6.2.1 Request for Comment – Proposed Repeal and Replacement of NP 58-201 *Corporate Governance Guidelines*, NI 58-101 *Disclosure of Corporate Governance Practices*, and NI 52-110 *Audit Committees* and Companion Policy 52-110CP *Audit Committees*

REQUEST FOR COMMENT

PROPOSED REPEAL AND REPLACEMENT OF

NATIONAL POLICY 58-201
***CORPORATE GOVERNANCE GUIDELINES*,**

NATIONAL INSTRUMENT 58-101
***DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES*, AND**

NATIONAL INSTRUMENT 52-110 *AUDIT COMMITTEES*
AND COMPANION POLICY 52-110CP *AUDIT COMMITTEES*

1. REQUEST FOR PUBLIC COMMENT

We, the Canadian Securities Administrators (CSA), are publishing for a 120-day comment period the following documents:

- National Policy 58-201 *Corporate Governance Principles* (the Proposed Governance Policy);
- National Instrument 58-101 *Disclosure of Corporate Governance Practices* (the Proposed Governance Instrument and, together with the Proposed Governance Policy, the Proposed Governance Materials);
- National Instrument 52-110 *Audit Committees* (the Proposed Audit Committee Instrument);
- Companion Policy 52-110CP (the Proposed Audit Committee Policy and, together with the Proposed Audit Committee Instrument, the Proposed Audit Committee Materials)

  (together, the Proposed Materials).

The Proposed Materials would replace the following documents currently in effect:

- National Policy 58-201 *Corporate Governance Guidelines* (the Current Governance Policy);
- National Instrument 58-101 *Disclosure of Corporate Governance Practices* (the Current Governance Instrument and, together with the Current Governance Policy, the Current Governance Materials);
- National Instrument 52-110 *Audit Committees* (the Current Audit Committee Instrument);
- Companion Policy 52-110CP

  (together, the Current Materials).

We invite comment on the Proposed Materials generally. In addition, we have raised a number of questions for your specific consideration. The Proposed Materials are set out in Appendix B.

2. BACKGROUND AND PURPOSE

When we published the Current Governance Materials in final form in April 2005, we indicated in the accompanying notice that we recognized that corporate governance is in a constant state of evolution. We stated that we intended to review the Current Governance Materials periodically following their implementation to ensure that the guidelines and disclosure requirements continue to be appropriate for issuers in the Canadian market.

We stated in the Current Governance Policy that we understand that some market participants have concerns about how the Current Governance Materials affect controlled issuers and that we intended to carefully consider these concerns.

On September 28, 2007, we published CSA Staff Notice 58-304 *Review of NI 58-101 Disclosure of Corporate Governance Practices and NP 58-201 Corporate Governance Guidelines* (CSA Notice 58-304), to communicate our plans to undertake a broad review of the Current Governance Materials and to publish our findings together with any proposed amendments for comment in 2008.

In conducting this broad review, we examined corporate governance regimes in other jurisdictions. We also considered the realities of the large number of small issuers and controlled issuers in the Canadian market.

Consistent with CSA Notice 58-304, this Notice and the Proposed Materials reflect the results of our review.

The Proposed Materials are intended to enhance the standard of governance and confidence in the Canadian capital markets. They introduce changes in three main areas of our current corporate governance regime.

First, we propose to replace the Current Governance Policy with a more principles-based policy that is broader in scope. The Current Governance Policy contains a list of specific corporate governance guidelines. The Proposed Governance Policy contains nine broad corporate governance principles and commentary explaining those principles. In addition, it includes examples of corporate governance practices that can be used to achieve the objectives of the principles.

Second, we propose to replace the existing disclosure requirements set out in the Current Governance Instrument with a new set of disclosure requirements. The new set of disclosure requirements are more general in nature (rather than based on a model of "comply-or-explain") and apply to both venture and non-venture issuers.

Third, we propose to replace the current prescriptive approach to independence in the Current Audit Committee Instrument with a more principles-based approach. Specifically, we propose to include a principles-based definition of independence in the Proposed Audit Committee Instrument with guidance in the Proposed Audit Committee Policy regarding the types of relationships that could affect a director's independence. This guidance would replace the bright-line tests in sections 1.4 and 1.5 of the Current Audit Committee Instrument.

The purpose of the Proposed Materials is consistent with that of the Current Materials. The purpose of the Proposed Governance Policy is to provide guidance on corporate governance practices. The purpose of the Proposed Governance Instrument is to provide greater transparency for the marketplace regarding issuers' corporate governance practices. The purpose of the Proposed Audit Committee Instrument is to provide a framework for establishing and maintaining strong, effective and independent audit committees. The purpose of the Proposed Audit Committee Policy is to provide interpretative guidance for the application of the Proposed Audit Committee Instrument.

Although the Alberta Securities Commission (the ASC) supports the objectives of the Proposed Materials, the ASC is concerned that the Proposed Materials may not substantially improve upon the Current Materials and that the anticipated potential benefits associated with implementing the Proposed Materials may be outweighed by the costs associated with adjusting to, and complying with, the Proposed Materials. Some of the ASC's concerns and specific requests for comment are set out in Appendix A, while other issues are raised in the specific requests for comment in this Notice.

3. SUMMARY OF PROPOSED MATERIALS

Proposed Governance Policy

The Current Governance Policy sets out corporate governance guidelines, grouped under nine main topics. These guidelines are not mandatory. However, because they are coupled with the "comply or explain" disclosure regime in the Current Governance Instrument, some market participants perceived them as prescriptive.

The Proposed Governance Policy establishes nine core corporate governance principles that apply to all issuers. Each principle is accompanied by commentary that provides relevant background and explanation, along with examples of practices that could achieve its objectives. These examples do not create obligatory practices or minimum requirements. The Proposed Governance Policy explicitly recognizes that corporate governance practices of issuers may differ from these examples but be equally good practices provided they achieve the objectives of the articulated principles. The Proposed Governance Policy does not purport to establish minimum standards or "best practices". It establishes nine principles that a board should consider and in respect of which disclosure is required.

The nine core corporate governance principles are:

- Principle 1 - Create a framework for oversight and accountability
  An issuer should establish the respective roles and responsibilities of the board and executive officers.

- Principle 2 - Structure the board to add value
  The board should be comprised of directors that will contribute to its effectiveness.

- Principle 3 - Attract and retain effective directors
  A board should have processes to examine its membership to ensure that directors, individually and collectively, have the necessary competencies and other attributes.

- Principle 4 - Continuously strive to improve the board's performance
  A board should have processes to improve its performance and that of its committees, if any, and individual directors.

- Principle 5 - Promote integrity
  An issuer should actively promote ethical and responsible behavior and decision-making.

- Principle 6 - Recognize and manage conflicts of interest
  An issuer should establish a sound system of oversight and management of actual and potential conflicts of interest.

- Principle 7 - Recognize and manage risk
  An issuer should establish a sound framework of risk oversight and management.

- Principle 8 - Compensate appropriately
  An issuer should ensure that compensation policies align with the best interests of the issuer.

- Principle 9 - Engage effectively with shareholders
  The board should endeavor to stay informed of shareholders' views through the shareholder meeting process as well as through ongoing dialogue.

The Proposed Governance Policy is broader in scope since the Current Governance Policy does not expressly address the subject matter of Principles 6, 7 and 9.

Principle 6 encourages issuers to establish a sound system of oversight and management of actual and potential conflicts of interest. We think that independence from management of the issuer is required to ensure the adequate supervision of management. We recognize, however, that conflicts of interest may arise in various situations, including if there is a significant divergence of interests among shareholders or their interests are not completely aligned. For example, conflicts of interest could arise in related party transactions to which a control person or significant shareholder is a party. The proposed Principle 6 encourages oversight and management of these conflicts in a manner that does not disqualify a control person or significant shareholder from being considered independent.

Principle 7 encourages issuers to establish a sound framework of risk oversight and management in order to effectively identify and manage significant risks. We think that risk oversight and management are an important component of corporate governance.

Principle 9 encourages the board to stay informed of shareholders' views, in order to facilitate board accountability to shareholders. This principle is intended to foster a productive relationship between shareholders and their elected representatives, the board of directors. We think that the examples of practices set out in this principle can assist the board of directors in keeping abreast of shareholder concerns.

Specific requests for comment

1. Do you think Principles 6, 7 and 9 provide useful and appropriate guidance? Does this guidance appropriately supplement other corporate law and securities law (including legislation and decisions of Canadian courts) relating to these areas?

2. Does the level of detail in the commentary and examples of practices successfully provide guidance to issuers and assistance to investors without appearing to establish "best practices"?

Proposed Governance Instrument

Required disclosure

A reporting issuer other than an investment fund is required to include in its information circular, annual information form or annual MD&A disclosure regarding its corporate governance practices.

We have significantly revised the disclosure requirements in Form 58-101F1. An issuer is required to disclose the practices it uses to achieve the objectives of each principle set out in the Proposed Governance Policy. An issuer is also required to disclose certain factual information, such as the board's composition and information about any of its standing committees. This disclosure is intended to help investors understand those practices.

The disclosure requirements are no longer based on a model of "comply or explain" against governance guidelines. That is one reason why the Proposed Governance Instrument does not provide an alternative disclosure regime for venture issuers.

Filing of code of business conduct and ethics

We no longer require an issuer to file a copy of its code of business conduct and ethics or an amendment to the code through SEDAR. However, an issuer must provide a summary of any standards of ethical and responsible behavior and decision-making or code adopted by the issuer and describe how to obtain a copy of its code, if any.

Application

We have clarified the application section as it applies to subsidiary entities.

Specific requests for comment

3. In your view, what are the relative merits of a principles-based approach for disclosure, compared to a "comply or explain" model?

4. Is the level of disclosure required under each of the principles appropriate both from an issuer's and an investor's point of view? Specifically, do you think the disclosure in respect of Principles 6, 7 and 9 provides useful information to investors?

5. Should venture issuers be subject to the same disclosure requirements concerning their corporate governance practices as non-venture issuers?

Proposed approach to independence (found in the Proposed Audit Committee Materials)

Definition of independence

The definition of independence in the Current Audit Committee Instrument is:

(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 judgment.

