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COMPANION POLICY 52-109CP TO NATIONAL INSTRUMENT 52-109 *CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS*

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PART 1 – GENERAL

- 1.1 **Introduction and purpose** – National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Instrument) sets out disclosure and filing requirements for all reporting issuers, other than investment funds. The objective of these requirements is to improve the quality, reliability and transparency of annual filings, interim filings and other materials that issuers file or submit under securities legislation.

This Companion Policy (the Policy) describes how the provincial and territorial securities regulatory authorities intend to interpret and apply the provisions of the Instrument.

- 1.2 **Application to non-corporate entities** – The Instrument applies to both corporate and non-corporate entities. Where the Instrument or the Policy refers to a particular corporate characteristic, such as the audit committee of the board of directors, the reference should be read to also include any equivalent characteristic of a non-corporate entity.
- 1.3 **Application to venture issuers** – Venture issuers should note that the guidance provided in Parts 5 through 14 of this Policy is intended for issuers filing Form 52-109F1 and Form 52-109F2. Under Parts 4 and 5 of the Instrument venture issuers are not required, but may elect, to use those Forms.
- 1.4 **Definitions** – For the purposes of the Policy, “DC&P” means disclosure controls and procedures (as defined in the Instrument) and “ICFR” means internal control over financial reporting (as defined in the Instrument).

PART 2 – FORM OF CERTIFICATES

- 2.1 **Prescribed wording** – Parts 4 and 5 of the Instrument require the annual and interim certificates to be filed in the exact wording prescribed by the required form (including the form number and form title) without any amendment. Failure to do so will be a breach of the Instrument.

PART 3 – CERTIFYING OFFICERS

- 3.1 **One individual acting as chief executive officer and chief financial officer** – If only one individual is serving as the chief executive officer and chief financial officer of an issuer, or is performing functions similar to those performed by such officers, that individual may either:
- (a) provide two certificates (one in the capacity of the chief executive officer and the other in the capacity of the chief financial officer); or
 - (b) provide one certificate in the capacity of both the chief executive officer and chief financial officer and file this certificate twice, once in the filing

category for certificates of chief executive officers and once in the filing category for certificates of chief financial officers.

3.2 **Individuals performing the functions of a chief executive officer or chief financial officer**

- (1) ***No chief executive officer or chief financial officer*** – If an issuer does not have a chief executive officer or chief financial officer, each individual who performs functions similar to those performed by a chief executive officer or chief financial officer must certify the annual filings and interim filings. If an issuer does not have a chief executive officer or chief financial officer, in order to comply with the Instrument the issuer will need to identify at least one individual who performs functions similar to those performed by a chief executive officer or chief financial officer, as applicable.
- (2) ***Management resides at underlying business entity level or external management company*** – In the case of a reporting issuer where executive management resides at the underlying business entity level or in an external management company such as for an income trust (as described in National Policy 41-201 *Income Trusts and Other Indirect Offerings*), the chief executive officer and chief financial officer of the underlying business entity or the external management company should generally be identified as individuals performing functions for the reporting issuer similar to a chief executive officer and chief financial officer.
- (3) ***Limited partnership*** – In the case of a limited partnership reporting issuer with no chief executive officer and chief financial officer, the chief executive officer and chief financial officer of its general partner should generally be identified as individuals performing functions for the limited partnership reporting issuer similar to a chief executive officer and chief financial officer.

3.3 **“New” certifying officers** – An individual who is the chief executive officer or chief financial officer at the time that an issuer files annual and interim certificates is the individual who must sign a certificate.

Certain forms included in the Instrument require each certifying officer to certify that he or she has designed, or caused to be designed under his or her supervision, the issuer’s DC&P and ICFR. If an issuer’s DC&P and ICFR have been designed prior to a certifying officer assuming office, the certifying officer would:

- (a) review the design of the existing DC&P and ICFR after assuming office;
and
- (b) design any modifications to the existing DC&P and ICFR determined to be necessary following his or her review,

prior to certifying the design of the issuer’s DC&P and ICFR.

PART 4 – FAIR PRESENTATION, FINANCIAL CONDITION AND RELIABILITY OF FINANCIAL REPORTING

4.1 Fair presentation of financial condition, results of operations and cash flows

- (1) ***Fair presentation not limited to issuer's GAAP*** – The forms included in the Instrument require each certifying officer to certify that an issuer's financial statements (including prior period comparative financial information) and other financial information included in the annual or interim filings *fairly present* in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date and for the periods presented.

This certification is not qualified by the phrase "in accordance with generally accepted accounting principles" which is typically included in audit reports accompanying annual financial statements. The forms specifically exclude this qualification to prevent certifying officers from relying entirely on compliance with the issuer's GAAP in this representation, particularly as the issuer's GAAP financial statements might not fully reflect the financial condition of the issuer. Certification is intended to provide assurance that the financial information disclosed in the annual filings or interim filings, viewed in its entirety, provides a materially accurate and complete picture that may be broader than financial reporting under the issuer's GAAP. As a result, certifying officers cannot limit the fair presentation representation by referring to the issuer's GAAP.

Although the concept of fair presentation as used in the annual and interim certificates is not limited to compliance with the issuer's GAAP, this does not permit an issuer to depart from the issuer's GAAP in preparing its financial statements. If a certifying officer believes that the issuer's financial statements do not fairly present the issuer's financial condition, the certifying officer should ensure that the issuer's MD&A includes any necessary additional disclosure.

- (2) ***Quantitative and qualitative factors*** – The concept of fair presentation encompasses a number of quantitative and qualitative factors, including:
 - (a) selection of appropriate accounting policies;
 - (b) proper application of appropriate accounting policies;
 - (c) disclosure of financial information that is informative and reasonably reflects the underlying transactions; and
 - (d) additional disclosure necessary to provide investors with a materially accurate and complete picture of financial condition, results of operations and cash flows.

- 4.2 **Financial condition** – The Instrument does not formally define financial condition. However, the term "financial condition" in the annual certificates and interim

certificates reflects the overall financial health of the issuer and includes the issuer's financial position (as shown on the balance sheet) and other factors that may affect the issuer's liquidity, capital resources and solvency.

- 4.3 **Reliability of financial reporting** – The definition of ICFR refers to the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP. In order to have reliable financial reporting and financial statements to be prepared in accordance with the issuer's GAAP, the amounts and disclosures in the financial statements must not contain any material misstatement.

PART 5 – CONTROL FRAMEWORKS FOR ICFR

- 5.1 **Requirement to use a control framework** – Section 3.4 of the Instrument requires an issuer to use a control framework in order to design the issuer's ICFR. The framework used should be a suitable control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment.

Examples of suitable frameworks that an issuer could use to design ICFR are:

- (a) the *Risk Management and Governance: Guidance on Control* (COCO Framework), formerly known as Guidance of the Criteria of Control Board, published by The Canadian Institute of Chartered Accountants;
- (b) the *Internal Control – Integrated Framework* (COSO Framework) published by The Committee of Sponsoring Organizations of the Treadway Commission (COSO); and
- (c) the *Guidance on Internal Control* (Turnbull Guidance) published by The Institute of Chartered Accountants in England and Wales.

A smaller issuer can also refer to *Internal Control over Financial Reporting – Guidance for Smaller Public Companies* published by COSO, which provides guidance to smaller public companies on the implementation of the COSO Framework.

In addition, *IT Control Objectives for Sarbanes-Oxley* published by the IT Governance Institute, might provide useful guidance for the design and evaluation of information technology controls that form part of an issuer's ICFR.

- 5.2 **Scope of control frameworks** – The control frameworks referred to in section 5.1 include in their definition of "internal control" three general categories: effectiveness and efficiency of operations, reliability of financial reporting and compliance with applicable laws and regulations. ICFR is a subset of internal controls relating to financial reporting. ICFR does not encompass the elements of these control frameworks that relate to effectiveness and efficiency of an issuer's operations or an issuer's compliance with applicable laws and regulations,

except for compliance with the applicable laws and regulations directly related to the preparation of financial statements.

PART 6 – DESIGN OF DC&P AND ICFR

- 6.1 **General** – Most sections in this Part apply to the design of both DC&P (DC&P design) and ICFR (ICFR design); however, some sections provide specific guidance relating to DC&P design or ICFR design. The term “design” in this context generally includes both developing and implementing the controls, policies and procedures that comprise DC&P and ICFR. This Policy often refers to such controls, policies and procedures as the “components” of DC&P and ICFR.

A control, policy or procedure is implemented when it has been placed in operation. An evaluation of effectiveness does not need to be performed to assess whether the control, policy or procedure is operating as intended in order for it to be placed in operation.

- 6.2 **Overlap between DC&P and ICFR** – There is a substantial overlap between the definitions of DC&P and ICFR. However, some elements of DC&P are not subsumed within the definition of ICFR and some elements of ICFR are not subsumed within the definition of DC&P. For example, an issuer’s DC&P should include those elements of ICFR that provide reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in accordance with the issuer’s GAAP. However, the issuer’s DC&P might not include certain elements of ICFR, such as those pertaining to the safeguarding of assets.

