APPENDIX C
TO NOTICE AND REQUEST FOR COMMENTS

SUMMARY OF COMMENTS AND CSA RESPONSES
ON THE MARCH 2007 PROPOSED MATERIALS

PROPOSED NATIONAL INSTRUMENT 52-109
CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS

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Legend:
ICFR: internal control over financial reporting
DC&P: disclosure controls and procedures
SOX: Sarbanes-Oxley 2002
VIE: variable interest entity
SOX 302: Section 302 of Sarbanes-Oxley 2002
SOX 404: Section 404 of Sarbanes-Oxley 2002

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	1. <u>GENERAL COMMENTS</u>		
1.	General support for the principles underlying the Instrument and Companion Policy as published	Twelve commenters express their support for the principles-based approach to DC&P and ICFR and the certification of such controls. Reasons cited include: • the approach will allow reporting issuers and their certifying officers to exercise judgment in their determination of disclosures; and • the approach is effective and meaningful. Eight commenters express general support for the approach being taken, the content and principles underlying the Instrument. Six commenters express support for the decision not to require auditor attestation. Reasons cited include: • external attestation can be a very time-consuming and costly exercise; and • this allows issuers and their board of directors to decide whether to obtain such a report after weighing the benefits of obtaining such comfort against the costs of doing so.	We thank the commenters for their support.
2.	General concern regarding the Instrument and Companion Policy as published	<u>Absence of a control framework requirement</u> Five commenters recommend a control framework be required. Reasons cited include: • without a control framework, the risk of inappropriate and inconsistent judgments increases significantly; • enhanced comparability of assessments across issuers; • standardization facilitates enhanced economies of scale and scope for the development of requisite expertise to conduct ICFR compliance and assurance activities; • improved investor understandability and confidence in the evaluation process and management's certification; and • promotes more consistent application of professional judgment. One commenter recommends that any issuer who does not use a control framework be required to explain why, due to the increased risk that this poses. One commenter expresses concern that small issuers do not have adequate tools available to them that will enable them to comply with the enhanced certification requirements without engaging external advisors. The absence of a control framework for small and	After careful consideration of the feedback received, and our decision to remove DC&P and ICFR certification requirements for venture issuers in our proposal, we propose to require the use of a control framework in the design and evaluation of ICFR. We agree that the required use of a control framework should result in more consistent implementation by certifying officers and a significantly reduced risk of inappropriate or inconsistent judgments. We recognize that some issuers that are not venture issuers may face some of the design challenges described in section 6.11 of the Companion Policy, however, since we are no longer requiring the remediation of any material weaknesses in the design of ICFR, we believe that all issuers will be able to comply with the certification requirements for the period, including the requirement to use a control framework to design ICFR.

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		medium issuers increases the uncertainty surrounding what would constitute a reasonable investigation to support a due diligence defence in the event of civil liability proceedings for secondary market disclosures. In order to address this concern the commenter requests that the CSA create or support a task force that will develop an internal control framework for small to medium size issuers. One commenter does not support the requirement to disclose the control framework chosen or to describe the process undertaken. The commenter believes the disclosure should be on the results of any internal control review process. <u>Separation of "design" and "operating" effectiveness</u> Two commenters expressed concern with separating the concepts of "design" and "operating" effectiveness. Reasons cited include: • the distinction between design and operating effectiveness is difficult to understand and may cause confusion to investors; • since design is meant to be a precursor to operating effectiveness, issuers should be allowed to assess coverage of risks without the added requirement to assess whether or not controls are placed in operation; and • the SEC's rules under SOX 404 do not require US issuers to make disclosure on a quarterly basis whether there are material weaknesses. <u>Removal of attestation requirement</u> Three commenters support a mandatory audit opinion. However, one of these commenters supports an exemption from auditor attestation for TSX-V issuers. Reasons cited supporting the inclusion of a mandatory audit opinion include: • enhances the timeliness, completeness and reporting of required information concerning ICFR; • could create negative and unfair perceptions by US investors, rating agencies and foreign regulators about the quality of management and governance in Canadian companies, and therefore be an impediment to cross-border flows of capital and trading in securities; • introducing two levels of auditor attestation in the Canadian capital markets that are highly integrated with the US is not a wise or appropriate policy decision; • the "integrated audit" based on a "top-down, risk-based" approach that is being developed in the US is a significant and cost effective solution that will benefit investors and directors and the commenter believes it will have benefits that exceed the costs involved; and • while we have only had one year of experience with the certification of the	We acknowledge the comments but do not agree that the separation of these components will result in confusion since the requirement to certify design separately for DC&P and ICFR has been in effect for a significant period of time. The concept of design has been separately discussed in the SEC's *Commission Guidance Regarding Management's report on ICFR* and the design and operating effectiveness concepts are separated in SOX 302 requirements. We continue to believe the benefits associated with a requirement for the issuer to obtain from its auditor an opinion on the effectiveness of ICFR do not exceed the costs.

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		design of ICFR, one commenter believes that the approach taken by most Canadian companies is not nearly as rigorous as that taken by the management of interlisted companies subject to SOX 404. If this first year experience carries forward, then investors will have a false sense of comfort when management does not disclose any ICFR weaknesses in their MD&A. <u>Other</u> One commenter stated that there is currently a serious shortage of qualified accountants and auditors, and there are concerns that there would be a tremendous strain on qualified resources to devote to the current proposals.	After careful consideration we are proposing that venture issuers not be required to certify the establishment and maintenance of DC&P and ICFR, which should result in a reduction in any strain on available resources.
3.	Harmonization with US internal control requirements	<u>General concerns</u> Three commenters believe that the CEO and CFO certification requirements within the capital markets in Canada should be harmonized with those in the U.S. to the greatest extent possible. One commenter believes that harmonization with the US internal control reporting requirements is very important to facilitate the significant cross-border flow of capital and to support a mutual reliance approach to securities regulation by US and Canadian regulators. The commenter identifies three major priorities to address in finalizing these proposals: • ensure there is consistency in concept and terminology between the CSA proposals for management and the SEC management guidance that was recently issued; • harmonize the concepts and terminology with respect to the disclosure requirements for internal control weaknesses and deficiencies; and • reassess the decision to not require auditor attestation. One commenter recommends that the CSA should attain the SEC's acceptance of the MI 52-109 certifications, or as Canadians, we risk having our rules and regulations viewed as inferior or inadequate. One commenter notes that, if the regulations in Canada continue to move away from those of the US, it will make it progressively more difficult for investors to determine their reliance. One commenter requests the CSA to explain in the Companion Policy the reasons why it	We acknowledge the importance of avoiding regulatory differences within North America that may impede the efficiency of cross-border capital flows. We believe our revised proposals strike an appropriate balance between recognizing the specific characteristics and needs of the Canadian marketplace and achieving an appropriate level of harmonization within North America. We believe, with the removal of venture issuers from the full certificate requirements, it is appropriate to adopt the term "material weakness" as defined by the SEC, which will help eliminate confusion for issuers and investors. We believe these changes will allow cross-listed issuers to take advantage of the exemption in Part 8.

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		has elected to depart from key aspects of the SOX 302 Rules and SOX 404 Rules. One commenter requests clarification with respect to exemptions provided for companies who are required to certify under the US legislation as foreign private issuers.	
		<u>Cross-border issuer concerns</u> One commenter believes that the failure to adopt the U.S. definitions of "material weakness" and "significant deficiency" and modify the form of interim certificates could result in the situation where most Canadian cross-border issuers would elect to voluntarily comply on a quarterly basis with the certification requirements under the SOX 302 Rules in order to avail themselves of the exemption contained in 7.2(2) of the Instrument and be entirely exempt from the requirements of the Instrument.	We propose to adopt the term "material weakness" as defined by the SEC to replace the term "reportable deficiency".
		One commenter does not believe that Canadian MJDS issuers should be forced to choose between additional, voluntary SEC filings (i.e., voluntary filing of an interim certificate under SOX 302) and attempting to reconcile the differences between the Canadian and US certification requirements. The commenter requests the CSA to reconsider whether an exemption could be provided from the new ICFR disclosure and certification aspects of the Instrument if the issuer is in compliance with SOX 404 rules and management's annual report on ICFR and the related independent auditor's report is included in the issuer's annual report filed with the SEC.	We acknowledge the comments, but continue to believe that all Canadian reporting issuers should certify their interim filings. We do not agree that it would be appropriate to apply the SEC's requirements for foreign private issuers to Canadian reporting issuers in our marketplace.
		<u>Comparison of guidance in Companion Policy to US guidance</u> One commenter recommends reassessing whether there are portions of the proposals that unnecessarily differ from the guidance for management recently released by the SEC. The commenter believes that, given the number of cross-border registrants, the introduction of unnecessary differences in definitions, requirements and / or disclosure requirements may create additional requirements and analysis for many issuers with little consequent benefit to investors in terms of incremental meaningful disclosure. The commenter believes that some of the material included in this guidance/thinking included therein should be considered for inclusion in the Companion Policy.	We have considered the SEC's *Commission Guidance Regarding Management's Report on ICFR* in the development of our latest proposal.
		One commenter requests clarification, to the extent such guidance in the proposed Companion Policy differs from that of the US, why that departure has been made in order to assist issuers who are relying on US guidance.	We do not believe that a comparison to US guidance in the Companion Policy is appropriate or necessary to assist Canadian reporting issuers in understanding the Instrument.

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	2. <u>SPECIFIC REQUESTS FOR COMMENT</u>		
1.	Definition of "reportable deficiency" and the proposed related disclosures	<u>General</u> Nine commenters agree with the definition of reportable deficiency as published. Reasons cited include: • reasonable business judgment is and should always be a factor in determining whether a reportable deficiency exists; • using the term "reportable deficiency" is a step in the right direction as it promotes the application of professional judgment with respect to the consideration of appropriate disclosures by the certifying officers relating to the design and operating effectiveness of ICFR; and • reportable deficiency is much more explainable and understandable to a broader range of people and hence, if more managers and directors understand it, there can be better governance. Twelve commenters agree with some features of the definition of reportable deficiency. Thirteen commenters prefer the US definition of material weakness. Reasons cited include: • the definition of reportable deficiency is confusing and will create significant difficulties for cross-border issuers complying with SOX 404; • the application of "material weakness" and "significant deficiency" as concepts has become well-defined in practice; and • the new definition of reportable deficiency has no existence in practice. This may cause confusion and inconsistency and will allow the use of more judgment in evaluating the facts and circumstances related to control deficiencies. <u>Guidance on determining a reportable deficiency</u> One commenter finds the level of guidance provided as to what represents a reportable deficiency relating to design or operation is sufficient as proposed. Four commenters request further guidance (in the form of examples or discussion) on how to apply judgment to determine a reportable deficiency. Suggestions include: • indicating when a combination of deficiencies will become reportable; • providing a decision tree with a step-by-step process to determine if a deficiency is "reportable"; and • examples of items that would <u>not</u> constitute a reportable deficiency.	After careful consideration of the various arguments and the adoption of a basic venture issuer certificate, we have concluded that issuers and investors will be better served by consistent adoption of the term and related definition of "material weakness" as the basis for disclosure of weaknesses in ICFR. In making this change, we believe issuers and their certifying officers will continue to be required to exercise responsible professional judgment in determining when a weakness in ICFR should be disclosed. We are no longer proposing to use the term "reportable deficiency", and instead propose to use the term and related definition of "material weakness". As a result we have revised our guidance on determining a material weakness to be consistent with that included in the SEC's *Commission Guidance Regarding Management's Report on ICFR*.

