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National Instrument 52-110

Audit Committees

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PART 1 DEFINITIONS AND APPLICATION

1.1 Definitions

In this Instrument,

“accounting principles” has the same meaning as in Part 1 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

“AIF” has the same meaning as in Part 1 of NI 51-102;

“asset-backed security” has the same meaning as in Part 1 of NI 51-102;

“audit committee” means a committee, or an equivalent body, established by and among the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer, and, if no such committee exists, the entire board of directors of the issuer;

“audit services” means the professional services provided by the issuer’s external auditor for the audit and review of the issuer’s financial statements or services that are normally provided by the external auditor in connection with engagements related to statutory and regulatory filings;

“credit support issuer” has the same meaning as in section 13.4 of NI 51-102;

“designated foreign issuer” has the same meaning as in Part 1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

“exchangeable security issuer” has the same meaning as in section 13.3 of NI 51-102;

“executive officer” has the same meaning as in Part 1 of NI 51-102;

“foreign private issuer” means an issuer that is a foreign private issuer within the meaning of Rule 405 under the 1934 Act;

“information circular” has the same meaning as in Part 1 of NI 51-102;

“marketplace” has the same meaning as in Part 1 of National Instrument 21-101 *Marketplace Operation*;

“MD&A” has the same meaning as in Part 1 of NI 51-102;

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“non-audit services” means services provided by the issuer’s external auditor other than audit services;

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“non-venture issuer” means a reporting issuer that is not a venture issuer;

“reverse takeover” has the same meaning as in Part 1 of NI 51-102;

“reverse takeover acquiree” has the same meaning as in Part 1 of NI 51-102;

“reverse takeover acquirer” has the same meaning as in Part 1 of NI 51-102;

“SEC foreign issuer” has the same meaning as in Part 1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

“venture issuer” has the same meaning as in Part 1 of NI 51-102.

1.2 Application

This Instrument applies to a reporting issuer other than

- (a) an investment fund;
- (b) an issuer of asset-backed securities;
- (c) a designated foreign issuer;
- (d) an SEC foreign issuer;
- (e) an exchangeable security issuer or credit support issuer that is exempt under section 13.3 or 13.4 of NI 51-102, as applicable; and
- (f) an issuer that is a subsidiary entity if
 - (i) the subsidiary entity does not have equity securities trading on a marketplace, other than non-convertible, non-participating preferred securities; and
 - (ii) the parent of the subsidiary entity is
 - (A) in compliance with the requirements of this Instrument; or
 - (B) an issuer that
 - (I) has equity securities listed or quoted on the New York Stock Exchange or Nasdaq Stock Market; and
 - (II) has not contravened the requirements of that exchange applicable to issuers, other than foreign private issuers, regarding the role and composition of audit committees.

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1.3 Subsidiary entity and control

- (1) For the purpose of this Instrument, a person or company is a “subsidiary entity” of another person or company if
 - (a) it is controlled by
 - (i) that other,
 - (ii) that other and one or more persons or companies each of which is controlled by that other, or
 - (iii) two or more persons or companies, each of which is controlled by that other; or
 - (b) it is a subsidiary entity of a person or company that is the other’s subsidiary entity.
- (2) For the purpose of this Instrument, “control” means the direct or indirect power to direct or cause the direction of the management and policies of a person or company, whether through ownership of voting securities or otherwise.
- (3) For the purpose of this Instrument, an individual is not considered to control an issuer if the individual
 - (a) beneficially owns or controls, directly or indirectly, 10% or less of any class of voting securities of the issuer; and
 - (b) is not an executive officer of the issuer.

1.4 Independence

For the purpose of this Instrument, a director is independent if he or she

- (a) is not an employee or executive officer of the issuer, and
- (b) does not have, or has not had, any relationship with the issuer, or an executive officer of the issuer, which could, in the view of the issuer’s board of directors having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment.

1.5 Financial literacy

For the purpose of this Instrument, a director is financially literate if he or she has the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are reasonably comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the issuer’s financial statements.

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PART 2 AUDIT COMMITTEE REQUIREMENTS

2.1 Audit committee

An issuer must have an audit committee that complies with the requirements of this Instrument.

2.2 Relationship with external auditors

An issuer must, under the terms of its audit engagement agreement, require its external auditor to report directly to the audit committee.

