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# Corporate Governance Policy Forum

## Proposed Multilateral Instrument 52-109 *Certification of Disclosure in Companies'* *Annual and Interim Filings* and Proposed Multilateral Instrument 52-110 *Audit Committees*

Presented to the Alberta Securities Commission  
November 12, 2003

Prepared by:

Kari Horn  
Senior Legal Counsel,  
Office of the General Counsel,  
Alberta Securities Commission

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## INTRODUCTION

On September 30, 2003, the Alberta Securities Commission, in conjunction with the Alberta Chapter of the Institute of Corporate Directors, held a half-day forum to discuss proposed Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings* ("MI 52-109") and 52-110 *Audit Committees* ("MI 52-110"). At the forum, Jim Goodfellow of Deloitte & Touche LLP and Stan Magidson of Osler Hoskin & Harcourt LLP provided an overview of the proposed rules and the anticipated effect of the new rules on reporting issuers. Additionally, the participants heard the views of selected CEO's, CFO's and audit committee members respecting the proposed rules, including views based on current experience with the corresponding rules in the U.S.

The demographic breakdown of the participants attending the forum is outlined in the following table:

	<b>TSX Venture</b>	<b>TSX</b>	<b>NYSE/NASDAQ</b>	<b>Interlisted (2 or more)</b>
<b>CEO</b>	8	3	2	0
<b>CFO</b>	11	14	0	3
<b>Director</b>	10	13	1	3
<b>A/C Member</b>	8	7	0	0
<b>Controller</b>	1	2	0	1
<b>Counsel</b>	0	2	2	2
<b>Other (IR/Corp. Gov. person)</b>	5	4	0	2
<b>TOTAL</b>	43	45	5	11

\* numbers in chart are greater than number of respondents as some participants represent more than one company.

Participants had the opportunity to voice their comments and concerns during the panel discussions. However, each participant was also asked to complete a questionnaire on both MI 52-109 and MI 52-110. We have compiled the results of the questionnaires and attach those as Appendix A and B to this report. The following Executive Summary outlines the broad themes that came out of the panel discussions and the questionnaires. A more detailed presentation of those broad themes follows the Executive Summary.

## **EXECUTIVE SUMMARY**

### **Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings***

#### ***Effect of MI 52-109 on Investor Confidence and Capital Markets***

Generally, participants were of the view that MI 52-109, as currently drafted, will do little to improve the quality of disclosure or investor confidence in Canadian capital markets and that the benefits of implementing MI 52-109 will not outweigh the costs. This view was particularly expressed with respect to the internal controls and disclosure controls certification (the “controls certification”) requirement.

#### ***“Fairly Present” vs. “Fairly Present in Accordance With GAAP”***

Panel discussions and comments in the questionnaires indicated a general consensus among the participants that not tying the term “fairly present” to compliance with GAAP will result in significant difficulties for the individuals making the certifications.

#### ***Harmonization with U.S. Rules***

The general view was that although harmonization with the U.S. situation is desirable, particularly for interlisted companies, we should be careful about adopting every U.S. requirement without a careful cost benefit analysis. In so far as harmonization is desirable, to the extent the rules we do adopt are a substantially similar subset of the U.S. rules, a liveable result will have been achieved.

#### ***Application of MI 52-109 to Smaller Companies and Income Trusts***

Participants, particularly representatives of TSX Venture Exchange companies, generally supported the idea of exempting smaller companies from some (particularly the control certification requirement) or all of the requirements under MI 52-109.

Proposed MI 52-109 was considered to not give enough guidance with respect to the application of the rule to income trusts. Participants generally felt that in addition to the CEO and CFO of the income trust, the CEO and CFO of both the operating entity and manager of a trust should be required to provide certification.

#### ***Issues Respecting the Controls Certification***

The inclusion of a controls certification requirement in MI 52-109 was the subject of the greatest opposition respecting this rule.

Participants clearly indicated a number of problems with respect to the controls certification (eg. difficulties with the terms “designed” and “implemented” in the circumstance of a newly appointed CEO or CFO and difficulties with respect to the control certification having application on a consolidated basis) and indicated substantial support for removing that requirement altogether.

#### ***Liability***

Respondents expressed substantial concerns respecting increased liability of CEO's and CFO's. Concern was raised regarding the type of standard that would be applied to the certifications given that the control certification effectively requires the application of an objective standard

to the “bare” certifications (ie. the certifications that there is no misrepresentation and the financial statements fairly present the issuer’s financial condition) even though they contain a subjective qualification (ie. “Based on my knowledge”).

### **Multilateral Instrument 52-110 *Audit Committees***

#### ***Definition and Requirement for Independence***

Participants were generally of the view that the definition of “independence” in MI 52-110 is too broad and that the bright line tests should be subject to a materiality standard. Additionally, there was support for the idea that it may not always be in the best interest of the company to have an entirely independent audit committee in certain circumstances.

#### ***Definition and Requirement for Financial Literacy***

There was general support for the idea that audit committee members should be financially literate; however, many participants believed there were circumstances where it should be permissible to have one member who is not financially literate. For example, if there was a choice to be made between a financially literate director and a director with a proven track record or experience in the particular industry.

#### ***Definition and Requirement for Disclosure of Financial Expert***

The requirement in MI 52-110 to disclose in an AIF the identity of any “audit committee financial expert” in MI 52-110 received the strongest opposition of all of the issues raised at the forum. Participants were unanimous in their assessment that no one would want to be identified as a financial expert and that such individuals would be subject to increased liability notwithstanding the “safe harbour” guidance in the policy. Participants also generally felt that the definition of financial expert was inappropriate because the word “expert” has a legal meaning that is not intended to be applied to the term “financial expert”.

## **DETAILED SUMMARY OF PARTICIPANT RESPONSE**

The following is a detailed summary of the major concerns raised during the panel discussions, selected written comments participants provided in the questionnaires and concerns that were highlighted by strong responses to the questionnaires. The full questionnaires, including a demographic breakdown of responses and all written comments, are attached to this Report as Appendix A (MI 52-109) and B (MI 52-110).

