

5.1.9 Notice of National Instrument 52-108 Auditor Oversight

NOTICE OF NATIONAL INSTRUMENT 52-108 AUDITOR OVERSIGHT

Introduction

National Instrument 52-108 *Auditor Oversight* (the "Instrument") is an initiative of the Canadian Securities Administrators ("CSA" or "we"). The Instrument was first published for comment as a multilateral instrument. Since publication, however, British Columbia has decided to participate in this initiative and the Instrument is now being adopted as a national instrument and will take effect in all jurisdictions.

The Instrument is expected to be adopted as a rule in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario and Québec, as a Commission regulation in Saskatchewan and Nunavut, as a policy in New Brunswick, Prince Edward Island and the Yukon Territory, and as a code in the Northwest Territories.

In Alberta, the Instrument and other materials were delivered to the Minister of Revenue. The Minister may approve or reject the Instrument. Subject to Ministerial approval, the Instrument will come into force on March 30, 2004. The Alberta Securities Commission will issue a separate notice advising whether the Minister has approved or rejected the Instrument.

In British Columbia, the Minister of Competition, Science and Enterprise gave his approval in principle of the Instrument on July 25, 2003. The Instrument will be adopted as a rule and come into force in British Columbia on March 30, 2004, subject to obtaining final Ministerial approval.

In Nova Scotia, the Instrument will be delivered to the Minister for non-objection by the Governor in Council in accordance with Nova Scotia securities law after it is adopted as a rule by the Commission. If the Instrument is not objected to by the Governor in Council, it will come into force on March 30, 2004.

In Ontario, the Instrument and other required materials were delivered to the Minister of Finance on January 14, 2004. The Minister may approve or reject the Instrument or return it for further consideration. If the Minister approves the Instrument or does not take any further action by March 15, 2004, the Instrument will come into force on March 30, 2004.

In Québec, the Instrument is a regulation made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. It must also be published in the Bulletin.

Provided all necessary ministerial approvals are obtained, we expect to implement the Instrument on March 30, 2004.

Substance and Purpose

The purpose of the Instrument is to contribute to public confidence in the integrity of financial reporting of reporting issuers by promoting high quality, independent auditing.

Where a reporting issuer files its financial statements accompanied by an auditor's report, the Instrument will require the reporting issuer to have the auditor's report signed by a public accounting firm that is:

- a participant in the Canadian Public Accountability Board ("CPAB") oversight program for public accounting firms that audit reporting issuers (the "CPAB Oversight Program"), and
- in compliance with any restrictions or sanctions imposed by the CPAB.

In addition, other than in Alberta, British Columbia and Manitoba, the Instrument will require a public accounting firm that prepares an auditor's report with respect to the financial statements of a reporting issuer to:

- be a participant in the CPAB Oversight Program;
- be in compliance with any sanctions or restrictions imposed by the CPAB, and
- provide notice, in certain situations, of any restrictions or sanctions imposed by the CPAB to their audit client and to the securities regulator in each jurisdiction in which the audit client is a reporting issuer.

Refer to the section of this notice dealing with "Application and Transition" for a discussion of situations in which public accounting firms in Alberta, British Columbia and Manitoba or elsewhere may still be required to follow the above requirements.

Background

The CPAB was created to address concerns relating to investor confidence in the credibility of auditors and audited financial information. Established in July 2002, a key mandate of the CPAB is to promote high quality external audits of reporting issuers. One of the ways it will achieve this is through registering and inspecting public accounting firms that prepare auditors' reports with respect to the financial statements of reporting issuers.

The CPAB has begun registering public accounting firms that prepare auditors' reports in connection with the financial statements of reporting issuers. To date, approximately 240 accounting firms have indicated they intend to participate in the CPAB Oversight Program and we expect that most of these will complete the registration process by February 29, 2004.

The CPAB registration process involves two phases. The first phase required public accounting firms to file an 'intent to participate form' and a 'quality control report' with the CPAB by December 31, 2003. The second phase requires public accounting firms (other than foreign public accounting firms) to file with the CPAB by February 29, 2004 an initial registration form and a signed participation agreement. Foreign public accounting firms will have until July 19, 2004 to file these documents. The participation agreement sets out requirements with which participating firms must comply, such as adhering to quality control standards established by the CPAB and submitting to regular inspections. A copy of the participation agreement, together with further information about the registration process, can be obtained from the CPAB website at www.cpab-ccrc.ca.

Summary of Written Comments Received by the CSA

The Instrument was first published for comment on June 27, 2003 by all CSA jurisdictions except British Columbia. It was published for comment on September 3, 2003 for 60 days in British Columbia. During the comment periods, we received submissions from 18 commenters. We have considered the comments received and thank all the commenters. The names of all the commenters are contained in Appendix A of this notice and a summary of their comments, together with the CSA responses, is contained in Appendix B of this notice. All of the changes made since the publication of the materials are reflected in the blacklined version of the Instrument contained in Appendix C of this notice.

After considering the comments, we have made amendments to the Instrument. However, as these changes are not material, we are not republishing the Instrument for a further comment period.

Summary of Changes to the Instrument

Set out below are notable changes made to the Instrument since it was published for comment.

1. National Instrument

As a result of British Columbia's decision to participate, the Instrument is now a national instrument and will take effect in all jurisdictions in Canada.

2. Part 1 - Definitions

(a) "Participant in Good Standing"

The definition of "participant in good standing" has been deleted from the Instrument. The substantive requirements of the definition have been incorporated into sections 2.1 and 2.2, and modified such that a public accounting firm must be a participating audit firm and be in compliance with any restrictions or sanctions imposed by the CPAB as of the date of the auditor's report.

(b) "Participating Audit Firm"

The definition of "participating audit firm" has been amended to ensure that a public accounting firm is a participant in the CPAB Oversight Program at each date on which it signs an auditor's report with respect to the financial statements of a reporting issuer. This change reflects the fact that even though a participating audit firm may have entered into a participation agreement, its status as a participant in the CPAB Oversight Program may be terminated by the CPAB in accordance with CPAB By-Law No. 1.

(c) “Public Accounting Firm”

The definition of “public accounting firm” has been amended to capture the various forms of legal entities under which public accountants may organize their business.

3. Part 1 - Application and Transition

Section 1.2 has been amended to clarify both the Instrument’s application and transition.

With respect to the application of the Instrument, we note that section 2.2 is being adopted in each jurisdiction in Canada. Accordingly, this section applies to every issuer that is a reporting issuer and that files its financial statements in at least one Canadian jurisdiction.