- 6.3 **Reasonable assurance** – The definition of DC&P includes reference to reasonable assurance that information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation. The definition of ICFR includes the phrase “reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer’s GAAP”. In this Part the term “reasonable assurance” refers to one or both of the above uses of this term.

Reasonable assurance is a high level of assurance, but does not represent absolute assurance. DC&P and ICFR cannot provide absolute assurance due to their inherent limitations. Each involves diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human error. As a result of these limitations, DC&P and ICFR cannot prevent or detect all errors or intentional misstatements resulting from fraudulent activities.

The terms “reasonable”, “reasonably” and “reasonableness” in the context of the Instrument do not imply a single conclusion or methodology, but encompass

a range of potential conduct, conclusions or methodologies upon which certifying officers may base their decisions.

6.4 **Judgment** – The Instrument does not prescribe specific components of DC&P or ICFR or their degree of complexity. Certifying officers should design the components and complexity of DC&P and ICFR using their judgment, acting reasonably, giving consideration to various factors particular to an issuer, including its size, nature of business and complexity of operations.

6.5 **Delegation permitted in certain cases** – Section 3.1 of the Instrument requires a non-venture issuer to establish and maintain DC&P and ICFR. Employees or third parties, supervised by the certifying officers, may conduct the design of the issuer's DC&P and ICFR. Such employees should individually and collectively have the necessary knowledge, skills, information and authority to design the DC&P and ICFR for which they have been assigned responsibilities. Nevertheless, certifying officers of the issuer must retain overall responsibility for the design and resulting MD&A disclosure concerning the issuer's DC&P and ICFR.

6.6 **Risk considerations for designing DC&P and ICFR**

(1) ***Approaches to consider for design*** – The Instrument does not prescribe the approach certifying officers should use to design the issuer's DC&P or ICFR. However, we believe that a top-down, risk-based approach is an efficient and cost-effective approach that certifying officers should consider. This approach allows certifying officers to avoid unnecessary time and effort designing components of DC&P and ICFR that are not required to obtain reasonable assurance. Alternatively, certifying officers might use some other approach to design, depending on the issuer's size, nature of business and complexity of operations.

(2) ***Top-down, risk-based approach*** – Under a top-down, risk-based approach to designing DC&P and ICFR certifying officers first identify and assess risks faced by the issuer in order to determine the scope and necessary complexity of the issuer's DC&P or ICFR. A top-down, risk-based approach helps certifying officers to focus their resources on the areas of greatest risk and avoid expending unnecessary resources on areas with little or no risk.

Under a top-down, risk-based approach, certifying officers initially consider risks without considering any existing controls of the issuer. Using this approach to design DC&P, the certifying officers identify the risks that could, individually or in combination with others, reasonably result in a material misstatement in its annual filings, interim filings or other reports filed or submitted by it under securities legislation. Using this approach to design ICFR, the certifying officers identify those risks that could, individually or in combination with others, reasonably result in a material misstatement of the financial statements (financial reporting risks). A material misstatement includes misstatements due to error, fraud or omission in disclosure.

Identifying risks involves considering the size and nature of the issuer's business and the structure and complexity of business operations. If an issuer has multiple locations or business units, certifying officers initially identify the risks that could reasonably result in a material misstatement and then consider the significance of these risks at individual locations or business units. If the officers identify a risk that could reasonably result in a material misstatement, but the risk is either adequately addressed by controls, policies or procedures that operate centrally or is not present at an individual location or business unit, then certifying officers do not need to focus their resources at that location or business unit to address the risk.

For the design of DC&P, the certifying officers assess risks for various types and methods of disclosure. For the design of ICFR, identifying risks involves identifying significant accounts and disclosures and their relevant assertions. After identifying risks that could reasonably result in a material misstatement, the certifying officers then ensure that the DC&P and ICFR designs include controls, policies and procedures to address each of the identified risks.

- (3) ***Fraud risk*** – When identifying risks, certifying officers should explicitly consider the vulnerability of the entity to fraudulent activity (e.g., fraudulent financial reporting and misappropriation of assets). Certifying officers should consider how incentives (e.g., compensation programs) and pressures (e.g., meeting analysts' expectations) might affect risks, and what areas of the business provide opportunity for an individual to commit fraud. For the purposes of this Instrument, fraud would generally include an intentional act by one or more individuals among management, other employees, those charged with governance or third parties, involving the use of deception to obtain an unjust or illegal advantage. Although fraud is a broad legal concept, for the purposes of this Instrument, the certifying officers should be concerned with fraud that could cause a material misstatement in the issuer's annual filings, interim filings or other reports filed or submitted under securities legislation.
- (4) ***Designing controls, policies and procedures*** – If the certifying officers choose to use a top-down, risk-based approach, they design specific controls, policies and procedures that, in combination with an issuer's control environment, appropriately address the risks discussed in subsections (2) and (3).

If certifying officers choose to use an approach other than a top-down, risk-based approach, they should still consider whether the combination of the components of DC&P and ICFR that they have designed are a sufficient basis for the representations about reasonable assurance required in paragraph 5 of the certificates.

6.7 Control environment

- (1) ***Importance of control environment*** – An issuer's control environment is the foundation upon which all other components of DC&P and ICFR are based and influences the tone of an organization. An effective control environment

contributes to the reliability of all other controls, processes and procedures by creating an atmosphere where errors or fraud are either less likely to occur, or if they occur, more likely to be detected. An effective control environment also supports the flow of information within the issuer, thus promoting compliance with an issuer's disclosure policies.

An effective control environment alone will not provide reasonable assurance that any of the risks identified will be addressed and managed. An ineffective control environment, however, can undermine an issuer's controls, policies and procedures designed to address specific risks.

- (2) ***Elements of a control environment*** – A key element of an issuer's control environment is the attitude towards controls demonstrated by the board of directors, audit committee and senior management through their direction and actions in the organization. An appropriate tone at the top can help to develop a culture of integrity and accountability at all levels of an organization which support other components of DC&P and ICFR. The tone at the top should be reinforced on an ongoing basis by those accountable for the organization's DC&P and ICFR.

In addition to an appropriate tone at the top, certifying officers should consider the following elements of an issuer's control environment:

- (a) *organizational structure of the issuer* – a structure which relies on established and documented lines of authority and responsibility may be appropriate for some issuers, whereas a structure which allows employees to communicate informally with each other at all levels may be more appropriate for some issuers;
- (b) *management's philosophy and operating style* – a philosophy and style that emphasises managing risks with appropriate diligence and demonstrates receptiveness to negative as well as positive information will foster a stronger control environment;
- (c) *integrity, ethics, and competence of personnel* – controls, policies and procedures are more likely to be effective if they are carried out by ethical, competent and adequately supervised employees;
- (d) *external influences that affect the issuer's operations and risk management practices* – these could include global business practices, regulatory supervision, insurance coverage and legislative requirements; and
- (e) *human resources policies and procedures* – an issuer's hiring, training, supervision, compensation, termination and evaluation practices can affect the quality of the issuer's workforce and its employees' attitudes towards controls.

- (3) **Sources of information about the control environment** – The following documentation might provide useful information about an issuer’s control environment:
- (a) written codes of conduct or ethics policies;
 - (b) procedure manuals, operating instructions, job descriptions and training materials;
 - (c) evidence that employees have confirmed their knowledge and understanding of items (a) and (b);
 - (d) organizational charts that identify approval structures and the flow of information; and
 - (e) written correspondence provided by an issuer’s external auditor regarding the issuer’s control environment.

6.8 **Controls, policies and procedures to include in DC&P design** – In order for DC&P to provide reasonable assurance that information required by securities legislation to be disclosed by an issuer is recorded, processed, summarized and reported within the required time periods, DC&P should generally include the following components:

- (a) written communication to an issuer’s employees and directors of the issuer’s disclosure obligations, including the purpose of disclosure and DC&P and deadlines for specific filings and other disclosure;
- (b) assignment of roles, responsibilities and authorizations relating to disclosure;
- (c) guidance on how authorized individuals should assess and document the materiality of information or events for disclosure purposes; and
- (d) a policy on how the issuer will receive, document, evaluate and respond to complaints or concerns received from internal or external sources regarding financial reporting or other disclosure issues.

An issuer might choose to include these components in a document called a disclosure policy. Part 6 of National Policy 51-201 *Disclosure Standards* encourages issuers to establish a written disclosure policy and discusses in more detail some of these components. For issuers that are subject to National Instrument 52-110 *Audit Committees* (NI 52-110), compliance with the instrument will also form part of the issuer’s DC&P design.

