

CSA Staff Notice 52-316 Certification of Design of Internal Control over Financial Reporting

Purpose of notice

This notice communicates staff's views regarding the ability of the certifying officers of a reporting issuer to certify the design of the issuer's internal control over financial reporting (ICFR) as required by Multilateral Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Certification Instrument) if the certifying officers are aware of a weakness in the design of the issuer's ICFR.

Background

The Certification Instrument came into force in all CSA jurisdictions, except British Columbia and Quebec, on March 30, 2004. The Certification Instrument came into force in Quebec on June 30, 2005 and in British Columbia on September 19, 2005.

With limited exceptions, the Certification Instrument applies to all reporting issuers other than investment funds.¹

The Certification Instrument requires a reporting issuer to file an annual certificate for each financial year ending after June 29, 2006 in Form 52-109F1 (the full annual certificate) without modification.² The full annual certificate requires the certifying officers to certify, among other things, that they have "*designed ... internal control over financial reporting, or caused it to be designed under [their] supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP.*"

Issuers have asked us whether certifying officers can certify the design of ICFR if the certifying officers are aware of a weakness in the design that has not been remediated. We will address this issue in more detail in a proposed amended and restated version of the Certification Instrument that we intend to publish later this year³, but in the interim this notice responds to these inquiries.

Staff's views

We acknowledge that there are circumstances in which the certifying officers of a reporting issuer can conclude that they are able to certify that they have designed the issuer's ICFR as required by the full annual certificate even though the certifying officers have identified a weakness in the design. In our view, the certifying officers can certify the design of the issuer's ICFR if the issuer's disclosure about the identified weakness presents an accurate and complete picture of the condition of the design of the issuer's ICFR.

¹ See section 1.2 and Part 4 of the Certification Instrument.

² See sections 2.1 and 5.2(1) of the Certification Instrument.

³ See Canadian Securities Administrators Notice 52-313 Status of Proposed Multilateral Instrument 52-111 *Reporting on Internal Control over Financial Reporting* and Proposed Amended and Restated Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

The Certification Instrument does not explicitly require the certifying officers to cause the issuer to disclose a weakness in the design of the issuer's ICFR but it does require the certifying officers to cause the issuer to disclose in the annual MD&A the certifying officers' conclusions about the effectiveness of the disclosure controls and procedures (DC&P)⁴. In our view, the conclusions about the effectiveness of the DC&P should include disclosure of identified weaknesses in the DC&P.

Given the substantial overlap between the definitions of DC&P and ICFR, it is our view that the certifying officers therefore should cause the issuer to disclose in the annual MD&A the nature of any weakness in the design of the issuer's ICFR, the risks associated with the weakness and the issuer's plan, if any, to remediate the weakness. If no such plan exists, the issuer should consider disclosing its reasons for not planning to remediate the weakness.

Questions

Please refer your questions to any of the following individuals:

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⁴ See Form 52-109F1 of the Certification Instrument.

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