

MULTILATERAL INSTRUMENT 52-111
REPORTING ON INTERNAL CONTROL OVER FINANCIAL REPORTING

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PART 1 – DEFINITIONS, INTERPRETATION AND APPLICATION

1.1 Definitions - In this Instrument,

“52-111 transition 1 issuer” means an issuer whose listed equity securities have an aggregate market value of \$250,000,000 or more but less than \$500,000,000 on the market capitalization date;

“52-111 transition 2 issuer” means an issuer whose listed equity securities have an aggregate market value of \$75,000,000 or more but less than \$250,000,000 on the market capitalization date;

“52-111 transition 3 issuer” means an issuer whose listed equity securities have an aggregate market value of less than \$75,000,000 on the market capitalization date;

“52-111 transition issuers” means a 52-111 transition 1 issuer, a 52-111 transition 2 issuer or a 52-111 transition 3 issuer;

“asset-backed security” has the meaning ascribed to it in NI 51-102;¹

“annual financial statements” means the annual financial statements required to be filed under NI 51-102;

“CICA Standard” means the standard, established by the Auditing and Assurance Standards Board of The Canadian Institute of Chartered Accountants, for an audit of internal control over financial reporting performed in conjunction with an audit of financial statements, as amended from time to time;

“foreign issuer” has the meaning ascribed to it in NI 52-107;²

“interim financial statements” means the interim financial statements required to be filed under NI 51-102;

¹ “Asset-backed security” is defined in NI 51-102 as a security that is primarily serviced by the cash flows of a discrete pool of mortgages, receivables or other financial assets, fixed or revolving, that by their terms convert into cash within a finite period and any rights or other assets designed to assure the servicing or the timely distribution of proceeds to securityholders.

² “Foreign issuer” is defined in NI 52-107 as an issuer, other than an investment fund, that is incorporated or organized under the laws of a foreign jurisdiction, unless

- (a) outstanding voting securities of the issuer carrying more than 50 per cent of the votes for the election of directors are owned, directly or indirectly, by residents of Canada; and
- (b) any of the following apply:
 - (i) the majority of the executive officers or directors of the issuer are residents of Canada;
 - (ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada; or
 - (iii) the business of the issuer is administered principally in Canada.

“internal control audit report” means a report in which a participating audit firm expresses an opinion, or states that an opinion cannot be expressed, concerning management’s assessment of the effectiveness of an issuer’s internal control over financial reporting;³

“internal control over financial reporting” means a process designed by, or under the supervision of, the issuer’s chief executive officer and chief financial officer, or persons performing similar functions, and effected by the issuer’s board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer’s GAAP and includes those policies and procedures that:

- (a) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer,
- (b) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with the issuer’s GAAP, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer, and
- (c) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer’s assets that could have a material effect on the annual financial statements or interim financial statements;⁴

“internal control report” means a report of management that describes management’s assessment of the effectiveness of an issuer’s internal control over financial reporting;

“investment fund” has the meaning ascribed to it in NI 51-102;⁵

“issuer’s GAAP” has the meaning ascribed to it in NI 52-107;⁶

“joint venture” has the meaning ascribed to it in the Handbook;

“listed equity securities” means equity securities listed or quoted on an exchange or marketplace;

“market capitalization date” means:

- (a) June 30, 2005;
- (b) in the case of an issuer that becomes a reporting issuer after June 30, 2005, the date on which the issuer becomes a reporting issuer; or

³ This definition is derived from 17 CFR 210.1-02(a)(2) (*Definitions of terms used in Regulation S-X*); however, the term has been changed to “internal control audit report” rather than “attestation report on management’s assessment of internal control over financial reporting” to conform to the wording in the proposed CICA Standard.

⁴ This is the same as the definition of “internal control over financial reporting” set out in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* (MI 52-109).

⁵ “Investment fund” is defined in NI 51-102 as a mutual fund or non-redeemable investment fund.

⁶ “Issuer’s GAAP” is defined in NI 52-107 as the accounting principles used to prepare an issuer’s financial statements, as permitted by NI 52-107.

