

**National Instrument 52-109**  
*Certification of Disclosure in Issuers' Annual and Interim Filings*

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**Form 52-109F2 – IPO/RTO** – Certification of interim filings for first interim period following certain initial public offerings and reverse takeovers

**Form 52-109F2R** – Certification of refiled interim filings

## **PART 1 – DEFINITIONS AND APPLICATION**

### **1.1 Definitions** – In this Instrument,

“AIF” has the meaning ascribed to it in NI 51-102;

“accounting principles” has the meaning ascribed to it in NI 52-107;

“annual certificate” means the certificate required to be filed under Part 3 or Part 5.1;

“annual filings” means an issuer’s AIF, if any, its annual financial statements and its annual MD&A filed under securities legislation for a financial year, including for greater certainty all documents and information that are incorporated by reference in the AIF;

“annual financial statements” means the annual financial statements required to be filed under NI 51-102;

“asset-backed security” has the meaning ascribed to it in NI 51-102;

“certifying officer” means each chief executive officer and each chief financial officer of an issuer, or in the case of an issuer that does not have a chief executive officer or a chief financial officer, each person performing similar functions to a chief executive officer or chief financial officer;

“disclosure controls and procedures” or “DC&P” means controls and other procedures of an issuer that are designed to provide reasonable assurance that information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in the securities legislation and include controls and procedures designed to ensure that information required to be disclosed by an issuer in its annual filings, interim filings or other reports filed or submitted under securities legislation is accumulated and communicated to the issuer’s management, including its certifying officers, as appropriate to allow timely decisions regarding required disclosure;

“interim certificate” means the certificate required to be filed under Part 4 or Part 5.2;

“interim filings” means an issuer’s interim financial statements and its interim MD&A filed under securities legislation for an interim period;

“interim financial statements” means the interim financial statements required to be filed under NI 51-102;

“interim period” has the meaning ascribed to it in NI 51-102;

“internal control over financial reporting” or “ICFR” means a process designed by, or under the supervision of, an issuer’s certifying officers, and effected by the issuer’s board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer’s GAAP and includes those policies and procedures that:

- (a) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer,

- (b) are designed to provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with the issuer's GAAP, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer, and
- (c) are designed to provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer's assets that could have a material effect on the annual financial statements or interim financial statements;

"issuer's GAAP" has the meaning ascribed to it in NI 52-107;

"marketplace" has the meaning ascribed to it in National Instrument 21-101 *Marketplace Operation*;

"MD&A" has the meaning ascribed to it in NI 51-102;

"NI 51-102" means National Instrument 51-102 *Continuous Disclosure Obligations*;

"NI 52-107" means National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

"proportionately consolidated entity" means an entity in which an issuer has an investment that is accounted for by combining on a line-by-line basis the issuer's *pro rata* share of each of the assets, liabilities, revenues and expenses of the entity with similar items in the issuer's financial statements;

"reportable deficiency" means a deficiency, or combination of deficiencies, in the design or operation of one or more controls that would cause a reasonable person to doubt that the design or operation of internal control over financial reporting provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP;

"reverse takeover" has the meaning ascribed to it in NI 51-102;

"reverse takeover acquirer" has the meaning ascribed to it in NI 51-102;

"Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002 of the United States of America, Pub.L. 107-204, 116 Stat. 745 (2002);

"Sox 302 Rules" means U.S. federal securities laws implementing the annual report certification requirements in section 302(a) of the Sarbanes-Oxley Act;

"Sox 404 Rules" means U.S. federal securities laws implementing the internal control report requirements in sections 404(a) and (b) of the Sarbanes-Oxley Act;

"U.S. marketplace" has the meaning ascribed to it in NI 51-102;

"variable interest entity" has the meaning ascribed to it in the issuer's GAAP; and

"venture issuer" means a reporting issuer that, as at the end of the period covered by the annual or interim filings, as the case may be,

- (a) in the case of a reporting issuer that has distributed only debt securities to the public, other than an issuer of asset-backed securities, had total assets of less than \$25 million, and
- (b) in the case of
  - (i) a reporting issuer other than a reporting issuer that has distributed only debt securities to the public, and
  - (ii) a reporting issuer that is an issuer of asset-backed securities,

did not have any of its securities listed or quoted on any of: the Toronto Stock Exchange; a marketplace in the United States of America; or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

## 1.2 **Application**

- (1) This Instrument applies to all reporting issuers other than investment funds.
- (2) This Instrument applies for financial years beginning on or after March 31, 2005.

## **PART 2 – DISCLOSURE CONTROLS AND PROCEDURES AND INTERNAL CONTROL OVER FINANCIAL REPORTING**

2.1 **Design of DC&P and ICFR** – A reporting issuer must cause its certifying officers to design or supervise the design of:

- (a) disclosure controls and procedures; and
- (b) internal control over financial reporting.

