



Bill 198 Bulletin: Disclosure controls and procedures: Are you ready?*

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Certification developments

Bill 198 empowered the Canadian Securities Administrators (CSA[†]) to develop Multilateral Instrument (MI) 52-109, requiring CEOs and CFOs to personally certify annual and interim filings pursuant to provincial and territorial securities legislation. The certifications required are being implemented in a phased manner. In late 2004 and early 2005, the CSA announced proposed changes to the implementation dates. The table on the following page summarizes the revised annual requirements.

The following are key elements to this phased approach upon which management and Audit Committees need to be focused:

- Presently, the CEO and CFO certify they have reviewed the filings, the filings do not contain any untrue statement of material fact or omit such facts, and that the financial information fairly presents the reporting issuer's financial condition, results of operations and cash flows as of the date and for the periods presented in the filings. This is referred to as the "Bare" certificate.
- In addition to the Bare certificate, the first annual certificate for **years ending on or after March 31, 2005** will include a statement regarding the responsibility of the certifying officers for designing a system of **disclosure controls and procedures**, and that the

effectiveness of these controls and procedures has been evaluated. This is referred to as the "Modified" certificate.

- The certification regarding the responsibility of the certifying officers for designing a system of internal control over financial reporting has been delayed until issuers are required to comply with MI 52-111 (see below). Inclusion of this statement with the modified certificate is referred to as the "Full" certificate.
- In February 2005, new proposed rules were announced that will require management to evaluate and test the system of internal control over financial reporting (MI 52-111). These new rules will also require auditor attestation and will become effective between 2006 and 2009 dependent upon the market capitalization of the issuer.

This document focuses on understanding what disclosure controls and procedures are, and introduces a self evaluation tool to understand how your organization measures up.

[†] The CSA is a forum of the 13 securities regulators of Canada's provinces and territories who work together to harmonize regulation of the Canadian capital markets.



What exactly is required and when?

Annual certifications required ¹	Bare Certificate	Modified Certificate	Full Certificate
	Years ending on or before March 30, 2005	Years ending on or after March 31, 2005 but before June 30, 2006	Timeline same as the Internal Control Instrument ²
Bare certificate States that management has read the filings, that they do not contain any untrue statement of material fact or omit such a statement and that financial information is presented fairly.	Yes	Yes	Yes
Disclosure controls and procedures Management has established disclosure controls and procedures and has evaluated the effectiveness of such controls and procedures.	No	Yes	Yes
Internal control over financial reporting Management has designed internal control over financial reporting, and has disclosed in the MD&A changes that are likely to materially affect this system.	No	No	Yes
Additional requirement for issuers complying with the Internal Control Instrument² Disclose significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting and fraud, if any, to their Audit Committees and auditors.	No	No	Yes

1 This table only includes requirements for annual filing requirements. Issuers are also required to file interim certificates based on the Bare, Modified or Full certificate.

2 Proposed MI 52-111 - Reporting on Internal Control over Financial Reporting (the Internal Control Instrument), will be implemented in a phased manner between 2006 and 2009 based on the market capitalization of Issuers at June 30, 2005. Issuers with a market capitalization in excess of \$500 million will be required to adopt the proposed Internal Control Instrument for years ending on or after June 30, 2006. Other Issuers with a market capitalization between \$500 million and \$250 million, \$250 million and \$75 million, and less than \$75 million will be required to adopt the proposed Internal Control Instrument for years ending on or after June 30, 2007, 2008 and 2009 respectively.

What are disclosure controls and procedures?

In essence, these types of controls are all about the quality and timeliness of financial and non-financial information in filings required by securities legislation. At first glance it may seem that disclosure controls and procedures are easy to understand (i.e. does one have an appropriate disclosure policy?,) however, they are in reality much broader in scope. Disclosure controls and procedures encompass the recording, processing and summarization of information disclosed in filings. Also included are controls to ensure that required disclosures by a Reporting Issuer are accumulated, and communicated to management in order that such disclosures can be made on a timely basis.

To satisfy the requirements of the modified certification process, it is important for Issuers to inventory the controls currently in place, identify gaps, remediate and ultimately evaluate the effectiveness of these controls.

The following are some examples of disclosure controls and procedures:

- A written disclosure policy;
- A Disclosure Committee;
- Involvement of operational employees on the Disclosure Committee;
- Review of selected disclosures by the audit committee;
- Appropriate training for the Audit Committee and Disclosure Committee;
- Controls to ensure issues being considered for disclosure are communicated to those responsible for making disclosure decisions;

- Control activities surrounding the preparation of financial and non-financial information;
- Keeping current with changes in disclosure requirements to ensure that all appropriate disclosures have been made; and
- Establishing a cascading certification process with the appropriate supporting frameworks.