6.9 **Controls, policies and procedures to include in ICFR design** – In order for ICFR to provide reasonable assurance regarding the reliability of financial reporting and

the preparation of financial statements for external purposes in accordance with the issuer's GAAP, ICFR should generally include the following components:

- (a) controls for initiating, authorizing, recording and processing transactions relating to significant accounts and disclosures;
- (b) controls for initiating, authorizing, recording and processing non-routine transactions and journal entries, including those requiring judgments and estimates;
- (c) procedures for selecting and applying appropriate accounting policies that are in accordance with the issuer's GAAP;
- (d) controls to prevent and detect fraud;
- (e) controls on which other controls are dependent, such as information technology general controls; and
- (f) controls over the period-end financial reporting process, including controls over entering transaction totals in the general ledger, controls over initiating, authorizing, recording and processing journal entries in the general ledger and controls over recording recurring and non-recurring adjustments to the financial statements (e.g., consolidating adjustments and reclassifications).

6.10 Identifying significant accounts and disclosures and their relevant assertions

- (1) ***Significant accounts and disclosures and their relevant assertions*** – As described in subsection 6.6(2) of the Policy, a top-down, risk-based approach to designing ICFR involves identifying significant accounts and disclosures and the relevant assertions that affect each significant account and disclosure. This method assists certifying officers in identifying the risks that could reasonably result in a material misstatement in the issuer's financial statements and not all possible risks the issuer faces.
- (2) ***Identifying significant accounts and disclosures*** – A significant account could be an individual line item on the issuer's financial statements, or part of a line item. For example, an issuer might present "net sales" on the income statement, which represents a combination of "gross sales" and "sales returns", but might identify "gross sales" as a significant account. By identifying part of a line item as a significant account, certifying officers might be able to focus on balances that are subject to specific risks that can be separately identified.

A significant disclosure relating to the design of ICFR could be any form of disclosure included in the issuer's financial statements, or notes to the financial statements, that is presented in accordance with the issuer's GAAP. The identification of significant disclosures for the design of ICFR does not extend to

the preparation of the issuer's MD&A or other similar financial information presented in a continuous disclosure filing other than financial statements.

- (3) ***Considerations for identifying significant accounts and disclosures*** – A minimum threshold expressed as a percentage or a dollar amount could provide a reasonable starting point for evaluating the significance of an account or disclosure. However, certifying officers should use their judgment, taking into account qualitative factors, to assess accounts or disclosures for significance above or below that threshold. The following factors will be relevant when determining whether an account or disclosure is significant:
- (a) the size, nature and composition of the account or disclosure;
 - (b) the risk of overstatement or understatement of the account or disclosure;
 - (c) the susceptibility to misstatement due to errors or fraud;
 - (d) the volume of activity, complexity and homogeneity of the individual transactions processed through the account or reflected in the disclosure;
 - (e) the accounting and reporting complexities associated with the account or disclosure;
 - (f) the likelihood (or possibility) of significant contingent liabilities in the account or disclosure;
 - (g) the existence of related party transactions; and
 - (h) the impact of the account on existing debt covenants.
- (4) ***Assertions*** – Using a top-down, risk-based approach, the certifying officers identify those assertions for each significant account and disclosure that presents a risk that could reasonably result in a material misstatement in that significant account or disclosure. For each significant account and disclosure the following assertions could be relevant:
- (a) *existence or occurrence* – whether assets or liabilities exist and whether transactions and events that have been recorded have occurred and pertain to the issuer;
 - (b) *completeness* – whether all assets, liabilities and transactions that should have been recorded have been recorded;
 - (c) *valuation or allocation* – whether assets, liabilities, equity, revenues and expenses have been included in the financial statements at appropriate amounts and any resulting valuation or allocation adjustments are appropriately recorded;

- (d) *rights and obligations* – whether assets are legally owned by the issuer and liabilities are the obligations of the issuer; and
- (e) *presentation and disclosure* – whether particular components of the financial statements are appropriately presented and described and disclosures are clearly expressed.

The certifying officers might consider assertions that differ from those listed above if the certifying officers determine that they have identified the pertinent risks in each significant account and disclosure that could reasonably result in a material misstatement.

- (5) ***Identifying relevant assertions for each significant account and disclosure*** – To identify relevant assertions for each significant account and disclosure, the certifying officers determine the source of potential misstatements for each significant account or disclosure. When determining whether a particular assertion is relevant, the certifying officers would consider the nature of the assertion, the volume of transactions or data related to the assertion and the complexity of the underlying systems supporting the assertion. If an assertion does not present a risk that could reasonably result in a material misstatement in a significant account, it is likely not a relevant assertion.

For example, valuation might not be relevant to the cash account unless currency translation is involved; however, existence and completeness are always relevant. Similarly, valuation might not be relevant to the gross amount of the accounts receivable balance, but is relevant to the related allowance accounts.

- (6) ***Identifying controls, policies and procedures for relevant assertions*** – Using a top-down, risk-based approach, the certifying officers design components of ICFR to address each relevant assertion. The certifying officers do not need to design all possible components of ICFR to address each relevant assertion, but should identify and design an appropriate combination of controls, policies and procedures to address all relevant assertions.

The certifying officers would consider the efficiency of evaluating an issuer's ICFR design when designing an appropriate combination of ICFR components. If more than one potential control, policy or procedure could address a relevant assertion, certifying officers could select the control, policy or procedure that would be easiest to evaluate (e.g., automated control vs. manual control). Similarly, if a control, policy or procedure can be designed to address more than one relevant assertion, then certifying officers could choose it rather than a control, policy or procedure that addresses only one relevant assertion. For example, the certifying officers would consider whether any entity-wide controls exist that adequately address more than one relevant assertion or improve the efficiency of evaluating operating effectiveness because such entity-wide controls negate the need to design and evaluate other components of ICFR at multiple locations or business units.

When designing a combination of controls, policies and procedures, the certifying officers should also consider how the components in subsection 6.7(2) of the Policy interact with each other. For example, the certifying officers should consider how information technology general controls interact with controls, policies and procedures over initiating, authorizing, recording, processing and reporting transactions.

6.11 **ICFR design challenges** – Key features of ICFR and related design challenges are described below.

- (a) *Segregation of duties* – The term “segregation of duties” refers to one or more employees or procedures acting as a check and balance on the activities of another so that no one individual has control over all steps of processing a transaction or other activity. Assigning different people responsibility for authorizing transactions, recording transactions, reconciling information and maintaining custody of assets reduces the opportunity for any one employee to conceal errors or perpetrate fraud in the normal course of his or her duties. Segregating duties also increases the chance of discovering inadvertent errors early. If an issuer has few employees, a single employee may be authorized to initiate, approve and effect payment for transactions and it might be difficult to re-assign responsibilities to segregate those duties appropriately.
- (b) *Board expertise* – An effective board objectively reviews management’s judgments and is actively engaged in shaping and monitoring the issuer’s control environment. An issuer might find it challenging to attract directors with the appropriate financial reporting expertise, objectivity, time, ability and experience.
- (c) *Controls over management override* – An issuer might be dominated by a founder or other strong leader who exercises a great deal of discretion and provides personal direction to other employees. Although this type of individual can help an issuer meet its growth and other objectives, such concentration of knowledge and authority could allow the individual an opportunity to override established policies or procedures or otherwise reduce the likelihood of an effective control environment.
- (d) *Qualified personnel* – Sufficient accounting and financial reporting expertise is necessary to ensure reliable financial reporting and the preparation of financial statements in accordance with the issuer’s GAAP. Some issuers might be unable to obtain qualified accounting personnel or outsourced expert advice on a cost-effective basis. Even if an issuer obtains outsourced expert advice, the issuer might not have the internal expertise to understand or assess the quality of the outsourced advice. If an issuer consults on technically complex accounting matters, this consultation alone is not indicative of a deficiency relating to the design of ICFR.

An issuer's external auditor might perform certain services (e.g., income tax, valuation or internal audit services), where permitted by auditor independence rules, that provide skills which would otherwise be addressed by hiring qualified personnel or outsourcing expert advice from a party other than the external auditor. This type of arrangement should not be considered to be a component of the issuer's ICFR design.

If an issuer identifies one or more of these ICFR design challenges, additional involvement by the issuer's audit committee or board of directors could be a suitable compensating control or alternatively could mitigate risks that exist as a result of being unable to remediate a material weakness relating to the design challenge. The control framework the certifying officers use to design ICFR could include further information on these design challenges. See section 9.1 of the Policy for a discussion of compensating controls versus mitigating procedures.

