

Nova Scotia Securities Commission

Rule 52-109 (Amendment)

**Amendments to National Instrument 52-109
*Certification of Disclosure in Issuers' Annual and Interim Filings***

- and -

**Amendments to Companion Policy 52-109CP to
*National Instrument 52-109 Certification of Disclosure
in Issuers' Annual and Interim Filings***

WHEREAS:

1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amendment Instrument for National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Rule) and Amendments to Companion Policy 52-109CP to National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Companion Policy), copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;
- (b) pursuant to the authority contained in section 19 of the Act and subject to publication in the Royal Gazette or the Commission's website, issues the Companion Policy as a policy of the Commission; and

- (c) declares that the Rule approved and made pursuant to clause (a) and the Companion Policy issued pursuant to clause (b) shall take effect on **January 1, 2011**, unless the Minister disapproves the Rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the Rule and the Companion Policy shall not become effective until the Rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair of the Commission, being the member of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 13th day of October, 2010.


H. Leslie O'Brien, Q.C.

Attachments

**Amendment Instrument for
National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings***

Although this amendment instrument amends section headers in National Instrument 52-109, section headers do not form part of the instrument and are inserted for ease of reference only

1. ***National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings is amended by this Instrument.***
2. ***Section 1.1 is amended***
 - (a) ***after the definition of "financial period", by adding the following definition:***

"financial statements" has the meaning ascribed to it in section 1.1 of NI 51-102;
 - (b) ***in the definition of "internal control over financial reporting", in paragraph (c), by replacing "interim financial statements" with "interim financial reports",***
 - (c) ***in the definition of "interim filings", by replacing "interim financial statements" with "interim financial report",***
 - (d) ***by deleting the definition of "interim financial statements" and adding the following definition:***

"interim financial report" means the interim financial report required to be filed under NI 51-102;
 - (e) ***in the definition of "material weakness", by replacing "annual or interim financial statements" with "annual financial statements or interim financial report",***
 - (f) ***in the definition of "NI 52-107", by replacing "Acceptable Accounting Principles, Auditing Standards and Reporting Currency" with "Acceptable Accounting Principles and Auditing Standards",***
 - (g) ***in the definition of "proportionately consolidated entity", by replacing "revenues" with "revenue",***
 - (h) ***after the definition of "Sarbanes-Oxley Act", by adding the following definition:***

"special purpose entity" has, in respect of an issuer, the meaning ascribed to that term in the issuer's GAAP;

- (i) *in the definition of “U.S. marketplace”, by adding “and” after “NI 51-102;”, and*
 - (j) *by deleting the definition of “variable interest entity”.*
- 3. *Section 3.3 is amended by replacing “variable interest entity” wherever it occurs with “special purpose entity”.*
- 4. *Section 5.6 is amended by replacing “interim financial statements” wherever it occurs with “interim financial reports”.*
- 5. *Section 6.2 is amended*
 - (a) *in the title, by replacing “interim financial statements” with “interim financial report”, and*
 - (b) *by replacing “interim financial statements” wherever it occurs with “interim financial report”.*
- 6. *Subsection 8.2(3) is amended by replacing “interim financial statements” wherever it occurs with “interim financial report”.*
- 7. *Section 3 of Form 52-109F1 Certification of annual filings – full certificate is amended by replacing “results of operations” with “financial performance”.*
- 8. *Section 5.3 of Form 52-109F1 Certification of annual filings – full certificate is amended by replacing “variable interest entity” wherever it occurs with “special purpose entity”.*
- 9. *Section 3 of Form 52-109FV1 Certification of annual filings – venture issuer basic certificate is amended by replacing “results of operations” with “financial performance”.*
- 10. *Section 3 of Form 52-109F1 – IPO/RTO Certification of annual filings following an initial public offering, reverse takeover or becoming a non-venture issuer is amended by replacing “results of operations” with “financial performance”.*
- 11. *Section 1 of Form 52-109F2 Certification of interim filings – full certificate is amended by replacing “interim financial statements” with “interim financial report”.*
- 12. *Section 3 of Form 52-109F2 Certification of interim filings – full certificate is amended*
 - (a) *by replacing “interim financial statements” with “interim financial report”, and*
 - (b) *by replacing “results of operations” with “financial performance”.*