The definition of independence in the Proposed Audit Committee Instrument is:

A director is independent if he or she

(a) is not an employee or executive officer of the issuer; and

(b) does not have, or has not had, any relationship with the issuer, or an executive officer of the issuer, which could, in the view of the issuer's board of directors having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment.

We propose to define independence to mean independence from the issuer and its management as a board of directors has an obligation to supervise the management of the business and affairs of an issuer. Under this definition, employees and executive officers of the issuer can never be considered independent.

While a control person or significant shareholder is not disqualified from being independent, when making independence assessments, boards should consider the control person's or significant shareholder's involvement with the management of the issuer and, depending on the nature and degree of involvement, this relationship may be reasonably perceived to interfere with the exercise of independent judgment.

In addition, the proposed definition captures relationships that are reasonably perceived to interfere with the exercise of independent judgment. In contrast, the current definition captures relationships that are reasonably expected to interfere with the exercise of independent judgment. We think the concept of perception is broader than that of expectation and is appropriate to include in the definition of independence since we are removing the "bright line" tests.

Removal of "bright line" tests

We have removed the "bright line" tests in section 1.4 of the Current Audit Committee Instrument. Instead, we have included guidance in the Proposed Audit Committee Policy for assessing independence. Specifically, we have included in section 3.1 a non-exhaustive list of relationships that could affect an individual's independence. Ultimately determining independence is left to the reasonable judgment of the board of directors.

Application

The new definition of independence will apply to all board members, including audit committee members. Consequently, we have removed the additional requirements for audit committee member independence in section 1.5 of the Current Audit Committee Instrument.

Related disclosure requirements

Under the Proposed Governance Instrument, an issuer is required to disclose information regarding director independence. Specifically, an issuer must disclose:

- the names of the directors considered by the board to be independent, with the following information for each of those directors, if any:
  - (i) a description of any relationship with the issuer or any of its executive officers that the board considered in determining the director's independence; and
  - (ii) if the director has a relationship referred to in sub-paragraph (i), a discussion of why the board considers the director to be independent;
- the names of the directors considered by the board to be not independent and the basis for that determination; and
- if a director has a business or other relationship with another director on the issuer's board, other than common membership on the issuer's board, information about that relationship.

Specific requests for comment

6. In your view, what are the relative merits of the proposed approach to independence compared to the current approach. In particular:
   - (a) basing the determination of independence on perception rather than expectation; and
   - (b) guiding the board through indicia rather than imposing bright line tests?
7. Is it sufficiently clear that the phrase "reasonably perceived" applies a reasonable person standard?
8. Is the guidance in the Proposed Audit Committee Policy sufficient to assist the board in making appropriate determinations of independence?
9. The proposed definition provides that independence is independence from the issuer and its management, and not from a control person or significant shareholder. Given this definition:
   - (a) should a relationship with a control person or significant shareholder be specified in section 3.1 of the Proposed Audit Committee Policy as a relationship that could affect independence?
   - (b) should such a relationship be solely addressed through Principle 6 – *Recognize and manage conflicts of interest* as proposed?
   - (c) is it appropriate to include as an example of a corporate governance practice that an appropriate number of independent directors on a board of directors and audit committee be unrelated to a control person or significant shareholder?
10. Does the required disclosure on director independence provide useful and appropriate information to investors?

Proposed Audit Committee Instrument

In addition to the changes to the definition of independence discussed above, the most significant changes to the Current Audit Committee Instrument are summarized below:

Exemptions

We have introduced two new provisions that provide transitional relief from the requirement that all audit committee members must be independent. The first provision applies when a venture issuer becomes a non-venture issuer. The second provision applies in the context of a reverse takeover when the acquirer is either a venture issuer or a non-reporting issuer. In addition, we have removed exemptions for controlled issuers in light of the new approach to independence. We have clarified the scope of the exemption for U.S. listed issuers in section 6.1 of the Proposed Audit Committee Instrument.

We have amended the temporary exemption from the requirement that all audit committee members be independent for limited and exceptional circumstances provided in section 3.8 of the Proposed Audit Committee Instrument. We have removed the condition that the board of directors determine, in its reasonable judgement, that the audit committee member relying on this exemption is able to exercise the impartial judgement necessary to fulfill his or her responsibilities. Instead, the exemption does not apply to an audit committee member unless the issuer's board of directors has determined that the reliance on the exemption will not significantly adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of the Proposed Audit Committee Instrument.

Responsibilities

We have clarified that the issuer or any of its subsidiary entities must not obtain a non-audit service from its external auditor unless the service has been approved by the issuer's audit committee. We have also clarified that the issuer must not publicly disclose information contained in or derived from its financial statements, MD&A or annual or interim earnings news releases, unless the document has been reviewed by its audit committee. Previously, these responsibilities rested with the audit committee.

Application

We have clarified the application section as it applies to subsidiary entities.

Proposed effective date

We recognize that issuers will need a reasonable amount of time to familiarize themselves with the new corporate governance and audit committee regimes, including the new definition of independence. We intend to provide at least six months advance notice of the implementation of the new regimes.

Specific requests for comment

11. Do you think our proposal regarding the effective date adequately addresses the needs of both venture and non-venture issuers?

4. ALTERNATIVES CONSIDERED

We considered maintaining the status quo. However, both issuers and investors have raised concerns about the current governance regime. In addition, since the implementation of the Current Governance Materials, corporate governance has evolved both domestically and internationally.

We think that the Proposed Materials appropriately address these concerns and developments. We expect that the Proposed Materials will:

- provide greater flexibility, or perceived flexibility, to issuers and their boards of directors;
- improve the quality of disclosure of corporate governance practices provided to investors; and
- better align with international standards while taking into account the realities of Canada's capital markets.

We considered the corporate governance regimes in other jurisdictions, including Australia, the United Kingdom and the United States of America. However, while elements of the Proposed Materials are similar to those regimes, we do not believe that it would be helpful to adopt those regimes in their entirety given the unique characteristics of the Canadian market.

We considered no other alternatives.

5. RELATED INSTRUMENTS

The Proposed Materials cover a broad range of subjects, some of which are addressed in the following Instruments or are related to them:

- National Instrument 51-102 *Continuous Disclosure Obligations*;
- National Policy 51-201 *Disclosure Standards*;
- National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings*; and
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

6. ANTICIPATED COSTS AND BENEFITS

There are two primary sets of stakeholders that will be affected by the Proposed Materials.

Issuers

The Current Governance Policy sets out non-prescriptive guidelines. However, these guidelines, when coupled with the "comply or explain" disclosure model, have been perceived by some issuers and other market participants as creating mandatory obligations. We think that the Proposed Governance Materials clarify that the examples of corporate governance practices included in the Proposed Governance Policy are not mandatory. In our view, issuers will benefit from this change.

One consequence of the Proposed Governance Materials is that issuers will have to re-consider the independence of their directors and audit committee members under the new definition of independence. However, we think that they will benefit from the additional flexibility under the new approach to independence, without compromising investor protection.

Another consequence is that issuers will be subject to different corporate governance disclosure requirements than they are currently. In particular, venture issuers will be subject to more extensive disclosure requirements. This may result in higher compliance costs, primarily in the first year of implementation. We do not expect the increase in compliance costs to be significant. Further, even in the absence of any change to our disclosure requirements, issuers may choose to provide more comprehensive disclosure regarding their governance practices in order to address investor concerns.

Issuers will remain subject to the same audit committee requirements as in the Current Audit Committee Instrument, although they will have to re-confirm the independence of their audit committee members under the new definition of independence.

Investors

We think investors will receive more comprehensive and meaningful information on which to base their investment decisions under the Proposed Governance Instrument. In particular, investors in venture issuers will receive more extensive disclosure than is currently the case.

The results of our corporate governance disclosure compliance review, set out in CSA Staff Notice 58-303 published on June 29, 2007, revealed that current corporate governance disclosure by issuers is often inadequate and does not provide clear or complete accounts of governance practices. In these instances, market participants have expressed concerns that the disclosure being provided is not sufficiently informative or meaningful to acquire an understanding of the issuer's governance practices to inform an investment decision. We think the requirements of the Proposed Governance Instrument respond to these concerns.

The proposed disclosure requirements will cover the same general topics as are currently set out in the Current Governance Instrument, plus three additional topics (conflicts of interest, risk management and shareholder communication). The addition of these topics is largely consistent with the disclosure requirements in other jurisdictions.

Disclosure provided to investors regarding audit committees will generally remain the same, except an issuer will be required to provide more comprehensive information about the independence of its audit committee members under the Proposed Governance Instrument.

We anticipate the benefits of greater transparency and flexibility will exceed the cost for issuers to reassess the independence of their directors and provide the disclosure required under the Proposed Materials.

7. RELIANCE ON UNPUBLISHED MATERIALS

In developing the Proposed Materials, we did not rely upon any significant unpublished study, report or other written materials.

8. CONSEQUENTIAL AMENDMENTS

We are also publishing for a 120-day comment period, amendments to the following:

- National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order*;
- National Policy 41-201 *Income Trusts and Other Indirect Offerings*;
- Form 51-102F2 *Annual Information Form*;
- Form 51-102F5 *Information Circular*; and
- Companion Policy 71-102CP to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

The proposed amendment instruments are set out in Appendix C .

9. WITHDRAWAL OF NOTICE

We are withdrawing CSA Staff Notice 58-304 in all Canadian jurisdictions in which it was published as it is no longer required.

10. PUBLISHING JURISDICTIONS

The Proposed Materials are initiatives of the securities regulatory authorities in all Canadian jurisdictions. If adopted, the Proposed Governance Instrument and the Proposed Audit Committee Instrument are expected to be adopted as rules in all Canadian jurisdictions except Saskatchewan and Québec. They will be adopted as Commission regulations in Saskatchewan and as regulations in Québec.

We expect that the Proposed Governance Policy and the Proposed Audit Committee Policy, if adopted, will be adopted as policies in all Canadian jurisdictions.

10A. AUTHORITY FOR AMENDMENTS – ONTARIO

The following provisions of the *Securities Act* (Ontario) (the Act) provide the Ontario Securities Commission (the OSC) with the authority to adopt the Proposed Materials.