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		One commenter noted issuers should be warned that a list of indicators of a reportable deficiency cannot be inclusive of all situations which could indicate reportable deficiencies. Three commenters request guidance on the extent to which the definition of reportable deficiency differs from the SEC's definition of "material weakness". One commenter believes the guidance in Part 8 of the Companion Policy regarding the identification of a reportable deficiency is too high-level to be of meaningful assistance to issuers with limited internal financial reporting and control expertise. <u>Definitions</u> Eight commenters believe the definition of reportable deficiency should incorporate materiality or alternatively the certificates should refer to materiality in relation to ICFR design and effectiveness. Two also note that excluding the concepts of materiality and probability may result in issuers disclosing more deficiencies than intended. Four commenters believe the term "reasonable person" requires more clarification, including guidance as to whether a "reasonable person" refers to a "reasonable person" who is financially literate or any reasonable person? Two commenters believe more guidance regarding the experience of a reasonable person would be helpful. One commenter believes the concept of a "reasonable officer" or "prudent official" as defined by the SEC might be a more appropriate benchmark. One commenter notes the definition of reportable deficiency includes reference to operation of one or more controls and operation of ICFR; however, the certificates refer to design and evaluation of effectiveness of ICFR. The commenter finds the use of two terms – operation and effectiveness - confusing. One commenter believes the definitions and guidance related to reportable deficiencies appear to be inconsistent between the sec. 1(1.1) of the Instrument and sec. 3.1(3) and 3.1(4) of the Companion Policy. <u>Reliability of Financial Reporting</u> Five commenters note the reference to the "*reliability of financial reporting and the preparation of the issuer's financial statements"* in the definition of ICFR suggests that the documentation and evaluation of internal controls must extend beyond those related to	We are no longer proposing to use the term "reportable deficiency", and instead propose to use the term and related definition of "material weakness". As a result we have revised our guidance to be consistent with that included in the SEC's *Commission Guidance Regarding Management's Report on ICFR*. We have provided further guidance on the meaning of "*reliability of financial reporting and the preparation of the issuer's financial statements*" in Section 4.3 of the

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		financial statement preparation and will include internal controls over all continuous disclosure documents (MD&A, AIF, proxy circular, news releases, etc.). They note that it is not clear if the reference to "reliability of financial reporting" is intended to broaden the Canadian definition beyond the financial statements as compared to the US definition of material weakness which focuses on the financial statements alone.	Companion Policy.
		<u>Reporting a reportable deficiency</u> One commenter believes the definition of reportable deficiency is too restrictive as it is confined to either reporting the matter in the MD&A or not at all; the commenter recommends an additional classification of weaknesses that should be reported to an appropriate level of board committee or external auditor. One commenter believes that any requirement to disclose a control deficiency in the MD&A should be limited to deficiencies that the issuer believes are material to a reasonable investor in the issuer's securities. One commenter notes it is difficult to determine what a "reportable deficiency" is when a "deficiency" has not been defined. Two commenters believe the Companion Policy guidance as to what constitutes a reportable deficiency is confusing. Section 8.1(1) first states that in order to have reliable financial reporting, there must be no misrepresentation in the annual or interim filings. However, section 8.1(1) also states there must be no material misstatement. It is not clear whether "material misstatement" must be read as meaning a "misrepresentation" or something different than a "misrepresentation".	We are no longer proposing to use the term "reportable deficiency", and instead propose to use the term and related definition of "material weakness". As a result we have revised our guidance on determining a material weakness to be consistent with that included in the SEC's *Commission Guidance Regarding Management's Report on ICFR*.
		<u>Remediation requirements</u> One commenter believes it is inconsistent to require design deficiencies to be remediated but to allow operating deficiencies to remain unremediated. They recommend deleting "if any" from Form 52-109F1 6(b)(iv). One commenter believes even if an issuer had previously reported in its annual MD&A that DC&P was ineffective, that it would be misleading for an issuer to sign Form 52-109F2 at an interim date indicating that they have designed DC&P to provide reasonable assurance when a deficiency in design exists unless they have taken action to remediate the deficiency. The commenter recommends issuers should be instructed that, if they are aware that DC&P is ineffective at an interim date, this fact should be disclosed in the MD&A.	We are no longer proposing that material weaknesses in the design of ICFR must be remediated. We have revised the guidance in section 10.2 of the Companion Policy to address this comment.

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		One commenter believes the obligation to disclose, in the MD&A, a "reportable deficiency" (design or operation) that existed on the financial statement closing date, even if an action plan to remediate is being developed and mitigating controls were implemented prior to publication of the financial information, could needlessly increase investor concern.	We disagree. We believe that information about material weaknesses and remediation plans is important information for an investor.
		One commenter believes the audit committee must monitor remediation efforts to ensure risks are mitigated to an acceptable level, and if the remediation is not implemented there should be compelling reasons as to why not. Based on this, the commenter feels the CSA should not have removed the requirement that certifying officers must disclose to the audit committee all significant deficiencies in the design or operation of ICFR.	We do not believe there is a need for the term "significant deficiency" within the Instrument. This does not preclude an audit committee from requesting certifying officers to bring any significant deficiencies to their attention.
		<u>Evaluation</u> One commenter believes the definition in the Instrument and the Companion Policy discussion of reportable deficiency do not appear to be consistent with a top-down, risk-based approach. The commenter suggests it might be beneficial to provide issuers with more prescriptive guidance on how to evaluate weaknesses based on materiality, risk and complexity of the overall risks being addressed by their system of control than to focus on whether one or a number of independent controls were not designed or operating properly.	We are no longer proposing to use the term "reportable deficiency", and instead propose to use the term and related definition of "material weakness". As a result we have revised our guidance on determining a material weakness to be consistent with that included in the SEC's *Commission Guidance Regarding Management's Report on ICFR*.
		<u>Other</u> One commenter believes the definition of reportable deficiency implies that DC&P deficiencies are excluded; this implies that DC&P cannot have a reportable deficiency (outside of the overlap between DC&P and ICFR) as the certificate requires officers to certify design and operation of DC&P; the commenter suggests making this point explicit.	We have provided a discussion of the overlap between DC&P and ICFR in section 6.2 of the Companion Policy.
		One commenter recommends that the Instrument set out what disclosure is required to be included in the MD&A relating to a reportable deficiency in the design of ICFR and when this disclosure is required rather than including this in section 5.2 of the certificates.	We acknowledge the comment and have clarified the disclosure requirements in section 3.2 of the Instrument.
2.	Availability of ICFR design accommodation for venture issuers	<u>General</u> Fourteen commenters generally support the proposed design accommodation for venture issuers. • One commenter agrees with the venture issuer accommodation, assuming a reasonable challenge as to whether the issuer should avail itself of the accommodation and that this decision is reviewed by the audit committee.	We have concluded that the venture issuer design accommodation is not sufficient to allow for cost effective certification of DC&P and ICFR and provide meaningful benefits to investors and other stakeholders. We therefore propose to modify the Instrument to exclude venture issuers from the requirement to design and evaluate DC&P and

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		• One commenter supports the venture issuer accommodation, but suggests that a DC&P design accommodation should also be provided, which would be consistent with Part 5.4 of Form 52-109F1 and Part 6.2 of Companion Policy. • One commenter believes the accommodation should not be limited to venture issuers that "cannot reasonably remediate". The requirement to disclose the existence of the reportable deficiency, the risks relating thereto and any steps taken to mitigate those risks should be sufficient to enable investors to make an informed investment decision. In addition the commenter believes the risks to be identified should be only those risks relating to ICFR. Seven commenters believe that the ICFR design accommodation does not adequately address the challenges faced by venture issuers, and the proposed materials should not apply to venture issuers. Reasons cited include: • the requirements impose too high a compliance cost without a benefit to shareholders; • the very intensive work required to evaluate and document internal controls may detract from a company's efforts to ensure the financial statement preparation process properly states accurate financials; • some issuers will be obliged to disburse substantial amounts to retain the services of outside consultants in order to comply with the additional certification requirements; • given the nature of the smaller management team and staff size, the deficiency disclosure provisions are not appropriate since the control qualification and comparison standards are generally derived from the profile of a large issuer; • the disclosure provisions put venture issuers in the position of saying they cannot currently, and will not in the future, be in a position to comply; • because many venture issuers do not generate revenue, investors tend to rely on information other than financial statements, such as drill results and clinical trial results, in making their investment decisions; and • the venture issuers are subject to robust regulatory and exchange governance and financial reporting requirements. Three commenters express concern that disclosure of deficiencies in internal controls for small companies will be perceived negatively by the markets when an issuer may in fact have very strong controls over financial reporting which are not acknowledged by the regulations based on the strict interpretation of the Instrument. If there are compensating controls such as management supervisory controls, shareholders know and accept that	ICFR and allow them to provide a "venture issuer basic certificate". The basic certificate includes a note to reader which explains for investors how it differs from the full certificate required to be filed by non-venture issuers. The note to reader explains to investors that inherent limitations on the ability of certifying officers of a venture issuer to design and implement on a cost effective basis, DC&P and ICFR may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation. These basic certificates are not available to non-venture issuers.

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		those controls are thoroughly dependent on trust in officer and director integrity and tone at the top. One commenter is not in favour of exceptions to the rules as additional effort is required to define when these exceptions are permitted with the risk that some parties may not comply with the spirit of the guidance. This commenter recommended that venture issuers follow the guidance outlined in paragraph 5.2 and report ICFR deficiencies. One commenter believes sending a message that a deficiency exists is not beneficial to investors or shareholders; it is how the deficiency is going to be fixed that is important. <u>Other accommodations</u> Seven commenters believe smaller TSX issuers (based on revenue and market cap tests) should be able to use the ICFR design accommodation. One commenter notes that if the CSA does not make the design accommodation available to all issuers, then they should clearly communicate under what circumstances they contemplate providing relief to non-venture issuers under the policy. Two commenters believe venture issuers graduating to TSX should be exempted from the requirement to evaluate the effectiveness of ICFR (and certify and disclose) for one year from graduation to TSX.	Non-venture issuers are not permitted to file the venture issuer basic certificate and we do not contemplate providing relief to non-venture issuers based on measures of size such as revenue or market capitalization. We are also no longer mandating remediation of a material weakness relating to design. We acknowledge the comment and have proposed separate certificates which are available to venture issuers who are graduating to the TSX.
3.	Scope limitation for design of DC&P and ICFR for an issuer's interest in a proportionately consolidated investment or VIE	<u>General</u> Twenty-three commenters generally support the proposed scope limitation. Reasons cited include: • Three commenters believe a reporting issuer may not, based on their legal relationship, have access or influence over the controls, policies and procedures for all investments; and • The scope limitation allows the issuer to determine whether they can meet the requirement of full compliance regarding certification of entities that they do not control or whether to exclude such entities but clearly identify to investors the fact that the entity is being excluded and why. One commenter does not agree with the proposed scope limitation and instead recommends a requirement for management to justify in their MD&A any scope limitations. <u>Application of scope limitation</u>	We acknowledge the support for the scope limitation as well as the comments received.

