



Navigating the New World*

May 16, 2006

Multilateral Instrument 52-109 and Notice 52-313

What's Your Next Move?

*connectedthinking

PRICEWATERHOUSECOOPERS 

Agenda

- Background, expectations & implications
- Legal liabilities
- PwC “Risk & Extent” approach
- Client perspective
- Q&A

Norm McPhedran

norm.mcphedran@ca.pwc.com

416-815-5085

- Audit partner PricewaterhouseCoopers Canada
- Variety of risk and operational advisory, corporate governance, corporate finance and business recovery assignments
- Calgary Advisory Group practice
- New York's Advisory Group
- Sarbanes-Oxley, Bill 198 advisory services and Corporate Governance

Background: Before & after March 10th

Differences	Notice 52-313 [†]	MI 52-111 ICFR [†]
Companies impacted	ALL	TSX only
Timing of implementation	December 2007	4-year staged approach 2006-2009
Auditor attestation	No	Yes

[†]proposed

Multilateral Instrument 52-109

Certification of Disclosure in Companies' Annual and Interim Filings

- Currently in effect; unaffected by Notice 52-313
- CEO/CFO must certify that they have:
 - established an appropriate system of disclosure controls and procedures (DC&P) and have evaluated the effectiveness of them – effective for years ending on or after March 31, 2005; and

Multilateral Instrument 52-109

Certification of Disclosure in Companies' Annual and Interim Filings

- CEO/CFO must certify that they have (cont'd):
 - appropriately **designed** *internal controls over financial reporting* and have disclosed in their MD&A **material changes** relative to this system of internal controls – effective for years ending on or after June 30, 2006

Notice 52-313

- Years ending on or after December 31, 2007, CEO and CFO must certify that they have:
 - Evaluated effectiveness of issuer's internal control over financial reporting as of end of the financial year
 - Caused issuer to disclose conclusions about effectiveness of internal control

No change in management's responsibilities

Implication for the Canadian Marketplace?

- Does this undermine Canadian capital markets internationally?
- Does this make the Canadian Market more “user friendly” than the US?

Multiple Choice Question:

How will the lack of auditor's attestation be viewed the international investor?

- 1 Canadian market will be considered "riskier" than with attestation.
- 2 Canadian market will be considered to be the same as before.
- 3 Don't know.

Lessons Learned Material Weaknesses

- Review of transactions
- Misapplication of general accepted accounting principles
- Insufficient accounting resources
- Accounting for income taxes
- Policies/documentation issues
- Control environment

Rating agencies “considering the nature of material weaknesses in rating process.”

of Adverse 404 Opinions

	Year 2	Year 1 as of 05/01/05	Entire Year 1
# SOX Filings	2,919	2,644	3,633
# Adverse Opinions	199	286	566
% Adverse Opinions	6.8%	10.8%	15.6%

Lessons Learned – Lord & Benoit Report (March 16, 2006)

- **Historical relationship of section 302 and 404 disclosures - first year US results:**
 - 1/12 - ineffective Section 404 controls self reported ineffective 302 controls in prior year.
 - 1/8 - ineffective Section 404 controls self reported ineffective 302 controls in prior quarter.

Lessons Learned – Lord & Benoit Report (March 16, 2006)

- **Report examined historical relationship of section 302 and 404 disclosures – first year US results (cont'd):**
 - Of all first year accelerated filers reporting Section 404 ineffective controls over financial reporting, slightly more than 50% had revenues under \$250 million (US)

BILL 198: Civil Liability for Misrepresentation and Failure to Disclose Material Changes in the Secondary Market

Larry Lowenstein

Osler, Hoskin & Harcourt LLP

Multiple Choice Question:
Under the new Civil Liability Legislation introduced in December 2005, who potentially faces more liability/exposure?

- 1 Management / officers
- 2 Directors
- 3 Both are equally exposed

Continuous Disclosure: What actions are prohibited?

- Misrepresentation (misrep.) in core and non-core documents
- Misrep. in public oral statements
- Failures to make timely disclosure of material changes

Who is liable?

- Responsible issuers (RI)
- Directors of RI
- Officers of RI
- Influential persons
- Experts
- Speaker

How is liability shown?

