

## APPENDIX B

### Summary of Comments and Responses

#	Theme	Comment	Response
<b>Certifications regarding internal control over financial reporting</b>			
1.	Need for sound internal control over financial reporting.	One commenter stated that sound internal control over financial reporting in all reporting issuers is critical for Canadian capital markets.	We agree.
2.	Need for deferral of certifications regarding internal control over financial reporting	One commenter believes that additional time is needed for certifying officers to satisfy themselves that they have an appropriate basis for providing the certifications regarding internal control over financial reporting.	We agree.
3.	Rationale for deferral of certifications regarding internal control over financial reporting	One commenter submits that any further delay in Canadian regulatory change is a failure. The commenter further submits that we have already fallen behind our competition in terms of external investor confidence. The commenter reminds us of Canadian reporting failures that have contributed to the lack of confidence which the commenter believes is present.	<p>We believe that it is critical for our markets that all reporting issuers have sound internal control over financial reporting. The purposes of the Certification Instrument are to improve the quality and reliability of financial and other continuous disclosure reporting by reporting issuers, which will in turn help to maintain and enhance investor confidence in the integrity of our capital markets.</p> <p>In order for the certifications regarding internal control over financial reporting by certifying officers to achieve the purposes identified above, the certifying officers must have satisfied themselves that they have an appropriate basis for providing the certifications. If the certifying officers do not have a sufficient amount of time to do so, there is a risk of inappropriate or premature certifications of internal control over financial reporting. Such certifications could undermine investor confidence or create false</p>

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			investor confidence, which in turn could undermine the purposes of the Certification Instrument.
4.	Rationale for deferral of certifications regarding internal control over financial reporting	One commenter suggests that the Proposed Amendments were proposed because the SEC delayed the full implementation of the rules implementing the <i>Sarbanes-Oxley Act of 2002</i> (SOX). The commenter questions whether this rationale for the Proposed Amendments is appropriate.	The rationale for the Proposed Amendments is not merely to follow changes to the rules implementing the requirements of section 302 of SOX. The rationale of the Proposed Amendments is to allow additional time for certifying officers to satisfy themselves that they have an appropriate basis for providing the certifications regarding internal control over financial reporting in their full annual certificates and full interim certificates.
5.	Rationale for deferral of certifications regarding internal control over financial reporting	One commenter questions whether there are any surveys or other data supporting the Proposed Amendments.	In developing the Proposed Amendments, we did not rely upon any significant unpublished study, report or other written materials. We became aware of the need to defer the certifications regarding internal control over financial reporting through consultations with various market participants and direct feedback from issuers.
6.	Deferral of certification of responsibility for establishing and maintaining internal control over financial reporting	One commenter questions whether it is appropriate to defer the certification that the certifying officers are responsible for establishing and maintaining internal control over financial reporting. The commenter submits that the CEO and CFO are responsible and questions why they cannot state so.	<p>We are proposing to defer the certification regarding responsibility for establishing and maintaining internal control over financial reporting as there is currently no stand-alone requirement that an issuer have internal control over financial reporting in our securities legislation.</p> <p>The requirement to have internal control over financial reporting is built in through the certification of the design of internal control over financial reporting.</p> <p>As a result, we believe that it is inappropriate to require certifying officers to certify that they are</p>

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			<p>responsible for establishing and maintaining internal control over financial reporting before they are required to certify that they have designed, or caused to be designed under their supervision, internal control over financial reporting.</p> <p>On February 4, 2005, the Participating Jurisdictions published for comment a proposed amended and restated Multilateral Instrument 52-109 <i>Certification of Disclosure in Issuers' Annual and Interim Filings</i> (the Revised Certification Instrument). The Revised Certification Instrument includes an express provision that every issuer must have disclosure controls and procedures and internal control over financial reporting.</p>
7.	Length of deferral of certifications regarding internal control over financial reporting	One commenter questions the appropriateness of the length of the deferral of the certifications regarding internal control over financial reporting. The commenter suggests that if a delay is required, one year might be an appropriate length.	<p>We believe that the deferral of the certifications regarding internal control over financial reporting until financial years ending on or after June 30, 2006 is appropriate.</p> <p>This deferral recognizes that:</p> <ul style="list-style-type: none"> <li>• the legislative requirement for issuers to have internal control over financial reporting is relatively new for Canadian reporting issuers;</li> <li>• the design of internal control over financial reporting involves a significant amount of work; and</li> <li>• issuers have advised us that in order to complete this work in a cost-effective manner, they need additional time.</li> </ul>

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<b>Certifications regarding disclosure controls and procedures</b>			
8.	Overlap between disclosure controls and procedures and internal control over financial reporting	One commenter believes that disclosure controls and procedures include most aspects of internal control over financial reporting.	We agree that there is a substantial overlap between the definition of disclosure controls and procedures and internal control over financial reporting. There are, however, some elements of disclosure controls and procedures that are not subsumed within the definition of internal control over financial reporting and some elements of internal control over financial reporting that are not subsumed within the definition of disclosure controls and procedures. For example, as noted in the Companion Policy, disclosure controls and procedures may include those components of internal control over financial reporting 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, some issuers may design their disclosure controls and procedures so that certain components of internal control over financial reporting pertaining to the accurate recording of transactions and disposition of assets or to the safeguarding of assets are not included.
9.	Deferral of certifications regarding disclosure controls and procedures	<p>One commenter suggests that the deferral of the certifications regarding internal control over financial reporting will be ineffectual given that the certifying officers are required to certify that they have evaluated the effectiveness of disclosure controls and procedures.</p> <p>Given the overlap between disclosure controls and procedures and internal control over financial reporting, the commenter believes</p>	We disagree that that the deferral of the certifications regarding internal control over financial reporting will be ineffectual without the deferral of the certifications regarding disclosure controls and procedures. We also do not believe that the deferral of the certifications regarding disclosure controls and procedures is necessary or appropriate.

