

Canadian Securities Administrators Multilateral Staff Notice 57-302**FAILURE TO FILE CERTIFICATES UNDER
MULTILATERAL INSTRUMENT 52-109 - CERTIFICATION OF DISCLOSURE IN ISSUERS'
ANNUAL AND INTERIM FILINGS****Purpose**

The purpose of this notice is to advise reporting issuers that a failure to file the certificates required by Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the "Instrument"), or the filing of certificates that are not in accordance with the prescribed forms, will be viewed by staff (except for staff in British Columbia, which did not adopt the Instrument) as a serious breach of securities law. In such circumstances staff will take appropriate action, which will generally include, depending on the relevant jurisdiction's authority, recommending the imposition of a cease trade order ("CTO") against the chief executive officer and/or chief financial officer of the issuer (or persons performing functions similar to a chief executive officer or chief financial officer) (the "CEO" or "CFO", as applicable) with respect to trading in securities of the issuer by the CEO and CFO, and placing the issuer on a list of defaulting reporting issuers. The Instrument was published in final form on January 16, 2004 and is subject to final Ministerial approvals. If such approvals are received, the Instrument will come into force on March 30, 2004.

Background

The Instrument is one of a number of recent investor confidence initiatives aimed at improving the quality and reliability of reporting issuers' financial disclosure. It requires CEOs and CFOs of reporting issuers to personally certify certain matters with respect to the annual and interim filings of the reporting issuer.

CEOs and CFOs will be required to certify, among other things, that:

- their issuers' annual filings and interim filings do not contain any misrepresentations or omit to state any material facts;
- the financial statements fairly present the financial condition, results of operations and cash flows of their issuers for the relevant period;
- they have designed or caused to be designed under their supervision, disclosure controls and procedures and internal control over financial reporting; and
- they have evaluated the effectiveness of such disclosure controls and procedures.

The Instrument will apply to interim periods and financial years beginning on or after January 1, 2004. Accordingly, issuers should be aware that, in some cases, certificates will need to be filed

as early as mid-May 2004. Transitional provisions in the Instrument permit issuers to file an abridged or “bare” form of certificate (without the representations in paragraphs 4 and 5 of Forms 52-109F1 and 52-109F2) in respect of financial years ending on or before March 30, 2005. Similarly, a bare certificate may be filed in respect of any interim period that occurs prior to the end of the first financial year in respect of which an issuer is required to file a “full” certificate (with all representations). For further guidance regarding compliance with the Instrument please see the final form of the Instrument which was published in each jurisdiction (except British Columbia) in January, 2004.

Staff Expectations

Once the Instrument comes into force, reporting issuers will be required to ensure that the certificates required by the Instrument are appropriately filed. Staff are available to provide assistance to issuers who have questions about how to meet their obligations under the Instrument. Issuers should also be aware that there is a mechanism available to them to obtain exemptive relief from the requirements of the Instrument, in appropriate circumstances.

Staff are of the view that a failure to file the certificates required by the Instrument, or the filing of deficient certificates, may be a signal of an underlying problem with the issuer’s related financial disclosure. Accordingly, if an issuer anticipates that it will have difficulty in filing the certificates in accordance with the Instrument, it should contact staff in its principal jurisdiction as soon as possible. Staff will ask the issuer to explain the reason why the certificates cannot be filed on time or in the prescribed form, as applicable. When an issuer fails to file the certificates by the required deadlines, staff will contact the issuer to request an explanation for the deficiency and will ask the issuer to identify any problems with its financial disclosure. In either case, if the situation is not promptly resolved, staff will generally recommend, depending on the jurisdiction’s authority, the issuance of a CTO against the issuer’s CEO and/or CFO and placing the issuer on a list of defaulting reporting issuers. In addition, staff will consider recommending further action, depending on the nature of the underlying deficiency.

Generally, we expect that responsibility for reviewing compliance with the Instrument, and for determining appropriate sanctions in the event of non-compliance with the Instrument, will rest with an issuer’s principal regulator. CSA staff will attempt to coordinate their reviews to ensure consistency in approach across the jurisdictions.

Questions

Please refer your questions to any of:

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