In contrast, because the securities commissions in Alberta, British Columbia and Manitoba do not have authority to make rules imposing obligations directly on auditors, section 2.1 and Part 3 are not being adopted in Alberta, British Columbia and Manitoba.

It should be emphasized, however, that while section 2.1 and Part 3 do not apply in Alberta, British Columbia and Manitoba, a public accounting firm situated in one of these provinces or elsewhere may still be subject to the requirements in section 2.1 and Part 3 by virtue of the fact that one of its clients is a reporting issuer in one of the other jurisdictions in Canada. For example, a public accounting firm situated in British Columbia that prepares an auditor’s report for a client situated in British Columbia that is a reporting issuer in British Columbia, Alberta, Ontario, and Quebec, would be subject to the requirements of each of the provinces in which its client is a reporting issuer. Under British Columbia and Alberta securities law, the public accounting firm would not be required to comply with section 2.1 and Part 3. However, because it is preparing an auditor’s report with respect to the financial statements of an issuer that is also a reporting issuer in Ontario and Quebec, the public accounting firm would be required to comply with section 2.1 and Part 3 under Ontario and Quebec securities law. In other words, it is the client’s reporting issuer status in a jurisdiction, not the physical location of a client or the physical location of a public accounting firm that determines whether the Instrument applies to a public accounting firm.

With respect to transition, subsection (3) makes it clear that once the Instrument takes effect it does not apply to either a public accounting firm or a reporting issuer unless:

- (a) the deadline for that public accounting firm to register with the CPAB has expired, and
- (b) the auditor’s report prepared by the public accounting firm is dated on or after March 30, 2004.

For example, if a Canadian public accounting firm prepares an auditor’s report dated March 29, 2004 respecting the financial statements of a reporting issuer, the Instrument will not apply. This is because, despite the fact that the February 29, 2004 registration deadline prescribed by the CPAB will have expired, the auditor’s report is dated before March 30, 2004. The outcome will be the same even if the financial statements are filed on or after March 30, 2004.

If the auditor’s report is dated March 31, 2004, then the Instrument will apply. As a result, the reporting issuer filing its financial statements will have to ensure that, as of March 31, 2004, the auditor’s report accompanying those financial statements is signed by an auditor that has registered with the CPAB and is in compliance with any CPAB restrictions or sanctions.

In situations where a foreign public accounting firm has prepared the auditor’s report, the Instrument will not apply until after the CPAB prescribed registration deadline of July 19, 2004 has expired.

4. Part 2 - Auditor Oversight

Part 2 of the Instrument has been amended to clarify which obligations are imposed on public accounting firms and which obligations are imposed on reporting issuers. We have also removed the references to “the time period prescribed by the CPAB.” These references were intended to clarify that the Instrument did not apply to a public accounting firm or a reporting issuer until such time as the registration deadline set by the CPAB had expired. However, as a result of the transitional provision that is now built into subsection 1.2(3), these references are no longer necessary.

Subsections 2.1 and 2.2 have been amended to require that, as of the date of its auditor’s report, a public accounting firm must be a participating audit firm and in compliance with any restrictions imposed on it by the CPAB. This change was made in response to a comment and is intended to remove any ambiguity as to when the conditions in paragraphs (a) and (b) have to be met.

Subsection 2.2 has also been amended to clarify that the requirements with respect to appointing a public accounting firm apply in connection with the reporting issuer’s own financial statements only and not, for example, to financial statements of another

issuer that the reporting issuer might file as a condition of an exemptive relief order provided in connection with an exchangeable security transaction.

5. Part 3 - Notice

We have rearranged the provisions under Part 3 so that the sections on notice of restrictions appear before the sections on notice of sanctions.

We have also changed the references respecting the auditor having been “engaged” to now refer to the auditor being “appointed”. We believe these changes better align the Instrument with the fact that auditors usually act as the auditors of reporting issuers until they either resign or are no longer re-appointed.

We have also increased the notice periods set out in subsection 3.2(3) and 3.3(3) from five to ten business days. These changes have been made in response to commenters’ recommendations that the notice periods be extended to provide more time for public accounting firms to prepare and deliver the required notices.

Section 3.4 was amended to clarify that, before a public accounting firm can accept an appointment, it must ensure it has provided notice to a reporting issuer client and the regulator of (a) any failures to address defects in its quality control systems to the satisfaction of the CPAB if these failures occurred within the 12-month period immediately preceding the expected date of appointment, and (b) any sanctions imposed by the CPAB within the 12-month period immediately preceding the expected date of appointment.

Finally, the notice provisions in Part 3 were amended to clarify that where a reporting issuer does not have an audit committee, the applicable notice should be delivered to the issuer’s board of directors or the person or persons responsible for reviewing and approving the reporting issuer’s financial statements.

6. Part 5 - Effective Date

The effective date for the Instrument has been changed to March 30, 2004.

Questions

Please refer your questions to any of:

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National Instrument

The text of the Instrument follows.

January 16, 2004.

APPENDIX A

List of Commenters

BDO Dunwoody LLP
British Columbia Securities Commission
Canadian Council of Chief Executives
Certified General Accountants Association of Alberta
Certified General Accountants Association of Canada
Certified Management Accountants of Ontario
Deloitte & Touche LLP
EnCana Corporation
Ernst & Young LLP
Grant Thornton LLP
KPMG
Ontario Teachers' Pension Plan Board
Raymond Chabot Grant Thornton
Simon Romano
Telus Corporation
The Canadian Institute of Chartered Accountants
The Institute of Internal Auditors
TSX Group

