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BY FACSIMILE AND E-MAIL August 11, 2003

Ontario Securities Commission
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Attention: John Stevenson, Secretary

Quebec Securities Commission
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C.P. 246, Tour de la Bourse
Montréal, QC H4Z 1G3

Attention: Denise Brousseau

Re: Proposed MIs 52-108, 52-109, 52-110, and related documents

I am writing in my personal capacity (and not on behalf of the firm or any client) to comment on the proposed MIs 52-108, 52-109, 52-110, and related documents. These comments are in no particular order. In addition, as a general question, as a result of these initiatives, is it anticipated that the SEC will exempt Canadian issuers from Sarbanes-Oxley requirements?

MI 52-108

1. As the CPAB will be a contractual based organization, and contractual penalties are generally not enforceable, are the "sanctions and restrictions" that the CPAB intends to impose enforceable? Should a statutory model be used?

2. Will the CPAB be required to maintain the name of any particular reporting issuer involved in an audit review in confidence to avoid inappropriate speculation as to its financial affairs?

3. There should be an exemption for issuers of exchangeable securities and guaranteed securities.

4. If the CPAB may until December 31, 2005 restrict the number of public accounting firms that are eligible to participate in the CPAB Oversight Program, then in fairness, the rule should not apply until such time. Otherwise, existing audit firms and their clients could be unfairly prejudiced.

5. Given the modest size of Canada's capital markets, and the somewhat uncertain definition of reporting issuer (particularly in the M & A context), and given the CPAB's request to exempt Canadian accounting firms from US registration, it does not seem appropriate to require foreign accounting firms auditing foreign companies to enter into participation agreements with the CPAB. Most will be subject to foreign requirements. This will only serve to further discourage foreign companies from becoming reporting issuers in Canada.

6. What will an issuer do if its audit firm is, just prior to the delivery of an auditor's report, suspended or terminated from the CPAB (or if the audit firm fails to comply with any sanctions or restrictions imposed by the CPAB)? Similarly, what will an issuer do if its audit partner is, just prior to the delivery of an auditor's report, suspended or terminated from the CPAB (or if the audit partner fails to comply with any sanctions or restrictions imposed by the CPAB)? The latter difficulties may be exacerbated if the audit firm is small and can't readily find a replacement. Also, current or prior non-compliance with sanctions or restrictions may well not be known to the reporting issuer. For how long would prior non-compliance continue to tarnish an audit firm in any event? Even suspension or termination may not be known. Only a known suspension or termination of the firm (and not non-compliance) should apply, in my view, and in any event a 12-month grandfathering provision should be provided for following acquiring knowledge thereof. Otherwise, you will be penalizing reporting issuers and their securityholders for the misdeeds of an audit firm, which seems inappropriate. If the CPAB does not suspend or terminate a firm, to the knowledge of the reporting issuer, reporting issuers should not be affected, and even if the CPAB does suspend or terminate a firm, to the knowledge of the reporting issuer, reporting issuers should have 12 months to find an alternative.

7. The five business day requirement should be extended to 30 days, as it appears insufficient to give notice to all clients. The regulators should be advised, and could publicize the sanctions within a five business day period, perhaps. Alternatively, the CPAB could be required to publicize the sanctions within such period, much as the IDA does.

8. Given its public interest mandate, is s. 3.22 of the CPAB's by-laws appropriate? Note that it does not apply to officers or governors. Should the governors and industry members also benefit from Article 5 of the by-laws. S. 11.1 of the by-laws suggests that individual accountants, as well as firms, may be required to become direct participants. Is it intended to be limited to firms (including sole practitioners)?

9. Should the CSA not have the ability, by contract or otherwise, to over-rule proposed rules and regulations, either generally or on the appeal of participants or others directly affected, as with the IDA for example?

10. The CPAB's proposed rules and regulations, and the terms of the proposed participation agreement, should be published for public comment, given its potential and intended impact on public companies, investors and the capital markets generally.

11. As all reporting issuers will not have audit committees, query if that is the body to whom notices should be given.

MI 52-109

1. You have asked for comments as to whether an issuer that carries on business through a subsidiary or similar entity, such as an income trust, should be subject to the same proposed certification requirements. Presumably, it should be clarified in the companion policy or the forms themselves that certification should be on a consolidated basis. Many income funds, however, because of the unclear scope of liability attaching to trustees of a trust (caused in part by the fact that the Ontario Securities Act, unlike in the US, may treat both a trust and a trustee as an issuer), seek to minimize the activities of the trust. Often, there is no CEO or CFO of the trust. I would thus recommend that reporting issuers structured as trusts be expressly entitled to satisfy the certification requirements by delivering certifications from the CEO and CFO of the underlying business; provided they refer to the consolidated picture of the trust.

2. The last paragraph of the companion policy should be deleted, in my view, as "mixing together" a core and non-core document may in fact not be possible and would raise very serious issues.

3. The companion policy should perhaps clarify that the CEO and CFO of a limited partnership are the CEO and CFO of the general partner.

MI 52-110

1. As noted above, income trusts often do not have audit committees, but rather employ the audit committee of the underlying business. I would thus recommend that reporting issuers structured as trusts be expressly entitled to satisfy all of the audit committee requirements by using the audit committee of the underlying business, provided that it reviews the consolidated financial picture of the trust.