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		<p>that an evaluation of the effectiveness of disclosure controls and procedures necessarily involves an evaluation of most aspects of the effectiveness of internal control over financial reporting.</p> <p>As a result, the commenter believes that deferral of certifications regarding internal control over financial reporting should be extended to the certifications regarding disclosure controls and procedures.</p>	<p>While there is a significant overlap between disclosure controls and procedures and internal control over financial reporting, not all aspects of internal control over financial reporting are subsumed within disclosure controls and procedures.</p> <p>We agree that an evaluation of the effectiveness of disclosure controls and procedures will involve an evaluation of many aspects of the effectiveness of internal control over financial reporting; however, we believe that the level of effort required to evaluate disclosure controls and procedures under the Certification Instrument is less than the level of effort required to evaluate internal control over financial reporting under the proposed Multilateral Instrument 52-111 <i>Reporting on Internal Control over Financial Reporting</i>.</p> <p>The level of effort and nature of work required to evaluate disclosure controls and procedures is left to the judgment of the certifying officers, acting reasonably, taking into consideration the issuer's circumstances, including its size, nature of its business and complexity of its operations. The nature and extent of evidence to support the evaluation of the effectiveness of disclosure controls and procedures is also a matter of judgment for the certifying officers. A control framework may provide certifying officers with a useful tool for organizing the evaluation of disclosure controls and procedures and maintaining evidence; however, the Certification Instrument does not prescribe the use of a control framework for that purpose. An audit of the effectiveness of disclosure controls and procedures</p>

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			<p>is not required under the Certification Instrument.</p> <p>We recognize that the evaluation of the effectiveness of disclosure controls and procedures may involve a significant amount of work and as a result, we did not require certifying officers to certify that they had designed or evaluated the effectiveness of disclosure controls and procedures for financial years ending on or before March 30, 2005, the one-year anniversary of the Certification Instrument coming into force.</p>
10.	Scope of certification of design and evaluation of the effectiveness of disclosure controls and procedures	<p>One commenter suggests that the scope of the certification of the design and evaluation of the effectiveness of disclosure controls and procedures differs. Disclosure controls and procedures address the accumulation and communication of information internally and the external reporting of that information. The commenter suggests that the certification in respect of the design of disclosure controls and procedures is limited to the internal communication of information, whereas the certification in respect of the evaluation of the effectiveness of disclosure controls and procedures address all aspects of disclosure controls and procedures.</p>	<p>We disagree that the scope of the certification of the design and evaluation of the effectiveness of disclosure controls and procedures differs.</p> <p>Certifying officers are required to certify that they have designed disclosure controls and procedures, or caused them to be designed under their supervision, to provide reasonable assurance that material information relating to the issuer, including its consolidated subsidiaries, is made known to the certifying officers by others within those entities.</p> <p>“Disclosure controls and procedures” is a defined term. As noted by the commenter, “disclosure controls and procedures” is defined to address the reporting of information required to be disclosed by an issuer in its annual filings, interim filings and other reports filed or submitted under securities legislation and the accumulation and communication of that information internally.</p>

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			Certifying officers are required to certify that they have designed disclosure controls and procedures as that term is defined in the Certification Instrument.
<b>Auditor attestation of internal control over financial reporting</b>			
11.	Auditor attestation of internal control over financial reporting	One commenter submits that market participants should know whether auditor attestation of internal control over financial reporting will be required for Canadian reporting issuers.	On February 4, 2005, the Participating Jurisdictions published for comment proposed Multilateral Instrument 52-111 <i>Reporting on Internal Control over Financial Reporting</i> (MI 52-111). The issue of auditor attestation is addressed in the proposed MI 52-111.
12.	Auditor attestation of internal control over financial reporting	One commenter believes that auditor attestation is required to enhance confidence in both reporting issuers and in the audit profession.	We acknowledge the comment.
13.	Timing of implementation of auditor attestation of internal control over financial reporting	One commenter submits that auditor attestation of internal control over financial reporting does not have to be implemented at the same time as the full annual certificates and full interim certificates.	The requirement to provide the certifications regarding internal control over financial reporting is not linked to a requirement to obtain auditor attestation of internal control over financial reporting. As noted above, the rationale for the Proposed Amendments is to allow additional time for certifying officers to satisfy themselves that they have an appropriate basis for providing the certifications regarding internal control over financial reporting in their full annual certificates and full interim certificates.
<b>Disclosure of reliance on Proposed Amendments</b>			
14.	Disclosure of reliance on the Proposed Amendments	One commenter suggested that if the Proposed Amendments are adopted, the form of annual certificates and interim certificates should be amended to include the following statement:	We do not believe that it is necessary to amend the form of annual certificates and interim certificates permitted by the Proposed Amendments in the manner suggested.

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		<p>“Despite the fact that we are presenting financial statements to the shareholders, the certifying officer is not in a position to offer the full certification as anticipated within the original timeframe and intent of [the Certification Instrument] and has taken advantage of the delayed implementation timetable being offered by security regulators. We will eventually do something if and when forced to.”</p>	