- Paragraph 143(1)22 of the Act authorizes the OSC to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of, (i) an annual report, (ii) an annual information form, and (iii) supplemental analysis of financial statements.

- Paragraph 143(1)39 of the Act authorizes the OSC to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including, (i) applications for registration and other purposes, (ii) preliminary prospectuses and prospectuses, (iii) interim financial statements and financial statements, (iv) proxies and information circulars, and (v) take-over bid circulars, issuer bid circulars and directors' circulars.

- Paragraph 143(1)44 of the Act authorizes the OSC to make rules varying the Act to permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of, (i) documents or information required under or

governed by the Act, the regulations or rules, and (ii) documents determined by the regulations or rules to be ancillary to documents required under or governed by the Act, the regulations or rules.

- Paragraph 143(1)57 of the Act authorizes the OSC to make rules requiring reporting issuers to appoint audit committees and prescribing requirements relating to the functioning and responsibilities of audit committees, including requirements in respect of, (i) the standard of review to be applied by audit committees in their review of documents filed under Ontario securities law, (ii) the certification or other evidence of review by audit committees, (iii) the scope and content of an audit committee's review, and (iv) the composition of audit committees and the qualifications of audit committee members, including independence requirements.

11. COMMENTS

We invite interested parties to make written submissions on the Proposed Materials. We will consider submissions received by April 20, 2009. **Due to timing concerns, we will not consider comments received after this deadline.**

Please address your submissions to the following securities regulatory authorities:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Please send your comments to the addresses below. Your comments will be distributed to the other participating CSA members.

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If you do not submit your comments by e-mail, provide a diskette containing the submissions in MS Word format.

Please note that all comments received during the comment period will be made publicly available. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period be published. We will post all comments received during the comment period to the Ontario Securities Commission website at www.osc.gov.on.ca to improve the transparency of the policy-making process.

12. QUESTIONS

Please refer your questions to any of:

Autorité des marchés financiers

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December 19, 2008

APPENDIX A

The ASC has concerns about certain aspects of the Proposed Materials, some of which are reflected in the specific requests for comment in the CSA Request for Comment. The remaining concerns are outlined herein with additional requests for comment.

Proposed approach to independence (found in the Proposed Audit Committee Materials)

Definition of independence

As stated in the CSA Request for Comment, the proposed definition of independence in the Proposed Audit Committee Instrument is:

> A director is independent if he or she
>
> (a) is not an employee or executive officer of the issuer; and
>
> (b) does not have, or has not had, any relationship with the issuer, or an executive officer of the issuer, which could, in the view of the issuer's board of directors having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment.

The ASC is concerned that clause (b) of the proposed definition of independence may remove the discretion of the board to determine whether or not a director who is not an employee or executive officer is independent. Under the proposed definition of independence, such a director cannot be labeled independent if a relationship exists which a "reasonable person" could perceive would interfere with the exercise of that director's independent judgment. This would be the case notwithstanding that a board, with its collective experience and specific knowledge of the director in question, may subjectively and reasonably come to a different conclusion. The ASC is concerned that under the proposed definition of independence, a reasonable but less informed and less experienced person's perception is the determining factor. Ultimately, the concern is that the best available directors may not become members of boards because of the application of this particular definition of independence.

Related disclosure requirements

The ASC is concerned that the disclosure requirements imposed by the Proposed Governance Instrument may ultimately have a detrimental effect on issuers' ability to attract and retain the best available directors. The Proposed Governance Instrument requires issuers to explain why a director has been found to be independent if a relationship enumerated in section 3.1 of the Proposed Audit Committee Policy exists. Such a requirement could result in market participants improperly assuming that such a relationship usually impedes the exercise of independent judgment unless the board is able to provide an explanation that proves otherwise. In addition, the requirement that the issuer identify the remaining directors as "not independent" implies that those directors are not capable of exercising independent judgment. The concern is that such a label will dissuade valuable directors from acting as members of boards.

Specific requests for comment

1. Instead of the "reasonable person" test, do you think the definition of independence should:
   (a) allow the board to subjectively determine whether or not a director is independent; and
   (b) require that the board's subjective decision be reasonable (i.e., there is a line of analysis that could reasonably lead the board from the factors it considered to the conclusion it reached, even if it is one with which others may disagree)?
2. Concerns have been expressed with respect to the effect the Current Materials have on controlled issuers. Is it appropriate to include being actively involved in the management of the issuer, which may include a control person or a significant shareholder, as one of the relationships that could affect independence enumerated in section 3.1 of the Proposed Audit Committee Policy?
3. Given that it is in all market participants' interests for issuers to have the best directors available:
   (a) is it appropriate to require that the board explain why a director was found to be independent?
   (b) could requiring such an explanation create a presumption that each relationship enumerated in section 3.1 of the Proposed Audit Committee Policy affects the exercise of independent judgment unless the contrary is proven?

(c) if so, do you think it is preferable that the disclosure requirements oblige an issuer to disclose the referenced relationships with respect to any director whom the board determines is independent without requiring an explanation for why that director is independent?

(d) do you think the requirement that the issuer identify the remaining directors as "not independent" might result in the perception that such an individual cannot exercise independent judgment and, as such, affect that individual's willingness to serve as a director?

APPENDIX B

NATIONAL POLICY 58-201
CORPORATE GOVERNANCE PRINCIPLES

Table of Contents

NATIONAL POLICY 58-201
CORPORATE GOVERNANCE PRINCIPLES

PART 1 INTRODUCTION AND APPLICATION

1.1 What is corporate governance?

Corporate governance is the set of rules, relationships, systems and processes that directs and controls the actions of issuers. It covers relationships between an issuer's executive officers, its board of directors (the board), its shareholders and other stakeholders, and the mechanisms for holding issuers and the board and executive officers accountable.

Corporate governance influences how an issuer establishes and achieves its objectives, monitors and assesses risk, and optimizes its performance. However, corporate governance on its own cannot prevent issuers from making poor decisions or from business failure.

1.2 Purpose of this Policy

This Policy sets out high level corporate governance principles and provides guidance to issuers on their corporate governance structures and practices. We recognize that there is no single model of good corporate governance and that the structures and practices that are most appropriate will vary among issuers. We have taken a flexible, principles-based approach that is designed to:

(a) provide protection to investors and foster fair and efficient capital markets and confidence in those markets;

(b) reflect the realities of the large number of small issuers and controlled issuers in the Canadian market; and

(c) take into account corporate governance developments around the world.

1.3 Structure of this Policy

This Policy articulates nine core principles to address corporate governance subjects not comprehensively covered in other requirements or guidelines. Each principle is accompanied by commentary that provides relevant background and explanation, along with examples of practices that could achieve its objectives.

The commentary and examples of practices are designed to assist issuers in crafting their own corporate governance regime that is appropriate in the circumstances. They are not meant to create obligatory practices or minimum requirements. The corporate governance practices of issuers may differ from the examples of practices identified but be equally good practices provided they achieve the objectives of the principles.

While we encourage issuers to consider the commentary and examples when developing their own corporate governance practices, we recognize that:

(a) other corporate governance practices could achieve the same objectives;

(b) corporate governance evolves as an issuer's circumstances change; and

(c) each issuer should have the flexibility to determine the appropriate corporate governance practices for its circumstances.

1.4 Application to non-corporate entities

National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101) applies to both corporate and non-corporate entities. Reference to a particular corporate characteristic, such as a board or shareholders, includes any equivalent characteristic of a non-corporate entity.

Income trust issuers should, in applying this Policy, recognize 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 entity 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.

1.5 Related disclosure requirements

Under NI 58-101 issuers are required to disclose and explain their corporate governance practices in relation to each principle to help investors understand those practices.

1.6 Other requirements and guidelines regarding corporate governance

Corporate governance covers a broad range of subjects, some of which are addressed in various other instruments including:

(a) National Instrument 51-102 *Continuous Disclosure Obligations*;

(b) National Policy 51-201 *Disclosure Standards*;

(c) National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*; and

(d) National Instrument 52-110 *Audit Committees* (NI 52-110).

PART 2 INTERPRETATION

2.1 Meaning of independence

For the purposes of this Policy, a director is independent if he or she is independent under section 1.4 of NI 52-110.

2.2 Meaning of subsidiary entity

For the purposes of this Policy, "subsidiary entity" has the same meaning as in Part 1 of NI 52-110.

2.3 Definitions

Terms defined in NI 58-101 have the same meaning if used in this Policy, unless otherwise defined.

PART 3 PRINCIPLES

Principle 1 – Create a framework for oversight and accountability
An issuer should establish the respective roles and responsibilities of the board and executive officers.

Commentary

The responsibilities of the board and executive officers should be clearly defined to, among other matters, promote accountability to the issuer and its shareholders and an appropriate allocation of authority.

In general, the board is responsible for setting the overall vision and long-term direction of the issuer, including risk and return expectations and non-financial goals. The primary role of executive officers is to develop and implement an appropriate strategy that meets the board's vision and direction.

The division of responsibilities between the board and executive officers will depend on the size, complexity and ownership structure of the issuer. It may also be influenced by the competencies and other attributes of directors and executive officers. The division of responsibilities may differ from issuer to issuer and may change as the issuer's business evolves.

Usual responsibilities of the board

The board is usually responsible for:

(a) developing the issuer's approach to corporate governance, including a set of corporate governance practices that are specific to the issuer;

(b) recruiting and appointing the CEO and evaluating his or her performance based on clear objectives;

(c) satisfying itself that the executive officers have integrity;

(d) empowering the CEO, and other executive officers to create a culture of integrity throughout the organization and satisfying itself they have done so;

(e) adopting a strategic planning process and approving, at least annually, a strategic plan, including any amendments, that takes into account the opportunities and risks of the business, among other things;

(f) identifying the principal risks of the issuer's business and ensuring that appropriate systems are in place to manage these risks;

(g) ensuring that a system for succession planning is in place, including appointing, training and monitoring executive officers;

(h) adopting a communications policy for the issuer; and

(i) adopting measures for receiving feedback from stakeholders.

