

Chapter 6

Request for Comments

6.1.1 Notice and Request for Comments - Proposed Multilateral Instrument 52-108 Auditor Oversight

NOTICE AND REQUEST FOR COMMENTS

PROPOSED MULTILATERAL INSTRUMENT 52-108 AUDITOR OVERSIGHT

We, the securities regulatory authorities in each jurisdiction other than British Columbia (the Participating Jurisdictions), seek public comment on proposed Multilateral Instrument 52-108 *Auditor Oversight* (the Proposed Instrument). We invite comment on the Proposed Instrument generally. In addition, we have raised a number of questions for your specific consideration.

Introduction

The Proposed Instrument is an initiative of certain members of the Canadian Securities Administrators (CSA). The Proposed Instrument is expected to be adopted as a rule in each of Alberta, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Québec, and the Northwest Territories, as a Commission regulation in Saskatchewan, as a policy in New Brunswick, Prince Edward Island, and the Yukon Territory, and as a code in Nunavut. The British Columbia Securities Commission has not yet determined whether it will adopt the Proposed Instrument.

The purpose of the Proposed Instrument is to contribute to public confidence in the integrity of financial reporting of reporting issuers by promoting high quality, independent auditing. The Proposed Instrument will require reporting issuers to engage auditors that:

- participate in an independent oversight program established by the Canadian Public Accountability Board (CPAB) for public accounting firms that audit the financial statements of public companies (the CPAB Oversight Program), and
- are participants in good standing with the CPAB.

In addition, the Proposed Instrument will require, other than in Alberta and Manitoba, public accounting firms that audit reporting issuers to:

- participate in the CPAB Oversight Program,
- be participants in good standing with the CPAB, and
- provide notice to their audit clients and securities regulators of any sanctions or restrictions imposed by the CPAB.

Background

The U.S. capital market recently suffered an erosion of investors' confidence as a result of several large corporate failures involving accounting irregularities. Following these corporate failures, the U.S. government enacted the *Sarbanes Oxley Act of 2002* (the "SOX Act") in July 2002. The SOX Act introduced numerous accounting, disclosure and corporate governance reforms aimed at restoring public confidence in the U.S. capital markets. One of these reforms was the creation of the Public Company Accounting Oversight Board (PCAOB) to oversee the auditing of public companies that are subject to U.S. securities laws. The PCAOB is mandated, among other things, to establish a registration system for public accounting firms that prepare audit reports for issuers and to conduct inspections of registered public accounting firms. Under the SOX Act, it will be unlawful for any public accounting firm that is not registered with the PCAOB to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to an issuer subject to U.S. securities laws.

Although the corporate scandals that triggered the threat to market confidence took place in the United States, they have revealed the vulnerability of our markets and the need to strengthen existing requirements in our jurisdictions. In response, several initiatives have been introduced to address the issue of investor confidence and to maintain the reputation of our capital markets internationally, including the creation of the CPAB that will oversee the work done by auditors of public companies in Canada.

The CPAB

In July 2002, federal and provincial financial and securities regulators, as well as Canada's chartered accountants announced the creation of the CPAB. The CPAB represents a new independent public oversight system for accountants and accounting firms that audit reporting issuers. It is incorporated as a corporation without share capital under the *Canada Corporations Act*. A copy of its By-laws are attached to this Notice in Appendix A.

The mandate of the CPAB is to promote high quality external audits of reporting issuers. It will be responsible for developing and implementing an oversight program that includes regular and rigorous inspections of the auditors of Canada's public companies.

The Council of Governors

Structurally, the CPAB has a Council of Governors that appoints the Chair and members of the Board. The Council also has the power to remove the Chair and members of the Board.

The five-member Council of Governors is made up of the:

- Chair of the CSA (currently the Chair of the Alberta Securities Commission)
- Chairs of the Ontario Securities Commission and the Commission des valeurs mobilières du Québec
- Superintendent of Financial Institutions Canada
- President and CEO of The Canadian Institute of Chartered Accountants (CICA)

The Council selects its own Chair from among the four non-CICA Governors. Each Governor is entitled to one vote and decisions are made by majority vote.

The Council will periodically review the effectiveness of the new system and take appropriate action, as necessary, to improve its effectiveness.