- 6.12 **Corporate governance for internal controls** – The board of directors of an issuer is encouraged to consider adopting a written mandate to explicitly acknowledge responsibility for the stewardship of the issuer, including responsibility for internal control and management information systems.
- 6.13 **Maintaining design** – Following their initial development and implementation of DC&P and ICFR, and prior to certifying design each quarter, certifying officers should consider:
- (a) whether the issuer faces any new risks and whether each design continues to provide a sufficient basis for the representations about reasonable assurance required in paragraph 5 of the certificates;
 - (b) the scope and quality of ongoing monitoring of DC&P and ICFR, including the extent, nature and frequency of reporting the results from the ongoing monitoring of DC&P and ICFR to the appropriate levels of management;
 - (c) the work of the issuer's internal audit function;
 - (d) communication, if any, with the issuer's external auditors; and
 - (e) the incidence of weaknesses in DC&P or material weaknesses in ICFR that have been identified at any time during the financial year.
- 6.14 **Efficiency and effectiveness** – In addition to the considerations set out in this Part that will assist certifying officers in appropriately designing DC&P and ICFR, other steps that certifying officers could take to enhance the efficiency and effectiveness of the designs are:
- (a) embedding DC&P and ICFR in the issuer's business processes;

- (b) implementing consistent policies and procedures and issuer-wide programs at all locations and business units;
- (c) including processes to ensure that DC&P and ICFR are modified to adapt to any changes in business environment; and
- (d) including procedures for reporting immediately to the appropriate levels of management any identified issues with DC&P and ICFR together with details of any action being undertaken or proposed to be undertaken to address such issues.

6.15 Documenting design

- (1) ***Extent and form of documentation for design*** – The certifying officers should generally maintain documentary evidence sufficient to provide reasonable support for their certification of design of DC&P and ICFR. The extent of documentation supporting the certifying officers’ design of DC&P and ICFR for each interim and annual certificate will vary depending on the certifying officers’ assessment of risk, as discussed in section 6.6 of the Policy, as well as the size and complexity of the issuer’s DC&P and ICFR. The documentation might take many forms (e.g., paper documents, electronic, or other media) and could be presented in a number of different ways (e.g., policy manuals, process models, flowcharts, job descriptions, documents, internal memoranda, forms, etc). Certifying officers should use their judgment, acting reasonably, to determine the extent and form of documentation.
- (2) ***Documentation of the control environment*** - To provide reasonable support for the certifying officers’ design of DC&P and ICFR, the certifying officers should generally document the key elements of an issuer’s control environment, including those described in subsection 6.7(2) of the Policy.
- (3) ***Documentation for design of DC&P*** – To provide reasonable support for the certifying officers’ design of DC&P, the certifying officers should generally document:
 - (a) the processes and procedures that ensure information is brought to the attention of management, including the certifying officers, in a timely manner to enable them to determine if disclosure is required; and
 - (b) the items listed in section 6.8 of the Policy.
- (4) ***Documentation for design of ICFR*** – To provide reasonable support for the certifying officers’ design of ICFR, the certifying officers should generally document:
 - (a) the issuer’s ongoing risk-assessment process and those risks which need to be addressed in order to conclude that the certifying officers have designed ICFR;

- (b) how significant transactions, and significant classes of transactions, are initiated, authorized, recorded and processed;
- (c) the flow of transactions to identify when and how material misstatements or omissions could occur due to error or fraud;
- (d) a description of the controls over relevant assertions related to all significant accounts and disclosures in the financial statements;
- (e) a description of the controls designed to prevent or detect fraud, including who performs the controls and, if applicable, how duties are segregated;
- (f) a description of the controls over period-end financial reporting processes;
- (g) a description of the controls over safeguarding of assets; and
- (h) the certifying officers' conclusions on whether a material weakness relating to the design of ICFR exists at the end of the period.

PART 7 – EVALUATING OPERATING EFFECTIVENESS OF DC&P AND ICFR

7.1 **General** – Most sections in this Part apply to both an evaluation of the operating effectiveness of DC&P (DC&P evaluation) and an evaluation of the operating effectiveness of ICFR (ICFR evaluation); however, some sections apply specifically to an ICFR evaluation.

7.2 **Scope of evaluation of operating effectiveness** – The purpose of the DC&P and ICFR evaluations is to determine whether the issuer's DC&P and ICFR designs are operating as intended. To support a conclusion that DC&P or ICFR is effective, certifying officers should obtain sufficient appropriate evidence at the date of their assessment that the components of DC&P and ICFR that they designed, or caused to be designed, are operating as intended. Regardless of the approach the certifying officers use to design DC&P or ICFR, they could use a top-down, risk-based approach to evaluate DC&P or ICFR in order to limit the evaluation to those controls and procedures that are necessary to address the risks that might reasonably result in a material misstatement.

Form 52-109F1 requires disclosure of each material weakness relating to the operation of the issuer's ICFR. Therefore, the scope of the ICFR evaluation must be sufficient to identify any such material weaknesses.

7.3 **Judgment** – The Instrument does not prescribe how the certifying officers should conduct their DC&P and ICFR evaluations. Certifying officers should exercise their judgment, acting reasonably, and should apply their knowledge and experience in determining the nature and extent of the evaluation.

- 7.4 **Knowledge and supervision** – Form 52-109F1 requires the certifying officers to certify that they have evaluated, or supervised the evaluation of, the issuer's DC&P and ICFR. Employees or third parties, supervised by the certifying officers, may conduct the evaluation of the issuer's DC&P and ICFR. Such employees should individually and collectively have the necessary knowledge, skills, information and authority to evaluate the DC&P and ICFR for which they have been assigned responsibilities. Nevertheless, certifying officers must retain overall responsibility for the evaluation and resulting MD&A disclosure concerning the issuer's DC&P and ICFR.

Certifying officers should ensure that the evaluation is performed with the appropriate level of objectivity. Generally, the individuals who evaluate the operating effectiveness of specific controls or procedures should not be the same individuals who perform the specific controls or procedures. See section 7.10 of the Policy for guidance on self-assessments.

- 7.5 **Use of external auditor or other third party** – The certifying officers might decide to use a third party to assist with their DC&P or ICFR evaluations. In these circumstances, the certifying officers should assure themselves that the individuals performing the agreed-upon evaluation procedures have the appropriate knowledge and ability to complete the procedures. The certifying officers should be actively involved in determining the procedures to be performed, the findings to be communicated and the manner of communication.

If an issuer chooses to engage its external auditor to assist the certifying officers in the DC&P and ICFR evaluations, the certifying officers should determine the procedures to be performed, the findings to be communicated and the manner of communication. The certifying officers should not rely on ICFR-related procedures performed and findings reported by the issuer's external auditor solely as part of the financial statement audit. However, if the external auditor is separately engaged to perform specified ICFR-related procedures, the certifying officers might use the results of those procedures as part of their evaluation even if the auditor uses those results as part of the financial statement audit.

If the issuer refers, in a continuous disclosure document, to an audit report relating to the issuer's ICFR, prepared by its external auditor, then it would be appropriate for the issuer to file a copy of the internal control audit report with its financial statements.

- 7.6 **Evaluation tools** – Certifying officers can use a variety of tools to perform their DC&P and ICFR evaluations. These tools include:

- (a) certifying officers' daily interaction with the control systems;
- (b) walkthroughs;

- (c) interviews of individuals who are involved with the relevant controls;
- (d) observation of procedures and processes, including adherence to corporate policies;
- (e) reperformance; and
- (f) review of documentation that provides evidence that controls, policies or procedures have been performed.

Certifying officers should use a combination of tools for the DC&P and ICFR evaluations. Although inquiry and observation alone might provide an adequate basis for an evaluation of an individual control with a lower risk, they will not provide an adequate basis for the evaluation as a whole.

The nature, timing and extent of evaluation procedures necessary for certifying officers to obtain reasonable support for the effective operation of a component of DC&P or ICFR depends on the level of risk the component of DC&P or ICFR is designed to address. The level of risk for a component of DC&P or ICFR could change each year to reflect management's experience with a control's operation during the year and in prior evaluations.

7.7 Certifying officers' daily interaction – The certifying officers' daily interaction with their control systems provides them with opportunities to evaluate the operating effectiveness of the issuer's DC&P and ICFR during a financial year. This daily interaction could provide an adequate basis for the certifying officers' evaluation of DC&P or ICFR if the operation of controls, policies and procedures is centralized and involves a limited number of personnel. Reasonable support of such daily interaction would include memoranda, e-mails and instructions or directions from the certifying officers to other employees.

7.8 Walkthroughs – A walkthrough is a process of tracing a transaction from origination, through the issuer's information systems, to the issuer's financial reports. A walkthrough can assist certifying officers to confirm that:

- (a) they understand the components of ICFR, including those components relating to the prevention or detection of fraud;
- (b) they understand how transactions are processed;
- (c) they have identified all points in the process at which misstatements related to each relevant financial statement assertion could occur; and
- (d) the components of ICFR have been implemented.