Examples of practices

The objective of this principle can be achieved in a number of ways, including by:

(a) adopting a written mandate or formal board charter that details the board's roles and responsibilities and the roles and responsibilities of each standing committee of the board, if any;

(b) having the board develop clear position descriptions for the chair of the board and the chair of each board committee;

(c) having the board together with the CEO, develop a clear position description for the CEO, which may include delineating management's responsibilities; and

(d) providing directors with the terms and conditions of their appointment.

Principle 2 – Structure the board to add value
The board should be comprised of directors that will contribute to its effectiveness.

Commentary

The board's role is to provide strategic leadership to the issuer and to supervise the performance of executive officers.

An effective board is structured in a way that allows directors to:

(a) fully and effectively carry out their fiduciary duties; and

(b) add value to the issuer with a view to its best interests.

The composition and size of the board may change as the circumstances of the issuer and its directors change.

Board composition

Each director should have skills that will contribute to the effective functioning of the board.

Competencies

Directors should have competencies appropriate to the issuer's business and circumstances.

Integrity

Directors should demonstrate integrity and high ethical standards.

Independent judgment

Directors should exercise independent judgment when making decisions and carrying out their other duties. This includes reviewing and challenging how executive officers discharge their duties and achieve their goals, where appropriate. The board's composition, structure and practices should facilitate the exercise of independent judgment.

Commitment

Directors should be able to provide sufficient time and commitment to their role.

Board interaction

The directors collectively should be able to interact and communicate in a manner that facilitates effective decision-making. No individual or small group should dominate the board's decision-making.

Board size

The size of a board should be appropriate for the issuer's business.

Examples of practices

The objective of this principle can be achieved in a number of ways, including by:

General practices

(a) having the board or a committee of the board regularly review its size and composition, and the commitment of its directors; and

(b) encouraging directors to limit other commitments, including to other corporate or non-profit boards, so as not to affect their ability to fulfil their duties on the board.

Practices related to composition of the board

(a) having a majority of independent directors on the board;

(b) having an independent director chair the board or act as a lead director;

(c) having an appropriate number of independent directors who are unrelated to any control person or significant shareholder;

(d) separating the roles of chair and CEO;

(e) creating committees with an appropriate number of independent directors for specific purposes;

(f) giving independent directors an opportunity, both at the board and committee level, to hold regularly scheduled meetings at which other directors and executive officers are not present; and

(g) giving the board the authority to engage and compensate any internal and external advisor that it determines necessary to carry out its duties, including advice from outside advisors at the expense of the issuer in appropriate circumstances.

Principle 3 – Attract and retain effective directors
A board should have processes to examine its membership to ensure that directors, individually and collectively, have the necessary competencies and other attributes.

Commentary

While the shareholders elect directors, the board plays an important role in selecting candidates for shareholder consideration.

The board should be satisfied that appropriate procedures are in place for selecting candidates so that it can maintain a balance of competencies and other attributes. Transparency of these procedures is a key aspect in promoting investor understanding and confidence.

A board nomination committee could facilitate procedures for selecting and appointing directors. The responsibility for these practices, however, rests with the full board. Smaller boards might not need a formal committee to accomplish the same objectives.

The board should consider each director's tenure as part of its succession planning.

Examples of practices

General practices

The objective of this principle can be achieved in a number of ways, including by:

(a) having procedures for:

(i) evaluating the necessary and desirable competencies and other attributes of directors;

(ii) identifying any gaps that exist on the board;

(iii) nominating directors to fulfil the needs of the board; and

(iv) developing and reviewing board succession plans;

(b) keeping an up-to-date list of potential candidates so that planned or unplanned vacancies on the board can be filled with candidates who have the necessary competencies and other attributes; and

(c) establishing a nomination committee to carry out, or make recommendations with respect to, some or all of these procedures.

Practices related to nomination committee

Where an issuer has established a nomination committee, design that committee to:

(a) have a majority of independent directors;

(b) have directors with the necessary competencies and other attributes to fulfil the committee's mandate;

(c) be chaired by an independent director;

(d) adopt a charter that sets out its roles and responsibilities, composition, structure and membership requirements; and

(e) have the authority to engage and compensate any internal and external advisor that it determines to be necessary to permit it to carry out its duties.

Principle 4 – Continuously strive to improve the board's performance
A board should have processes to improve its performance and that of its committees, if any, and individual directors.

Commentary

A board's performance is dependent upon directors having the requisite knowledge, information and abilities to fulfil their obligations.

Orientation and continuing education

The board should provide its new directors with a comprehensive orientation. In addition, the board should provide continuing education opportunities for all directors.

Comprehensive orientation and continuing education should include areas such as:

(a) the issuer and its business, including its financial condition, strategy, operations and risk management practices, the industry within which the issuer operates and its competitive position; and

(b) the roles and responsibilities of the board, any board committees, individual directors and executive officers.

Access to information

To effectively make decisions and carry out their duties, directors need access to sufficient and relevant information in a timely manner.

Assessments

A board can improve its performance by addressing areas for potential improvement identified through regular assessments of the board, its committees (if any) and individual directors.

Examples of practices

The objective of this principle can be achieved in a number of ways, including by:

(a) having appropriate orientation procedures in place for new directors;

(b) ensuring that all directors are provided with continuing education opportunities relevant to their duties on the board;

(c) having procedures in place regarding the timely provision of relevant information to the board by executive officers;

(d) allowing directors to request additional information or independent advice at the issuer's expense, if the directors consider it necessary to fulfill their duties;

(e) creating opportunities for directors to interact with executive officers; and

(f) assessing the board, any board committees and each individual director on a regular basis regarding his, her or its contribution against established criteria and acting upon the results.

Principle 5 – Promote integrity
An issuer should actively promote ethical and responsible behaviour and decision-making.

Commentary

The board has a responsibility to set the ethical standards applicable to the issuer's directors, executive officers and employees. Investor confidence can be enhanced if the board clearly articulates ethical practices which are acceptable to the issuer.

The board should consider and assess the ethical standards that are appropriate in the issuer's circumstances. Executive officers have a responsibility to implement and enforce those standards for behaviour and decision-making.

Examples of practices

General practices

The objective of this principle can be achieved in a number of ways, including by:

(a) outlining the standards of ethical behaviour required of directors, executive officers and all employees;

(b) supporting the issuer's standards of ethical behaviour with appropriate training, monitoring, reporting, investigating and addressing unethical behaviour;

(c) adopting a code of conduct; and

(d) if the issuer has adopted standards of ethical behaviour or a code of conduct, assessing whether a departure from the standards or code would be a material change.

Practices related to code of conduct

A code of conduct usually addresses the following:

(a) conflicts of interest, including transactions and agreements where a director or executive officer has a significant interest;

(b) protection and proper use of corporate assets and opportunities;

(c) confidentiality of corporate information;

(d) the issuer's responsibilities to security holders, employees, those with whom it has a contractual relationship and the broader community;

(e) compliance with laws, rules and regulations;

(f) reporting of any illegal or unethical behaviour; and

(g) monitoring and ensuring compliance with the code.

Principle 6 – Recognize and manage conflicts of interest
An issuer should establish a sound system of oversight and management of actual and potential conflicts of interest.

Commentary

Conflicts of interest may arise in various situations, for example, when:

(a) there is a significant divergence of interests among shareholders or their interests are not completely aligned;

(b) one or more directors cannot be considered impartial in connection with a proposed decision to be made by the board;

(c) a contract, arrangement or transaction is entered into between an issuer and a control person or significant shareholder; or

(d) an issuer makes a decision or enters into a contract, arrangement or transaction that will benefit one or more of its officers or directors.

An issuer should have practices in place to identify, assess and resolve actual and potential significant conflicts of interest. Those practices should allow issuers to assess all the circumstances necessary to determine if directors, officers and employees have acted honestly and in good faith, and in the best interests of the issuer.

Examples of practices

General practices

The objective of this principle can be achieved in a number of ways, including by:

(a) having practices for:

(i) identifying situations, decisions, contracts, arrangements or transactions where an actual or potential significant conflict of interest could arise;

(ii) reviewing and assessing situations, decisions, contracts, arrangements or transactions that could put directors or executive officers in an actual or potential conflict of interest;

(iii) submitting to the board the prior declaration by directors of their interest in any situations, decisions, contracts, arrangements or transactions;

(iv) keeping records of any situations, decisions, contracts, arrangements or transactions where an actual or potential conflict of interest arises; and

(b) establishing an ad hoc or standing board committee to carry-out these practices, such committee to consist of directors that are not directly or indirectly interested in the matters being discussed or considered; and

(c) obtaining independent advice on the situation, decision, contract, arrangement or transaction.

Practices related to ad hoc or standing board committee

Where an issuer has established an ad hoc or standing board committee, design that committee to:

(a) be composed of directors who are not interested in any matter being discussed or considered;

(b) have terms of reference that clearly sets out its roles and responsibilities; and

(c) have the authority to engage and compensate any internal and external advisor that it determines to be necessary to permit it to carry out its duties.

Principle 7 – Recognize and manage risk
An issuer should establish a sound framework of risk oversight and management.

Commentary

Risk oversight and management include the culture, processes and structures that are directed towards taking advantage of potential opportunities while managing potential adverse effects. It usually is designed to identify, assess, monitor and manage risk, and identify significant changes to an issuer's risk profile.

Risk oversight and management is most effective if it is embedded into the issuer's practices and business processes rather than if it is viewed or practiced as a separate activity.

Risk oversight and management should focus on identifying the most significant areas of uncertainty or exposure that could have an adverse impact on the achievement of the issuer's goals and objectives (principal risks).

As stated in Principle 1, the board is usually responsible for identifying the principal risks of the issuer's business and ensuring that appropriate systems are in place to manage these risks. A board committee could facilitate meeting this responsibility. The responsibility for risk oversight and management, however, rests with the full board.

Examples of practices

The objective of this principle can be achieved in a number of ways, including by:

(a) developing, approving and implementing policies and procedures for the oversight and management of principal risks that:

  (i) reflect the issuer's risk profile;

  (ii) clearly describe significant elements of its risk management;

  (iii) take into account its legal obligations; and

  (iv) clearly describe the roles and accountabilities of the board, audit committee, or other appropriate board committee, management and any internal audit function.

