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September 22, 2003

Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Commission des valeurs mobilières du Québec
Nova Scotia Securities Commission
Securities Administration Branch, New Brunswick
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

in care of:

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and

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Dear Mr. Stevenson and Ms. Brosseau,

Re: Request for Comments
Notice of Proposed Multilateral Instrument 52-110
Forms 52-110F1 and Companion Policy 52-110CP
Audit Committees

We are submitting this comment in response to your request in the June 27th, 2003 Ontario Securities Bulletin.[1] We have eagerly anticipated the release of your proposed multilateral instrument on audit committees and we wish to comment on what we perceive as both the strengths and weaknesses of this new rule.

1. **Determination of "Material Relationships" and Disclosure of Relationship to Issuer**:

From our reading of the proposed Multilateral Instrument, it would appear that the ultimate determination of whether or not an audit committee member is independent is to be based on a collective determination made by the issuer's board of directors.[2] We submit that the list of possible material relationships in section 1.4(3) is very comprehensive and will be very helpful in highlighting the kinds of relationships that can lead to a loss of independence amongst board members. We commend the OSC on the inclusion of such a comprehensive test for the determination of material relationships and also for the disclosure obligations for those who fall within sections 3.2, 3.3, 3.4 and 3.5.

2. **Approval of all Non-Audit Work:**

We agree that the audit committee should pre-approve all non-audit services to be provided to the issuer by the external auditor as outlined in section 2.3(4) of the proposed Multilateral Instrument. However, we are concerned that the audit committee is not given specific assistance with this duty. For the purposes of discussion, we refer to the list of non-audit services that are prohibited in the United States by means of Section 201(a) of the **Sarbanes-Oxley Act** which imposes the same list into a new s.10A(g) of the **Securities Exchange Act of 1934**. The list of services that are prohibited in the United States, and for which pre-approval may not ever be sought, are the following[3]:

- bookkeeping or other services related to the accounting records or financial statements of the audit client;
- financial information systems design and implementation;
- appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- actuarial services;
- internal audit outsourcing services;
- management functions or human resources;
- broker or dealer, investment adviser, or investment banking services;
- legal services and expert services unrelated to the audit;
- any other service that the Public Company Accounting Oversight Board deems impermissible.

We understand that this list of prohibited services was first proposed by the SEC in a set of rules for auditor independence on November 21, 2000.[4] This list of prohibited services is based on the belief that an external auditor should not perform in any of the three following categories:

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[1] Ontario Securities Commission Bulletin, June 27, 2003 Volume 26, Issue 26, Pages 4989 – 5016.
[2] Section 3.1(3) of Proposed Multilateral Instrument 52-110 (2003) 26 OSCB @ page 5001 with the definition of "independence" found at sectioln 1.4(1) and section 1.4(3). The decision as to whether or not a "material relationship" could reasonably interfere with the exercise of a member's independent judgment is to be made in the view of the issuer's board of directors, section 1.4(2).
[3] Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, SEC Release No. 33-8183 (January 28, 2003), as amended.
[4] Rules Governing Auditor Independence, SEC Release No. 33-7919 (Nov. 21, 2000).

(1) The auditor should not function in the role of management;
(2) The auditor should not ever be placed in the position of auditing his/her own work;
(3) The auditor should not ever be placed in the position of advocating for his/her client.

Teachers' is committed to these principles. While we are not certain that it would be useful to incorporate a list of prohibited services directly into the Canadian rule, we believe that if audit committees are given similar assistance as their counterparts in the United States, the chances that external auditors will find themselves in one of the three dangerous positions described above will be small. While not urging the drafters of Multilateral Instrument to implement the prohibited services directly into the rules for audit committees, we urge some direction regarding the scope of the work that can and cannot be performed for the benefit of audit committees. To do otherwise would be to throw the burden solely upon audit committees to have to refuse applications to perform work of this nature. We are committed to the belief that there are no circumstances under which an external auditor should perform such services and to do so will lead to a serious challenge of that auditor's independence from management. At the very least, we recommend that the OSC consider amending language to section 2.3(4) that prohibits the audit committee from pre-approving any non-audit work in which, in the opinion of the audit committee, the auditors will ultimately be auditing their own work.

3. **Affiliated Entities**

We note that according to the definition of "material relationships", those who are considered to be "affiliated entities" are considered to fall within the category of individuals who may not be able to exercise independent judgment by virtue of the fact that they are employed by a controlling shareholder.[5] Teachers' has a concern that the provisions of section 1.4(3)(a) and (f), will prohibit individuals employed by a controlling shareholder from sitting on the audit committee of a reporting issuer. We acknowledge the exemption in section 3.3 for controlled companies but we do not believe this exemption goes far enough. In fact the exemption provided by section 3.3 is very limited – an individual is considered to be independent and may sit on the audit committee if s/he is on the board of directors of the affiliated entity (or controlling shareholder) and providing that s/he is otherwise independent of the issuer and affiliated entity (other than by sitting on the audit committee of the issuer).

We wish to indicate that the senior employees of controlling shareholders often provide valuable assistance on audit committees and because they represent a shareholder, they do have the interests of the shareholders very much in mind and are very independent from management. We urge you to reconsider this matter and allow employees of controlling shareholders to be considered for the audit committees of the companies with which they have very large share positions because as a bottom line, the concept of "independence" should be nothing more than "independence from management".

4. **Disclosure on the Annual Information Form:**

We are content that the disclosure obligations for this Multilateral Instrument be contained within the Annual Information Form. We can think of no reason for this disclosure to be included in any other statement.

[5] Section 1.3 **Meaning of Affiliated Entity, Subsidiary Entity and Control** and in particular, subsection (1) for "affiliated entity".

5. **Exemption for Venture Issuers:**

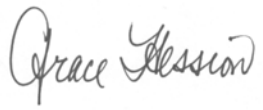
We are not objecting to the exemption provided for venture issuers because of the careful definition you have provided for venture issuers and because of the fact that the exemption you provide is only partial. A venture issuer is defined as an issuer who does not have any of its securities listed or quoted on the following exchanges:

- Toronto Stock Exchange;
- New York Stock Exchange;
- American Stock Exchange;
- Nasdaq National Market;
- Nasdaq SmallCap Market;
- Pacific Exchange
- or a marketplace outside of Canada or the United States

We are content with this definition because we are certain that an investor that decides to purchase a security that is not listed with any of these exchanges will know to expect a lesser degree of corporate governance standards and protection.

We thank you again for this opportunity to express our views and for being the first regulatory agency to formulate rules of this nature in Canada.

Sincerely,



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