



Alert – Proposed changes National Instrument 52-109

On April 28, 2008, the CSA released the details of its proposed new approach for additional provisions relating to ICFR. If adopted, these amendments will take effect December 15, 2008. A broad, quick summary of the proposed National Instrument 52-109 Certification of Disclosure in an Issuers' Annual and Interim Filings (Proposed NI 52-109 or Proposed Instrument) is listed below:

- These proposed changes replace the current MI 52-109;
- There is no requirement for external auditor attestation;
- There are different requirements for Venture Issuers vs. Non-Venture Issuers as follows:

Current Rules: MI 52-109 (applicable to all Issuers) ¹	Proposed Rules: NI 52-109	
	Non-Venture Issuers	Venture Issuers
<ul style="list-style-type: none"> • Issuers are required to evaluate the design and effectiveness of DC&P. • Issuers are required to evaluate the design of ICFR. 	<ul style="list-style-type: none"> • Are required to evaluate the design and effectiveness of both DC&P and ICFR. 	<ul style="list-style-type: none"> • Are not required to make any representations relating to the establishment and maintenance of DC&P and ICFR.
<ul style="list-style-type: none"> • The current rules are silent on the use of a control framework. 	<ul style="list-style-type: none"> • Are required to use a control framework in the design of their ICFR. 	<ul style="list-style-type: none"> • Not applicable.
<ul style="list-style-type: none"> • The current rules do not define what weaknesses should be reported. • The current rules do not explicitly require disclosure of weaknesses in the design of the Issuer's ICFR, however CSA Staff Notice 52-316 indicates that ICFR weaknesses should be disclosed in the Issuer's MD&A. 	<ul style="list-style-type: none"> • The threshold for reporting a weakness in ICFR a "Material Weakness" is defined as: "A deficiency, or a combination of deficiencies, in ICFR such that there is a reasonable possibility that a material misstatement of the reporting Issuer's annual or interim financial statement will not be detected or prevented on a timely basis". • The Canadian definition of "Material Weakness" is the same as in the U.S.. 	<ul style="list-style-type: none"> • Not applicable.
<ul style="list-style-type: none"> • The current rules are silent on the remediation of weaknesses. 	<ul style="list-style-type: none"> • An Issuer does not have to remediate a weakness; however, an Issuer must disclose its plans or actions taken, if any, to remediate a material weakness. 	<ul style="list-style-type: none"> • Not applicable.
<ul style="list-style-type: none"> • The current rules are silent on scope exclusions. 	<ul style="list-style-type: none"> • An Issuer may limit the scope of its design of DC&P and ICFR to exclude: <ul style="list-style-type: none"> • proportionately consolidated entities; • variable interest entities; or • acquisitions within 365 days of period end. 	<ul style="list-style-type: none"> • Not applicable.
<ul style="list-style-type: none"> • The current rules are silent on documentation requirements. 	<ul style="list-style-type: none"> • The proposed rules address the extent and form of the Issuer's documentation required to support their evaluation of design and effectiveness of ICFR. 	<ul style="list-style-type: none"> • Not applicable.
	<ul style="list-style-type: none"> • Are required to re-file certificates if the financials or MD&A are re-filed. 	<ul style="list-style-type: none"> • Not applicable.
	<ul style="list-style-type: none"> • Are required to disclose any fraud that involves management or other employees who have a significant role in the Issuer. 	<ul style="list-style-type: none"> • Not applicable.
<p>¹ In November 2007, certain CSA jurisdictions issued Staff Notices indicating they would accept Basic Certificates in lieu of the full certificates required under MI 52-109 for Venture Issuers for periods on or after December 31, 2007. This administrative approach has the effect of modifying the current requirements as they apply to Venture Issuers to the proposed rules.</p>		

A comparison of the certificate disclosure requirements under the current and proposed rules is provided in the table below:

Current Rules: MI 52-109	Proposed Rules: NI 52-109	
All Issuers:	Non-Venture Issuers	Venture Issuers
Review: • Annual filings have been reviewed.	Review: • They have reviewed the annual filings.	Review: • They have reviewed the annual filings.
No Misrepresentations: • Based on their knowledge, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact.	No Misrepresentations: • Based on their knowledge, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact.	No Misrepresentations: • Based on their knowledge, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact.
Fair Presentation: • Based on their knowledge, the annual financial statements and filings present all material findings fairly.	Fair Presentation: • Based on their knowledge, the annual financial statements and filings present all material findings fairly.	Fair Presentation: • Based on their knowledge, the annual financial statements and filings present all material findings fairly.
Responsibility¹: • They are responsible for DC&P and ICFR.	Responsibility: • They are responsible for DC&P and ICFR.	
Design¹: • They have caused to be designed appropriate DC&P. • They have caused to be designed appropriate ICFR.	Design: • They have caused to be designed appropriate DC&P. • They have caused to be designed appropriate ICFR.	
	Control Framework: • The control framework used to design the Issuer's ICFR must be disclosed.	
	Material Weaknesses related to ICFR design (if applicable): • Issuer's must include the following in the MD&A: • a description of the material weakness related to design; • the impact of the material weakness on the Issuer's financial reporting; and • the Issuer's plans, or actions already taken, for remediating the material weakness.	
	Limitation on Scope (if applicable): • Issuer's must disclose the following in the MD&A if the scope of the ICFR evaluation excludes one or more of: • proportionately consolidated entities; • variable interest entities; or • acquisitions within 365 days of period end. • The Issuer must disclose summary financial information related to any entities excluded from the scope of the ICFR evaluation.	
Evaluation¹: • They have evaluated the effectiveness of DC&P and disclosed in the MD&A their conclusions regarding effectiveness.	Evaluation: • They have evaluated the effectiveness of DC&P and disclosed in the MD&A their conclusions regarding effectiveness; • They have evaluated the effectiveness of ICFR and disclosed in the MD&A: • their conclusions regarding effectiveness; • a description of each material weakness related to operating effectiveness; • the impact of the material weakness on the Issuer's financial reporting; and • the Issuer's plans, or actions already taken, for remediating the material weakness	
Changes in ICFR¹: • They have caused the Issuer to disclose material changes in ICFR that occurred in the most recent interim period.	Changes in ICFR: • They have caused the Issuer to disclose material changes in ICFR that occurred in the most recent interim period.	
	Disclosure of Fraud: • They have disclosed any fraud that involves management or other employees who have a significant role in the Issuer's ICFR to the Issuer's external auditor and board of directors or audit committee.	
¹ In November 2007, certain CSA jurisdictions issued Staff Notices that they would accept Basic Certificates in lieu of the full certificates as required by MI 52-109 for Venture Issuers for periods on or after December 31, 2007. This administrative approach has the effect of modifying the current requirements as they apply to Venture Issuers to the proposed rules.		

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