

**5.1.3 Multilateral Instrument 52-110 Audit Committees and Companion Policy 52-110CP**

**AMENDMENTS TO  
MULTILATERAL INSTRUMENT 52-110 AUDIT COMMITTEES**

**Part 1 Amendments**

- 1.1 Definition of Venture Issuer** — The definition of “venture issuer” in subsection 1.1 of Multilateral Instrument 52-110 *Audit Committees* (the “Instrument”) is deleted and replaced by the following:

“venture issuer” means an issuer that, at the end of its most recently completed financial year, does not have any of its securities listed or quoted on the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America.”

- 1.2 Meaning of Control** — Subsection 1.3(4) of the Instrument is amended by deleting the words “be an affiliated entity of” and substituting the word “control”.

**1.3 Meaning of Independence —**

- (1) Section 1.4 of the Instrument is deleted and replaced by the following:

**“1.4 Meaning of Independence —**

- (1) An audit committee member is independent if he or she has no direct or indirect material relationship with the issuer.
- (2) For the purposes of subsection (1), a “material relationship” is a relationship which could, in the view of the issuer's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgement.
- (3) Despite subsection (2), the following individuals are considered to have a material relationship with an issuer:
  - (a) an individual who is, or has been within the last three years, an employee or executive officer of the issuer;
  - (b) an individual whose immediate family member is, or has been within the last three years, an executive officer of the issuer;
  - (c) an individual who:
    - (i) is a partner of a firm that is the issuer's internal or external auditor,
    - (ii) is an employee of that firm, or
    - (iii) was within the last three years a partner or employee of that firm and personally worked on the issuer's audit within that time;
  - (d) an individual whose spouse, minor child or stepchild, or child or stepchild who shares a home with the individual:
    - (i) is a partner of a firm that is the issuer's internal or external auditor,
    - (ii) is an employee of that firm and participates in its audit, assurance or tax compliance (but not tax planning) practice, or
    - (iii) was within the last three years a partner or employee of that firm and personally worked on the issuer's audit within that time;
  - (e) an individual who, or whose immediate family member, is or has been within the last three years, an executive officer of an entity if any of the issuer's current executive officers serves or served at that same time on the entity's compensation committee; and

- (f) an individual who received, or whose immediate family member who is employed as an executive officer of the issuer received, more than \$75,000 in direct compensation from the issuer during any 12 month period within the last three years.
- (4) Despite subsection (3), an individual will not be considered to have a material relationship with the issuer solely because
  - (a) he or she had a relationship identified in subsection (3) if that relationship ended before March 30, 2004; or
  - (b) he or she had a relationship identified in subsection (3) by virtue of subsection (8) if that relationship ended before June 30, 2005.
- (5) For the purposes of clauses (3)(c) and (3)(d), a partner does not include a fixed income partner whose interest in the firm that is the internal or external auditor is limited to the receipt of fixed amounts of compensation (including deferred compensation) for prior service with that firm if the compensation is not contingent in any way on continued service.
- (6) For the purposes of clause (3)(f), direct compensation does not include:
  - (a) remuneration for acting as a member of the board of directors or of any board committee of the issuer, and
  - (b) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the issuer if the compensation is not contingent in any way on continued service.
- (7) Despite subsection (3), an individual will not be considered to have a material relationship with the issuer solely because the individual or his or her immediate family member
  - (a) has previously acted as an interim chief executive officer of the issuer, or
  - (b) acts, or has previously acted, as a chair or vice-chair of the board of directors or of any board committee of the issuer on a part-time basis.
- (8) For the purpose of section 1.4, an issuer includes a subsidiary entity of the issuer and a parent of the issuer.

#### **1.5 Additional Independence Requirements —**

- (1) Despite any determination made under section 1.4, an individual who
  - (a) accepts, directly or indirectly, any consulting, advisory or other compensatory fee from the issuer or any subsidiary entity of the issuer, other than as remuneration for acting in his or her capacity as a member of the board of directors or any board committee, or as a part-time chair or vice-chair of the board or any board committee; or
  - (b) is an affiliated entity of the issuer or any of its subsidiary entities,is considered to have a material relationship with the issuer.
- (2) For the purposes of subsection (1), the indirect acceptance by an individual of any consulting, advisory or other compensatory fee includes acceptance of a fee by
  - (a) an individual's spouse, minor child or stepchild, or a child or stepchild who shares the individual's home; or
  - (b) an entity in which such individual is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary entity of the issuer.