The Board of Directors

The Board has 11 voting members. Seven members, including the Chair, are from outside the accounting profession. Of the remaining four members, initially three will be the CEOs of the provincial Institutes of Chartered Accountants in Alberta and Ontario and the CEO of the Ordre des comptables agréés du Québec. Board members are appointed for a term of up to 3 years and will be eligible for reappointment, provided that the total tenure does not exceed 6 years. Should a vacancy arise, the Council of Governors will appoint a replacement.

Mandate and Responsibilities

The CPAB will enter into contractual agreements with firms auditing reporting issuers that will permit the CPAB to take actions necessary to carry out its responsibilities.

As part of the CPAB Oversight Program, the CPAB will, among other things:

- Promote, publicly and proactively, high quality external audits of reporting issuers;
- Establish and maintain participation requirements for public accounting firms that audit reporting issuers;
- Conduct inspections of public accounting firms that audit reporting issuers to ensure compliance with professional standards and participation requirements;
- Receive and evaluate reports and recommendations resulting from the inspection process, including, if appropriate, reports from provincial accounting organizations on results of inspections of public accounting firms that audit reporting issuers that are not inspected directly by the CPAB;
- Impose, where appropriate, sanctions and restrictions on public accounting firms that audit reporting issuers and, where necessary require remedial action;
- Maintain a register of public accounting firms that audit reporting issuers;

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- Refer matters, as appropriate, to provincial accounting organizations for discipline purposes;
- Refer matters, as appropriate, to securities regulators;
- Provide comments and recommendations on accounting standards, assurance standards and governance practices to relevant standards-setting and oversight bodies; and
- Provide recommendations to securities regulatory authorities.

The Board will report to the public at least annually on the results of its activities. The form and content of this report will be determined by the Board taking into account the need to provide a high degree of transparency.

Funding

The CPAB will establish a fee schedule that is designed to recover its start-up costs and its ongoing operating costs from participating public accounting firms. Annual operating costs have yet to be determined fully but are estimated to be in the range of \$3 to \$5 million. The structure and amount of the fees to be levied will be determined by the CPAB taking into account the need to ensure an equitable distribution of costs that reflects the extent to which a participating audit firm is involved in auditing reporting issuers. Elements that could be the subject of separate fees include: (i) start-up cost recovery fees, (ii) initial registration fees, (iii) annual participation fees, and (iv) inspection fees.

Registration with the CPAB

Any firm seeking to participate in the CPAB Oversight Program must demonstrate its suitability in its application. The Board will prescribe the form and content of the application. In connection with its review of a public accounting firm's application, the CPAB may examine the books and records of the applicant and make copies in order to ascertain and verify the information contained in the application. Once a public accounting firm's application is approved, it will have to enter into a participation agreement agreeing to abide by all of the provisions of the by-laws and rules and regulations of the CPAB pertaining to the Program. The Board will prescribe the time period within which a public accounting firm will have to enter into a participation agreement with the CPAB.

The CPAB will develop and maintain a publicly accessible register of participating public accounting firms that are in good standing.

The Inspection Program

The CPAB will hire full-time staff, including practice inspectors led by a full-time CEO. The Board of Directors is currently in the process of recruiting the CEO.

It is currently contemplated that CPAB's practice inspectors will inspect the majority of the largest accounting firms that audit reporting issuers to determine whether the firms are complying with professional standards, Rules of Professional Conduct, relevant regulatory requirements and the contractual requirements of the CPAB. In order to maximize efficiency and minimize duplication, it is possible that the CPAB will work with staff of provincial accounting organizations to inspect some public accounting firms that audit a small number of reporting issuers.

The exact scope, nature and frequency of inspections of participating firms will be determined by the CPAB. However, it is expected that the frequency of inspections will be greater for those firms that audit a large number of reporting issuers. The extent of each inspection may include:

- a review of the results of the firm's internal inspection program;
- follow-up on any matters reported in a previous inspection;
- a review of the implementation of any new CPAB requirement; and
- a review of any significant changes in the firm's policies such as changes in the firm's audit methodology.

Each inspection is expected to result in preparation of a report to the Board addressing matters such as:

- the adequacy of the firm's quality control policies and procedures for the public company audit practice;
- comments on compliance with the system of quality control for the public company audit practice and with the requirements of the CPAB; and

- deficiencies relating to the application of generally accepted auditing standards, including compliance with independence standards.

Summary and Discussion of the Proposed Instrument

The Proposed Instrument has five parts.