APPENDIX B

Summary of Comments and Responses

National Instrument 52-108 Auditor Oversight

	Theme	Comment	Response
General Comments			
1.	Support for the CPAB and Instrument	Eight commenters expressed general support for the creation of the Canadian Public Accountability Board (CPAB) or indicated that they believed that the requirements outlined in the Instrument would contribute to the integrity of financial reporting by promoting high quality, independent auditing. One commenter encouraged adoption of the Instrument as soon as possible.	We agree and acknowledge the support of the commenters.
2.	CPAB - Structure and Independence	One commenter expressed support for the creation of the CPAB and noted that it was established within the constraints of the current Canadian constitutional framework and in the best of good faith. The commenter expressed concerns, however, about its structure and questioned its independence from the accounting profession and regulators. The commenter noted in particular that the CPAB's Council of Governors is composed of representatives from provincial securities commissions, the Superintendent of Financial Institutions Canada and The Canadian Institute of Chartered Accountants (CICA). In addition, three members of the Board of Directors will be selected from provincial institutes of chartered accountants.	Federal and provincial regulators and the CICA established the CPAB to be an independent public oversight body with respect to auditors of public companies. Having representatives from financial institutions and securities regulators play an active role in monitoring the activities of the board will ensure that the CPAB remains independent of the auditors that it oversees and acts in a manner consistent with the public interest. While representatives from the CICA participated in establishing the CPAB, and a representative of the CICA serves as a member of the Council of Governors (Council), the CPAB is and will remain dominated by members who are independent of the accounting profession. In this respect, we note that four out of the five members of the Council, as well as seven out of eleven members of the Board of Directors, will be independent of the accounting profession.
3.	CPAB - Structure and Independence	One commenter noted that the approach taken by the U.S. Public Company Accounting Oversight Board (PCAOB) and the CPAB with respect to fees are different, in that the fees collected by the PCAOB will be drawn from accounting firms and market participants while the fees collected by the CPAB will come solely from accounting firms. The commenter noted that this may result in the CPAB appearing less independent from the firms which it is overseeing.	The CPAB does not have authority to require fees from reporting issuers. However, we do not believe the CPAB is any less independent than the PCAOB since participation in the CPAB Oversight Program, and hence payment of fees, will be mandatory as a result of the Instrument. Further, participating accounting firms will not have the power to influence the budget established by the Board of Directors to provide the resources required to discharge the CPAB's mandate.
4.	CPAB - Structure and Independence	Two commenters felt that the CPAB is a flawed model of public policy and that it unfairly excludes Certified General Accountants (CGAs) and Certified Management Accountants (CMAs), who, in many jurisdictions, have the same rights to audit reporting issuers as	The national and provincial associations of CGAs and CMAs currently have no formal role within the CPAB structure. This reflects the fact that members of these associations audit fewer than 2% of all reporting issuers. The CPAB is aware of these commenters' views and is considering the best way to address

	Theme	Comment	Response
		Chartered Accountants. One commenter added that the CPAB is not independent of the accounting profession and suggested that CGAs should either be given Industry Member status in the CPAB structure or should be asked to develop a similar regulatory model.	their concerns. In any event, we believe the structure of the CPAB ensures its independence from the accounting profession (see response to comment no. 2). We also note that participation in the CPAB's program of inspection and oversight is open to all auditors of reporting issuers on the same terms and conditions, without regard to professional affiliation.
5.	CPAB - Oversight	One commenter asked whether the CSA should have the ability to set aside or reject proposed rules and regulations introduced by the CPAB, either generally or on appeal by participants that are directly affected.	We believe the CSA's representation on the Council will allow the CSA to remain informed on the CPAB's activities and monitor whether it acts in a manner consistent with the public interest. In addition, the rules and regulations introduced by the CPAB will be subject to a 60-day public comment period. As part of the public comment process, the CSA may monitor rules and regulations proposed by the CPAB and, where appropriate, may offer comments.
6.	CPAB - Rules and Regulations	<p>Two commenters suggested that rules and regulations proposed by the CPAB, as well as the proposed participation agreement, should be published for public comment prior to being enacted.</p> <p>One commenter noted that the conditions for acceptance of a firm's application to participate in the CPAB Oversight Program are not set out in the Instrument or the CPAB by-laws and no terms and conditions or requirements of the participation agreement have been published. The commenter suggested that a standardized form of agreement should be published for comment, and that further details of the application process and participation agreement should be disclosed so that interested parties can review them and provide substantive comments.</p>	<p>CPAB's By-law No.1 (By-law) requires the board of the CPAB to provide public notice of any proposed rules and regulations, including proposed amendments to an existing rule or regulation, for at least 60 days before they can be prescribed in final form.</p> <p>Details of the CPAB's proposed registration system, including a proposed participation agreement, were published for comment on September 11, 2003. The 60-day comment period ended November 10, 2003. As a result of comments from interested parties, changes are being made to the proposed registration system and participation agreement. The final form of the participation agreement will be available on the CPAB website.</p> <p>The CPAB also published certain rules for public comment on December 24, 2003. These proposed rules are available on its website at www.cpab-ccrc.ca. The proposed rules will not be prescribed in final form until after the comment period has expired on February 23, 2004.</p>
7.	CPAB - By-Law No. 1	One commenter noted that the first duty listed in the By-Law is to promote the importance of high quality external audits of public companies and expressed disappointment that the need to protect investors was not specifically included in the wording of the By-Law.	The mandate to protect investors in our capital markets rests primarily with the Canadian securities regulatory authorities. While not explicitly stated in the By-Law as part of its duties, the CPAB will contribute to the protection of investors by strengthening the integrity and reliability of financial statements through its efforts to promote high quality, independent auditing. The CPAB will carry out its mission by, among other things, designing and implementing a program for the inspection of auditors of reporting issuers, imposing sanctions on participating audit firms and referring matters to professional organizations that have a statutory responsibility to regulate

	Theme	Comment	Response
			their members.
8.	CPAB - By-Law No. 1	<p>Given the public interest mandate of the CPAB, one commenter questioned whether s. 3.22 of the By-law (respecting confidentiality of information acquired by directors of the CPAB) is appropriate.</p> <p>In addition, the commenter questioned whether Governors and Industry Members should also benefit from Article 5 of the By-law (respecting limitation of liability of directors and officers of the CPAB).</p>	<p>Section 3.22 of the By-Law reflects the fiduciary obligations of directors at common law and is intended to buttress the confidentiality provisions contained in the participation agreement to be published by the CPAB.</p> <p>The provisions contained in Article 5 are standard provisions found in the by-laws of most corporations governed by the <i>Canada Business Corporations Act</i>. The Directors and Officers supervise or manage the operations and affairs of the corporation on a day-to-day basis and, consequently, have the greatest exposure to potential liability and the most need for protection and indemnification. Whether additional liability protection is required will be evaluated by the affected parties.</p>
9.	CPAB - By-Law No. 1	A commenter asked whether we intended to limit the requirement to become a direct participant in the CPAB Oversight Program only to firms (including sole practitioners) or whether we also intended to capture individuals.	Only public accounting firms, including sole practitioners, will have to register with the CPAB and agree to participate in the CPAB Oversight Program. Individual accountants at these firms will not be required to register.
10.	CPAB - By-Law No.1	One commenter suggested that the CPAB should commit to provide disclosure in its annual report and MD&A to reflect allocation of costs and the CPAB's expenditures, as well as a comparison of actual expenditures of the CPAB to previously disclosed forecasts.	In keeping with its public mandate, the CPAB will ensure there is appropriate transparency in the conduct of its activities, and will report publicly on the means taken to oversee the audit of public companies and the results achieved.
11.	CPAB - By-Law No. 1	One commenter stated that, if the CPAB is going to provide comments and recommendations on accounting and assurance standards and governance practices, its mandate should state that it will publish such comments.	While not specifically set out in its mandate, the CPAB has indicated that it intends to describe its involvement with, and recommendations to, accounting and assurance standards-setting bodies in its annual report on the results of its activities.
12.	CPAB - By-Law No. 1	One commenter noted that it was unclear whether the CPAB will be working with provincial accounting organizations to inspect accounting firms and asked whether the CPAB will seek any special status for disclosure of, and/or intervening in, the disciplinary processes of provincial accounting organizations.	The CPAB has indicated that it intends to work with provincial accounting organizations with respect to inspections and disciplinary matters relating to participating audit firms. Whether the CPAB will seek special status for disclosure of, and/or intervening in, the disciplinary processes of provincial accounting organizations is a matter to be determined by the Board of Directors.
13.	CPAB - Reviews	One commenter asked whether the CPAB would keep the names of a public accounting firm's audit clients confidential when it inspects the firm.	The CPAB will not publicly disclose which audit client files it reviews when it inspects a participating audit firm. However, the CPAB will request information respecting the names of an audit firm's clients and this information will be made public at the time a participating audit firm files an initial registration form with the CPAB. We also note that the identity of a

