

Multilateral Instrument 52-109
Certification Of Disclosure In Companies' Annual And Interim Filings

Part 1 – Definitions, Application and Transition

1.1 Definitions¹ - In this Instrument,

“annual certificate” means the certificate required to be filed pursuant to Part 2 of this Instrument;

“annual filings” means the issuer’s annual information form, and annual financial statements and annual MD&A, that have been most recently filed under provincial and territorial securities legislation, including for greater certainty all documents and information that are incorporated by reference in the annual information form;

“annual financial statements” means the annual financial statements required to be filed under National Instrument 51-102 *Continuous Disclosure Obligation*²;

“annual information form” means the AIF as defined under National Instrument 51-102 *Continuous Disclosure Obligations*³;

“filings” means annual filings and interim filings;

“interim certificate” means the certificate required to be filed pursuant to Part 3 of this Instrument;

“interim filings” means the issuer’s interim financial statements and interim MD&A, that have been most recently filed under provincial and territorial securities legislation;

“interim financial statements” means the interim financial statements required to be filed under National Instrument 51-102 *Continuous Disclosure Obligations*⁴;

¹ National Instrument 14-101 *Definitions* defines certain terms that are used in more than one national or multilateral Instrument.

² Section 4.1 of NI 51-102 states:

4.1- Annual Financial Statements and Auditor’s Report

- (1) Subject to subsection 4.8(6), a reporting issuer must file annual financial statements that include:
 - (a) an income statement, a statement of retained earnings, and a cash flow statement for:
 - (i) the most recently completed financial year; and
 - (ii) the period covered by the financial year immediately preceding the most recently completed financial year, if any;
 - (b) a balance sheet as at the end of each of the periods referred to in paragraph (a); and
 - (c) notes to the financial statements.
- (2) Comparative annual financial statements filed under subsection (1) must be accompanied by an auditor’s report.

³ In NI 51-102, “AIF” means a completed Form 51-102F1 *Annual Information Form* or, in the case of an SEC issuer, either a completed Form 51-102F1 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or on Form 20-F

“interim period” has the meaning ascribed to it in the definition of interim period under National Instrument 51-102 *Continuous Disclosure Obligations*⁵;

“investment fund”⁶ means a mutual fund, a non-redeemable investment fund or a scholarship plan;

“MD&A” has the meaning ascribed to it in the definition of MD&A under National Instrument 51-102 *Continuous Disclosure Obligations*⁷;

"non-redeemable investment fund"⁸ means an issuer:

- (a) whose primary purpose is to invest money provided by its securityholders;
- (b) that does not invest for the purpose of exercising effective control, seeking to exercise effective control, or being actively involved in the management of the issuers in which it invests, other than other mutual funds or non-redeemable investment funds; and
- (c) that is not a mutual fund;

⁴ NI 51-102 states:

4.3 - Interim Financial Statements

- (1) A reporting issuer must file:
 - (a) if it has not completed its first financial year, interim financial statements for the interim periods of the reporting issuer's current financial year other than a period that is less than three months in length; or
 - (b) if it has completed its first financial year, interim financial statements for the interim periods of the reporting issuer's current financial year.
- (2) Subject to subsections 4.7(4), 4.8(7) and (8), the interim financial statements required to be filed under subsection (1) must include:
 - (a) a balance sheet as at the end of the interim period and a balance sheet as at the end of the immediately preceding financial year, if any;
 - (b) an income statement, a statement of retained earnings and a cash flow statement, all for the year-to-date interim period and comparative financial information for the corresponding interim period in the immediately preceding financial year, if any;
 - (c) for interim periods other than the first interim period in a reporting issuer's financial year, an income statement and cash flow statement for the three month period ending on the last day of the interim period and comparative financial information for the corresponding period in the preceding financial year, if any; and
 - (d) notes to the financial statements.

⁵ In NI 51-102, “interim period” means:

- (a) a period commencing on the first day of a financial year and ending nine, six or three months before the end of a financial year, or
- (b) in the case of a reporting issuer's transition year, a period commencing on the first day of the transition year and ending either:
 - (i) three, six, nine or twelve months, if applicable, after the end of its old financial year, or
 - (ii) twelve, nine, six or three months, if applicable, before the end of the transition year,

and in the case of (b)(ii), the first interim period must not exceed four months

⁶ This definition is taken from subsection 1.1 of proposed National Instrument 81-106 *Investment Fund Continuous Disclosure*.

⁷ In NI 51-102, “MD&A” means a completed Form 51-102F2 *Management's Discussion & Analysis* or, in the case of an SEC issuer, either a completed Form 51-102F2 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

⁸ This definition is taken from OSC Rule 14-501 *Definitions*.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002, Pub.L. 107-204, 116 Stat. 745 (2002); and

"SEDAR" means the computer system for the transmission, receipt, acceptance, review and dissemination of documents filed in electronic format known as the System for Electronic Document Analysis and Retrieval.

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

1.3 Transition Period – Notwithstanding Parts 2 and 3 of this Instrument, issuers may exclude paragraphs 4, 5 and 6 from any annual and interim certificates required to be filed prior to **[January 1, 2005]**.

Part 2 – Certification of Annual Filings

2.1 Every issuer must file a separate annual certificate, in the form specified in Form 52-109F1, in respect of and personally signed by each of the following persons:

1. each chief executive officer;
2. each chief financial officer; and
3. in the case of an issuer that does not have a chief executive officer or chief financial officer, each person who performs similar functions to a chief executive officer or a chief financial officer, as the case may be.

