

NOTICE

PROPOSED AMENDMENTS TO MULTILATERAL INSTRUMENT 52-109 CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS AND COMPANION POLICY 52-109CP

Introduction

The following are initiatives of members of the Canadian Securities Administrators, other than British Columbia (the Participating Jurisdictions):

- a proposed amendment instrument (the Proposed Amendment Instrument) amending Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Certification Instrument); and
- proposed amendments (the Proposed CP Amendments and together with the Proposed Amendment Instrument, the Proposed Amendments) to Companion Policy 52-109CP to the Certification Instrument (the Companion Policy).

The Proposed Amendment Instrument has been made, or is expected to be made, by each of the Participating Jurisdictions and will be implemented as:

- a rule in each of Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia and Newfoundland and Labrador;
- a Commission regulation in Saskatchewan and a regulation in the Northwest Territories;
- a policy in each of Prince Edward Island and Yukon; and
- a code in Nunavut.

It is expected that the Proposed CP Amendments will be adopted as a policy in each of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon.

In Québec, since the Certification Instrument and the Companion Policy have not been adopted yet, the Proposed Amendment Instrument is being published as Amendment to Proposed *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*, and the Proposed CP Amendments are being published as Amendment to Proposed Policy Statement 52-109 to *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*.

Ministerial approvals

In Saskatchewan, Commission regulations adopting the Proposed Amendment Instrument will be delivered to the Minister of Justice. The Minister may approve or reject the Proposed Amendment Instrument or return it for further consideration. If the Minister approves the Proposed Amendment Instrument or does not take any further action by June 6, 2005, the Proposed Amendment Instrument will come into force on June 6, 2005. The Proposed CP Amendments will come into force on the date that the

Proposed Amendment Instrument comes into force. The Saskatchewan Financial Services Commission will issue a separate notice advising of whether the Minister has approved or rejected the Proposed Amendment Instrument.

In Ontario, the Proposed Amendment Instrument and other required materials were delivered to the Minister responsible for the Ontario Securities Commission on March 23, 2005. The Minister may approve or reject the Proposed Amendment Instrument or return it for further consideration. If the Minister approves the Proposed Amendment Instrument or does not take any further action by June 6, 2005, the Proposed Amendment Instrument will come into force on June 6, 2005. The Proposed CP Amendments will come into force on the date that the Proposed Amendment Instrument comes into force.

In Alberta, the Proposed Amendment Instrument and other materials were delivered to the Minister of Revenue on March 24, 2005. The Minister may approve or reject the Proposed Amendment Instrument. Subject to Ministerial approval, the Proposed Amendment Instrument and the Proposed CP Amendments will come into force on June 6, 2005. The Alberta Securities Commission will issue a separate notice advising of whether the Minister has approved or rejected the Proposed Amendment Instrument.

Provided all necessary ministerial approvals are obtained, we expect to implement the Proposed Amendment Instrument and the Proposed CP Amendments on June 6, 2005.

Background to the Certification Instrument and the Companion Policy

The Certification Instrument and the Companion Policy were initiatives of the Participating Jurisdictions.

The purpose of the Certification Instrument 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.

Current filing requirements under the Certification Instrument

Under the Certification Instrument, issuers are required to file annual certificates for each financial year beginning on or after January 1, 2004. The form of annual certificate is Form 52-109F1 (the full annual certificate); however, issuers are permitted to file annual certificates in Form 52-109FT1 (the bare annual certificate) for financial years ending on or before March 30, 2005.

Issuers are also required to file interim certificates for each interim period beginning on or after January 1, 2004. The form of interim certificate is Form 52-109F2 (the full interim certificate); however, issuers are permitted to file interim certificates in Form 52-109FT2 (the bare interim certificate) for interim periods that occur before the end of the first financial year for which issuers are required to file full annual certificates.

Substance of the Proposed Amendments

The Proposed Amendments contain the following changes to the Certification Instrument and the Companion Policy:

1. ***Deferral of certifications regarding internal control over financial reporting***

The Proposed Amendments allow certifying officers to omit the following certifications from their full annual certificates filed for financial years ending on or before June 29, 2006 (permitted financial years) and their full interim certificates filed for permitted interim periods:

- (a) the certification that the certifying officers are responsible for establishing and maintaining internal control over financial reporting;
- (b) the certification that the certifying officers 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
- (c) the certification that the certifying officers 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.

The permitted interim periods are those interim periods that occur before the end of the first financial year for which an issuer is required to file full annual certificates that include the certifications described in paragraphs (a), (b) and (c) above.

If the Proposed Amendments are made, issuers will be permitted to file annual certificates and interim certificates for the specified financial years and interim periods in the forms set out in Appendix A to this Notice.