- (c) in the case of a reporting issuer that ceases to be a venture issuer after June 30, 2005, the date on which the reporting issuer ceased to be a venture issuer;

“marketplace” has the meaning ascribed to it in National Instrument 21-101 *Marketplace Operation*;⁷

“material weakness” has the meaning ascribed to it in the CICA Standard;⁸

“MD&A” has the meaning ascribed to it in NI 51-102;⁹

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“NI 52-107” means National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

“notice of 52-111 exemption” means a notice that includes:

- (a) the financial year for which the notice is being filed;
- (b) a statement that the issuer is a 52-111 transition issuer;
- (c) the calculation of the aggregate market value of the issuer’s listed equity securities on the market capitalization date; and
- (d) a statement that the issuer is not required to file an internal control report and internal control audit report for the identified financial year;

“participating audit firm” has the meaning ascribed to it in National Instrument 52-108 *Auditor Oversight*;¹⁰

⁷ “Marketplace” is defined in National Instrument 21-101 *Marketplace Operation* to mean:

- (a) an exchange,
- (b) a quotation and trade reporting system,
- (c) a person or company not included in paragraph (a) or (b) that
- (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities;
- (ii) brings together the orders for securities of multiple buyers and sellers, and
- (iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of the trade, or
- (d) a dealer that executes a trade of an exchange-traded security outside of a marketplace, but does not include an inter-dealer bond broker.

⁸ The definition in the proposed CICA Standard is:

““Material weakness” means a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.”

⁹ “MD&A” is defined in NI 51-102 as a completed Form 51-102F1 *Management’s Discussion & Analysis* or, in the case of an SEC issuer, a completed Form 51-102F1 or management’s discussion and analysis prepared in accordance with Item 303 of Regulation S-K or item 303 of Regulation S-B under the 1934 Act.

¹⁰ “Participating audit firm” is defined in National Instrument 52-108 *Auditor Oversight* as a public accounting firm that has entered into a participation agreement and that has not had its participation status terminated, or, if its participation status was terminated, has been reinstated in accordance with CPAB by-laws.

“PCAOB Standard” means Auditing Standard No. 2, An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements adopted by the Public Company Accounting Oversight Board, as amended from time to time;

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002, Pub.L. 107-204, 116 Stat. 745 (2002), as amended from time to time;

“significant deficiency” has the meaning ascribed to it in the CICA Standard;¹¹

“U.S. marketplace” has the meaning ascribed to it in NI 51-102;¹²

“variable interest entity” has the meaning ascribed to it in the Handbook; and

“venture issuer” means an issuer that, as at the applicable time, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada or the United States of America; where the “applicable time” in respect of:

- (a) the Instrument other than paragraph (c) of the definition of market capitalization date in section 1.1, is the end of the applicable financial year; and
- (b) paragraph (c) of the definition of market capitalization date in section 1.1, is the date on which securities of an issuer are listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada or the United States of America.

1.2 **Application** – This Instrument applies to all reporting issuers other than investment funds and venture issuers.

1.3 **Calculation of the aggregate market value of an issuer’s listed equity securities** – For the purposes of this Instrument, the aggregate market value of the listed equity securities of an issuer is the aggregate of the market value of each class of its listed equity securities outstanding on the market capitalization date, calculated by multiplying

1. the total number of listed equity securities of the class outstanding on the market capitalization date, by
2. the weighted average of the market price for the listed equity securities of the class outstanding on the exchange or marketplace on which that class of listed equity securities is principally traded for each of the 20 trading days immediately following the market capitalization date.

¹¹ The definition in the proposed CICA Standard is:

““Significant deficiency” means a control deficiency, or combination of control deficiencies, that adversely affects an issuer’s ability to initiate, authorize, record, process or report external financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity’s annual or interim financial statements that is more than inconsequential will not be prevented or detected.”

¹² “U.S. marketplace” is defined in NI 51-102 as an exchange registered as a ‘national securities exchange’ under section 6 of the 1934 Act, or the Nasdaq Stock Market.

PART 2 – MANAGEMENT’S ASSESSMENT OF INTERNAL CONTROL OVER FINANCIAL REPORTING

2.1 **Annual evaluation of effectiveness of internal control over financial reporting** – The management of an issuer must evaluate, with the participation of the issuer’s chief executive officer and chief financial officer, or in the case of an issuer that does not have a chief executive officer or a chief financial officer, persons performing similar functions to a chief executive officer or chief financial officer, the effectiveness of the issuer’s internal control over financial reporting as of the end of a financial year.¹³

2.2 Control framework for evaluation –

- (1) Management must base its evaluation of the effectiveness of an issuer’s internal control over financial reporting on a suitable control framework.
- (2) A suitable control framework must be 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.¹⁴

2.3 Evidence –

- (1) An issuer must maintain evidence to provide reasonable support for management’s assessment of the effectiveness of the issuer’s internal control over financial reporting.¹⁵
- (2) An issuer must maintain the evidence required under subsection (1) in a manner that will ensure the trustworthiness and readability of the information recorded.¹⁶
- (3) The evidence required under subsection (1) 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).