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		Two commenters recommend that the scope limitation be expanded to include portfolio and equity investments. One commenter requests clarification as to the treatment of wholly or partially-owned subsidiaries and joint venture interests.	Since the applicability of the scope limitation is determined by the issuer's access to the underlying entity, we do not think that additional guidance is needed.
		Various commenters request that the scope limitation be clarified to include the following: • working interests in the sense used in the oil and gas industry since only the operator in such interests usually has access and it is not practical that each joint venture partner in the oil and gas industry be given access to the operator's systems to evaluate internal controls; • an exemption for joint ventures below specified revenue or income thresholds and that are not material to the reporting issuer; and • an exemption for VIEs that are not consolidated.	We acknowledge the comments, but do not propose to change the scope limitation to address these items. We continue to believe that a limitation based on access to the underlying entity is appropriate.
		One commenter recommends that the guidance be clarified regarding whether scope limitations will be available for proportionately consolidated investments or VIEs created after the date that the Instrument becomes effective.	We do not propose a distinction between proportionately consolidated investments or VIEs created before or after the effective date of the Instrument. Since there is no distinction, we do not think guidance is necessary.
		One commenter recommends that section 2.3 be enhanced to extend the exemption to the reporting of material changes.	We acknowledge the comment but do not agree that the scope limitation needs to be further enhanced. If an issuer uses the scope limitation, it would not report material changes since it is limiting the scope of its design of ICFR in the investment.
		<u>Disclosure of summary financial information</u> Two commenters recommend that the disclosure obligations under subsection 2.3(2) only apply in respect of entities that, based on the issuer's top-down, risk-based approach to DC&P and ICFR design, would have been within the scope of the issuer's design of DC&P and ICFR absent the limitation.	We have revised the guidance in Part 13.3(4) of the Companion Policy to address this comment.
		Five commenters recommend that the Companion Policy clarify that summary financial information does not have to be disclosed if not material in aggregate or on an individual-entity basis and that issuers are permitted to disclose such information in aggregate since many issuers have limited participations in tens or even hundreds of entities, which may not be material to investors.	We have revised the guidance in subsection 13.3(4) of the Companion Policy to address this comment.
		One commenter recommends that, if summary information is to be required, then it should be limited to key metrics which should be specified in the Instrument rather than the Companion Policy so that there is no uncertainty as whether the disclosure provided by the	We have revised the guidance in subsection 13.3(4) of the Companion Policy to address this comment but we do not agree that it is necessary to revise the Instrument.

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		issuer in the MD&A meets the requirements of the Instrument. One commenter requests clarity on whether the continuous disclosure requirements of Form 51-102F1 are applicable to disclosures required under subsection 10.3(4) of the Companion Policy. Two commenters note that the financial disclosure of summary financial information in the MD&A may reflect negatively on issuers in the marketplace. One commenter believes that the additional significant cost of compliance and the forcing of private partners in joint ventures to put information in the public domain may significantly detract from the desirability of Canadian public companies as joint venture partners and recommends some form of exception to be created where a joint venture partner is a private company. <u>Other</u> One commenter notes that if the IASB decides to eliminate the proportionate consolidation method, significant changes in accounting treatment and financial statement presentation will arise. The commenter believes that the consequences of this have not been contemplated or reflected in subsections 10.3(4) and 10.3(5) of the Companion Policy.	In our request for comments we are also recommending amendments to Form 51-102F1. We acknowledge the comments but do not agree that an exception for joint ventures with a private company should be provided. We continue to believe that a limitation based on access to the underlying entity is appropriate. The proportionate consolidation method is currently available to issuers under various types of GAAP. If the proportionate consolidation method is eliminated under various types of GAAP then we will reconsider its applicability at that time.
4.	Scope limitation for design of DC&P and ICFR within 90 days of the acquisition of a business	<u>General</u> Forty-six commenters agree with the scope limitation but believe the 90-day period is not enough. Reasons cited include: • Depending on the timing of the acquisition, 90 days may not allow the company the benefit of an entire quarter to evaluate the acquired company's controls. In addition, there are various matters that can only be tested on an annual basis and a 90-day period would often not allow for annual testing to be conducted; • Knowledge, transition and integration of business processes, controls, IT systems, policies and procedures take a great deal of dedicated, properly trained resources and time. To embed reasonable accuracy, consistency and completeness into management's ICFR assessment process, 90 days is too restrictive; • The shorter the period of compliance, the more expensive the compliance will be and the greater the likelihood that deficiencies will be identified out of an abundance of caution due to a lack of time to properly assess or address potential deficiencies. Such identification will likely create some uncertainties in the market and Canadian issuers will be disadvantaged compared to US public	We have revised our proposal to permit a scope limitation for the design of DC&P and ICFR for a business that the issuer acquired not more than 365 days before the end of the financial period to which the certificate relates.

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		companies; • For larger acquisitions, requiring a purchaser to certify the design and effectiveness of ICFR in the first 90 days would change the sequencing of merger priorities which would be detrimental to integration activities; • In some cases, management and / or employees from the acquired business do not join the issuer. Thus, there is a loss of internal control knowledge and expertise that must be obtained by recruiting and training additional staff or retraining existing staff; • International differences in accounting standards and the challenge of language and cultural barriers between head office personnel and the business being acquired add complexity and time delay to the accomplishment of ICFR and DC&P efforts in the first days of an acquisition; • In the context of an arm's-length acquisition, it is highly unlikely that a purchaser would be able to thoroughly access or assess the target's corporate controls during the due diligence process. Such assessment would often require the assistance of internal and external auditors, who are generally not involved in those aspects of the due diligence; • If the business to be acquired is an entrepreneurial business, it is common for the company to have limited control systems documentation available therefore requiring additional resources by the issuer to complete the assessment of DC&P and ICFR; • Canadian GAAP allows the finalization of the purchase equation for acquisitions to occur up to a year after the acquisition, recognizing the underlying complexity of these transactions; • Many issuers change the financial systems of the acquired business to allow for integration into the consolidated operations and processes. Certifying the design of a system that is likely to change would be inefficient, uneconomical and uninformative to the reader; • It is not inconceivable that a private company, faced with competing bids involving 90-day compliance from a Canadian public company and a foreign bid with no similar rules, will place a value on not having to be compliant during a period of tremendous transition. A longer period will help alleviate this concern and potential disadvantage; and • In the course of an acquisition, many deficiencies are remediated in the first year after the acquisition as reviews and audits are completed. One commenter believes that the scope limitation period should be available for the two fiscal years of the issuer following the year of acquisition. If the purchased entity is an	

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		issuer already subject to the Instrument or SOX, the scope limitation period could be reduced to one full fiscal year following the year of the acquisition. Two commenters believe that providing a one-year exclusion for newly acquired business from the design of DC&P or ICFR of issuers is a more reasonable time frame and will be consistent with the SEC Guidance and the US PCAOB AS No.5 recommendations. The commenter believes that the annual requirements of the Instrument should be met for acquisitions completed in the previous year. This would give issuers anywhere from 12 to 24 months after the acquisition is made to utilize the scope limitation and exclude it from the certification process. One commenter does not agree with the scope limitation within the certificates and suggests that a disclosure in the MD&A is enough, without any time limit.	
5.	Permit limitation for design of ICFR within 90 days after an issuer has become a reporting issuer	<u>General</u> Twenty commenters agree with the scope limitation but believe the 90-day period is not enough. Reasons cited include: Eight commenters noted that the period following an initial public offering or the completion of a reverse takeover transaction is an intense period of activity for an issuer and represents a fundamental change to the governance structure of such issuer. The commenters believe the time period should be extended to at least a year to allow the necessary time to implement and remediate deficiencies relating to ICFR. One commenter recommends that issuers be exempt from DC&P and ICFR in quarterly and annual certifications for one year. The commenter notes that an issuer that does an IPO jointly in Canada and the United States would be able to obtain an ICFR exemption for up to a full year under the SEC rules as no evaluation of ICFR is required in the year of the IPO. The commenter recommends that an exemption for DC&P also be allowed given the substantial overlap between DC&P and ICFR. Two commenters state that, in the case of an IPO, prior to becoming a reporting issuer, senior management should be in a position to influence the design of DC&P and ICFR and prepare for the anticipated filing requirements. As a result, the 90 day timeframe appears reasonable. However, they will need time to adjust for their new public reporting requirements; accordingly the commenter believes that the 90 day exemption would be appropriate for new issuers.	We acknowledge the comments and have proposed an alternative form of certificate be filed in the first financial period following certain IPOs, RTOs and when an issuer becomes a non-venture issuer. We continue to propose that certifying officers be required to certify the design of ICFR for the first annual or interim filing at least one filing after an issuer becomes a reporting issuer or following the completion of certain reverse takeover transactions. Since certifying officers have access to design ICFR prior to becoming a reporting issuer, we believe investors are entitled to expect that the certifying officers prepare for compliance with certification requirements within a relatively short period of time from the date an issuer becomes a reporting issuer.

#	Theme	Comments	Responses
		One commenter does not agree with the proposals and believes that certifying officers should be able to certify on the design of ICFR from day one of becoming a reporting issuer. <u>Other</u> Two commenters state that an additional definition is required within the Companion Policy in respect of the "date" to be used in the event of an IPO or reverse takeover. One commenter notes that, in order to file Form 52-109F1-IPO/RTO or Form 52-109F2-IPO/RTO, the reverse takeover acquirer (which is the legal subsidiary in the RTO) cannot have been a reporting issuer immediately prior to the RTO. This means that if both parties to the RTO are issuers, then the certifying officers of the new combined entity have to be in a position to immediately provide all certifications relating to ICFR of the combined entity. The commenter believes the fact that the certifying officers of each separate company were in a position to make certifications regarding the ICFR in their respective companies prior to the RTO does not mean that certifying officers of the combined company will be in a position to make the same certifications regarding the ICFR of the combined company. Accordingly, the commenter suggests that the ability to file a certification on either Form 52-109F1-IPO/RTO or Form 52-109F2-IPO/RTO be extended to those situations where the reverse takeover acquirer is an issuer immediately prior to the RTO.	We do not agree that a definition is needed. We acknowledge the comment but do not agree that a scope limitation is needed. We believe the certifying officers in this scenario should have the information necessary to be in a position to certify for the combined entity.
6.	Appropriateness of nature and extent of guidance in the Companion Policy	<u>General comments on nature of guidance</u> Twelve commenters agree that the nature and extent of guidance is appropriate. Eight commenters have a general concern that some language in the Companion Policy is too prescriptive, and lends to a "rule-based approach" rather than a "principles-based" approach. Various commenters have indicated that the current language could: • suggest that failure to follow such rules is not in accordance with the regulators' views as to what processes should be implemented; • imply that even if the business circumstances do not warrant a particular process, the regulators will want to see certain steps and documentation; • potentially cause certifying officers to feel they must consider and document a number of items in their disclosure process to avoid potential liability; and • potentially be read to be a requirement. Specific language in the Companion Policy cited by commenters that lends to a "rule-based approach" rather than a "principles-based" approach is as follows:	We acknowledge the comments and do not believe the Companion Policy is overly prescriptive. All materials included in the Companion Policy are guidance provided to assist certifying officers with determining the level of work needed to support their DC&P and ICFR certifications. This guidance should not be viewed as requirements.