	Theme	Comment	Response
			reporting issuer's auditor is publicly available on SEDAR.
14.	CPAB - Restrictions and sanctions	One commenter asked whether restrictions and sanctions imposed by the CPAB would be enforceable and whether the CSA should adopt a statutory model.	<p>The CSA believe the participation agreement between the CPAB and auditors of reporting issuers will permit enforcement of restrictions and sanctions even without the benefit of a statutory model. The constraints imposed by the constitutional division of powers between the provincial and federal governments would present a significant challenge to establishing the CPAB in a timely manner. The participation agreement will contain a clause stating that the participating audit firm agrees to comply with any requirement, restriction or sanction that may be imposed by the CPAB in accordance with prescribed rules. Any failure to comply with requirements, restrictions or sanctions will result in a breach of the participation agreement. Apart from any contractual rights of action, the CPAB will have other remedies available to it, including terminating the participating audit firm's participant status under the By-law.</p> <p>In addition, the Instrument specifically contemplates that a participating audit firm must, as of the date of its auditor's report, be in compliance with any restrictions or sanctions imposed by the CPAB. Any non-compliance at that point in time will mean that a participating audit firm will be in breach of securities law and (other than in British Columbia, Alberta and Manitoba) one or more securities regulatory authorities could take enforcement action directly against the participating audit firm.</p>
15.	CPAB - Restrictions and sanctions	One commenter supported the need for the CPAB to impose restrictions and sanctions on wrongdoers, as well as the concept of having various levels of restrictions and sanctions depending on the severity of any wrongdoing.	We agree that it is appropriate for the CPAB to impose restrictions and sanctions and to have the flexibility to impose them in a manner that reflects the severity of any wrongdoing.
16.	CPAB - Restrictions and sanctions	One commenter suggested the CPAB disclose the due process measures it will adopt with respect to imposing sanctions.	The CPAB published for comment on December 24, 2003 proposals in connection with the process it intends to follow for imposing requirements, restrictions and sanctions. These proposals are available on its website at www.cpab-ccrc.ca . The 60-day comment period ends on February 23, 2004.
17.	CPAB - Restrictions and sanctions	One commenter noted that a reporting issuer may not know that its auditor failed to comply with any CPAB-imposed restrictions or sanctions, or that its participation in the CPAB Oversight Program had been suspended or terminated. The commenter also raised concerns that a reporting issuer may be indirectly penalized if, for example, its audit firm or audit partner is suspended	We expect that a public accounting firm's participation in the CPAB Oversight Program will not be suspended or terminated without advance warning. The CPAB's compliance and enforcement system is designed to consist of a series of graduated measures that will focus on correcting deficiencies and raising the quality of compliance with auditing standards. Suspension or termination will occur only after the CPAB has exhausted other measures,

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		or terminated from the CPAB Oversight Program just prior to it issuing an auditor's report with respect to financial statements that are due to be filed in a few days.	such as imposing restrictions or other sanctions on a participating audit firm in accordance with its rules. We also note that Part 3 of the Instrument requires (other than in Alberta, British Columbia and Manitoba) a participating audit firm to give a reporting issuer notice of any sanctions, and, in certain cases, of any restrictions imposed on it. In such circumstances, the reporting issuer will be able to determine in advance whether it should engage another auditor to ensure it meets filing deadlines under securities law.
18.	CPAB - Costs	Two commenters expressed concern that the CPAB Oversight Program be managed in a cost effective manner in order to minimize additional costs that may be passed on to reporting issuers.	The CSA agree and expect that the Board of Directors of the CPAB will ensure that the Oversight Program is managed in a cost effective manner consistent with fulfilling its mandate.
19.	CPAB - Costs	One commenter noted that discussions between the CPAB and the PCAOB may result in the PCAOB relying on the CPAB to perform oversight of auditors of Canadian-based SEC issuers. If this occurs, the commenter believes Canadian-based SEC issuers should receive some relief from the fees they would otherwise be required to pay to the PCAOB.	Representatives from the CPAB and PCAOB have met to discuss the possibility of developing cooperative arrangements with respect to the oversight of Canadian public accounting firms that audit SEC registrants and U.S. public accounting firms that audit Canadian reporting issuers. While we expect the CPAB to continue its discussions with the PCAOB on these issues, any alleviation of the amount of fees to be paid to the PCAOB by Canadian-based SEC registrants is a matter to be determined by the PCAOB and is not within the control of either the CSA or the CPAB.
20.	Definition – "In good standing"	A commenter questioned the amount of time that a failure to comply with restrictions or sanctions would impact on an auditor's ability to audit a reporting issuer's financial statements. The commenter also suggested that only suspension or termination from the CPAB Oversight Program (and not non-compliance with restrictions or sanctions) should impair a public accounting firm's ability to conduct audits of reporting issuers. Finally, the commenter suggested that if a reporting issuer does not have knowledge that its auditor had been suspended by the CPAB or had its participant status terminated, then it should be exempt from the requirement in subsection 2.3(1) [now section 2.2] to have a participating audit firm in good standing. The commenter added, however, that even where a reporting issuer knows about the suspension or termination, it should have 12 months to find another auditor.	<p>The version of the Instrument published on June 27, 2003 contained a definition of "participant in good standing" such that, if a participating audit firm failed to comply with a restriction or sanction, it would be permanently prevented from auditing the financial statements of a reporting issuer. While we fully expect a participating audit firm to comply with all restrictions or sanctions imposed on it by the CPAB, we recognize that the effect of the definition was too far-reaching. For this and other reasons explained in the notice, we have deleted the definition of "in good standing" and amended the Instrument so that a participating audit firm must be in compliance with any restrictions or sanctions as of the date of the auditor's report.</p> <p>With respect to the commenter's second point, we believe that a failure to comply with restrictions or sanctions imposed by the CPAB, and not just suspension or termination, is a serious default that should impair the ability of a public accounting firm to issue an auditor's report in respect of the financial statements of a reporting issuer.</p> <p>Finally, we expect reporting issuers and their audit committees to be proactive and informed</p>

