

Proposed Amending Instrument
Proposed Amendments to
National Instrument 52-109
Certification of Disclosure in Issuers’
Annual and Interim Filings

1. *This Instrument amends National Instrument 52-109 Certification of Disclosure of Issuers’ Annual and Interim Filings*

2. *Section 1.1 is amended by*

(a) *repealing and replacing the definition of “certifying officer” with the following:*

“certifying officer” means:

- (a) for an issuer that is not a securitized product issuer, each chief executive officer and each chief financial officer, or in the case of an issuer that does not have a chief executive officer or a chief financial officer, each individual performing similar functions to those of a chief executive officer or chief financial officer;
- (b) for an issuer that is a securitized product issuer, either of the following:
 - (i) an authorized officer of the servicer, or if multiple servicers are used, the master servicer;
 - (ii) each individual performing similar functions to those of a chief executive officer or chief financial officer.

(b) *adding the following definitions after the definition of “Sarbanes-Oxley Act”:*

“securitized product” has the same meaning as in section 1 of National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*;

“servicer” has the same meaning as in National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*;

“securitized product issuer” means a reporting issuer that issued a securitized product that is outstanding, and that is subject to the reporting

obligations in National Instrument 51-106 *Supplementary Continuous Disclosure for Securitized Products*;

3. *Subsection 4.2 is repealed and replaced with the following:*

- 4.2 **Required form of annual certificate** – (1) The required form of annual certificate under subsection 4.1(1) is
- (a) Form 52-109F1, in the case of an issuer that is a non-venture issuer and that is not a securitized product issuer;
 - (b) Form 52-109FV1, in the case of an issuer that is a venture issuer and that is not a securitized product issuer; and
 - (c) Form 52-109FS1, in the case of an issuer that is a securitized product issuer.
- (2) Despite subsection (1)(b), a venture issuer that is not a securitized product issuer may file Form 52-109F1 in the wording prescribed by the Form instead of Form 52-109FV1 for a financial year.
- (3) The required form of annual certificate under subsection 4.1(3) is
- (a) Form 52-109F1 – AIF, in the case of a venture issuer that is not a securitized product issuer; and
 - (b) Form 52-109FS1 – AIF for a venture issuer that is a securitized product issuer.

4. *Section 4.3 is amended by replacing “an issuer may file an annual certificate” with “an issuer that is not a securitized product issuer may file an annual certificate”.*

5. *Section 4.4 is amended by replacing “an issuer may file an annual certificate” with “an issuer that is not a securitized product issuer may file an annual certificate”.*

6. *Section 4.5 is amended by replacing “an issuer may file an annual certificate” with “an issuer that is not a securitized product issuer may file an annual certificate”.*

7. *Section 5.2 is repealed and replaced with the following:*

- 5.2 **Required form of interim certificate** – (1) The required form of interim certificate under subsection 5.1(1) is

- (a) Form 52-109F2, in the case of an issuer that is a non-venture issuer and that is not a securitized product issuer;
- (b) Form 52-109FV2, in the case of an issuer that is a venture issuer and that is not a securitized product issuer; and
- (c) Form 52-109FS2, in the case of an issuer that is a securitized product issuer.

(2) Despite subsection (1)(b), a venture issuer that is not a securitized product issuer may file Form 52-109F2 in the wording prescribed by the Form instead of Form 52-109FV2 for an interim period.

8. ***Section 5.3 is amended by replacing*** “an issuer may file an interim certificate” ***with*** “an issuer that is not a securitized product issuer may file an interim certificate”.

9. ***Section 5.4 is amended by replacing*** “an issuer may file an interim certificate” ***with*** “an issuer that is not a securitized product issuer may file an interim certificate”.

10. ***Section 5.5 is amended by replacing*** “an issuer may file an interim certificate” ***with*** “an issuer that is not a securitized product issuer may file an interim certificate”.

11. ***Section 6.1 is repealed and replaced with the following:***

6.1 **Refiled annual financial statements, annual MD&A or AIF** – (1) If an issuer refiles its annual financial statements, annual MD&A or AIF for a financial year, it must file separate annual certificates in the wording prescribed by the required form for that financial year on the date that it refiles the annual financial statements, annual MD&A or AIF, as the case may be.

