

This document is an unofficial consolidation of all amendments to National Instrument 52-110 *Audit Committees* and its Companion Policy and applies from January 1, 2011.

The unofficial consolidation of the Instrument is for reference purposes only and is not an official statement of law and the footnotes in it are for explanatory purposes only and are not part of the Instrument. These footnotes provide a description of the law as it applies to periods relating to financial years beginning before January 1, 2011. The law as it applies on and after January 1, 2011 to those periods was not changed by recent amendments related to the change-over in Canada to International Financial Reporting Standards.

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 meaning ascribed to it in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“AIF” has the meaning ascribed to it in NI 51-102;

“asset-backed security” has the meaning ascribed to it in 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 rendered 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 statutory and regulatory filings or engagements;

“credit support issuer” has the meaning ascribed to it in section 13.4 of NI 51-102;

“designated foreign issuer” has the meaning ascribed to it in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

“exchangeable security issuer” has the meaning ascribed to it in section 13.3 of NI 51-102;

“executive officer” of an entity means an individual who is:

- (a) a chair of the entity;
- (b) a vice-chair of the entity;
- (c) the president of the entity;
- (d) a vice-president of the entity in charge of a principal business unit, division or function including sales, finance or production;

- (e) an officer of the entity or any of its subsidiary entities who performs a policy-making function in respect of the entity; or
- (f) any other individual who performs a policy-making function in respect of the entity;

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

“immediate family member” means an individual’s spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, brother or sister-in-law, and anyone (other than an employee of either the individual or the individual’s immediate family member) who shares the individual’s home;

“marketplace” has the meaning ascribed to it in National Instrument 21-101 *Marketplace Operation*;

“MD&A” has the meaning ascribed to it in NI 51-102;

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

“non-audit services” means services other than audit services;

“SEC foreign issuer” has the meaning ascribed to it in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

“U.S. marketplace” means an exchange registered as a ‘national securities exchange’ under section 6 of the 1934 Act, or the Nasdaq Stock Market;

“venture issuer” means an issuer that, at the end of its most recently completed financial year, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

1.2 **Application**

This Instrument applies to all reporting issuers other than:

- (a) investment funds;
- (b) issuers of asset-backed securities;
- (c) designated foreign issuers;
- (d) SEC foreign issuers;
- (e) issuers that are subsidiary entities, if

- (i) the subsidiary entity does not have equity securities (other than non-convertible, non-participating preferred securities) trading on a marketplace, and
- (ii) the parent of the subsidiary entity is
 - (A) subject to the requirements of this Instrument, or
 - (B) an issuer that (1) has securities listed or quoted on a U.S. marketplace, and (2) is in compliance with the requirements of that U.S. marketplace applicable to issuers, other than foreign private issuers, regarding the role and composition of audit committees;
- (f) exchangeable security issuers, if the exchangeable security issuer qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, section 13.3 of NI 51-102; and
- (g) credit support issuers, if the credit support issuer qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, section 13.4 of NI 51-102.

1.3 Meaning of Affiliated Entity, Subsidiary Entity and Control

- (1) For the purposes of this Instrument, a person or company is considered to be an affiliated entity of another person or company if
 - (a) one of them controls or is controlled by the other or if both persons or companies are controlled by the same person or company, or
 - (b) the person is an individual who is
 - (i) both a director and an employee of an affiliated entity, or
 - (ii) an executive officer, general partner or managing member of an affiliated entity.
- (2) For the purposes of this Instrument, a person or company is considered to be a subsidiary entity of another person or company if
 - (a) it is controlled by,
 - (i) that other, or
 - (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.
- (3) 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.
- (4) Despite subsection (1), an individual will not be considered to control an issuer for the purposes of this Instrument if the individual:
 - (a) owns, directly or indirectly, ten per cent or less of any class of voting securities of the issuer; and
 - (b) is not an executive officer of the issuer.