7.9 Reperformance

- (1) **General** – Reperformance is the independent execution of certain components of the issuer’s DC&P or ICFR that were performed previously. Reperformance could include inspecting records whether internal (e.g., a purchase order prepared by the issuer’s purchasing department) or external (e.g., a sales invoice prepared by a vendor), in paper form, electronic form or other media. The reliability of records varies depending on their nature, source and the effectiveness of controls over their production. An example of reperformance is inspecting whether the quantity and price information in a sales invoice agree with the quantity and price information in a purchase order, and confirming that an employee previously performed this procedure.
 - (2) **Extent of reperformance** – The extent of reperformance of a component of DC&P or ICFR is a matter of judgment for the certifying officers, acting reasonably. Components that are performed more frequently (e.g., controls for recording sales transactions) will generally require more testing than components that are performed less frequently (e.g., controls for monthly bank reconciliations). Components that are manually operated will likely require more rigorous testing than automated controls. Certifying officers could determine that they do not have to test every individual step comprising a control in order to conclude that the overall control is operating effectively.
 - (3) **Reperformance for each evaluation** – Certifying officers might find it appropriate to adjust the nature, extent and timing of reperformance for each evaluation. For example, in “year 1”, certifying officers might test information technology controls extensively, while in “year 2”, they could focus on monitoring controls that identify changes made to the information technology controls. Certifying officers should consider the specific risks the controls address when making these types of adjustments. It might also be appropriate to test controls at different interim periods, increase or reduce the number and types of tests performed or change the combination of procedures used in order to introduce unpredictability into the testing and respond to changes in circumstances.
- 7.10 **Self-assessments** – A self-assessment is a walk-through or reperformance of a control, or another procedure to analyze the operation of controls, performed by an individual who might or might not be involved in operating the control. A self-assessment could be done by personnel who operate the control or members of management who are not responsible for operating the control. The evidence of operating effectiveness from self-assessment activities depends on the personnel involved and how the activities are conducted.

A self-assessment performed by personnel who operate the control would normally be supplemented with direct testing by individuals who are independent from the operation of the control being tested and who have an equal or higher level of authority. In these situations, direct testing of controls would be needed to corroborate evidence from the self-assessment since the self-assessment alone would not have a reasonable level of objectivity.

In some situations a certifying officer might perform a self-assessment and the certifying officer is involved in operating the control. Even if no other members of management independent from the operation of the control with equal or higher level of authority can perform direct testing, the certifying officer's self-assessment alone would normally provide sufficient evidence since the certifying officer signs the annual certificate. In situations where there are two certifying officers and one is performing a self-assessment, it would be appropriate for the other certifying officer to perform direct testing of the control.

- 7.11 **Timing of evaluation** – Form 52-109F1 requires certifying officers to certify that they have evaluated the effectiveness of the issuer's DC&P and ICFR, as at the financial year end. Certifying officers might choose to schedule testing of some DC&P and ICFR components throughout the issuer's financial year. However, since the evaluation is at the financial year end, the certifying officers will have to perform sufficient procedures to evaluate the operation of the components at year end.

Since some year-end procedures occur subsequent to the year end (e.g., financial reporting close process), some testing of DC&P and ICFR components could also occur subsequent to year-end. The timing of evaluation activities will depend on the risk associated with the components being evaluated, the tools used to evaluate the components, and whether the components being evaluated are performed prior to, or subsequent to, year end.

- 7.12 **Extent of examination for each annual evaluation** – For each annual evaluation the certifying officers must evaluate those components of ICFR that, in combination, provide reasonable assurance regarding the reliability of financial reporting. For example, the certifying officers cannot decide to exclude components of ICFR for a particular process from the scope of their evaluation simply based on prior-year evaluation results. To have a reasonable basis for their assessment of the operating effectiveness of ICFR, the certifying officers must have sufficient evidence supporting operating effectiveness of all relevant components of ICFR as of the date of their assessment.

7.13 **Documenting evaluations**

- (1) ***Extent of documentation for evaluation*** – The certifying officers should generally maintain documentary evidence sufficient to provide reasonable support for their certification of a DC&P and ICFR evaluation. The extent of documentation used to support the certifying officers' evaluations of DC&P and ICFR for each annual certificate will vary depending on the size and complexity of the issuer's DC&P and ICFR. The extent of documentation is a matter of judgment for the certifying officers, acting reasonably.
- (2) ***Documentation for evaluations of DC&P and ICFR*** – To provide reasonable support for a DC&P or ICFR evaluation the certifying officers should generally document:

- (a) a description of the process the certifying officers used to evaluate DC&P or ICFR;
- (b) how the certifying officers determined the extent of testing of the components of DC&P or ICFR;
- (c) a description of, and results from applying, the evaluation tools discussed in sections 7.6 and 7.7 of the Policy or other evaluation tools; and
- (d) the certifying officers' conclusions about:
 - (i) the operating effectiveness of DC&P or ICFR, as applicable; and
 - (ii) whether a material weakness relating to the operation of ICFR existed as at the end of the period.

PART 8 – USE OF A SERVICE ORGANIZATION OR SPECIALIST FOR AN ISSUER'S ICFR

- 8.1 **Use of a service organization** – An issuer might outsource a significant process to a service organization. Examples include payroll, production accounting for oil and gas companies, or other bookkeeping services. Based on their assessment of risks as discussed in subsection 6.6(2) of the Policy, the certifying officers might identify the need for controls, policies and procedures relating to an outsourced process. In considering the design and evaluation of such controls, policies and procedures, the officers should consider whether:
- (a) the service organization can provide a service auditor's report on the design and operation of controls placed in operation and tests of the operating effectiveness of controls at the service organization;
 - (b) the certifying officers have access to the controls in place at the service organization to evaluate the design and effectiveness of such controls; or
 - (c) the issuer has controls that might eliminate the need for the certifying officers to evaluate the design and effectiveness of the service organization's controls relating to the outsourced process.
- 8.2 **Service auditor's reporting on controls at a service organization** – If a service auditor's report on controls placed in operation and tests of the operating effectiveness of controls is available, the certifying officers should evaluate whether the report provides them sufficient evidence to assess the design and effectiveness of controls relating to the outsourced process. The following factors will be relevant in evaluating whether the report provides sufficient evidence:

- (a) the time period covered by the tests of controls and its relation to the as-of date of the certifying officers' assessment of the issuer's ICFR;
- (b) the scope of the examination and applications covered and the controls tested; and
- (c) the results of the tests of controls and the service auditor's opinion on the operating effectiveness of controls.

8.3 Elapsed time between date of a service auditor's report and date of certificate –

If a significant period of time has elapsed between the time period covered by the tests of controls in a service auditor's report and the date of the certifying officer's assessment of ICFR, the certifying officers should consider whether the service organization's controls have changed subsequent to the period covered by the service auditor's report. The service organization might communicate certain changes such as changes in its personnel or changes in reports or other data that it provides. Changes might also be indicated by errors identified in the service organization's processing. If the certifying officers identify changes in the service organization's controls, they should evaluate the effect of these changes and consider the need for additional procedures. These might include obtaining further information from the service organization, performing procedures at the service organization, or requesting that a service auditor perform specified procedures.

8.4 Indicators of a material weakness relating to use of a service organization –

There could be circumstances in which a service auditor's report is not available, the certifying officers do not have access to controls in place at the service organization and the certifying officers have not identified any compensating controls performed by the issuer. In these circumstances the inability to assess the service organization's controls, policies and procedures might represent a material weakness since the certifying officers might not have sufficient evidence to conclude whether the components of the issuer's ICFR at the service organization have been designed or are operating as intended.

8.5 Use of a specialist – A specialist is a person or firm possessing expertise in specific subject matter. A reporting issuer might arrange for a specialist to provide certain specialized expertise such as actuarial services, taxation services or valuation services. Based on their assessment of risks as discussed in subsection 6.6(2) of the Policy, the certifying officers might identify the need for the services provided by a specialist. The certifying officers should ensure the issuer has controls, policies or procedures in place relating to the source data and the reasonableness of the assumptions used to support the specialist's findings. The certifying officers should also consider whether the specialist has the necessary competence, expertise and integrity.

PART 9 – MATERIAL WEAKNESS

9.1 Identifying a deficiency in ICFR

- (1) ***Deficiency relating to the design of ICFR*** – A deficiency relating to the design of ICFR exists when:
 - (a) necessary components of ICFR are missing from the design;
 - (b) an existing component of ICFR is designed so that, even if the component operates as designed, the financial reporting risks would not be addressed; or
 - (c) a component of ICFR has not been implemented and, as a result, the financial reporting risks have not been addressed.

Subsection 6.6(2) of the Policy provides guidance on financial reporting risks.

- (2) ***Deficiency relating to the operation of ICFR*** – A deficiency relating to the operation of ICFR exists when a properly designed component of ICFR does not operate as intended. For example, if an issuer's ICFR design requires two individuals to sign a cheque in order to authorize a cash disbursement and the certifying officers conclude that this process is not being followed consistently, the control may be designed properly but is deficient in its operation.
- (3) ***Compensating controls versus mitigating procedures*** – If the certifying officers identify a component of ICFR that does not operate as intended they should consider whether there is a compensating control that addresses the financial reporting risks that the deficient ICFR component failed to address. If the certifying officers are unable to identify a compensating control, then the issuer would have a deficiency relating to the operation of ICFR.

