interim certificates to be filed in the exact wording prescribed 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 **“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.

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, 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.

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

- 4.3 **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 **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.

Examples of suitable frameworks 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.

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 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.

- 5.2 **Scope of control frameworks** – The control frameworks referred to in section 5.1 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 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 securities legislation. The definition of ICFR includes the phrase “reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP”. In this Part the term “reasonable assurance” refers to one or both of the above uses of this term.

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 **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 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 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 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 initially consider risks without considering any existing controls of the issuer. Using this approach to design DC&P, 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 identify those risks that could, individually or in combination with others, reasonably result in a material misstatement 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 assess risks for various types and methods of disclosure. For the design of ICFR, identifying risks involves identifying significant accounts and disclosures and their relevant assertions. After identifying risks that could reasonably result in a material misstatement, the certifying officers 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) might affect risks, and what areas of the business provide opportunity for an 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 issuer's annual filings, interim filings or other reports filed or submitted under securities legislation.

(4) **Designing controls, policies and procedures** – If the certifying officers choose to use a top-down, risk-based approach, they 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.

6.7 **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, can undermine an issuer’s controls, policies and procedures designed to address specific risks.

- (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 structure which relies on established and documented lines of authority and responsibility may be appropriate for some issuers, whereas a structure which allows employees to communicate informally with each other at all levels may be more appropriate for some 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* – 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** – The following documentation might provide useful information about 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.

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

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 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).

6.10 **Identifying significant accounts and disclosures and their relevant assertions**

- (1) **Significant accounts and disclosures and their relevant assertions** – As described in subsection 6.6(2) of the Policy, a top-down, risk-based approach to designing ICFR involves 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) **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. The following 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.
- (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 or disclosure. For each significant account and disclosure the following assertions 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 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 or disclosure. When determining whether a particular assertion is relevant, the certifying officers 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 should identify and design an appropriate combination of controls, policies and procedures to address all relevant assertions.

The certifying officers would consider the efficiency of evaluating an issuer's ICFR design 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 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.

- 6.11 **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 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.
  - (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* – 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 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.
  - (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. If an issuer consults on technically complex accounting matters, this consultation alone is not indicative of a deficiency relating to the design of ICFR.
- 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 provide 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 design.
- 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** – 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.
- 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:
- (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 external auditors; and
  - (e) the incidence of weaknesses in DC&P or 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 certifying officers' assessment of risk, as discussed in section 6.6 of the Policy, as well as 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). Certifying officers should use their judgment, acting reasonably, to determine the extent and form of documentation.
- (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 6.7(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 6.8 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;
  - (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 material weakness relating to the design of ICFR exists at the end of the period.

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

7.1 **General** – Most sections in this 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 **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. Regardless of the approach the certifying officers use to design DC&P or ICFR, they could use a top-down, risk-based approach to evaluate DC&P or ICFR in order to limit the evaluation 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 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 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** – Form 52-109F1 requires the certifying officers to certify that they have evaluated, or supervised the evaluation of, the issuer's 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 of the Policy for guidance on self-assessments.

7.5 **Use of external auditor or other third party** – The certifying officers might decide to use a third party to assist with their DC&P or ICFR evaluations. In these circumstances, the certifying officers should 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. In situations where there are two certifying officers and one is performing a self-assessment, it would be appropriate for the other certifying officer to perform direct testing of the control.

- 7.11 **Timing of evaluation** – Form 52-109F1 requires certifying officers to certify that they have evaluated the effectiveness of the issuer's DC&P 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, the tools used to evaluate the components, and whether the components being evaluated are performed prior to, or subsequent to, year end.

- 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:
- (a) a description of the process the certifying officers used to evaluate DC&P or ICFR;
  - (b) how the certifying officers determined the extent of testing of the components of DC&P or ICFR;
  - (c) a description of, and results from applying, the evaluation tools discussed in sections 7.6 and 7.7 of the Policy or other evaluation tools; and
  - (d) the certifying officers' conclusions about:
    - (i) the operating effectiveness of DC&P or ICFR, as applicable; and
    - (ii) whether a 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 has 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.

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.

8.5 **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.

## PART 9 – MATERIAL WEAKNESS

### 9.1 Identifying a deficiency in ICFR

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

- (2) **Deficiency relating to the operation of ICFR** – A deficiency relating to the operation of ICFR exists when a properly designed component of ICFR does not operate as intended. 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.

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. In disclosing these mitigating procedures in its MD&A, an issuer should not imply that the procedures eliminate the existence of a material weakness.

- 9.2 **Assessing significance of deficiencies in ICFR** – If a deficiency or combination of deficiencies in the design or operation of one or more components of ICFR is identified, certifying officers should assess the significance of the deficiency, or combination of deficiencies, to determine whether a material weakness exists. Their assessment should generally include both qualitative and quantitative analyses.

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 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) identification of 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;
- (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) ineffective oversight of the issuer's external financial reporting and ICFR by the issuer's audit committee.

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 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 unless the qualification pertains to 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.

9.6 **Disclosure of a material weakness**

- (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 paragraph 5.2 of Form 52-109F1 and Form 52-109F2.
- (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)(A), (B) and (C) 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 paragraph 5.2 of Form 52-109F1 and Form 52-109F2.

- (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.

Once an issuer has completed its remediation it 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 paragraph 6 of Form 52-109F2.