Part 1

Part 1 contains definitions of terms and phrases used in the Proposed Instrument that are not defined or interpreted under a national definitions instrument in force in a Participating Jurisdiction. National Instrument 14-101 *Definitions* defines commonly used terms and phrases and should be read together with the Proposed Instrument.

Part 1 also stipulates that the sections of the Proposed Instrument that impose requirements directly on auditors do not apply in Alberta and Manitoba. We have carved these jurisdictions out of these sections because they do not have rule-making authority to prescribe requirements respecting qualifications of auditors.

Part 2

Part 2 of the Proposed Instrument will require, in effect, every public accounting firm that audits an issuer that is a reporting issuer in any of the Participating Jurisdictions to participate in the CPAB Oversight Program.

a. Requirement to participate in the CPAB Oversight Program

Section 2.1 imposes a requirement, other than in Alberta and Manitoba, on any public accounting firm that chooses to audit financial statements of a reporting issuer to enter into a participation agreement with the CPAB. It should be emphasized that this requirement is being imposed directly on the auditor of a reporting issuer.

In addition to the requirement imposed on auditors, section 2.3 imposes a requirement on all reporting issuers in the Participating Jurisdictions to file auditor's reports issued by auditors that are participating in the CPAB Oversight Program.

The timing as to when a public accounting firm must enter into a participation agreement will be determined and announced by the Board of Directors of the CPAB. In accordance with its By-laws the CPAB may, until December 31, 2005, restrict the number of public accounting firms that are eligible to participate in the CPAB Oversight Program.

The necessity to participate in the CPAB Oversight Program, either by virtue of section 2.1 or section 2.3, only applies to an accounting firm that issues an auditor's report with respect to the financial statements of a reporting issuer. It does not apply to an accounting firm that participates or assists in the preparation or issuance of an auditor's report. This contrasts with the requirement under the SOX Act that any public accounting firm that participates in the preparation or issuance of an auditor's report to any issuer must register with the PCAOB. We have limited the scope of the Proposed Instrument to audit firms that issue the auditor's reports because we believe there will be relatively few situations in which a public accounting firm participates in the preparation or issuance of an auditor's report with respect to a reporting issuer and is not otherwise required to register with the CPAB. In addition, we note that Canadian generally accepted auditing standards require an auditor that is engaged to express an opinion on financial statements containing financial information audited by another auditor to carry out sufficient procedures to support the opinion given. Unlike in the U.S., the primary auditor assumes sole responsibility for the opinion expressed and may not refer to the work of another auditor except to explain the reason for a reservation of opinion.

We note that if proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102) is implemented in the Participating Jurisdictions, certain foreign issuers that are reporting issuers will not be required to comply with section 2.3. Specifically, a foreign issuer that is defined as a "SEC foreign issuer" or as a "designated foreign issuer" in NI 71-102 will be deemed to comply with section 2.3 provided it complies with the regulations in its home jurisdiction respecting audit reports and financial statements. However, section 2.1 will require the issuer's auditors to enter into a participation agreement with the CPAB. We believe it is important that public accounting firms based outside Canada that audit foreign issuers reporting in the Participating Jurisdictions be subject to oversight by the CPAB. The CPAB will maintain flexibility on how it exercises that oversight, however, and it may choose to consider entering into arrangements with independent oversight bodies in the home jurisdiction of the auditor to share information about the results of inspections of the auditor carried out by that oversight body.

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Do you agree that public accounting firms in foreign jurisdictions should be required to participate in the CPAB Oversight Program? If not, what other alternatives should be considered? For example, should a public accounting firm based outside Canada that is subject to oversight by a comparable body in a foreign jurisdiction, such as the PCAOB, be treated differently?

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b. Requirement to be in good standing

Sections 2.2 and 2.3 of the Proposed Instrument have the effect of requiring a participating audit firm to be in good standing at the time it issues an auditor's report relating to the financial statements of an issuer that is reporting in one of the Participating Jurisdictions.

For the accounting firm to be considered "in good standing", its participation agreement with the CPAB must not have been suspended or terminated at the time the auditor's report is issued. In addition, if the participating audit firm is subject to CPAB imposed sanctions or restrictions at the time it issues the auditor's report, it must be in compliance with those sanctions or restrictions. Further, if the accounting firm had been subject to CPAB imposed sanctions or restrictions that expired prior to the time it issues the auditor's report, it must have complied with those sanctions or restrictions to satisfy the good standing requirement.

Part 3

Part 3 does not apply in Alberta or Manitoba.

