

**NOTICE
REQUEST FOR COMMENTS**

**PROPOSED MULTILATERAL INSTRUMENT 52-111
AND COMPANION POLICY 52-111CP
REPORTING ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

AND

**PROPOSED REPEAL AND REPLACEMENT OF
MULTILATERAL INSTRUMENT 52-109,
FORMS 52-109F1, 52-109FT1, 52-109F2 AND 52-109FT2
AND COMPANION POLICY 52-109CP
CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS**

1. REQUEST FOR PUBLIC COMMENT

Members of the Canadian Securities Administrators (the CSA), other than British Columbia (together the Publishing Jurisdictions), are publishing for a 120-day comment period the following documents:

- Multilateral Instrument 52-111 *Reporting on Internal Control over Financial Reporting* (the Proposed Internal Control Instrument);
- Companion Policy 52-111CP (the Proposed Internal Control Policy and together with the Proposed Internal Control Instrument, the Proposed Internal Control Materials);
- Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Revised Certification Instrument);
- Forms 52-109F1, 52-109FVT1, 52-109FM1, 52-109F1R, 52-109F1R – AIF, 52-109F2, 52-109FT2, 52-109FM2 and 52-109F2R (together, the Revised Certification Forms); and
- Companion Policy 52-109CP (the Revised Certification Policy and together with the Revised Certification Instrument and the Revised Certification Forms, the Revised Certification Materials).

The Revised Certification Materials are intended to replace the current Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Current

Certification Instrument), Forms 52-109F1, 52-109FT1, 52-109F2 and 52-109FT2 (the Current Certification Forms) and the Companion Policy to the Current Certification Instrument (the Current Certification Policy and together with the Current Certification Instrument and Current Certification Forms, the Current Certification Materials). The Current Certification Materials came into effect in all CSA jurisdictions, except British Columbia and Québec, on March 30, 2004.

In Québec, the Current Certification Instrument will be adopted as a regulation made under section 331.1 of *The Securities Act* (Québec) once it is approved, with or without amendment, by the Minister of Finance, and will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. The Current Certification Policy will be implemented as a policy.

New Brunswick is in the process of publishing the Current Certification Materials and the proposed amendments to the Current Certification Instrument and the Current Certification Policy that were published by the other Publishing Jurisdictions on November 26, 2004. Both the Current Certification Materials and the proposed amendments will be adopted in New Brunswick by implementing instruments. It is expected that the Current Certification Instrument and the Current Certification Forms will be adopted as a rule and the Current Certification Policy will be adopted as a policy.

We invite comment on these materials generally. In addition, we have a raised a number of questions for your specific consideration.

In determining whether to adopt the Proposed Internal Control Materials and the Revised Certification Materials, we will consider comments received in response to this Notice.

In the course of developing the Proposed Internal Control Materials, several of the Publishing Jurisdictions, including Alberta and Ontario, conducted consultations with market participants. Although the Alberta Securities Commission (the ASC) supports the objectives of the Proposed Internal Control Materials, because of feedback it received from issuers and investors, the ASC is still considering whether adoption of the Proposed Internal Control Materials is appropriate and whether any of the alternatives outlined under “7. Alternatives considered – Proposed Internal Control Materials” might sufficiently address the proposed objectives in a more cost-effective manner. The Manitoba Securities Commission shares the concerns expressed by the ASC with respect to the adoption of the Proposed Internal Control Materials.

2. OUTLINE OF NOTICE

1. Request for public comment
2. Outline of notice
3. Introduction
 - Publishing Jurisdictions
 - Purpose of Proposed Internal Control Materials and Revised Certification Materials

4. Background
 - Sarbanes-Oxley Act of 2002
 - Canadian initiatives
 - Previously published proposed amendments to the Current Certification Materials
5. Summary of Proposed Internal Control Materials
 - Scope of application
 - Management's assessment of internal control over financial reporting
 - Internal control report
 - Internal control audit report
 - Refiled internal control reports and internal control audit reports
 - Delivery of internal control reports and internal control audit reports
 - Language of internal control reports and internal control audit reports
 - Exemptions
 - Effective date and transition
 - Proposed Internal Control Policy
6. Anticipated costs and benefits – Proposed Internal Control Materials
7. Alternatives considered – Proposed Internal Control Materials
8. Summary of changes to Current Certification Materials
 - Significant changes to Current Certification Instrument and Current Certification Forms
 - Significant changes to Current Certification Policy
9. Summary of Revised Certification Materials
 - Revised Certification Instrument
 - Revised Certification Forms
 - Revised Certification Policy
10. Anticipated costs and benefits – Revised Certification Materials
11. Alternatives considered – Revised Certification Materials
12. Consequential amendments
13. Related instruments
14. Reliance on unpublished studies, etc.
15. Authority - Ontario
16. Comments
17. Questions
18. Text of Proposed Internal Control Materials and Revised Certification Materials

3. INTRODUCTION

Publishing Jurisdictions

The Proposed Internal Control Materials and the Revised Certification Materials are initiatives of the Publishing Jurisdictions. If adopted, the Proposed Internal Control Instrument, the Revised Certification Instrument and the Revised Certification Forms are expected to be adopted as:

- a rule in each of Alberta, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador;

- a Commission regulation in Saskatchewan;
- a policy in each of Prince Edward Island and Yukon; and
- a code in each of the Northwest Territories and Nunavut.

It is expected that the Proposed Internal Control Policy and the Revised Certification Policy, if adopted, will be adopted as a policy in each of Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut.

Purpose of Proposed Internal Control Materials and Revised Certification Materials

The objective of the proposals set out in the Proposed Internal Control Materials and the Revised Certification Materials is to improve the quality and reliability of financial and other continuous disclosure reporting by reporting issuers. We believe that this in turn will help to maintain and enhance investor confidence in the integrity of our capital markets.

The Proposed Internal Control Materials and the Revised Certification Materials will also lend support to various other initiatives developed by the CSA by requiring issuers to develop appropriate systems that provide reasonable assurance regarding the reliability of disclosure made by issuers. These other initiatives include:

a harmonized continuous disclosure rule that, among other things, mandates specific and expanded content for issuers' MD&A (National Instrument 51-102 *Continuous Disclosure Obligations*);

- an audit committee rule that mandates the establishment of an independent and financially literate audit committee (Multilateral Instrument 52-110 *Audit Committees*); and
- a proposed rule that requires issuers to disclose their corporate governance practices (National Instrument 58-101 *Corporate Governance Disclosure* and National Policy 58-201 *Corporate Governance Guidelines*).

The anticipated costs and benefits associated with the Proposed Internal Control Materials and the Revised Certification Materials are discussed below under “6. Anticipated costs and benefits – Proposed Internal Control Materials” and “10. Anticipated costs and benefits – Revised Certification Materials”.

Alternatives to the Proposed Internal Control Materials and the Revised Certification Materials considered are discussed below under “7. Alternatives considered – Proposed Internal Control Materials” and “11. Alternatives considered – Revised Certification Materials”.

4. BACKGROUND

Sarbanes-Oxley Act of 2002

In July 2002, the *Sarbanes-Oxley Act of 2002* (SOX) was enacted in the U.S. SOX prescribes a broad range of measures designed to restore the public's faith in the U.S. capital markets in the wake of several U.S. financial reporting scandals. These measures include:

- CEO and CFO certification of financial and other disclosure requirements implementing section 302 of SOX (the SOX 302 Rules); and
- internal control reporting requirements implementing section 404 of SOX (the SOX 404 Rules).