1.4 Meaning of Independence

- (1) An audit committee member is independent if he or she has no direct or indirect material relationship with the issuer.
- (2) For the purposes of subsection (1), a "material relationship" is a relationship which could, in the view of the issuer's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgement.
- (3) Despite subsection (2), the following individuals are considered to have a material relationship with an issuer:
 - (a) an individual who is, or has been within the last three years, an employee or executive officer of the issuer;
 - (b) an individual whose immediate family member is, or has been within the last three years, an executive officer of the issuer;
 - (c) an individual who:
 - (i) is a partner of a firm that is the issuer's internal or external auditor,
 - (ii) is an employee of that firm, or
 - (iii) was within the last three years a partner or employee of that firm and personally worked on the issuer's audit within that time;
 - (d) an individual whose spouse, minor child or stepchild, or child or stepchild who shares a home with the individual:
 - (i) is a partner of a firm that is the issuer's internal or external auditor,

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

- (8) For the purpose of section 1.4, an issuer includes a subsidiary entity of the issuer and a parent of the issuer.

1.5 Additional Independence Requirements

- (1) Despite any determination made under section 1.4, an individual who
 - (a) accepts, directly or indirectly, any consulting, advisory or other compensatory fee from the issuer or any subsidiary entity of the issuer, other than as remuneration for acting in his or her capacity as a member of the board of directors or any board committee, or as a part-time chair or vice-chair of the board or any board committee; or
 - (b) is an affiliated entity of the issuer or any of its subsidiary entities, is considered to have a material relationship with the issuer.
- (2) For the purposes of subsection (1), the indirect acceptance by an individual of any consulting, advisory or other compensatory fee includes acceptance of a fee by
 - (a) an individual's spouse, minor child or stepchild, or a child or stepchild who shares the individual's home; or
 - (b) an entity in which such individual is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary entity of the issuer.
- (3) For the purposes of subsection (1), compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the issuer if the compensation is not contingent in any way on continued service.

1.6 Meaning of Financial Literacy

For the purposes of this Instrument, an individual 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 generally 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 RESPONSIBILITIES

2.1 Audit Committee

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

2.2 Relationship with External Auditors

Every issuer must require its external auditor to report directly to the audit committee.

2.3 Audit Committee 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 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.
- (4) An audit committee must pre-approve all non-audit services to be provided to the issuer or its subsidiary entities by the issuer's external auditor.
- (5) An audit committee must review the issuer's financial statements, MD&A and annual and interim profit or loss^{1A} press releases before the issuer publicly discloses this information.
- (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 periodically assess the adequacy of those procedures.
- (7) An audit committee must establish procedures for:

^{1A} For periods relating to financial years beginning before January 1, 2011, "annual and interim profit or loss" is read as "annual and interim earnings".

- (a) the receipt, retention and treatment of 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 and employees of the present and former external auditor of the issuer.

2.4 *De Minimis* Non-Audit Services

An audit committee satisfies the pre-approval requirement in subsection 2.3(4) if:

- (a) the aggregate amount of all the non-audit services that were not pre-approved is reasonably expected to constitute no more than five per cent of the total amount of fees paid by the issuer and its subsidiary entities to the issuer's external auditor during the fiscal 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) 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 or by one or more of its members to whom authority to grant such approvals has been delegated by the audit committee.

2.5 Delegation of Pre-Approval Function

- (1) An audit committee may delegate to one or more independent members the authority to pre-approve non-audit services in satisfaction of the requirement in subsection 2.3(4).
- (2) The pre-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 pre-approval.

2.6 Pre-Approval Policies and Procedures

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

- (a) the pre-approval policies and procedures are detailed as to the particular service;
- (b) the audit committee is informed of each non-audit service; and

- (c) the procedures do not include delegation of the audit committee's responsibilities to management.

PART 3 COMPOSITION OF THE AUDIT COMMITTEE

3.1 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 3.2, 3.3, 3.4, 3.5 and 3.6, every audit committee member must be independent.
- (4) Subject to sections 3.5 and 3.8, every audit committee member must be financially literate.

3.2 Initial Public Offerings

- (1) Subject to section 3.9, if an issuer has filed a prospectus to qualify the distribution of securities that constitutes its initial public offering, subsection 3.1(3) does not apply for a period of up to 90 days commencing on the date of the receipt for the prospectus, provided that one member of the audit committee is independent.
- (2) Subject to section 3.9, if an issuer has filed a prospectus to qualify the distribution of securities that constitutes its initial public offering, subsection 3.1(3) does not apply for a period of up to one year commencing on the date of the receipt for the prospectus, provided that a majority of the audit committee members are independent.