### **Summary of Comments Respecting MI 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings***

#### **1. *Effect of MI 52-109 on Investor Confidence and Capital Markets***

##### **Written Comments**

Participants included the following written comments in their questionnaires:

- “You can’t legislate honesty, therefore I believe this process will do nothing to prevent dishonest management from manipulating disclosure items, yet it will put a significant burden on honest management.” *TSX Respondent*
- “Keeping expenses down that are not directly related to publishing books (we are book publishers) is of far more importance to us than instilling confidence in Canada’s capital markets...any money spent on additional compliance measures (significant for very small companies) is money that could have been invested in the business itself.” *TSX Venture Respondent*
- “The certification requirements are a reaction to substantial failures of public companies, however in my view, had these requirements been in place five years ago, they would not have prevented the business failures nor will they prevent future failures.” *TSX Respondent*
- “Cost benefit is clearly issuer driven - if access to U.S. capital markets is required, cost is not an issue, failure to certify will become a pricing issue on your offering.” *Interlisted Respondent*
- “Investors in junior oil and gas companies are by nature risk takers, are already accepting a large investment risk (dry holes), diversify their portfolios to address this risk[. T]he new rules are a disservice to those investors since the cost will outweigh this benefit.” *TSX Venture Representative*
- “I believe these rules in no way help a shareholder to better understand the position submitted and reported by management. The could, in fact, contribute to the negative performance of the company through the diversion of resources to comply with submission filings.” *TSX Venture Respondent*

- “In my experience, investors do not rely on or even read the financial statements, MD&A and AIF. They rely more on the president’s message, press releases and discussions with their broker.” *TSX Respondent*

### **Questionnaire Results**

The survey contained four questions (3, 7, 8, 18 and 19) respecting the effect of MI 52-109 on the quality of disclosure, investor confidence and whether the benefits outweigh the costs. In each instance the questions were asked with respect to their company and then in respect of other companies or the Canadian capital market generally. Consistently, the responses to those questions indicated participants expected a less positive effect for their company as compared to the Canadian capital market. However, even for other companies or the Canadian capital market, most participants did not think the benefits outweighed the cost:

- 74% of respondents indicated that the certificates regarding the accuracy and fair presentation of the annual and interim filings would not improve the quality of disclosure provided by their company and 55% responded that they would not improve the quality of disclosure provided by other companies.
- When asked whether requiring the certifications to address internal controls and disclosure controls (as compared to only certifying that there was no misrepresentation and that the financial statements fairly present the issuer’s financial condition) would significantly improve the quality of disclosure provided by “your company” versus other companies, 88% of respondents indicated that the certifications would not significantly improve the quality of disclosure provided by their company and 74% indicated they would not improve the quality of disclosure provided by other companies.
- 72% of respondents believed that the certification requirements would not improve investor confidence in their company and 61% said the requirements would not improve investor confidence in the Canadian capital market.
- 75% of respondents believed the benefits of implementing MI 52-109 did not outweigh the costs for their company and 59% responded that the benefits did not outweigh the costs for the Canadian capital market.

Respondents were asked (question 7) whether the CEO and CFO of their company would require significant additional assistance from the company’s auditors or other professional advisors in order to feel confident providing the certifications. 85% of respondents said yes for the first year and 70% of respondents said yes for subsequent years.

## **2. “Fairly Present” vs. “Fairly Present in Accordance with GAAP”**

### **Panel Discussions**

Comments were made during the panel discussions indicating that the term “fairly present” should be tied to GAAP or, at the very least, the meaning of “fairly present” should be clarified.

### **Written Comments**

Several respondents also raised this issue in their comments on the questionnaires:

- “Presents fairly versus presents fairly in accordance with GAAP provides a window for a lot of potential issues, problems and additional disclosure.” *Interlisted*
- “Presents fairly versus GAAP presentation is disturbing due to subjectivity required. Perhaps comments in companion policy on what would constitute sufficient due diligence to achieve objectivity.” *Not Listed*
- ““Fairly presents in all material respects” concerns me greatly as we are a real estate company with large unrealized gains. Should these gains be disclosed? Any guidance as to how to disclose these gains?” *TSX Respondent*
- “Certifications should follow GAAP. If GAAP results in misleading disclosures, GAAP needs to change. GAAP should, by definition, result in fair, complete and accurate disclosure. Otherwise, it is of questionable value. The onus for this should land squarely on the shoulders of the CICA. It is possible under the proposed rules that management disagrees with GAAP, but is overruled by the audit committee (or board) in including this disagreement in the MD&A. How can an individual then certify?” *TSX Respondent*

### **3. Harmonization With U.S. Rules**

#### **Panel Discussions**

During the panel discussion, the following comments were made:

- Canadian regulators should not see harmonization with the U.S. as a necessity. The appropriate solution is a “made in Canada” solution.
- Adopting the U.S. proposal for auditor attestation (s. 404) would result in additional costs estimated at 75 - 100% of audit costs.

#### **Written Comments**

The comments written in the questionnaires included the following:

- “Harmonization with the U.S. at least for dual listed companies is needed to avoid double work.” *Interlisted Company*
- “We appreciate the ASC’s efforts to harmonize Canadian requirements with the U.S.” *Interlisted Company*
- “Requiring auditor assurance on these controls [as contemplated in the U.S.] would only make [controls certification] even less attractive. The auditors at this point don’t place any (or very little) reliance on internal controls in the course of conducting their audits as it is not cost effective for them to do so when compared to executing a more substantive approach.



### **Questionnaire Results**

The questionnaire included 2 questions (questions 10 and 17) which highlighted the specific differences between 52-110 and the U.S. certification requirements:

- Asked whether the rule should require an interim certification regarding a recent evaluation of the effectiveness of the internal controls and disclosure controls, an overwhelming 92% of respondents indicated that MI 52-109 should not include such a requirement.
- 75% of respondents indicated MI 52-109 should not require auditor attestation to, and reporting on the evaluation of internal controls.

## ***4. Application of MI 52-109 to Smaller Companies and Income Trusts***

### ***Smaller Companies***

#### **Panel Discussions**

The following comments were made during the panel discussions:

- The proposed rules are “grinding juniors out of business”. This comment received substantial approval demonstrated by a round of applause from participants.
- Investors in start up companies are interested because of a particular idea, not because the company in question has great controls in place.

#### **Written Comments**

Numerous respondents included comments in their questionnaires suggesting that all or part of MI 52-109 should not apply to smaller companies:

- “I am very concerned about the additional costs that micro and small cap companies and private companies that want to go public [will incur]. A lot of potential “young” companies are not going to go through the aggravation and cost and hassles.” *TSX Respondent*
- “Too costly for micro and small companies....with such high costs, the private company model is the only valid model, thereby eliminating the small public company model.” *TSX Respondent*
- “The size of the issuer needs to be taken into account when determining who these rules should apply to.” *TSX Venture Respondent*
- “Companies that produce less than \$25 million EBITDA or NAV of less than \$100 million or market cap of less than \$100 million should be permitted to apply for an exemption and provide an appeals process to permit the fluid continuity of the company without creating a burden from a cost benefit point of view.” *TSX Venture Respondent*

### **Questionnaire Results**

Question 12 asked respondents about possible exemptions from MI 52-109:

- Asked whether there were other types of issuers that should be provided exemptions, 72% of respondents said yes and suggested small cap companies and publicly traded investment only holding companies.
- 56% of respondents believed the certification requirements should not apply to smaller companies. However there was a greater opposition from TSX Venture/Unlisted respondents, of whom 75% said no.