Canadian initiatives

Since our markets are connected to and affected by the U.S. markets, they are not immune from real or perceived erosion of investor confidence in the U.S. Therefore, we initiated domestic measures to address the issue of investor confidence and to maintain the reputation of our markets internationally.

On March 30, 2004, the Current Certification Materials came into force in the Publishing Jurisdictions (other than Québec). The Current Certification Materials are similar to the SOX 302 Rules and require a CEO and a 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 and internal control over financial reporting (or caused them to be designed under their supervision);
- they have evaluated the effectiveness of the issuer's disclosure controls and procedures and caused the issuer to disclose their conclusions regarding their evaluation; and
- they have caused the issuer to disclose certain changes in internal control over financial reporting.

Unlike the SOX 302 Rules, the Current Certification Materials do not require certifying officers to certify that they have disclosed to their audit committees and auditors significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting

and certain fraud. The requirement for this representation under the SOX 302 Rules is based upon an evaluation of the effectiveness of internal control over financial reporting.

At the time that the Current Certification Materials came into force, the Publishing Jurisdictions indicated that they were developing, as a separate CSA initiative, an instrument which would require a report on management's assessment of an issuer's internal control over financial reporting. They also indicated that they were evaluating the extent to which auditor attestation of that report should be required.

The Proposed Internal Control Instrument will impose the following requirements in addition to the requirements of the Revised Certification Materials:

- an evaluation of the effectiveness of internal control over financial reporting against a suitable control framework;
- maintenance of evidence providing reasonable support for the evaluation of the effectiveness of internal control over financial reporting;
- reporting of material weaknesses in internal control over financial reporting; and
- an audit of internal control over financial reporting.

These requirements are similar to those under the SOX 404 Rules.

The Revised Certification Instrument will harmonize our certification requirements with those imposed by the SOX 302 Rules for all reporting issuers that are subject to the Proposed Internal Control Instrument.

Previously published proposed amendments to the Current Certification Materials

On November 26, 2004, the Publishing Jurisdictions published for comment proposed amendments to the Current Certification Materials (the Interim Certification Amendments). It is intended that the Interim Certification Amendments come into effect before the Revised Certification Materials come into effect. The Revised Certification Materials incorporate the Interim Certification Amendments. Please see the discussion of transition periods under "8. Summary of changes to Current Certification Materials – Significant changes to Current Certification Instrument and Current Certification Forms" for a summary of these amendments.

5. SUMMARY OF PROPOSED INTERNAL CONTROL MATERIALS

Scope of Application

Part 1 of the Proposed Internal Control Instrument establishes the scope of the Proposed Internal Control Instrument. It applies to all reporting issuers other than investment funds and venture issuers. In contrast, the Revised Certification Instrument applies to all reporting issuers other

than investment funds. As a result, venture issuers are subject to the requirements of the Revised Certification Instrument, but are not required to comply with the Proposed Internal Control Instrument.

Under the Proposed Internal Control Instrument, a venture issuer is an issuer that, as at the applicable time, does not have any of its securities listed or quoted on any of the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the Nasdaq National Market, the Nasdaq SmallCap Market, the Pacific Exchange or a marketplace outside of Canada or the U.S.

Specific Request for Comment

1. Do you agree that the Proposed Internal Control Instrument should apply to all reporting issuers other than investment funds and venture issuers? If not, which issuers do you believe should be subject to the Proposed Internal Control Instrument?

The table set out below under “5. Summary of Proposed Internal Control Materials – Effective date and transition” provides a breakdown of issuers by market capitalization, which may be helpful in preparing your response to this question.

2. Do you believe that venture issuers should be subject to different requirements relating to internal control over financial reporting beyond what is required by the Revised Certification Materials? If so, what should be the nature of any different requirements?

Management’s assessment of internal control over financial reporting

Part 2 of the Proposed Internal Control Instrument requires management of every issuer, with the participation of the certifying officers, to evaluate the effectiveness of the issuer’s internal control over financial reporting as of the end of the issuer’s financial year.

Management

The Proposed Internal Control Instrument does not define “management”. This is intentional. The Proposed Internal Control Policy clarifies that we expect management to include at a minimum the issuer’s certifying officers. We believe, however, that it should be left to the discretion of the certifying officers, acting reasonably, to determine the other members of management for the purposes of the Proposed Internal Control Instrument.

Specific Request for Comment

3. Should the term “management” be formally defined? If so, what would be an appropriate definition?
4. If “management” is not defined, is the guidance in the Proposed Internal Control Policy adequate and appropriate?

Scope of evaluation

The Proposed Internal Control Instrument does not prescribe the scope of the evaluation of internal control over financial reporting. We believe that the scope of the evaluation should be left to the judgment of management, acting reasonably. This will allow management to tailor its evaluation to the particular circumstances of the issuer, taking into account the issuer's size, nature of business and complexity of operations.

The Proposed Internal Control Policy, however, clarifies our expectations of the scope of the evaluation if the issuer has any of the following interests:

- an interest in an entity that is consolidated because the issuer controls that entity (a subsidiary);
- an interest in an entity that is consolidated because it is a variable interest entity (a VIE);
- an interest in an entity that is proportionately consolidated because the issuer jointly controls that entity (a joint venture);
- an interest in an entity that is accounted for using the equity method because the issuer has significant influence over that entity (an equity investment);
- an interest in an entity that is carried at cost because the issuer has neither control nor significant influence over that entity (a portfolio investment); or
- an interest in a business that the issuer acquired during the financial year.

Specific Request for Comment

5. Is the guidance set out in the Proposed Internal Control Policy with respect to the scope of the evaluation of internal control over financial reporting in relation to each of the circumstances set out above adequate and appropriate?

Suitable control framework

The evaluation must be based upon a suitable control framework. The Proposed Internal Control Instrument does not prescribe the control framework that must be used. Instead the Proposed Internal Control Instrument requires management to use a suitable control framework established by a body or group that has followed an open and transparent process, including providing the public with an opportunity to provide comments, when developing the control framework.

The Proposed Internal Control Policy provides additional guidance on what constitutes a "suitable control framework". In particular, it confirms that the following control frameworks satisfy the criteria of a suitable control framework:

- the *Risk Management and Governance/Guidance on Control* published by The Canadian Institute of Chartered Accountants' Criteria of Control Board (CoCo);
- the *Internal Control – Integrated Framework* published by The Committee of Sponsoring Organizations of the Treadway Commission (COSO); and
- the *Turnbull Report* published by The Institute of Chartered Accountants in England and Wales.

This list is not intended to be exhaustive.

Specific Request for Comment

6. Are there any other control frameworks that should be identified in the Proposed Internal Control Policy as satisfying the criteria for a suitable control framework?
7. Are there any specific aspects of the identified control frameworks on which additional guidance is required to assist in their application by issuers that have limited formal structures for internal control over financial reporting?

Evidence

Part 2 of the Proposed Internal Control Instrument requires every issuer to maintain evidence to provide reasonable support for management's assessment of the effectiveness of the issuer's internal control over financial reporting.

