

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

and

Repeal of Multilateral Instrument 52-109
Certification of Disclosure in Issuers' Annual and Interim Filings

Introduction

We, the Canadian Securities Administrators (CSA), are repealing Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, Forms 52-109F1, 52-109FT1, 52-109F2 and 52-109FT2 and withdrawing Companion Policy 52-109CP (collectively, the Current Materials) and replacing them with:

- National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the New Rule);
- Forms 52-109F1, 52-109FV1, 52-109F1 – IPO/RTO, 52-109F1R, 52-109F1 – AIF, 52-109F2, 52-109FV2, 52-109F2 – IPO/RTO and 52-109F2R (together with the New Rule, the New Instrument); and
- Companion Policy 52-109CP *Certification of Disclosure in Issuers' Annual and Interim Filings* (the New Policy, and together with the New Instrument, the New Materials).

In conjunction with the New Materials, we are also making consequential amendments to Form 51-102F1 *Management's Discussion & Analysis* of National Instrument 51-102 *Continuous Disclosure Obligations* (the Consequential Amendments).

The New Materials and Consequential Amendments are initiatives of the securities regulatory authorities in all Canadian jurisdictions. Members of the CSA in the following jurisdictions have made, or expect to make, the New Instrument and Consequential Amendments as

- rules in each of British Columbia, Alberta, Manitoba, Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, the Northwest Territories, Nunavut and Yukon;
- regulations in Québec; and
- commission regulations in Saskatchewan.

In Alberta, British Columbia and Ontario, the implementation of the New Instrument is subject to ministerial approval. The implementation of the Consequential Amendments is subject to ministerial approval in British Columbia and Ontario.

In Ontario, the New Instrument, Consequential Amendments and the other required materials were delivered to the Minister of Finance on August 15, 2008.

In Québec, the New Instrument and Consequential Amendments are regulations made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The New Instrument and Consequential Amendments will come into force on the date of publication in the *Gazette officielle du Québec* or on any later date specified in the regulation.

Provided all necessary ministerial approvals are obtained, the New Instrument and Consequential Amendments will come into force on **December 15, 2008**.

The New Policy has been, or is expected to be, adopted as a policy in all CSA jurisdictions. The New Policy has an effective date of **December 15, 2008**.

Substance and Purpose

The purpose of the New Materials is to improve the quality and reliability of reporting issuers' annual and interim disclosure. We believe that this, in turn, will help to maintain and enhance investor confidence in the integrity of our capital markets. The New Materials require an issuer's chief executive officer (CEO) and chief financial officer (CFO), or persons performing similar functions to a CEO or CFO (certifying officers), to personally certify that, among other things:

- the issuer's annual filings and interim filings do not contain any misrepresentations;
- the financial statements and other financial information in the annual filings and interim filings fairly present the financial condition, results of operations and cash flows of the issuer;
- they have designed disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR), or caused them to be designed under their supervision;
- they have caused the issuer to disclose in its MD&A any change in the issuer's ICFR that has materially affected the issuer's ICFR; and
- on an annual basis they have evaluated the effectiveness of the issuer's DC&P and ICFR and caused the issuer to disclose their conclusions about the effectiveness of DC&P and ICFR in the issuer's MD&A.

Under the New Instrument, venture issuers are not required to include representations in their certificates relating to DC&P and ICFR. Venture issuers are also not required to discuss in their annual or interim MD&A changes in ICFR or the certifying officers' conclusions about the effectiveness of DC&P or ICFR.

The New Policy describes how we intend to apply the New Instrument.

Background

The Current Materials came into force in all CSA jurisdictions except British Columbia, Québec and New Brunswick on March 30, 2004. The Current Materials came into force in Québec on June 30, 2005, in New Brunswick on July 28, 2005, and in British Columbia on September 19, 2005.

The CSA published prior versions of the New Materials and Consequential Amendments for a 60-day comment period on April 18, 2008 (the April 2008 Materials). The April 2008 Materials were a revision of previously proposed materials that CSA members published for comment on March 30, 2007. For further background on the materials published in March 2007 and the revisions made, refer to the CSA Notice and Request for Comments published on April 18, 2008.

Summary of Written Comments Received by the CSA

The comment period for the April 2008 Materials expired on June 17, 2008. We received written submissions from 29 commenters. We have considered the comments received and thank all the commenters. The names of the commenters are contained in Appendix A of this notice and a summary of their comments, together with our responses, are contained in Appendix B of this notice.

Summary of Changes to the April 2008 Materials

After considering the comments received, we made some revisions to the April 2008 Materials that are reflected in the New Materials and Consequential Amendments. As these changes are not material, we are not republishing the New Materials or Consequential Amendments for a further comment period.

See Appendix C of this notice for a summary of notable changes made to the April 2008 Materials.

The text of the New Materials is being published concurrently with this notice.

Consequential Amendments

In order to conform with the New Instrument, we are also making the Consequential Amendments. The Consequential Amendments are contained in Appendix D of this notice.

Withdrawal of Notices and Revocation of Local Exemption Instruments

We are withdrawing the following national notices, effective December 15, 2008:

- CSA Staff Notice 52-311 *Regarding the Required Forms of Certificates under MI 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*;
- CSA Staff Notice 52-316 *Certification of Design of Internal Control Over Financial Reporting*;
- CSA Staff Notice 52-322 *Status of Proposed Repeal and Replacement of Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*; and
- CSA Multilateral Staff Notice 57-302 *Failure to File Certificates Under Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*.

Each CSA jurisdiction other than Ontario has issued either a blanket order or local rule that has the effect of modifying the CEO and CFO certification requirements in the Current Materials as they apply to venture issuers (collectively, the Exemption Instruments). Each applicable CSA jurisdiction will revoke its Exemption Instrument effective December 15, 2008. A list of the Exemption Instruments that will be revoked is contained in Appendix E of this notice.

The following local notices, published concurrently with the corresponding local Exemption Instrument, will be withdrawn effective December 15, 2008:

- in Alberta, Alberta Securities Commission Notice *MI 52-109 Exemptive Relief, 2007 ABASC 836 Certain Certification Requirements: Relief for Venture Issuers*;
- in British Columbia, BC Notice 2007/36 *Relief for venture issuers from certain certification requirements*; and
- in Manitoba, Manitoba Securities Commission Notice 2007-43 *Relief for Venture Issuers from Certain Certification Requirement: Blanket Order No. 52-501*.

In Ontario, the CEO and CFO certification requirements in the Current Materials as they apply to venture issuers are set out in Ontario Securities Commission Staff Notice 52-717 *Certification of Annual and Interim Certificates – Venture Issuer Basic Certificates*. This staff notice will be withdrawn in Ontario effective December 15, 2008.

Questions

Please refer your questions to any of:

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August 15, 2008