(b) regularly reviewing and evaluating the effectiveness of these policies and procedures; and

(c) requiring the CEO and other executive officers to regularly report to the board on the effectiveness of the issuer's policies for the oversight and management of principal risks.

Principle 8 – Compensate appropriately
An issuer should ensure that compensation policies align with the best interests of the issuer.

Commentary

The board should be satisfied that appropriate compensation policies and practices are in place for executive officers and directors. Compensation should be set and structured to attract and retain executive officers and directors and motivate them to act in the best interests of the issuer. This includes a balanced pursuit of the issuer's short-term and long-term objectives.

A board compensation committee could develop and recommend appropriate compensation policies and practices. The responsibility for these policies and practices, however, rests with the full board. Smaller boards might not need a formal committee to achieve the same objectives.

Transparency of compensation can promote investor understanding and confidence in the process.

Examples of practices

General practices

The objective of this principle can be achieved in a number of ways, including by:

(a) having procedures for:

(i) establishing and maintaining goals related to executive officers' compensation;

(ii) regularly evaluating executive officers' performance in light of those goals;

(iii) determining the compensation of executive officers;

(iv) determining the compensation of directors; and

(v) having the board review executive compensation disclosure before the issuer publicly discloses it; and

(b) establishing a compensation committee to carry out, or make recommendations with respect to, some or all of these procedures.

Practices related to compensation committee

Where an issuer has established a compensation committee, design that committee to:

(a) have all independent directors;

(b) have directors with the requisite competencies and other attributes to fulfil the mandate of the committee;

(c) have a charter that clearly sets out its roles and responsibilities, composition, structure and membership requirements;

(d) have the authority to engage and compensate any internal and external advisor that it determines to be necessary to permit it to carry out its duties; and

(e) have procedures to ensure that no individual is directly involved in deciding his or her own compensation.

Principle 9 – Engage effectively with shareholders
The board should endeavour to stay informed of shareholders' views through the shareholder meeting process as well as through ongoing dialogue.

Commentary

An issuer's relationship with its shareholders is an important aspect of corporate governance. One of the most significant ways that shareholders can express their approval or disapproval of matters relating to the issuer is through exercising their right to vote at shareholder meetings, including the election of board members. Within the parameters of applicable corporate and securities law, the board should promote a voting process that:

(a) is understandable, transparent and robust; and

(b) facilitates the board obtaining meaningful information on shareholder views.

Examples of practices

The objective of this principle can be achieved in a number of ways, including by:

(a) posting on the issuer's website a clear description of the voting process for registered and beneficial shareholders;

(b) giving shareholders the option of voting electronically, for example, through telephone or internet voting; and

(c) giving shareholders or proxy holders the option of attending meetings through electronic means.

NATIONAL INSTRUMENT 58-101
DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES

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NATIONAL INSTRUMENT 58-101
DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES

PART 1 DEFINITIONS AND APPLICATION

1.1 Definitions

In this Instrument,

"AIF" has the same meaning as in Part 1 of NI 51-102;

"asset-backed security" has the same meaning as in Part 1 of NI 51-102;

"CEO" means each chief executive officer of an issuer, or in the case of an issuer that does not have a chief executive officer, each individual performing similar functions to those of a chief executive officer;

"credit support issuer" has the same meaning as in section 13.4 of NI 51-102;

"designated foreign issuer" has the same meaning as in Part 1 of NI 71-102;

"exchangeable security issuer" has the same meaning as in section 13.3 of NI 51-102;

"executive officer" has the same meaning as in Part 1 of NI 51-102;

"information circular" has the same meaning as in Part 1 of NI 51-102;

"investment fund" has the same meaning as in provincial and territorial securities legislation;

"marketplace" has the same meaning as in Part 1 of National Instrument 21-101 *Marketplace Operation*;

"MD&A" has the same meaning as in Part 1 of NI 51-102;

"NI 51-102" means National Instrument 51-102 *Continuous Disclosure Obligations*;

"NI 52-110" means National Instrument 52-110 *Audit Committees*;

"NI 71-102" means National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

"SEC foreign issuer" has the same meaning as in Part 1 of NI 71-102;

"subsidiary entity" has the same meaning as in Part 1 of NI 52-110.

1.2 Meaning of independence

For the purposes of this Instrument, a director is independent if he or she is independent under section 1.4 of NI 52-110.

1.3 Application

This Instrument applies to a reporting issuer, other than

(a) an investment fund;

(b) an issuer of asset-backed securities;

(c) a designated foreign issuer;

(d) an SEC foreign issuer;

(e) an exchangeable security issuer or credit support issuer that is exempt under section 13.3 or 13.4 of NI 51-102, as applicable; and

(f) an issuer that is a subsidiary entity if

(i) the subsidiary entity does not have equity securities trading on a marketplace, other than non-convertible, non-participating preferred securities; and

(ii) the parent of the subsidiary entity is

(A) in compliance with the requirements of this Instrument; or

(B) an issuer that

(I) has equity securities listed or quoted on the New York Stock Exchange or Nasdaq Stock Market;

(II) is not on the list of issuers that are non-compliant with continued listing standards of that exchange; and

(III) has publicly disclosed its corporate governance practices in a document filed with or furnished to the SEC or that exchange.

PART 2 DISCLOSURE REQUIREMENTS

2.1 Required disclosure

(1) If management of an issuer solicits a proxy from a security holder of the issuer for the purpose of electing directors to the issuer's board of directors, the issuer must include in its information circular the disclosure required by Form 58-101F1.

(2) An issuer that does not send an information circular to its security holders must include the disclosure required by Form 58-101F1 in its AIF.

(3) An issuer that does not send an information circular to its security holders or file an AIF must include the disclosure required by Form 58-101F1 in its annual MD&A.

PART 3 EXEMPTION

3.1 Exemption

(1) The regulator or 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.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 4 EFFECTIVE DATE AND REPEAL

4.1 Effective date

This Instrument comes into force on ●.

4.2 Repeal

National Instrument 58-101 *Disclosure of Corporate Governance Practices* which came into force on the date set out below, is repealed:

(a) June 30, 2005, in all jurisdictions other than the Northwest Territories, Nunavut, Prince-Edward Island and Yukon;

(b) September 19, 2005, in Nunavut;

(c) March 17, 2008, in Prince-Edward Island and Yukon; and

(d) October 26, 2008, in the Northwest Territories.

FORM 58-101F1
CORPORATE GOVERNANCE STATEMENT

Principle 1 – Create a framework for oversight and accountability

(a) Describe the practices the issuer uses to establish the roles and responsibilities of the board of directors (the board) and executive officers of the issuer.

(b) State the names of the chair, any lead director, all other directors and the CEO.

(c) Describe the roles and responsibilities of the board and the terms of any written mandate or formal board charter.

(d) For each standing committee of the board:

(i) state the names of its chair and all other members;

(ii) describe the roles and responsibilities and the terms of any written mandate or formal charter;

(iii) describe the qualifications of its members;

(iv) describe the process for appointing and removing members; and

(v) describe the process for reporting to the board.

(e) Describe any directors' authority and responsibilities that have been delegated to an executive officer or officers of the issuer, if any.

Principle 2 – Structure the board to add value

(a) Describe any practices the board uses to address its composition and size and the commitment of its directors.

(b) Describe the competencies and other attributes the board determines are necessary to fulfill its functions.

(c) Describe the relevant competencies and other attributes that each director brings to the board.

(d) State the names of the directors considered by the board to be independent, with the following information for each of those directors, if any:

(i) a description of any relationship with the issuer or any of its executive officers that the board considered in determining the director's independence; and

(ii) if the director has a relationship referred to in sub-paragraph (i), a discussion of why the board considers the director to be independent.

(e) State the names of the directors considered by the board to be not independent and the basis for that determination.

(f) If a director has a business or other relationship with another director on the issuer's board, other than common membership on the issuer's board, provide information about that relationship.

(g) If a director is a director of any other issuer that is a reporting issuer in any jurisdiction of Canada or the equivalent in any foreign jurisdiction, state the names of both the director and the other issuer.

(h) Provide the attendance record of each director for all board meetings, and any board committee meetings, held since the beginning of the issuer's most recently completed financial year. For the purposes of this disclosure, "attendance" is limited to those means permitted under the issuer's constating documents.

Principle 3 – Attract and retain effective directors

(a) Describe any practices the issuer uses to select and nominate, and attract and retain, effective directors.

(b) If a consultant or advisor has assisted the board or the nomination committee since the beginning of the issuer's most recently completed financial year:

(i) state the name of the consultant or advisor and a summary of the mandate it has been given;

(ii) disclose when the consultant or advisor was originally retained; and

(iii) if the consultant or advisor has performed any other work for the issuer, state this fact and briefly describe the nature of the work.

Principle 4 – Continuously strive to improve the board's performance

(a) Describe any practices the board uses that are intended to improve the performance of the board, any board committee or individual directors, including:

(i) orientation of new directors;

(ii) continuing education for directors; and

(iii) the assessment process and outcomes, if a performance assessment of the board, any board committee or individual directors was conducted during the most recently completed financial year.

Principle 5 – Promote integrity

(a) Describe any practices the issuer uses to promote ethical and responsible behaviour and decision-making.

(b) Provide a summary of any standards of ethical and responsible behaviour and decision-making or code of business conduct and ethics adopted by the issuer.

(c) Describe how a person or company may obtain a copy of the issuer's code of business conduct and ethics, if any.

Principle 6 – Recognize and manage conflicts of interest

(a) Describe any practices the issuer uses to identify, assess and resolve significant conflicts of interest.

(b) If the board has appointed an ad hoc committee to address a significant conflict of interest:

(i) state the names of the chair and its members; and

(ii) describe the purpose of its appointment and its roles and responsibilities.

(c) If a consultant or advisor has assisted the board or a committee in carrying out their responsibilities in relation to a significant conflict of interest since the beginning of the issuer's most recently completed financial year:

(i) state the name of the consultant or advisor and a summary of the mandate it has been given;

(ii) disclose when the consultant or advisor was originally retained; and

(iii) if the consultant or advisor has performed any other work for the issuer, state this fact and briefly describe the nature of the work.