### ***Income Trusts***

#### **Panel Discussions**

With respect to the application of the rule to income trusts, it was suggested during the panel discussions that the rule required clarification.

#### **Questionnaire Results**

The questionnaire requested input respecting application of the rule to income trusts (question 13):

- 83% of respondents thought the CEO and CFO of an operating subsidiary should be required to sign the certificate.
- 87% of respondents thought the CEO and CFO of the parent (e.g., the income trust) should be required to sign the certificates.
- 82% of respondents thought that where there is a manager of a trust, the manager of the trust should be required to sign the certificates in addition to the CEO and CFO of the trust.

### ***5. Issues Respecting the “Controls” Certification***

#### **Panel Discussions**

The panel discussion elicited the following comments:

- The control certification requirement, as it is currently drafted, requires that the certification be made with respect to the company on a consolidated basis. How the control certification could be given was questioned in the circumstance of something other than a wholly-owned subsidiary. For example, how can the CEO and CFO of a company certify as to the internal and disclosure controls of a working interest partner or a joint venture partner or a majority owned subsidiary?
- To the extent the control certification requirement remains in the rule, perhaps the burden could be reduced by allowing the control evaluation to occur at Q2 rather than at year-end.
- The current wording of the control certification suggests that the people certifying have designed and implemented the disclosure and internal controls. This wording will become problematic for any new CEO's or CFO's as those individuals will not have designed or implemented the requisite controls.

### **Written Comments**

A number of respondents commented on this issue in their questionnaires:

- “In a high growth organization such as ours, controls change every time we add a new body to the finance group. Keeping up with the documentation and evaluation of controls would prove to be costly, problematic and quite frankly a nuisance to the ongoing operation of our business.” *TSX Respondent*
- “I do not believe that certification on internal controls will add value.... There are also problems with design and implementation. If certification is required, leave it as [a statement] that an evaluation has been undertaken and the CEO/CFO are responsible.” *TSX Respondent*
- “I believe that points 1 - 3 [ie. the bare certificate] are valid points to be included in the certification. I have big concerns about point 4 [the control certification] and feel it should not be included in the certification. Too costly for micro and small cap companies.” *TSX Respondent*
- “Very clear that the wording of the certifications needs to be changed to encompass all circumstances.” *TSX Venture Respondent*
- “I believe the “internal controls” certification is onerous for smaller cap companies. First, inherent limitations based on size make a small cap company an easy target for those who wish to look to a “lack of controls” as a reason for failure. Second, the oil and gas industry non-operated joint interest activities are very difficult to control and certify.” *TSX Venture Respondent*
- “Junior oil and gas companies (Venture listed) are short life entities, evolve quickly, focus on low G&A in order to ride out low commodity price cycles [and], do not have the resources to comply with internal control certification.” *TSX Venture Respondent*

### **Questionnaire Results**

The responses to a number of questions in the questionnaire (questions 5 and 8 (see summary under “effectiveness of the rule” above), 14, 15 and 16) highlighted specific issues respecting the controls certification.

- 88% of respondents expect that their company will incur significant costs in order to implement and maintain internal controls and disclosure controls in the first year and 82% thought they would incur significant expense in subsequent years.
- 53% of respondents felt that the concept of internal controls was sufficiently clear and 51% of respondents felt that the concept of disclosure controls was sufficiently clear. However, during the panel discussions, these concepts were highlighted as areas needing further clarity.
- 86% of respondents thought that CEO’s and CFO’s would have significant difficulty providing the required controls certification in cases where the company has a

significant interest in another entity (not wholly-owned), a joint venture partner or other form of extended enterprise.

## **6. Liability**

### **Panel Discussions**

During the panel discussions, one of the participants raised a concern respecting the effect of the certification on a CEO or CFO's liability. The participant suggested that including the control certification, as it is currently worded, will effectively cause certification numbers 2 and 3 (ie. that there is no misrepresentation and the financial statements fairly present the issuer's financial condition) to be judged on an objective standard instead of the subjective standard the words "based on my knowledge" imply.

### **Written Comments**

Comments respecting liability in the questionnaires included the following:

- "Standards of liability need to be clarified - is the due diligence defence available to a "certification" which by definition is inconsistent with such a concept?" *Interlisted Respondent*
- "Directors and officer liability insurance is going to go through the roof." *TSX Venture Respondent*
- "I'm not sure why I'd want to risk my personal wealth [for] the salary I make as CFO?" *TSX Respondent*

## **Summary of Comments Respecting MI 52-110 Audit Committees**

### **1. Definition and Requirement for Independence**

#### **Panel Discussions**

During the panel discussion, the following comments were made with respect to the definition of independence:

- It may be useful to include the concept of materiality in the various bright line tests that must be considered in determining independence.
- The definition of independence should serve as a guideline rather than as a hard and fast rule.
- The definition of independence is not consistent with the definition used by the Canadian Coalition for Good Governance - it is too broad, for example it should not include siblings.
- The definition is too restrictive in respect of controlled companies - the situation often arises where a controlling shareholder understandably wants representation on the audit committee, however, under the current definition such a representative would not qualify as independent.

### Written Comments

Comments written in respondent's questionnaires included the following:

- “Bright line tests of independence are likely to cause difficulty. There should be certain *de minimis* rules. [The] chair of [our] audit committee does not meet the test, as he was CEO of a predecessor manager. He has no relation to that entity now and is independent in the truest sense of the word.” *TSX Respondent*
- “The definition of independence goes too far in a number of areas”. *TSX Venture Respondent*
- “Independence requirements need to specify relationships ie. employers (through their position) exert a significant influence over operations and major decision making. The salary limitation (as set out in this questionnaire) could create a lack of independence (or vice versa) by not considering the individual's impact on decision making.” *TSX Venture Respondent*

### Questionnaire Results

The responses to a number of questions in the questionnaire (questions 1, 2, 3, 10, 12, 23 and 25) highlighted certain concerns respecting both the definition of independence and the requirement for independence.

- 47% of respondents indicated that not all of the directors on the audit committee of their company are independent as defined in MI 52-110. Those respondents estimated that they would require on average an additional 1.5 directors at a cost of \$79,000 per director.
- Asked whether the definition of independence generally set the right standard for testing independence, 56% of respondents said yes. However respondents representing interlisted companies viewed the definition less favourably, with 67% of those respondents saying that the definition of independence did not set the right standard.
- 55% of respondents said that it was important that every member of the audit committee be independent. However, one respondent added the comment “I believe great value can be added to audit committees through the inclusion of legal counsel. In this case, the test for independence could be considered to be based upon “no material financial dependence” ie. if a lawyer has many clients and does not rely on the issuer for a material portion of his or her income, he or she could fit within the definition of independence.” *TSX Respondent*
- Asked whether there should be a minimum level of compensation required before a person must be considered not independent, 69% of respondents said yes and numerous examples were given of possible levels of compensation:
  - “Based on a percentage of annual income (eg. 20%) - a material amount rather than “one size fits all”.” *Interlisted Respondent*

- “Less than \$24,000 per year”. *TSX Venture Respondent*
- “The test should be one of materiality.” *Unlisted Respondent*
- 92% of respondents believe that TSX Venture Exchange listed companies should meet some level of independence, eg. a majority.
- Asked whether there were transitional situations (other than an IPO) where grace periods would commonly be required, 67% of respondents said yes and the examples given were take-over bids, reverse take-overs, amalgamations, changes in control, share reorganizations and sudden resignations.
- 71% of respondents indicated that income trusts should be required to establish an audit committee even though operations are conducted through a subsidiary.