Section 3.1 requires public accounting firms that are subject to sanctions imposed by the CPAB to give written notice to their reporting issuer audit clients. This means that each audit client that is a reporting issuer in any one of the Participating Jurisdictions, other than Alberta or Manitoba, will have to be provided notice. In addition, the auditor will also have to provide notice to the regulator in each Participating Jurisdiction, other than Alberta and Manitoba, where a client is a reporting issuer.

The notice must provide details of the sanctions and be delivered within five business days. In addition, notice will have to be provided to potential reporting issuer clients if the public accounting firm is proposing to undertake an audit of their financial statements.

If, in the course of carrying out an inspection of a participating audit firm, the CPAB identifies defects with the firm's quality control systems, the board of directors of the CPAB may impose restrictions on the participating audit firm in order to address these deficiencies. In such cases, section 3.3 requires a public accounting firm that is subject to restrictions to give written notice to the regulator in each Participating Jurisdiction, other than Alberta or Manitoba, where a client is a reporting issuer. The public accounting firm, however, will not have to provide notice to its audit clients except when it fails to address the defects in its quality control systems to the satisfaction of the CPAB within the agreed time period.

Section 3.4 recognizes that there are benefits to providing the CPAB and a public accounting firm with the opportunity to address issues respecting a firm's quality control system without having to disclose that it is subject to restrictions. We believe that, by requiring disclosure only in situations where a public accounting firm fails to address the underlying deficiencies in its quality control systems within a reasonable period of time, it will act as an incentive to address deficiencies. Restrictions that will be imposed by the CPAB while the accounting firm addresses the underlying deficiencies will ensure that any auditor's report the firm may issue meets acceptable standards. A similar benefit is reflected in paragraph 2 of subsection 104(g) of the SOX Act that provides that the PCAOB does not have to publicly disclose findings of defects in the quality control systems of a public accounting firm except where those defects are not addressed by the firm within 12 months.

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Do you think that five business days is an appropriate length of time for a public accounting firm to provide notice to its audit clients? Do you agree that an audit firm should only be required to provide notice to its audit clients when it fails to address defects within the time period prescribed by the CPAB? Are there other more effective means of having information about sanctions or restrictions communicated? For example, should the CPAB disclose to the public on a timely basis any sanctions or restrictions it imposes on a public accounting firm?

Part 4

Part 4 provides for exemptive relief from the requirements of the Proposed Instrument.

Part 5

Part 5 sets out the effective date of the Proposed Instrument.

Authority for Proposed Instrument - Ontario

In those jurisdictions in which the Proposed Instrument are to be adopted or made as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority regarding the subject matter of the Proposed Instrument.

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The following provisions of the *Securities Act* (Ontario) provides the Ontario Securities Commission (OSC) with authority to adopt the Proposed Instrument:

Paragraph 143(1)25(iv) authorizes the OSC to make rules prescribing requirements in respect of financial accounting, reporting and auditing, including standards of independence and other qualifications for auditors.

Paragraph 143(1)39(iii) authorizes the OSC to make rules prescribing format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by Ontario securities law.

Alternatives Considered

No alternatives were considered.

Unpublished Materials

In proposing the Proposed Instrument, we did not rely upon any significant unpublished study, report, decision or other written materials.

Anticipated Costs and Benefits

The anticipated costs and benefits of implementing the Proposed Instrument are discussed in the paper entitled *Investor Confidence Initiatives: A Cost Benefit Analysis*, which has been published together with this Notice and is incorporated by reference into this Notice.

Related Instruments

The Proposed Instrument is related to the following instruments: (i) proposed National Instrument 51-102 *Continuous Disclosure Obligations*, which requires auditor's reports to be filed with financial statements; (ii) proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, which will introduce certain requirements respecting auditor's reports and acceptable auditors; and (iii) proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, which will exempt certain foreign issuers that are reporting issuers from requirements respecting annual financial statements and auditor's reports filed in Canada.

In Ontario, the Proposed Instrument is related to section 78 of the *Securities Act* (Ontario)(the Act) and section 2 of the Regulation made under the Act (Regulation 1015).

