



March 14, 2006

Changes to Multi-lateral Instrument 52-109

On March 10, 2006, the Canadian Securities Administrators (CSA) announced it will not proceed with the proposed Multilateral Instrument 52-111, *Reporting on Internal Control over Financial Reporting*. This instrument would have required auditor attestation on the effectiveness of internal control over financial reporting.

Instead, the CSA has proposed to expand Multilateral Instrument 52-109, *Certification of Disclosure in Issuers' Annual and Interim Filings*, to include the following:

- The CEO and CFO of a reporting issuer will be required to certify in their annual certificates that they have evaluated the effectiveness of the issuer's internal control over financial reporting as of the end of the financial year.
- The annual MD&A must contain their conclusions about the effectiveness of internal control over financial reporting and a description of the process followed in conducting their evaluation.

The CSA proposes a single implementation date for all issuers. The earliest these requirements will apply is December 31, 2007, and affects all reporting issuers except investment funds.

This includes all TSX-V issuers as well as those registered with the B.C. Securities Commission, who were previously exempted from the proposed provisions in MI 52-111.

In addition, the proposed deferral of the full certification requirements of MI 52-109 has been withdrawn. As a result, for financial years ending on or after June 30, 2006, the reporting issuer's CEO and CFO must certify that their internal controls over financial reporting provides reasonable assurance as to the reliability of financial reporting and the preparation of financial statements in accordance with GAAP. These rules are currently in effect.

Further, according to OSC staff, the CEO and CFO must review and document the controls to offer substantive support for these certifications. As a result, in 2006 a significant amount of work will be required. The liability for officers who deliver false certifications remains unchanged, as they continue to face possible

quasi-criminal, administrative or civil proceedings for such actions under securities law.

Under the proposed changes, the issuer will not require an internal control audit opinion from the auditor concerning management's assessment of the effectiveness of internal control over financial reporting. However, issuers should note the auditor's existing obligations under generally accepted auditing standards:

- The auditor must understand the issuer's internal controls relevant to the issuer's financial statements; this includes internal controls over financial reporting.
- The auditor must read materials that the auditor is deemed associated with such as the issuer's MD&A, assess whether they are consistent with their knowledge, and take appropriate action if they are aware of any material misstatement of fact.

To a certain degree, auditors remain responsible to take action if they become aware that the issuer's report in the MD&A contains false, incomplete or misleading statements. This responsibility of the auditor was referred to in the notice.

So far, the issuers' initial reaction to the announcement appears to be one of confusion. This notice – a high-level summary of proposed requirements – does not address the specific parameters for the design and evaluation of internal controls over financial reporting. Since the CSA has indicated they will seek public comment, it is highly likely more specific details will emerge following the comment period later this year.

Under the current circumstances, the prudent course of action for issuers is to proceed with the design and evaluation of their internal controls over financial reporting. This should entail documentation and evaluation against a generally accepted internal control framework such as COSO.

If you have any questions on Multilateral Instrument 52-109, or on anything covered in this publication, please contact your local BDO Dunwoody partner.