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**VIA COURIER**

Alberta Securities Commission  
4th Floor, 300-5th Ave SW  
Calgary, AB T2P 3C4

Attention: Mr. Stephen P. Sibold, Q.C.  
Chair, Alberta Securities Commission

To Whom It May Concern:

**Re: Multi-National Instruments 52-109 and 52-110**

With respect to the above noted national instruments, Canadian Oil Sands Trust and its operating subsidiary, Canadian Oil Sands Limited, (collectively, "Canadian Oil Sands") would like to submit the following comments for consideration.

While we support the basic thrust and principals enunciated in these instruments, we have concerns with the draft instruments in a number of areas. As Chief Financial Officer of Canadian Oil Sands Limited, I strongly believe that I am responsible for the accurate and appropriate disclosure in the financial statements and related filings and for internal controls. However, certain ambiguities in the draft instrument cause me concern. I also believe that unintended conflicts may arise form the current language.

**1. MI 52-109 – Fairly Present Certification Without Reference to GAAP**

Based on comments that I heard from John Carache, Chief Accountant at the Ontario Securities Commission, at the September 17, 2003 Policy Forum, it is my understanding that the phrase "present fairly" is a subset of "presents fairly in accordance with GAAP" – that is, with appropriate selection and application of GAAP accounting policies and appropriate disclosure in MD&A and other filings, this "presents fairly" requirement would be met. I believe that the intent is to eliminate so called "fringe GAAP", and have the certification cover information included in filings outside of the financial statements.

The concern that I have is that GAAP may not always "present fairly", yet we are required to utilize GAAP for our financial statements. An example would be that GAAP sometimes requires that a trust report as income an amount generated in year by an operating subsidiary of a trust as a result of future tax rate changes as when it is highly unlikely that the operating subsidiary or the trust will pay any tax. Does this present fairly? Probably not. Is this definitive GAAP? I believe it is.

While I am not suggesting changes in the certification language of the instrument, I believe that clarification in the companion policy that issuers can rely on GAAP for financial statements is necessary and appropriate. Without this clarification, "fairness" when applying GAAP may become a discussion point in public disclosure documents such as the MD&A or notes to the financial statements, which discussion will no doubt confuse investors and add little or no value.

On another related point, Part 4 of the companion policy to MI 52-109 states "...particularly where the results of a GAAP audit may not reflect the financial condition of a company...". The wording is unclear as I am not aware of "audits" reflecting financial condition. Do you mean that GAAP presentation of financial statements may not reflect the financial condition of a company? Please clarify.

## **2. Certification of Disclosure and Internal Controls**

I believe that, as CFO, I have responsibility for establishing, maintaining and evaluating the effectiveness of internal and disclosure controls to provide reasonable assurance. The difficulties that I have with the proposed MI 52-109 certification are the length of this certification and the statements relating to "design and implementation". As a new CFO of Canadian Oil Sands, I have difficulty certifying that I "designed and implemented" something that already existed. I would suggest that the same objectives could be achieved with the following:

"The issuer's other officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls for the issuer to provide reasonable assurance, but not absolute assurance, that:

- a) material information relating to the issuer is known to us and such material information is disclosed within the time periods specified under applicable legislation; and
- b) the issuer's financial statements are fairly presented in accordance with GAAP."

I do not see the cost benefit in stating that I have evaluated the internal controls or in discussing changes in internal controls or their effectiveness in the MD&A. As CEO and CFO, we are responsible for ensuring that the internal and disclosure controls provide reasonable assurance. How any evaluation is done, when it is done and the conclusions reached are for the corporation and its audit committee and auditors to consider. Substantive testing or other activities may be substituted for internal controls to provide reasonable assurance required in (a) and (b) above. Accordingly, I recommend that paragraph 6 of MI 52-109 be deleted.

Clarification of what is "reasonable assurance" would also be helpful. I believe that absolute assurance is not achievable and if achievable would be extremely expensive. If reasonable assurance was assigned a 95% probability (ie. 2 standard deviations), it would imply that one out of every 20 issuers would have difficulty with this certification. Where is the cut-off? Some discussion and clarification of "reasonable assurance" would be helpful. I am concerned that without clarification, reasonable assurance will be interpreted to be a higher level of assurance than was the intended result or appropriate.

### 3. MI 52-110 - Financial Expert

I agree that audit committees need to be financially literate and that at least one person should have financial expertise along the lines outlined in the current definition of a financial expert. I disagree however that such an individual be designated a "financial expert". The term "expert" means someone who has special knowledge or skill in a particular area and the term "financial" is very broad. I am concerned that, despite the definition, the term "financial expert" implies something more than the definition and will be used by lawyers to hold the directors on the audit committee with such designation to an extremely high level of expertise and result in a higher degree of liability. In the context of finding well informed, knowledgeable directors to sit on audit committees in Canada, we believe that use of the term "financial expert" with the heightened liability will make it more difficult for public issuers to attract the very individuals that the regulators and investors want on audit committees. An easy change would be to require someone on the audit committee who has the following "expertise": **[insert definition]**

### 4. Lack of Recognition of Trust Structure

The current draft instruments fail to address the prevalent situation where income trusts do not have a board of directors but instead use the board of directors of the trust's subsidiary to act as the governing body for the public trust. We would suggest that the current language be amended to provide that where a public trust does not have a separate board of directors and has a third party corporation as a trustee, that the requirements regarding audit committees and CEO/CFO certification may be met by the trust's subsidiary complying with these requirements.

Should you have any questions, please do not hesitate to contact me directly at (403) 218-6212.

Yours truly,

(signed) *Allen R. Hagerman*

Allen R. Hagerman  
Chief Financial Officer

ARH/cej

cc: Mr. John Stevenson, Secretary, Ontario Securities Commission  
Ms. Denise Hendrickson, Alberta Securities Commission  
Ms. Trudy M. Curran, Canadian Oil Sands Limited