



Public Disclosures Review

June 2006

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Introduction

Deloitte's mission is to promote quality and excellence in all areas of financial reporting. This objective includes helping management and Boards of Directors ensure that they are not just in compliance with regulatory requirements, but that they understand the benefits of moving beyond compliance and onto best practices. Our goal in performing this study of public disclosures was to review the current compliance level with regulatory disclosure requirements regarding the design and evaluation of disclosure controls and procedures, to identify areas for improvement in such disclosures, and to help management and Boards of directors prepare for the additional disclosures that will soon be required regarding internal control over financial reporting (ICFR).

A colour coded copy of the annual CEO/CFO certificate which CEOs and CFOs will be required to sign starting in 2006, along with a matching colour coded copy of the Canadian Securities Administrators' (CSA) proposed flight plan indicating when each of the CEO/CFO certification requirements comes into effect has been included on the following pages for your reference.

Form 52-109F1 – Certification of Annual Filings

Form 52-109F1 - Certification of Annual Filings

I, **<identify the certifying officer, the issuer, and his or her position at the issuer>**, certify that:

1. I have reviewed the annual filings (as this term is defined in Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings) of **<identify issuer>** (the issuer) for the period ending **<state the relevant date>**;
2. Based on my knowledge, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the annual filings;
3. Based on my knowledge, the annual financial statements together with the other financial information included in the annual 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 in the annual filings;
4. The issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal control over financial reporting for the issuer, and we have:
 - a. designed such disclosure controls and procedures, or caused them to be designed under our supervision, to provide reasonable assurance that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the annual filings are being prepared;
 - b. designed such internal control over financial reporting, or caused it to be designed under our supervision, 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; and
 - c. evaluated the effectiveness of the issuer's disclosure controls and procedures as of the end of the period covered by the annual filings and have caused the issuer to disclose in the annual MD&A our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by the annual filings based on such evaluation; and
5. I have caused the issuer to disclose in the annual MD&A any change in the issuer's internal control over financial reporting that occurred during the issuer's most recent interim period that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