2. How does the CSA consider that a limited partnership's audit committee would be constituted? The rule or companion policy should address this issue more clearly than in s. 1.2 of the companion policy.

3. It is not clear what an "earnings press release" is and is not. Presumably it does not include "profit warnings" and similar guidance, but only press releases announcing annual or quarterly financial results. This should be clarified. If the audit committee must review "profit warnings" before they are publicly disclosed, then a temporary exemption should be provided from the material change obligation (e.g. OSA s. 75(1)) for the period relating to such review taking place. Otherwise, in situations where such review cannot occur forthwith due to the unavailability of committee members, the obligation to comply with MI 52-110 will potentially lead to a violation of material change requirements. The TSX and other exchanges should also be instructed to modify their timely disclosure requirements accordingly.

4. Bill 198 (see s. 138.4(7)) seems likely to increase the liability of any "financial expert", despite the CSA's expressed non-intention to increase such person's liabilities (see, for example, the OSC's reasons in YMB Magnex, where skill was a focal point of the analysis). Designation would only exacerbate this situation, in my view and should perhaps be replaced with a mandatory discussion of the "financial literacy" concept as applied by the issuer.

5. The definition of "venture issuer" should perhaps not exclude every non-North American marketplace. The AIM market in the U.K., for example, might be considered to qualify. Also, entirely unlisted issuers, even if large, would not be caught (e.g. issuers with publicly held debt securities only). Also, given the uniqueness of the definition of marketplace in NI 21-101 (see for example para (d) thereof), it is not at all clear that this is an appropriate term either here or in s. 1.2(d)(i). Perhaps a more numerical

threshold (e.g. assets or revenues over $25 million at year end) should be used instead.

6. The publication of audit committee charters may lead to expanded personal civil liability of members. Query whether their publication should be mandatory. This may serve to discourage participation on audit-committees.

7. Should s. 1.4(3)(b) use the words "employed in a professional capacity by", like s. 1.4(3)(c)?

8. What is a "member" of a legal firm (s. 1.4(7)(b))? The concept of being an employee in a professional capacity should be used instead, in my view. I personally do not believe that being in a lawyer-client relationship necessarily creates a situation of non-independence. In my experience, the reverse is often true, as lawyers are often very conservative and risk-averse by training. Query therefore whether a legal relationship should be included in this list.

9. The purpose and intent of s. 2.3(6) is unclear, and may benefit from a discussion in the companion policy. What disclosure (presumably this should say "public disclosure" in any event) of "financial information" extracted or derived from the financial statements generally occurs, other than in the financial statements themselves, the MD&A and associated press releases? As noted above, if it is trying to capture "profit warnings" or guidance, this should be indicated, and material change requirements may need to be delayed to enable a review of a "profit warning". Also, see para. 16 below.

10. S. 2.4 should cover services that are "reasonably expected to constitute" 5% or less, since one may not know the total revenues until year end. Also, the word "promptly" in s. 2.4(c) should be deleted. As long as awareness occurs prior to the requisite time, this should suffice. The words "prior to completion of the audit" should, in my view, be replaced by "prior to the public release of the audited financial statements".

11. S. 3.1(1) requires at least three members. Consider the case where there are three members, but one or two are away, hospitalized or otherwise unavailable during a particular period. It generally needs to be clarified (as would be the case in a typical by-law) that the committee can act without all members present, set its own quorum and procedures, etc.

12. S. 3.2(1) should also clearly apply to a secondary IPO.

13. S. 3.5 should also provide for an exemption from the minimum size requirement of s. 3.1(1) in these cases.

14. S. 7.1 should use the words “or quoted” after “listed”. Is it really intended that foreign 10-Ks (which are AIFs as defined in proposed NI 51-102) would need to satisfy these Canadian requirements?

15. An exemption from MI 52-110 should be provided for issuers of exchangeable securities, as their financial statements are not relevant.

16. I am not sure that, as described in s. 2.1 of the companion policy, boards always “delegate” their financial reporting oversight responsibilities to audit committees. Sometimes such committees are more advisory in nature, and the board itself is more involved. This language should perhaps be softened. In addition, given the potential ultimate liability of board members, the CSA should presumably not prevent a board from taking a more direct role. Thus, s. 2.2 of the rule should say “or the board of directors” at the end, s. 2.3(3) should allow the board to be directly responsible for such oversight while receiving input from the audit committee, and ss. 2.3 (4), (5), (6), (7) and (8) should similarly allow a board to be the ultimate decision-maker in these areas (taking into account the advice of the audit committee, of course).

17. S. 2.2 of the companion policy should be contained in the rule itself.

18. S. 1.3 of MI 52-110 a very fuzzy standard of control and affiliate and subsidiary status. Would, for example, a lender in a situation involving financial difficulty be seen to have such “control”? I recommend the usual 50% standard as contained in OSC Rule 45-501, for example. Also, I recommend extending s. 3.3 of MI 52-110 to any insider or associate as well as any affiliate.

19. Ss. 5.1 and 5.2 of the companion policy should form part of the rule.

Yours truly,

Simon Romano

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