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		• references to steps or items that certifying officers "should consider"; • references indicating what DC&P or ICFR "should generally include"; • reference that certifying officers "should" use their judgment; and • references to "will generally require", "generally include" or "will likely require". Two commenters believe that the guidance in Parts 6, 7 and 8 does not support a top-down, risk-based approach and one believes that the guidance does not address the concept of managing and assessing residual risk. One commenter believes that, while the Companion Policy states in various places that it is not meant to be prescriptive, the overall effect is the opposite with respect to DC&P compared to the current guidance and the SEC's approach that does not require any particular procedures for conducting the required review and evaluation of DC&P. The commenter recommends that the guidance in the Companion Policy focus on ICFR and revert to the previous, more general approach to DC&P. One commenter is of the view that the guidance is written at a very high level. In order to be meaningful to issuers, the principles articulated should be fleshed out with examples or other indicators. <u>General comments on extent of guidance</u> One commenter believes that the Companion Policy should be amended to clearly state that it only provides guidance and does not prescribe any mandatory actions because there are concerns that the guidance may have the effect of unnecessarily increasing the disclosure made by issuers. One commenter notes that Parts 6, 7 and 8 of the Companion Policy were useful but perhaps provide too much information. It appears to the commenter that the CSA is attempting to define a compliance methodology for management which may be beyond the scope of this requirement.	We do not propose to include additional guidance since these are decisions that would be made by the certifying officers based on the issuers' facts and circumstances and the issuers' top-down, risk-based approach. All materials included in the Companion Policy are guidance provided to assist certifying officers with determining the level of work needed to support their DC&P and ICFR certifications. This guidance should not be viewed as requirements. Since the top-down, risk-based approach is equally applicable to DC&P as it is to ICFR, and since there is an overlap between DC&P and ICFR (as discussed in section 6.2 of the Companion Policy), we believe that the guidance provided will assist issuers with their certifications relating to DC&P. In our view, the guidance provided will allow certifying officers to design and evaluate DC&P and ICFR based on their facts and circumstances. Providing detailed examples could inappropriately be viewed as adding prescriptive requirements. Section 1.1 of the Companion Policy states that the Companion Policy is to help an issuer understand how securities regulatory authorities interpret or apply certain provisions of the Instrument. We believe that the guidance in noted sections provides an appropriate amount of information to assist certifying officers with the design and evaluation of DC&P and ICFR. This guidance should not be viewed as a compliance methodology or control framework.

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		Nature and extent of guidance regarding documentation Three commenters believe that the guidance respecting the documenting of ICFR and DC&P is unduly prescriptive, and that a principled-based approach should be used. Reasons cited include: • determination of what is or is not documented must rest with those that know the business and the issuer best, namely the board of directors and management; and • certain ICFR at the head office or regional head offices could be sufficient in design and operation to adequately address and manage many of the material risks to reliable financial reporting irrespective of the underlying transaction flow. One commenter agrees that to provide reasonable support for the certifying officers' design and evaluation of ICFR, maintenance of documentation is necessary. However, the commenter questions the prescribed documentation that the issuers must maintain in order to provide reasonable support for the design of ICFR and whether creation and maintenance of such documentation would add value. One commenter believes that the use of the word "generally" is problematic as the guidance should provide a clear requirement for documentation and then provide leeway over the nature and or extent of the documentation. One commenter recommends that a number of provisions dealing with documentation be removed and instead repeat the intent and purpose of the certification process, namely to have controls around accurate and timely reporting.	We acknowledge the comments but have not made any changes to the nature and extent of guidance regarding documentation. As stated in section 6.15 of the Companion Policy the extent of documentation supporting the certifying officers' design of DC&P and ICFR will vary depending on the size and complexity of the issuer's DC&P and ICFR. The documentation might take many forms and can be presented in a number of ways. The extent and form of documentation is a matter of judgment.
7.	Identification of specific topics not addressed in the Companion Policy	Additional guidance for specific terms One commenter notes that the Proposed Policy refers to "misstatements" in several places. The commenter recommends highlighting "misstatement" as a defined term because the commenter believes the concept of what is included in the term "misstatement", particularly disclosure omissions, may not be well understood in the marketplace. Financial statements and financial information	We do not believe that "misstatement" needs to be defined and that sufficient guidance has been provided in subsection 6.6(2) of the Companion Policy.

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		One commenter recommends the inclusion of a clear and specific definition of what constitutes financial information.	We do not agree that a definition is needed.
		One commenter recommends guidance regarding whether ICFR and DC&P procedures need extend to separately filed GAAP reconciliations.	A separately filed GAAP reconciliation that is not required by NI 52-107 would not be part of an issuer's financial statements. However, it would be financial information. We do not believe further clarification is necessary.
		<u>Guidance on risks and the risk assessment process</u> Two commenters recommend that further guidance be provided on IT risks and controls.	We do not believe that additional guidance is needed since we have made reference to a relevant IT framework in section 5.1 of the Companion Policy.
		<u>Multi-locations</u> One commenter recommends the guidance include factors for management to consider when making risk-based multi-location judgments because the commenter believes that issuers may have difficulty in determining whether and how to test controls at locations that are neither quantitatively significant nor otherwise pose location-specific risks.	We have provided additional guidance in subsection 6.6(2) of the Companion Policy.
		One commenter requests clarity on whether evaluation procedures can be performed rotationally or performed homogenously in multiple locations.	We have provided additional guidance in section 7.12 of the Companion Policy.
		<u>Clarity with regards to overlap of DC&P and ICFR</u> One commenter requests additional clarity regarding the overlap of DC&P and ICFR since this distinction has more relevance in the proposed and existing Canadian regulation, in comparison to regulation in the United States, as an issuer's certification of operating effectiveness of DC&P depends on which ICFR controls are included in the scope of DC&P. For example, the examples in Part 6.2 of the Companion Policy imply almost a complete overlap between ICFR and disclosure controls.	We believe section 6.2 of the Companion Policy adequately discusses the overlap between DC&P and ICFR.
		One commenter recommends clarifying that ICFR is a sub set of DC&P and therefore a weakness in ICFR is also a weakness in DC&P.	We have provided additional guidance in section 10.3 of the Companion Policy.
		<u>Guidance regarding internal audit</u> Two commenters recommend that the Companion Policy indicate where internal audit could have a role to assist with the design and evaluation of DC&P and ICFR.	We do not believe additional guidance is needed. The consideration of internal audit is noted in paragraph 6.13(c) of the Companion Policy.
		<u>Control Framework</u> One commenter recommends guidance on how entity-level controls affect the design and	We do not believe additional guidance is needed. Since we

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		evaluation of DC&P and ICFR.	are proposing the required use of a control framework for the design of ICFR, additional information on entity-level controls may be found in these control frameworks.
		One commenter requests further details concerning the types of risk to which an entity is exposed because, for instance, too broad an interpretation of the financial risk might prompt issuers to considerably expand the scope of their work.	We are now proposing a requirement to use a control framework to design ICFR. The control framework an issuer uses will provide further guidance concerning the types of risk to which an entity is exposed.
		<u>Guidance on timing of evaluation</u> Two commenters note that differences in interpretation may arise when considering key controls relating to a year-end which are actually used in the first quarter of the following year. The commenters recommend clarification since many of the processes that contribute the highest degree of risk in financial reporting typically occur after a period-end has closed.	We acknowledge the comment and have provided additional guidance in Section 7.11 of the Companion Policy.
		One commenter recommends that guidance be clarified to address whether a control that was working effectively throughout the year needs to be reassessed for effectiveness proximate to or on the "as at" date, or whether a period of time prior to that date would be acceptable (i.e., within 60 days prior to the reporting date).	We do not propose to include additional guidance since these are decisions that would be made by the certifying officers based on the issuer's facts and circumstances and the issuer's top-down, risk-based approach.
		<u>Use of service organizations</u> Six commenters recommend guidance on how the use of a service organization would affect the design and evaluation procedures to be performed by management in its ICFR certification activities. One commenter in particular noted that, if guidance is not provided this would create a risk that issuers will be inconsistent in application, resulting in confusing investors, or that issuers would be placed in a situation that they would not be able to certify at all. In particular guidance is requested for the following areas: • how management can attain comfort if a SAS 70 report is unavailable and access to the service provider is not permitted under contract; • how management should assess the sufficiency and findings in SAS 70 reports; • what management should do when the date of the SAS 70 report, or the period covered by the report, differs significantly from management's certification date; • if the company is a service provider itself, why the company cannot rely on the SAS 70 it provides to others for SOX 404 purposes for its own assessment and certification; and • what would happen if the SAS 70 report contained control deficiencies.	We acknowledge the comments and have included additional guidance in part 8 of the Companion Policy.
		One commenter recommends that management be given the flexibility to assess the risk of	

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		an outsourced function and not report a deficiency if there are sufficient high level controls in place. The CEO and CFO would assess the controls specific to their company in determining whether they can sign the general certification currently present in the Instrument. <u>Use of an expert or specialist</u> Four commenters recommend guidance on how the use of a specialist would affect the design and evaluation procedures to be performed by management in its ICFR certification activities and guidelines that certifying officers may use when evaluating the role of an expert or specialist. One commenter recommends that certifying officers should only need to assure themselves that the third party has relevant knowledge and ability to provide necessary assistance because certifying officers cannot "ensure" that they in fact have such knowledge. Two commenters recommend that the Companion Policy include an accommodation to management, in respect of management's use of an expert or specialist, that would limit management's responsibilities in respect of ICFR in these situations to the following: • exercising due diligence in the selection of the expert or specialist; • the ICFR related to providing complete, accurate and timely information to the expert or specialist; and • the ICFR related to incorporating the expert or specialists results into the relevant business and financial reporting process. One commenter recommends clear guidance on the use of a specialist for taxation services and to clarify whether contracting the services of an external audit firm, other than its external auditor, to prepare or review the issuer's tax provision or provide other taxation expertise would be considered an "outsourced activity" or the "use of a specialist". <u>Other</u> Two commenters stated their view that certifying officers should not be expected to question the qualification of the individuals employed who appear to have general expertise and who represented that they had such expertise. One commenter would appreciate further clarification on the extent that certifying officers can rely on sub-certifications and independent auditor attestations for internal subsidiaries and joint ventures.	We acknowledge the comments and have provided additional guidance on the use of a specialist in part 8 of the Companion Policy. We disagree with the commenters. No changes have been made to the guidance. Use of sub-certifications is a process that certifying officers may consider based on their issuer's facts and circumstances. We do not believe that general guidance on the extent of reliance is appropriate. Certifying officers are

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			ultimately responsible for the accuracy of the representations in the certificates.
		<u>Guidance regarding the identification of reportable deficiencies</u> One commenter believes that further guidance should be provided with regard to the trial period required for the functioning of a new control that has been put in place or for modifications to the existing control before being able to assert that the issuer has corrected the reportable deficiency.	We acknowledge the comment but do not believe additional guidance is needed. Appropriate trail periods will vary depending on the nature of the control.
		One commenter recommends guidance with respect to what considerations issuers need to make regarding original conclusions regarding effectiveness of ICFR and DC&P when the issuer has refiled financial statements as a result of a material misstatement.	We have provided additional guidance in Part 20.2 of the Companion Policy.
		<u>Guidance on "any change in the issuer's ICFR"</u> Three commenters recommend that guidance be given on the definition of "change in the issuer's ICFR" as to what constitutes a change and as to applicable materiality. One commenter recommends that guidance be provided on whether issuers need to report material changes that have occurred within a scoped out entity. One commenter recommends eliminating the requirement to disclose in the MD&A "…any change in the issuer's ICFR that occurred during the period…that has materially affected" because it is too vague to be meaningful in practice.	We have proposed additional guidance on what constitutes a "change in the issuer's ICFR" in Part 11 of the Companion Policy.
		<u>Guidance regarding fraud</u> Two commenters believe that a clear definition of fraud accompanied by guidance for management on the nature and extent of work to be performed in the area of documentation and assessment of anti-fraud measures is needed. One commenter recommends increased guidance on what a company should do to assess and mitigate fraud risks, especially the risks related to fraudulent manipulation by senior executives since many detrimental financial statement frauds have been perpetrated by senior management. One commenter requests further clarity with respect to the statement, in the certification of annual filings, on reporting to the issuer's auditors and board of directors or audit committee on any fraud involving management or other employees who have a significant role in the issuer's ICFR. For example, further clarity is needed on what would be	We acknowledge the comments but do not think that further guidance is necessary.