Signature

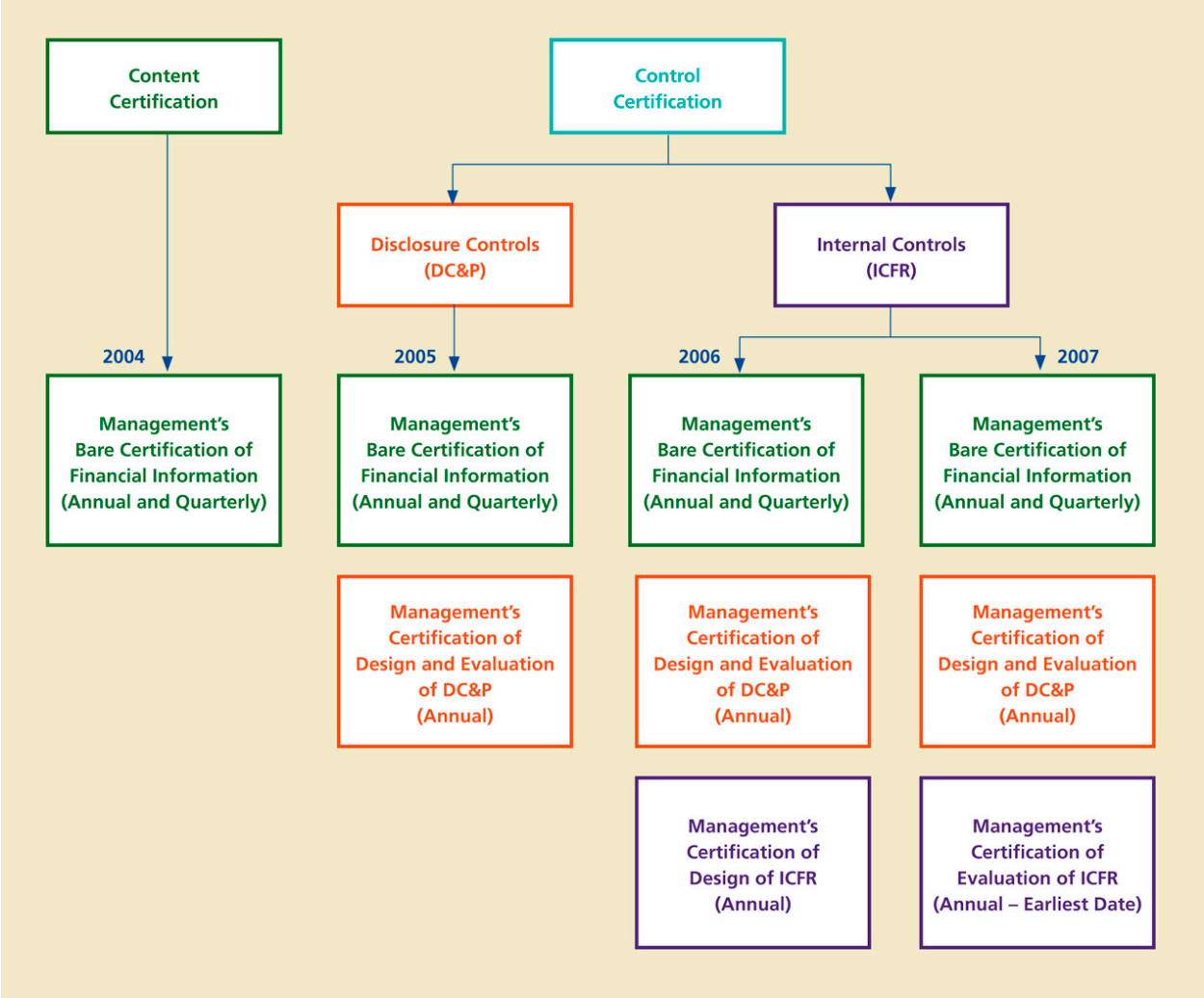
Title

Date

While the CSA has not yet issued its' final rule, based on the content of the proposals they have previously issued, we are able to speculate that, starting in 2007, the certificate will be expanded to include certification as to the evaluation of internal control over financial reporting. Therefore, at a minimum, the final paragraph will likely include the following certifications:

5. The issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the issuer's auditors and the audit committee (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonable likely to adversely affect the issuer's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting.

The CSA's Revised Flight Plan



Methodology

In preparing this study, we reviewed the public disclosures of all companies included in the S&P/TSX 60 index, and the S&P/TSX SmallCap index. Our study sample included the disclosures of over 200 companies.

We reviewed the disclosures included in each company's 2005 annual MD&A, paying specific attention to disclosures regarding the design and evaluation of disclosure controls as well as the design and evaluation of internal control over financial reporting (ICFR). Where such disclosures had not been included in the MD&A, the company's annual report, and, if necessary, the annual information form, were reviewed to determine if the disclosures had been included in these documents.

In cases in which the companies included in our study sample were inter-listed, we also reviewed the U.S. filings of such companies. The filings reviewed included the 10K and 20F and, again, we specifically reviewed the disclosures concerning the design and evaluation of disclosure controls and procedures as well as Management's report on internal control over financial reporting to determine if any additional disclosure had been included beyond that which was included in the Canadian filings of these companies. Where the U.S. disclosures differed significantly from the Canadian disclosures, these differences were documented. It should be noted that in the majority of cases, the inter-listed companies had filed a 40F which contains exactly the same information as is included in their Canadian filings.

In our review of the disclosures, we noted whether or not the following information had been disclosed:

- Were the disclosure controls and procedures effective;
- Were any weaknesses in ICFR disclosed;
- What were the significance of the weaknesses (i.e. – immaterial, significant or material);
- Were descriptions of the weaknesses included;
- Was the control framework used in the evaluation process disclosed (e.g. COSO or CoCo);
- Was the scope of the assessment performed disclosed (i.e. – how was the assessment performed);
- Who reviewed the results of the assessment (i.e. – CEO/CFO, Board, Audit Committee, etc.);
- Were there any significant changes in ICFR;
- Were there any concerns held by the CEO/CFO regarding the reliability of ICFR of consolidated subsidiaries disclosed; and
- Were there any business segments excluded from the assessment.

The results of our analysis and our insights have been recorded below.

Public Disclosures Review and Analysis

Key Findings

Of the over 200 public company disclosures reviewed, few reported any information of significance.

- **2** companies disclosed that they had **ineffective disclosure controls**;
- **4** companies indicated that they had **weaknesses in ICFR**. All 4 companies are **U.S. inter-listed** companies;
- Of the 4 companies reporting weaknesses in ICFR, **1** company indicated that the weaknesses were **material** while the other **3** indicated that the weaknesses were **immaterial**;
- **13** companies disclosed that they had **significant changes** in their **ICFR** during the year; and
- **3** companies **excluded** some business **segments** from their **assessment**.