- (3) For the purposes of subsection (1), compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the issuer if the compensation is not contingent in any way on continued service."

- (2) Section 1.5 of the Instrument is re-numbered section 1.6

**1.4 Controlled Companies** — Paragraph (a) of subsection 3.3(2) is deleted and replaced by the following:

- "(a) the member would be independent of the issuer but for the relationship described in paragraph 1.5(1)(b) or as a result of subsection 1.4(8);"

**1.5 Temporary Exemption for Limited and Exceptional Circumstances** — Paragraph (a) of section 3.6 is amended by deleting the words "paragraph 1.4(3)(f)(i) or 1.4(3)(g)" and substituting the words "subsection 1.5(1)"

**1.6 U.S. Listed Issuers** — Section 7.1 of the Instrument is amended by

- (i) deleting the word "a" as it appears before the words "issuers, other than foreign private issuers," and
- (ii) deleting the words "paragraph 5 of Form 52-110F1" and substituting the words "paragraph 7 of Form 52-110F1".

**1.7 Replacement of "person" with "individual" —**

- (1) Paragraph 1.3(1)(b) is amended by deleting the words "or company" and substituting the words "is an individual who".
- (2) Subsection 1.3(4) is amended by deleting the words "a person" and substituting the words "an individual" and by deleting the words "the person" and substituting the words "the individual".

**1.8 Form 52-110F1** — Paragraph (c) of Item 3 of Form 52-110F1 is amended by deleting the word "persons" and substituting the word "individuals".

**1.9 Form 52-110F2 —**

- (1) Form 52-110F2 is amended by re-numbering Items 3 through 7 as Items 4 through 8, respectively, and adding the following as a new Item 3:

**"3. Relevant Education and Experience**

Describe the education and experience of each audit committee member that is relevant to the performance of his or her responsibilities as an audit committee member and, in particular, disclose any education or experience that would provide the member with:

- (a) an understanding of the accounting principles used by the issuer to prepare its financial statements;
  - (b) the ability to assess the general application of such accounting principles in connection with the accounting for estimates, accruals and reserves;
  - (c) experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the issuer's financial statements, or experience actively supervising one or more individuals engaged in such activities; and
  - (d) an understanding of internal controls and procedures for financial reporting."
- (2) Form 52-110F2 is amended by deleting the words "this paragraph 5" in the instruction to Item 7 and substituting the words "this paragraph 7".

**Part 2 Effective Date**

**2.1 Effective Date** — These amendments come into force on June 30, 2005.

**AMENDMENTS TO COMPANION POLICY 52-110CP  
TO MULTILATERAL INSTRUMENT 52-110 AUDIT COMMITTEES**

**1.1 Application to Non-Corporate Entities.** Paragraph 1.2 of Companion Policy 52-110CP to Multilateral Instrument 52-110 *Audit Committees* ("52-110CP") is deleted and replaced by the following:

**"1.2 Application to Non-Corporate Entities.** The Instrument applies to both corporate and non-corporate entities. Where the Instrument or this Policy refers to a particular corporate characteristic, such as a board of directors, the reference should be read to also include any equivalent characteristic of a non-corporate entity. For example, in the case of a limited partnership, the directors of the general partner who are independent of the limited partnership (including the general partner) should form an audit committee which fulfils these responsibilities.

Income trust issuers should apply the Instrument in a manner which recognizes that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board or management of a subsidiary of the trust, or the board, management or employees of a management company. For this purpose, references to "the issuer" refer to both the trust and any underlying entities, including the operating entity.

If the structure of an issuer will not permit it to comply with the Instrument, the issuer should seek exemptive relief."

**1.2 Meaning of Independence.** Part Three of 52-110CP is deleted and replaced by the following:

**"Part Three  
Independence**

**3.1 Meaning of Independence.** The Instrument generally requires every member of an audit committee to be independent. Subsection 1.4(1) of the Instrument defines independence to mean the absence of any direct or indirect material relationship between the director and the issuer. In our view, this may include a commercial, charitable, industrial, banking, consulting, legal, accounting or familial relationship, or any other relationship that the board considers to be material. Although shareholding alone may not interfere with the exercise of a director's independent judgement, we believe that other relationships between an issuer and a shareholder may constitute material relationships with the issuer, and should be considered by the board when determining a director's independence. However, only those relationships which could, in the view of the issuer's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgement should be considered material relationships within the meaning of section 1.4.