The Proposed Internal Control Instrument does not prescribe the content of the evidence as we believe that it may vary depending on the issuer's size, nature of business and complexity of operations. The Proposed Internal Control Policy provides guidance on our minimum expectations for the content of the evidence.

The evidence must be maintained in a manner that ensures the trustworthiness and readability of the information recorded. The Proposed Internal Control Policy clarifies that the evidence may be maintained in a variety of formats.

In addition, the evidence must be maintained for the same period that the accounting records for the financial year to which the evidence relates are maintained in accordance with the *Income Tax Act* (Canada).

Specific Request for Comment

8. Is the guidance in the Proposed Internal Control Policy regarding the content of the evidence adequate and appropriate?
9. Are the requirements in the Proposed Internal Control Instrument regarding the manner in which the evidence must be maintained adequate and appropriate? Is the guidance in the

Proposed Internal Control Policy regarding the manner in which the evidence may be maintained adequate and appropriate?

10. Is the requirement in the Proposed Internal Control Instrument on the period of time during which the evidence must be maintained adequate and appropriate?

Internal control report

Part 2 of the Proposed Internal Control Instrument also requires every issuer to file a report of management that describes management's assessment of the effectiveness of the issuer's internal control over financial reporting (an internal control report). An internal control report must be filed separately, but concurrently, with the issuer's annual financial statements and annual MD&A.

An internal control report must include:

- a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the issuer;
- a statement identifying the control framework used by management to evaluate the effectiveness of the issuer's internal control over financial reporting;
- management's assessment of the effectiveness of the issuer's internal control over financial reporting as of the end of the issuer's financial year, including a statement as to whether the internal control over financial reporting is effective;
- disclosure of any material weaknesses in the issuer's internal control over financial reporting identified by management;
- a statement that the auditors that audited the issuer's annual financial statements have issued an internal control audit report;
- disclosure of any limitations in management's assessment of the effectiveness of the issuer's internal control over financial reporting extending into a joint venture or a VIE in which the issuer has a material interest; and
- disclosure of any limitations in management's assessment of the effectiveness of the issuer's internal control over financial reporting extending into a business that was acquired by the issuer during the financial year.

The internal control report must be approved by the issuer's board of directors before it is filed.

Specific Request for Comment

11. Is it appropriate to require disclosure of any limitations in management's assessment of the effectiveness of an issuer's internal control over financial reporting extending into a joint venture, VIE or acquired business? If not, are there alternative ways of providing transparency with respect to any limitations in management's assessment?
12. Are there any other circumstances under which management may reasonably limit its assessment? Should disclosure of these circumstances be required?

Internal control audit report

Part 3 of the Proposed Internal Control Instrument requires every issuer to file a report in which the issuer's auditor expresses an opinion, or states that an opinion cannot be expressed, concerning management's assessment of the effectiveness of the issuer's internal control over financial reporting (an internal control audit report). The internal control audit report must be filed together with the internal control report.

An internal control audit report must:

- be prepared in accordance with the standard (the CICA Standard) for an audit of internal control over financial reporting performed in conjunction with an audit of financial statements established by the Auditing and Assurance Standards Board of The Canadian Institute of Chartered Accountants (the CICA);
- be dated the same date as the audit report on the annual financial statements;
- be signed by the auditor; and
- identify the internal control report in respect of which the internal control audit report has been prepared.

Auditing standard

As noted above, the internal control audit report must be prepared in accordance with the CICA Standard. In October 2004, the Auditing and Assurance Standards Board of the CICA (the AASB) issued for public comment an exposure draft of the proposed CICA Standard. The proposed CICA Standard is substantially the same as the Public Company Accounting Oversight Board's (the PCAOB) Auditing Standard No. 2, An Audit of Internal Control over Financial Reporting Performed in Conjunction with an Audit of Financial Statements (the PCAOB Standard). The exposure draft, together with background information about the project and the current status of the AASB's deliberations, is available on the CICA's website (www.cica.ca). The nature and scope of the audit engagement proposed in the exposure draft is an important element to be considered in assessing the implications of the Proposed Internal Control

Materials. We therefore encourage you to review the Proposed Internal Control Materials in conjunction with the exposure draft.

Despite the preceding paragraph, auditors of foreign issuers may perform their audit and prepare their audit report in accordance with the PCAOB Standard. The term “foreign issuer” is defined in the Proposed Internal Control Instrument. The PCAOB Standard is available on the PCAOB’s website (www.pcaobus.org).

No separate engagement

The internal control audit report and the audit report on the annual financial statements must be prepared by the same auditor. We believe that the audit of internal control over financial reporting and the audit of financial statements are interrelated and as a result, should be performed by the same auditor.

Auditor independence

Under the rules of professional conduct of the provincial and territorial institutes of Chartered Accountants, auditors are prohibited from providing certain non-audit services to issuers above a specified size threshold. Among other things, this permits an auditor expressing an opinion on financial statements of an issuer to provide certain non-audit services such as accounting, bookkeeping and internal audit so long as any resulting self-review threat is reduced to an acceptable level. The Proposed Internal Control Policy confirms that, if such services are provided to an issuer, the issuer’s audit committee and the auditor should evaluate carefully whether the auditor’s independence will be impaired for purposes of signing an internal control audit report.

Refiled internal control reports and internal control audit reports

Part 4 of the Proposed Internal Control Instrument requires an issuer to refile its internal control report and internal control audit report if it refiles its annual financial statements. The Proposed Internal Control Policy clarifies that if the annual MD&A is refiled but the annual financial statements are not refiled, it will not be necessary to refile the internal control report and internal control audit report.

Delivery of internal control reports and internal control audit reports

Part 5 of the Proposed Internal Control Instrument sets out the delivery requirement for internal control reports and internal control audit reports.

Language of internal control reports and internal control audit reports

Part 6 of the Proposed Internal Control Instrument specifies the language requirements for internal control reports and internal control audit reports.

Exemptions

Part 7 of the Proposed Internal Control Instrument provides for a number of exemptions.

52-111 transition issuers

We have included three exemptions for 52-111 transition issuers which have the effect of delaying the implementation of the reporting requirements of the Proposed Internal Control Instrument for these issuers. Please see “5. Summary of Proposed Internal Control Materials - Effective date and transition” for a further discussion of these exemptions.

Issuers that comply with SOX 404 Rules

Issuers that comply with the SOX 404 Rules are exempt from the Proposed Internal Control Instrument provided that they file with the securities regulatory authorities management’s annual report on internal control over financial reporting and the attestation report on management’s assessment of internal control over financial reporting prepared in accordance with the PCAOB Standard.

We believe that issuers that comply with the SOX 404 Rules should be exempt from the Proposed Internal Control Instrument because the requirements of the Proposed Internal Control Instrument and the SOX 404 Rules are substantially similar.

Foreign issuers

Certain foreign issuers are exempt from the Proposed Internal Control Instrument. We have included this exemption in order to be consistent with the basic scheme contemplated by National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

Exchangeable security issuers and credit support issuers

Certain issuers of exchangeable securities and guaranteed debt securities are exempt from the Proposed Internal Control Instrument provided that they are exempt from National Instrument 51-102 *Continuous Disclosure Obligations*.