Detailed Analysis

In performing a more detailed analysis, we found that it was helpful to separate the sample into larger cap (i.e. – those included on the S&P/TSX 60 index), and smaller cap (i.e. – those included on the S&P/TSX SmallCap index) issuers. Then, we reviewed the disclosures and evaluated them based on the following criteria:

- **Conformity** – were the disclosures in compliance with the current CSA Multilateral Instrument 52-109, *Certification of Disclosures in Issuers Interim and Annual Filings* requirements;
- **Transparency** – were the disclosures included boilerplate or true statements reflecting the issuer’s actual situation;
- **Scope** – were the disclosures limited or did they provide a transparent description of the issuer’s situation.

S&P/TSX 60 Index	S&P/TSX SmallCap Index
Conformity	
All but one company concluded that the disclosure controls and procedures were effective.	All but 16 of the companies indicated that the disclosure controls were effective. Of these 16 companies, one indicated that the disclosure controls were not effective. The remaining 15 companies remained silent on the design and evaluation of the disclosure controls.
All but one company included their disclosures in either the MD&A and/or the Annual Report. The other company included their disclosures in the AIF.	Two companies included their disclosures only in their 10K filing or their 20F filing. All other companies included their disclosures in the MD&A and/or the Annual Report.
2 companies indicated that they had weaknesses in ICFR. One of these companies failed to provide either the number of weaknesses found or a description of the weaknesses. The only disclosure it did provide was to state that the weaknesses were immaterial. The other company disclosed that it found 5 material weaknesses in its’ ICFR. Short descriptions of each of the weaknesses were provided .	2 companies indicated that they had weaknesses in ICFR. Neither of these companies provided either the number of weaknesses found or a description of the weaknesses. The only disclosure they did provide was to state that the weaknesses were immaterial .

S&P/TSX 60 Index	S&P/TSX SmallCap Index
<p>6 companies disclosed the control framework used. In each of these cases, COSO was the selected framework.</p>	<p>2 companies disclosed the control framework used. In each of these cases, COSO was the selected framework.</p>
<p>In most cases, the assessment and evaluation of the disclosure controls and procedures and/or ICFR was performed solely by management (i.e. – management, CEO, CFO, President).</p> <p>2 companies noted that their external auditors had also been involved.</p> <p>One company included the internal auditors in the review.</p> <p>Only one company included the Chairman of the Board in the review.</p>	<p>In most cases, the assessment and evaluation of the disclosure controls and procedures and/or ICFR was performed solely by management (i.e. – management, CEO, CFO, President).</p> <p>One company indicated that the entity performed the review.</p> <p>One company had included the audit committee in the review.</p> <p>One company included its' Chairman in the review process.</p> <p>One other company included its' audit committee and the Board of Directors in the review.</p> <p>3 companies did not specify if a review had been performed.</p>
<p>3 companies disclosed that there were significant changes in ICFR during the period the disclosure covered.</p> <p>21 companies disclosed that there were no changes in ICFR.</p> <p>33 companies did not disclose whether or not there were any changes in ICFR during the period.</p>	<p>The majority of the companies did not include any disclosures regarding whether or not there were any changes in ICFR during the period being reported on.</p> <p>Of the companies which did include such disclosures, 13 indicated that there had been no such changes, and 10 indicated that there had been some change.</p>
<p>Of the inter-listed companies, only one company included different disclosures in their U.S. filings that what had been included in the Canadian filings.</p> <p>The additional disclosures indicated that there had been no significant changes in ICFR during the period, whereas in its' Canadian filings there were no disclosures made concerning ICFR.</p>	<p>Of the inter-listed companies, two had included different disclosures in their U.S. filings that what had been included in the Canadian filings.</p> <p>In both cases, these companies had not included any disclosures in their MD&A or Annual report, but had included in their U.S. filings (10K/20F) disclosures concerning the design and evaluation of their disclosure controls and procedures as well as their ICFR.</p>
Transparency	
<p>There was quite a range in the information provided in the disclosures.</p> <p>Many companies simply indicated in one or two sentences that they had concluded that the controls were effective.</p>	<p>There was quite a range in the information provided in the disclosures.</p> <p>Many companies simply indicated in one or two sentences that they had concluded that the controls were effective.</p>
<p>The majority of the disclosures made were simply boilerplate.</p> <p>Many simply included the definitions of disclosure controls and procedures, and ICFR, and then stated that an evaluation had been performed and the conclusion was drawn that the controls were effective.</p>	<p>Similarly to the large cap issuers, many of the disclosures were boilerplate and included a definition of disclosure controls, and in some cases ICFR, and then a statement that the controls were determined to be effective.</p>
<p>Very rarely was there any disclosure regarding details of the evaluation performed.</p>	<p>Very rarely was there any disclosure regarding details of the evaluation performed.</p>
<p>A very few of the disclosures included warnings as to the inherent limitations of disclosure controls and ICFR.</p>	<p>Many of the disclosure included warnings as to the inherent limitations of disclosure controls as well as ICFR, and that it was not possible to provide absolute assurance that the controls had prevented all instances of error or fraud.</p>

