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September 25, 2003

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

Dear Sirs:

Overview Commentary Re: Multilateral Instrument 52:108 Auditor Oversight; Multilateral Instrument 52:109 Certification of Disclosure in Companies' Annual and Interim Filings; and Multilateral Instrument 52:110 Audit Committees.

We are pleased to provide our comments on the above proposals. In this covering letter we present our main comments, observations and points of principle. The attached document provides a more detailed commentary.

Overall, our firm is very supportive of the proposals put forward in the above documents. While Canada's capital markets are only a small part of the global financial markets, we are a nation with large capital needs and a significant dependency on foreign markets and sources of capital. We must ensure that our capital markets remain attractive to both foreign and Canadian investors, who have many options on where they can invest their savings. If we allow the

credibility of our markets to deteriorate relative to other countries, and the United States in particular, the cost of capital for all Canadian companies will increase, which will place an additional burden on our economic growth and prospects.

We also believe that relevant, timely and reliable financial reporting is central to both the credibility of our markets and investor confidence. The scandals of the past year in the United States have shaken the confidence of investors in financial reporting, which has introduced more uncertainty into the analysis of corporate performance and investment decision-making. Given the number of inter-listed companies in Canada, the number of Canadian foreign registrants with the SEC and the magnitude of cross border capital flows between Canada and the United States, we believe it would be a serious mistake to assume that the loss of investor confidence in financial reporting can be confined to the United States. While the attractiveness of our capital markets to investors ultimately depends on the competitiveness and performance of our Canadian companies, we agree with the focus on ensuring that the financial reporting of the performance of Canadian companies is relevant, timely and reliable.

Should Canada Have a Two-Tier Market?

We are pleased to see that the Canadian Securities Administrators have tried to take into account the difference in size and scale of the Canadian capital markets as compared with the U.S. markets. It is well known that Canada has a much higher proportion of small-cap public companies than the United States and a much higher proportion of controlled companies. We believe that most of these proposals are workable in the Canadian marketplace.

There are, however, some areas where more work needs to be done.

We believe strongly that the Canadian Securities Regulators should not adopt policies and regulations that will create a two-tier market system in Canada. In our opinion, the core principles of financial reporting, auditing and governance should be universally applied across all Canadian public companies, irrespective of size or exchange listing. Flexibility should be permitted, however, in how these core principles are applied to mitigate the relative cost burden on smaller companies. As a result, we are supportive of the CEO/CFO certification proposals that must be implemented by all reporting issuers and not supportive of the proposed exemption that would lower the standards for audit committees of reporting issuers listed on the TSX Venture Exchange. We believe that producing relevant, timely and reliable information for investors is a fundamental obligation of all public companies that obtain capital from third party investors.

We are also disappointed that unanimity amongst the commissions regarding these proposals. We fear that this will create difficulties for many Canadian companies and damage the credibility of our markets. We urge the securities commissions to renew their efforts to achieve a national consensus on the final policies and regulations.

Regulation of The Audit Profession

We are highly supportive of the recent establishment of the Canadian Public Accountability Board (CPAB), chaired by former Bank of Canada Governor, Gordon Thiessen. We also support the proposals put forward to operationalize the CPAB so it can begin to conduct annual reviews of the audit practices of the accounting firms that audit public corporations.

We do, however, wish to emphasize the importance of establishing a system of mutual reliance with the US Public Company Accounting Oversight Board (PCAOB). Having Canadian public accounting firms directly and actively regulated by PCAOB would not only double the costs of regulation, which would increase the costs of auditing in Canada, but also undermine the authority and credibility of the CPAB in Canada.

Oversight of External Auditors

We agree that the audit committee must be responsible for recommending to the board the nomination and compensation of the external auditors and overseeing the work of the external auditor. We also agree with the requirement for the disclosure of the audit committee charter, the approval by the audit committee of all audit and non-audit services to be performed by the external auditor, and the other requirements put forward in the proposals such as the requirement for the audit committee to review the issuer's financial statements, MD&A and earnings press releases before the issuer publicly discloses this information.