Core Documents:

(MD&A, AIFs, financial statements; for officers-material change reports)

- NEW: plaintiff (Pff.) does not need to show reliance on misrep.
- Once establish misrep. in core doc. onus shifts to defendant (Def.)

How is liability shown?

Non-Core Documents and Oral Statements

- Pff. must show knowledge, wilful blindness, or gross misconduct except against experts (same test as for core docs.)

Failure to Disclose

- Pff. must show knowledge, wilful blindness, or gross misconduct except against RI and officer of RI

How is liability avoided?

1) Due diligence defence:

- Disclosure controls requiring:
 - Review of all disclosure for accuracy
 - Review of all changes and facts for materiality
 - Documentation of key meetings to show diligence

2) Corrective action: useful for auditors

How is liability avoided?

3) Plaintiff knowledge

4) Disclosure unexpected

5) Reliance on experts

6) Confidential disclosure

7) No authority for oral statements

How is liability for FLI (forward-looking information) avoided?

- Cautionary language is “proximate”
- Must identify the information as FLI:
 - In documents - same page or immediately preceding or following the FLI
 - In oral statements - speaker to state required cautions and identify document that discusses factors and FLI in more detail

How are damages calculated?

Damages: change in share price between purchase and sale or weighted average price in 10 days following correction

Causation: Def. only liable for damage caused by wrong; def. must prove other cause, such as a fall in the market

How are damages calculated?

Liability Limits: liability caps apply to each def. for each wrong for all damages assessed for that wrong

- If 2 defs. or 2 misreps. damages = limit x 2, etc.
- Corporations capped at \$1,000,000 or 5% market cap
- Do not apply if fraud

Procedural Safeguards

- Threshold Test
- Settlement Approval
- Costs
- Limitation

Conclusions

- Shareholders insured against risk
- Expanded liability may chill the market
- Limit risk of liability by:
 - Adhering to effective due diligence policies
 - Adhering to disclosure and internal controls
 - Properly identifying and qualifying FLI
 - Making corrective disclosure as quickly as possible