Comments

Interested parties are invited to make written submissions on the Proposed Instrument. Submissions received by September 25, 2003 will be considered. **Due to timing concerns, comments received after the deadline will not be considered.**

Submissions should be sent, in duplicate, to the securities regulatory authorities listed below in care of the OSC and CVMQ:

Ontario Securities Commission
Commission des valeurs mobilières du Québec
Alberta Securities Commission
The Manitoba Securities Commission
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Securities Commission of Newfoundland and Labrador
Nova Scotia Securities Commission
Saskatchewan Financial Services Commission
Office of the Attorney General, Prince Edward Island
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Department of Justice, Securities Administration Branch, New Brunswick

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
jstevenson@osc.goc.on.ca

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Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3
Fax: (514) 864-6381
Consultation-en-cours@cvmq.com

A diskette containing the submissions (in Windows format, preferably Word) should also be submitted.

Comment letters submitted in response to requests for comments are placed on the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated amongst the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed in the public file, freedom of information legislation in certain jurisdictions may require securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to the following people:

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Request for Comments

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Proposed Instrument

The text of the Proposed Instrument follows.

Dated: June 27, 2003.

APPENDIX A

CANADIAN PUBLIC ACCOUNTABILITY BOARD/
CONSEIL CANADIEN SUR LA REDDITION DE COMPTES
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BY-LAW NO. 1

A By-law relating to the affairs of

Canadian Public Accountability Board/Conseil canadien sur la reddition de comptes

BE IT ENACTED as a By-law of Canadian Public Accountability Board/Conseil canadien sur la reddition de comptes as follows:

**Article 1
INTERPRETATION**

1.1 Definitions. In this By-law and in all other By-laws and special resolutions of the Corporation, unless the context otherwise requires:

- (a) "Act" means the Canada Corporations Act, and any act that may be substituted therefor, as from time to time amended;
- (b) "Board" means the board of directors of the Corporation
- (c) "By-laws" means this By-law No. 1 and all other By-laws of the Corporation from time to time in force and effect;
- (d) "Chair" means the officer designated as the "Chair" of the Corporation as specified in Section 4.2;
- (e) "CICA" means the Canadian Institute of Chartered Accountants, or any successor to such entity;
- (f) "Corporation" means Canadian Public Accountability Board/Conseil canadien sur la reddition de comptes, incorporated as a corporation without share capital under the Act by Letters Patent;
- (g) "Council of Governors" means the Members of the corporation described in Section 8.1 hereof and "Governor" means any one of such Members;
- (h) "CVMQ" means the Commission des valeurs mobilières du Québec, or any successor body to such entity;
- (i) "Directors" means the Independent Directors and the Ex-Officio Directors;
- (j) "Ex-Officio Directors" means the directors of the Corporation referred to in paragraph 3.2(a) and paragraph 3.2(b) hereof;
- (k) "Firm" or "firm" means a partnership of individuals practicing as such and includes, where the context permits, an individual carrying on business as a sole proprietor, and any professional corporation through which either a partner or a sole proprietor carries on its business;
- (l) "Independent Directors" means the directors of the Corporation appointed pursuant to paragraph 3.2(c) hereof;
- (m) "Industry Members" has the meaning ascribed thereto in Section 9.1 hereof;
- (n) "Letters Patent" means the Letters Patent incorporating the Corporation, as from time to time amended and supplemented by supplementary letters patent;
- (o) "Members" shall mean the Council of Governors and/or the Industry Members, as the context may require;
- (p) "OSC" means the Ontario Securities Commission, or any successor body to such entity;
- (q) "OSFI" means the Office of the Superintendent of Financial Institutions of Canada, or any successor body to such entity;
- (r) "Participating Audit Firm" or "PAF" means an accounting firm that has entered into a Participation Agreement and has not had its participant status terminated;
- (s) "Participation Agreement" means a participation agreement between the Corporation and a PAF contemplated by Article 11 of this By-law No. 1;

- (t) "Program" means the Corporation's program applicable to PAFs;
- (u) "Relevant Provincial Regulatory Authority" means those accounting oversight bodies which are admitted as Industry Members by the Board;
- (v) "Relevant Regulatory Authorities" means the Relevant Provincial Regulatory Authorities together with the CICA; and
- (w) "Rules and Regulations" means the rules and regulations contemplated by Section 11.3 hereof.