## **2. Definition and Requirement for Financial Literacy**

### **Panel Discussions**

During the panel discussion the following comments were made with respect to financial literacy:

- The definition of financial literacy is much too general.
- It may be sufficient just to require that the chair of the audit committee be financially literate.
- Companies should not be required to get rid of good audit committee members because they are not financially literate; sometimes it is desirable to have expertise in a particular industry versus financial literacy and no expertise.
- A director who asks probing and pertinent questions is perhaps better than a financially literate director who does not.

### **Written Comments**

Respondents included the following the following comments in their questionnaires:

- “If “financially literate” means “a working knowledge of financial statements” (as literate means a working knowledge of language), then clearly all members of an audit committee need to be financially literate.” *TSX-V Respondent*
- “Need to change definition of financially literate to be less subjective.” *TSX Venture Respondent*

### **Questionnaire Results**

The responses to certain questions (questions 4 and 6) highlighted issues with respect to the financial literacy requirement:

- Asked whether the respondent's company currently complies with the proposed financial literacy requirements for the audit committee, 30% of the respondents answered no. Those respondents indicated their company would require an average of 1.3 additional financially literate directors to meet the requirements costing an average of \$78,000 per financially literate director.
- 57% of respondents indicated that it is necessary for all directors, as opposed to a majority of directors, on the audit committee to meet the proposed definition of financially literate. However interlisted companies were the most supportive with 89% of the respondents representing interlisted companies saying yes.

### **3. Definition and Requirement for Disclosure of Financial Expert**

#### **Panel Discussions**

During the panel discussions the following issues were discussed:

- Numerous attendees thought that the identification of someone as a "financial expert" would increase potential liability for that person and thought the CSA's attempt in the policy to address that issue were inadequate.
- One of the panellists indicated that the use of the word "expert" in the term "financial expert", is problematic as it suggests a higher degree of liability. The panellist then went on to suggest that the regulators had not properly defined financial expert. This comment received substantial support by way of applause.

#### **Written Comments**

The following comments were included in the questionnaires:

- "It does not appear that the inclusion of a financial expert adds any tangible benefit to the company or its shareholders. It only appears to add potential liability." *TSX Venture Respondent*
- One respondent indicated in his comments that his positive answers respecting the effect of 52-110 on the capital markets are not applicable to the financial expert disclosure requirement. *TSX Respondent*

#### **Questionnaire Results**

Four questions (questions 18 - 21) dealt with issues surrounding identification of financial experts.

- 78% of respondents indicated that identification of a financial expert on the audit committee would not significantly improve investor confidence in their company and 73% of respondents said it would not improve investor confidence in other companies.
- 86% of respondents indicated that the absence of a financial expert on the audit committee would not significantly detract from the attractiveness of their company to investors and 80% said it would not detract from other companies' attractiveness.

- Asked whether identifying an individual as a financial expert would significantly increase that individual's potential liability, 95% of respondents said yes.
- 100% of respondents indicated that no one would want to be identified as a financial expert.



## APPENDIX A

### Questions and Answers Related to Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings*

#### **BARE CERTIFICATE**

1. If the new rule becomes effective, for the first year only a bare or partial certification will be necessary. Do you believe that the CEO and CFO of your company could currently certify, based on their knowledge, that the annual and interim filings (financial statements, MD&A and AIF)
- (a) 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?

**Yes: 93% No: 7%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
93%	7%	92%	8%	100%	0%

- (b) fairly present in all material respects the financial condition, results of operations and cash flows of the company? (The phrase “fairly present” refers to more than the statements being in accordance with GAAP. It may require that additional disclosure be provided as GAAP may not always define all the components of an overall fair presentation)?

**Yes: 77% No: 23%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
65%	35%	71%	29%	100%	0%

**Comments:**

*Need more guidance on what financial condition is but I suspect the answer is yes. **TSX Respondent***

2. Will you require significant changes in your company’s internal controls etc. in order to provide the bare certificate?

**Yes: 29% No: 71%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
39%	61%	25%	75%	13%	87%

3. Do you think that the certificates regarding the accuracy and fair presentation of the annual and interim filings will improve the quality of disclosure provided by

(a) your company?

**Yes: 26% No: 74%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
30%	70%	20%	80%	19%	81%

(b) other companies?

**Yes: 45% No: 55%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
46%	54%	29%	71%	60%	40%

**Comments:**

*Not sure - may initially but then the dishonest will find ways around the rules.  
TSX/NYSE Respondent*

**FULL CERTIFICATE**

4. Following a one year transition period, a full certificate will be required under the proposed rule. Will the one-year transition period in which to establish internal controls and disclosure controls be sufficient for the CEO and CFO of your company to provide the full certification?

**Yes: 82% No: 18%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
86%	14%	75%	25%	88%	12%

**Comments:**

2 years would work. *TSX-V*

5. Has your company or do you expect that your company will incur significant costs in order to implement and maintain these internal controls and disclosure controls

(a) in the first year?

**Yes: 88% No: 12%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
79%	21%	92%	8%	94%	6%

(b) in subsequent years?

**Yes: 82% No: 18%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
82%	18%	79%	21%	80%	20%

6. Do you think that providing certifications regarding internal controls and disclosure controls will require significant changes in the management and administration of your company's business?

**Yes: 53% No: 47%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
37%	63%	65%	35%	53%	47%

**Comments:**

*Not useful changes - just more manuals/paper. TSX & NYSE Respondent*

7. Do you think that the CEO and CFO of your company will require significant additional assistance from the company's auditors or other professional advisers in order to feel confident providing the certifications

(a) the first year?

**Yes: 85% No: 15%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
75%	25%	92%	8%	86%	14%

(b) in subsequent years?

**Yes: 70% No: 30%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
75%	25%	67%	33%	57%	43%

8. Do you think that requiring the certifications to address internal controls and disclosure controls as compared to just the "bare certificate" (referred to above) will significantly improve the quality of disclosure provided by

(a) your company?

**Yes: 13% No: 88%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
11%	89%	20%	80%	0%	100%

**Comments:**

*It will improve transparency only minimally. TSX-V Respondent*

(b) other companies?