Asset-backed securities issuers

Certain issuers of asset-backed securities (ABS issuers) are exempt from the Proposed Internal Control Instrument. The term “asset-backed security” is defined in the Proposed Internal Control Instrument. ABS issuers are similarly exempt from the requirements of the SOX 404 Rules.

We are currently examining the continuous disclosure requirements imposed on ABS issuers as a separate initiative. Upon completing this review, we may consider imposing the requirements of the Proposed Internal Control Instrument or alternative requirements on ABS issuers.

Part 7 of the Proposed Internal Control Instrument also provides that exemptions from the Proposed Internal Control Instrument may be granted by the securities regulatory authority or regulator.

Specific Request for Comment

13. Are the exemptions from the Proposed Internal Control Instrument appropriate?
14. Are there any other classes of issuers that should be exempt from the Proposed Internal Control Instrument?

Effective date and transition

Part 8 of the Proposed Internal Control Instrument establishes the date that the Proposed Internal Control Instrument comes into force.

The provisions regarding internal control reports and internal control audit reports will apply for financial years ending on or after June 30, 2006. There are three exemptions from this implementation date which result in implementation of the Proposed Internal Control Instrument being phased-in over four years:

Exemption for 52-111 transition 1 issuers

Issuers with a market capitalization of \$250,000,000 or more but less than \$500,000,000 are exempt from the reporting requirements for financial years ending on or before June 29, 2007 provided that they file a notice of the exemption in the prescribed form with the securities regulatory authorities.

Exemption for 52-111 transition 2 issuers

Issuers with a market capitalization of \$75,000,000 or more but less than \$250,000,000 are exempt from the reporting requirements for financial years ending on or before June 29, 2008 provided that they file a notice of the exemption in the prescribed form with the securities regulatory authorities.

Exemption for 52-111 transition 3 issuers

Issuers with a market capitalization of less than \$75,000,000 are exempt from the reporting requirements for financial years ending on or before June 29, 2009 provided that they file a notice of the exemption in the prescribed form with the securities regulatory authorities.

Market capitalization will be calculated on the basis of a 20 trading-day weighted average as of June 30, 2005 (with an exception for an issuer who becomes a reporting issuer or ceases to be a venture issuer after that date). The manner in which market capitalization is calculated is set out in the Proposed Internal Control Instrument.

The following table summarizes the implementation of the reporting requirements for reporting issuers in Canada:^{1, 2}

Category of reporting issuers ³	Number of issuers	Approximate% of issuers	Approximate % of market capitalization ⁴	First year-ends to which reporting requirements apply (either under the SOX 404 Rules or the Proposed Internal Control Instrument)
SEC registrants ⁵	175	13%	61%	November 15, 2004 or July 15, 2005 (if foreign private issuer or non-accelerated filer)
Non-venture issuers ⁶ with a market capitalization of greater than \$500,000,000	186	14%	31%	June 30, 2006
Non-venture issuers with a market capitalization of \$250,000,000 or more but less than \$500,000,000	127	10%	3%	June 30, 2007
Non-venture issuers with a market capitalization of \$75,000,000 or more but less than \$250,000,000	355	27%	4%	June 30, 2008
Non-venture issuers with a market capitalization of less than \$75,000,000	475	36%	1%	June 30, 2009
Total	1,318	100%	100%	
Venture issuers ⁷	2,317	-	-	Not applicable

¹ All values are as of October 2004.

² Please see Specific Request for Comment #1 under “5. Summary of Proposed Internal Control Materials – Scope of Application” and Alternative #3 – More limited scope of application under “7. Alternatives considered – Proposed Internal Control Materials”, both of which refer to this table.

³ We have removed foreign issuers from this analysis because they would otherwise distort the numbers due to the size of the market capitalization of these issuers that have listings on the TSX but are very thinly traded there. As a result, “% of issuers” is calculated as the percent of Canadian-based issuers and “% of market capitalization” is calculated as the percent of domestic quoted market value.

⁴ Subject to footnote 2, the approximate percentage of market capitalization is calculated using the total TSX Quoted Market Value at the end of October 2004 (\$1,308 billion).

⁵ We have used interlisted issuers identified by the TSX as an approximation for SEC registrants. These issuers are not venture issuers; however, they are not included in the groups of non-venture issuers in the table above.

⁶ We have used TSX-listed issuers as an approximation for non-venture issuers.

⁷ We have used TSX Venture-listed issuers and NEX-listed issuers as an approximation for venture issuers.

We are proposing the phased-in implementation as we are conscious of the need to provide adequate time for an orderly implementation that achieves the objectives of the Proposed Internal Control Instrument, while taking into account concerns about the cost and limited availability of appropriate expertise, both within reporting issuers and among external advisors and auditors.

Specific Request for Comment

15. Is the phased-in implementation of the Proposed Internal Control Instrument appropriate?
16. Does the phased-in implementation adequately address the concerns regarding the cost and limited availability of appropriate expertise within reporting issuers and among external advisors and auditors? If not, how can these concerns be addressed?

Proposed Internal Control Policy

The purpose of the Proposed Internal Control Policy is to help users understand how the securities regulatory authorities interpret or apply certain provisions of the Proposed Internal Control Instrument. It also includes a discussion on the consequences of filing internal control reports and internal control audit reports containing misrepresentations.

6. ANTICIPATED COSTS AND BENEFITS – PROPOSED INTERNAL CONTROL MATERIALS

As with all regulatory initiatives, it is important to consider the costs and benefits (both quantifiable and unquantifiable) associated with the Proposed Internal Control Materials.

Adoption of the Proposed Internal Control Materials may have a number of potential implications. These include:

- promotion of an enhanced focus on internal control over financial reporting among reporting issuers in Canada;
- improvement in the quality and reliability of financial reporting;
- enhanced investor confidence in our capital markets, potential increase in capital investment in Canada and potential lower cost of capital for reporting issuers in Canada;
- the alignment of our regulatory system with the regulatory system in the U.S.;
- potential adverse effect on issuers' profitability and growth prospects as a result of the costs of compliance;
- potential decrease in the number of reporting issuers in Canada; and

- misconceptions regarding the objectives of the Proposed Internal Control Instrument, which is not designed to legislate against fraud, resulting in a false sense of security in investors.

The anticipated costs and benefits of implementing the Proposed Internal Control Materials are discussed in the paper entitled *The Cost and Benefits of Management Reporting and Auditor Attestation on Internal Controls over Financial Reporting* (the Internal Control CBA), which has been published together with this Notice, and is incorporated by reference into this Notice. The Internal Control CBA identifies both quantifiable and unquantifiable costs and benefits associated with the Proposed Internal Control Materials. The Internal Control CBA is available on the Ontario Securities Commission’s website (at www.osc.gov.on.ca under “Policy & Regulation” – “Rules, Policies & Notices” – “Category 5 – Ongoing Requirements for Issuers and Insiders” - “52-111 – Reporting on Internal Control over Financial Reporting”).

There has also been a significant amount of commentary emanating from the U.S. regarding the costs of compliance with the SOX 404 Rules. This commentary has indicated that:

- Compliance with the SOX 404 Rules is both time-consuming and costly and in some cases, diverting human and capital resources away from the core business.
- The costs of compliance with the SOX 404 Rules may be disproportionately higher for smaller issuers or issuers with complex or decentralized operations.
- Compliance with the SOX 404 Rules has increased the demand for internal accounting staff, auditors and consultants. This has led to, in certain markets, a shortage of such persons and an increase in the costs of the services provided by such persons.