	Theme	Comment	Response
			<p>about their auditors' ability to conduct audits. In the jurisdictions where the notice provisions regarding restrictions and sanctions apply, the notices will provide clear signals to reporting issuers of any potential problems with their auditors. As a result, a reporting issuer should be able to remain informed about whether its auditor has been suspended or terminated by the CPAB. Therefore, we do not think it is necessary to provide reporting issuers with a period of time to find another auditor. In the event a reporting issuer believes it would suffer undue hardship as a result of a failure of its auditor, the reporting issuer could always apply for an exemption from the requirements of the Instrument. Applications will be considered on a case by case basis.</p>
21.	Part 2 - Date an auditor's report is issued	<p>Part 2 of the Instrument makes several references to circumstances that should exist when an auditor's report is "issued". One commenter recommended changing such references to "the date of the auditor's report" since different views might exist as to when an auditor's report is issued.</p>	<p>We agree and have amended the Instrument to clarify that a participating audit firm must be a participating audit firm and in compliance with any CPAB restrictions or sanctions as of the date of the auditor's report.</p>
22.	Part 4 - Exemption	<p>One commenter suggested that issuers of exchangeable securities and guaranteed securities should be exempt from the Instrument.</p>	<p>We note that Part 2 only applies where a participating audit firm prepares an auditor's report with respect to the reporting issuer's financial statements. Therefore, to the extent these types of issuers are exempt from having to file their own financial statements, the Instrument would not apply.</p>
23.	Part 4 - Exemption	<p>One commenter stated that the core principles of financial reporting, auditing and governance should apply universally to all Canadian public companies, irrespective of size or exchange listing. Flexibility should be permitted, however, in how these principles are applied to mitigate the relative cost burden on smaller companies.</p>	<p>We agree. It is a fundamental requirement of securities laws that all reporting issuers file financial statements prepared in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards. In carrying out its oversight and inspection responsibilities, the CPAB will be assessing compliance with these established principles and standards as well as any rules and regulations established by the CPAB to govern behaviour of participating firms. While the CSA is sensitive to the relative cost burden of requirements imposed on smaller companies in our capital markets, we agree that smaller companies should not be held to a different standard of financial reporting. We believe all reporting issuers should provide financial statements that have been audited by an audit firm that participates in the CPAB Oversight Program and complies with CPAB restrictions and sanctions. We also expect that any costs that arise from CPAB oversight will be determined and allocated fairly and will be proportionate to the revenues earned by a public accounting firm in connection with reporting issuer audits.</p>

	Theme	Comment	Response
24.	Part 4 - Exemption	One commenter raised concerns about the impact on small reporting issuers. The commenter noted that smaller accounting firms with few public issuer clients may choose not to enter into a participation agreement with the CPAB given that it would not add value to the majority of their private issuer clients. As a result, smaller public issuers may have to retain new accounting firms at potentially higher costs. The commenter suggested that all TSX Venture Exchange issuers be exempted from the requirement to retain a participating audit firm in good standing with the CPAB. In addition, the commenter suggested that venture issuers be required to disclose whether or not their financial statements have been prepared and/or audited by a CPAB registered accounting firm and, if not, to explain why.	We believe all reporting issuers should provide financial statements that have been audited by a firm that participates in the CPAB Oversight Program and complies with CPAB restrictions and sanctions. We recognize that some smaller public accounting firms may choose to cease to audit reporting issuers and that there may be some incremental increases in auditing costs for reporting issuers. Nevertheless, we believe the benefits of a consistently high standard of auditing for financial statements filed by reporting issuers will outweigh the costs.
25.	Part 4 - Exemption	In addition to supporting the exemption of TSX Venture Exchange issuers from certain requirements of the Instrument, one commenter suggested that smaller, non-Venture Exchange issuers also be exempt from some requirements. The commenter suggested that the CSA monitor the effect of the Instrument on such issuers on a cost/benefit basis.	As indicated above, we believe all reporting issuers should be bound by the Instrument. Once the Instrument is implemented, the CSA will monitor its impact.
26.	Part 5 - Effective date	One commenter noted that the rule should not take effect until all public accounting firms are deemed eligible to participate in the CPAB Oversight Program.	According to the CPAB registration process announced in September 2003, all public accounting firms are immediately eligible to participate in the CPAB Oversight Program. A public accounting firm wishing to participate was required to submit by December 31, 2003, an intent to participate form and a quality control report. Public accounting firms that have filed the required documents will be invited to submit a registration form and signed participation agreement by February 29, 2004. Once the documents and the required fee are received by the CPAB, a public accounting firm will automatically be considered to be a participating audit firm. Details of the CPAB's registration process are available on CPAB's website at www.cpab-ccrc.ca .
<p>Do you agree that public accounting firms in foreign jurisdictions should be required to participate in the CPAB Oversight Program? If not, what other alternatives should be considered? For example, should a public accounting firm based outside Canada that is subject to oversight by a comparable body in a foreign jurisdiction, such as the PCAOB, be treated differently?</p>			
27.	CPAB Oversight of foreign auditors	Four commenters stated that public accounting firms in foreign jurisdictions should be required to participate in the CPAB Oversight Program. The commenters also suggested that if foreign auditors were subject to review	We agree that foreign auditors should be subject to CPAB oversight and, in the jurisdictions that have rule-making authority to impose requirements directly on auditors, the effect of section 2.1 will be that foreign audit firms will be required to participate in the