It is imperative that investors and the public have confidence in the independence of the auditor and that the auditor always conduct his or her work with an objective state of mind. We believe that the framework put forward in these proposals (auditor accountability to the audit committee, disclosure of the audit committee charter which includes policies for the approval of audit and non-audit services and disclosure of audit and non-audit fees in the Annual Information Form) will achieve this objective.

We also urge the Canadian Securities Administrators to resist the temptation to issue detailed rules and interpretations on auditor independence matters and pre-approval processes for audit committees to follow. These issues should be left to the CA Profession, subject to full CPAB oversight. We believe it is the responsibility of the audit committee, and the board of directors, to establish pre-approval policies and processes that are appropriate in their circumstances to comply with the principles of assessing auditor independence and then disclose such policies in the audit committee's charter. They should be given the flexibility to establish practical approaches to implementing the requirement that the audit committee approve in advance all audit and non-audit services provided by the external auditor.

While we support the proposals for auditor accountability to the audit committee and approval of audit and non-audit services by the audit committee, we wish to make two points as follows:

The first is to recommend that the final rules emphasize that the external auditors are appointed by the shareholders at the annual meeting and must report to the shareholders on the results of

their audit. The audit committee can oversee and assist the auditor in performing his or her duties, but the final responsibility for the auditors' work and opinion on the financial statements lies with the external auditor, not the audit committee.

The second point is that the primary focus of the audit committee in "overseeing the work of the external auditors" is to understand, assess and monitor the quality of audit work performed by the external auditor, including conclusions formed on complex and highly subjective/judgemental areas. This is a challenging task for audit committee members, especially those who have limited experience in auditing. It is however, the crux of "overseeing the work of the external auditor", and there is a danger that the attention directed at non-audit services will distract the audit committee from this principal task.

Finally, there is one element of the disclosure framework that is not addressed in the proposals, namely the reporting by the audit committee on its activities. This disclosure is currently part of the corporate governance disclosures required by companies listed on the Toronto Stock Exchange. We suggest that this reporting be included in the audit committee proposals so that the requirements are complete, presented in one place and easy to understand.

Top Management Accountability

The proposals put forward show, in our view, a solution that balances the need for consistency with the U.S. requirements and the characteristics of the Canadian market place.

While we support the concept that the CEO and CFO should certify that the documents filed annually and quarterly "present fairly" without reference to GAAP, we are concerned that we are leaving the interpretation of "presents fairly" to the courts to decide. We suggest you request the CA Profession to develop guidance for CFOs and CEOs to help them in making this important assessment.

We also suggest that the Canadian Securities Administrators make it clearer in the final document that the "presents fairly" assessment includes both the MD&A and the financial statements (and the AIF in the annual certification). The guidance in the draft proposals and the case law references give the erroneous impression that "presents fairly" assessment is focused on the financial statements and not the financial statements and MD&A taken together. Many people have erroneously concluded that this is a return to the two-part audit opinion, which was restricted to the financial statements and did not include either the MD&A or the AIF. The final rules and supporting documents should make it clear that the reporting package for the CEO and CFO certification is the MD&A and Financial Statements (and the AIF in the annual certification), which also must be reviewed by the audit committee.

We support the proposals put forward with respect to disclosure controls and internal controls, including the requirement for only an annual evaluation of these controls by the CEO and CFO and the disclosure of the results of their evaluation in the MD&A. We also agree with the transitional provisions, which would require only a "bare certification" in the first year, and the decision to not proceed with detailed definitions of internal control, disclosure controls and the

contents of the report by management on their evaluation of controls. These are matters however that require urgent attention in the first year of implementation, and we urge the Securities Administrators to work closely with the CA Profession to develop practical guidance in these areas.