(2) The required form of annual certificate under subsection (1) is

- (a) Form 52-109F1R, in the case of an issuer that is not a securitized product issuer; and
- (b) Form 52-109FS1R, in the case of an issuer that is a securitized product issuer.

12. ***Section 6.2 is repealed and replaced with the following:***

6.2 **Refiled interim financial statements or interim MD&A** – (1) If an issuer refiles its interim financial statements or interim MD&A for an

interim period, it must file separate interim certificates in the wording prescribed by the required form for that interim period on the date that it refiles the interim financial statements or interim MD&A, as the case may be.

- (2) The required form of interim certificate under subsection (1) is
 - (a) Form 52-109F2R, in the case of an issuer that is not a securitized product issuer; and
 - (b) Form 52-109FS2R, in the case of an issuer that is a securitized product issuer.

13. *The following is added after section 8.5:*

8.5.1 Exemption for securitized product issuers – Part 3 does not apply to a securitized product issuer.

14. *The following is added after Form 52-109FV1 – Certification of Annual Filings – Venture Issuer Basic Certificate:*

**FORM 52-109FS1
CERTIFICATION OF ANNUAL FILINGS
SECURITIZED PRODUCT ISSUER**

I, *<identify (i) the certifying officer, (ii) his or her title and function in relation to the issuer and (iii) the name of the issuer>*, certify the following:

- 1. *Review:* I have reviewed all of the following documents of *<identify the issuer>* (the “issuer”):
 - (a) each report filed on Form 51-106F1 in respect of a payment period during the financial year ended *<state the relevant date>* (the “servicer reports”);
 - (b) annual financial statements and annual MD&A for the financial year ended *<state the relevant date>* (the “annual financial statements and annual MD&A”);
 - (c) AIF for the financial year ended *<state the relevant date>* (the “AIF”) [if applicable], including for greater certainty, all documents and information that are incorporated by reference in the AIF;
 - (d) each annual servicer report filed pursuant to section 6 of National Instrument 51-106 *Continuous Disclosure*

Requirements for Securitized Products (the “Instrument”) for the financial year ended <*state the relevant date*> (the “annual servicer report(s)”);

- (e) each annual servicer certificate filed pursuant to section 7 of the Instrument for the financial year ended <*state the relevant date*> (the “annual servicer certificate(s)”);

(the servicer reports, the annual financial statements and annual MD&A, the AIF [if applicable], the annual servicer report(s) and the annual servicing certificate(s) are together the “annual filings”);

2. *No misrepresentations:* Based on my knowledge, having exercised reasonable diligence, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, for the period covered by the annual filings;
3. *Fair presentation:* Based on my knowledge, having exercised reasonable diligence, the annual financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, financial performance and cash flows of the issuer, as of the date of and for the periods presented in the annual filings;
4. Based on my knowledge, having exercised reasonable diligence, the annual filings contain all disclosure required by section 7 of the Instrument; and
5. **<Option #1: use this alternative if a servicer or master servicer is providing the certificate>**

I am responsible for reviewing the activities performed by the servicer(s) and based on my knowledge, having exercised reasonable diligence, and based on the compliance review(s) conducted in preparing the annual servicer certificate(s), the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s) except as disclosed in the annual filings.

<Option #2: use this alternative if a person acting in the capacity of a chief executive officer or chief financial officer is providing the certificate>

Based on my knowledge, having exercised reasonable diligence, and based on the annual servicer certificate(s), the servicer(s)

[has/have] fulfilled [its/their] obligations under the servicing agreement(s) except as disclosed in the annual filings.

[In giving the certifications above, I have reasonably relied on information provided to me by the following parties that are not affiliates of *<insert name of servicer or master servicer if Option #1 is being used, or the name of the issuer if Option #2 is being used>*:

<insert names of all relevant parties and state their relationship to the issuer>.]

Date: *<insert date of filing>*

[Signature]

[Title]

< indicate the capacity in which the certifying officer is providing the certificate>

15. The following is added after Form 52-109F1R:

**FORM 52-109FS1R
CERTIFICATION OF REFILED ANNUAL FILINGS
SECURITIZED PRODUCT ISSUER**

This certificate is being filed on the same date that *<identify the issuer>* (the “issuer”) has refiled *<identify the filing(s) that have been refiled>*.