In the process of determining whether there is a compensating control, the certifying officers might identify mitigating procedures which help to reduce the financial reporting risks that the deficient ICFR component failed to address, but do not meet the threshold of being a compensating control because:

- (a) the procedures only partially address the financial reporting risks or
- (b) the procedures are not designed by, or under the supervision of, the issuer's certifying officers, and thus may not represent an internal control.

In these circumstances, since the financial reporting risks are not addressed with an appropriate compensating control, the issuer would continue to have a deficiency relating to the operation of ICFR and would have to assess the significance of the deficiency. The issuer may have one or more mitigating procedures that reduce the financial reporting risks that the deficient ICFR component failed to address and may consider disclosure of those procedures, as discussed in section 9.7 of the Policy. In disclosing these mitigating procedures in its MD&A, an issuer should not imply that the procedures eliminate the existence of a material weakness.

- 9.2 **Assessing significance of deficiencies in ICFR** – If a deficiency or combination of deficiencies in the design or operation of one or more components of ICFR is identified, certifying officers should assess the significance of the deficiency, or combination of deficiencies, to determine whether a material weakness exists. Their assessment should generally include both qualitative and quantitative analyses.

Certifying officers evaluate the severity of a deficiency, or combination of deficiencies, by considering whether (a) there is a reasonable possibility that the issuer's ICFR will fail to prevent or detect a material misstatement of a financial statement amount or disclosure; and (b) the magnitude of the potential misstatement resulting from the deficiency or deficiencies. The severity of a deficiency in ICFR does not depend on whether a misstatement has actually occurred but rather on whether there is a reasonable possibility that the issuer's ICFR will fail to prevent or detect a material misstatement on a timely basis.

9.3 **Factors to consider when assessing significance of deficiencies in ICFR**

- (1) **Reasonable possibility of misstatement** – Factors that affect whether there is a reasonable possibility that a deficiency, or combination of deficiencies would result in ICFR not preventing or detecting in a timely manner a misstatement of a financial statement amount or disclosure, include, but are not limited to:
- (a) the nature of the financial statement accounts, disclosures and assertions involved (e.g., related-party transactions involve greater risk);
 - (b) the susceptibility of the related asset or liability to loss or fraud (e.g., greater susceptibility increases risk);
 - (c) the subjectivity, complexity, or extent of judgment required to determine the amount involved (e.g., greater subjectivity, complexity, or judgment increases risk);
 - (d) the interaction or relationship of the control with other controls, including whether they are interdependent or address the same financial reporting risks;
 - (e) the interaction of the deficiencies (e.g., when evaluating a combination of two or more deficiencies, whether the deficiencies could affect the same financial statement amounts or disclosures); and
 - (f) the possible future consequences of the deficiency.
- (2) **Magnitude of misstatement** – Various factors affect the magnitude of a misstatement that might result from a deficiency or deficiencies in ICFR. These factors include, but are not limited, to the following:

- (a) the financial statement amounts or total of transactions relating to the deficiency; and
- (b) the volume of activity in the account balance or class of transactions relating to the deficiency that has occurred in the current period or that is expected in future periods.

9.4 **Indicators of a material weakness** – It is a matter for the certifying officers' judgment whether the following situations indicate that a deficiency in ICFR exists and, if so, whether it represents a material weakness:

- (a) identification of fraud, whether or not material, on the part of the certifying officers or other senior management who play a significant role in the issuer's financial reporting process;
- (b) restatement of previously issued financial statements to reflect the correction of a material misstatement;
- (c) identification by the issuer or its external auditor of a material misstatement in the financial statements in the current period in circumstances that indicate that the misstatement would not have been detected by the issuer's ICFR; and
- (d) ineffective oversight of the issuer's external financial reporting and ICFR by the issuer's audit committee.

9.5 **Conclusions on effectiveness if a material weakness exists** – If the certifying officers identify a material weakness relating to the design or operation of ICFR existing as at the period-end date, the certifying officers could not conclude that the issuer's ICFR is effective. Certifying officers may not qualify their assessment by stating that the issuer's ICFR is effective subject to certain qualifications or exceptions unless the qualification pertains to one of the permitted scope limitations available in section 3.3 of the Instrument. As required by paragraph 6 in Form 52-109F1, the certifying officers must ensure the issuer has disclosed in the annual MD&A the certifying officers' conclusions about the effectiveness of ICFR at the financial year end.

9.6 **Disclosure of a material weakness**

- (1) ***Disclosure of a material weakness relating to the design of ICFR*** – If the certifying officers become aware of a material weakness relating to the design of ICFR that existed at the end of the annual or interim period, the issuer's annual or interim MD&A must describe each material weakness relating to design, the impact of each material weakness on the issuer's financial reporting and its ICFR, and the issuer's current plans, if any, or any actions already undertaken, for remediating each material weakness as required by paragraph 5.2 of Form 52-109F1 and Form 52-109F2.

- (2) ***Disclosure of a material weakness relating to the operation of ICFR*** – If the certifying officers become aware of a material weakness relating to the operation of ICFR that existed at the financial year end, the issuer’s annual MD&A must describe each material weakness relating to operation, the impact of each material weakness on the issuer’s financial reporting and its ICFR, and the issuer’s current plans, if any, or any actions already undertaken, for remediating each material weakness as required by subparagraphs 6(b)(ii)(A), (B) and (C) of Form 52-109F1.

If a material weakness relating to the operation of ICFR continues to exist, the certifying officers should consider whether the deficiency initially relating to the operation of ICFR has become a material weakness relating to the design of ICFR that must be disclosed in the interim, as well as the annual MD&A under paragraph 5.2 of Form 52-109F1 and Form 52-109F2.

- (3) ***Description of a material weakness*** – Disclosure pertaining to an identified material weakness should provide investors with an accurate and complete picture of the material weakness, including its effect on the issuer’s ICFR. Issuers should consider providing disclosure in the annual or interim MD&A that allows investors to understand the cause of the material weakness and assess the potential impact on, and importance to, the financial statements of the identified material weakness. The disclosure will be more useful to investors if it distinguishes between those material weaknesses that may have a pervasive impact on ICFR from those material weaknesses that do not.

- 9.7 **Disclosure of remediation plans and actions undertaken** – If an issuer commits to a remediation plan to correct a material weakness relating to the design or operation of ICFR prior to filing a certificate, the annual or interim MD&A would describe the issuer’s current plans, or any actions already undertaken, for remediating each material weakness.

Once an issuer has completed its remediation it would disclose information about the resulting change in the issuer’s ICFR in its next annual or interim MD&A as required by paragraph 7 of Form 52-109F1 or paragraph 6 of Form 52-109F2.

If an issuer is unable to, or chooses not to, remediate a material weakness, but identifies mitigating procedures that reduce the impact of the material weakness on the issuer’s ICFR, then disclosure about these mitigating procedures could provide investors with an accurate and complete picture of the material weakness, including its effect on the issuer’s ICFR. If an issuer does not plan to remediate the material weakness, regardless of whether there are mitigating procedures, the issuer would continue to have a material weakness that the issuer must disclose in the annual or interim MD&A.

PART 10 – WEAKNESS IN DC&P THAT IS SIGNIFICANT

- 10.1 **Conclusions on effectiveness of DC&P if a weakness exists that is significant** – If the certifying officers identify a weakness relating to the design or operation of

DC&P that is significant existing as at the period-end date, the certifying officers could not conclude that the issuer's DC&P is effective. Certifying officers may not qualify their assessment by stating that the issuer's DC&P is effective subject to certain qualifications or exceptions unless the qualification pertains to one of the permitted scope limitations available in section 3.3 of the Instrument. A certifying officer could not conclude that the issuer's DC&P is effective if there is a deficiency, or combination of deficiencies, in DC&P such that there is a reasonable possibility that the issuer will not disclose material information required to be disclosed under securities legislation, within the time periods specified in securities legislation.

As required by paragraph 6(a) in Form 52-109F1, the certifying officers must ensure the issuer has disclosed in its annual MD&A the certifying officers' conclusions about the effectiveness of DC&P. The MD&A disclosure about the effectiveness of DC&P will be useful to investors if it discusses any identified weaknesses that are significant, whether the issuer has committed, or will commit, to a plan to remediate the identified weaknesses, and whether there are any mitigating procedures that reduce the risks that have not been addressed as a result of the identified weaknesses.