Specific Request for Comment

17. Are there any costs or benefits associated with the Proposed Internal Control Materials that have not been identified in the Internal Control CBA? If so, what are they?
18. Do you believe that the benefits (both quantifiable and unquantifiable) justify the costs of compliance (both quantifiable and unquantifiable) for:
 - (a) issuers with a market capitalization of less than \$75 million?
 - (b) issuers with a market capitalization of \$75 million or more but less than \$250 million?
 - (c) issuers with a market capitalization of \$250 million or more but less than \$500 million?
 - (d) issuers with a market capitalization of greater than \$500 million?
 - (e) all issuers?

Why?

7. ALTERNATIVES CONSIDERED - PROPOSED INTERNAL CONTROL MATERIALS

We did consider proposing alternative instruments or policies which would contain less onerous or different requirements than those found in the Proposed Internal Control Materials.

In evaluating each of these alternatives, we considered its potential to achieve the following objectives: (i) improvement in the quality and reliability of financial reporting in Canada; (ii) promotion of an “internal control culture” through an enhanced focus on internal control over financial reporting in Canada; and (iii) maintenance and enhancement of the reputation of our markets. We also balanced these objectives with the transparency of the alternative to the marketplace, the costs of compliance for issuers and the practicality of the alternative from the perspective of issuers, their auditors and the securities regulatory authorities.

We did not identify any alternatives that we believed met all of the objectives discussed above to the same extent as the Proposed Internal Control Materials. Some of the alternatives considered are briefly discussed below.

Alternative #1 - No internal control audit report

This alternative would require issuers to comply with the requirements of the Proposed Internal Control Instrument other than the requirement to file an internal control audit report.

The costs of compliance with this alternative would be lower than the costs of compliance with the Proposed Internal Control Instrument.

While this alternative would enhance the focus on internal control over financial reporting to some extent, the depth to which management would evaluate the effectiveness of internal control over financial reporting would potentially vary significantly without the internal control audit. We believe that the audit provides greater assurance regarding the consistency in the quality and appropriateness of management’s evaluation. Without the audit requirement, it would be difficult for investors to assess and compare the quality and results of management’s evaluation of internal control over financial reporting. As a result, investors may assign a lower value to the internal control reports filed in accordance with this alternative as compared to those filed in accordance with the SOX 404 Rules. This in turn may affect the reputation of our markets.

Alternative #2 - Less prescriptive auditing standard

This alternative would require issuers to comply with the requirements of the Proposed Internal Control Instrument except that internal control audit reports would be required to be prepared in accordance with an alternative auditing standard that would be less prescriptive than the proposed CICA Standard and the PCAOB Standard.

The costs of compliance with this alternative may be lower than the costs of compliance with the Proposed Internal Control Instrument.

While this alternative would enhance the focus on internal control over financial reporting to some extent, it poses practical implementation problems for issuers, auditors and securities regulatory authorities. It would reduce the ability of issuers and auditors to learn from the experience of issuers and auditors complying with the SOX 404 Rules. Auditors may have to apply audit procedures in Canada that are different from those applied in the United States. This alternative would not enable us to implement internal control reporting requirements in a timely manner as a new auditing standard would have to be developed.

In addition, it may be difficult for investors to compare the internal control audit reports filed in accordance with this alternative with those filed in accordance with the SOX 404 Rules and to assign the appropriate value to each type of report. It is difficult to assess the effect this may have on the reputation of our markets.

Alternative #3 - More limited scope of application

This alternative would exempt non-venture issuers with a market capitalization of less than a specified amount (e.g. \$75 million, \$250 million or \$500 million) from the requirements of the Proposed Internal Control Instrument.

There is some evidence that the costs of compliance with the Proposed Internal Control Instrument may be disproportionately higher for smaller issuers. As a result, this alternative would eliminate the cost burden for smaller issuers, while issuers representing a significant percentage of the total TSX Quoted Market Value would still be subject to the Proposed Internal Control Instrument. Please see the table set out under “5. Summary of Proposed Internal Control Materials – Effective date and transition” which provides a breakdown of issuers by market capitalization.

This alternative, however, would create two levels of regulation among issuers listed on the TSX, Canada’s senior exchange: issuers listed on the TSX with a market capitalization of greater than the specified amount would be subject to the Proposed Internal Control Instrument in addition to the Revised Certification Instrument and issuers listed on the TSX with a market capitalization of less than the specified amount would only be subject to the Revised Certification Instrument.

This alternative poses practical and transparency concerns. A mechanism to address issuers’ market capitalization fluctuating above and below the specified amount would have to be developed. It would be more difficult for both issuers and investors to predict which issuers would be subject to the requirements of the Proposed Internal Control Instrument in any given year. In addition, it may be less transparent to investors which issuers have complied with the Proposed Internal Control Instrument in any given year.

It also would not necessarily enhance the focus on internal control over financial reporting among smaller issuers listed on the TSX. This approach may affect the reputation of our senior exchange as not all of its listed issuers would be subject to requirements similar to the SOX 404 Rules.

Alternative #4 – Evaluation of entity-level controls only

This alternative would require management to evaluate only entity-level controls relating to financial reporting as at the end of the issuer's financial year and require the issuer to file a report of management's assessment of such controls and auditor attestation to that report. Entity-level controls include ethics, code of conduct and "tone at the top".

This alternative would enhance the focus on internal control over financial reporting with management and auditors concentrating on the "big picture" components of internal control over financial reporting.

It may also involve less work by management and auditors than the Proposed Internal Control Instrument, resulting in lower costs of compliance. It is difficult to estimate the extent of the cost reductions as management and auditors would still be required to perform a significant amount of work to support their assessment of the effectiveness of the entity-level controls. This work may include evaluating operating controls that support the entity-level controls.

This alternative, however, poses practical implementation problems for issuers, auditors and securities regulatory authorities. It would reduce the ability of issuers and auditors to learn from the experience of issuers and auditors complying with the SOX 404 Rules. Auditors may have to apply audit procedures in Canada that are different from those applied in the United States. This alternative would not enable us to implement internal control reporting requirements in a timely manner as a new auditing standard would have to be developed.

This alternative would also result in a significantly different scope of evaluation of internal control over financial reporting than the scope required under the SOX 404 Rules. It may be difficult for investors to compare the internal control audit reports filed in accordance with this alternative with those filed in accordance with the SOX 404 Rules and to assign the appropriate value to each type of report. Given the more limited scope of the entity-level control evaluation, investors may assign a lower value to internal control reports filed in accordance with this alternative. This in turn may affect the reputation of our markets.

Alternative #5 – Voluntary compliance

This alternative would implement the Proposed Internal Control Instrument as a recommended practice. Issuers would have the option of either complying with the internal control reporting requirements or explaining why it is appropriate that they did not comply. The market would be able to respond accordingly.

This alternative would eliminate the cost burden for issuers who chose not to comply with the internal control reporting requirements.

This alternative, however, would not necessarily enhance the focus on internal control over financial reporting in Canada. This in turn may affect the reputation of our markets.

In addition, this alternative poses practical and transparency concerns. It would be more difficult to predict which issuers would be complying with the requirements of the Proposed Internal Control Instrument in any given year. In addition, it may be less transparent to investors which issuers have complied with the Proposed Internal Control Instrument in any given year.