2. ***Appendix A to the Companion Policy***

In light of the changes to the Certification Instrument described above, the Proposed Amendments also include consequential changes to Appendix A to the Companion Policy.

The certifications required in annual certificates and interim certificates, assuming the Proposed Amendments come into force, are summarized in the table below:

Summary of certifications¹	Bare interim certificate	Bare annual certificate	Interim certificate for permitted interim periods	Annual certificate for permitted financial years	Full interim certificate	Full annual certificate
The certifying officers have reviewed the annual filings or interim filings. <i>Paragraph 1</i>	Required	Required	Required	Required	Required	Required
Based on the certifying officers' knowledge, the issuer's annual filings or interim filings do not contain any misrepresentations. <i>Paragraph 2</i>	Required	Required	Required	Required	Required	Required

Summary of certifications¹	Bare interim certificate	Bare annual certificate	Interim certificate for permitted interim periods	Annual certificate for permitted financial years	Full interim certificate	Full annual certificate
Based on the certifying officers' knowledge, the financial statements and other financial information in the annual filings or interim filings fairly present the financial condition, results of operations and cash flows of the issuer. <i>Paragraph 3</i>	Required	Required	Required	Required	Required	Required
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. <i>Introductory language to paragraph 4 and paragraph 4(a)</i>	Not required	Not required	Required	Required	Required	Required
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. <i>Introductory language to paragraph 4 and paragraph 4(b)</i>	Not required	Not required	Not required	Not required	Required	Required
The certifying officers have evaluated the effectiveness of disclosure controls and procedures and caused the issuer to disclose their conclusions. <i>Paragraph 4(c)</i>	Not required	Not required	Not required	Required	Not Required	Required
The certifying officers have caused the issuer to disclose certain changes in internal control over financial reporting. <i>Paragraph 5</i>	Not required	Not required	Not required	Not required	Required	Required

¹ Please see Forms 52-109F1, 52-109FT1, 52-109F2 and 52-109FT2 for the prescribed wording of the required certifications.

Purpose of the Proposed Amendments

We believe that it is critical for our markets that all reporting issuers have sound internal control over financial reporting. The Proposed Amendments will allow additional time for certifying officers to satisfy themselves that they have an appropriate basis for providing the certifications regarding internal control over financial reporting in their full annual certificates and full interim certificates.

Summary of written comments received by the Participating Jurisdictions

The Proposed Amendments were published for comment on November 26, 2004. The comment period expired on February 24, 2005.

We received submissions from two commenters, Christopher Loucks, CA and the CICA's Canadian Performance Reporting Board. We have considered the comments received and thank the commenters. A summary of the comments, together with the responses of the Participating Jurisdictions, are set out in Appendix B of this Notice.

After considering the comments, we have determined that no substantive changes to the Proposed Amendments are required. We have made certain drafting changes to the Proposed Amendments; however, as we believe these changes do not change the substance of the Proposed Amendments and are not material, we are not republishing the Proposed Amendments for a further comment period.

Authority – Saskatchewan

In Saskatchewan, securities legislation provides the Saskatchewan Financial Services Commission (the Commission) with rule-making or regulation-making authority regarding the subject matter of the Certification Instrument.

Clause 154(1)(r) of *The Securities Act, 1988* (Saskatchewan) (the Act) authorizes the Commission to make regulations 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.

Clauses 154(1)(s) of the Act authorizes the Commission to make regulations prescribing requirements in respect of financial accounting, reporting and auditing for the purposes of the Act and the regulations.

Clause 154(1)(ii) of the Act authorizes the Commission to make regulations 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 or the regulations and all documents determined by the regulations to be ancillary to the documents, including financial statements, proxies and information circulars.

Clause 154(1)(ee.2 and ee.3) of the Act 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.

Clause 154(1)(ee.4 and ee.5) of the Act 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.

Related instruments

The Certification Instrument is related to:

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

Alternatives

We did not identify any alternatives that we believed accomplished the purposes of the Certification Instrument, as discussed above, while allowing additional time for certifying officers to satisfy themselves that they have an appropriate basis for providing the representations regarding internal control over financial reporting.

Anticipated costs and benefits

The anticipated costs and benefits of implementing the Certification Instrument were previously outlined in the paper entitled *Investor Confidence Initiatives: A Cost-Benefit Analysis*, which was published on June 27, 2003. The Proposed Amendments do not impose any additional requirements upon reporting issuers. As a result, we believe that the benefits of the Proposed Amendments outweigh the costs, if any.

Reliance on unpublished studies, etc.

In developing the Proposed Amendments, we did not rely upon any significant unpublished study, report or other written materials.

Questions

Please refer your questions to any of:

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