VIA EMAIL June 27, 2007

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Securities Administration Branch, New Brunswick
Office of the Attorney General, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Email: jstevenson@osc.gov.on.ca

- and –

Commission des valeurs mobilières du Québec
c/o Anne- Marie Beaudoin, Secretary
800 Victoria Square, Stock Exchange Tower
P. O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Comments regarding proposed repeal and replacement of Multilateral Instrument 52-109 in the form of the proposed National Instrument 52-109 ("NI 52-109" or the "Instrument")

We submit the following comments in response the Notice and Request for Comments published on March 30, 2007, (2007) 30 OSCB 2877, on NI 52-109. Section A consists of our general comments on NI 52-109 and Section B consists of specific comments relating to specific provisions of NI 52-109.

This letter represents the general comments of certain members of our securities practice group (and not those of the firm generally or any client of the

firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

All defined terms have the same meanings as ascribed to them in NI 52-109.

SECTION A. GENERAL COMMENTS

We support the CSA in its move towards a more risk-based and cost effective approach to certifications. Our comments below are focussed, generally, on elements that we believe could further enhance the risk-based approach to certifications, keeping the process cost-effective and streamlined for issuers, while being relevant and useful to investors.

As an overall comment we suggest that the required forms should be more flexible and allow for modifications that will more accurately reflect a CEO and CFO's assessment of ICFR and DC&P design and effectiveness. As is currently required and is being proposed under NI 52-109, CEOs and CFOs are forced to adopt and certify words that in many instances do not accurately reflect their assessments. As the certificate cannot be modified, the only option they currently have is to refuse to file and risk facing a cease trade order. Securities legislation in Canada has always been a disclosure-based system, and NI 52-109 should be no different. Investors and capital market participants would be better served by a system that allows a certifying officer to disclose their assessment of ICFR and DC&P in a manner that is better suited to each individual issuer and its design and operation of these controls. For example, it strains the meaning of the English language for a CEO or CFO who has been in office for only a few days to be required to state that he or she has "designed or caused to be designed" ICFR or DC&P.

SECTION A. SPECIFIC COMMENTS

1. "reportable deficiency" – The term "reportable deficiency" is defined as "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 controls over financial reporting provides reasonable assurance regarding the reliability …." However, the certifications themselves relate to design and evaluation of effectiveness of ICFR. We suggest that the reportable deficiency should also relate to a deficiency in the design or effectiveness of ICFR, as the entire Instrument and certification process requires the certifying officer's to certify and evaluate as to effectiveness and not operation. We submit that requiring the officer to certify and disclose his or her conclusions about the effectiveness of ICFR, and then allow disclosure for a reportable deficiency relating to operation (as set out in paragraph 6(b)(iii) of the Full Annual Certificate) is confusing and inappropriate. This requires testing for effectiveness and operation, to the extent they are different. If these are not different, use of a new and different term is confusing and is subject to different interpretation.

2. Section 2.2(b) -

(a) The disclosure required in paragraphs (i) –(iv) should be streamlined. The MD&A is already a very lengthy document, and increasing its length will only dissuade investors from paying attention to the important disclosure contained in it. The disclosure currently required by these paragraphs is awkward and unhelpful, and poses an additional burden for issuers without providing too much additional, useful information to investors. We submit that where an accommodation is relied upon, the disclosure required should include only the identification of the reportable deficiency and what is being done to address it. We also make the following specific observations with respect to each of the subsections below:

(ii) – disclosure should be required of the reasons why the issuer was not able to remediate the reportable deficiency (and not why it cannot remediate it currently) since the certificate speaks to a completed financial period in the past.

(iii) – disclosure should be required of the risks that "would reasonably be expected to be posed by the" reportable deficiency and not to "the risks the issuer faces related to the reportable deficiency" since the issuer will not be in a position to know the risks with certainty and should not be required to make a definitive statement with respect to them (specifically considering the liability associated with the statement in the MD&A). Referring to the risks "that would reasonably be expected to be posed" also accommodates the fact that the certificate speaks to a past period of time, while taking into consideration the fact that the risks may or may not be ongoing.

(iv) – disclosure should be required as to "what steps the issuer has taken to mitigate" those risks and not to "whether the issuer has mitigated" those risks. Once again, requiring an issuer to make a definitive statement is unreasonable since the certificates speak to a past period of time, and while the issuer may know what procedures it has put in place to mitigate the risks, the results of those will not be known until enough time has passed for implementation to be tested.