The Role of Audit in the Capital Markets

We suggest that the role of the auditor in a regulatory environment that is focused on continuous and integrated disclosure needs to be clarified and explicitly stated. At the present time the external auditor is only required to provide an audit opinion on the annual financial statements. Many companies engage their auditors to perform a "review" of the quarterly financial statements, but there is no external reporting or indication to the reader of whether the external auditor has been engaged to perform such a review and what the results of the review were. Audit committees will now be required to review the quarterly MD&A and financial statements, which are the focus of the CEO and CFO certification, and should seek assurances from the auditor on these documents, including the evaluation of disclosure controls and internal controls performed by the CEO and CFO. Without explicitly clarifying the role of the auditor, we believe that there is a danger for confusion, divergence in practice and a missed opportunity for further strengthening investor confidence.

Our firm believes the role of the external auditor is important and that it must move beyond the current annual requirements to become an integral and meaningful part of the continuous disclosure process. We urge the Canadian Securities Administrators to work closely with the CA Profession to implement requirements for quarterly reviews by the external auditor for both the MD&A and financial statements, with appropriate standards and public reporting, and for attestation of the CEO and CFO evaluation of disclosure controls and internal controls similar to those required in the United States.

Audit Committee Effectiveness

We agree with most of the proposals dealing with the requirements for audit committees. While we agree that all members of the audit committee members must be independent, we believe that the knowledge, competency and courage of audit committee members are perhaps more important. While we acknowledge and support the proposals for financial literacy and disclosure of audit committee financial experts, our experience is that knowledge of the company's business and industry is of equal and perhaps greater importance, yet this is not even referred to in the proposals. We are concerned that the proposals as drafted may give too much emphasis to the technical independence issues, and not enough emphasis to the broader business and industry knowledge that is critical to audit committee effectiveness.

We also wish to register a concern with the "bright line" tests for independence of audit committee members. We think the level of specificity in these tests will result in many "unintended circumstances" which would disqualify competent and experienced directors from serving on the audit committee. We strongly suggest that these tests be repositioned as matters that the board of directors should consider in determining whether all members of the audit

committee meet the independence requirement. The tests could be presented in a "comply or explain" framework, but the board of directors should be given the flexibility and responsibility to make the final determination – with appropriate disclosure.

Moving Beyond Compliance

Some believe that it is important to change behaviour if corporate governance and audit committee effectiveness is to be improved. The report of the Saucier Committee expressed the view that regulation aimed at changing board behaviour may turn out to be counterproductive. We support the proposals put forward as a foundation on which Canada can develop corporate reporting policies and practices that meet the requirements of relevance, timeliness and reliability.

The CSA has, however, put forward a very significant compliance agenda for Canadian public companies. And there is a real danger that a "tick the box" approach to compliance will not produce improvements in effectiveness. The CSA must be prepared to work with professional associations like the Canadian Institute of Chartered Accountants and the Canadian Institute of Corporate Directors to put in place the educational and supporting materials to ensure we focus on improving effectiveness and not just ensuring compliance with the new requirements.

Moving beyond compliance to enhanced effectiveness requires integrity, leadership (from senior management, auditors, audit committee chairmen, board chairmen etc.), forging and managing new relationships, trust and new behaviours. These things cannot be legislated or implemented through regulation. All participants in the Canadian capital markets must now work together on these important matters and not become totally preoccupied with the compliance challenges presented by the new requirements. We are committed to play our part in providing leadership to this endeavour.

We will be pleased to discuss any of our comments further if required.

Yours truly,

Bruce C. Jenkins, FCA
National Director – Professional Practice

Detailed Commentary Re: Multilateral Instrument 52:108 Auditor Oversight; Multilateral Instrument 52:109 Certification of Disclosure in Companies' Annual and Interim Filings; and Multilateral Instrument 52:110 Audit Committees.