**Yes: 26% No: 74%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
29%	71%	22%	78%	33%	67%

**Comments:**

*Larger companies \$1 billion market cap should help. **TSX-V Respondent***

9. The annual certificate relates to the AIF, the annual financial statements and the MD&A. The certificate is filed with the last of these filings. If the documents are not all filed at the same time, there will be a timing gap. Is the timing gap a problem?

**Yes: 40% No: 60%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
33%	67%	48%	52%	40%	60%

**Comments:**

*No, if they speak from the date. **TSX/NYSE Respondent***

*Yes, bare certificates. No, disclosure control certificates. **TSX/NYSE Respondent***

10. Both the annual and interim certificates required under U.S. securities laws contain a statement of the CEO & CFO regarding a recent evaluation of the effectiveness of the internal controls and disclosure controls and procedures. The interim certificate under MI 52-109 does not. (Only the annual certificate references an evaluation.)

Do you believe that the absence of an interim certification regarding the evaluation will significantly detract from the reliability of the financial information?

**Yes: 8% No: 92%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
7%	93%	8%	92%	13%	87%

11. Companies that prepare two sets of financial statements, one in accordance with Canadian GAAP and one in accordance with U.S. GAAP and file only the U.S. GAAP financial statements with the SEC, will still need to provide a MI 52-109 certificate for the Canadian GAAP financial statements.

Will this deter Canadian companies reporting in the U.S. from preparing financial statements in accordance with Canadian GAAP?

**Yes: 32% No: 68%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
30%	70%	29%	71%	33%	67%

12. MI 52-109 provides exemptions for issuers of exchangeable securities and guaranteed debt securities. Furthermore, the instrument does not apply to investment funds.

- (a) Are there other types of issuers that should be provided exemptions?

**Yes: 72% No: 28%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
75%	25%	71%	29%	64%	36%

**Comments:**

*Yes, but only financial disclosure not internal controls. **TSX Respondent***

*Small cap companies size test ie. Market cap. **TSX Respondent***

*Publicly traded investment only hold companies. **TSX-V Respondent***

- (b) Should the certification requirements apply to smaller companies (eg. TSX Venture Exchange companies)?

**Yes: 44% No: 56%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
25%	75%	56%	44%	63%	37%

**Comments:**

*MI 52-109 - there should be some type of capitalization test to trigger the certification requirement. **TSX-V Respondent***

13. For some reporting issuers, such as income trusts, all of the operations are conducted through a subsidiary. In such case,

(a) Should the CEO and CFO of the operating subsidiary be required to sign the certificates?

**Yes: 83% No: 17%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
84%	16%	79%	21%	88%	12%

(b) Should the CEO and CFO of the parent (e.g. the income trust) be required to sign the certificates?

**Yes: 87% No: 13%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
80%	20%	92%	8%	93%	7%

**Comments:**

*Different from may be necessary. **TSX/NYSE Respondent***

*Reliance/due diligence to be reviewed. Perhaps - “negative assurance”. **TSX Respondent***

*CEO only. **TSX-V Respondent***

(c) If there is a manager of the trust should the manager of the trust be required to sign the certificates

(i) in addition to the CEO and CFO of the trust?

**Yes: 82% No: 18%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
75%	25%	95%	5%	75%	25%

(ii) instead of the CEO and CFO of the trust?

**Yes: 28% No: 72%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
29%	71%	33%	67%	25%	75%

14. MI 52-109 does not provide a definition of internal controls. Each issuer is required to develop controls that are sufficient “to provide reasonable assurances that the issuer’s financial statements are fairly presented in accordance with generally accepted accounting principles”. It is left to management to determine how best to achieve this outcome. Do you believe that the concept of “internal controls” as used in MI 52-109 is sufficiently clear?

**Yes: 53% No: 47%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
52%	48%	52%	48%	50%	50%

**Comments:**

*The litigation lawyers will have a hay day with this. **TSX Respondent***

*Issue with smaller companies and “division of duties” issues. **TSX Respondent***

15. The term disclosure controls and procedures is similarly defined to refer to controls that will provide “reasonable assurances that material information relating to the issuer, including its consolidated subsidiaries, is made known to [the CEO and CFO] by others within those entities... and that such material information is disclosed within the time periods specified under applicable provincial and territorial securities legislation”. Do you believe that the definition is sufficiently clear?

**Yes: 51% No: 49%**



Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
48%	52%	54%	46%	63%	37%

**Comments:**

*Clarification on reasonable disclosure. **TSX Respondent***

*This is not going to work. **TSX-V Respondent***

16. The certifications relate to an issuer’s financial statements as well as its internal and disclosure controls on a consolidated basis.

(a) Do you think the CEO and CFO will have significant difficulty providing the required certification in cases where the company has a significant interest in another entity (not wholly-owned), a joint venture partner or other form of extended enterprise?

**Yes: 86% No: 14%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
88%	12%	84%	16%	88%	12%

(b) Do think the required certification should only extend to wholly-owned subsidiaries?

**Yes: 60% No: 40%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
73%	27%	52%	48%	53%	47%

17. MI 52-109 does not require auditor attestation to, and reporting on, the evaluation of internal controls by the CEO and CFO as envisaged by subsections 404(a) and (b) of the Sarbanes-Oxley Act. The SEC has recently adopted rules to implement the requirements of section 404.

(a) Do you believe an auditor attestation requirement should be included in MI 52-109?

**Yes: 25% No: 75%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
21%	79%	21%	79%	25%	75%

- (b) Would your company have significant difficulty including auditor attestation of the CEO/CFO evaluation in the MD&A?

**Yes: 52% No: 48%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
61%	39%	55%	45%	33%	67%

**Comments:**

*I'm not sure they want to share the liability, I don't know. **TSX Respondent***

18. Do you believe that the certification requirements under MI 52-109 will improve investor confidence in

- (a) your company?

**Yes: 28% No: 72%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
14%	86%	28%	72%	47%	53%

- (b) the Canadian capital markets?

**Yes: 39% No: 61%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
36%	64%	40%	60%	47%	53%

19. Do you believe that the benefits of implementing MI 52-109 outweigh the costs for

(a) your company?

**Yes: 25% No: 75%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
14%	86%	24%	76%	43%	57%

(b) the Canadian capital markets?