Daniel (Dan) McPhee

daniel.mcphee@ca.pwc.com

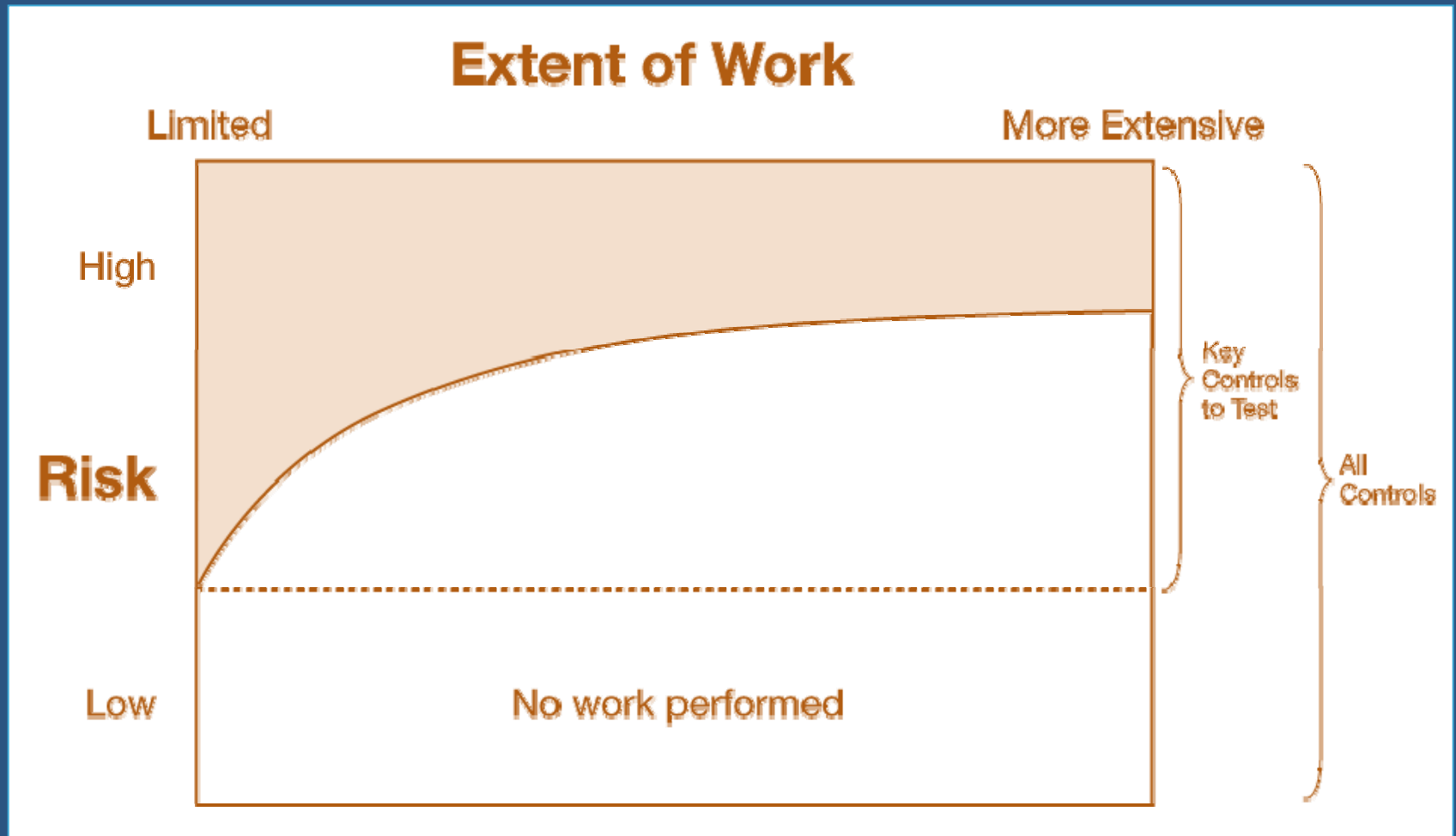
416-941-8217

- Partner Advisory Services practice
PricewaterhouseCoopers Canada
- Risk & Regulatory/Systems and Process
Assurance practice
- Audit and Assurance Executive team &
Advisory Executive team
- All Controls related matters
- Sarbanes-Oxley and Bill 198 programs in
Canada

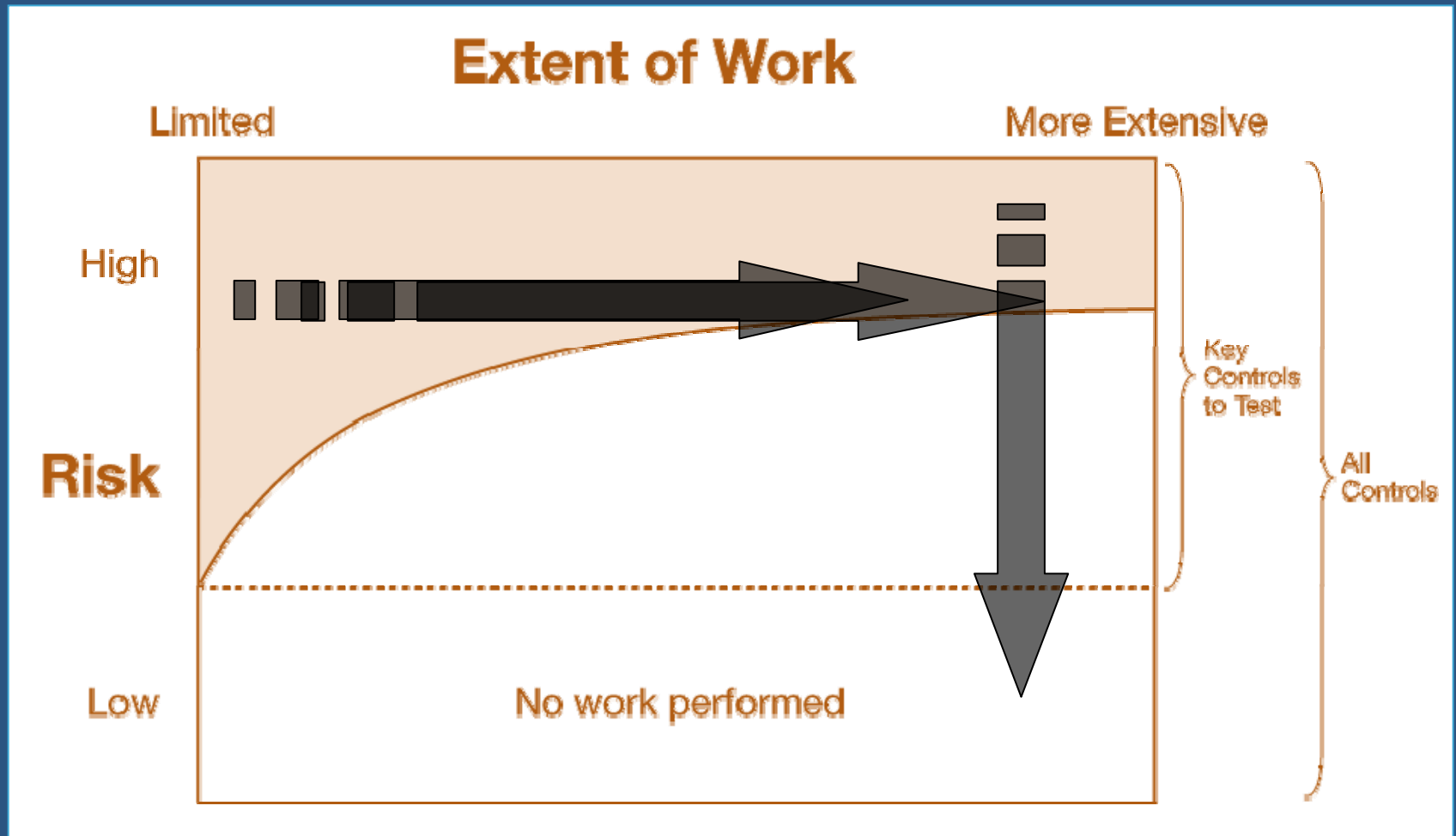
What Should Companies Be Doing?