13. *Section 5.3 of Form 52-109F2 Certification of interim filings – full certificate is amended by replacing “variable interest entity” wherever it occurs with “special purpose entity”.*
14. *Section 1 of Form 52-109FV2 Certification of interim filings – venture issuer basic certificate is amended by replacing “interim financial statements” with “interim financial report”.*
15. *Section 3 of Form 52-109FV2 Certification of interim filings – venture issuer basic certificate is amended*
 - (a) *by replacing “interim financial statements” with “interim financial report”, and*
 - (b) *by replacing “results of operations” with “financial performance”.*
16. *Section 1 of Form 52-109F2 – IPO/RTO Certification of interim filings following an initial public offering, reverse takeover or becoming a non-venture issuer is amended by replacing “interim financial statements” with “interim financial report”.*
17. *Section 3 Form 52-109F2 – IPO/RTO Certification of interim filings following an initial public offering, reverse takeover or becoming a non-venture issuer is amended*
 - (a) *by replacing “interim financial statements” with “interim financial report”, and*
 - (b) *by replacing “results of operations” with “financial performance”.*
18. *Section 1 of Form 52-109F2R Certification of refiled interim filings is amended by replacing “interim financial statements” with “interim financial report”.*
19. *This Instrument only applies to annual filings and interim filings for periods relating to financial years beginning on or after January 1, 2011.*
20. *Despite section 19, an issuer may apply the amendments set out in this Instrument to annual filings and interim filings for periods relating to a financial year that begins before January 1, 2011 if the immediately preceding financial year ends no earlier than December 21, 2010 and if the issuer is relying on the exemption in section 5.3 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards.*
21. *This Instrument comes into force on January 1, 2011.*

**Amendments to
Companion Policy 52-109CP to National Instrument 52-109 Certification of Disclosure in
Issuers' Annual and Interim Filings**

1. ***Companion Policy 52-109CP to National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings is amended.***
2. ***Part 1 is amended by adding the following after section 1.4:***
 - 1.5 **Accounting terms** – The Instrument uses accounting terms that are defined or used in Canadian GAAP applicable to publicly accountable enterprises. In certain cases, some of those terms are defined differently in securities legislation. In deciding which meaning applies, you should consider that National Instrument 14-101 *Definitions* provides that a term used in the Instrument and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern continuous disclosure; or (b) the context otherwise requires.
 - 1.6 **Acceptable accounting principles other than Canadian GAAP applicable to publicly accountable enterprises** – If an issuer is permitted under NI 52-107 to file financial statements in accordance with acceptable accounting principles other than Canadian GAAP applicable to publicly accountable enterprises, then the issuer may interpret any reference in the Instrument to a term or provision defined or used in Canadian GAAP applicable to publicly accountable enterprises as a reference to the corresponding term or provision in the other acceptable accounting principles.
 - 1.7 **Rate-regulated activities** - If a qualifying entity is relying on the exemption in paragraph 5.4(1)(a) of NI 52-107, then the qualifying entity may interpret any reference in the Instrument to a term or provision defined or used in Canadian GAAP applicable to publicly accountable enterprises as a reference to the corresponding term or provision in Part V of the Handbook..
3. ***Section 4.1 is amended***
 - (a) ***in the title, by replacing “results of operations” with “financial performance”, and***
 - (b) ***by replacing “results of operations” wherever it occurs with “financial performance”.***
4. ***Section 4.2 is amended by replacing “balance sheet” with “statement of financial position”.***

5. *Section 6.10 is amended*

(a) *in subsection (2), by*

- (i) *replacing* “net sales” *with* “net revenue”,
- (ii) *deleting* “on the income statement”,
- (iii) *replacing* “gross sales” *wherever it occurs with* “gross revenue”, *and*
- (iv) *replacing* “sales returns” *with* “returns”,

(b) *in subparagraph (3)(f), by adding* “conditions that will give rise to” *after* “the likelihood (or possibility) of”, *and*

(c) *in subsection (4), by replacing* “revenues” *with* “revenue”.