- 10.2 **Interim certification of DC&P design if a weakness exists that is significant** – If the certifying officers identify a weakness in the design of DC&P that is significant at the time of filing an interim certificate, to provide reasonable context for their certifications of the design of DC&P, it would be appropriate for the issuer to disclose in its interim MD&A the identified weakness and any other information necessary to provide an accurate and complete picture of the condition of the design of the issuer's DC&P.
- 10.3 **Certification of DC&P if a material weakness in ICFR exists** – As discussed in section 6.2 of the Policy, there is a substantial overlap between the definitions of DC&P and ICFR. If the certifying officers identify a material weakness in the issuer's ICFR, this will almost always represent a weakness that is significant in the issuer's DC&P.

PART 11 – REPORTING CHANGES IN ICFR

- 11.1 **Assessing the materiality of a change in ICFR** – Paragraph 7 of Form 52-109F1 and paragraph 6 of Form 52-109F2 require an issuer to disclose any change in the issuer's ICFR that has materially affected, or is reasonably likely to materially affect, the issuer's ICFR. A material change in ICFR might occur regardless of whether the change is being made to remediate a material weakness (e.g., a change from a manual payroll system to an automated payroll system). A

change in an issuer's ICFR that was made to remediate a material weakness would generally be considered a material change in an issuer's ICFR.

PART 12 – ROLE OF BOARD OF DIRECTORS AND AUDIT COMMITTEE

- 12.1 **Board of directors** – Form 52-109F1 requires the certifying officers to represent that the issuer has disclosed in its annual MD&A certain information about the certifying officers' evaluation of the effectiveness of DC&P. Form 52-109F1 also requires the certifying officers to represent that the issuer has disclosed in its annual MD&A certain information about the certifying officers' evaluation of the effectiveness of ICFR. Under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), the board of directors must approve the issuer's annual MD&A, including the required disclosure concerning DC&P and ICFR, before it is filed. To provide reasonable support for the board of directors' approval of an issuer's MD&A disclosure concerning ICFR, including any material weaknesses, the board of directors should understand the basis upon which the certifying officers concluded that any particular deficiency or combination of deficiencies did or did not constitute a material weakness (see section 9.2 of the Policy).
- 12.2 **Audit committee** – NI 52-110 requires the audit committee to review an issuer's financial disclosure and to establish procedures for dealing with complaints and concerns about accounting or auditing matters. Issuers subject to NI 52-110 should consider its specific requirements in designing and evaluating their DC&P and ICFR.
- 12.3 **Reporting fraud** – Paragraph 8 of Form 52-109F1 requires certifying officers to disclose to the issuer's auditors, the board of directors or the audit committee of the board of directors any fraud that involves management or other employees who have a significant role in the issuer's ICFR. Subsection 6.6(3) of the Policy provides guidance on the term "fraud" for purposes of this Instrument.

Two types of intentional misstatements are (i) misstatements resulting from fraudulent financial reporting, which includes omissions of amounts or disclosures in financial statements to deceive financial statement users, and (ii) misstatements resulting from misappropriation of assets.

PART 13 – CERTAIN LONG TERM INVESTMENTS

- 13.1 **Underlying entities** – An issuer might have a variety of long term investments that affect how the certifying officers design and evaluate the effectiveness of the issuer's DC&P and ICFR. In particular, an issuer could have any of the following interests:
- (a) an interest in an entity that is a subsidiary which is consolidated in the issuer's financial statements;
 - (b) an interest in an entity that is a variable interest entity (a VIE) which is consolidated in the issuer's financial statements;

- (c) an interest in an entity that is proportionately consolidated in the issuer's financial statements;
- (d) an interest in an entity that is accounted for using the equity method in the issuer's financial statements (an equity investment); or
- (e) an interest in an entity that is accounted for using the cost method in the issuer's financial statements (a portfolio investment).

In this Part, the term entity is meant to capture a broad range of structures, including, but not limited to, corporations. The terms "consolidated", "subsidiary", "VIE", "proportionately consolidated", "equity method" and "cost method" have the meaning ascribed to such terms under the issuer's GAAP. In this Part, the term "underlying entity" refers to one of the entities referred to in items (a) through (e) above.

13.2 **Fair presentation** – As discussed in section 4.1 of the Policy, the concept of fair presentation is not limited to compliance with the issuer's GAAP. If the certifying officers believe that an issuer's financial statements do not fairly present its financial condition insofar as it relates to an underlying entity, the certifying officers should cause the issuer to provide additional disclosure in its MD&A.

13.3 **Design and evaluation of DC&P and ICFR**

(1) ***Access to underlying entity*** – The nature of an issuer's interest in an underlying entity will affect the certifying officer's ability to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

Subsidiary – In the case of an issuer with an interest in a subsidiary, as the issuer controls the subsidiary, certifying officers will have sufficient access to the subsidiary to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

Proportionately consolidated entity or VIE – In the case of an issuer with an interest in a proportionately consolidated entity or a VIE, certifying officers might not always have sufficient access to the underlying entity to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

Whether the certifying officers have sufficient access to a proportionately consolidated entity or a VIE to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity is a question of fact. The sufficiency of their access could depend on, among other things:

- (a) the issuer's percentage ownership of the underlying entity;

- (b) whether the other underlying entity owners are reporting issuers;
- (c) the nature of the relationship between the issuer and the operator of the underlying entity if the issuer is not the operator;
- (d) the terms of the agreement(s) governing the underlying entity; and
- (e) the date of creation of the underlying entity.

Portfolio investment or equity investment – In the case of an issuer with a portfolio investment or an equity investment, certifying officers will generally not have sufficient access to the underlying entity to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

- (2) ***Access to an underlying entity in certain indirect offering structures*** – In the case of certain indirect offering structures, including certain income trust and limited partnership offering structures, the issuer could have:

- (a) a significant equity interest in the underlying entity but not legally control the underlying entity, since legal control is retained by a third party (typically the party involved in establishing the indirect offering structure) or
- (b) an equity interest in an underlying entity that represents a significant asset of the issuer and results in the issuer providing the issuer's equity holders with separate audited annual financial statements and interim financial statements prepared in accordance with the same GAAP as the issuer's financial statements.

In these cases, we generally expect the trust indenture, limited partnership agreement or other constating documents to include appropriate terms ensuring the certifying officers will have sufficient access to the underlying entity to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

- (3) ***Reasonable steps to design and evaluate*** – Certifying officers should take all reasonable steps to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity that provide the certifying officers with a basis for the representations in the annual and interim certificates. However, it is left to the discretion of the certifying officers, acting reasonably, to determine what constitutes “reasonable steps”.

If the certifying officers have access to the underlying entity to design the controls, policies and procedures discussed in subsection (2) and they are not satisfied with those controls, policies and procedures, the certifying officers

should consider whether there exists a material weakness or a weakness in DC&P that is significant.

- (4) ***Disclosure of a scope limitation relating to a proportionately consolidated entity or VIE*** – A scope limitation exists if the certifying officers would not have a reasonable basis for making the representations in the annual or interim certificates because they do not have sufficient access to a proportionately consolidated entity or VIE, as applicable, to design and evaluate the controls, policies and procedures carried out by that underlying entity.

When determining whether a scope limitation exists, certifying officers must initially consider whether one, or a combination of more than one, proportionately consolidated entity or VIE includes risks that could reasonably result in a material misstatement in the issuer's annual filings, interim filings or other reports. The certifying officers would consider such risks when the certifying officers first identify the risks faced by the issuer in order to determine the scope and necessary complexity of the issuer's DC&P or ICFR, as discussed in subsection 6.6(2) of the Policy.

The certifying officers would disclose a scope limitation if one, or a combination of more than one, proportionately consolidated entity or VIE includes risks that could reasonably result in a material misstatement and the certifying officers do not have sufficient access to design and evaluate the controls, policies and procedures carried out by each underlying entity.

The certifying officers would not disclose a scope limitation if a proportionately consolidated entity or VIE, individually or in combination with another such entity, does not include risks that could reasonably result in a material misstatement.

The issuer must disclose in its MD&A a scope limitation and summary financial information about each underlying entity in accordance with section 3.3 of the Instrument. The summary financial information may be disclosed in aggregate or individually for each proportionately consolidated entity or VIE.

Meaningful summary financial information about an underlying entity, or combination of underlying entities, that is the subject of a scope limitation would include:

- (a) sales or revenues;
- (b) income or loss before discontinued operations and extraordinary items;
- (c) net income or loss for the period; and

unless (i) the accounting principles used to prepare the financial statements of the underlying entity permit the preparation of its balance sheet without classifying assets and liabilities between current and non-current, and (ii) the MD&A includes alternative meaningful financial information about the

underlying entity, or combination of underlying entities, which is more appropriate to the underlying entity's industry,

- (d) current assets;
- (e) non-current assets;
- (f) current liabilities; and
- (g) non-current liabilities.

Meaningful disclosure about an underlying entity that is the subject of a scope limitation would also include any contingencies and commitments for the proportionately consolidated entity or VIE.