2.3 Responsibilities

- (1) An audit committee must have a written charter that sets out its mandate and responsibilities.
- (2) An audit committee must recommend to the board of directors
 - (a) the external auditor to be nominated for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the issuer; and
 - (b) the compensation of the external auditor.
- (3) An audit committee must oversee the work of the external auditor engaged for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the issuer, including the resolution of disagreements between management and the external auditor regarding financial reporting.
- (4) An issuer or any of its subsidiary entities must not obtain a non-audit service from its external auditor unless the service has been approved by the issuer's audit committee.
- (5) An issuer must not publicly disclose information contained in or derived from its financial statements, MD&A or annual or interim earnings news releases, unless the document has been reviewed by its audit committee.
- (6) An audit committee must be satisfied that adequate procedures are in place for the review of the issuer's public disclosure of financial information extracted or derived from the issuer's financial statements, other than the public disclosure referred to in subsection (5), and must, on a reasonably frequent basis, assess the adequacy of those procedures.
- (7) An audit committee must establish procedures for

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- (a) the receipt and retention of and reasonable attempts to resolve complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and
 - (b) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.
- (8) An audit committee must review and approve the issuer's hiring policies regarding partners, employees and former partners or employees of the present or former external auditor of the issuer.

2.4 Exemption for minimal non-audit services

An issuer does not contravene subsection 2.3(4) if

- (a) the aggregate fees paid for all the non-audit services that are not approved is reasonably expected to constitute no more than five per cent of the aggregate fees paid by the issuer and its subsidiary entities to the issuer's external auditor during the financial year in which the services are provided;
- (b) the issuer or the subsidiary entity of the issuer, as the case may be, did not recognize the services as non-audit services at the time of the engagement; and
- (c) once recognized as non-audit services, the services are promptly brought to the attention of the audit committee of the issuer and approved, prior to the completion of the audit, by the audit committee.

2.5 Delegation of approval function

- (1) An audit committee may delegate to one or more independent members its authority to approve non-audit services under subsection 2.3(4) or paragraph 2.4 (c).
- (2) The approval of non-audit services by any member to whom authority has been delegated pursuant to subsection (1) must be presented to the audit committee at its first scheduled meeting following such approval.

2.6 Approval policies and procedures

An issuer satisfies the approval requirement in subsection 2.3(4) if it adopts policies and procedures for the engagement of the non-audit services and

- (a) the approval policies and procedures are detailed as to the particular service; and
- (b) the audit committee is informed of each non-audit service.

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PART 3 COMPOSITION OF THE AUDIT COMMITTEE

3.1 Application

This Part applies only to a non-venture issuer.

3.2 Composition

- (1) An audit committee must be composed of a minimum of three members.
- (2) Every audit committee member must be a director of the issuer.
- (3) Subject to sections 3.3 to 3.8, every audit committee member must be independent.
- (4) Subject to sections 3.5 and 3.9, every audit committee member must be financially literate.

3.3 Initial public offerings

- (1) Subject to section 3.10, if an issuer has filed a prospectus to qualify the distribution of securities that constitutes its initial public offering, subsection 3.2(3) does not apply to the issuer for a period of 90 days commencing on the date of the receipt for the prospectus, provided that at least one member of the audit committee is independent.
- (2) Subject to section 3.10, if an issuer has filed a prospectus to qualify the distribution of securities that constitutes its initial public offering, subsection 3.2(3) does not apply to the issuer for a period of one year commencing on the date of the receipt for the prospectus, provided that a majority of the audit committee members are independent.

3.4 Events outside control of member

Subject to section 3.10, if an audit committee member ceases to be independent for reasons outside the member's reasonable control, subsection 3.2(3) does not apply to the issuer, with respect to that member, for the period ending on the later of

- (a) the next annual meeting of the issuer; and
- (b) the date that is six months from the occurrence of the event which caused the member to not be independent.

3.5 Death, disability or resignation of member

Subject to section 3.10, if the death, disability or resignation of an audit committee member has resulted in a vacancy on the audit committee that would cause the issuer to

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contravene subsection 3.2 (1), subsections 3.2(3) and 3.2(4) do not apply to the issuer with respect to an audit committee member appointed to fill the vacancy for the period ending on the later of

- (a) the next annual meeting of the issuer; and
- (b) the date that is six months from the day the vacancy was created.

3.6 Becoming a non-venture issuer

- (1) Subject to section 3.10, if a venture issuer becomes a non-venture issuer, subsection 3.2(3) does not apply for a period of 90 days commencing on the date the venture issuer becomes a non-venture issuer, provided that at least one member of the audit committee is independent.
- (2) Subject to section 3.10, if a venture issuer becomes a non-venture issuer, subsection 3.2(3) does not apply for a period of one year commencing on the date the venture issuer becomes a non-venture issuer, provided that a majority of the audit committee members are independent.