- Risk based
- Tailored to each company
- Phased-in over a two-year period
- Correlated to the level of risk
- One-size does not fit all

The PwC “Risk and Extent” Approach



The PwC “Risk and Extent” Approach



What most companies seem to have done:

- Excessive number of controls to test last year
- Lower risk areas with relatively low impact
- Included more key controls than were really necessary

Multiple Choice Question:

Given the change from 52-111 to 52-109 will you plan to do:

1. Less work
2. More work
3. Nothing
4. Await further clarification from the CSA

Key Phases of an Internal Control Project (2006)

- ↓ Risk Assessment
- ↓ Documentation
- ↓ Evaluation of design effectiveness
- ↓ Management certification - design effectiveness
 - ⇒ Design Evaluation

Key Phases of an Internal Control Project (2007)

- ⇓ Risk Assessment
- ⇓ Documentation
- ⇓ Evaluation
- ⇓ Testing of Operating Effectiveness
- ⇓ Management certification of operating effectiveness
 - ⇒ Validating Operating Effectiveness

Summary

- Significant judgement
- Doing nothing - not sufficient
- Top-down risk-based approach to 52-109 projects = fewer key controls assessed
- Role of Management
- Role of PwC

PMC Sierra: Internal Controls over Financial Reporting

Alan Krock

Alan Krock

- Vice president and CFO at PMC-Sierra
- High technology and financial sectors
- VP and CFO Integrated Device Technology, Inc.,
- IDT's VP & corporate controller of domestic and worldwide financial reporting and systems
- Corporate controller for Rohm USA
- Senior manager Price Waterhouse (US and Australia)