Principle 7 – Recognize and manage risk

(a) Disclose a summary of any policies on risk oversight and management adopted by the issuer.

Principle 8 – Compensate appropriately

(a) Describe any practices the issuer uses to establish and maintain appropriate compensation policies for executive officers and directors.

(b) If a compensation consultant or advisor has assisted the board or the compensation committee since the beginning of the issuer's most recently completed financial year:

(i) state the name of the consultant or advisor and a summary of the mandate it has been given;

(ii) disclose when the consultant or advisor was originally retained;

(iii) if the consultant or advisor has performed any other work for the issuer, state this fact and briefly describe the nature of the work; and

(iv) disclose the aggregate fees billed by the consultant or advisor in each of the last two financial years for:

(A) professional services relating to executive compensation; and

(B) professional services other than those relating to executive compensation. Include a description of the nature of the services comprising the fees disclosed under this category.

Principle 9 – Engage effectively with shareholders

(a) Describe any practices or policies of the issuer that are related to the shareholder voting process or that promote a voting process that:

(i) is understandable, transparent and robust; and

(ii) facilitates the board obtaining meaningful information on shareholder views.

(b) Describe how directors of the issuer are elected, including if the issuer has adopted a majority or plurality voting standard.

NATIONAL INSTRUMENT 52-110
AUDIT COMMITTEES

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NATIONAL INSTRUMENT 52-110
AUDIT COMMITTEES

PART 1 DEFINITIONS AND APPLICATION

1.1 Definitions

In this Instrument,

"accounting principles" has the same meaning as in Part 1 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

"AIF" has the same meaning as in Part 1 of NI 51-102;

"asset-backed security" has the same meaning as in Part 1 of NI 51-102;

"audit committee" means a committee, or an equivalent body, established by and among the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer, and, if no such committee exists, the entire board of directors of the issuer;

"audit services" means the professional services provided by the issuer's external auditor for the audit and review of the issuer's financial statements or services that are normally provided by the external auditor in connection with engagements related to statutory and regulatory filings;

"credit support issuer" has the same meaning as in section 13.4 of NI 51-102;

"designated foreign issuer" has the same meaning as in Part 1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

"exchangeable security issuer" has the same meaning as in section 13.3 of NI 51-102;

"executive officer" has the same meaning as in Part 1 of NI 51-102;

"foreign private issuer" means an issuer that is a foreign private issuer within the meaning of Rule 405 under the 1934 Act;

"information circular" has the same meaning as in Part 1 of NI 51-102;

"marketplace" has the same meaning as in Part 1 of National Instrument 21-101 *Marketplace Operation*;

"MD&A" has the same meaning as in Part 1 of NI 51-102;

"NI 51-102" means National Instrument 51-102 *Continuous Disclosure Obligations*;

"non-audit services" means services provided by the issuer's external auditor other than audit services;

"non-venture issuer" means a reporting issuer that is not a venture issuer;

"reverse takeover" has the same meaning as in Part 1 of NI 51-102;

"reverse takeover acquiree" has the same meaning as in Part 1 of NI 51-102;

"reverse takeover acquirer" has the same meaning as in Part 1 of NI 51-102;

"SEC foreign issuer" has the same meaning as in Part 1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

"venture issuer" has the same meaning as in Part 1 of NI 51-102.

1.2 Application

This Instrument applies to a reporting issuer other than

(a) an investment fund;

(b) an issuer of asset-backed securities;

(c) a designated foreign issuer;

(d) an SEC foreign issuer;

(e) an exchangeable security issuer or credit support issuer that is exempt under section 13.3 or 13.4 of NI 51-102, as applicable; and

(f) an issuer that is a subsidiary entity if

(i) the subsidiary entity does not have equity securities trading on a marketplace, other than non-convertible, non-participating preferred securities; and

(ii) the parent of the subsidiary entity is

(A) in compliance with the requirements of this Instrument; or

(B) an issuer that

(I) has equity securities listed or quoted on the New York Stock Exchange or Nasdaq Stock Market; and

(II) has not contravened the requirements of that exchange applicable to issuers, other than foreign private issuers, regarding the role and composition of audit committees.

1.3 Subsidiary entity and control

(1) For the purpose of this Instrument, a person or company is a "subsidiary entity" of another person or company if

(a) it is controlled by

(i) that other,

(ii) that other and one or more persons or companies each of which is controlled by that other, or

(iii) two or more persons or companies, each of which is controlled by that other; or

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

(2) For the purpose of this Instrument, "control" means the direct or indirect power to direct or cause the direction of the management and policies of a person or company, whether through ownership of voting securities or otherwise.

(3) For the purpose of this Instrument, an individual is not considered to control an issuer if the individual

(a) beneficially owns or controls, directly or indirectly, 10% or less of any class of voting securities of the issuer; and

(b) is not an executive officer of the issuer.

1.4 Independence

For the purpose of this Instrument, a director is independent if he or she

(a) is not an employee or executive officer of the issuer, and

(b) does not have, or has not had, any relationship with the issuer, or an executive officer of the issuer, which could, in the view of the issuer's board of directors having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment.

1.5 Financial literacy

For the purpose of this Instrument, a director is financially literate if he or she has the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are reasonably comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the issuer's financial statements.

PART 2 AUDIT COMMITTEE REQUIREMENTS

2.1 Audit committee

An issuer must have an audit committee that complies with the requirements of this Instrument.

2.2 Relationship with external auditors

An issuer must, under the terms of its audit engagement agreement, require its external auditor to report directly to the audit committee.

2.3 Responsibilities

(1) An audit committee must have a written charter that sets out its mandate and responsibilities.

(2) An audit committee must recommend to the board of directors

(a) the external auditor to be nominated for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the issuer; and

(b) the compensation of the external auditor.

(3) An audit committee must oversee the work of the external auditor engaged for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the issuer, including the resolution of disagreements between management and the external auditor regarding financial reporting.

(4) An issuer or any of its subsidiary entities must not obtain a non-audit service from its external auditor unless the service has been approved by the issuer's audit committee.

(5) An issuer must not publicly disclose information contained in or derived from its financial statements, MD&A or annual or interim earnings news releases, unless the document has been reviewed by its audit committee.

(6) An audit committee must be satisfied that adequate procedures are in place for the review of the issuer's public disclosure of financial information extracted or derived from the issuer's financial statements, other than the public disclosure referred to in subsection (5), and must, on a reasonably frequent basis, assess the adequacy of those procedures.

(7) An audit committee must establish procedures for

(a) the receipt and retention of and reasonable attempts to resolve complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

(b) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

(8) An audit committee must review and approve the issuer's hiring policies regarding partners, employees and former partners or employees of the present or former external auditor of the issuer.

2.4 Exemption for minimal non-audit services

An issuer does not contravene subsection 2.3(4) if

(a) the aggregate fees paid for all the non-audit services that are not approved is reasonably expected to constitute no more than five per cent of the aggregate fees paid by the issuer and its subsidiary entities to the issuer's external auditor during the financial year in which the services are provided;

(b) the issuer or the subsidiary entity of the issuer, as the case may be, did not recognize the services as non-audit services at the time of the engagement; and

(c) once recognized as non-audit services, the services are promptly brought to the attention of the audit committee of the issuer and approved, prior to the completion of the audit, by the audit committee.

2.5 Delegation of approval function

(1) An audit committee may delegate to one or more independent members its authority to approve non-audit services under subsection 2.3(4) or paragraph 2.4 (c).

(2) The approval of non-audit services by any member to whom authority has been delegated pursuant to subsection (1) must be presented to the audit committee at its first scheduled meeting following such approval.

2.6 Approval policies and procedures

An issuer satisfies the approval requirement in subsection 2.3(4) if it adopts policies and procedures for the engagement of the non-audit services and

(a) the approval policies and procedures are detailed as to the particular service; and

(b) the audit committee is informed of each non-audit service.

PART 3 COMPOSITION OF THE AUDIT COMMITTEE

3.1 Application

This Part applies only to a non-venture issuer.

3.2 Composition

(1) An audit committee must be composed of a minimum of three members.

(2) Every audit committee member must be a director of the issuer.

(3) Subject to sections 3.3 to 3.8, every audit committee member must be independent.

(4) Subject to sections 3.5 and 3.9, every audit committee member must be financially literate.

3.3 Initial public offerings

(1) Subject to section 3.10, if an issuer has filed a prospectus to qualify the distribution of securities that constitutes its initial public offering, subsection 3.2(3) does not apply to the issuer for a period of 90 days commencing on the date of the receipt for the prospectus, provided that at least one member of the audit committee is independent.

(2) Subject to section 3.10, if an issuer has filed a prospectus to qualify the distribution of securities that constitutes its initial public offering, subsection 3.2(3) does not apply to the issuer for a period of one year commencing on the date of the receipt for the prospectus, provided that a majority of the audit committee members are independent.

3.4 Events outside control of member

Subject to section 3.10, if an audit committee member ceases to be independent for reasons outside the member's reasonable control, subsection 3.2(3) does not apply to the issuer, with respect to that member, for the period ending on the later of

(a) the next annual meeting of the issuer; and

(b) the date that is six months from the occurrence of the event which caused the member to not be independent.

3.5 Death, disability or resignation of member

Subject to section 3.10, if the death, disability or resignation of an audit committee member has resulted in a vacancy on the audit committee that would cause the issuer to contravene subsection 3.2 (1), subsections 3.2(3) and 3.2(4) do not apply to the issuer with respect to an audit committee member appointed to fill the vacancy for the period ending on the later of

(a) the next annual meeting of the issuer; and

(b) the date that is six months from the day the vacancy was created.

3.6 Becoming a non-venture issuer

(1) Subject to section 3.10, if a venture issuer becomes a non-venture issuer, subsection 3.2(3) does not apply for a period of 90 days commencing on the date the venture issuer becomes a non-venture issuer, provided that at least one member of the audit committee is independent.

(2) Subject to section 3.10, if a venture issuer becomes a non-venture issuer, subsection 3.2(3) does not apply for a period of one year commencing on the date the venture issuer becomes a non-venture issuer, provided that a majority of the audit committee members are independent.