Issuers may also not choose to obtain an internal control audit report, which may raise concerns regarding the quality and appropriateness of management's evaluation.

Alternative #6 - Status quo

This alternative would not impose the requirements regarding internal control over financial reporting set out in the Proposed Internal Control Instrument. As a result, issuers would only be subject to the requirements regarding internal control over financial reporting set out in the Revised Certification Materials.

There would be no incremental costs of compliance associated with this alternative.

While this alternative would enhance the focus on internal control over financial reporting to some extent, the extent to which management would design internal control over financial reporting would potentially vary significantly without the formal requirement to evaluate internal control over financial reporting and obtain an internal control audit. We believe that the audit provides greater assurance regarding the consistency in the quality and appropriateness of management's design and evaluation of internal control over financial reporting.

As a result, we do not believe that the Revised Certification Materials alone achieve the objectives identified above to the same extent as the Revised Certification Materials combined with the Proposed Internal Control Materials.

Specific Request for Comment

19. Do you agree with our assessment of the identified alternatives?

20. What other alternatives, if any, would achieve the objectives identified above?

8. SUMMARY OF CHANGES TO CURRENT CERTIFICATION MATERIALS

The Current Certification Materials continue to be in force in all jurisdictions, except British Columbia and Québec. If the Revised Certification Materials are adopted, they will replace the Current Certification Materials.

Significant changes to Current Certification Instrument and Current Certification Forms

The most significant changes to the Current Certification Instrument and the Current Certification Forms are summarized below:

Requirement for disclosure controls and procedures and internal control over financial reporting

A new section has been added to clarify that every issuer must have disclosure controls and procedures and internal control over financial reporting.

Annual certificates

(i) *Transition periods*

Under the Current Certification Materials, issuers are permitted to file annual certificates in Form 52-109FT1 (a bare annual certificate) for financial years ending on or before March 30, 2005.

An additional transition period has been added during which issuers will be permitted to file annual certificates in Form 52-109FM1 (a modified annual certificate). The modified annual certificates are permitted for financial years ending on or before June 29, 2006 and do not require the certifying officers to represent that:

- they are responsible for establishing and maintaining internal control over financial reporting;
- they have designed internal control over financial reporting, or caused it to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP; and
- they have caused the issuer to disclose in the issuer's MD&A any change in the issuer's internal control over financial reporting that occurred during the period between the end of the most recent interim period and the end of the issuer's financial year that materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

(ii) *Required form of full annual certificates*

Following the transition periods discussed above:

- An issuer that is not a 52-109 transition issuer or a venture issuer must file annual certificates in Form 52-109F1 (a full annual certificate for issuers required to comply with the Proposed Internal Control Instrument).
- A venture issuer must file annual certificates in Form 52-109FVT1 (a full annual certificate for issuers not required to comply with the Proposed Internal Control Instrument).

- A 52-109 transition issuer may file annual certificates in Form 52-109FVT1 for the financial years in respect of which it is not required to comply with the reporting requirements of the Proposed Internal Control Instrument, following which it must file annual certificates in Form 52-109F1.

Under the Revised Certification Instrument, a venture issuer is an issuer that, as at the applicable time, does not have any of its securities listed or quoted on any of the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the Nasdaq National Market, the Nasdaq SmallCap Market, the Pacific Exchange or a marketplace outside of Canada or the U.S.

There are three classes of 52-109 transition issuers which are defined in the Revised Certification Instrument. Generally speaking, 52-109 transition issuers are issuers with a market capitalization of less than \$500,000,000.

(iii) *Differences between forms of full annual certificates*

There are two primary differences between Form 52-109F1 and Form 52-109FVT1. First, Form 52-109F1 includes a representation that an issuer's certifying officers have disclosed, based on their most recent evaluation of internal control over financial reporting, to the issuer's auditors and audit committee:

- all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information; and
- any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting.

"Significant deficiency", "material weakness" and "audit committee" are defined in the Revised Certification Instrument. This representation is contained in the form of certificate required under the SOX 302 Rules. It is based upon an evaluation of internal control over financial reporting, which is a requirement of the Proposed Internal Control Instrument. As issuers who are permitted or required to file annual certificates in Form 52-109FVT1 for a financial year are not subject to the requirements of the Proposed Internal Control Instrument for that financial year, this representation has not been included in Form 52-109FVT1.

Second, Form 52-109FVT1 contains a representation that the issuer is not required to comply with the requirements of the Proposed Internal Control Instrument.

(iv) *Summary of annual certificate filing requirements*

The annual certificate filing requirements (as amended by the Revised Certification Instrument) are summarized in the table below and are illustrated in Appendix A:

Implementation date	Type of certificate	Summary of representations of certifying officers ¹
Financial years ending on or before March 30, 2005	Bare <i>Form 52-109FTI</i>	<ul style="list-style-type: none"> • The certifying officers have reviewed the annual filings. • Based on the certifying officers' knowledge, the issuer's annual filings do not contain any misrepresentations. • Based on the certifying officers' knowledge, the financial statements and other financial information in the annual filings fairly present the financial condition, results of operations and cash flows of the issuer.
Financial years ending after March 30, 2005 but on or before June 29, 2006	Modified <i>Form 52-109FMI</i>	<ul style="list-style-type: none"> • The representations in the bare certificate plus the following: <ul style="list-style-type: none"> • The certifying officers are responsible for establishing and maintaining disclosure controls and procedures and have designed (or caused to be designed) such disclosure controls and procedures. • The certifying officers have evaluated the effectiveness of disclosure controls and procedures and caused the issuer to disclose their conclusions.
Financial years ending after June 29, 2006	Full – subject to the Proposed Internal Control Instrument <i>Form 52-109FI</i>	<p><i>If the issuer is required to comply with the Proposed Internal Control Instrument:</i></p> <ul style="list-style-type: none"> • The representations in the modified certificate plus the following: <ul style="list-style-type: none"> • The certifying officers are responsible for establishing and maintaining internal control over financial reporting and have designed (or caused to be designed) such internal control over financial reporting. • The certifying officers have caused the issuer to disclose certain changes in internal control over financial reporting. • Based on their evaluation of internal control over financial reporting, the certifying officers have disclosed to the issuer's auditors and the audit committee certain significant deficiencies in internal control over financial reporting and fraud.
	Full – not subject to the Proposed Internal Control Instrument <i>Form 52-109FVTI</i>	<p><i>If the issuer is not required to comply with the Proposed Internal Control Instrument:</i></p> <ul style="list-style-type: none"> • The representations in the modified certificate plus the following: <ul style="list-style-type: none"> • The certifying officers are responsible for establishing and maintaining internal control over financial reporting and have designed (or caused to be designed) such internal control over financial reporting. • The certifying officers have caused the issuer to disclose certain changes in internal control over financial reporting. • The issuer is not required to comply with the requirements of the Proposed Internal Control Instrument.

¹ Please see the Revised Certification Forms for the prescribed wording of the required representations.

Interim certificates

(i) *Transition periods*

Under the Current Certification Materials, issuers are not required to file interim certificates in Form 52-109F2 (a full interim certificate) until they are required to file full annual certificates.