	Theme	Comment	Response
		<p>by a comparable body in their home jurisdiction, e.g., the PCAOB in the U.S., then it would be preferable to have the CPAB enter into a reciprocal agreement with that oversight body. It was further suggested that any agreement should be structured to allow the CPAB to review and accept the results of the foreign oversight body rather than require public accounting firms to undergo reviews by two separate oversight bodies. Conversely, the commenter suggested that the foreign oversight body should accept the results of the quality assurance reviews performed by the CPAB.</p>	<p>CPAB Oversight Program (subject to any distinct registration deadlines established by the CPAB).</p> <p>We also acknowledge that the functions of similar auditor oversight organizations, such as the CPAB and the PCAOB should be coordinated and harmonized to the extent possible to prevent duplicative regulation. In this regard, we note that the CPAB has held discussions with the PCAOB and the PCAOB has stated that it intends to develop an efficient and effective cooperative arrangement where reliance may be placed on the home country system to the maximum extent possible (see PCAOB release number 2003-020 dated October 28, 2003 available on the PCAOB website at www.pcaobus.org)</p>
28.	CPAB Oversight of foreign auditors	<p>One commenter suggested that, in those situations where registration in the auditor's home jurisdiction is not sufficient, registration deadlines and other requirements should be aligned to the extent possible between countries requiring the auditor to register. This is especially relevant in relation to registration with the PCAOB due to the large number of Canadian public companies that are also public companies in the United States.</p>	<p>We agree that registration deadlines and other requirements should be aligned to the extent possible. We note that many of the requirements introduced by the CPAB are similar to those enacted in the United States. In addition, the CPAB has extended the registration deadline for foreign auditors in Canada until July 19, 2004 in order to align the registration deadline for foreign auditors with that in the U.S.</p>
29.	CPAB Oversight of foreign auditors	<p>One commenter supported the principle that the CPAB be given flexibility on how it oversees foreign auditors and stressed the need for establishing a "mutual reliance" system with the PCAOB in the U.S. to ensure we do not end up with a duplication of effort and costs.</p>	<p>We agree that the CPAB should be given sufficient flexibility to avoid unnecessary duplication of work carried out by its counterparts in foreign jurisdictions. As noted in our response to comment number 27, we understand that the CPAB and PCAOB are working together to develop a system of mutual recognition.</p>
30.	CPAB Oversight of foreign auditors	<p>Two commenters stated that it was not appropriate to require foreign accounting firms auditing reporting issuers to enter into participation agreements with the CPAB. One commenter noted it may discourage foreign companies from becoming reporting issuers in Canada. The other commenter thought requiring a foreign auditor with similar oversight rules to register with the CPAB was duplicative, and that such auditors should not be subject to oversight in Canada.</p>	<p>See responses to comments number 27, 28 and 29.</p>

	Theme	Comment	Response
<p>Do you think that five business days is an appropriate length of time for a public accounting firm to provide notice to its audit clients? Do you agree that an audit firm should only be required to provide notice to its audit clients when it fails to address defects within the time period prescribed by the CPAB? Are there other more effective means of having information about restrictions or sanctions communicated? For example, should the CPAB disclose to the public on a timely basis any restrictions or sanctions it imposes on a public accounting firm?</p>			
31.	Notice	<p>Two commenters stated that it would be easier to respond to the specific request for comment on the notice provisions if it had a fuller understanding of the process the CPAB intends to follow with respect to imposing restrictions and sanctions. The commenter asked, for example, whether a firm would be given the chance to rectify deficiencies.</p>	<p>The CPAB has begun publishing for public comment proposed rules respecting practice inspections and compliance requirements. These rules explain the process the CPAB intends to follow in imposing requirements, restrictions and sanctions. A firm will generally be given a reasonable opportunity to rectify any deficiencies in its practices and procedures before any restrictions or sanctions are imposed by the CPAB.</p>
32.	Notice	<p>Nine commenters commented specifically on the time periods for giving notice.</p> <p>One commenter concurred with the notice proposals as drafted in the Instrument published on June 27, 2003.</p> <p>Another commenter stated that a public accounting firm should be required to provide notice immediately when the CPAB imposes sanctions on it.</p> <p>Seven commenters suggested that five business days would not be an adequate amount of time to provide notice. Some commenters suggested that the notice periods under section 3.1 [now section 3.3] and/or section 3.4 [now section 3.2] should be extended to 10 or 30 business days.</p>	<p>We believe it would not be feasible to impose an immediate notice requirement on auditing firms that have a large number of reporting issuer clients, as firms will need time to identify their clients and organize delivery of the notice. On the other hand, we do not believe that this process will take more than a few days.</p> <p>In light of the fact that the majority of commenters on this issue recommended a 10 day notice requirement, we have amended the Instrument to require that notices under subsections 3.1(3) [now subsection 3.3(3)] and 3.4(3) [now subsection 3.2(3)] be provided within 10 business days. We believe this strikes an appropriate balance between the public interest in ensuring reporting issuers receive timely notice and the practicalities of disseminating information quickly.</p>
33.	Notice	<p>One commenter noted that the current inspection process used by provincial institutes of chartered accountants has due process safeguards and disciplinary notices are only published at the conclusion of this due process. The commenter added that, if information regarding restrictions and sanctions is not properly communicated to the public, it could result in potentially unwarranted fear in the investment community. The commenter concluded that any information regarding restrictions and sanctions should be communicated by the audit firm to its clients only, since the public could misunderstand publication of this information by the CPAB.</p>	<p>The Instrument requires a public accounting firm to provide notice of restrictions (in certain situations) and notice of sanctions to its clients only, not to the public generally. Any determination to require further transparency will be a matter to be considered by the CPAB.</p>
34.	Notice	<p>Four commenters agreed that an audit firm should be required to provide notice to its audit clients when it fails to address defects in its quality control systems</p>	<p>We agree and acknowledge the support of the commenters.</p>

