

CANADIAN SECURITIES ADMINISTRATORS STAFF NOTICE 52-308

STATUS OF PROPOSED INSTRUMENT REGARDING REPORTING ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Introduction

On January 16, 2004, the members of the Canadian Securities Administrators, other than British Columbia (the participating CSA jurisdictions), published a notice in respect of Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Certification Instrument) in which the participating CSA jurisdictions indicated they were currently developing, as a separate CSA initiative, a proposed instrument that would require a report on management's assessment of an issuer's internal control over financial reporting (the Proposed Instrument). The participating CSA jurisdictions also indicated that they were evaluating the extent to which auditor attestation to that report should be required.

Status of the Proposed Instrument

Staff of the participating CSA jurisdictions (staff) are issuing this notice to provide an update to market participants on the status of the Proposed Instrument and to assist reporting issuers in planning their continuous disclosure.

Staff believe it is critical for our markets that all Canadian reporting issuers have sound internal control over financial reporting. Staff are continuing to develop the Proposed Instrument and, in doing so, are evaluating the extent to which it is necessary or appropriate for the Proposed Instrument to parallel the U.S. Securities and Exchange Commission's rules implementing the requirements of section 404 of the *Sarbanes-Oxley Act of 2002* (the SOX 404 Rules). Under the SOX 404 Rules:

- Management must, on an annual basis, evaluate the issuer's internal control over financial reporting against a suitable control framework, report on its assessment of the effectiveness of internal control over financial reporting and disclose, among other things, all material weaknesses in internal control over financial reporting; and
- The issuer's auditors must express an opinion on management's assessment of internal control over financial reporting in accordance with the U.S. Public Company Accounting Oversight Board's audit standard for internal control audit engagements.

In developing the Proposed Instrument, staff are consulting with a wide range of groups, including: reporting issuers in Canada (including issuers that are SEC registrants and subject to the SOX 404 Rules), audit firms and legal advisers to reporting issuers, internal control consultants, a control framework expert and investor groups.

Staff intend to present the Proposed Instrument to their respective securities regulatory authorities in late 2004. If the Proposed Instrument is approved by the securities regulatory authorities, it will be published for public comment in late 2004 or early 2005.

The effective date and scope of application of the Proposed Instrument have not been finalized yet; however, those staff seeking authority from their respective securities regulatory authorities to publish the Proposed Instrument for public comment will recommend that the *earliest* the Proposed Instrument should apply is in respect of financial years ending on or after June 30, 2006. Staff are conscious of the need to provide adequate time for an orderly implementation that achieves the objectives of the Proposed Instrument, taking into account concerns about the cost and limited availability of appropriate expertise, both within reporting issuers and among external advisors and auditors. Staff are also considering whether implementation of the Proposed Instrument should be deferred for certain issuers and whether certain issuers should be exempt from the Proposed Instrument.

Implications for the Certification Instrument

Staff are currently reviewing the implications of the recommended implementation date of the Proposed Instrument for the Certification Instrument and the requirement to file “full certificates”. At this time, no decision has been made to extend the period during which “bare certificates” may be filed.

Staff will provide more information on the proposed effective date and scope of application of the Proposed Instrument and any resulting changes to the Certification Instrument in a subsequent notice.

Questions

Please refer your questions to any of the following people:

Ontario Securities Commission

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