An additional transition period for interim certificates has been added. Under the Revised Certification Instrument, issuers are permitted to file interim certificates in Form 52-109FM2 (a modified interim certificate) for permitted interim periods. As in the case of the modified annual certificates, the modified interim certificates do not require the certifying officers to represent that:

- they are responsible for establishing and maintaining internal control over financial reporting;
- they have designed internal control over financial reporting, or caused it to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP; and
- they have caused the issuer to disclose in the issuer's MD&A any change in the issuer's internal control over financial reporting that occurred during the issuer's most recent period that materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

Permitted interim periods are those interim periods that occur before the first financial year in respect of which an issuer is required to file full annual certificates.

(ii) *Summary of interim certificate filing requirements*

The interim certificate filing requirements (as amended by the Revised Certification Instrument) are summarized in the table below and are illustrated in Appendix B:

Implementation date	Type of certificate	Summary of representations of certifying officers ¹
Interim periods occurring before the first financial year in respect of which modified annual certificates are required	Bare <i>Form 52-109FT2</i>	<ul style="list-style-type: none"> • The certifying officers have reviewed the interim filings. • Based on the certifying officers' knowledge, the issuer's interim filings do not contain any misrepresentations. • Based on the certifying officers' knowledge, the financial statements and other financial information in the interim filings fairly present the financial condition, results of operations and cash flows of the issuer.
Interim periods occurring before the first financial year in respect of which full annual certificates are required	Modified <i>Form 52-109FM2</i>	<ul style="list-style-type: none"> • The representations in the bare certificate plus the following: <ul style="list-style-type: none"> • The certifying officers are responsible for establishing and maintaining disclosure controls and procedures and have designed (or caused to be designed) such disclosure controls and procedures.
Interim periods occurring after the first financial year in respect of which full annual certificates are required	Full <i>Form 52-109F2</i>	<ul style="list-style-type: none"> • The representations in the modified certificate plus the following: <ul style="list-style-type: none"> • The certifying officers are responsible for establishing and maintaining internal control over financial reporting and have designed (or caused to be designed) such internal control over financial reporting. • The certifying officers have caused the issuer to disclose certain changes in internal control over financial reporting.

Definition of “annual filings”

The definition of “annual filings” has been amended to include the issuer’s internal control report, if any. A definition of “internal control report” has also been added. As a result of these amendments, certifying officers will be required to certify the issuer’s internal control reports. This requirement is consistent with the SOX 302 Rules.

Refiled financial statements, MD&A and AIFs

New sections have been added to clarify that:

- an issuer must refile its annual certificates for a financial year if the issuer refiles its annual financial statements, annual MD&A or AIF for that financial year; and
- an issuer must refile its interim certificates for an interim period if the issuer refiles its interim financial statements or interim MD&A for that interim period.

The required form for the refiled certificates is Form 52-109F1R or Form 52-109F2R, as applicable.

Voluntarily filed AIFs

A new section has been added to clarify that a venture issuer must refile its annual certificates for a financial year if the issuer voluntarily files an AIF for that financial year after the issuer has filed its annual financial statements, annual MD&A and annual certificates for that financial year. The required form for the refiled certificates is Form 52-109F1R-AIF.

¹ Please see the Revised Certification Forms for the prescribed wording of the required representations.

Specific Request for Comment

21. Is it necessary or appropriate to require a venture issuer to refile its annual certificates for a financial year when it voluntarily files an AIF for that financial year after it has filed its annual financial statements, annual MD&A and annual certificates for that financial year?
22. Since the AIF may be voluntarily filed several months after the issuer's annual financial statements and annual MD&A, there may be a significant gap between the time that the annual financial statements and annual MD&A are filed and the time that the annual certificates are refiled. Is this timing gap problematic?

Language of certificates

A new part has been added to clarify the language requirements for annual certificates and interim certificates.

Significant changes to Current Certification Policy

The most significant changes to the Current Certification Policy are summarized below:

Non-corporate entities

A new section has been added to provide guidance on the application of the Revised Certification Materials to non-corporate entities.

Prescribed form

A new section has been added to remind issuers that the language of annual certificates and interim certificates is prescribed.

Paper copies of the signed certificates

A new section has been added to clarify the filing requirements for annual certificates and interim certificates.

One person acting as CEO and CFO

A new section has been added to provide guidance on the filing requirements of an issuer that has one person acting as CEO and CFO.

Guidance regarding certification extending into underlying entities

A new section has been added to provide guidance on the procedures to be undertaken by certifying officers of an issuer that has an interest in certain underlying entities such as a subsidiary, a VIE, a joint venture, an equity investment or a portfolio investment.

Specific Request for Comment

23. Is the guidance regarding the treatment of underlying entities set out in the Revised Certification Policy adequate and appropriate?

9. SUMMARY OF REVISED CERTIFICATION MATERIALS

Revised Certification Instrument

Part 1 contains definitions of certain terms and phrases used in the Revised Certification Materials. It also establishes the scope of application of the Revised Certification Instrument.

Part 2 contains the requirement of every issuer to have disclosure controls and procedures and internal control over financial reporting.

Part 3 deals with the annual certificate requirements.

Part 4 deals with the interim certificate requirements.

Part 5 deals with the requirement to refile annual certificates and interim certificates upon the refiling of annual or interim financial statements, annual or interim MD&A or AIFs and upon the voluntary filing of an AIF subsequent to the filing of the issuer's annual financial statements, annual MD&A and annual certificates.

Part 6 deals with the language requirements of the annual certificates and interim certificates.

Part 7 provides for a number of exemptions, including exemptions for certain issuers that comply with the SOX 302 Rules, certain foreign issuers, certain exchangeable security issuers and certain credit support issuers. It also provides that exemptions from the Revised Certification Instrument may be granted by the securities regulatory authority or regulator.

Part 8 deals with the coming into force of the Revised Certification Instrument. Section 8.1 provides for the revocation of the Current Certification Instrument while section 8.2 establishes the date that the Revised Certification Instrument comes into force.

Revised Certification Forms

The Revised Certification Forms are the required forms of annual certificates and interim certificates.

Revised Certification Policy

The purpose of the Revised Certification Policy is to help users understand how the securities regulatory authorities interpret or apply certain provisions of the Revised Certification Instrument. It also includes a discussion on the consequences of filing annual certificates and interim certificates containing misrepresentations.

10. ANTICIPATED COSTS AND BENEFITS – REVISED CERTIFICATION MATERIALS

As with all regulatory initiatives, it is important to consider the costs and benefits (both quantifiable and unquantifiable) associated with the Revised Certification Materials.

The anticipated costs and benefits of implementing the Current Certification Materials are discussed in the paper entitled *Investor Confidence Initiatives: A Cost-Benefit Analysis* published on June 27, 2003. The Revised Certification Materials are meant to address the implementation of the Proposed Internal Control Materials and to improve the effectiveness of the Current Certification Materials. We believe that any incremental costs associated with the Revised Certification Materials have been addressed in the Internal Control CBA.

11. ALTERNATIVES CONSIDERED – REVISED CERTIFICATION MATERIALS

The proposed amendments to the Current Certification Materials are intended to improve the effectiveness of this instrument which we believe will better serve issuers, investors and other market participants. The proposed amendments to the Current Certification Materials also address consequential amendments resulting from the Proposed Internal Control Materials. No other alternatives were considered.