2.2 **ICFR design accommodation for venture issuers** – Despite section 2.1, if a venture issuer:

- (a) has a reportable deficiency relating to design which exists as at the end of the period covered by its annual or interim filings, as the case may be; and
- (b) cannot reasonably remediate the reportable deficiency, it must disclose in its MD&A:
  - (i) the reportable deficiency;
  - (ii) why the issuer cannot reasonably remediate the reportable deficiency;
  - (iii) the risks the issuer faces relating to the reportable deficiency; and
  - (iv) whether the issuer has mitigated those risks and if so, how.

2.3 **Limitations on scope of design**

- (1) Despite section 2.1 and subject to subsection (2), an issuer may cause its certifying officers to limit the scope of their design of DC&P and ICFR to exclude controls, policies and procedures of:
  - (a) a proportionately consolidated entity in which the issuer has an interest;
  - (b) a variable interest entity in which the issuer has an interest; or
  - (c) a business that the issuer acquired not more than 90 days before the end of the period to which the certificate relates.
- (2) An issuer relying on subsection (1) must disclose in its MD&A:
  - (a) the scope limitation; and
  - (b) summary financial information of the proportionately consolidated entity, variable interest entity or business that the issuer acquired that has been proportionately consolidated or consolidated in the issuer's financial statements.

### **PART 3 – CERTIFICATION OF ANNUAL FILINGS**

#### **3.1 Requirement to file**

- (1) A reporting issuer must file a separate annual certificate in the required form:
  - (a) for each person who, at the time of filing the annual certificate, is a certifying officer; and
  - (b) signed by the certifying officer.
- (2) A reporting issuer must file a certificate required under subsection (1) on the same date that the issuer files the later of the following:
  - (a) if it is required to file an AIF under NI 51-102, its AIF; or
  - (b) its annual financial statements and annual MD&A.
- (3) In addition to complying with subsections 3.1(1) and (2), if a venture issuer voluntarily files an AIF for a financial year after it has filed its annual financial statements, annual MD&A and annual certificates for the financial year, the venture issuer must file on the same date that it files its AIF a separate annual certificate in the required form:
  - (a) for each person who, at the time of filing the annual certificate, is a certifying officer; and
  - (b) signed by the certifying officer.

(4) A reporting issuer must file a certificate required under subsection (1) or (3) separately from the documents it purports to certify.

### 3.2 **Required form of annual certificate**

(1) The required form of annual certificate under subsection 3.1(1) is Form 52-109F1.

(2) The required form of annual certificate under subsection 3.1(3) is Form 52-109F1 – AIF.

3.3 **Required form of annual certificate following certain initial public offerings** – Despite subsection 3.2(1), an issuer may file an annual certificate in Form 52-109F1 – IPO/RTO for a financial year ending on or before the 90<sup>th</sup> day after it became a reporting issuer.

3.4 **Required form of annual certificate following certain reverse takeovers** – Despite subsection 3.2(1), an issuer may file an annual certificate in Form 52-109F1 – IPO/RTO if:

(a) the annual certificate is for a financial year ending on or before the 90<sup>th</sup> day after the completion of a reverse takeover to which it was a party; and

(b) the reverse takeover acquirer was not a reporting issuer immediately before the reverse takeover.

3.5 **Transition period for financial years ending on or before June 29, 2006** – Despite subsection 3.2(1), an issuer may file an annual certificate in Form 52-109FM1 for a financial year ending on or before June 29, 2006.

3.6 **Transition period for financial years ending on or before [June 29, 2008]** – Despite subsection 3.2(1), an issuer may file an annual certificate in Form 52-109FMP1 for a financial year ending on or before **[June 29, 2008]**.

## **PART 4 - CERTIFICATION OF INTERIM FILINGS**

### 4.1 **Requirement to file**

(1) A reporting issuer must file a separate interim certificate in the required form:

(a) for each person who, at the time of filing the interim certificate, is a certifying officer; and

(b) signed by the certifying officer.

(2) A reporting issuer must file a certificate required under subsection (1) on the same date that the issuer files its interim filings.

(3) A reporting issuer must file a certificate required under subsection (1) separately from the documents it purports to certify.

4.2 **Required form of interim certificate** – The required form of interim certificate is Form 52-109F2.

- 4.3 **Required form of interim certificate following certain initial public offerings** – Despite section 4.2, an issuer may file an interim certificate in Form 52-109F2 – IPO/RTO for an interim period ending on or before the 90<sup>th</sup> day after it becomes a reporting issuer.
- 4.4 **Required form of interim certificate following certain reverse takeovers** – Despite section 4.2, an issuer may file an interim certificate in Form 52-109F2 – IPO/RTO if:
- (a) the interim certificate is for the first interim period after the completion of a reverse takeover to which it was a party when the issuer has not been required to file an annual certificate; and
  - (b) the reverse takeover acquirer was not a reporting issuer immediately before the reverse takeover.