**Yes: 41% No: 59%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
33%	67%	40%	60%	60%	40%

**GENERAL COMMENTS**

*You can't legislate honesty, therefore, I believe this process will do nothing to prevent dishonest management from manipulating disclosure items, yet will put a significant burden on honest management. I'm not sure why I'd want to risk my personal wealth over the salary I make as CFO. What about COO's and other officers? **TSX Respondent***

*Presents fairly versus presents fairly in accordance with GAAP provides window for a lot of potential issues, problems, additional disclosure. Need to further clarify. Harmonization with U.S. for at least dual listed companies needed to avoid double work. Internal control documentation is make work project with significant cost. **TSX/NYSE Respondent***

*Standards of liability need to be clarified - is the due diligence defense available to a "certification" which by definition is inconsistent with such a concept. These issues need thought. **TSX/NYSE Respondent***

*These questions relate mainly to large/large small cap companies. Consistent with the proposed legislation, they do not relate to micro and small, small cap companies. **TSX-V Respondent***

*Certifications should not apply to micro caps. "Present Fairly" vs. GAAP presentation is disturbing due to subjectivity required. Perhaps comments in companion policy on what would constitute sufficient due diligence to achieve objectivity. **Not listed***

*Onerous, expensive, reactionary, unnecessary - but will prove lucrative for the sponsors. TSX-V Respondent*

*Our company is growing but still very small (sales = \$3.5 million/year). Keeping expenses down that are not directly related to publishing books (we are a publisher) is of far more importance to us than instilling confidence in Canada's capital markets. We are far from being a significant raiser of capital and our shares trade only once per week. Any money spent on additional compliance measures (significant for very small companies) is money that could have been invested in the business itself, which is still fairly fragile. TSX-V Respondent*

*In a high growth organization such as ours, controls change every time we add a new body to the finance group. Keeping up with the documentation and evaluation of controls would prove to be costly, problematic and quite frankly a nuisance to the ongoing operation of our business. Requiring auditor assurance on these controls would only make this even less attractive. The auditors at this point don't place any (or very little) reliance on internal controls in the course of conducting their audit(s) as it is not cost effective for them to do so when compared to executing a more substantive approach. I like the idea, but don't believe that this formal certification adds significantly to the responsibilities of the CEO/CFO, but with it being little more than window dressing to the window that seemed to work just fine before. TSX Respondent*

*I am very concerned about the additional costs for micro and small cap companies and private companies that want to go public. A lot of potential "young" companies are not going to go through the aggravation and cost and hassles. TSX Respondent*

*We appreciate the ASC's efforts to harmonize Canadian requirements with U.S. sarbanes. TSX/NYSE Respondent*

*"Fairly present in all material respects" concerns me greatly as we are a real estate company with large unrealized gains. Should these gains be disclosed? Any guidance on how to disclose these gains? Other issues will likely come up like this one once we get further into the process. TSX Respondent*

*Differences between certification of financials and certification of internal controls. Do not believe certification on internal controls will add value. Agree that CEO and CFO are responsible for the f/s and that includes internal and disclosure controls but there are better methods of achieving comfort. I do not believe that certification of internal controls adds value. There are also problems with design and implementation. If certification is required leave it as that an evaluation has been undertaken and the CEO/CFO are responsible. TSX Respondent*

*I believe the CEO/CFO certification can be beneficial to the shareholders, the public perception and the capital markets. However, to be effective, the buzz word, "material fact", fairly present, disclosure control, designed, "maintaining", need to be reviewed as to cost, benefit gained and accuracy. TSX Respondent*

*The Certification requirements are a reaction to substantial failures of public companies. However, in my view, had these requirements been in place 5 years ago, they would not have prevented the business failures. Nor will they prevent future failures. TSX Respondent*

*Cost benefit is clearly issuer driven - if access to U.S. capital markets is required, cost is not an issue, failure to certify will become a pricing issue on your offering. TSX & NYSE Respondent*

*I believe that points 1 to 3 are valid points to be included in the Certification. I have big concerns about point 4 and feel it should not be included in the Certification. Too costly for micro and small companies. Also, do "Historic Cost Based" financial statements "present fairly" the financial condition..... The cost of complying with these rules and other rules are too costly for small companies. With such high costs the private company model is the only valid model thereby eliminating the small public company model. TSX Respondent*

*As CFO in micro cap - I will have no difficulty signing the attestation. I wonder what my CEO is going to do. He relies on my work. Will he now have to hire external "consultants" to audit me? TSX Respondent*

*Very clear that the wording of the certifications needs to be changed to encompass all circumstances. The size of the issuer needs to be taken into account when determining who these should apply to. TSX-V Respondent*

*I believe the "Internal Controls" certification is onerous for smaller-cap companies. First, inherent limitations based on size make a small cap company an easy target for those who wish to look to a "lack of controls" as a reason for failure. Second, the oil and gas industry non-operated joint interest activities are very difficult to control and certify. TSX-V Respondent*

*Cost/Benefit is always a concern for small cap. Information overload to the investor also raises significant problems in that it becomes useless information that is only used in a look back situation when the law suits start. TSX-V Respondent*

*Junior Oil & Gas Companies (Venture listed) are short life entities, evolve quickly, focus on low G & A in order to ride out low commodity price cycles, do not have the resources to comply with internal control certification. Investors in Junior Oil and Gas Companies are by nature risk takers, are already accepting a large investment risk (dry holes), diversify their portfolios to address this risk, the new rules are a disservice to those investors since the cost will outweigh this. TSX-V Respondent*

*I believe that these rules in no way help a shareholder to better understand the position submitted and reported by management. They could, in fact, contribute to the negative performance of the company through the diversion of resources to comply with submission filings. TSX-V Respondent*

*Some tough choices. I was not fully prepared to give an informed answer but put in what I felt was good for what I know today. TSX Respondent*

*Certifications should follow GAAP. If GAAP results in misleading disclosures, GAAP needs to change. GAAP should, by definition, result in fair, complete and accurate disclosure. Otherwise, it is*

*of questionable value. Onus for this should land squarely on the shoulders of the CICA. It is possible (under proposed rules) that management disagrees with GAAP, but is over ruled by the audit committee (or board) in including this disagreement in the MD&A. How can an individual then certify? **TSX Respondent***

*Companies that produce less than \$25,000,000 EBITDA or NAV of less than \$100,000,000 or market cap of less than \$100 million should be permitted to apply for an exemption and provide an appeals process to permit the fluid continuity of the company without creating a burden on them from a cost benefit point of view. Simply, there are not enough incentives for all this to work. Fairly, the costs are going to ultimately hurt the "distributed investor". Directors and officers liability insurance is going to go through the roof. **TSX-V Respondent***

*In my experience investors do not rely on or even read the FS's, MD&A and AIF. They rely more on the President's message, press releases and discussions with their broker. **TSX Respondent***

## APPENDIX B

### Questions and Answers Related to Multilateral Instrument 52-110 *Audit Committees*

#### **INDEPENDENCE**

1. Assume your company had to comply with the requirement for an entirely independent audit committee. Currently, are all of the directors on the audit committee of your company “independent” as that term is defined in MI 52-110?

**Yes: 53% No: 47%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
42%	58%	56%	44%	78%	22%

- (a) If not, how many additional independent directors would your company need in order to meet the requirements?

**1.5 directors (average)**

- (b) What would be the approximate cost of adding the requisite number of independent directors?