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		considered a "significant role".	
		Guidance regarding disclosure Three commenters recommend guidance detailing the minimum requirements for the disclosure of "a description of the process [management] used to evaluate the effectiveness of ICFR" in order to comply with paragraph 6(b) of Form 52-109F1. This would assist companies in preparing an adequate and useful disclosure as well as increase consistency among issuers and therefore decrease investor confusion.	We are no longer proposing a description of the process since we are now requiring the use of a control framework to design ICFR.
		One commenter believes that any requirement to disclose information in an issuer's MD&A should be subject to the general disclosure standard of paragraph 1(e) of Form 51-102F1, which provides that issuers should "focus your disclosure on material information".	The MD&A disclosure requirements referred to in the certificates, in our view, would generally be material, therefore we see no conflict with the general disclosure standard in paragraph 1(e) of Form 51-102F1.
		One commenter recommends requiring a separate "control" section of the MD&A in which an issuer would provide its disclosures in accordance with a prescribed control framework, which could include items such as: • a description of the issuer's control structure and design; • an outline of how the board monitors the code of business conduct and the organization's culture of integrity, and how the CEO and CFO assessed the effectiveness of DC&P and ICFR; and • conclusions of the effectiveness of DC&P and ICFR, including remediation plans and actions taken to ensure that ICFR and DC&P weaknesses have not produced material errors in financial statements or filings.	In our request for comments we are also recommending amendments to Form 51-102F1 which includes disclosure of conclusion of the effectiveness of DC&P and ICFR.
		DC&P One commenter recommends that further guidance be provided for DC&P with regard to continuous reporting versus timely reporting.	We acknowledge the comment but do not think that further guidance is necessary. National Policy 51-201 Disclosure Standards provides guidance to assist issuers in satisfying their timely disclosure obligations.
		One commenter requests that the Instrument recognize that the securities requirements for disclosure (material facts and material changes) must be considered.	We do not believe that additional clarification is necessary since these requirements clearly fall within the definition of DC&P.
		Audit of ICFR One commenter recommends providing guidance for disclosing the report of the auditor when an issuer chooses to voluntarily engage its auditor to perform an audit of ICFR. The commenter also believes that disclosure of attest reports by the auditor on elements of a	The issuer, with consent from its auditor, would need to decide whether the issuer would choose to disclose attest information based on its facts and circumstances. We have

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		business or specific components of internal controls should not be disclosed as this would create confusion and could lead to situations where investors place inappropriate reliance on the related auditor's report.	provided additional guidance in section 7.5 of the Companion Policy.
		<u>Sufficiency and retention of evidence</u> Two commenters request guidance in respect of the level of reliance, if any, management may reasonably place upon its prior years' results in performing their current year evaluations. For example, can a portion of management's comfort be derived from: • their cumulative knowledge and experience of the processes and controls, in particular those processes and controls for which there have been no significant changes since their last evaluation; and • evaluation procedures performed on a rotational basis, in particular those processes and controls assessed as lower-risk or performed homogenously in multiple locations.	We have included additional guidance in section 7.12 of the Companion Policy. The revised guidance states that certifying officers cannot decide to exclude components of ICFR for a particular process from the scope of their evaluation simply based on prior years evaluation results.
		One commenter requests guidance with respect to what constitutes sufficient evidence to support management's annual evaluation of the design and effectiveness of both DC&P and ICFR.	We acknowledge the comments but do not believe the additional guidance is necessary because the sufficiency of evidence will depend on the facts and circumstances of the issuer.
		Four commenters request guidance on the appropriate nature, extent and form of the documents the CSA would expect management to retain as its evidence supporting its interim and annual evaluations of design and effectiveness of ICFR and the appropriate period of time management would be expected to retain its evidence. One commenter also asked for clarification on whether Part XXII section 138(14) of the Securities Act should be used to infer that management should retain its documentation supporting its certification disclosures for at least a three year period after the disclosure has been made.	We acknowledge the comments but believe that retention policies are a management decision based on the facts and circumstances of the issuer.
		<u>Other</u> One commenter believes that the CSA should consider whether some additional guidance concerning the COSO components concerning monitoring of information and communications would be desirable.	We acknowledge the comment. We have not provided additional guidance since we are now requiring the use of a control framework to design ICFR.
	INSTRUMENT COMMENTS		
	3. <u>PART 1 – DEFINITIONS AND APPLICATION (OTHER THAN DEFINITION OF "REPORTABLE DEFICIENCY")</u>		
1.	General	<u>Definitions</u>	

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	comments	One commenter recommends a definition for "business acquisition" to prevent or reduce inconsistent interpretation and reporting by issuers. Three commenters recommend a clear definition be provided for "date of acquisition" in the context of a business acquisition. One commenter recommends that it be defined as the date that management attains the ability to influence or alter the policies, procedures and otherwise exert control over the daily operations of the acquired company. Two commenters believe that the discussion of the term "reasonable" in the second paragraph of sec. 6.3 of the Companion Policy is not adequate and recommend that a definition of "reasonable assurance" be added to the Proposed Materials. One commenter believes the CSA should adopt the SEC definition of this term. <u>Other</u> One commenter notes that the scope limitation available in paragraph 2.3(1)(c) of the Instrument is limited to "a business that the **issuer** acquired…". The commenter raises concern that this may cause some confusion in the case of an RTO on whether the scope limitation is available. The commenter recommends that a definition of the term "acquired" be included based on an accounting definition of the term. One commenter recommends definitions for "remediation" and "mitigation" since the commenter has found that these terms are used interchangeably by certifying officers, directors, business process owners and staff employees without consideration to what they really mean.	We do not believe that definitions for "business acquisition", "date of acquisition" and "reasonable assurance" are necessary because those terms are used in a manner consistent with their use in other national instruments and are generally understood. We acknowledge the comments but do not believe additional guidance is necessary. Paragraph 3.3(1)(c) does not apply to an RTO. An issuer that becomes a reporting issuer through an RTO may use the IPO/RTO form of certificate. We have provided additional guidance in subsection 9.1(3) of the Companion Policy.
2.	Definition of "ICFR"	One commenter notes that the definition of ICFR utilizes in part the words "regarding the reliability of financial reporting ***and*** [emphasis added] the preparation of financial statements in accordance with the issuer's GAAP". The commenter recommends that the CSA clearly indicate that ICFR be limited to the preparation of financial statements in accordance with GAAP and does not include financial information in reports or filings outside the financial statements. One commenter disagrees with the inclusion and references to "unauthorized expenditures" and "unauthorized acquisition, use and disposition of assets" and believe that these aspects should be removed from the Instrument and Companion Policy since financial transactions can be appropriately accounted for irrespective of whether they were properly approved. Ensuring approvals are in accordance with financial authorities, and safeguarding assets are stewardship concerns, not risks to reliable financial reporting.	We have provided additional guidance in section 4.3 of the Companion Policy. We do not agree that the noted references should be removed from the Instrument or Companion Policy. The definition of ICFR, consistent with the use of the term in other literature, includes reference to policies and procedures designed to prevent and detect unauthorized acquisition, use, or disposal of assets.

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	4. <u>PART 7 – EXEMPTIONS</u>		
1.	General comments	One commenter recommends that subsidiary reporting issuers which do not have equity securities trading on a marketplace and whose parent company is subject to and complies with the Instrument should be exempt. Reasons cited: • exemption would parallel the existing exemptions in MI 52-110 and NI 58-101; and • requiring certificates for these types of reporting issuers which do not have equity investors would result in considerable implementation costs with no corresponding benefit for investors.	We acknowledge the comments and believe that the changes to the requirements for venture issuers, which includes debt only issuers, addresses these comments.
		One commenter recommends an exemption for companies, regardless of size, that issue only debt securities. Reasons cited include: • holders of debt securities generally focus on a company's solvency and primarily rely on trustees and rating agencies; and • the role that rating agencies play in valuing risk are regularly updated.	We do not agree that an exemption should be provided.
		One commenter recommends an exemption for asset-back securities issuers given the nature and purpose of these types of issuers. The commenter further noted that this would be consistent with the US approach.	We do not agree that an exemption for issuers of asset-backed securities (ABS issuers) should be included in the instrument. We will consider applications by ABS issuers for relief from the continuous disclosure requirements contained in NI 51-102 on a case-by-case basis. If an ABS issuer is granted relief from the requirements in NI 51-102, we will generally recommend corresponding relief from the certification requirements in NI 52-109. The relief will generally include a condition that the ABS issuer file alternative forms of certificate, similar to the certificates filed in the US. For an example of this type of relief, please see *In the Matter of Falcon Trust/Fiducie Falcon* dated October 17, 2005.
		One commenter recommends that the Instrument include an "existing exemptions" part similar to the one contained in Part 13.2 of NI 51-102.	We do not believe an "existing exemptions" provision is necessary. If an issuer has previously received an exemption order relating to MI 52-109, the issuer may

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			continue to rely on the order in accordance with its terms. The repeal and replacement of MI 52-109 with NI 52-109 will not to affect the validity of existing exemption orders.
	5. PART 8 – EFFECTIVE DATE		
1.	General comments	Effective Date Two commenters support the proposed effective date of June 30, 2008, as long as the final version of the Instrument is published by the end of 2007. If the final Instrument is published later than December 31, 2007, one commenter recommends delaying the effective date to December 31, 2008. Two commenters recommend the implementation date be for years ended after June 30, 2009. Reasons cited include: • the extension would allow issuers to undertake effective compliance activities to be based on final certification requirements instead of engaging valuable time and limited resources to comply with proposed requirements that may be further amended. Reasons cited for later implementation dates are as follows: • if, based on final rules, changes are necessary to existing certification processes then such changes can be implemented at the start of the fiscal year to which the new rules apply. One commenter believes it may be more appropriate if the effective date is for years ending after December 31, 2008 since the proposal is still in the comments stage and there may not be sufficient time to make the appropriate adjustments required once finalized. Staggered Implementation Two commenters recommend that a staggered implementation date for the Instrument would be a more appropriate way to reduce the requirements. Reasons cited include: • recognizes the varying resources and expertise of different issuers in complying with the rules; and • smaller issuers have fewer dedicated resources to undertake these activities.	We are proposing a new effective date of December 15, 2008. We acknowledge the comments but do not agree that there is a need for staggered implementation.