S&P/TSX 60 Index	S&P/TSX SmallCap Index
<p>In a couple of cases, the disclosures included slightly more information regarding disclosure controls, including discussion of the role of the disclosure committee which provided a clearer picture of the process followed by the company in determining that all material information is brought to their attention on a timely basis prior to disclosure to the general public.</p> <p>As well, in a few instances, the roles and responsibilities of the Audit Committee and the Board of Directors were included in the disclosure.</p>	<p>In a couple of cases, the disclosures included slightly more information regarding disclosure controls, including discussion of the role of the disclosure committee which provided a clearer picture of the process followed by the company in determining that all material information is brought to their attention on a timely basis prior to disclosure to the general public.</p> <p>As well, in a few instances, the roles and responsibilities of the Audit Committee and the Board of Directors were included in the disclosure.</p>
Scope	
<p>One company fully disclosed the scope of its assessment process.</p> <p>3 other companies provided some limited disclosures regarding the scope of their assessment process.</p>	<p>4 companies fully disclosed the scope of their assessment process.</p> <p>One other company provided some limited disclosures regarding the scope of its assessment process.</p>
<p>None of the companies disclosed whether or not the CEO/CFO had concerns regarding the reliability of the ICFR of the consolidated subsidiaries.</p>	<p>30 companies disclosed that the CEO/CFO did not have any concerns regarding the reliability of the ICFR of consolidated subsidiaries.</p> <p>The remaining companies did not provide any disclosures regarding this issue.</p>
<p>Two companies disclosed that there had been exclusions from the assessment. They did provide a full explanation as to the reason for the exclusion.</p>	<p>Two companies disclosed that there had been exclusions from the assessment. They did provide a full explanation as to the reason for the exclusion.</p>
<p>During the period under review, 2 companies had made financial statement restatements. No specific details regarding the restatements were included in the disclosures. Only one of these companies indicated that their disclosure controls and ICFR had weaknesses.</p>	<p>During the period under review, 3 companies had made financial statement restatements. No specific details regarding the restatements were included in the disclosures. One of these companies made no disclosures with regards to disclosure controls and procedures or ICFR. The other two companies did not make any disclosures regarding their ICFR, however they both disclosed that their disclosure controls and procedures were effective.</p>

The U.S. Experience – Lessons Learned

U.S. listed companies have just completed the second year of reporting under the Sarbanes-Oxley (SOX) Act. Of specific interest with regards to our study of Canadian disclosures are the U.S. disclosures required under Section 302 (self-reporting of disclosure controls and deficiencies in internal controls) and Section 404 (internal control over financial reporting) of the SOX Act. As the CSA's proposed approach to the reporting of disclosure controls and deficiencies is one of self-reporting (i.e. – as required by Section 302 of SOX), now that the requirement for external auditor attestation has been removed, we were interested to determine what the U.S. experience had been with regards to this type of self-reporting, as it is likely that the Canadian experience will be similar to that of the U.S.

According to a report¹, written by Robert Benoit, CPA, in consultation with AuditAnalytics, which examines the relationship between Section 404 and Section 302 reporting, their research correlated the disclosure of material weaknesses identified in the first year of SOX 404 audits with weaknesses reported in the preceding year under the self-reporting framework required in Section 302. The following results were revealed:

- Only **1 in 12** companies with **ineffective Section 404** controls **self-reported ineffective Section 302** controls in the prior year.
- A full **9 out of every 10** companies with **ineffective Section 404** controls **self-reported ineffective Section 302** controls in the same period end that an **adverse Section 404 was reported**.
- The report found that of all the first year accelerated filers reporting Section 404 ineffective controls over financial reporting, slightly **more than half** had revenues under US\$250 million. In other words, **small cap and micro cap companies are likely to have weaker internal control** and more material weaknesses.