We are pleased to submit our detailed comments on the above-noted Multilateral Instruments for the consideration of the securities regulatory authorities in each jurisdiction noted above. We believe that the proposed new capital market reform policies represent a very timely contribution in an area that is currently subject to intense public scrutiny. With these policies, Canadian practitioners and Reporting Organizations will not only be able to address these issues more effectively themselves but will also be in a position to contribute to improving public confidence in the integrity of financial reporting by promoting high quality independent auditing; improving the quality and reliability of reporting issuers' annual and interim disclosures; and establishing and maintaining strong, effective and independent audit committees. All of these measures will ultimately enhance investor confidence in the integrity of Canada's capital markets.

Multilateral Instrument 52:108 – Auditor Oversight

The proposal states that the Canadian Public Accountability Board (the "CPAB") practice inspectors would perform inspections to ensure that participating firms are complying with professional standards, Rules of Professional Conduct, relevant regulatory requirements and the contractual requirements of the CPAB. We feel that the audit forms the core and central part of the credibility of capital market reform. From this point of view, the importance of both the traditional audit, as well as the importance of audit keeping pace with the continuing expansion of reporting responsibilities, cannot be overstated. This message is echoed by the recent accounting scandals that have rocked the U.S. We are supportive of all measures designed to increase public confidence in the integrity of financial reporting of reporting issuers by promoting high quality, independent auditing.

A foreign issuer that is defined as an "SEC foreign issuer" or as a "designated foreign issuer" in NI 71-102 will be deemed to comply with section 2.3 of the proposal provided it complies with the regulations in its home jurisdiction respecting audit reports and financial statements. However, section 2.1 will require the issuer's auditors to enter into a participation agreement with the CPAB. Therefore, public accounting firms based outside Canada that audit foreign issuers reporting to the Participating Jurisdictions would be subject to oversight by the CPAB. However, the CPAB will maintain flexibility on how it exercises that oversight, and may choose to enter into arrangements with independent oversight bodies in the home jurisdiction of the auditor to share information about the results of inspections of the auditor carried out by that oversight body. We support the need for flexibility when dealing with foreign issuers, and stress the need for establishing a "mutual reliance" system with the U.S. to ensure that we do not end up with a duplication of effort and costs, with minimal benefit.

Part 3 of the proposal states a requirement that public accounting firms that are subject to sanctions imposed by the CPAB give written notice, providing details of the sanctions to their reporting issuer audit

clients, as well as to the regulator in each Participating Jurisdiction. Per section 3.4(3), notice must be provided within 5 business days of the public accounting firm being informed by the CPAB of their failure to address the defects in its quality control systems. The public accounting firm will not have to provide notice to its audit clients if it addresses the defects in its quality control systems to the satisfaction of the CPAB within an agreed time period. Restrictions may be imposed on the participating audit firm until the deficiencies have been addressed. We support the proposal that provides an audit firm a set time period to address any identified defects prior to being required to provide notice of these deficiencies to their clients. We would request further details as to the amount of time this set time period would constitute (i.e. – would it match the 12 months currently acceptable in the U.S. by the PCAOB per paragraph 2 subsection 104(g) of the Sarbanes-Oxley Act?). Furthermore, we question the practicality of a five-day timeline for providing written notice to clients.

Multilateral Instrument 52:109 – Certification of Disclosure In Companies' Annual and Interim Filings

Transition
Part 1.3 of the proposal specifies a transition period of one year, which would allow issuers to file only a "bare" certificate (without any certification relating to internal controls or disclosure controls and procedures) during the first year after implementation. Although most issuers should already have a process of internal and disclosure controls in place, we believe that this transition period would provide the time required by issuers to ensure that adequate procedures are in place to allow their CEOs and CFOs to sign off on the certificate, and if necessary, to develop and implement any further procedures to ensure that their controls and disclosure are effective.