3.3 Controlled Companies

- (1) An audit committee member that sits on the board of directors of an affiliated entity is exempt from the requirement in subsection 3.1(3) if the member, except for being a director (or member of a board committee) of the issuer and the affiliated entity, is otherwise independent of the issuer and the affiliated entity.
- (2) Subject to section 3.7, an audit committee member is exempt from the requirement in subsection 3.1(3) if:
 - (a) the member would be independent of the issuer but for the relationship described in paragraph 1.5(1)(b) or as a result of subsection 1.4(8);
 - (b) the member is not an executive officer, general partner or managing member of a person or company that
 - (i) is an affiliated entity of the issuer, and
 - (ii) has its securities trading on a marketplace;

- (c) the member is not an immediate family member of an executive officer, general partner or managing member referred to in paragraph (b), above;
- (d) the member does not act as the chair of the audit committee; and
- (e) the board determines in its reasonable judgement that
 - (i) the member is able to exercise the impartial judgement necessary for the member to fulfill his or her responsibilities as an audit committee member, and
 - (ii) the appointment of the member is required by the best interests of the issuer and its shareholders.

3.4 Events Outside Control of Member

Subject to section 3.9, if an audit committee member ceases to be independent for reasons outside the member's reasonable control, the member is exempt from the requirement in subsection 3.1(3) for a 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 3.9, if the death, disability or resignation of an audit committee member has resulted in a vacancy on the audit committee that the board of directors is required to fill, an audit committee member appointed to fill such vacancy is exempt from the requirements in subsections 3.1(3) and (4) for a 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 Temporary Exemption for Limited and Exceptional Circumstances

Subject to section 3.7, an audit committee member is exempt from the requirement in subsection 3.1(3) if:

- (a) the member is not an individual described in subsection 1.5(1);
- (b) the member is not an employee or officer of the issuer, or an immediate family member of an employee or officer of the issuer;
- (c) the board, under exceptional and limited circumstances, determines in its reasonable judgement that

- (i) the member is able to exercise the impartial judgement necessary for the member to fulfill his or her responsibilities as an audit committee member, and
- (ii) the appointment of the member is required by the best interests of the issuer and its shareholders;
- (d) the member does not act as chair of the audit committee; and
- (e) the member does not rely upon this exemption for a period of more than two years.

3.7 Majority Independent

The exemptions in subsection 3.3(2) and section 3.6 are not available to a member unless a majority of the audit committee members would be independent.

3.8 Acquisition of Financial Literacy

Subject to section 3.9, 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.

3.9 Restriction on Use of Certain Exemptions

The exemptions in sections 3.2, 3.4, 3.5 and 3.8 are not available to a member unless the issuer's board of directors has determined that the reliance on the exemption will not materially 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

An audit committee must have the authority

- (a) to engage independent counsel and other advisors as it determines necessary to carry out its duties,
- (b) to set and pay the compensation for any advisors employed by the audit committee, and
- (c) to communicate directly with the internal and external auditors.

PART 5 REPORTING OBLIGATIONS

5.1 Required Disclosure

Every issuer must include in its AIF the disclosure required by Form 52-110F1.

5.2 Management Information Circular

If management of an issuer solicits proxies from the security holders of the issuer for the purpose of electing directors to the issuer's board of directors, the issuer must include in its management information circular a cross-reference to the sections in the issuer's AIF that contain the information required by section 5.1.

PART 6 VENTURE ISSUERS

6.1 Venture Issuers

Venture issuers are exempt from the requirements of Parts 3 (*Composition of the Audit Committee*) and 5 (*Reporting Obligations*).

6.2 Required Disclosure

- (1) Subject to subsection (2), if management of a venture issuer solicits proxies from the security holders of the venture issuer for the purpose of electing directors to its board of directors, the venture issuer must include in its management information circular the disclosure required by Form 52-110F2.
- (2) A venture issuer that is not required to send a management information circular to its security holders must provide the disclosure required by Form 52-110F2 in its AIF or annual MD&A.

PART 7 U.S. LISTED ISSUERS

7.1 U.S. Listed Issuers

An issuer that has securities listed or quoted on a U.S. marketplace is exempt from the requirements of Parts 2 (*Audit Committee Responsibilities*), 3 (*Composition of the Audit Committee*), 4 (*Authority of the Audit Committee*), and 5 (*Reporting Obligations*), if:

- (a) the issuer is in compliance with the requirements of that U.S. marketplace 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 AIF the disclosure (if any) required by paragraph 7 of Form 52-110F1.