3.7 Certain reverse takeovers

(1) Subject to section 3.10, if an issuer participates in a reverse takeover, subsection 3.2(3) does not apply for a period of 90 days commencing on the date of completion of the reverse takeover if

(a) the issuer is the reverse takeover acquiree;

(b) immediately before the reverse takeover, the reverse takeover acquirer was

(i) a venture issuer, or

(ii) not a reporting issuer; and

(c) at least one member of the audit committee is independent.

(2) Subject to section 3.10, if an issuer participates in a reverse takeover, subsection 3.2(3) does not apply for a period of one year commencing on the date of completion of the reverse takeover if

(a) the issuer is the reverse takeover acquiree;

(b) immediately before the reverse takeover, the reverse takeover acquirer was

(i) a venture issuer, or

(ii) not a reporting issuer; and

(c) a majority of the audit committee members are independent.

3.8 Temporary exemption for limited and exceptional circumstances

Subject to section 3.10, subsection 3.2(3) does not apply to an issuer in respect of a member of the audit committee if

(a) the member is not an employee or executive officer of the issuer;

(b) the board of directors, under limited and exceptional circumstances, determines that the appointment of the member is required in the best interests of the issuer;

(c) the member does not act as chair of the audit committee;

(d) the member does not rely upon this exemption for a period of more than two years; and

(e) a majority of the audit committee members are independent.

3.9 Acquisition of financial literacy

Subject to section 3.10, an audit committee member who is not financially literate may be appointed to the audit committee provided that the member becomes financially literate within a reasonable period of time following his or her appointment.

3.10 Restriction on use of certain exemptions

Sections 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9 do not apply to a member unless the issuer's board of directors has determined that the reliance on the exemption will not significantly adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of this Instrument.

PART 4 AUTHORITY OF THE AUDIT COMMITTEE

4.1 Authority

The board of directors of an issuer must give the audit committee the authority

(a) to engage independent counsel, or other advisors, as it determines necessary to carry out its duties;

(b) to set and direct the payment of the compensation for any independent counsel or other advisor engaged by the audit committee; and

(c) to communicate directly with the internal and external auditors.

PART 5 REPORTING OBLIGATIONS

5.1 Non-venture issuers

(1) If management of a non-venture issuer solicits a proxy from a security holder of the issuer for the purpose of electing directors to the issuer's board of directors, the issuer must include in its information circular the disclosure required under Form 52-110F1.

(2) A non-venture issuer that does not send an information circular to its security holders must include the disclosure required under Form 52-110F1 in its AIF.

5.2 Venture issuers

(1) If management of a venture issuer solicits a proxy from a security holder of the venture issuer for the purpose of electing directors to the issuer's board of directors, the venture issuer must include in its information circular the disclosure required under Form 52-110F2.

(2) A venture issuer that does not send an information circular to its security holders must include the disclosure required under Form 52-110F2 in its AIF.

(3) A venture issuer that does not send an information circular to its security holders or file a AIF must include the disclosure required under Form 52-110F2 in its annual MD&A.

PART 6 U.S. LISTED ISSUERS

6.1 U.S. listed issuers

Parts 2, 3, 4, and 5 do not apply to an issuer that has securities listed or quoted on the New York Stock Exchange or Nasdaq Stock Market if

(a) the issuer has not contravened the requirements of that exchange applicable to issuers, other than foreign private issuers, regarding the role and composition of audit committees, and

(b) if the issuer is incorporated, continued or otherwise organized in a jurisdiction in Canada, the issuer includes in its information circular or, if none, in its AIF or, if neither, in its annual MD&A, the disclosure, if any, required under paragraph 7 of Form 52-110F1 or paragraph 4 of Form 52-110F2.

PART 7 EXEMPTIONS

7.1 Exemptions

(1) The securities regulatory authority or regulator 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.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 8 EFFECTIVE DATE AND REPEAL

8.1 Effective date

This Instrument comes into force on ●.

8.2 Repeal

National Instrument 52-110 *Audit Committees*, which came into force on the date set out below, is repealed:

(a) March 30, 2004, in all jurisdictions other than British Columbia and Québec;

(b) June 30, 2005, in Québec;

(c) March 17, 2008, in British Columbia.

FORM 52-110F1
AUDIT COMMITTEE DISCLOSURE BY NON-VENTURE ISSUERS

1. An audit committee's charter

State the text of the audit committee's charter.

2. Composition of the audit committee

State the name of each audit committee member and state whether or not the member is considered by the board of directors to be

(a) independent, and

(b) financially literate.

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, describe 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 provisions;

(c) experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are reasonably 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.

4. Reliance on certain provisions or exemptions

If, at any time since the commencement of the issuer's most recently completed financial year, the issuer has relied on a provision or exemption set out below, state that fact:

(a) section 2.4 (Exemption for minimal non-audit services),

(b) section 3.3 (Initial public offerings),

(c) section 3.4 (Events outside control of member),

(d) section 3.5 (Death, disability or resignation of member),

(e) section 3.6 (Becoming a non-venture issuer),

(f) section 3.7 (Certain reverse takeovers), or

(g) an exemption from the Instrument, in whole or in part, referred to in Part 7 (Exemptions).

5. Reliance on section 3.8

If, at any time since the commencement of the issuer's most recently completed financial year, the issuer has relied on section 3.8 (Temporary exemption for limited and exceptional circumstances), state that fact and state

(a) the name of the member, and

(b) the rationale for appointing the member to the audit committee.

6. Reliance on section 3.9

If, at any time since the commencement of the issuer's most recently completed financial year, the issuer has relied on section 3.9 (Acquisition of financial literacy), state that fact and state

(a) the name of the member,

(b) that the member is not financially literate, and

(c) the date by which the member expects to become financially literate.

7. Audit committee oversight

If, at any time since the commencement of the issuer's most recently completed financial year, a recommendation of the audit committee to nominate or compensate an external auditor was not adopted by the board of directors, state that fact and describe why.

8. Approval policies and procedures

If the issuer has adopted policies and procedures for the engagement of non-audit services, describe those policies and procedures.

9. External auditor service fees (by category)

(a) State, under the caption "Audit fees", the aggregate fees billed by the issuer's external auditor in each of the last two financial years for audit services.

(b) State, under the caption "Audit-related fees", the aggregate fees billed in each of the last two financial years for assurance and related services by the issuer's external auditor that are reasonably related to the performance of the audit or review of the issuer's financial statements and are not reported under paragraph (a). Include a description of the nature of the services comprising the fees stated under this category.

(c) State, under the caption "Tax fees", the aggregate fees billed in each of the last two financial years for professional services rendered by the issuer's external auditor for tax compliance, tax advice, and tax planning. Include a description of the nature of the services comprising the fees stated under this category.

(d) State, under the caption "All other fees", the aggregate fees billed in each of the last two financial years for products and services provided by the issuer's external auditor, other than the services reported under paragraphs (a), (b) and (c). Include a description of the nature of the services comprising the fees stated under this category.

FORM 52-110F2
AUDIT COMMITTEE DISCLOSURE BY VENTURE ISSUERS

1. An audit committee's charter

State the text of the audit committee's charter.

2. Composition of the audit committee

State the name of each audit committee member and state whether or not the member is considered by the board of directors to be

(a) independent, and

(b) financially literate.

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, describe 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 provisions;

(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.

4. Audit committee oversight

If, at any time since the commencement of the issuer's most recently completed financial year, a recommendation of the audit committee to nominate or compensate an external auditor was not adopted by the board of directors, state that fact and describe why.

5. Reliance on certain provisions or exemptions

If, at any time since the commencement of the issuer's most recently completed financial year, the issuer has relied on a provision or exemption set out below, state that fact:

(a) section 2.4 (Exemption for minimal non-audit services), or

(b) an exemption from the Instrument, in whole or in part, referred to in Part 7 (Exemptions).

6. Approval policies and procedures

If the issuer has adopted policies and procedures for the engagement of non-audit services, describe those policies and procedures.

7. External auditor service fees (by category)

(a) State, under the caption "Audit fees", the aggregate fees billed by the issuer's external auditor in each of the last two financial years for audit services.

(b) State, under the caption "Audit-related fees", the aggregate fees billed in each of the last two financial years for assurance and related services by the issuer's external auditor that are reasonably related to the performance of the audit or review of the issuer's financial statements and are not reported under paragraph (a). Include a description of the nature of the services comprising the fees stated under this category.

(c) State, under the caption “Tax fees”, the aggregate fees billed in each of the last two financial years for professional services rendered by the issuer’s external auditor for tax compliance, tax advice, and tax planning. Include a description of the nature of the services comprising the fees stated under this category.

(d) State, under the caption “All other fees”, the aggregate fees billed in each of the last two financial years for products and services provided by the issuer’s external auditor, other than the services reported under paragraphs (a), (b) and (c). Include a description of the nature of the services comprising the fees stated under this category.

COMPANION POLICY 52-110CP TO NATIONAL INSTRUMENT 52-110
AUDIT COMMITTEES

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COMPANION POLICY 52-110CP TO NATIONAL INSTRUMENT 52-110
AUDIT COMMITTEES

PART 1 GENERAL

1.1 Purpose

We, the Canadian Securities Administrators (the CSA), adopt National Instrument 52-110 *Audit Committees* (the Instrument) to encourage reporting issuers to establish and maintain strong, effective and independent audit committees. We think that such audit committees enhance the quality of financial disclosure made by reporting issuers, and ultimately foster increased investor confidence in Canada's capital markets.

This companion policy (the Policy) provides information regarding the interpretation and application of the Instrument.

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, in applying the Instrument, recognize that certain functions of a corporate issuer, its board of directors and its management may be performed by any or all of the trustees, the board of directors or management of a subsidiary entity of the trust, or the board of directors, 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.

1.3 Management companies

The definition of "executive officer" includes any individual who performs a policy-making function in respect of the entity in question. We consider this aspect of the definition to include an individual who, although not employed by the entity in question, nevertheless performs a policy-making function in respect of that entity, whether through another person or company or otherwise.