#	Theme	Comments	Responses
	6. ANNUAL AND INTERIM CERTIFICATES		
1.	General certificate comments	Situational modifications to certificates One commenter supports the proposal that CEOs and CFOs amend their certificates in an "except for" manner when weaknesses in DC&P and ICFR are disclosed in the MD&A. One commenter requested one master form that assigns a number to each requirement and then delete numbers/ requirements not required in subsequent forms. One commenter believes the forms should be more flexible and allow for modifications that will more adequately reflect a CEO and CFO's assessment of ICFR and DC&P design and effectiveness. Disclosure about changes in ICFR One commenter recommends that the Form requirement to report changes in ICFR in the MD&A should also be embedded in the Instrument as the commenter believes that it is inappropriate to embed disclosure requirements within forms. Three commenters note that paragraph 5.2 of the annual and interim certificate seems to require a positive obligation to identify and disclose all reportable deficiencies in the design of ICFR on an interim basis. The commenters do not believe that this interim obligation is consistent with the approach adopted by the SEC which does not require an evaluation of the effectiveness of the design of ICFR on an interim basis even for its domestic issuers. The commenters feel that this proposed approach is unreasonable as a quarter review or evaluation would impose considerable additional costs and burdens on issuers. The commenters recommend that clarification be made that the requirement to provide the disclosure in paragraph 5.2 of the annual certificate does not require an issuer to evaluate the effectiveness of the design of its ICFR on an interim basis. Two commenters note the paragraph titled, Reporting of changes in ICFR, requires the issuer to disclose in the MD&A "any change in the issuer's ICFR that occurred during the period … that has materially affected, or is reasonably likely to materially affect, the issuer's ICFR." The commenters believe clear guidelines and examples of what should be disclosed should be provided. Other One commenter recommends guidance on whether the paragraphs within the certificates	We acknowledge the comments but do not propose to allow any changes to the certificates. We acknowledge the comment but do not believe a change is required as the Forms represent a part of the Instrument. Disclosure of the material weakness is required for both interim and annual periods. We do not agree that further clarification is necessary. We acknowledge the comment and have provided additional guidance in Part 11 of the Companion Policy. We have amended the Instrument to clarify that paragraphs

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		can, or should be, renumbered when an issuer utilizes one of the various exemptions.	within the certificates should not be renumbered when an issuer utilizes various exemptions.
		Two commenters believe the wording of the certificates should be changed from "I have reviewed the issuer's ….statements …**for the** financial period ended." to "I have reviewed the issuer's ….statements …**relevant to** the financial period ended." . The commenter believes confusion will arise when officers must certify operating effectiveness whether they should be testing controls that have occurred during the fiscal year or the controls that have been performed after the period close but pertain to the fiscal year.	We acknowledge the comments but do not agree a change is needed. We have provided additional guidance in section 7.11 of the Companion Policy.
		One commenter believes the wording in paragraphs 6(b)(iii) & (iv) should be changed from "relating to operation" to "relating to effectiveness".	We acknowledge the comment but do not agree.
		Two commenters believe the proposed certification form is too long and complex and that paragraphs 5.2 to 5.4 should be removed. They believe conclusions should not be in the certificate as they can be found in the MD&A.	We acknowledge the comment but do not propose any changes as conclusions regarding evaluation are not provided in the certificate. Management can explain their assessment in the MD&A.
		One commenter believes it should be clear on the certificate which paragraphs (of Paragraphs 5.2-5.4) relate to the design accommodation for venture issuers and which are available as optional paragraphs for all issuers.	Paragraph 5.3 has been removed because of the proposed venture issuer basic certificate. The remaining optional paragraphs will be available to any issuer filing a full certificate.
2.	Annual certificates	Two commenters believe it is inconsistent to require design deficiencies to be remediated but to allow operating deficiencies to remain unremediated. The commenter recommends deleting "if any" from Form 52-109F1 6b(iv).	We are no longer proposing to require remediation of material weaknesses relating to design.
		One issuer believes that paragraph 7 of Form 52-109F1 should refer to reportable deficiency.	We acknowledge the comment but do not propose a change. Under NI 51-102 the board must approve the MD&A and would therefore be aware of any material weakness.
		One commenter noted that in paragraph 8 of the certificate one sentence says board of directors and audit committee and another says board of directors or audit committee. The commenter recommends the certificate use "or" as it is closer to the SOX 302 requirements.	We acknowledge the comment and propose to modify the certificate.

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3.	Interim certificates	One commenter believes that the disclosure in the interim MD&A about the control framework is not necessary because it should be assumed the reader has access to this discussion in your annual MD&A. One commenter notes that Form 52-109F2 does not require certification that any fraud has been reported to the auditors, board of directors or audit committee. The commenter believes that it is possible for management to become aware of a fraud between annual evaluations of ICFR and suggests that Form 52-109F2 should require disclosure of any fraud.	We are now requiring disclosure of the control framework used in the annual and interim certificates. The fraud disclosure in the annual certificate pertains to information obtained from the evaluation of the effectiveness of ICFR. Since there is no evaluation of ICFR on an interim basis a similar requirement is not included in Form 52-109F2. This does not preclude an audit committee from requesting certifying officers to notify them of any fraud identified between annual evaluations of ICFR.
	COMPANION POLICY COMMENTS		
	7. PART 3 – CERTIFYING OFFICERS		
1.	Section 3.3 Delegation permitted	One commenter recommends that a sentence be included in this part that references to the certifying officers and their actions and judgment in the Companion Policy include those employees and third parties to whom responsibility has been delegated under the supervision of the certifying officers. One commenter recommends that the fourth sentence in Part 3.3 be deleted since it should be left to the certifying officers' judgment as to what skills an employee need have since the certifying officers have responsibility for design and evaluation of DC&P and ICFR. One commenter recommends that in each instance the Companion Policy states "the certifying officers should or shall", a qualification or cross-reference to Part 3.3 *Delegation permitted* should be included.	We believe the last sentence of section 6.5 of the Companion Policy addresses this comment. We acknowledge the comment but believe the sentence is useful in reminding officers to consider what skills an employee has when determining whether delegation of assigned responsibility can occur. We acknowledge the comment, but do not believe that a cross-reference is necessary.
	8. PART 5 – CONTROL FRAMEWORKS FOR ICFR		
1.	General comments	General One commenter thinks the guidance on applicable "control framework" is misleading considering that issuers are not required to adopt a specific control framework while at the same time requiring disclosure if one is used.	We acknowledge the comments. We are proposing the required use of a control framework to design ICFR and disclosure of the name of the control framework used.

#	Theme	Comments	Responses
		One commenter recommends more specific guidance in Part 5.3 tailored to the three control framework types mentioned in the Companion Policy. One commenter recommends additional terms and conditions regarding the use of a control framework for companies with foreign subsidiaries. <u>Disclosure about use of a control framework</u> Two commenters believe that the disclosure in the MD&A of a statement identifying the control framework the certifying officers used to design the issuer's ICFR or a statement that a control framework was not used is unnecessary. One commenter is concerned that issuers may not be comfortable disclosing that they have not adopted a control framework, nor would most small issuers have the expertise or desire to assume the responsibility for determining the sufficiency of control criteria to be used in the design and evaluation of ICFR. One commenter recommends that an issuer be required to certify only that an internal control framework has been used because the requirement to disclose the control framework used may cause small companies to do more work than necessary as certain areas of a control framework may not apply to all companies. One commenter believes that since there is no requirement to employ a control framework, a negative confirmation is inappropriate as it may attract a negative perception in the mind of readers and may indirectly "suggest" that a control framework should be used. One commenter believes disclosing the control framework used or whether a control framework has not been used is considered useful information for users of an issuer's annual filings to make an assessment of an issuer's commitment to establishing ICFR. One commenter believes the MD&A disclosure requiring the scope and description of the control framework as well as the description of the reportable deficiency and the remediation work is too lengthy. The commenter believes a more general description focusing on the conclusion rather than the process would be more meaningful for investors. <u>Guidance regarding information technology controls</u> One commenter suggest the addition of a reference to guidance on information technology developed by the Institute of Internal Auditors and another thought it would be useful to	We acknowledge the comments. We are proposing the required use of a control framework to design ICFR, and disclosure of the name of the control framework used. We acknowledge that there may be other suitable control frameworks available, however, we have not made reference to all that are available.

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		specify the value that can be given to the IT Governance Institute recommendations on this matter One commenter believes that the reference in Part 5.2 to COBIT was intended to be a reference to IT Control Objectives for SOX, and recommends that this reference be changed. One commenter believes that the Companion Policy fails to attribute to IT the value it deserves, and more specific guidance in this regard should be given, including some with respect to the COBIT framework in order to ensure adequate IT coverage by issuers.	We agree with the comment and have made a corresponding change in the Companion Policy. We acknowledge the comment but do not believe additional guidance is needed. We think that it is appropriate to let management use their judgment, based on the issuers' facts and circumstances, to determine which IT controls will be included in the scope of their design of DC&P and ICFR.
	9. PART 6 – DESIGN OF DC&P AND ICFR		
1.	Section 6.1 General	One commenter recommends that the term "design" should not include "implementing the controls policies and procedures that comprise DC&P and ICFR." Reasons cited include: • the term "design" that is proposed is different than the dictionary definition; • Part 6.15 of the Companion Policy does not refer to evidentiary documentation to support the "implementation" of controls; and • under Part 8.4(2) of the Companion Policy the issuer only needs to have committed to a remediation plan, as opposed to actively implemented the remediation. If "design" continues to include implementation then guidance should be provided with regard to what it means to implement a control and each section in the Companion Policy should be revised so that it is readily apparent from the headings that design includes implementation. One commenter recommends the Companion Policy clarify that "implementation" does not mean that the controls have been adhered to or work as designed. One commenter recommends that the definition of "design" should be included in Part 1.1 of the Instrument.	We acknowledge the comment but do not agree with the commenter. We continue to believe that implementation of the design is necessary in order to certify that the issuer has "designed" DC&P or ICFR. We have provided additional guidance on what implementation means in section 6.1 of the Companion Policy. We have provided additional guidance on what implementation means in section 6.1 of the Companion Policy. We acknowledge the comment but do not believe that a formal definition is needed. The term "design" is discussed in Part 6 of the Companion Policy.
2.	Section 6.3 Reasonable	One commenter recommends that the term "reasonable assurance" be clarified. The commenter notes that the SEC has interpreted the term as not meaning absolute assurance	We have considered the comments and have provided additional guidance regarding reasonable assurance in

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	assurance	but rather such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs. The commenter recommends that this standard be adopted, which is for all intent and purposes the Canadian corporate law standard applicable to the conduct of directors. One commenter recommends that it be clear that the certification rules and internal control process and certifications are not guarantees to investors that there will be no errors or deficiencies. The intent is to provide "reasonable but not absolute" assurances with regard to errors occurring in the disclosure. One commenter requests clarity on the intention of the guidance regarding "reasonable assurance".	section 6.3 of the Companion Policy.
3.	Section 6.5 Risk considerations for designing DC&P and ICFR	<u>Top-down, risk-based approach</u> One commenter would prefer that Part 6.5(2) state that certifying officers first identify and "assess" risks faced by the issuer, rather than use the word "understand". One commenter believes that the risks identified in Part 6.5(2) should only be financial reporting risks. One commenter recommends deleting the last sentence in Part 6.5(2) because they do not think it is accurate as stated. <u>Fraud risk</u> One commenter believes that including "a combination of employees" in the definition of areas where fraud could occur in Part 6.5(3) significantly increases scope. Since segregation of duties is a primary fraud prevention control, the inclusion of "a combination of employees" perhaps makes it impossible for many issuers, particularly smaller issuers, to design controls to the standard implied by including this concept in the policy. One commenter recommends further guidance in Part 6.5(3) regarding fraud. In particular, since misappropriation of assets must be covered, it should take into account employee theft and fraud that would have the impact of reducing the company's profitability without necessarily causing a misleading or erroneous disclosure of financial information. One commenter believes that assessing the effectiveness of an internal control system that must take into account the risk of collusion among employees is not realistic.	We have enhanced the guidance in subsection 6.6(2) of the Companion Policy to address this comment. We disagree with this comment since this guidance pertains to DC&P and ICFR. We have enhanced the guidance in subsection 6.6(2) of the Companion Policy to address this comment. We have amended our guidance to remove the reference to "a combination of employees". We acknowledge the comment but do not believe additional guidance is necessary. We acknowledge the comment but we do not agree.