Common pitfalls

Our experience working with Canadian and U.S. companies to implement and improve their disclosure controls and procedures, highlights the following as some of the more common misconceptions and pitfalls:

- Operating personnel may not be closely linked with the finance function, therefore events impacting disclosure are not known on a timely basis;
- Inconsistent views on materiality leading to an inconsistent application of disclosure principles;
- Disclosure practices not being documented, making it difficult to prove they existed after the fact;
- Disclosure controls and procedures not being formally tested;
- Informal controls and procedures;
- Cascading certificates, without an appropriate framework; and
- Inadequate time allocated to document systems, policies and procedures.

How do you measure up?

Consider the following questions and evaluate how your organization measures up. If you answer no, or are unsure, then it is likely that your organization will have to do more to meet the Modified certification requirement.

1.	Has a project sponsor and manager been identified?	Yes / No / Unsure
2.	Has your company developed a formal disclosure policy and guidelines, and do these guidelines provide definitions on what is material for disclosure?	Yes / No / Unsure
3.	Is there a Disclosure Committee, does the committee have a mandate, does this committee meet on a regular basis, and are the appropriate non-financial representatives included?	Yes / No / Unsure
4.	Is there adequate formality and documentation in place for identified disclosure controls and procedures?	Yes / No / Unsure
5.	Are there procedures in place to ensure the accuracy and consistency of the material that is conveyed in analyst calls, earnings estimate announcements, press releases and other public statements?	Yes / No / Unsure
6.	Are others in your organization aware of their obligation to report matters for disclosure, and do they know to whom they should report such matters?	Yes / No / Unsure
7.	Has the company documented the nature of controls over financial and non-financial information required for disclosure in quarter, annual and other filings?	Yes / No / Unsure
8.	Is the Audit Committee appropriately involved with significant disclosures?	Yes / No / Unsure
9.	Do appropriate procedures exist to ensure your organization obtains up-to-date information on new disclosure requirements?	Yes / No / Unsure
10.	Are appropriate monitoring procedures in place to ensure disclosure controls and procedures continue to operate effectively and provide the CEO and CFO with the appropriate information to sign the certificates?	Yes / No / Unsure

Next steps

The importance of disclosure controls and procedures has been overshadowed by focus on internal controls over financial reporting. Clearly disclosure controls and procedures have a wide impact across an organization as they deal with both financial and non-financial matters. As the deadline for certification is fast approaching Issuers should now be focusing on how they will meet these requirements. Below are some suggested milestones that should be incorporated into your organization's project plan.

- Understand and inventory current disclosure policies and procedures;
- Document the closing and financial reporting process, including the process for gathering financial and non-financial data;
- Identify weaknesses and gaps in the process;
- Remediate, if necessary;
- Test key controls and procedures to validate their operating effectiveness; and
- Establish other plans, as appropriate, to evaluate the effectiveness of disclosure controls and procedures.

How can we help?

- We can assist you in establishing your disclosure controls and procedures framework, including cascading certificates and a Disclosure Committee.
- We can benchmark your disclosure controls and procedures against regulatory requirements and best practices.
- We can inventory your disclosure controls and procedures.
- We can assist you with testing your disclosure controls and procedures.

What's next?

As we have stated in this document, we believe Issuers should be first focused on making sure they have appropriately addressed the question of disclosure controls and procedures and that they implement a plan to evaluate the effectiveness of such controls and procedures as required by the Modified certificate. While this should be the immediate focus, Issuers should not lose sight of the proposed MI 52-111, The internal Control Instrument. This will require issuers to:

- Formally evaluate the effectiveness of their internal control over financial reporting each year against a recognized conceptual framework. Such assessments will require the active involvement of the CEO, CFO and others that certify the fairness of the financial information;
- Maintain evidence providing reasonable support for the evaluation of the effectiveness of these internal controls;
- Publicly report the results of management's assessment, including any material weaknesses in controls; and
- Have their independent auditor audit and report on the company's internal control over financial reporting.

These proposed rules are substantially the same as Sarbanes Oxley (SOX) section 404 in the United States, although the timing and scope are different. From the implementation of SOX 404 in the United States we have seen many organizations delay their 404 projects as a result of underestimating its scope and importance. In Canada, we would be wise not to make the same mistake. We will be writing further bulletins to share our experience on SOX 404 and in particular the implementation lessons learned from the United States.



Further Information

We encourage you to use your contacts at PricewaterhouseCoopers if you would like further information about the topics discussed in this publication. You can also contact the individuals below:

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