2.2 The annual certificate must be filed by the issuer at the same time as it files the last of the following annual filings:

1. its annual information form; and
2. its annual financial statements and annual MD&A.

Part 3 - Certification of Interim Filings

3.1 Every issuer must file a separate interim certificate, in the form specified in Form 52-109F2, in respect of and personally signed by each of the following persons:

1. each chief executive officer;
2. each chief financial officer; and
3. in the case of an issuer that does not have a chief executive officer or chief financial officer, each person who performs similar functions to a chief executive officer or a chief financial officer, as the case may be.

3.2 The interim certificate must be filed by the issuer at the same time as it files its interim filings.

Part 4 - Exemptions

4.1 Exemption for Issuers that comply with U.S. laws –

- (1) Subject to subsection (4), an issuer is exempt from Part 2 of this Instrument with respect to the relevant period if:
 - (a) the issuer is in compliance with U.S. federal securities laws⁹ implementing the annual report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and
 - (b) the issuer's most recent annual report and signed certificates are filed on SEDAR as soon as reasonably practicable after they are filed with the SEC.
- (2) Subject to subsection (5), an issuer is exempt from Part 3 of this Instrument with respect to the relevant interim period if:
 - (a) the issuer is in compliance with U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and
 - (b) the issuer's most recent quarterly report and signed certificates are filed on SEDAR as soon as reasonably practicable after they are filed with the SEC.
- (3) An issuer is exempt from Part 3 of this Instrument with respect to the relevant interim period if:
 - (a) the issuer furnishes to the SEC a current report on Form 6-K containing the issuer's quarterly financial statements and MD&A;
 - (b) the Form 6-K is accompanied by signed certificates that are furnished to the SEC in the same form required by U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and
 - (c) the Form 6-K and signed certificates are filed on SEDAR as soon as reasonably practicable after they are furnished to the SEC.
- (4) Notwithstanding subsection 4.1(1), Part 2 of this Instrument applies to an issuer with respect to the relevant period if the issuer files annual financial statements prepared in accordance with Canadian generally accepted accounting principles, unless the issuer files those statements with the SEC in compliance with U.S. federal securities laws

⁹ "U.S. federal securities laws" is defined in National Instrument 14-101 *Definitions*.

implementing the annual report certification requirements in section 302(a) of the Sarbanes-Oxley Act.

- (5) Notwithstanding subsection 4.1(2), Part 3 of this Instrument applies to an issuer with respect to the relevant interim period if the issuer files interim financial statements prepared in accordance with Canadian generally accepted accounting principles, unless the issuer files those statements with the SEC in compliance with U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act.

4.2 Exemption for Foreign Issuers – An issuer is exempt from the requirements in this Instrument so long as it qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, sections 5.4¹⁰ and 5.5¹¹ of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

4.3 Exemption for Issuers of Exchangeable Securities – An issuer is exempt from the requirements in this Instrument so long as it qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, section 13.3¹² of National Instrument 51-102 *Continuous Disclosure Obligations*.

¹⁰ NI 71-102 states:

5.4 - *Financial Statements*

A designated foreign issuer satisfies securities legislation requirements relating to the preparation, filing and delivery of its interim financial statements, annual financial statements and auditor's reports on annual financial statements if it:

- (a) complies with the foreign disclosure requirements relating to interim financial statements, annual financial statements and auditor's reports on annual financial statements;
- (b) files the interim financial statements, annual financial statements and auditor's reports on annual financial statements required to be filed with or furnished to the foreign regulatory authority;
- (c) sends each document filed under paragraph (b) to securityholders in the local jurisdiction, in the manner and at the time such documents are required to be sent to securityholders of the issuer by the foreign disclosure requirements; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

¹¹ NI 71-102 states:

5.5 - *Annual Reports, AIFs, Business Acquisition Reports & MD&A*

A designated foreign issuer satisfies securities legislation requirements relating to the preparation, filing and delivery of annual reports, AIFs, business acquisition reports and MD&A if it:

- (a) complies with the foreign disclosure requirements relating to annual reports, quarterly reports, business acquisitions and management's discussion and analysis;
- (b) files each annual report, quarterly report, report in respect of a business acquisition and management's discussion and analysis required to be filed with the foreign regulatory authority;
- (c) sends each document filed under paragraph (b) to securityholders in the local jurisdiction, in the manner and at the time such documents are required to be sent to securityholders of the issuer by the foreign disclosure requirements; and
- (d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

¹² Section 13.3 of NI 51-102 provides relief for certain exchangeable security issuers.

4.4 Exemption for Issuers of Guaranteed Securities – An issuer is exempt, in a jurisdiction, from the requirements in this Instrument if:

- (a) it does not have any securities outstanding other than debt securities or preferred shares, and all payments to be made in respect of those securities are fully and unconditionally guaranteed by another issuer (the guarantor issuer); and
- (b) it has been granted an exemption in that jurisdiction (the exemption order) from filing its annual financial statements, annual MD&A, interim financial statements, and interim MD&A on the condition that, among other things, the equivalent annual and interim disclosure documents of the guarantor issuer be filed;

so long as at the time that the issuer would otherwise be required to comply with this Instrument the exemption order is in effect and the parties to the exemption order are in compliance with its requirements and conditions.

4.5 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.

Part 5 - Effective Date

5.1 This Instrument comes into force on **[January 1, 2004]**.