2.4 **Filing of internal control report** – An issuer must file an internal control report separately but concurrently with the filing of its annual financial statements and annual MD&A.¹⁷

¹³ This section is derived from 17 CFR 240.13a-15(c) (*Controls and procedures*) and 17 CFR 240.15d-15(c) (*Controls and procedures*).

¹⁴ This section is derived from 17 CFR 240.13a-15(c) (*Controls and procedures*) and 17 CFR 240.15d-15(c) (*Controls and procedures*).

¹⁵ This section is derived from 17 CFR 229.308 (*Instruction to Item 308*), 17 CFR 249.220f (*Instruction to Item 15*) and 17 CFR 249.240f (*Instruction to paragraph (c) of General Instruction B.6*).

¹⁶ This requirement is similar to requirements set forth in Canada Revenue Agency’s Information Circular 78-10R3 *Books and Records Retention/Destruction*.

¹⁷ This section is derived from 17 CFR 229.308(a) (*Management’s annual report on internal control over financial reporting*), 17 CFR 249.220f (*Item 15(b) – Management’s annual report on internal control over financial reporting*) and 17 CFR 249.240f (*Paragraph (c) of General Instruction B.6 – Management’s annual report on internal control over financial reporting*).

2.5 **Form and content of internal control report –**

- (1) An internal control report must include:
 - (a) a statement of management’s responsibility for establishing and maintaining adequate internal control over financial reporting for an issuer;
 - (b) a statement identifying the control framework used by management to evaluate the effectiveness of the issuer’s internal control over financial reporting;
 - (c) 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;
 - (d) disclosure of any material weaknesses in the issuer’s internal control over financial reporting identified by management;
 - (e) a statement that the participating audit firm that audited the issuer’s annual financial statements has issued an internal control audit report;
 - (f) 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 variable interest entity in which the issuer has a material interest; and
 - (g) 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.¹⁸
- (2) Despite paragraph (1)(g), management must not limit its assessment of the effectiveness of an issuer’s internal control over financial reporting extending into a business as at the end of a financial year where the business was acquired in the immediately preceding financial year.
- (3) An internal control report must be dated a date that is on or before the date of the internal control audit report prepared in respect of the internal control report.

2.6 **Approval of internal control report –** An issuer’s board of directors must approve an internal control report required to be filed under section 2.4 before the internal control report is filed.

¹⁸ The requirements set out in paragraphs (a) through (e) in this section are derived from 17 CFR 229.308(a) (*Management’s annual report on internal control over financial reporting*), 17 CFR 249.220f (*Item 15(b) – Management’s annual report on internal control over financial reporting*) and 17 CFR 249.240f (*Paragraph (c) of General Instruction B.6 – Management’s annual report on internal control over financial reporting*). The requirements set out in paragraphs (f) and (g) of this section are derived from Office of the Chief Accountant, Division of Corporate Finance: *Management’s Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports – Frequently Asked Questions (revised October 6, 2004)*.

PART 3 – INTERNAL CONTROL AUDIT REPORT

3.1 Filing of internal control audit report –

- (1) An issuer must file an internal control audit report for the same financial year for which an internal control report has been filed.
- (2) The internal control audit report must be filed by the issuer together with the internal control report.

3.2 Form and content of internal control audit report –

- (1) An internal control audit report must:
 - (a) be prepared in accordance with the CICA Standard;
 - (b) be dated the same date as the auditor's report on the annual financial statements;
 - (c) be signed by the participating audit firm; and
 - (d) identify the internal control report in respect of which the internal control audit report has been prepared.¹⁹
 - (2) Despite paragraph (1)1, an internal control audit report in respect of an internal control report of a foreign issuer may be prepared in accordance with the PCAOB Standard.
 - (3) An internal control audit report may be combined with the auditor's report on the annual financial statements.²⁰
- 3.3 No separate engagement** – An internal control audit report and auditor's report on annual financial statements for a financial year must be prepared by the same participating audit firm.²¹

PART 4 – REFILED INTERNAL CONTROL REPORTS AND INTERNAL CONTROL AUDIT REPORTS

4.1 Refiled annual financial statements –

- (1) If an issuer refiles its annual financial statements for a financial year, it must refile its internal control report and internal control audit report for that financial year.
- (2) The refiled internal control report and internal control audit report must be filed by the issuer separately but concurrently with the filing of its refiled annual financial statements.

¹⁹ This section is derived from 17 CFR 210.2-02(f) (*Accountants' reports and attestation reports on management's assessment of internal control over financial reporting*).