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4.	Section 6.6 Control environment	One commenter states that Part 6.6(3)(b) should be removed because the noted items do not have a place in the certification requirements. Two commenters recommend that Part 6.6(3)(c) be limited to those persons related to DC&P, ICFR, the financial reporting process, executive management and others that a reasonable official would expect to contribute to the risk of material misstatement in the external-use financial statements. One commenter recommends further guidance on how controls at the environment level impact controls at the process level.	We acknowledge the comments but have decided not to make any changes to our previously proposed guidance.
5.	Section 6.8 Controls, policies and procedures to include in ICFR design	Two commenters recommend deleting "reporting transactions" in 6.8(a) as typically individual transactions are not publicly reported. One commenter recommends including "authorizing and recording" of journal entries and non-routine transactions in Part 6.8 of the Companion Policy.	We have amended our guidance to remove the word "reporting" in this section. We have enhanced the guidance to address this comment.
6.	Section 6.9 Identification of significant accounts and relevant assertions in the context of a top-down, risk-based approach.	<u>General</u> One commenter questions the utility of the approach adopted that requires the identification and design of ICFR design components to address every relevant assertion for every significant account of an issuer because it does not seem to be a "top-down, risk-based approach. The commenter thinks the use of the term "assertions" is potentially confusing. <u>Considerations for identifying significant accounts</u> One commenter recommends that in paragraph 6.9(3) there should be a reference to significant process changes that could make a previously insignificant account significant in the current year. One commenter recommends that 6.9(3)(i) be deleted since any change in accounts should be captured when considering items (a) through (h). <u>Assertions</u> One commenter notes that Part 6.9(4) identifies assertions that are financial statement assertions used by their external auditors in the annual financial statement audits and are different from the COSO assertions. The commenter states that the purpose of the COSO	Since the guidance refers to the identification of accounts that are significant and only assertions that are relevant, this guidance is consistent with a top-down, risk-based approach. We refer the commenter to section 6.13 of the Companion Policy which provides guidance on maintaining design. We have removed this guidance from the Companion Policy. We have provided additional guidance in subsection 6.10(4) of the Companion Policy to address these comments.

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		assertions versus financial statement assertions is quite different. The commenter requests clarity on whether the CSA would be imposing the use of the financial statement assertions rather than the COSO internal control assertions, or would there be flexibility on the use of assertions taking into consideration the reporting issuer's choice of control framework for use in its internal controls review and evaluation. One commenter notes that the assertions provided in 6.9(4) does not include all assertions in section 5300.21 of the CICA Handbook (for example, accuracy is omitted) and believes that more judgment needs to be given to the certifying officers to determine what may be relevant assertions. <u>Identifying controls, policies and procedures for relevant assertions</u> One commenter believes that the reference to "an appropriate combination" in Part 6.9(6) should be removed because this will require issuers to design and test preventive controls when a detective control may provide sufficient assurance that there is no deficiency in ICFR. One commenter requests clarification for the third paragraph in Part 6.9(6) to explain why the certifying officers should consider the interaction of components in Part 6.8 of the Companion Policy.	We have amended our discussion in subsection 6.10(6) of the Companion Policy to address this comment. We believe the example provided in subsection 6.10(6) of the Companion Policy is sufficient in explaining how interaction of components is considered.
7.	Section 6.10 ICFR design challenges	<u>Board expertise</u> Two commenters request clarification on what is meant by the board being "actively engaged in shaping and monitoring" the issuer's control environment. The commenters indicate that references to the role of the board need to reflect an oversight role rather than the active design and test role, and that board members should not usurp the role of the certifying officers in the day to day designing or testing of these controls. One commenter states their view that the role of the board of directors and the audit committee appear to be overstated in the Companion Policy. For example the commenter notes the following: • the last sentence of Part 6.10(a), the word "extensive" should be replaced with "increased"; and • the statement in Part 6.10(c) that directors with appropriate expertise and objectivity might be able to perform some compensating procedures overstates the board's role.	We acknowledge the comments, but do not believe that clarification is necessary. The components of a control environment identified in subsection 6.7(2) are areas where the board of directors should be actively engaged in shaping and monitoring. The amount of oversight needed by a board of directors at an issuer would depend on the issuers' facts and circumstances. We acknowledge the comment and we have removed the noted items from section 6.11 of the Companion Policy

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		Qualified personnel One commenter notes that 6.10(d) states that if an issuer uses its external auditor to "compensate for skills which would otherwise be addressed by hiring qualified personnel or outsourcing expert advice" that this is a mitigating activity. The commenter requests clarification because it is not clear from this statement whether the CSA believes an issuer who needs to consult on most technically complex accounting matters should be disclosing a reporting deficiency. The SEC has indicated that consultation in and of itself is not deemed an ICFR deficiency. One commenter recommends that the last sentence in the first paragraph in Part 6.10(d) be redrafted to state "could provide a similar review of the control to address a lack of qualified personnel" because the sentence as currently drafted appears to contradict the last sentence of the second paragraph in 7.4. Auditor independence One commenter recommends a reference in Part 6.10(d) to the need to consider the impact on the auditor's independence of engaging the auditors to perform such services. One commenter recommends redrafting or eliminating the examples in Part 6.10(d) because some of the examples of services that might be performed by an issuer's external auditor are specifically prohibited under auditors' rules of professional conduct One commenter recommends reconsidering the material in Part 6.10(d) and / or reference auditor independence requirements and the size limitation for the utilization of auditors that are not independent. The commenter also observes that where auditors are not independent that this might well represent a "reportable deficiency' as defined.	We have provided additional guidance in paragraph 6.11(d) of the Companion Policy. We have removed this sentence in paragraph 6.11(d) of the Companion Policy. We have amended paragraph 6.11(d) in the Companion Policy to refer to auditor independence rules.
8.	Section 6.13 Maintaining design	One commenter disagrees that the scope and quality of monitoring should be considered by the certifying officers, rather it should be the results of such monitoring that should be considered. One commenter recommends ending the sentence in 6.13(d) at "auditors", as an issuer's auditor may perform other services such as quarterly reviews or an audit of ICFR.	We do not agree. No change has been made to the guidance. We have provided additional guidance in section 6.13 of the Companion Policy to address this comment.
9.	Section 6.15 Documenting design	One commenter recommends that the items listed in Part 6.15(4) be expanded to include a listing of all deficiencies in design and operational effectiveness identified.	We acknowledge the comments but do not believe any changes are necessary. Paragraph 6.15(4)(h) refers to the certifying officer's conclusions on whether a material

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			weakness relating to design exists at the end of the period.
		** General comments about the nature and extent of guidance relating to documentation are included in "Specific Requests for Comments" section under the theme "Appropriateness of nature and extent of guidance in the Companion Policy".*	
	10. <u>PART 7 – EVALUATION OF DC&P AND ICFR</u>		
1.	General comments	One commenter recommends that the heading of Part 7 be changed to "Evaluating Effectiveness of DC&P and ICFR" since it deals with evaluating effectiveness rather than of design. One commenter recommends that it be made more clear to certifying officers and boards of reporting issuers what level of work, if any, is necessary for them to demonstrate that they have satisfied their responsibilities in evaluating the effectiveness of their DC&P and ICFR under the Instrument.	We have amended the heading to address this comment. We acknowledge the comments but have not provided any additional guidance since the level of work will depend on the facts and circumstances for each issuer.
2.	Section 7.2 Scope of evaluation	One commenter states that the term "evaluation" is not appropriate because evaluation is occurring in all phases. The commenter recommends that this phase be referred to as the "performance" or "operation" phase. Three commenters recommend that the third sentence should have the word "not" removed. One commenter notes that the current wording implies that not employing a top-down approach gives more flexibility.	We have amended the heading to address this comment. We have provided additional guidance in section 7.2 of the Companion Policy to address this comment.
3.	Section 7.3 Judgment	One commenter recommends that additional emphasis be provided that not all evaluation tools are appropriate for each control and that DC&P and ICFR evaluations can be conducted in different manners with different levels of documentation.	We acknowledge this comment but do not agree that additional emphasis is necessary.
4.	Section 7.4 Knowledge, supervision and objectivity	One commenter requests clarity on whether the needs for objectivity only apply to individuals under the certifying officers' supervision but not to the certifying officers themselves in Part 7.4. The commenter also questions whether the objectivity expectations in Part 7.4 are achievable with the smaller size of many Canadian domestic issuers One commenter agrees with the statement "generally, the individuals who evaluate the effectiveness of specific controls or procedures should not be the same individuals who perform the specific controls or procedures". However, the commenter believes that issuers could struggle with how to apply this concept as there will be situations (i.e., the financial	We acknowledge the comments. We have included an enhanced discussion in section 7.10 of the Companion Policy.

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		reporting process), where the certifying officers perform the control. The commenter recommends guidance on the activities of the audit committee or the board of directors where senior management are the people that perform DC&P and ICFR functions. Such guidance could be similar to the last paragraph of Part 8.7(2).	
5.	Section 7.5 Use of external auditor or other independent third party	One commenter recommends that the use of external auditor be disclosed in a separate section due to its importance and emphasize the following key points: • the work of external auditors' can be used to corroborate the certifying officers' conclusions on the effectiveness of disclosures on DC&P and ICFR, but not replace their responsibility for the process; and • a robust, independent and objective review process conveys to investors that the certifying officers, board of directors and the audit committee are committed to the process, which in turn enhances the company's corporate governance process. One commenter recommends deleting the word "independent" since third parties, other than the auditor, do necessarily need to be independent. One commenter recommends that references be deleted relating to certifying officers having to "ensure" and be "actively involved" in setting the procedures that an independent auditor or consultant uses. One commenter believes that section 7.5 appears to contain an error in logic. If management separately engages the external auditor to perform specified ICFR related procedures, the certifying officers should be able to use the results of those procedures irrespective and without consideration of whether or not the external auditor uses those results as part of their statutory audit.	We acknowledge the comment but do not believe that additional disclosure regarding the use of an external auditor is necessary or appropriate in the Companion Policy. We have provided additional guidance in section 7.5 of the Companion Policy to address this comment. We disagree with the commenter. No changes have been made to the guidance. We have provided additional guidance in section 7.5 of the Companion Policy to address this comment.
6.	Section 7.6 Evaluation tools	One commenter believes that many of the evaluation tools outlined in section 7.6 of the Companion Policy are not applicable to DC&P evaluations. For example, the commenter believes that reperformance is not an appropriate tool for evaluating a control that is generally considered a DC&P.	We acknowledge the comments but disagree since any of the tools outlined may be applicable to a DC&P evaluation depending on the facts and circumstances of the issuer.
7.	Section 7.9 Reperformance	Two commenters state that there are two approaches to the evaluation of ICFR – testing (reperformance) and management evaluation. Management evaluation involves the documentation by the control owner that the control was executed as it should have been or escalation of the control was not properly executed. The commenters recommend this part be redrafted so as not to appear to exclude the management evaluation process as an appropriate method to evaluate the effectiveness of ICFR.	We have provided additional guidance in section 7.9 of the Companion Policy to address this comment.

