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Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Subject: CSA Consultation Paper 52-403

The Canadian Public Accountability Board (CPAB) is pleased to have an opportunity to respond to the questions raised in the CSA Consultation Paper 52-403 – *Auditor Oversight Issues in Foreign Jurisdictions* (the "Paper"). We remind the readers of both the Paper and our responses below that, without access to Component Auditor Working Paper files in foreign jurisdictions, CPAB is restricted in fulfilling its mandate. By amending NI 52-108 and requiring Component Auditor registration, CPAB could access audit working papers in over 20 countries representing 98 percent of the market capitalization of the market capitalization of Canadian Reporting Issuers with substantial operations in foreign jurisdictions.

CPAB's responses to the CSA's questions are as follows. For the reader's ease, the questions have been reproduced in italics.

Question 1: *Is a Component Auditor registration requirement the way to proceed to assist CPAB in obtaining access to inspect work performed by foreign audit firms? If not, please suggest other ways to address CPAB's access challenges. Please explain the reasons for your views.*

CPAB believes it is the way to proceed – the scope of CPAB's mandate in a number of foreign jurisdictions is limited by the current form of NI 52-108. Many foreign countries will only provide access to a foreign audit regulator where access is required by the laws of the Reporting Issuer's home jurisdiction. In order to address the scope limitation, CPAB needs to have NI 52-108 amended so as to embed in financial regulations the legal authority for CPAB to access audit working papers in foreign jurisdictions. This can be accomplished by amending NI 52-108 to require that a component auditor be registered with CPAB, thereby giving CPAB the legal basis for access recognized by foreign jurisdictions. We do know that this is embedded in U.S. financial legislation and has given the PCAOB access to most foreign jurisdictions.

In addition CPAB asked its outside legal counsel to consider this matter. Their response was as follows:

> "You've asked whether NI 52-108 provides CPAB with access to inspection of audit firms outside of Canada who play a substantial role in the preparation or furnishing of an audit report prepared by a participating audit firm. We do not believe this to be the case, given that the National Instrument only extends CPAB's jurisdiction to "a public accounting firm that prepares an auditor's report with respect to the financial statements of a reporting issuer".
>
> We have also reviewed the MOUs that CPAB has entered into with the Australian Securities and Investment Commission ("ASIC"), the U.K. Financial Reporting Council ("FRC") and the U.S. Public Company Accounting Oversight Board ("PCAOB"). It should be noted that these MOUs are not binding agreements and, in any event, only extend to audit firms over which CPAB has jurisdiction in accordance with NI 52-108.

As a result, while CPAB may be able to exercise effective oversight, in certain circumstances, with the assistance of the foreign oversight body, **it has no legal authority to compel such cooperation**. In the absence of consent and voluntary assistance from the subject audit firm (as well as the reporting issuer), we do not think CPAB has any basis under our own laws (nor are we aware of any basis under those of the other jurisdictions) for compelling production of the documentation it would typically require to exercise its audit oversight role." (Emphasis ours)

Question 2: *Are there any additional implications, other than those discussed above, to consider in assessing whether to require a Component Auditor to register with CPAB?*

CPAB would like to remind readers that our goal is to gain access to working papers held by the Component Auditor in the context of an inspection of the group auditor, not to conduct full oversight and inspections of the Component Auditor. This would alleviate part of the second challenge raised in the Paper, as a Component Auditor would no longer have a basis for charging additional fees for additional oversight.

Question 3: *If NI 52-108 is amended to require Component Auditor registration:*

(a) Should the requirement be based on an asset and revenue threshold that is equivalent to that used in the PCAOB's 'substantial role' threshold? If not, please specify your recommended threshold, if any, and explain why that threshold would be more appropriate.

Yes, in our view the threshold should be both measurable and at a designated point in time (i.e. as at the prior year end date) to avoid any ambiguity on the requirement to register with CPAB. We also believe that alignment of the Canadian requirement with the PCAOB's threshold will simplify the process for many, if not all, firms who will need to register with CPAB. The PCAOB's rules are already well known and understood.

(b) Should certain components of an entity be exempt when applying the threshold referred to in (a), such as investments accounted for using the equity method?

CPAB does not believe there should be any exemptions when applying the threshold referred to in (a). Either the threshold is met, or it is not. The creation of exemptions at this early stage is premature and would not be based on practical knowledge that will be gained in the first few years of the operation of the threshold. (Firms may apply a specific exemption erroneously to other components to avoid registration with CPAB). It should be up to CPAB to determine the applicability of the threshold upon the application of the Component Auditor for registration. Exemptions would happen naturally on an ad hoc basis. If Firms are allowed to "self-exempt" under published exemptions, NI 52-108 may be ineffective in that regard.

For the above noted example, if the equity accounted investment was a significant component for either the balance sheet or the income statement, CPAB is unclear why either an investor in, or the Board of , a Reporting Issuer would find it acceptable that the audit work on the equity accounted investment would be excluded from any or all audit regulatory oversight.

Question 4: *Would additional transparency about situations where CPAB has been prevented from inspecting the work of a Participating Audit Firm (PAF) or Component Auditor that plays a 'substantial role' be useful to investors and others, and if so in what situations? Please explain the reasons for your views, including any potential implications that we should consider if such disclosure was required.*

Additional transparency as suggested in the Paper would create many negative outcomes, and, as the Paper itself states, would not result in fulsome information in any event.

One challenge is that while additional transparency on situations where CPAB was prevented from inspecting the work of a PAF or Component Auditor may be useful to investors and others, it would be in direct conflict with the confidentiality requirements embedded in CPAB's rules.

[KH1]Another challenge is the potential punitive effect of such disclosure. In circumstances where a PAF denies access to the working papers for a reason other than a foreign law or regulation, it would be in violation of its participation agreement with CPAB and CPAB already has the power to terminate the Firm as a PAF, assuming the situation was not rectified.

In circumstances where access is denied due to foreign laws and regulation, CPAB believes disclosure would be unduly punitive to an individual Reporting Issuer, from a capital market perspective. CPAB selects its files for inspection on a risk-based sample basis and does not target all files in a specific industry or in a foreign jurisdiction. The "naming and shaming" of the one Reporting Issuer, and not its competitors operating in that same foreign jurisdiction, is not the appropriate role of CPAB, as it would put that Issuer at a competitive disadvantage in the capital markets.

Question 5: *If we were to require this disclosure, who should provide the disclosure - CPAB or reporting issuers? Please explain the reasons for your views.*

While CPAB does not support this disclosure, if enacted, we do not believe that it should be disclosed by the Reporting Issuer or CPAB.

As the regulation of Reporting Issuers rests with the various provincial securities commissions, CPAB would have no authority to enforce the National Instrument if the Reporting Issuer was non-compliant with the requirement. CPAB would also have no ability to ensure a Reporting Issuer provided appropriate prominence and context to the required disclosure as proposed in this Paper and, as a result, would have no means to ensure consistency in the transparency of disclosure amongst Reporting Issuers.

If any entity would be best fitted to provide this disclosure, it would be the relevant security commission.

* * *

We hope these comments are of some assistance and look forward to working with the CSA in refining the proposed amended instrument.

Yours truly,

Brian Hunt, FCPA, FCA, ICD.D
Chief Executive Officer