Subsection 1.4(3) and section 1.5 of the Instrument describe those individuals that we believe have a relationship with an issuer that would reasonably be expected to interfere with the exercise of the individual's independent judgement. Consequently, these individuals are not considered independent for the purposes of the Instrument and are therefore precluded from serving on the issuer's audit committee. Directors and their counsel should therefore consider the nature of the relationships outlined in subsection 1.4(3) and section 1.5 as guidance in applying the general independence requirement set out in subsection 1.4(1).

**3.2 Derivation of Definition.** In the United States, listed issuers must comply with the audit committee requirements contained in SEC rules as well as the director independence and audit committee requirements of the applicable securities exchange or market. The definition of independence included in the Instrument has therefore been derived from both the applicable SEC rules and the corporate governance rules issued by the New York Stock Exchange. The portion of the definition of independence that parallels the NYSE rules is found in section 1.4 of the Instrument. Section 1.5 of the Instrument contains additional rules regarding audit committee member independence that were derived from the applicable SEC rules. To be independent for the purposes of the Instrument, a director must satisfy the requirements in both sections 1.4 and 1.5.

**3.3 Safe Harbour.** Subsection 1.3(1) of the Instrument provides, in part, that a person or company is an affiliated entity of another entity if the person or company controls the other entity. Subsection 1.3(4), however, provides that an individual will not be considered to control an issuer if the individual:

- (a) owns, directly or indirectly, ten per cent or less of any class of voting equity securities of the issuer; and
- (b) is not an executive officer of the issuer.

Subsection 1.3(4) is intended only to identify those individuals who are not considered to control an issuer. The provision is not intended to suggest that an individual who owns more than ten percent of an issuer's voting equity securities automatically controls an issuer. Instead, an individual who owns more than ten percent of an issuer's voting

equity securities should examine all relevant facts and circumstances to determine if he or she controls the issuer and is therefore an affiliated entity within the meaning of subsection 1.3(1).

**3.4 Remuneration of Chair of Board, Etc.** Subsection 1.4(6) of the Instrument provides that, for the purpose of the prescribed relationship described in clause 1.4(3)(f), direct compensation does not include remuneration for acting as a member of the board of directors or of any board committee of the issuer. In our view, remuneration for acting as a member of the board also includes remuneration for acting as the chair of the board or of any committee of the board.”

**1.3. Disclosure of Relevant Education and Experience.** Paragraph 4.2 of 52-110CP is deleted and replaced by the following:

**“4.2 Disclosure of Relevant Education and Experience.**

- (1) Item 3 of Forms 52-110F1 and 52-110F2 require an issuer to disclose any education or experience of an audit committee member that would provide the member with, among other things, an understanding of the accounting principles used by the issuer to prepare its financial statements. The level of understanding that is requisite is influenced by the complexity of the business being carried on. For example, if the issuer is a complex financial institution, a greater degree of education and experience is necessary than would be the case for an audit committee member of an issuer with a more simple business.
- (2) Item 3 of Forms 52-110F1 and 52-110F2 also require an issuer to disclose any experience that the member has, among other things, actively supervising persons engaged in preparing, auditing, analyzing or evaluating certain types of financial statements. The phrase active supervision means more than the mere existence of a traditional hierarchical reporting relationship between supervisor and those being supervised. An individual engaged in active supervision participates in, and contributes to, the process of addressing (albeit at a supervisory level) the same general types of issues regarding preparation, auditing, analysis or evaluation of financial statements as those addressed by the individual or individuals being supervised. The supervisor should also have experience that has contributed to the general expertise necessary to prepare, audit, analyze or evaluate financial statements that is at least comparable to the general expertise of those being supervised. An executive officer should not be presumed to qualify. An executive officer with considerable operations involvement, but little financial or accounting involvement, likely would not be exercising the necessary active supervision. Active participation in, and contribution to, the process, albeit at a supervisory level, of addressing financial and accounting issues that demonstrate a general expertise in the area would be necessary.”