

Annex A

Proposed National Instrument 52-108 Auditor Oversight

NATIONAL INSTRUMENT 52-108 AUDITOR OVERSIGHT

PART 1 DEFINITIONS AND APPLICATION

Definitions

1. In this Instrument

"CPAB" means the Canadian Public Accountability Board/Conseil canadien sur la reddition de comptes, incorporated as a corporation without share capital under the *Canada Corporations Act* by Letters Patent dated April 15, 2003;

"CPAB rules" means the rules and bylaws of CPAB, as amended from time to time;

"participation agreement" means a written agreement between CPAB and a public accounting firm in connection with CPAB's program of practice inspections and the establishment of practice requirements;

"participating audit firm" means a public accounting firm that has entered into a participation agreement and that has not had its participant status terminated or, if its participant status was terminated, the status has been reinstated by CPAB;

"professional standards" means the standards, as amended from time to time, listed in section 300 of CPAB rules that are applicable to participating audit firms;

"public accounting firm" means a person or company engaged in the business of providing services as public accountants.

PART 2 AUDITOR OVERSIGHT

Public Accounting Firms

- 2.** A public accounting firm that prepares an auditor's report with respect to the financial statements of a reporting issuer must be, as of the date of its auditor's report
- (a) a participating audit firm,

- (b) in compliance with any remedial action referred to under subsection 5(1), and
- (c) in compliance with the notice requirements in section 5.

Notice to Reporting Issuer if Public Accounting Firm Not in Compliance

- 3. (1) If a public accounting firm has been appointed to prepare an auditor's report with respect to the financial statements of a reporting issuer and, at any time before signing the audit report, is not in compliance with the requirements of paragraphs 2(a), (b) or (c), the public accounting firm must provide the reporting issuer with notice in writing that it is not in compliance within 2 days of first becoming aware of its non-compliance.
- (2) A public accounting firm that has previously provided notice to a reporting issuer under (1) must not notify a reporting issuer that it complies with paragraphs 2(a), (b) or (c) unless it has been informed in writing by CPAB that the circumstances that gave rise to the notice no longer apply.
- (3) A public accounting firm must deliver a copy of a notice required under this section to CPAB on the same day that it is delivered to the reporting issuer.

Reporting Issuers

- 4. A reporting issuer that files its financial statements accompanied by an auditor's report of a public accounting firm must have the auditor's report prepared by a public accounting firm that, as of the date of the auditor's report,
 - (a) is a participating audit firm, and
 - (b) has not given the reporting issuer a notice under subsection 3(1) or, if it has given the reporting issuer a notice under subsection 3(1), has notified the reporting issuer that the circumstances that gave rise to the notice no longer apply.

PART 3 NOTICE

Notice of Remedial Action to Regulator or Securities Regulatory Authority

- 5. (1) A participating audit firm appointed to prepare an auditor's report with respect to the financial statements of a reporting issuer must deliver a notice to the regulator or, in Quebec, the securities regulatory authority, if any of the following occurs:
 - (a) CPAB notifies the participating audit firm in writing that it requires the participating audit firm to take one or more of the following remedial actions:
 - (i) terminate an audit engagement;

- (ii) engage an independent monitor to observe and report to CPAB on the participating audit firm's compliance with professional standards;
 - (iii) engage an external reviewer or supervisor to oversee the work of the participating audit firm;
 - (iv) limit the type or number of new reporting issuer audit clients the participating audit firm may accept;
 - (b) CPAB notifies the participating audit firm in writing that it must disclose to the regulator or, in Quebec, the securities regulatory authority, any remedial action not referred to in paragraph (a);
 - (c) CPAB publicly discloses a remedial action with which the participating audit firm must comply.
- (2) The notice required under subsection (1) must be in writing and must include the descriptions CPAB provided the participating audit firm of all of the following:
- (a) how the participating audit firm failed to comply with professional standards;
 - (b) each remedial action that CPAB imposed on the participating audit firm;
 - (c) for greater certainty, the time frame within which the participating audit firm must comply with each remedial action.
- (3) The notice described in subsection (2) must be delivered to the regulator or, in Quebec, the securities regulatory authority, no later than 2 days after the date that CPAB notifies the participating audit firm that it must comply with any remedial action under paragraph (1)(a), (b), or (c).
- (4) The participating audit firm must deliver a copy of a notice required under this section to CPAB on the same day that it is delivered to the regulator or, in Quebec, the securities regulatory authority.

Additional Notice Relating to Defects in Quality Control Systems

6. (1) If CPAB required a participating audit firm to comply with any remedial action relating to a defect in the participating audit firm's quality control systems, and CPAB notifies the participating audit firm that it has not addressed the defect in its quality control systems within the time period required by CPAB, the participating audit firm must deliver a notice to all of the following:
- (a) for each reporting issuer for which the participating audit firm is appointed to prepare an auditor's report,

- (i) the audit committee, or
 - (ii) if the reporting issuer does not have an audit committee, the person or company responsible for reviewing and approving the reporting issuer's financial statements before they are filed;
 - (b) the regulator or, in Quebec, the securities regulatory authority.
- (2) The notice required under subsection (1) must be in writing and must describe all of the following:
- (a) the defect in the participating audit firm's quality control systems identified by CPAB;
 - (b) the remedial action imposed by CPAB, including the date the remedial action was imposed and the time period within which CPAB required the participating audit firm to address the defect in its quality control systems;
 - (c) why the participating audit firm did not address the defect in its quality control systems within the time period required by CPAB.
- (3) A participating audit firm must deliver the notice required under subsection (1) no later than 10 days after the participating audit firm received notice from CPAB in writing that the participating audit firm failed to address the defect in its quality control systems within the time period required by CPAB.
- (4) The participating audit firm must deliver a copy of a notice required under this section to CPAB on the same day it is delivered to the regulator or, in Quebec, the securities regulatory authority.

Notice Before New Appointment

7. (1) A participating audit firm that is seeking an appointment to prepare an auditor's report with respect to the financial statements of a reporting issuer for a financial year must provide notice to the audit committee or, if the reporting issuer does not have an audit committee, the person or company responsible for reviewing and approving the reporting issuer's financial statements before they are filed, if
- (a) the participating audit firm did not audit the financial statements of the reporting issuer for the immediately preceding financial year, and
 - (b) CPAB informed the participating audit firm within the preceding 12-month period that the participating audit firm failed to address defects in its quality control systems to the satisfaction of CPAB.

- (2) The notice required under subsection (1) must be in writing and include the information referred to in subsection 6(2).

PART 4 EXEMPTION

Exemption

8. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions and restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of NI 14-101 opposite the name of the local jurisdiction.

PART 5 REPEAL AND EFFECTIVE DATE

Repeal

9. National Instrument 52-108 *Auditor Oversight* is repealed.

Effective Date

10. This Instrument comes into force on ***