The results of this research provide strong evidence of what the investing public in the U.S. can expect with respect to self-reporting of material weaknesses of internal controls and the quality of financial reporting by smaller public companies in the U.S. that are lobbying to be outscoped from Section 404. It also provides a good indication of what can be expected from Canadian companies if the CSA's proposed new approach is adopted. Two key conclusions emerge:

- For those companies with ineffective internal controls, the **expected rate of full and accurate disclosure** under the self-reporting Section 302 would be **below 15 percent**.
- The **highest rates** of material weaknesses in Section 404 internal controls over financial reporting will be observed at SmallCap and MicroCap **companies with revenue below US\$250 million**.

Finally, this research would also suggest that we could have many Canadian companies with material weaknesses in either the design or operating effectiveness of ICFR that did not report any material weaknesses in their certifications of disclosure controls last year.

¹ The Lord & Benoit Report: Bridging the Sarbanes-Oxley Disclosure Control Gap, Robert Benoit, CPA of Lord & Benoit, LLC in association with www.AuditAnalytics.com, 2006

Conclusion

2005 was the first year for which Canadian listed companies were required to certify on the design and evaluation of their disclosure controls and procedures. In 2006, they will be required to certify on the design of ICFR, and in 2007 (at the earliest), they will be required to certify on the operating effectiveness of ICFR.

Based on the results of our review of the disclosures made for the 2005 year-end, a vast majority of the companies appear to not meet the basic disclosure requirements regarding disclosure controls. The situation is evident in the disclosures of both large cap as well as small cap companies.

It seems unlikely that the situation will improve when the additional requirements for disclosures regarding ICFR come into effect. Furthermore, if we believe that Canada is likely to follow the U.S. experience with regards to the accuracy, completeness and reliability of disclosures made under the Section 302 self-reporting requirements, questions about the reliability of financial reporting in Canada may be raised. If Canadian financial reporting disclosures become viewed as being unreliable, incomplete, or inaccurate, the Canadian capital markets will suffer, and corporate and civil legal liability exposure will increase.

To avoid this scenario, Canadian reporting issuers must adopt a strong certification process which will allow them to identify control weaknesses and fix them right away. Such a process will assist them in making significant enhancements to the financial reporting disclosures included in their MD&A, including moving away from boilerplate disclosures, as they will be more comfortable to transparently explain how they assessed the design and effectiveness of their controls, what control framework was used, who oversaw the process, the auditors' (both internal and external) involvement, etc.. This will not just achieve compliance with the regulations, it will improve the quality of internal and external reporting and decision making.

Canadian reporting issuers need to act now to ensure that the financial reporting system in Canada is maintained at the highest possible globally recognized standards of transparency, completeness, accuracy and reliability.

How Deloitte Can Help

If you are interested in learning more about the requirements related to the CEO/CFO certification process, including the required disclosures regarding the design and evaluation of disclosure controls and procedures and the design and evaluation of internal control over financial reporting, please contact your Deloitte partner. Deloitte professionals have access to a wealth of information and resources and can guide you and your audit committee through everything from the basic requirements to leading edge practices.

Specifically, Deloitte can help you:

- to assess the quality of your control related disclosures in the MD&A;
- to assess the rigour of your CEO/CFO certification process;
- in the evaluation of disclosure controls and internal controls; and
- where permitted by our professional independence standards, in the implementation and testing of disclosure controls and internal controls.

At Deloitte, we are committed to helping the business community, securities regulators, and our profession meet this challenge. In conjunction with the CICA, the CSA, and others, we intend to pioneer solutions that will help directors and issuers in discharging their responsibilities.

The CSA has achieved a consensus that presents all market participants with a major challenge. We all must do our part to meet this challenge.

Deloitte's objective is to ensure your audit committee, and, your board of directors as a whole, is as effective as possible. Let us help you to go beyond compliance.

If you are not currently a Deloitte client, but would like further information, please contact the Deloitte professional in your region.

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Disclaimer

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