PART 8 EXEMPTIONS

8.1 Exemptions

- (1) The securities regulatory authority or regulator may grant an exemption from this rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 9 EFFECTIVE DATE

[Note: Part 9 is not reproduced. It contains the historical coming-into-force of the original version of the Instrument.]

Form 52-110F1

Audit Committee Information Required in an AIF

1. The Audit Committee’s Charter

Disclose the text of the audit committee’s charter.

2. Composition of the Audit Committee

Disclose the name of each audit committee member and state whether or not the member is (i) independent and (ii) 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, disclose any education or experience that would provide the member with:

- (a) an understanding of the accounting principles used by the issuer to prepare its financial statements;
- (b) the ability to assess the general application of such accounting principles in connection with the accounting for estimates, accruals and provisions;^{1B}
- (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. Reliance on Certain Exemptions

If, at any time since the commencement of the issuer’s most recently completed financial year, the issuer has relied on

- (a) the exemption in section 2.4 (*De Minimis Non-audit Services*),
- (b) the exemption in section 3.2 (*Initial Public Offerings*),
- (c) the exemption in section 3.4 (Events Outside Control of Member),

^{1B} For periods relating to financial years beginning before January 1, 2011, “provisions” is read as “reserves”.

- (d) the exemption in section 3.5 (Death, Disability or Resignation of Audit Committee Member) or
- (e) an exemption from this Instrument, in whole or in part, granted under Part 8 (*Exemptions*),

state that fact.

5. Reliance on the Exemption in Subsection 3.3(2) or Section 3.6

If, at any time since the commencement of the issuer's most recently completed financial year, the issuer has relied upon the exemption in subsection 3.3(2) (*Controlled Companies*) or section 3.6 (*Temporary Exemption for Limited and Exceptional Circumstances*), state that fact and disclose

- (a) the name of the member, and
- (b) the rationale for appointing the member to the audit committee.

6. 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 upon section 3.8 (*Acquisition of Financial Literacy*), state that fact and disclose

- (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 explain why.

8. Pre-Approval Policies and Procedures

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

9. External Auditor Service Fees (By Category)

- (a) Disclose, under the caption “Audit Fees”, the aggregate fees billed by the issuer’s external auditor in each of the last two fiscal years for audit services.
- (b) Disclose, under the caption “Audit-Related Fees”, the aggregate fees billed in each of the last two fiscal 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 clause (a) above. Include a description of the nature of the services comprising the fees disclosed under this category.
- (c) Disclose, under the caption “Tax Fees”, the aggregate fees billed in each of the last two fiscal 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 disclosed under this category.
- (d) Disclose, under the caption “All Other Fees”, the aggregate fees billed in each of the last two fiscal years for products and services provided by the issuer’s external auditor, other than the services reported under clauses (a), (b) and (c), above. Include a description of the nature of the services comprising the fees disclosed under this category.

INSTRUCTION

The fees required to be disclosed by this paragraph 9 relate only to services provided to the issuer or its subsidiary entities by the issuer’s external auditor.

Form 52-110F2

Disclosure by Venture Issuers

1. The Audit Committee’s Charter

Disclose the text of the audit committee’s charter.

2. Composition of the Audit Committee

Disclose the name of each audit committee member and state whether or not the member is (i) independent and (ii) 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, disclose any education or experience that would provide the member with:

- (a) an understanding of the accounting principles used by the issuer to prepare its financial statements;
- (b) the ability to assess the general application of such accounting principles in connection with the accounting for estimates, accruals and provisions;^{1C}
- (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 explain why.

5. Reliance on Certain Exemptions

If, at any time since the commencement of the issuer’s most recently completed financial year, the issuer has relied on

- (a) the exemption in section 2.4 (*De Minimis Non-audit Services*), or

^{1C} For periods relating to financial years beginning before January 1, 2011, “provisions” is read as “reserves”.

- (b) an exemption from this Instrument, in whole or in part, granted under Part 8 (*Exemptions*),

state that fact.