Certification of Annual and Interim Filings
Sections 2.1 and 3.1 set out the requirements that each issuer must file a separate annual and interim certificate, in the forms specified in Forms 52-109F1 and 52-109F2, signed by each of the CEO and CFO to certify that the interim and annual financial statements together with the other financial information included in the filings (e.g., the MD&A) fairly present, in all material respects, the financial condition, results of operations and cash flows of the issuers without any reference to generally accepted accounting principles (GAAP).

These proposals reaffirm the markets' expectation that the CEO and CFO are responsible for operating a controlled organization. We fully support these proposals as they reaffirm the responsibility of the CEO and CFO to ensure the following: 1) that their internal controls are effective and therefore their financial statements are fairly presented; and 2) their disclosure controls are effective, and all pertinent information is being disclosed on a timely basis. We would propose that the final proposal clarify that any discussion regarding the financial reporting package refers to the issuer's financial statements and the MD&A. We are satisfied with the fact that the representations refer to "presents fairly" with no reference to GAAP. We believe, however, that the profession should determine the guidance as to the definition of "presents fairly" versus allowing the courts to determine this definition via the benefit of hindsight.

We support the requirement for the CEO and CFO to certify that they have evaluated the effectiveness of the issuer's disclosure controls and procedures and internal control as of the end of the period covered by the annual filing, but not for each of the interim filings. Nevertheless, for these reports to be truly useful to the public, we would call for auditor attestation of the CEO and CFO report on their evaluation of control (both disclosure control and internal control). The importance of controls and disclosure as a method to strengthen the credibility of financial reporting and to increase investor confidence cannot be

overemphasized. To this end, we would propose that as a result of their review, the auditors should issue a positive assertion regarding the quarterly reporting package, versus the current situation whereby silence from the auditors is taken to signify that no significant issues were discovered. To further strengthen these proposals, security regulators should therefore mandate auditor reviews of both quarterly MD&A and financial statements, and encourage the profession to develop some form of public reporting by the auditor on these reviews. Finally, we recommend that the profession should develop the standards and guidance required for these reports, with the support and input of the regulators.

Exemptions
In the United States, a separate annual report by management on internal control with an auditor attestation thereon is required (per Sarbanes-Oxley section 404). The OSC has indicated that they are studying the final rules issued by the SEC before proposing a similar requirement. We believe that a similar report with auditor attestation would increase the public's confidence in the financial information and disclosures provided by reporting companies.

Other Issues
There is no exemption provided in the proposals for small cap issuers. The Certification Proposal for interim and annual certifications by the CEO and CFO applies universally to all issuers, regardless of size. There will be cost to small cap issuers in having to comply with the proposed regulations, with a benefit in terms of increased public confidence given for the limited number of investors impacted. The small cap issuers should have flexibility in how they implement the approach, but not be exempted from the requirement

Multilateral Instrument 52:110 – Audit Committees

Meaning of Independence
Part 1.4(3) specifies a bright line test regarding independence, which automatically deems certain categories of people to have a material relationship that could interfere with the exercise of a member's independent judgement, and which therefore precludes these people from serving on the issuer's audit committee. We feel that this test is problematic as in some instances rather innocuous relationships could be determined to be material relationships.

We would like to see a more balanced approach to the issue of independence, an approach which would include input from the Board, and should any material relationships be determined, full disclosure. Allowing Board input and flexibility would render this situation similar to the approach taken in the requirement for audit committee members to be financially literate and the requirement for a financial expert to be part of the audit committee. The determination of a material relationship could be assessed using the bright line test, however, if the board should determine that a person identified as having a material relationship should be appointed to the audit committee, then the nature of the relationship should be disclosed along with the appointment. We believe that there are three attributes that contribute to an effective audit committee: Competence, Accountability, and Independence. The two most important attributes for an audit committee member to possess are those of competence and accountability. Focusing solely on independence and using stringent rules to determine the definition of independence may result in less effective audit committees.

Audit Committee Responsibilities
Sections 2.2 and 2.3 propose that the Audit committee be directly responsible for overseeing the work of the external auditors, as well as the requirement for the audit committee to pre-approve all non-audit services to be provided to the issuer or its subsidiary entities by its external auditors or the external auditors of its subsidiary entities.

