

CEO and CFO certifications of disclosure

NI 52-109 Revised rule

Effective December 15, 2008

Adviser alert: reporting issuers
August 19, 2008

Overview

On Friday August 15, 2008, the Canadian Securities Administrators (CSA) published the regulation that replaces Multilateral Instrument (MI) 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*. The new instrument, labelled NI 52-109, will come into effect on December 15, 2008. For example, all reporting issuers with a December 31 year-end will be required to file the new annual certificate for December 31, 2008, filings. Also, the first interim period ending after December 15, 2008, will require the new interim certificate. Exemptions available for venture issuers are carried forward to the new rule.

Significant changes

The CSA last signalled their intention to modify the certification requirements in April 2008. Grant Thornton, four other professional services firms and twenty-three issuers and others provided the CSA with comments on their proposals. These comments enabled the CSA to improve

both the regulation and the guidance in the companion policy. The CSA did not make material changes to the substance of what they proposed in April. Significant changes from the current regulation for non-venture issuers include

- Requirement to use a control framework to design their Internal Control over Financial Reporting (ICFR) and disclose framework used.
- Requirement to evaluate the effectiveness of Disclosure Controls & Procedures (DC&P) **and** ICFR as at the reporting issuer's year end.
- Disclosure in the annual MD&A of conclusions about the effectiveness of the ICFR in addition to similar existing requirements on the effectiveness of DC&P.
- Disclosure in the interim and annual MD&A of a description of any material weakness, as defined, its impact and the issuer's plans, if any, or actions already taken, to remediate each material weakness. An issuer does not have to

remediate a material weakness; however, an issuer must disclose any remediation plans.

- Certifying officers may limit the scope of their certification of design of DC&P and ICFR (subject to providing certain disclosures) to exclude controls, policies and procedures of (a) a proportionately consolidated entity; (b) a variable interest entity; or (c) a business that the issuer acquired not more than 365 days before the end of the financial period to which the certificate relates. The exemption for (a) and (b) is only available if the certifying officers do not have sufficient access to the information.
- The annual certificate for a non-venture issuer now specifies that the certificate covers the AIF, the financial statements and the MD&A and any documents incorporated by reference in the AIF.

Effective date

The new requirements of NI 52-109 become effective on December 15, 2008, and apply to all annual or interim periods ending on or after December 15, 2008.

Action plans

Since the rule is now final, issuers will have to ensure that they have processes in place to gather evidence of the operating effectiveness of ICFR. For December 31 year-ends, this means that there is approximately seven months between now and the first effective filing deadline. Issuers that are not fully prepared for the new requirements will need to address a few major issues including

- (a) picking a control framework and evaluating ICFR design against that framework;

- (b) establishing a process to evaluate the operating effectiveness of ICFR; and
- (c) determining whether to remediate or disclose any material weaknesses.

Available guidance

Our advice on available guidance includes

- 1 The new regulation and companion policy. The CSA put extensive resources and research into this regulation. The companion policy includes best practices and guidance from authoritative sources from other jurisdictions.
- 2 The re-exposed guidance on monitoring internal controls published by the Committee of Sponsoring Organizations (COSO). While COSO will not finalize this guidance until September or October, we believe that the available guidance will help all entities integrate controls monitoring into their business practices and otherwise improve the effectiveness and efficiency of resources allocated in this area.

Grant Thornton can help. We take pride in the thought leadership we have provided in the disclosure and internal controls area. We have added value by commenting on each of the CSA proposals, by devoting resources to assist in setting related auditing standards, and we provided resources to assist in the authoring of the COSO controls monitoring guidance and tools. Our people can add value to your internal control efforts as well.

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