**\$78,526 (average)**

2. Do you believe that the definition of “independence” (see s.1.4 of proposed MI 52-110) generally sets the right standard for testing independence?

**Yes: 56% No: 44%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
52%	48%	68%	32%	33%	67%

**Comments:**

*3 years back test should be only 1 year. TSX-V Respondent*

3. Do you believe it is important that every member of the audit committee be independent?

**Yes: 55% No: 45%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
52%	48%	62%	38%	44%	56%

**Comments:**

*Within a reasonable definition. **TSX-V Respondent***

*2/3 is okay. **TSX-V Respondent***

*In fact, non arms length member can bring valuable info. **TSX Respondent***

*I believe great value can be added to audit committees through the inclusion of legal counsel. In this case, the test for independence could be considered to be based upon “no material financial dependence” ie. If a lawyer has many clients and does not rely on the issuer for a material portion of his/her income. **TSX Respondent***

**FINANCIAL LITERACY**

4. Does your company currently comply with the proposed financial literacy requirements for the audit committee?

**Yes: 70% No: 30%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
57%	43%	72%	28%	100%	0%

**Comments:**

*Unsure - A diploma exam in financial literacy is required to evaluate Directors. **TSX Respondent***

*Difficult to say. Subjective to the definition. **TSX-V Respondent***

- (a) If not, how many additional financially literate directors would your company need in order to meet the requirements?

**1.3 directors (average)**

- (b) What would be the approximate cost of adding the requisite number of financially literate directors?

**\$77,552 (average)**



5. Do you believe that the definition of “financially literate” (see definition in s.1.1 of proposed MI 52-110)

(a) is sufficiently clear?

**Yes: 67% No: 33%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
62%	28%	68%	32%	78%	22%

(b) sets the right test for establishing financial literacy?

**Yes: 58% No: 42%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
65%	35%	50%	50%	56%	44%

6. Do you think it is necessary that all of the directors, as opposed to a majority of directors, on the audit committee meet the proposed definition of financially literate?

**Yes: 57% No: 43%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
46%	54%	56%	44%	89%	11%

7. Would an entirely “financially literate” audit committee improve the reliability of your company’s financial statements?

**Yes: 41% No: 59%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
36%	64%	42%	58%	57%	43%

**Comments:**

*Already there. **TSX/NYSE Respondent***

8. Would an entirely “financially literate” audit committee improve the reliability of other public companies’ financial statements?

**Yes: 51% No: 49%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
52%	48%	46%	54%	63%	37%

**Comments:**

*Not if other processes followed. **TSX Respondent***

**EXEMPTIONS FROM INDEPENDENCE AND FINANCIAL LITERACY REQUIREMENTS**

9. The definition of “independent” includes a three year cooling off period regarding former employees, officers and auditors during which these individuals will not be considered independent. Is this cooling off period

**Too Short: 2%  
Too Long: 42%  
Adequate: 56%**

**Comments:**

*2 years is okay. **TSX/NYSE Respondent***

*1 year is okay. **TSX-V Respondent***

10. Employees, consultants and family members of employees and consultants are precluded from being considered independent. Should there be a minimum level of compensation required before a person must be considered not independent?

**Yes: 69% No: 31%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
60%	40%	80%	20%	67%	33%

**Comments:**

*Based on % of annual income (eg - 20%) - \$amount that is material not “one size fits*

all”. *TSX/NYSE Respondent*

Less than \$24,000 per year. *TSX-V Respondent*

Depends on what is material to company. *TSX-V Respondent*

Test should be materiality. *Unlisted*

If so, what do you think would be an appropriate minimum (on an annual basis)?

**\$76,906 (average)**

11. The instrument allows a director of a controlled subsidiary who is also a director of the controlling parent to be considered an “independent” director of the controlled subsidiary, provided that the director is otherwise independent.

(a) Is this exemption sufficient to address the situation of Canadian controlled companies?

**Yes: 78% No: 22%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
88%	12%	76%	24%	56%	44%

(b) Does the presence of a controlling shareholder (who is not also a member of management) on the audit committee affect the independent functioning of the audit committee?

**Yes: 64% No: 36%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
64%	36%	68%	32%	50%	50%

**Comments:**

*But should be entitled anyway. TSX-V Respondent*

12. TSX Venture Exchange listed companies will not be required to comply with the independence requirements in the proposed rule. However, these companies are still subject to the independence requirements in applicable corporate law and the requirements of the TSX Venture Exchange (e.g. Policy 3.1).

- (a) Is it appropriate to exempt companies listed on the TSX Venture Exchange from the requirement to have an entirely independent audit committee?

**Yes: 66% No: 34%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
80%	20%	52%	48%	67%	33%

**Comments:**

*2/3 is okay. TSX-V Respondent*

- (b) Should the rule require TSX Venture Exchange listed companies to meet some level of independence, e.g. a majority?

**Yes: 92% No: 8%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
96%	4%	92%	8%	78%	22%

- (c) Will exempting TSX Venture Exchange listed companies from the independence requirements create a negative perception of the overall Canadian capital markets?

**Yes: 33% No: 67%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
16%	84%	54%	56%	22%	78%

- (d) Will exempting TSX Venture Exchange listed companies put the venture companies at a disadvantage by discouraging investment in them?

**Yes: 24% No: 76%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
8%	92%	46%	54%	1%	99%

13. Is it appropriate to exempt TSX Venture companies from the requirement to have an entirely financially literate audit committee?

**Yes: 46% No: 54%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
60%	40%	24%	76%	67%	33%

**Comments:**

*2/3 is okay. TSX-V Respondent*

14. Do you believe that exempting TSX Venture companies from the financial literacy requirements will

- (a) create a negative perception of the overall Canadian capital markets?

**Yes: 35% No: 65%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
23%	77%	56%	44%	1%	99%

- (b) put the venture companies at a disadvantage by discouraging investment in them?

**Yes: 37% No: 63%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
28%	72%	56%	44%	1%	99%

***EFFECT ON INVESTOR CONFIDENCE***

15. Do you believe that the audit committee independence requirements under MI 52-110 will improve investor confidence in

(a) your company?

**Yes: 52% No: 48%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
48%	52%	52%	48%	67%	33%

(b) the Canadian capital markets?

**Yes: 64% No: 36%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
56%	44%	68%	32%	78%	22%

16. Do you believe that the audit committee financial literacy requirements under MI 52-110 will improve investor confidence in

(a) your company?

**Yes: 59% No: 41%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
56%	44%	68%	32%	44%	56%

(b) the Canadian capital markets?

**Yes: 73% No: 27%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
68%	32%	84%	16%	56%	44%

**FINANCIAL EXPERT**

17. Is the definition of “audit committee financial expert” (see s.1.1 of proposed MI 52-110) sufficiently clear?

**Yes: 44% No: 56%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
44%	56%	52%	48%	22%	78%

18. Do you believe that disclosure of a financial expert on the audit committee will significantly improve investor confidence

- (a) in your company?