## **PART 5 – REFILED FINANCIAL STATEMENTS, MD&A OR AIF**

- 5.1 **Refiled annual financial statements, annual MD&A or AIF** – If an issuer refiles its annual financial statements, annual MD&A or AIF for a financial year, it must file separate annual certificates for that financial year in Form 52-109F1R on the date that it refiles the annual financial statements, annual MD&A or AIF, as the case may be.
- 5.2 **Refiled interim financial statements and interim MD&A** – If an issuer refiles its interim financial statements or interim MD&A for an interim period, it must file separate interim certificates for that interim period in Form 52-109F2R on the date that it refiles the interim financial statements or interim MD&A, as the case may be.

## **PART 6 – GENERAL REQUIREMENTS OF CERTIFICATES**

- 6.1 **Dating of certificates** – A certifying officer must date a certificate filed under this Instrument the same date the certificate is filed.
- 6.2 **French or English**
- (1) A certificate filed by an issuer under this Instrument must be in French or in English.
  - (2) In Québec, an issuer must comply with linguistic obligations and rights prescribed by Québec law.

## **PART 7 – EXEMPTIONS**

- 7.1 **Exemption from annual requirements for issuers that comply with U.S. laws**
- (1) Subject to subsection (2), Parts 2, 3, 5 and 6 do not apply to an issuer for a financial year if:
    - (a) the issuer is in compliance with the Sox 302 Rules and the issuer files signed certificates relating to its annual report under the 1934 Act separately but concurrently as soon as practicable after they are filed with or furnished to the SEC; and



- (b) the issuer is in compliance with the Sox 404 Rules, and the issuer files management's annual report on internal control over financial reporting and the attestation report on management's assessment of internal control over financial reporting included in the issuer's annual report under the 1934 Act for the financial year, if applicable, as soon as practicable after they are filed with or furnished to, the SEC.
- (2) Despite subsection (1), Parts 2, 3, 5 and 6 apply to an issuer for a financial year if the issuer's annual financial statements, annual MD&A or AIF that comprise the issuer's annual filings differ from those filed with, furnished to the SEC or included as exhibits to other documents, and certified in compliance with the Sox 302 Rules.

## 7.2 **Exemption from interim requirements for issuers that comply with U.S. laws**

- (1) Subject to subsection (3), Parts 2, 4, 5 and 6 do not apply to an issuer for an interim period if the issuer is in compliance with the Sox 302 Rules and the issuer files signed certificates relating to its quarterly report under the 1934 Act for the quarter separately but concurrently as soon as practicable after they are filed with or furnished to the SEC.
- (2) Subject to subsection (3), Parts 2, 4, 5 and 6 do not apply to an issuer for an interim period if:
  - (a) the issuer files with or furnishes to the SEC a current report on Form 6-K containing the issuer's quarterly financial statements and MD&A;
  - (b) the Form 6-K is accompanied by signed certificates that are filed with or furnished to the SEC in the same form required by the Sox 302 Rules; and
  - (c) the issuer files signed certificates relating to the quarterly report filed or furnished under cover of the Form 6-K as soon as practicable after they are filed with or furnished to the SEC.
- (3) Despite subsections (1) and (2), Parts 2, 4, 5 and 6 apply to an issuer for an interim period if the issuer's interim financial statements and interim MD&A that comprise the issuer's interim filings differ from those filed with, furnished to the SEC, or included as exhibits to other documents, and certified in compliance with the Sox 302 Rules.

7.3 **Exemption for certain foreign issuers** – This Instrument does not apply to an issuer if it qualifies for the relief contemplated by, and is in compliance with the conditions set out in, sections 5.4 and 5.5 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

7.4 **Exemption for certain exchangeable security issuers** – This Instrument does not apply to an issuer if it qualifies for the relief contemplated by, and is in compliance with the conditions set out in, subsection 13.3(2) of NI 51-102.

7.5 **Exemption for certain credit support issuers** – This Instrument does not apply to an issuer if it qualifies for the relief contemplated by, and is in compliance with the conditions set out in, subsection 13.4(2) of NI 51-102.

## 7.6 **General exemption**

- (1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.
- (3) In Québec, this exemption is granted pursuant to section 263 of the *Securities Act* (R.S.Q., c. V-1.1).
- (4) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

## **PART 8 – EFFECTIVE DATE**

- 8.1 **Repeal of former instrument** – Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* which came into force on March 30, 2004 is repealed on [●].
- 8.2 **Effective date** – This Instrument comes into force on [●].