1.2 Interpretation. In this By-law No. 1 and in all other By-laws hereafter passed, unless the context otherwise requires, words importing the singular number or the masculine gender shall include the plural number or the feminine gender, as the case may be, and vice versa, and references to persons shall include individuals, firms and corporations. The division of this By-law No. 1 into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

Article 2 GENERAL

- 2.1 Head Office.** Until changed in accordance with the Act, the head office of the Corporation shall be in the City of Toronto, in the Province of Ontario.
- 2.2 Seal.** Until changed by resolution of the Board, the seal, an impression whereof is stamped in the margin hereof, shall be the corporate seal of the Corporation.
- 2.3 Financial Year.** The financial year-end of the Corporation shall be as determined by the Board.
- 2.4 Books and Records.** The Board shall ensure that all necessary books and records of the Corporation required by the By-laws or by any applicable statute or law are regularly and properly kept.
- 2.5 Passage of By-laws.** By-laws of the Corporation may be made, repealed or amended by a By-law passed by a majority of the Directors present at a meeting of the Board and sanctioned by at least:
 - (a) 4 of the votes cast by Governors at a special general meeting of the Council of Governors duly called for the purpose of considering the said By-law, and
 - (b) a majority of the votes cast by the Industry Members at a special general meeting of the Industry Members duly called for the purpose of considering the said By-law,

provided that any repeal, amendment or substitution of any such By-law relating to the matters referred to in subsection 155(2) of the Act shall not be enforced or acted upon until the approval of the Minister of Industry Canada has been obtained.

- 2.6 Amendment to Letters Patent.** The Letters Patent may be amended by a By-law passed by a majority of the Directors present at a meeting of the Board and sanctioned by at least:
 - (a) 4 of the votes cast by Governors at a special general meeting of the Council of Governors duly called for the purpose of considering the said By-law, and
 - (b) a majority of the votes cast by the Industry Members at a special meeting of the Industry Members duly called for the purpose of considering the said By-law.

Article 3 THE BOARD

- 3.1 Duties.** The Board shall manage or supervise the management of the property, activities and affairs of the Corporation in all things and in particular, shall manage or supervise the management to:
 - (a) promote, publicly and proactively, the importance of high quality external audits of public companies;
 - (b) oversee the design and implementation of a rigorous program of inspection of PAFs;
 - (c) establish the terms of reference of the Board;

- (d) approve the business plan and budget for the activities of the Corporation, supervise the activities of the Corporation and evaluate the effectiveness of the Corporation in carrying out this mandate;
- (e) hire the Chief Executive Officer;
- (f) obtain independent technical advice when needed and appropriate;
- (g) establish and maintain the membership requirements for PAFs;
- (h) establish and maintain a register of firms that have been accepted as PAFs;
- (i) receive and evaluate the reports and recommendations of the results of the inspection of PAFs;
- (j) when appropriate, refer matters relating to PAFs to the Relevant Provincial Regulatory Authorities for discipline purposes;
- (k) impose sanctions directly on PAFs, including conditions and restrictions;
- (l) report publicly on the means taken to oversee the audit of public companies and the results achieved;
- (m) manage or supervise all other matters which are the proper subject matter of the management of the business and affairs of the Corporation;
- (n) ensure appropriate transparency in the conduct of the Corporation's activities;
- (o) carry out or cause to be carried out inspections of the audit practices of PAFs, as they relate to public companies;
- (p) when appropriate, provide comments and recommendations on accounting standards, assurance standards, rules of professional conduct, and governance practices to Relevant Regulatory Authorities and any other relevant bodies;
- (q) make recommendations to the Relevant Regulatory Authorities, other applicable regulatory authorities and other supervisory bodies (including, without limitation, securities regulatory authorities and OSFI) with a view to harmonizing and strengthening the inspection and discipline processes applicable to PAFs; and
- (r) when appropriate, notify the Relevant Regulatory Authorities, other applicable regulatory authorities and other supervisory bodies (including, without limitation, securities regulatory authorities and OSFI) whenever the Board has imposed sanctions on or conditions or restrictions pertaining to the participation status of any PAF or any individual working at a PAF.

3.2 Number and Term. The Board shall consist of 11 directors of whom:

- (a) two shall be the chief executive officer (or the equivalent) of the Relevant Provincial Regulatory Authority in each of the Provinces of Ontario and Quebec with oversight responsibility for Participating Audit Firms which audit public companies with the highest total market capitalization as at the end of the last completed calendar year and have their principal place of business in such provinces;
- (b) one shall be appointed by the Industry Members from among the chief executive officers (or the equivalent) of the two Relevant Provincial Regulatory Authorities in provinces other than Ontario and Quebec with oversight responsibility for Participating Audit Firms which audit public companies with the highest total market capitalization as at the end of the last completed calendar year and have their principal place of business in such provinces; and
- (c) eight shall be appointed by the Council of Governors from among individuals who satisfy the criteria specified in Section 3.3 below (such eight directors herein collectively referred to as the "Independent Directors"), provided however that, notwithstanding Subsection 3.3(a) hereof, one of such individuals may (but need not) hold a professional accounting designation (such person holding such designation, a "Professional Director").