6. Pre-Approval Policies and Procedures

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

7. External Auditor Service Fees (By Category)

- (a) Disclose, under the caption “Audit Fees”, the aggregate fees billed by the issuer’s external auditor in each of the last two fiscal years for audit fees.
- (b) Disclose, under the caption “Audit-Related Fees”, the aggregate fees billed in each of the last two fiscal 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 clause (a) above. Include a description of the nature of the services comprising the fees disclosed under this category.
- (c) Disclose, under the caption “Tax Fees”, the aggregate fees billed in each of the last two fiscal 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 disclosed under this category.
- (d) Disclose, under the caption “All Other Fees”, the aggregate fees billed in each of the last two fiscal years for products and services provided by the issuer’s external auditor, other than the services reported under clauses (a), (b) and (c), above. Include a description of the nature of the services comprising the fees disclosed under this category.

INSTRUCTION

The fees required to be disclosed by this paragraph 7 relate only to services provided to the issuer or its subsidiary entities by the issuer’s external auditor.

8. Exemption

Disclose that the issuer is relying upon the exemption in section 6.1 of the Instrument.

Companion Policy 52-110CP to National Instrument 52-110

Audit Committees

PART 1 GENERAL

1.1 Purpose

National Instrument 52-110 *Audit Committees* (the Instrument) is a rule in each of Québec, Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador and British Columbia, a Commission regulation in Saskatchewan and Nunavut, a policy in Prince Edward Island and the Yukon Territory, and a code in the Northwest Territories. We, the securities regulatory authorities in each of the foregoing jurisdictions (the Jurisdictions), have implemented the Instrument to encourage reporting issuers to establish and maintain strong, effective and independent audit committees. We believe 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 apply the Instrument in a manner which recognizes that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board or management of a subsidiary of the trust, or the board, management or employees of a management company. For this purpose, references to "the issuer" refer to both the trust and any underlying entities, including the operating entity.

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

1.3 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 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 delegates its responsibility for oversight of the financial reporting process. Traditionally, the audit committee has performed a number of roles, including

- helping directors meet their responsibilities,
- providing better communication between directors and the external auditors,
- enhancing the independence of the external auditor,
- increasing the credibility and objectivity of financial reports, and
- 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 auditors. In particular, it provides that an audit committee must have responsibility for:

- (a) overseeing the work of the external auditors 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 auditors.

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

2.2 Relationship between External Auditors 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 auditors 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 auditors regarding financial reporting. Notwithstanding this responsibility, the external auditors are retained by, and are ultimately accountable to, the shareholders. As a result, subsection 2.3(3) does not detract from the external auditors' right and responsibility to also provide their 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*.

PART 3 INDEPENDENCE

3.1 Meaning of Independence

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

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

3.2 Derivation of Definition

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

3.3 Safe Harbour

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

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

Subsection 1.3(4) is intended only to identify those individuals who are not considered to control an issuer. The provision is not intended to suggest that an individual who owns more than ten percent of an issuer's voting equity securities automatically controls an issuer. Instead, an individual who owns more than ten percent of an issuer's voting equity securities should examine all relevant facts and circumstances to determine if he or she controls the issuer and is therefore an affiliated entity within the meaning of subsection 1.3(1).

3.4 Remuneration of Chair of Board, Etc.

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

PART 4 FINANCIAL LITERACY, FINANCIAL EDUCATION AND EXPERIENCE

4.1 Financial Literacy

For the purposes of the Instrument, an individual 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 generally 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 Disclosure of Relevant Education and Experience.

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

PART 5 NON-AUDIT SERVICES

5.1 Pre-Approval of Non-Audit Services

Section 2.6 of the Instrument allows an audit committee to satisfy, in certain circumstances, the pre-approval requirements in subsection 2.3(4) by adopting specific 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:

- Monetary limits should not be the only basis for the pre-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.

- 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.
- The appropriate level of detail for the pre-approval policies will differ depending upon the facts and circumstances of the issuer. The pre-approval policies must be designed to ensure that the audit committee knows precisely what services it is being asked to pre-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 requires that the policies cannot result in a delegation of the audit committee's responsibility to management, the pre-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

National Instrument 51-102 permits disclosure required to be included in an issuer's AIF or information circular to be incorporated by reference, provided that the referenced document has already been filed with the applicable securities regulatory authorities.¹ Any disclosure required by the Instrument to be included in an issuer's AIF or management information circular may also be incorporated by reference, provided that the procedures set out in National Instrument 51-102 are followed.

[Amended July 4, 2008]

¹ See Part 1, paragraph (f) of Form 51-102F2 (*Annual Information Form*) and Part 1, paragraph (c) of Form 51-102F5 (*Information Circular*)