**Yes: 22% No: 78%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
15%	85%	28%	72%	22%	78%

- (b) in other companies?

**Yes: 27% No: 73%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
27%	73%	28%	72%	22%	78%

19. Do you believe the absence of a financial expert on the audit committee

- (a) of your company will significantly detract from your company’s attractiveness to investors?

**Yes: 14% No: 86%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
14%	86%	17%	83%	1%	99%

- (b) of other companies will significantly detract from the attractiveness of those other companies to investors?

**Yes: 20% No: 80%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
19%	81%	17%	83%	22%	78%

**Comments:**

*Yes, due to requirement and U.S. requirement. Unlisted*

20. Do you believe that identifying an individual as a financial expert will significantly increase that individual's potential liability?

**Yes: 95% No: 5%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
96%	4%	92%	8%	100%	0%

**Comments:**

*An expert is always more liable. TSX-V Respondent*

21. Do you think individuals that qualify as financial experts will want to be identified as financial experts?

**Yes: 0% No: 100%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
0%	100%	0%	100%	0%	100%



**Comments:**

Generally, unless they are paid well. *TSX-V Respondent*

Nor should they be. *TSX Respondent*

22. The proposed rule contemplates a grace period (the later of the next AGM or 6 months) during which an issuer that does not comply with the independence and financial literacy requirements can attempt to regain compliance (e.g. following the death, disability or resignation of a member of the audit committee).

Is the proposed transition period long enough?

**Yes: 59% No: 41%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
54%	46%	72%	28%	33%	67%

**Comments:**

Application for one year extension should be available. *TSX-V Respondent*

No, access to qualified directors. *TSX-V Respondent*

23. The proposed rule contemplates a grace period related to the independence requirement following an IPO (for 90 days following the IPO, only one member of the audit committee must be independent and for the balance of the first year following the IPO a majority of the audit committee must be independent).

- (a) Are the proposed transition periods long enough?

**Yes: 61% No: 39%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
60%	40%	68%	32%	44%	56%

- (b) Are there other transitional situations where grace periods will be commonly required? (e.g. take-over bids, reverse take-overs, amalgamations etc.)

**Yes: 67% No: 33%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
70%	30%	68%	32%	56%	44%

**Comments:**

All of the above items. *TSX-V Respondent*

R.T.O.'s, changes in control, changes in management. *TSX Respondent*

All of the above. *TSX Respondent*

Yes, all mentioned. *TSX Respondent*

See above list. *TSX-V Respondent*

Any share reorganization should be provided a grace period, as the Board of the successor company will be changed immediately. *TSX Respondent*

Application for one year extension should be available on all of the above. *TSX-V Respondent*

The above examples. *TSX/NYSE Respondent*

All of the above resignations. *TSX-V Respondent*

Sudden resignations: independence being compromised. *TSX Respondent*

90 days as well. *TSX Respondent*

Mergers, acquisitions, rehiring certain staff positions. *TSX-V Respondent*

Growing companies are dynamic and old rules and processes may not apply, therefore, give more time. Stagger the year end and compliance times. *TSX Respondent*

- (c) No transition period is provided respecting financial literacy following an IPO. Should there be one?

**Yes: 55% No: 45%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
50%	50%	50%	50%	63%	38%

**Comments:**

2/3 should be the rule + 90 days. *TSX-V Respondent*

*Should be in place prior to IPO. TSX Respondent*

24. Do you believe that the proposed functions of the audit committee are appropriate?

**Yes: 97% No: 3%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
96%	4%	96%	4%	100%	0%

25. Many reporting issuers are structured as trusts with operations conducted through a subsidiary.

(a) Should the trust be required to establish an audit committee?

**Yes: 71% No: 29%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
63%	37%	87%	13%	56%	44%

(b) Should it be sufficient that an audit committee be established by the subsidiary?

**Yes: 49% No: 51%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
57%	43%	36%	64%	67%	33%

26. Do you believe the benefits of implementing MI 52-110 outweigh the costs for

(a) your company?

**Yes: 46% No: 54%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
42%	58%	50%	50%	44%	56%

(b) the Canadian capital market?

**Yes: 59% No: 41%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
42%	58%	67%	33%	44%	56%

27. Do you believe your company will be able to comply with proposed MI 52-110 without incurring significant costs?

**Yes: 55% No: 45%**

Breakdown of responses

TSX Venture/Unlisted		TSX		NYSE/NASDAQ Interlisted	
Yes	No	Yes	No	Yes	No
42%	58%	60%	40%	78%	22%

**GENERAL COMMENTS**

*I am the President/CEO of a small TSX-V company. The proposed requirements are very onerous and may serve to distract management from company building efforts. The TSX-V is an “entrepreneurial” market. My source of capital is the Western Canadian capital markets and investors are looking to honesty and management’s track record. I often get questions on financials and micro-financial info. **TSX-V Respondent***

*Bright lines tests of independence likely cause difficulty. Needs to be certain de minimis rules. Our chair of audit committee does not meet the test as he was CEO of a predecessor manager. He has no relation to that entity now and is independent in the truest sense of the word. **TSX Respondent***

*A big issue facing companies will be attracting qualified directors. **TSX Respondent***

*The definition of independence goes too far in a number of areas. **TSX-V Respondent***

*The proposed rules mainly affect large to medium cap companies - difficult to apply to micro cap companies. **TSX-V Respondent***

*Does not appear that the inclusion of a financial expert adds any tangible benefit to the company or its shareholders. It only appears to add potential liability. TSX-V Respondent*

*If “financially literate” means “a working knowledge of financial statements” (as “literate” means “a working knowledge of a language”), then clearly all members of an audit committee need to be “financially literate”. However, an audit committee should not require a “financial expert”, (a designated accountant?) which, to continue the metaphor, would be a Professor of English. TSX-V Respondent*

*Independence requirements need to specify relationships ie. employers that (through their position) exert a significant influence over operations and major decision making. The salary limitation (as set out in this questionnaire) could create a lack of independence (or vice versa) by not considering the individual’s impact on decision making. Need to change definition of financially literate to be less subjective. TSX-V Respondent*

*Items 26 and 27 - Answer based on 52-110 except for financial expert requirement. TSX Respondent*

*The cost of following these rules is the cost which results from (a) a smaller talent pool to draw AC members from, (b) losing very capable and useful AC members due to not meeting the definition(s), or singling out financial experts, without certification or identifying of other experts, which are useful and valuable to the organization. TSX Respondent*

*It seems that a significant amount of the proposed rules will only be interpreted through the courts. TSX-V Respondent*

*Small cap/micro cap - though moderate in cost it is significant at this time for us. TSX Respondent*