	Theme	Comment	Response
		within the time period prescribed by the CPAB.	
35.	Notice	One commenter asked how much time an accounting firm will be given to address deficiencies in its quality control systems. For example will it match the 12 month time period under paragraph 104(g)(2) of the <i>Sarbanes Oxley Act of 2002</i> .	The CPAB has proposed that firms be given 180 days in which to address any deficiencies in their quality control systems, and that this information will be clearly communicated to the participating audit firm.
36.	Notice	<p>Three commenters suggested that information about participating audit firms should be a matter of public record.</p> <p>One commenter added that the CPAB should promptly disclose the details of restrictions or sanctions to the public. Another commenter suggested that the CPAB could either have securities regulators make the information public or it could publicize the information itself.</p>	<p>Information about a participating firm submitted with the initial registration form, other than information respecting fees earned by the public accounting firm from specific clients, will be made public.</p> <p>With respect to disclosing restrictions and sanctions, the CPAB will determine whether it will disclose publicly on a timely basis any restrictions or sanctions it imposes on a public accounting firm.</p>
37.	Notice	One commenter noted that it is not clear from section 3.2 [now paragraph (a) of subsection 3.4(1)] when the 12-month period for reporting sanctions to a potential audit client would end. The commenter suggested that the requirement should be to include notification of any sanction in any proposal presented to a reporting issuer within 12 months of the date the sanction was imposed.	We agree and have amended the Instrument to clarify that, prior to accepting an appointment by a new audit client, a participating audit firm must provide notice of any sanctions imposed within the 12 months immediately preceding the expected date of appointment. We have also added a requirement that a participating audit firm provide notice of any failures to address defects in its quality control systems if it was notified of any such failure by the CPAB within the 12 months immediately preceding the expected date of appointment.
38.	Notice	<p>One commenter stated that the proposal in section 3.1 [now section 3.3] should be reconsidered since it is impossible to assess the reaction of a firm's clients to such a communication and, as a result, the impact of the sanction may be much more severe than intended by the CPAB. The commenter stated that for a system of restrictions or sanctions to be equitable, the affected firm should be able to reasonably assess the outcome or cost of the restriction or sanction.</p> <p>The commenter noted that a firm should be required to communicate a sanction directly to its issuer audit clients only when the sanction imposed by the CPAB results in a firm being ineligible to issue future audit reports to reporting issuers.</p> <p>Also, assuming that sanctions may be imposed on individual members of a firm rather than the firm in its entirety, any required notices should depend on the scope of the sanctions imposed. For</p>	<p>We disagree and believe the notice requirements respecting sanctions strike the appropriate balance between the interests of a participating audit firm and its reporting issuer audit clients. Furthermore, we believe participating audit firms will be able to manage the relationship with clients and it is reasonable to expect them to be able to assess clients' reactions to the imposition of sanctions on an audit firm.</p> <p>We disagree that the notice requirement should not apply unless the sanction imposed by the CPAB results in a firm being ineligible to issue future audit reports to reporting issuers. In our view, it is important that a participating audit firm's reporting issuer clients be made aware of CPAB-imposed sanctions to assess whether they need to take specific action regarding their auditor or their financial statements.</p> <p>While we considered requiring the notice of sanctions to be provided to those clients that were directly impacted only, we concluded it</p>

	Theme	Comment	Response
		example, a sanction prohibiting a member of the firm from participating in the audit of an issuer should only be required to be communicated to those clients the member has been involved in auditing, rather than all issuer audit clients of the firm.	would be too complex to try to define which clients of a participating audit firm would be affected by sanctions in different circumstances. Therefore, we have left it up to the accounting firm to explain the scope of the sanctions imposed on it within the notice it provides to all of its audit clients.
39.	Notice	One commenter noted that not all reporting issuers have audit committees and questioned to whom the notice should be delivered.	We agree and have amended the Instrument to clarify that, when a reporting issuer does not have an audit committee, the notice should be provided to the person or persons responsible for reviewing and approving the financial statements before they are filed.
40.	Notice	One commenter noted that the terms "sanctions", "restrictions" and the failure "to address, to the satisfaction of the CPAB, the defects in its quality control systems" are not defined or commonly understood. The commenter observed that notification of such issues to audit clients, prospective clients and regulators are serious matters and it would need a better understanding of the relationship between the CPAB and participating audit firms, as well as the means the CPAB will use to classify inspection findings, specify remedial actions and otherwise take action against auditors with which the CPAB has quality concerns. The commenter recommended that the CSA and the CPAB consult with audit firms that are expected to become participating firms on these matters before this Instrument is finalized.	We agree that these are matters that warrant consultation and public feedback. Details of the CPAB's compliance and enforcement system are set out in rules that the CPAB began publishing on its website (www.cpab-crc.ca) on December 24, 2003. The published rules, among other things, outline membership requirements, the investigation process and the types of requirements, restrictions and sanctions the CPAB may impose. Participating audit firms and the public have the opportunity to provide comments on these rules. In addition, we expect the CPAB will keep securities regulators and audit firms informed about the development of its compliance and enforcement system.

APPENDIX C

**MULTILATERAL NATIONAL INSTRUMENT 52-108
AUDITOR OVERSIGHT**

PART 1 DEFINITIONS AND APPLICATION

1.1 Definitions - In this Instrument

“CPAB” means the Canadian Public Accountability Board/Conseil canadien sur la reddition de comptes, incorporated as a corporation without share capital under the *Canada Corporations Act* by Letters Patent dated April 15, 2003, and any of its successors;

~~“participant in good standing” means a participating audit firm that meets the following conditions: (a) its participation agreement is not suspended or terminated by the CPAB, and (b) it has complied with, and, if applicable, continues to comply with, any sanctions or restrictions imposed by the board of directors of the CPAB; “participation agreement” means a written agreement between the CPAB and a public accounting firm in connection with an oversight program of public accounting firms established by the CPAB~~ the CPAB’s program of practice inspections and the establishment of practice requirements;

~~“participating audit firm” means a public accounting firm that has entered into a participation agreement~~ and that has not had its participant status terminated, or, if its participant status was terminated, has been reinstated in accordance with CPAB by-laws; and

~~“public accounting firm” means a sole proprietorship, partnership of individuals, corporation or other legal entity engaged in the business of providing services as public accountants and includes, where the context permits, an individual carrying on business as a sole proprietor and any professional corporation through which either a partner or a sole proprietor carries on its business;~~

1.2 Application – Sections 2.1, 2.2 and Transition –

~~(1) This Instrument applies to reporting issuers and public accounting firms.~~

~~(2) Section 2.1 and Part 3 do not apply in Alberta or, British Columbia and Manitoba.~~

~~(3) Part 2 does not apply unless~~

~~(a) the CPAB’s prescribed time period for the public accounting firm to submit a participation agreement has expired, and~~

~~(b) the auditor’s report prepared by the public accounting firm is dated on or after March 30, 2004.~~

PART 2 AUDITOR OVERSIGHT

~~**2.1.2.1 Participation Agreement with the CPAB – Public accounting firms –** A public accounting firm that issues prepares an auditor’s report with respect to the financial statements of a reporting issuer must **enter into a participation agreement within the time period prescribed by the CPAB, as of the date of its auditor’s report,**~~

~~(a) a participating audit firm, and~~

~~**2.2 Participant in Good Standing –** A participating audit firm must be a participant in good standing when it issues an auditor’s report with respect to the financial statements of a reporting issuer.~~

~~(b) in compliance with any restrictions or sanctions imposed by the CPAB.~~

~~**2.3 Auditor’s report filed with Financial Statements – (1) 2.2 Reporting Issuers –** A reporting issuer that files its financial statements accompanied by an auditor’s report with financial statements may only file an auditor’s report issued by its report must have the auditor’s report prepared by a public accounting firm that is, as of the date of the auditor’s report,~~