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8.	Section 7.12 Documenting evaluations	** General comments about the nature and extent of guidance relating to documentation are included in "Specific Requests for Comments" section under the theme "Appropriateness of nature and extent of guidance in the Companion Policy".*	
	11. <u>PART 8 – IDENTIFICATION AND DISCLOSURE OF A REPORTABLE DEFICIENCY</u>		
1.	General comments	One commenter recommends that the CSA emphasize that disclosure of information on control weaknesses are intended to be leading indicators of potential deficiencies in DC&P and ICFR. The commenter has seen management take the view that disclosure of material weaknesses in DC&P and ICFR should only be made when there is evidence of an actual error or control breakdown, such as a restatement. One commenter states that the level of guidance provided under Part 8 with respect to what represents a reportable deficiency relating to design, and a reportable deficiency relating to operation, is sufficient as proposed.	We are no longer proposing to use the term "reportable deficiency", and instead propose to use the term and related definition of "material weakness". As a result we have revised our guidance to be similar to that included in the SEC's Commission Guidance Regarding Management's Report on ICFR. We further note that section 9.2 of the Companion Policy clarifies that the severity of a deficiency in ICFR does not depend on whether a misstatement actually occurred but rather on whether there is a reasonable possibility that ICFR will fail to prevent or detect a misstatement.
2.	Section 8.1 ICFR – reportable deficiency	One commenter interprets the second sentence in the first paragraph to imply that if an issuer only has one reportable deficiency, the issuer does not have to provide a description of this deficiency in its interim or annual MD&A. The commenter recommends that this be clarified since this is inconsistent with other statements in the Companion Policy. One commenter recommends providing an example in Part 8.1(3) if a reportable deficiency relating to design to enhance the guidance.	We acknowledge the comment and have amended Part 9 of the Companion Policy to clarify this point. The identification of a material weakness is different for each issuer based on their facts and circumstances. We believe that an example could unintentionally be viewed as prescriptive.
3.	Section 8.2 Assessing significance of deficiencies in ICFR	One commenter recommends expanding this part to provide a discussion of compensating controls for control deficiencies including examples.	We acknowledge the comment but do not believe that discussion of specific compensating controls is appropriate since it will depend on the facts and circumstances of each issuer.
4.	Section 8.3 Strong indicators of a reportable	Two commenters recommend that the final list of strong indicators of a reportable deficiency be consistent with the SEC's list of indicators of a material weakness.	We are no longer proposing to use the term "reportable deficiency", and instead propose to use the term and related definition of "material weakness". As a result we have

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	deficiency	Three commenters indicate that, although an effective audit committee of the board is a very important aspect of the overall control environment, it seems inappropriate to suggest that management could evaluate the effectiveness of the audit committee since they are not in a position to control their actions. One commenter disagreed that the refiling of an issuer's annual or interim filings because of a material misstatement in its filings is a strong indicator of a reportable deficiency. ICFR can at best only reduce the risk of material misstatement, it cannot eliminate it. Two commenters disagreed that identification by the issuer's external auditor of a material misstatement is a strong indicator of a reportable deficiency. Two commenters recommend the removal of "control deficiencies that have been identified and remain unaddressed after some reasonable period of time" as this is an extremely low threshold and may result in unintended deficiencies requiring remediation. One commenter recommends removing "for complex entities in highly regulated industries, an ineffective regulatory compliance function" as this is not useful. One commenter requests clarification on what is meant by "regulated industry". One commenter recommends that the policy clearly state that a list of indicators of a reportable deficiency cannot be inclusive of all situations which could indicate reportable deficiencies. One commenter recommends that section 8.3 should removed in its entirety because selecting these few factors and attaching a strong presumption of deficiency of a company's ICFR is inconsistent with the application of judgment One commenter believes there is confusion amongst issuers and investors as to the factors to be considered in determining deficiencies that require disclosure ("reportable deficiencies"). One commenter believes the issuer should only have to disclose a reportable deficiency and not have to provide a completion date for their remediation plan. One commenter believes in the case where an issuer has not completed a remediation plan an issuer should still be able to file a certificate as long as they describe the steps taken to	revised our guidance to be similar to that included in the SEC's Commission Guidance Regarding Management's Report on ICFR.

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		address the reportable deficiency, even if a remediation plan hasn't been decided upon.	
5.	Section 8.7 Disclosure by venture issuers relying on the ICFR design accommodation	One commenter notes that section 7050.04 of the CICA Handbook prohibits referencing the interim review unless the interim review report is included in the public document (which is a rare occurrence). The commenter recommends eliminating this inconsistency. One commenter recommends adding the concept of "another service provider" to the penultimate and last sentence in Part 8.7(2).	We have removed this section from the guidance.
	12. PART 9 – ROLE OF DIRECTORS AND AUDIT COMMITTEE		
1.	General comments	One commenter recommends a stronger linkage and connection between the Instrument and NP 58-201. The commenter also suggests that the CSA state that the activities performed by the board in monitoring compliance with its code of business conduct, or if the board does not monitor business compliance, the explanation on how the board satisfies itself regarding compliance with its code, should be a key part of the assessment of ICFR design and effectiveness and a disclosable weakness if it is not done effectively.	We acknowledge the comment but do not believe a stronger linkage to NP 58-201 is necessary. A reference to NP 58-201 was already included in section 6.12 of the Companion Policy. We acknowledge the comment regarding the board monitoring compliance with its code of business conduct, but do not agree that this is a key part of the assessment of ICFR for all issuers, or that specific guidance on this topic is necessary or appropriate.
2.	Section 9.1 Board of directors	One commenter recommends clearly stating that the board is responsible for: • a culture of integrity flowing from the CEO and CFO; • risk identification and management; and • internal control and management information systems. One commenter expresses concern with the CSA prescribing the actions of directors and senior officers who are already the subject of fiduciary and other legal duties under corporate legislation.	While we acknowledge that the board will have a role in the areas noted, this guidance focuses on the certifying officers' responsibilities. Our guidance, while not prescriptive, is meant to assist market participants in interpreting the associated rules. Canadian securities legislation imposes duties and obligations on a variety of market participants, including issuers and their officers and directors, with a view to protecting investors and fostering fair and efficient capital markets. While we acknowledge that, in some cases, the duties and obligations imposed on officers and directors under Canadian securities legislation may be comparable to the duties and obligations that may exist under corporate

#	Theme	Comments	Responses
			legislation, the duties and obligations may differ significantly in the case of certain non-corporate issuers. Ultimately, we believe that market participants that wish to access Canadian capital markets should be subject to appropriate regulatory standards without regard to the issuer's choice of corporate form.
		One commenter suggests that the board of directors be able to delegate to its audit committee the requirements for grasping the basis on which the certifying officers concluded that a specific deficiency or combination of deficiencies did or did not constitute a reportable deficiency.	Under NI 51-102, the board of directors must approve the issuer's annual financial statements and the annual MD&A and is not permitted to delegate the approval of such statements or MD&A to the audit committee. Therefore, the board of directors should understand the basis upon which the certifying officers concluded that any particular deficiency or combination of deficiencies did, or did not, constitute a material weakness. NI 51-102 does permit the board to delegate the approval of an issuer's interim financial statements and interim MD&A to the audit committee. Accordingly, to the extent that an issuer's interim MD&A includes disclosure relating to ICFR, including disclosure relating to material weaknesses, the approval of such interim MD&A and the need to understand the basis for the conclusions contained within the interim MD&A may be delegated to the audit committee.
		One commenter recommends that Part 9.1 of the Companion Policy be amended to contain language similar to 9.2 *Audit committee*.	We disagree with the commenter. No changes have been made to the guidance.
3.	Section 9.2 Audit committee	One commenter recommends clearly stating that the audit committee is responsible for: • reviewing the disclosures provided in the MD&A; • assessing the reasonableness of the processes followed by the CEO and CFO to evaluate DC&P and ICFR; and • reviewing the issues raised in the evaluations performed by the CEO and CFO, the work of internal audit and the reports of external auditors.	We acknowledge the comment but do not agree that this information should be included in the Companion Policy since the guidance focuses on the certifying officers' responsibilities. Staff will review the issues raised as part of our ongoing review of corporate governance issues.
4.	Section 9.3	One commenter believes that it is unclear as to the intent of this guidance and requests	We have amended section 12.3 of the Companion Policy to

#	Theme	Comments	Responses
	Reporting of fraud	further clarity. If the guidance is intended to ensure that both financial reporting fraud and misappropriation of assets are reported to the audit committee and board of directors, perhaps the paragraphs should be reversed and then the purpose clearly stated.	address this comment.
	13. PART 10 – SUBSIDIARIES, VIE'S, PROPORTIONATELY CONSOLIDATED ENTITIES, EQUITY INVESTMENTS AND PORTFOLIO INVESTMENTS		
1.	Section 10.2 Fair presentation	One commenter expresses concern that the proposed guidance could provide some certifying officers with an excuse to use the MD&A discussion to undermine their GAAP based financial statements when they don't like the outcome of the application of GAAP.	We acknowledge the comment but believe that the guidance in sections 4.1(1) and 13.2 of the Companion Policy is clear.
2.	Section 10.3 Design and evaluation of DC&P and ICFR	One commenter is concerned that it is not possible to meet the requirements in Part 10.3(6) because (i) certifying officers cannot ensure that the underlying entity's financial statements are received on a timely basis since the certifying officer may have little or no influence over the timing, and (ii) the certifying officers may have little or no knowledge of the underlying entity's accounting policies. One commenter recommends providing guidance in Part 10.3(6) to consider the significance of the underlying entity as some entities may not be significant to an issuer's ICFR.	In our view, if an issuer is unable to perform the underlying procedures referred to in subsection 13.3(6) for a significant underlying entity, then the issuer may not be able to present its financial statements in accordance with GAAP. We have amended the discussion in subsection 13.3(6) to address this comment.
	14. PART 13 – LIABILITY FOR CERTIFICATES CONTAINING MISREPRESENTATIONS		
1.	General comments	One commenter recommends that this section explicitly state liability for the board of directors. Reasons cited include: • the board of directors' approval of the issuer's annual MD&A connects them directly to the certificates filed by the CEO and CFO and would introduce civil and/or criminal liability if misrepresentations were contained in these respective certificates; and • MI 52-110 requires the audit committee to review an issuer's financial disclosure and to establish procedures for dealing with complaints and concerns about accounting and auditing matters.	We acknowledge the comment but do not think additional discussion is necessary since Part 18 refers to existing securities law requirements and existing legal liability.