1.4 Audit committee procedures

The Instrument establishes requirements for the responsibilities, composition and authority of audit committees. Nothing in the Instrument is intended to restrict the ability of the board of directors or the audit committee to establish the committee's quorum or procedures, or to restrict the committee's ability to invite additional parties to attend audit committee meetings.

PART 2 THE ROLE AND COMPOSITION OF THE AUDIT COMMITTEE

2.1 The role of the audit committee

An audit committee is a committee of a board of directors to which the board of directors delegates its responsibility for oversight of the financial reporting process. Traditionally, the audit committee has performed a number of roles, including

(a) helping directors meet their responsibilities,

(b) providing better communication between directors and the external auditor,

(c) enhancing the independence of the external auditor,

(d) increasing the credibility and objectivity of financial reports, and

(e) strengthening the role of the directors by facilitating in-depth discussions among directors, management and the external auditor.

The Instrument requires that the audit committee also be responsible for managing, on behalf of the shareholders, the relationship between the issuer and the external auditor. In particular, it provides that an audit committee must have responsibility for

(a) overseeing the work of the external auditor engaged for the purpose of preparing or issuing an auditor's report or related work; and

(b) recommending to the board of directors the nomination and compensation of the external auditor.

Although under corporate law an issuer's external auditor is responsible to the shareholders, in practice, shareholders have often been too dispersed to effectively exercise meaningful oversight of the external auditor. As a result, management has typically assumed this oversight role. However, the auditing process may be compromised if the external auditor views its main responsibility as serving management rather than the shareholders. By assigning these responsibilities to an independent audit committee, the Instrument helps to ensure that the external audit will be conducted independently of the issuer's management.

2.2 Relationship between the external auditor and shareholders

Subsection 2.3(3) of the Instrument provides that an audit committee must be directly responsible for overseeing the work of the external auditor engaged for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the issuer, including the resolution of disagreements between management and the external auditor regarding financial reporting. Notwithstanding this responsibility, the external auditor is retained by, and is ultimately accountable to, the shareholders. As a result, subsection 2.3(3) does not detract from the external auditor's right and responsibility to also provide its views directly to the shareholders if they disagree with an approach being taken by the audit committee.

2.3 Public disclosure of financial information

Issuers are reminded that, in our view, the extraction of information from financial statements that have not previously been reviewed by the audit committee and the release of that information into the marketplace is inconsistent with the issuer's obligation to have its audit committee review the financial statements. See also National Policy 51-201 *Disclosure Standards*.

2.4 Composition of the audit committee

An audit committee should be composed of an appropriate number of independent directors who are unrelated to any control person or significant shareholder.

PART 3 INDEPENDENCE

3.1 Guidance for assessing independence

When assessing independence, the board of directors should review closely the director's business and other relationships with the issuer or its executive officers. The board of directors should apply in its analysis of such business and other relationships materiality thresholds that are appropriate for the issuer and the directors.

A director's independence could be affected if he or she

(a) has been employed by the issuer;

(b) is, or has been, employed by an affiliate of the issuer;

(c) has a close association with an executive officer of the issuer or is actively involved in the day to day management of the issuer;

(d) has family ties with an executive officer of the issuer;

(e) has, or had, a significant contractual or other business relationship with the issuer or an affiliate of the issuer, other than as a director, or is a partner, shareholder, director, executive officer or employee of an entity that has such a relationship;

(f) is, or was, a significant professional advisor or consultant to the issuer or an affiliate of the issuer, an executive officer or director of such advisor or consultant, or an employee of such advisor or consultant significantly associated with the service provided; and

(g) receives, or has received, significant compensation from the issuer, other than compensation for acting as a member of the board of directors or of any board committee or fixed amounts of compensation under a retirement plan.

PART 4 FINANCIAL LITERACY, FINANCIAL EDUCATION AND EXPERIENCE

4.1 Financial literacy

For the purpose of the Instrument, a director is financially literate if he or she has the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are reasonably comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the issuer's financial statements. In our view, it is not necessary for a member to have a comprehensive knowledge of GAAP and GAAS to be considered financially literate.

4.2 Relevant education and experience

Item 3 of Forms 52-110F1 and 52-110F2 requires an issuer to describe 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.

Item 3 of Forms 52-110F1 and 52-110F2 also requires an issuer to describe 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.

PART 5 NON-AUDIT SERVICES

5.1 Approval of non-audit services

Section 2.6 of the Instrument allows an issuer to satisfy, in certain circumstances, the approval requirements in subsection 2.3(4) by adopting policies and procedures for the engagement of non-audit services. The following guidance should be noted in the development and application of such policies and procedures:

(a) Monetary limits should not be the only basis for the approval policies and procedures. The establishment of monetary limits will not, alone, constitute policies that are detailed as to the particular services to be provided and will not, alone, ensure that the audit committee will be informed about each service.

(b) The use of broad, categorical approvals (e.g. tax compliance services) will not meet the requirement that the policies must be detailed as to the particular services to be provided.

(c) The appropriate level of detail for the approval policies will differ depending on the facts and circumstances of the issuer. The approval policies must be designed to ensure that the audit committee knows precisely what services it is being asked to approve so that it can make a well-reasoned assessment of the impact of the service on the auditor's independence. Furthermore, because the Instrument does not permit the audit committee to delegate its responsibility to management, the approval policies must be sufficiently detailed as to particular services so that a member of management will not be called upon to determine whether a proposed service fits within the policy.

PART 6 DISCLOSURE OBLIGATIONS

6.1 Incorporation by reference

NI 51-102 permits disclosure required to be included in an issuer's information circular or AIF to be incorporated by reference, provided that the referenced document has already been filed with the applicable securities regulatory authorities. Any disclosure required by the Instrument to be included in an issuer's information circular or AIF, as the case may be, may also be incorporated by reference, provided that the procedures set out in NI 51-102 are followed.

APPENDIX C

CONSEQUENTIAL AMENDMENTS

AMENDMENT INSTRUMENT
FOR
NATIONAL POLICY 12-202 *REVOCATION OF A COMPLIANCE-RELATED CEASE TRADE ORDER*

1. National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order* is amended by this Instrument.

2. Paragraph 3.1 (1) (f) is repealed and the following is substituted:

"(f) National Instrument 52-110 *Audit Committees*; and**".**

3. This Instrument comes into force on ●.

AMENDMENT INSTRUMENT
FOR
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS* AND
FORM 41-101F1 *INFORMATION REQUIRED IN A PROSPECTUS*

1. National Instrument 41-101 *General Prospectus Requirements* (NI 41-101) and Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1) are amended by this Instrument.

2. Section 1.1 of NI 41-101 is amended

(a) by repealing the definition of "Form 52-110F1" and substituting the following:

" "Form 52-110F1" means Form 52-110F1 *Audit Committee Disclosure by Non-Venture Issuers* of NI 52-110;**";**

(b) by repealing the definition of "Form 52-110F2" and substituting the following:

" "Form 52-110F2" means Form 52-110F2 *Audit Committee Disclosure by Venture Issuers* of NI 52-110;**";**

(c) by repealing the definition of "Form 58-101F1" and substituting the following:

" "Form 58-101F1" means Form 58-101F1 *Corporate Governance Statement* of NI 58-101;**";**

(d) by repealing the definition of "Form 58-101F2";

(e) by repealing the definition of "MI 52-110"; and

(f) by adding the following after the definition of "NI 52-107":

"NI 52-110" means National Instrument 52-110 *Audit Committees*;**".**

3. Section 19.2 of Form 41-101F1 is amended

(a) by repealing subsection (1) and substituting the following:

"Include in the prospectus the disclosure in accordance with Form 58-101F1.**", and**

(b) by repealing subsection (2).

4. This Instrument comes into force on ●.

AMENDMENT INSTRUMENT
FOR
NATIONAL POLICY 41-201 *INCOME TRUSTS AND OTHER INDIRECT OFFERINGS*

1. National Policy 41-201 *Income Trusts and Other Indirect Offerings* is amended by this Instrument.

2. Section 7.1 is amended

(a) by striking out "Multilateral Instrument 52-110 *Audit Committees*" **and substituting "**National Instrument 52-110 *Audit Committees*" **wherever it occurs;**

(b) in paragraph 1 (b), by striking out "or BCI 52-509 *Audit Committees*, as applicable**"; and**

(c) in paragraph 3 (c), by striking out "Guidelines**" and substituting "**Principles**".**

3. This Instrument comes into force on ●.

AMENDMENT INSTRUMENT
FOR
FORM 51-102F2 *ANNUAL INFORMATION FORM*

1. Form 51-102F2 *Annual Information Form* is amended by this Instrument.

2. Form 51-102F2 is amended by, in the Instruction after Item17.1, striking out "Form 52-110F1 *Audit Committee Information Required in an AIF***" and substituting "**Form 58-101F1 *Corporate Governance Statement* and Form 52-110F1 *Audit Committee Disclosure by Non-Venture Issuers* or Form 52-110F2 *Audit Committee Disclosure by Venture Issuers*, as applicable**".**

3. This Instrument comes into force on ●.

AMENDMENT INSTRUMENT
FOR
FORM 51-102F5 *INFORMATION CIRCULAR*

1. Form 51-102F5 *Information Circular* is amended by this Instrument.

2. Form 51-102F5 is amended by adding the following, after Item 16.1:

"*INSTRUCTION*

*Your company may also be required to provide additional information in its information circular as set out in Form 58-101F1 Corporate Governance Statement and Form 52-110F1 Audit Committee Disclosure by Non-Venture Issuers or Form 52-110F2 Audit Committee Disclosure by Venture Issuers, as applicable.***"**

3. This Instrument comes into force on ●.

AMENDMENT INSTRUMENT
FOR
COMPANION POLICY 71-102CP TO NATIONAL INSTRUMENT 71-102
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS

1. **Companion Policy 71-102CP to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* is amended by this Instrument.**

2. **Subsection 6.4 (c) is amended by striking out "**Multilateral Instrument 52-110 *Audit Committees* or BC Instrument 52-509 *Audit Committees*" **and substituting "**National Instrument 52-110 *Audit Committees*"**.**

3. **This Instrument comes into force on ●.**