- (5) ***Limited access to the underlying entity of a portfolio investment or equity investment*** – Although the certifying officers may not have sufficient access to design and evaluate controls, policies and procedures carried out by the underlying entity of a portfolio investment or equity investment, the issuer's DC&P and ICFR should address the issuer's controls over its disclosure of material information relating to:
 - (a) the carrying amount of the investment;
 - (b) any dividends the issuer receives from the investment;
 - (c) any required impairment charge related to the investment; and
 - (d) if applicable, the issuer's share of any income/loss from the equity investment.
- (6) ***Reliance on financial information of underlying entity*** – In most cases, certifying officers will have to rely on the financial information reported by a proportionately consolidated entity, VIE or the underlying entity of an equity investment. In order to certify an issuer's annual or interim filings that include information regarding the issuer's investment in these underlying entities, the certifying officers should perform the following minimum procedures:
 - (a) ensure that the issuer receives the underlying entity's financial information on a timely basis;
 - (b) review the underlying entity's financial information to determine whether it has been prepared in accordance with the issuer's GAAP; and
 - (c) review the underlying entity's accounting policies and evaluate whether they conform to the issuer's accounting policies.

PART 14 – BUSINESS ACQUISITIONS

14.1 **Access to acquired business** – In many circumstances it is difficult for certifying officers to design or evaluate controls, policies and procedures carried out by an acquired business shortly after acquiring the business. In order to address these situations, paragraph 3.3(1)(c) of the Instrument permits an issuer to limit the scope of its design of DC&P and ICFR for a business that the issuer acquired not more than 365 days before the end of the financial period to which the certificate relates. Generally this will result in an issuer limiting the scope of its design for a business acquisition for three interim certificates and one annual certificate.

14.2 **Disclosure of scope limitation** – When determining whether a scope limitation exists, certifying officers must initially consider whether an acquired business includes risks that could reasonably result in a material misstatement in the issuer's annual filings, interim filings or other reports. The certifying officers would consider such risks when the certifying officers first identify the risks faced by the issuer in order to determine the scope and necessary complexity of the issuer's DC&P or ICFR, as discussed in subsection 6.6(2) of the Policy. If the certifying officers limit the scope of their design of DC&P and ICFR for a recent business acquisition, this scope limitation and summary financial information about the business must be disclosed in the issuer's MD&A in accordance with section 3.3 of the Instrument and paragraph 5.3 in Form 52-109F1, or 52-109F2 as applicable. Meaningful summary financial information about the acquired business would include:

- (a) sales or revenues;
- (b) income or loss before discontinued operations and extraordinary items;
- (c) net income or loss for the period; and

unless (i) the accounting principles used to prepare the financial statements of the acquired business permit the preparation of its balance sheet without classifying assets and liabilities between current and non-current, and (ii) the MD&A includes alternative meaningful financial information about the acquired business which is more appropriate to the acquired business' industry,

- (d) current assets;
- (e) non-current assets;
- (f) current liabilities; and
- (g) non-current liabilities.

Meaningful disclosure about the acquired business would also include the issuer's share of any contingencies and commitments, which arise as a result of the acquisition. In the case of related businesses, as defined in NI 51-102, the issuer may present the summary financial information about the businesses on a combined basis.

PART 15 – VENTURE ISSUER BASIC CERTIFICATES

- 15.1 **Venture issuer basic certificates** – Many venture issuers have few employees and limited financial resources which make it difficult for them to address the challenges described in section 6.11 of the Policy. As a result, many venture issuers are unable to design DC&P and ICFR without (i) incurring significant additional costs, (ii) hiring additional employees, or (iii) restructuring the board of directors and audit committee. Since these inherent limitations exist for many venture issuers, the required forms of certificate for venture issuers are Forms 52-109FV1 and 52-109FV2. These forms do not include representations relating to the establishment and maintenance of DC&P and ICFR.

Although Forms 52-109FV1 and 52-109FV2 are the required forms for venture issuers, a venture issuer may elect to file Forms 52-109F1 or 52-109F2, which include representations regarding the establishment and maintenance of DC&P and ICFR.

Certifying officers of a non-venture issuer are not permitted to use Forms 52-109FV1 and 52-109FV2. Although a non-venture issuer may face similar challenges in designing its ICFR, such as those described in section 6.11 of the Policy, the issuer is still required to file Forms 52-109F1 and 52-109F2 and disclose in the MD&A a description of each material weakness existing at the end of the financial period.

- 15.2 **Note to reader included in venture issuer basic certificates** – Forms 52-109FV1 and 52-109FV2 include a note to reader that clarifies the responsibility of certifying officers and discloses that inherent limitations on the ability of certifying officers of a venture issuer to design and implement on a cost effective basis DC&P and ICFR may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.
- 15.3 **Voluntary disclosure regarding DC&P and ICFR** – If a venture issuer files Form 52-109FV1 or 52-109FV2, it is not required to discuss in its annual or interim MD&A the design or operating effectiveness of DC&P or ICFR. If a venture issuer files Form 52-109FV1 or 52-109FV2 and chooses to discuss in its annual or interim MD&A or other regulatory filings the design or operation of one or more components of its DC&P or ICFR, it should also consider disclosing in the same document that:

- (a) the venture issuer is not required to certify the design and evaluation of the issuer's DC&P and ICFR and has not completed such an evaluation; and
- (b) inherent limitations on the ability of the certifying officers to design and implement on a cost effective basis DC&P and ICFR for the issuer may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.

A selective discussion in a venture issuer's MD&A about one or more components of a venture issuer's DC&P or ICFR without these accompanying statements will not provide transparent disclosure of the state of the venture issuer's DC&P or ICFR.

PART 16 – CERTIFICATION REQUIREMENTS FOR A NEW REPORTING ISSUER AND AN ISSUER THAT BECOMES A NON-VENTURE ISSUER

- 16.1 **Certification requirements after becoming a non-venture issuer** – Sections 4.5 and 5.5 of the Instrument permit an issuer that becomes a non-venture issuer to file Forms 52-109F1 – IPO/RTO and 52-109F2 – IPO/RTO for the first certificate that the issuer is required to file under this Instrument, for a financial period that ends after the issuer becomes a non-venture issuer. If, subsequent to becoming a non-venture issuer, the issuer is required to file an annual or interim certificate for a period that ended while it was a venture issuer, the required form of certificate for that annual or interim filing is Form 52-109FV1 or 52-109FV2.

PART 17 – EXEMPTIONS

- 17.1 **Issuers that comply with U.S. laws** – Some Canadian issuers that comply with U.S. laws might choose to prepare two sets of financial statements and file financial statements in Canada with accounting principles that differ from those that are filed or furnished in the U.S. For example, an issuer may file U.S. GAAP financial statements in the U.S. and financial statements using another acceptable form of GAAP in Canada. In order to ensure that the financial statements filed in Canada are certified (under either the Instrument or SOX 302 Rules), those issuers will not have recourse to the exemptions in sections 8.1 and 8.2 of the Instrument.

PART 18 – LIABILITY FOR CERTIFICATES CONTAINING MISREPRESENTATIONS

- 18.1 **Liability for certificates containing misrepresentations** – A certifying officer providing a certificate containing a misrepresentation potentially could be subject to quasi-criminal, administrative or civil proceedings under securities law.

A certifying officer providing a certificate containing a misrepresentation could also potentially be subject to private actions for damages either at common law or, in Québec, under civil law, or under the statutory civil liability regimes in certain jurisdictions.

PART 19 – TRANSITION

- 19.1 **Representations regarding DC&P and ICFR following the transition periods** – If an issuer files an annual certificate in Form 52-109F1 or an interim certificate in Form 52-109F2 that includes representations regarding DC&P or ICFR, these representations would not extend to the prior period comparative information included in the annual filings or interim filings if:
- (a) the prior period comparative information was previously the subject of certificates that did not include these representations; or
 - (b) no certificate was required for the prior period.

PART 20 – CERTIFICATION OF REVISED OR RESTATED ANNUAL OR INTERIM FILINGS

- 20.1 **Certification of revised or restated annual or interim filings** – If an issuer files a revised or restated continuous disclosure document that was originally certified as part of its annual or interim filings, the certifying officers would need to file Form 52-109F1R or Form 52-109F2R. These certificates would be dated the same date the certificate is filed and filed on the same date as the revised or restated continuous disclosure document.
- 20.2 **Disclosure considerations if an issuer revises or restates a continuous disclosure document** – If an issuer determines that it needs to revise or restate previously issued financial statements, the issuer should consider whether its original disclosures regarding the design or operating effectiveness of ICFR are still appropriate and should modify or supplement its original disclosure to include any other material information that is necessary for such disclosures not to be misleading in light of the revision or restatement.

Similarly, if an issuer determines that it needs to revise or restate a previously issued continuous disclosure document, the issuer should consider whether its original disclosures regarding the design or operating effectiveness of DC&P are still appropriate and should modify or supplement its original disclosure to include any other material information that is necessary for such disclosures not to be misleading in light of the revision or restatement.