

SECURITIES LAW UPDATE

National Instrument 52-109 Amends the requirements of Financial Disclosure of Reporting Issuers

The Canadian Securities Administrators have recently adopted National Instrument NI 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, which replaces the requirements previously set out in MI 52-109. NI 52-109 applies to all financial periods ending on or after December 15, 2008.

NI 52-109 sets out the disclosure controls and procedures ("DC&P") for all issuers (whether corporate or non-corporate) except investment funds.

Under NI 52-109, the CEOs and CFOs of issuers must certify that they have designed the issuer's internal controls over financial reporting ("ICFR"), being systems or processes which provide reasonable assurance regarding reliability of financial reporting and preparation of financial statements. The CEOs and CFOs must also certify that they have evaluated the effectiveness of the ICFR, and (a) have caused the issuer's management discussion and analysis ("MD&A") to disclose conclusions about the effectiveness of the issuer's ICFR, and (b) have disclosed to auditors and the board of the issuer any fraud involving management or employees of the issuer that have any material role in ICFR of the issuer. While the Instrument requires any "material weakness" in the issuer's ICFR to be disclosed in MD&A, there is no remedial action of material weaknesses currently required.

The design of ICFR of an issuer must employ a control framework, which framework must also be disclosed in the certification. Acceptable control frameworks for use by issuers under NI 52 109 are identified in the companion policy, and include (i) *Risk Management and Governance: Guidance on Control* (COCO Framework) published by the Institute of Chartered Accountants,

(ii) *Internal Control – Integrated Framework (COSO Framework)* published by the Committee of Sponsoring Organizations of the Treadway Commission, and (iii) *Guidance on Internal Control* (Turnbull Guidance) published by the Institute of Chartered Accountants in England and Wales.

The Companion Policy for NI 52-109 provides guidance for the design of effective ICFR by issuers, identification and disclosure of material weaknesses, and certification of revised or restated filings.

Venture issuers are not subject to the full requirements of NI 52-109 in that they are not required to design and disclose ICFR controls. Under NI 52-109, venture issuers must file a basic certificate with their annual and interim filings. This certificate requires the certifying officers to state that (a) they have reviewed the filings and (b) the filings contain no misrepresentations and are a fair representation of the corporation's position. A notice to reader warning is included in the venture certificate setting out the limitations of not having internal DC&P and ICFR as defined in NI 52 109, which may result in additional risks to the quality, reliability and transparency of filings.

While venture issuers are not required to use the full certificate, they may elect to do so.

The forms required by NI 52-109 are attached for your ease of reference in Word format. The national instrument and its companion policy can be found at the Alberta Securities Commission website at:

<http://www.albertasecurities.com/securitiesLaw/Pages/ViewDocument.aspx?ProjectId=10decdec0-ab8b-4381-a5d9-cae81083f816>.

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TSX Venture Exchange News Releases

The TSX Venture Exchange announced that, effective December 15, 2008, the mandatory disclaimer language required by Section 8.6 of Policy 3.3 was revised such that issuers listed on the TSX Venture Exchange must now include the following in a prominent location:

“Neither TSX Venture Exchange *nor its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange)* accepts responsibility for the adequacy or accuracy of this release.” (italics added for emphasis)

Note the change requires the addition of “its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange)” to be added to the warning



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Faralee has a corporate commercial practice with an emphasis on taxation law and securities law including the structuring and implementing of transactions and corporate reorganizations for both private and public companies in a tax-effective manner. Faralee acts as counsel, advising on securities matters for various public companies and has completed several initial public offerings on behalf of clients. She has participated in the completion of transactions which have required innovative solutions to address significant and complex tax and securities issues.



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Gabrielle Kaufmann's practice primarily involves advising clients on issues relating to corporate and commercial law, with an emphasis on securities and real property areas. Her experience includes involvement in transactions, including asset and share purchases, business formations and mergers and acquisitions. She has been involved in extensive due diligence activities, including those relating to domestic and international oil and gas assets. She has been involved with the drafting and interpretation of various types of general commercial contracts as well as those used in real estate development and marketing industry. Gabrielle has experience in securities and has been involved in such transactions as takeovers, qualifying transactions and a variety of private placements.

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