3.7 Certain reverse takeovers

- (1) Subject to section 3.10, if an issuer participates in a reverse takeover, subsection 3.2(3) does not apply for a period of 90 days commencing on the date of completion of the reverse takeover if
 - (a) the issuer is the reverse takeover acquiree;
 - (b) immediately before the reverse takeover, the reverse takeover acquirer was
 - (i) a venture issuer, or
 - (ii) not a reporting issuer; and
 - (c) at least one member of the audit committee is independent.
- (2) Subject to section 3.10, if an issuer participates in a reverse takeover, subsection 3.2(3) does not apply for a period of one year commencing on the date of completion of the reverse takeover if
 - (a) the issuer is the reverse takeover acquiree;
 - (b) immediately before the reverse takeover, the reverse takeover acquirer was
 - (i) a venture issuer, or
 - (ii) not a reporting issuer; and
 - (c) a majority of the audit committee members are independent.

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3.8 Temporary exemption for limited and exceptional circumstances

Subject to section 3.10, subsection 3.2(3) does not apply to an issuer in respect of a member of the audit committee if

- (a) the member is not an employee or executive officer of the issuer;
- (b) the board of directors, under limited and exceptional circumstances, determines that the appointment of the member is required in the best interests of the issuer;
- (c) the member does not act as chair of the audit committee;
- (d) the member does not rely upon this exemption for a period of more than two years; and
- (e) a majority of the audit committee members are independent.

3.9 Acquisition of financial literacy

Subject to section 3.10, an audit committee member who is not financially literate may be appointed to the audit committee provided that the member becomes financially literate within a reasonable period of time following his or her appointment.

3.10 Restriction on use of certain exemptions

Sections 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9 do not apply to a member unless the issuer's board of directors has determined that the reliance on the exemption will not significantly adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of this Instrument.

PART 4 AUTHORITY OF THE AUDIT COMMITTEE

4.1 Authority

The board of directors of an issuer must give the audit committee the authority

- (a) to engage independent counsel, or other advisors, as it determines necessary to carry out its duties;
- (b) to set and direct the payment of the compensation for any independent counsel or other advisor engaged by the audit committee; and
- (c) to communicate directly with the internal and external auditors.

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PART 5 REPORTING OBLIGATIONS

5.1 Non-venture issuers

- (1) If management of a non-venture issuer solicits a proxy from a security holder of the issuer for the purpose of electing directors to the issuer's board of directors, the issuer must include in its information circular the disclosure required under Form 52-110F1.
- (2) A non-venture issuer that does not send an information circular to its security holders must include the disclosure required under Form 52-110F1 in its AIF.

5.2 Venture issuers

- (1) If management of a venture issuer solicits a proxy from a security holder of the venture issuer for the purpose of electing directors to the issuer's board of directors, the venture issuer must include in its information circular the disclosure required under Form 52-110F2.
- (2) A venture issuer that does not send an information circular to its security holders must include the disclosure required under Form 52-110F2 in its AIF.
- (3) A venture issuer that does not send an information circular to its security holders or file a AIF must include the disclosure required under Form 52-110F2 in its annual MD&A.

PART 6 U.S. LISTED ISSUERS

6.1 U.S. listed issuers

Parts 2, 3, 4, and 5 do not apply to an issuer that has securities listed or quoted on the New York Stock Exchange or Nasdaq Stock Market if

- (a) the issuer has not contravened the requirements of that exchange applicable to issuers, other than foreign private issuers, regarding the role and composition of audit committees, and
- (b) if the issuer is incorporated, continued or otherwise organized in a jurisdiction in Canada, the issuer includes in its information circular or, if none, in its AIF or, if neither, in its annual MD&A, the disclosure, if any, required under paragraph 7 of Form 52-110F1 or paragraph 4 of Form 52-110F2.

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PART 7 EXEMPTIONS

7.1 Exemptions

- (1) The securities regulatory authority or regulator may grant an exemption from this Instrument, in whole or in part, subject to such conditions or 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 National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 8 EFFECTIVE DATE AND REPEAL

8.1 Effective date

This Instrument comes into force on •

8.2 Repeal

National Instrument 52-110 *Audit Committees*, which came into force on the date set out below, is repealed:

- (a) March 30, 2004, in all jurisdictions other than British Columbia and Québec;
- (b) June 30, 2005, in Québec;
- (c) March 17, 2008, in British Columbia.