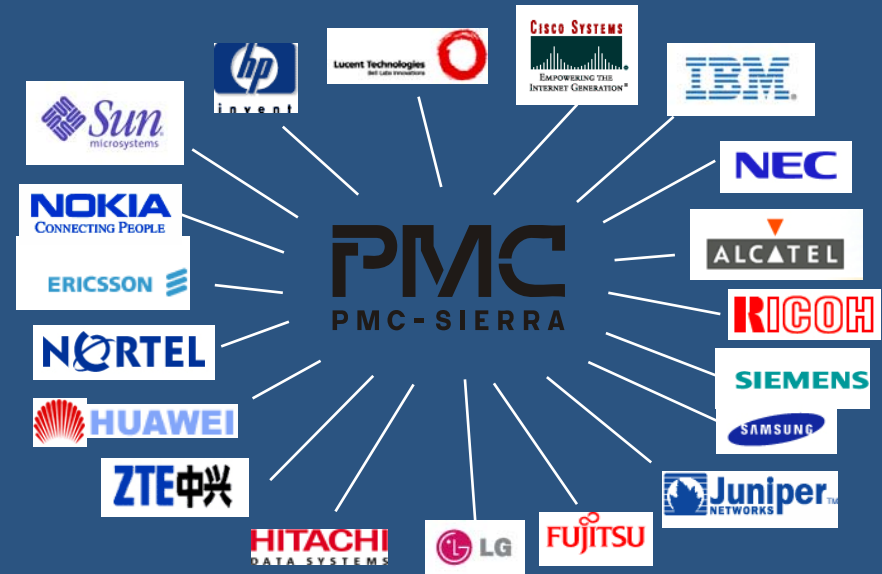
PMC Sierra Overview

- PMC-Sierra (NASDAQ: PMCS) provides an extensive range of:
 - Communication semiconductors
 - Enterprise storage semiconductors
 - Microprocessors
 - High speed mixed signal semiconductors

PMC Sierra Overview

- These products are used in:
 - Telecom Metro Transport Equipment
 - Telecom Metro Access Equipment – wireline and wireless network infrastructure
 - Enterprise Storage Systems
 - Enterprise Laser and Multi-Function Printers
 - Consumer Electronics – Set-Top Boxes, VoIP Telephone Adapters, High-Definition TVs, and Personal Video Recorders

PMC Sierra: World Class Customer Base



**Worldwide
headquarters in
Santa Clara, CA
Operations
headquarters in
Vancouver, BC
Approximately
1,000 employees**

A Management View Implementation Phases

Phase 1: Planning (What Management Should Do)

- Project Plan (Get Out In Front of the Project and Keep Going)
 - Formal Planning Process
 - Start As Early As Possible

A Management View Implementation Phases

Phase 1: (Continued)

- Staffing (Realize a Clerk and a Spreadsheet Will Not Work)
 - Project is Thousands of Hours of Work
 - Automation of Documentation Effort Required

A Management View Implementation Phases

Phase 1: (Continued)

- Consultants / Auditors, Internal Auditors, and Tools (engage early)
 - Resources are scarce and are booked up early

A Management View Implementation Phases

Phase 2: Interim Progress Updates

- Review project status regularly
 - Monitor Company Project Percentage Completion
 - Understand Project Impediments

A Management View Implementation Phases

Phase 2: (Continued)

- Keeping Current on Control Issues
 - Review Interim Reporting of Deficiencies
 - Consider Voluntary External Disclosures

A Management View Implementation Phases

Phase 2: (Continued)

- Nominate BOD Reviewer of Company Generated Reports
 - Internal Audit Reports
 - Auditor Letters

A Management View Implementation Phases

Phase 3:

Know What to Expect at Year End

- Classification of Findings (understand meaning and actions)
 - Deficiencies – Reported via Normal Auditor Letter
 - Significant Deficiencies - Reported to Audit Committee
 - Material Weaknesses – Reported Externally

A Management View Implementation Phases

Phase 3: (Continued)

- There Are Benefits (Huge Effort – Find the Positives)
 - Business Process Improvements
 - Control and Reporting Improvements
- Review Reports, Findings and Corrective Action Plans
 - External Auditor Letters and Reports
 - Management's Response

2005: Year Two and Beyond (It gets easier the second time!)

- PMC's Role
 - Update process documentation in all areas
 - Review impact of ERP software changes and other changes on internal controls
 - Overall project management and assessment of internal control environment

Multiple Choice Question:

Old 52-111 vs new 52-109 proposed - do you believe that there is more of a basis to leverage from for process improvement and efficiencies in:

- 1 52-111
- 2 52-109
- 3 Neither
- 4 Both

2005: Year Two and Beyond

- PwC's Role (Internal Audit & Consulting Services)
 - Update overall control environment assessment
 - Perform all walkthroughs
 - Update documentation, if needed, based on walkthroughs
 - Conduct & document all testing of key controls
 - Document & report exceptions/deficiencies noted

In Conclusion

- Get organized, put a top tier project management team in place, develop a plan.
- Stay focused on total project time & cost objectives.
- Don't just focus on cost & inconvenience of compliance - look for opportunities to improve.
- Set compliance metrics & metrics to measure business process improvements.
- Recognize organizational success!

The End