6. *Subsection 7.9(2) is amended by replacing* “controls for recording sales transactions” *with* “controls for recording revenue”.

7. *Section 13.1 is amended*

(a) *in paragraph (b), by*

- (i) *replacing* “variable interest entity” *with* “special purpose entity”,
and
- (ii) *replacing* “VIE” *with* “SPE”,

(b) *in paragraph (e), by replacing* “entity that is accounted for using the cost method in the issuer’s financial statements (a portfolio investment)” *with* “entity that is not accounted for by consolidation, proportionate consolidation or the equity method (a portfolio investment)”, *and*

(c) *in the last paragraph, by*

- (i) *replacing* “VIE” *with* “SPE”, *and*
- (ii) *replacing* “The terms “consolidated”, “subsidiary”, “VIE”, “proportionately consolidated”, “equity method” and “cost method” have the meaning ascribed to such terms under the issuer’s GAAP.” *with* “The terms “consolidated”, “subsidiary”, “SPE”, “proportionately consolidated”, and “equity method” have the meaning ascribed to such terms under the issuer’s GAAP.”.

8. *Section 13.3 is amended*

- (a) *in subsection (1), by replacing “VIE” wherever it occurs with “SPE”,*
- (b) *in subparagraph (2)(b), by*
 - (i) *replacing “interim financial statements” with “interim financial reports”, and*
 - (ii) *replacing “GAAP” with “accounting principles”,*
- (c) *in subsection (4), by*
 - (i) *replacing “VIE” wherever it occurs with “SPE”,*
 - (ii) *replacing “sales or revenues” with “revenue”,*
 - (iii) *replacing “income or loss before discontinued operations and extraordinary items” with “profit or loss before discontinued operations”,*
 - (iv) *replacing “net income or loss for the period” with “profit or loss for the period”,*
 - (v) *replacing “balance sheet” with “statement of financial position”, and*
 - (vi) *replacing “contingencies” with “contingent liabilities”,*
- (d) *in subsection (5),*
 - (i) *in paragraph (c), by replacing “any required impairment charge related to the investment” with “any impairment loss in the investment”, and*
 - (ii) *in paragraph (d), by replacing “income/loss” with “profit or loss”, and*
- (e) *in subsection (6), by replacing “VIE” with “SPE”.*

9. *Section 14.2 is amended*

- (a) *by replacing “sales or revenues” with “revenue”,*
- (b) *by replacing “income or loss before discontinued operations and extraordinary items” with “profit or loss before discontinued operations”,*
- (c) *by replacing “net income or loss for the period” with “profit or loss for the period”,*

- (d) by replacing “balance sheet” with “statement of financial position”, and*
- (e) by replacing “contingencies” with “contingent liabilities”.*
- 10. Section 17.1 is amended by replacing “acceptable form of GAAP” with “acceptable form of accounting principles”.**
- 11. Part 19 is amended by adding the following after section 19.1:**
 - 19.2 Application of Amendments** – The amendments to the Instrument and this Policy which came into effect on January 1, 2011 only apply to annual filings and interim filings for periods relating to financial years beginning on or after January 1, 2011..
- 12. These amendments only apply to annual filings and interim filings for periods relating to financial years beginning on or after January 1, 2011.**
- 13. Despite section 12, an issuer may apply these amendments to annual filings and interim filings for periods relating to a financial year that begins before January 1, 2011 if the immediately preceding financial year ends no earlier than December 21, 2010 and if the issuer is relying on the exemption in section 5.3 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards.**
- 14. These amendments become effective on January 1, 2011.**