²⁰ This section is derived from 17 CFR 210.2-02(f) (*Accountants' reports and attestation reports on management's assessment of internal control over financial reporting*).

²¹ This section is derived from section 404(b) of the Sarbanes-Oxley Act.

PART 5 – DELIVERY OF INTERNAL CONTROL REPORT AND INTERNAL CONTROL AUDIT REPORT

- 5.1 **Delivery** – An issuer that must send its annual financial statements and annual MD&A for a financial year to a person or company under NI 51-102 must also send to the person or company, concurrently and without charge, a copy of its internal control report and internal control audit report for that financial year.

PART 6 – LANGUAGE OF INTERNAL CONTROL REPORTS AND INTERNAL CONTROL AUDIT REPORTS

6.1 French or English -

- (1) An issuer must file the internal control reports and the internal control audit reports required to be filed under this Instrument in French or in English.
- (2) Despite subsection (1), if an issuer files an internal control report or an internal control audit report only in French or only in English but delivers to securityholders a version of the document in the other language, the issuer must file that other version not later than when it is first delivered to securityholders.
- (3) In Québec, an issuer must comply with linguistic obligations and rights prescribed by Québec law.

PART 7 - EXEMPTIONS

- 7.1 **Exemption for 52-111 transition 1 issuers** – A 52-111 transition 1 issuer is exempt from the requirements of this Instrument for a financial year ending on or before June 29, 2007 provided that the issuer files a notice of 52-111 exemption with the securities regulatory authorities separately but concurrently with its annual financial statements and annual MD&A for that financial year.
- 7.2 **Exemption for 52-111 transition 2 issuers** – A 52-111 transition 2 issuer is exempt from the requirements of this Instrument for a financial year ending on or before June 29, 2008 provided that the issuer files a notice of 52-111 exemption with the securities regulatory authorities separately but concurrently with its annual financial statements and annual MD&A for that financial year.
- 7.3 **Exemption for 52-111 transition 3 issuers** – A 52-111 transition 3 issuer is exempt from the requirements of this Instrument for a financial year ending on or before June 29, 2009 provided that the issuer files a notice of 52-111 exemption with the securities regulatory authorities separately but concurrently with its annual financial statements and annual MD&A for that financial year.
- 7.4 **Exemption for issuers that comply with U.S. laws** – An issuer is exempt from the requirements in this Instrument for a financial year if:

- (a) the issuer is in compliance with U.S. federal securities laws implementing the internal control report requirements in sections 404(a) and (b) of the Sarbanes-Oxley Act; and
- (b) management's annual report on internal control over financial reporting and the attestation report on management's assessment of internal control over financial reporting included in the issuer's annual report for the financial year is filed promptly after it is filed with the SEC.²²

7.5 **Exemption for foreign issuers** – An issuer is exempt from the requirements in this Instrument if it qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, sections 5.4 and 5.5 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.²³

7.6 **Exemption for certain exchangeable security issuers** – An issuer is exempt from the requirements in this Instrument if it qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, section 13.3 of NI 51-102.²⁴

7.7 **Exemption for certain credit support issuers** – An issuer is exempt from the requirements in this Instrument if it qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, section 13.4 of NI 51-102.²⁵

7.8 **Exemption for asset-backed securities issuers** – An issuer is exempt from the requirements in this Instrument if it is an issuer of asset-backed securities.²⁶

7.9 **General exemption** –

(1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.²⁷

PART 8 - EFFECTIVE DATE AND TRANSITION

8.1 **Effective date** - This Instrument comes into force on [●].²⁸

²² This is similar to the exemption contained in section 7.1 of MI 52-109.

²³ This is similar to the exemption contained in section 7.2 of MI 52-109.

²⁴ This is similar to the exemption contained in section 7.3 of MI 52-109.

²⁵ This is similar to the exemption contained in section 7.4 of MI 52-109.

²⁶ Issuers of asset-backed securities are not required to comply with the SEC rules implementing section 404 of the Sarbanes-Oxley Act.

²⁷ This is similar to the exemption contained in section 7.5 of MI 52-109.

²⁸ This Instrument is intended to come into force on the same date as the amended and restated MI 52-109.

8.2 **Transition** – The provisions of the Instrument regarding internal control reports and internal control audit reports apply for financial years ending on or after June 30, 2006.²⁹

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²⁹ Under the SEC rules implementing section 404 of the Sarbanes-Oxley Act, a foreign private issuer must comply with the annual internal control report for its first financial year ending on or after July 15, 2005.