12. CONSEQUENTIAL AMENDMENTS

We are considering amending the prospectus rules to require internal control reports and internal control audit reports to be included or incorporated by reference in certain prospectuses. Any such amendments will be published for public comment.

13. RELATED INSTRUMENTS

The Proposed Internal Control Materials and the Revised Certification Instrument are related to:

- National Instrument 51-102 *Continuous Disclosure Obligations*;
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;
- National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;
- National Instrument 52-108 *Auditor Oversight*; and
- Multilateral Instrument 52-110 *Audit Committees*.

14. RELIANCE ON UNPUBLISHED STUDIES, ETC.

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

15. AUTHORITY – ONTARIO

The following provisions of the *Securities Act* (Ontario) (the Act) provide the Ontario Securities Commission (the Commission) with authority to adopt the Proposed Internal Control Materials and the Revised Certification Materials:

- Paragraph 143(1) 10 authorizes the Commission to make rules prescribing requirements in respect of the books, records and other documents required by subsection 19(1) of the Act to be kept by market participants, including the form in which and the period for which the books, records and other documents are to be kept.
- Paragraph 143(1) 22 authorizes the Commission to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act.
- Paragraph 143(1) 24 authorizes the Commission make rules requiring issuers or other persons to comply, in whole or in part, with the continuous disclosure filing requirements.
- Paragraph 143(1) 25 authorizes the Commission to make rules prescribing requirements in respect of financial accounting, reporting and auditing for the purposes of the Act, the regulations and the rules.
- Paragraph 143(1) 39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including financial statements, proxies and information circulars.
- Paragraph 143(1) 39.1 authorizes the Commission to make rules governing the approval of any document described in paragraph 143(1) 39 of the Act.
- Paragraphs 143(1) 58 and 59 authorize the Commission to make rules requiring reporting issuers to devise and maintain systems of disclosure controls and procedures and internal controls, the effectiveness and efficiency of their operations, including financial reporting and assets control.

- Paragraphs 143(1) 60 and 61 authorize the Commission to make rules requiring chief executive officers and chief financial officers of reporting issuers to provide certification relating to the establishment, maintenance and evaluation of the systems of disclosure controls and procedures and internal controls.

16. COMMENTS

Interested parties are invited to make written submissions on the Proposed Internal Control Materials and the Revised Certification Materials. Submissions received by June 6, 2005 will be considered. **Due to timing concerns, comments received after the deadline will not be considered.**

Submissions should be addressed to the following securities regulatory authorities:

Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Please deliver your comments to the addresses below. Your comments will be distributed to the other participating CSA members.

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
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Fax: (416) 593-2318
E-mail: jstevenson@osc.gov.on.ca

Anne-Marie Beaudoin, Directrice du secrétariat
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E-mail: consultation-en-cours@lautorite.com

A diskette containing the submissions (in Windows format, preferably Word) should also be submitted.

Comment letters submitted in response to requests for comments are placed on the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated among the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed in the public file, freedom of information legislation in certain jurisdictions may require securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

17. QUESTIONS

Questions may be referred to:

Ontario Securities Commission

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Manitoba Securities Commission

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**18. TEXT OF PROPOSED INTERNAL CONTROL MATERIALS AND REVISED
CERTIFICATION MATERIALS**

The text of the Proposed Internal Control Materials and the Revised Certification Materials follows.

February 4, 2005

**APPENDIX A
SAMPLE FORM OF ANNUAL CERTIFICATE**

Legend		
For financial years ending on or before March 30, 2005	Bare certificate	Plain text
For financial years ending after March 30, 2005 but on or before June 29, 2006	Modified certificate	Plain text + bold text
For financial years ending after June 29, 2006	Full certificate –subject to the Proposed Internal Control Instrument	<i>If the issuer is required to comply with the Proposed Internal Control Instrument:</i> Plain text + bold text + single-underlined text + shaded text
	Full certificate - not subject to the Proposed Internal Control Instrument	<i>If the issuer is not required to comply with the Proposed Internal Control Instrument:</i> Plain text + bold text + single-underlined text + double-underlined text

I, <identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer’s title is not “chief executive officer” or “chief financial officer” of the issuer, whether the certifying officer is providing the certificate in the capacity of a chief executive officer or a chief financial officer>, certify that:

1. I have reviewed the annual filings (as this term is defined in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings*) of <identify issuer> (the issuer) for the financial year ended <state the relevant date>;
2. Based on my knowledge, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the annual filings;
3. Based on my knowledge, 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 and for the periods presented in the annual filings;
4. **The issuer’s other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal control over financial reporting for the issuer, and we have:**
 - (a) **designed such disclosure controls and procedures, or caused them to be designed under our supervision, to provide reasonable assurance that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the annual filings are being prepared;**

- (b) designed such internal control over financial reporting, 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;
- (c) **evaluated the effectiveness of the issuer’s disclosure controls and procedures as of the end of the period covered by the annual filings and have caused the issuer to disclose in the annual MD&A our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by the annual filings based on such evaluation; and**
- (d) caused the issuer to disclose in the annual MD&A any change in the issuer’s internal control over financial reporting that occurred during the period beginning on <insert the date immediately following the end of the most recent interim period> and ended <insert financial year end> that has materially affected, or is reasonably likely to materially affect, the issuer’s internal control over financial reporting; and

5. The issuer’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the issuer’s auditors and the audit committee (or persons performing the equivalent functions):

- (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer’s ability to record, process, summarize and report financial information; and
- (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer’s internal control over financial reporting.

5. The issuer is not required to comply with the requirements of Multilateral Instrument 52-111 Reporting on Internal Control over Financial Reporting for the financial year ended <state the relevant date>.

Date: <insert date of filing>

[Signature]

[Title]

<if the certifying officer’s title is not “chief executive officer” or “chief financial officer”, indicate whether the certifying officer is providing the certificate in the capacity of a chief executive officer or chief financial officer>

**APPENDIX B
SAMPLE FORM OF INTERIM CERTIFICATE**

Legend		
Interim periods occurring before the first financial year in respect of which modified annual certificates are required	Bare certificate <i>Form 52-109FT2</i>	Plain text
Interim periods occurring before the first financial year in respect of which full annual certificates are required	Modified certificate <i>Form 52-109FM2</i>	Plain text + bold text
Interim periods occurring after the first financial year in respect of which full annual certificates are required	Full certificate <i>Form 52-109F2</i>	Plain text + bold text + single-underlined text

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

1. I have reviewed the interim filings (as this term is defined in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*) of *<identify the issuer>*, (the issuer) for the interim period ended *<state the relevant date>*;
2. Based on my knowledge, 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. Based on my knowledge, 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 and for the periods presented in the interim filings;
4. **The issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal control over financial reporting for the issuer, and we have:**
 - (a) **designed such disclosure controls and procedures, or caused them to be designed under our supervision, to provide reasonable assurance that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the interim filings are being prepared;**
 - (b) designed such internal control over financial reporting, 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; and

- (c) caused the issuer to disclose in the interim MD&A any change in the issuer's internal control over financial reporting that occurred during the three months ended <insert end of interim period>that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

Date: <insert date of filing>

[Signature]

[Title]

<if the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate whether the certifying officer is providing the certificate in the capacity of a chief executive officer or chief financial officer>