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.

#### **PART 10 – WEAKNESS IN DC&P THAT IS SIGNIFICANT**

- 10.1 **Conclusions on effectiveness of DC&P if a weakness exists that is significant** – If the certifying officers identify a weakness relating to the design or operation of DC&P that is significant existing 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 by stating that the issuer's DC&P is effective subject to certain qualifications or exceptions unless the qualification pertains to one of the permitted scope limitations available in section 3.3 of the Instrument. A certifying officer could not conclude that the issuer's DC&P is effective if there is a deficiency, or combination of deficiencies, in DC&P such that there is a reasonable possibility that the issuer will not disclose material information required to be disclosed under securities legislation, within the time periods specified in securities legislation.

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.

- 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.
- 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 almost always represent a weakness that is significant in the issuer's DC&P.

#### **PART 11 – REPORTING CHANGES IN ICFR**

- 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 12 – ROLE OF BOARD OF DIRECTORS AND AUDIT COMMITTEE**

- 12.1 **Board of directors** – Form 52-109F1 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 National Instrument 51-102 *Continuous Disclosure Obligations* (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 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 material weakness (see section 9.2 of the Policy).
- 12.2 **Audit committee** – NI 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 NI 52-110 should consider its specific requirements in designing and evaluating their DC&P and ICFR.
- 12.3 **Reporting fraud** – Paragraph 8 of Form 52-109F1 requires certifying officers to disclose to the issuer's auditors, the board of directors 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. 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, which includes omissions of amounts or disclosures in financial statements to deceive financial statement users, and (ii) misstatements resulting from misappropriation of assets.

### PART 13 – CERTAIN LONG TERM INVESTMENTS

13.1 **Underlying entities** – An issuer might have a variety of long term investments that affect how the certifying officers design and evaluate the effectiveness of the issuer’s DC&P and ICFR. In particular, an issuer could have any of the following interests:

- (a) an interest in an entity that is a subsidiary which is consolidated in the issuer’s financial statements;
- (b) an interest in an entity that is a variable interest entity (a VIE) which is consolidated in the issuer’s financial statements;
- (c) an interest in an entity that is proportionately consolidated in the issuer’s financial statements;
- (d) an interest in an entity that is accounted for using the equity method in the issuer’s financial statements (an equity investment); or
- (e) an interest in an entity that is accounted for using the cost method in the issuer’s financial statements (a portfolio investment).

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

13.2 **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 **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* – 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”.

If the certifying officers have access to the underlying entity to design the controls, policies and procedures discussed in subsection (2) and they are not satisfied with those controls, policies and procedures, the certifying officers should consider whether there exists a material weakness or a weakness in DC&P that is significant.

- (4) **Disclosure of a scope limitation relating to a proportionately consolidated entity or VIE** – A scope limitation exists if the certifying officers would not have a reasonable basis for making the representations in the annual or interim certificates because they do not have sufficient access to a proportionately consolidated entity or VIE, as applicable, to design and evaluate the controls, policies and procedures carried out by that underlying entity.

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 each underlying entity in accordance with section 3.3 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 about an underlying entity, or combination of underlying entities, that is the subject of a scope limitation would include:

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

unless (i) the accounting principles used to prepare the financial statements of the underlying entity permit the preparation of its balance sheet without classifying assets and liabilities between current and non-current, and (ii) the MD&A includes alternative meaningful financial information about the underlying entity, 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 an underlying entity that is the subject of a scope limitation would also include any contingencies and commitments for the proportionately consolidated entity or VIE.

- (5) **Limited access to the underlying entity of a portfolio investment or equity investment** – Although the certifying officers may not have sufficient 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 controls over its disclosure of material information 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** – 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 14 – BUSINESS ACQUISITIONS

- 14.1 **Access to acquired business** – In many circumstances it is difficult for certifying officers to design or evaluate controls, policies and procedures carried out by an acquired business 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.
- 14.2 **Disclosure of scope limitation** – When determining whether a scope limitation exists, certifying officers must initially consider whether an acquired business includes risks that could reasonably result in a material misstatement in the issuer's annual filings, interim filings or other reports. The 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. If the certifying officers limit the scope of their design of DC&P and ICFR for a recent business acquisition, this scope limitation and summary financial information about the business must be disclosed in the issuer's MD&A in accordance with section 3.3 of the Instrument and paragraph 5.3 in Form 52-109F1, or 52-109F2 as applicable. Meaningful summary financial information about 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. In the case of related businesses, as defined in NI 51-102, the issuer may present the summary financial information about the businesses on a combined basis.

## **PART 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 has not completed such an evaluation; 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**

- 17.1 **Issuers that comply with U.S. laws** – Some Canadian issuers that comply with U.S. laws might choose to prepare two sets of financial statements and file 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 financial statements filed in Canada are certified (under either the Instrument or SOX 302 Rules), those issuers will not have recourse to the exemptions in sections 8.1 and 8.2 of the Instrument.

#### **PART 18 – LIABILITY FOR CERTIFICATES CONTAINING MISREPRESENTATIONS**

- 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 19 – TRANSITION**

- 19.1 **Representations regarding DC&P and ICFR following the transition periods** – If an issuer files an annual certificate in Form 52-109F1 or an interim certificate in Form 52-109F2 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.