We support these recommendations. We would propose, however, that the concept of pre-approval of non-audit services permit a type of pre-approval of services in advance by the nature of the engagements, such as periodic regulatory filings, rather than having to grant approval on a project by project basis which would be time consuming and could impact the timeliness and therefore the effectiveness of the services to be provided. For audit committee oversight to be truly effective, the committee must not be bogged down in unnecessary detail. To determine a rule whereby there is a focus only on the dollar amount of non-audit services being provided by the auditors does not aid in the delivery of effective auditor oversight. The audit committees' focus should be on how to ensure the effectiveness of the auditor. More important than simply knowing the dollar amounts involved, the audit committee must have a clear understanding of the nature and scope of the engagement to be performed. The ultimate test is that the auditors' independence is not in doubt. To this end, we believe that disclosure is key. We therefore recommend that a policy be included in the audit committee charter regarding the pre-approval of fees as well as a requirement for the disclosure of these fees.

Further, section 2.3(5) states that the Audit committee must review an issuer's financial statements, MD&A and earnings press releases before they are publicly disclosed by the issuer.

We fully support this proposal. To further strengthen this proposal, security regulators should mandate auditor reviews of both quarterly MD&A and financial statements, and encourage the profession to develop some form of public reporting by the auditor on these reviews. For further details see our comments above concerning quarterly reviews under the heading of Certification of Annual and Interim Filings.

Section 2.3(6) proposes a requirement that Audit Committees establish procedures for the receipt, retention and treatment of complaints received from the issuer regarding accounting, internal accounting controls or auditing matters, as well as the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters. We fully support this proposal, and believe that its implementation could significantly improve investor confidence and provide public protection by avoiding further scandals such as Enron and WorldCom.

Composition of the Audit Committee
Section 3.1 specifies the composition of the Audit Committee, and specifies that each member must be independent and financially literate. Section 5 specifies that disclosure must be made of whether or not the audit committee has a financial expert, and if no such member exists this fact must be disclosed and a statement made to explain why not.

Notwithstanding our comments regarding the bright line test, above, we fully support this proposal for the composition of the Audit Committee. The new audit committee qualifications and enhanced disclosures introduced by the CSA can be expected to increase demands on and present new challenges to audit committee members. In light of this, we would propose the need for new educational programs for directors, to help them develop the corporate governance, financial literacy and financial expertise to effectively implement these proposals and enhance investor confidence.

Venture Issuers
Section 6.1 allows the exemption from parts 3 (composition of the audit committee) and 5 (reporting obligations) for venture issuers. We question the proposal that companies listed on the TSX Venture exchange be exempt from the requirements for the audit committee to be comprised entirely of directors who are independent and financially literate, and for the disclosure of whether an audit committee has an audit committee financial expert. The types of companies listed on the TSX Venture exchange are often a higher risk from a financial reporting, control and management override point of view. Notwithstanding the fact that audit committee members would be able to bypass the requirements of being independent and financially literate, and the lack of a financial expert, the proposals would still hold the auditors accountable to the audit committee. The audit committees of these types of companies would be less competent and less independent than those of larger companies with better systems and controls. This proposal would not appear to be in the best interest of the profession, nor would it appear to promote investor confidence in the Canadian market. We would therefore stipulate that this exemption be removed from the proposals.

Other Issues
Some believe that it is important to change behaviour if corporate governance and audit committee effectiveness is to be improved. The report of the Saucier Committee expressed the view that regulation aimed at changing board behaviour may turn out to be counterproductive. We would like to stress the importance and effectiveness of disclosure, (as contrasted with more regulation) in achieving the goal of improving corporate governance and audit committee effectiveness, and suggest that a formal report be prepared and issued by the audit committee, in addition to the disclosure of the audit committee charter, as is required in the U.S.