~~(a) a participating audit firm that is a participant in good standing at the time the auditor’s report is issued, and~~

~~(2) A reporting issuer is exempt from the requirement in subsection (1) if, at the date on which an auditor's report is issued with respect to the issuer's financial statements by a public accounting firm, the time period prescribed by the CPAB within which that public accounting firm must enter into a participation agreement has not expired.~~

~~(b) in compliance with any restrictions or sanctions imposed by the CPAB.~~

PART 3 NOTICE

3.1 ~~Notice of Sanctions~~Restrictions -

~~(1) A participating audit firm must, if the board of directors of the CPAB imposes sanctions on it, notify that is appointed to prepare an auditor's report with respect to the financial statements of a reporting issuer must, if the CPAB imposes restrictions on the participating audit firm intended to address defects in its quality control systems, provide notice to the regulator.~~

~~(2) The notice required under subsection (1) must be in writing and include a complete description of~~

~~(a) the defects in the quality control systems identified by the CPAB, and~~

~~(b) the restrictions imposed by the CPAB, including the date the restrictions were imposed and the time period within which the participating audit firm agreed to address the defects.~~

~~(3) The notice required under subsection (1) must be delivered within 2 business days of the restrictions being imposed.~~

3.2 Idem -

~~(1) A participating audit firm that is subject to CPAB restrictions intended to address defects in its quality control systems and that is informed by the CPAB that it failed to address defects in its quality control systems, to the satisfaction of the CPAB, within the agreed upon time period, must provide notice to~~

~~(a) the audit committee of each reporting issuer for which it is appointed to prepare an auditor's report, or, if a reporting issuer does not have an audit committee, the board of directors or the person or persons responsible for reviewing and approving the reporting issuer's financial statements before they are filed, and~~

~~(b) the regulator, if the participating audit firm is appointed to prepare an auditor's report with respect to the financial statements of a reporting issuer.~~

~~(2) The notice required under subsection (1) must be in writing and include a complete description of~~

~~(a) the defects in the quality control systems identified by the CPAB,~~

~~(b) the restrictions imposed by the CPAB that were intended to address defects in its quality control systems, including the date the restrictions were imposed and the time period within which the participating audit firm agreed to address the defects, and~~

~~(c) the reasons it was unable to address the defects to the satisfaction of the CPAB.~~

~~(3) The notice required under subsection (1) must be delivered within 10 business days of the participating audit firm being informed by the CPAB that it has failed to address the defects in its quality control systems.~~

3.3 Notice of Sanctions -

~~(1) A participating audit firm that is subject to sanctions imposed by the CPAB must provide notice to~~

~~(a) the audit committee of each reporting issuer for which it has been engaged to issue an auditor's report and is appointed to prepare an auditor's report, or, if a reporting issuer does not have an audit committee, the board of directors or the person or persons responsible for reviewing and approving the reporting issuer's financial statements before they are filed, and~~

(b) ~~the regulator if the issuer is, if the participating audit firm is appointed to prepare an auditor's report with respect to the financial statements of a reporting issuer in the local jurisdiction.~~

(2) The notice required under subsection (1) must be in writing and include a complete description of the sanctions imposed by the ~~board of directors of the CPAB~~, including the date the sanctions were imposed.

(3) ~~—~~The notice required under subsection (1) must be delivered within ~~5~~10 business days of the sanctions being imposed.

~~3.2 Idem — A participating audit firm must, if it is making a proposal to undertake an audit of a reporting issuer, advise the reporting issuer's audit committee of any sanctions that have been imposed by the board of directors of the CPAB within the preceding 12 months.~~

~~3.3 — Notice of Restrictions —~~

(1) ~~—~~A participating audit firm must, if the board of directors of the CPAB imposes restrictions on it in order to address defects in the participating audit firm's quality control systems, notify the regulator if it has been engaged to issue an auditor's report with respect to the financial statements of a reporting issuer in the local jurisdiction.

(2) ~~—~~The notice required under subsection (1) must be in writing and include a complete description of (a) the defects in the quality control systems identified by the CPAB and (b) the restrictions imposed by the board of directors of the CPAB, including the date the restrictions were imposed and the time period within which the participating audit firm agreed to address the defects.

3.4 Notice of Restrictions and Sanctions Prior to Appointment —

(1) Prior to accepting an appointment to prepare an auditor's report with respect to the financial statements of a reporting issuer, a participating audit firm must provide notice in accordance with

(3) ~~—~~The notice required under subsection (1) must be delivered within 2 business days of the restrictions being imposed.

(a) subsections 3.2(1) and 3.2(2), if the CPAB informed the participating audit firm within the 12-month period immediately preceding the expected date of appointment that it failed to address defects in its quality control systems to the satisfaction of the CPAB, and

~~3.4 — Idem —~~

(1) ~~—~~If a participating audit firm is informed by the CPAB that it failed to address, to the satisfaction of the CPAB, the defects in its quality control systems within the time period agreed to between the participating audit firm and the CPAB, it must notify (a) the audit committee of a reporting issuer for which it has been engaged to issue an auditor's report with respect to the issuer's financial statements, and (b) the regulator if it has been engaged to issue an auditor's report with respect to the financial statements of a reporting issuer in the local jurisdiction.

(b) subsections 3.3(1) and 3.3(2), if the CPAB imposed sanctions on the participating audit firm within the 12-month period immediately preceding the expected date of appointment.

(2) ~~—~~The notice required under subsection (1) must be in writing and include a complete description of (a) the defects in the quality control systems identified by the CPAB, (b) the restrictions imposed by the board of directors of the CPAB, including the date the restrictions were imposed and the time period within which the participating audit firm agreed to address the defects, and (c) the reasons it was unable to address the defects to the satisfaction of the CPAB.

(2) For the purposes of subsection (1), the references to "is appointed" contained in subsections 3.2(1) and 3.3(1) shall mean "is expected to be appointed."

(3) ~~—~~The notice required under subsection (1) must be delivered within 5 business days of the public accounting firm being informed by the CPAB that it has failed to address the defects in its quality control systems.

(3) A participating audit firm is not required to provide notice under subsection (1) if, pursuant to a notice provided under sections 3.2 or 3.3, the reporting issuer and regulator have been provided notice of the participating

audit firm's failure to address the defects in its quality control systems to the satisfaction of the CPAB and of the sanctions imposed by the CPAB.

PART 4 EXEMPTION

4.1 Exemption ≡

- (1) The regulator or the securities regulatory authority 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.

PART 5 EFFECTIVE DATE

5.1 Effective Date of Instrument ≡ This Instrument comes into force on ~~January 1, 2004~~ March 30, 2004.