I, *<identify (i) the certifying officer, (ii) his or her title and function in relation to the issuer and (iii) the name of the issuer>*, certify the following:

<Insert all paragraphs included in the annual certificate originally filed with the annual filings.>

Date: *<insert date of filing>*

[Signature]

[Title]

< indicate the capacity in which the certifying officer is providing the certificate >

16. The following is added after Form 52-109F1 – AIF – Certification of Annual Filings in Connection with Voluntarily Filed AIF:

**FORM 52-109FS1 AIF
CERTIFICATION OF ANNUAL FILINGS IN CONNECTION WITH
VOLUNTARILY FILED AIF SECURITIZED PRODUCT ISSUER**

This certificate is being filed on the same date that *<identify the issuer>* (the “issuer”) has voluntarily filed an AIF.

1. *Review:* I have reviewed all of the following documents of *<identify the issuer>*:
 - (a) each report filed on Form 51-106F1 in respect of a payment period during the financial year ended *<state the relevant date >* (the “servicer reports”);
 - (b) annual financial statements and annual MD&A for the financial year ended *<state the relevant date >* (the “annual financial statements and annual MD&A”);
 - (c) AIF for the financial year ended *<state the relevant date >* (the “AIF”), including for greater certainty, all documents that are incorporated by reference in the AIF;
 - (d) each annual servicer report filed pursuant to section 6 of National Instrument 51-106 *Supplementary Continuous Disclosure Requirements for Securitized Products* (the “Instrument”) for the financial year ended *<state the relevant date >* (the “annual servicer report(s)”);
 - (e) each annual servicer certificate filed pursuant to section 7 of the Instrument for the financial year ended *<state the relevant date >* (the “annual servicer certificate(s)”);

(the servicer reports, the annual financial statements and annual MD&A, the AIF, the annual servicer report(s) and the annual servicer certificate(s) are together the “annual filings”);

<Insert all paragraphs included in the annual certificates originally filed with the annual filing, other than paragraph 1.>

Date: *<insert date of filing>*

[Signature]

[Title]

< indicate the capacity in which the certifying officer is providing the certificate >

17. *The following is added after Form 52-109FV2 – Certification of Interim Filings – Venture Issuer Basic Certificate:*

FORM 52-109FS2
CERTIFICATION OF INTERIM FILINGS
SECURITIZED PRODUCT ISSUER

I, *<identify (i) the certifying officer, (ii) his or her title and function in relation to the issuer and (iii) the name of the issuer>*, certify the following:

1. *Review:* I have reviewed all of the following documents of *<identify the issuer>* (the “issuer”):
 - (a) each report on Form 51-106F1 filed in respect of a payment period during the interim period ended *<state the relevant date>* (the “servicer reports”); and
 - (b) the interim financial report and interim MD&A for the interim period ended *<state the relevant date>* (the “interim financial report and interim MD&A”),

(the servicer reports and the interim financial statements and interim MD&A are together the “interim filings”);
2. *No misrepresentation:* Based on my knowledge, having exercised reasonable diligence, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings; and
3. *Fair presentation:* Based on my knowledge, having exercised reasonable diligence, the interim financial report together with the other financial information included in the interim filings fairly present in all material respects the financial condition, financial performance and cash flows of the issuer, as of the date of and for the periods presented in the interim filings.

[In giving the certifications above, I have reasonably relied on information provided to me by the following parties that are not affiliates of *<insert name of servicer or master servicer if Option #1 is being used, or the name of the issuer if Option #2 is being used>*:

<insert names of all relevant parties and state their relationship to the issuer >.

Date: *<insert date of filing>*

[Signature]

[Title]

< indicate the capacity in which the certifying officer is providing the certificate >

18. *The following is added after Form 52-109F2R – Certification of Refiled Interim Filings:*

**FORM 52-109FS2R
CERTIFICATION OF REFILED INTERIM FILINGS
SECURITIZED PRODUCT ISSUER**

This certificate is being filed on the same date that *<identify the issuer>* (the “issuer”) has refiled *<identify the filing(s) that have been refiled>*.

I, *<identify (i) the certifying officer, (ii) his or her title and function in relation to the issuer and (iii) the name of the issuer>*, certify the following:

<Insert all paragraphs included in the interim certificate originally filed with the interim filing.>

Date: *<insert date of filing>*

[Signature]

[Title]

< indicate the capacity in which the certifying officer is providing the certificate >

19. *This Instrument is effective on [*].*