(b) The disclosure required under paragraphs 2.2(b) (i) –(iv) should be consistent with what is set out in section 5.2 and 5.3 of the certificate itself. As the Instrument and the Certificate currently read, an issuer relying on the accommodation would be required to disclose, under section 2.2(b), (i) the reportable deficiency, (ii) why it cannot be remediated, (iii) the risks associated with it, and (iv) whether the issuer has mitigated those risks, and if so how. Under section 5.3 of the certificate the certifying officer is required to certify that the issuer

has disclosed these same elements in the MD&A, however, under section 5.2 of the Certificates the certifying officer is also required to certify that (v) the issuer has disclosed a description of the remediation plan and (vi) the completion date or expected completion date of the remediation plan. These two disclosure items are in addition to what section 2.2(b) of the Instrument requires. Having a different requirement in the Instrument and additional disclosure requirement via the certificate also creates confusion. To the extent such a requirement exists it should be consistent and streamlined. It should also be clear on the certificate itself as to which paragraphs relate to the design accommodation for venture issuers and which are available as optional paragraphs for all issuers.

3. Section 2.3

   (a) There should be a 365 or greater (not just a 90) day grace period before acquisitions must be certified (as is in the U.S.), as it may take substantially longer than 90 days to be able to deal with DC&P and ICFR for acquisitions, specifically to be able to certify both design and effectiveness. While we recognize that the Instrument includes some concessions compared to what is required in the U.S., it will still likely be very difficult for issuers to comply with the certification requirements in a 90 day period.

   (b) The additional disclosure required in the MD&A represents yet additional length and complication to what should be a streamlined and effective disclosure document. We also raise the question of whether the disclosure required by section 2.3(2)(b) is appropriate for all instances listed in section 2.3(1). For example, for acquisitions, the issuer will have previously provided significant financial disclosure in a prospectus or business acquisition report and we question whether such additional disclosure in the MD&A is appropriate or necessary.

4. Section 3.3. and 3.4 – Similar to the concerns raised in paragraph 3 above, we question whether 90 days is sufficient time to be able to certify both design and effectiveness of ICFR and DC&P. This should be extended to 365 days or more. Absent these changes, requiring an officer to certify the interim or annual certificate as is will pose a significant hardship upon issuers who will otherwise be dealing with what is required to run their business following an IPO/RTO: 90 days is not sufficient time to adequately design, but especially test, the effectiveness of DC&P or ICFR.

5. Content of Certificates

(a) Section 5.1 of the certificate should require disclosure of the control framework only if a control framework is used. The issuer should not be required to make a negative statement where a control framework is not used. As the CSA are not imposing the requirement to employ a control framework, a negative confirmation is inappropriate. For many issuers, especially smaller issuers, compliance with the Instrument may be most appropriately dealt with outside of a control framework. Requiring a negative statement may attract a negative perception in the minds of the reader and may indirectly "suggest" or require that a control framework should be used.

(b) Sections 5.2 and 5.3 – These paragraphs are confusing as it is not clear which paragraph relates to a design accommodation for venture issuers only and which is available to all issuers. As well, given that the design accommodation for venture issuers is set out in 2.2 of the Instrument we question why the same disclosure is restated in section 5.3 of the Certificate. In addition, it is not clear what is intended by "completion date or expected completion date of the remediation plan" under section 5.2(c). The disclosure in this paragraph should be consistent with what is required under paragraph 6 (b) (iii) and (iv), which requires disclosure with respect to a reportable deficiency relating to operation to include only a description of the reportable deficiency and the issuer's plans to remediate it (with no disclosure required as to the completion date or expected completion date of such plan). Requiring the issuer to disclose the date or expected date requires the issuer to make prediction and for the certifying officer to certify that prediction.

(c) Section 6 (b) (iii) and (iv). See our comments in paragraph 1 above. We believe that for consistency, these subsections should refer to a reportable deficiency relating to effectiveness and not to operation. To the extent effectiveness and operation are different concepts, please include an explanation of how they differ.

(d) Section 8 – The requirement to certify the disclosure of "fraud that involves management or other employees who have a significant role in the issuer's ICFR" is imprecise and open to interpretation. The explanation given in section 9.3 of the Companion Policy, that fraud refers to "an intentional act by one or more individuals among management other employees…involving the use of deception to obtain an unjust or illegal advantage" is unhelpful as it is not clear whether this would encompass a perceived or suspected fraud or only fraud that has been objectively uncovered and proven. We suggest that the requirement should be limited to fraud which is

known as of the end of the relevant period to which the certifications relate.

(e) As set out above in our general comments, the certificate should allow for specifically tailored conclusions and qualifications in the certificate, or should accommodate for qualifications that are disclosed in the MD&A regarding DC&P and ICFR.

Thank you for giving us this opportunity to comment on this initiative.

Yours truly,

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