3.3 Independent Directors. An Independent Director shall be an individual who is otherwise qualified to be a Director and who, unless otherwise agreed by unanimous resolution of the Council of Governors,

- (a) does not hold any professional accounting designation;

- (b) is not a sole proprietor carrying on the business of accounting, nor a partner, member, director, officer or employee of any firm of accountants; and
- (c) in the three years prior to appointment as an Independent Director, was not a sole proprietor carrying on the business of accounting, nor a partner, member, director, officer or employee of any firm of accountants.

3.4 Qualification. The following individuals are not qualified to stand for election as Directors:

- (a) individuals who are less than 18 years of age;
- (b) individuals who, pursuant to an order of a court of competent jurisdiction under applicable provincial legislation, are declared to be mentally incompetent persons or incapable of managing their affairs made;
- (c) individuals who have the status of bankrupt under the *Bankruptcy and Insolvency Act* (Canada);
- (d) individuals who have been convicted of a violation of securities legislation; and
- (e) individuals who have been found guilty of violating the rules of professional conduct of the profession (if any) of which such individual was or is a member.

3.5 Election and Term. The first Directors of the Corporation shall be the individuals specified as such in the Application for Letters Patent, such individuals to hold office for a term expiring at the close of the first annual meeting of the Council of Governors, or until their successors are elected or appointed. Thereafter, the Independent Directors shall be appointed by the Council of Governors at each annual meeting of the Council of Governors and the Ex-Officio Director appointed pursuant to Subsection 3.2(b) shall be appointed by the Industry Members at each annual meeting of the Industry Members. Subject to Sections 3.6 and 3.7 below, the Directors so appointed shall hold office until the first annual meeting after such Directors are so appointed, at which time, each such Director shall retire as a Director, but, if qualified, shall be eligible for re-election.

3.6 Removal of Directors. The Council of Governors may, by a resolution approved by at least four of the Governors, remove any Independent Director (but not an Ex-Officio Director) before the expiration of his term of office and may by a resolution approved by at least three Governors, elect any person in his stead for the remainder of the term of the Independent Director so removed. The Directors shall, on the requisition of the Chair of the Corporation or by any two Governors, call a special general meeting of the Council of Governors for the purpose of considering a resolution to remove any Independent Director before the expiration of his term of office. Such requisition shall state its purpose, be signed by the requisitionists and be deposited at the head office of the Corporation. Such requisition may consist of several documents in like form, each signed by one or more requisitionists.

3.7 Vacation of Office. The office of a Director shall be automatically vacated upon the occurrence of any of the following events:

- (a) if the Director is adjudged a bankrupt under the *Bankruptcy and Insolvency Act* (Canada);
- (b) if an order of a court of competent jurisdiction is made under applicable provincial legislation declaring the Director to be a mentally incompetent person or incapable of managing his affairs;
- (c) if the Director is removed from office by resolution of the Council of Governors as provided in Section 3.6 hereof;
- (d) if, by notice in writing to the Corporation, the Director resigns his office and if such resignation is not effective immediately, upon such resignation becoming effective in accordance with its terms;
- (e) on the death of the Director;
- (f) with respect to a Director who is an Independent Director, if such director ceases to satisfy the criteria specified in Section 3.3 (subject to the proviso contained in Subsection 3.2(c)); or
- (g) if such Director shall cease to hold the office by virtue of which such Director became a Director.

3.8 Vacancies. Vacancies on the Board, howsoever caused, shall be filled by the Council of Governors.

3.9 Meetings and Quorum.

- (a) The powers of the Directors may be exercised by resolution passed at a meeting of the Board at which a quorum is present.
- (b) The presence of seven of the Directors shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board. Where there is a vacancy on the Board, the remaining Directors may exercise all the powers of the Board so long as a quorum remains in office.
- (c) The Board may hold its meetings either at the head office of the Corporation or at any place within or outside Canada as it may from time to time determine.
- (d) Board meetings may be formally called by the Chair, any three Directors, or by resolution of the Council of Governors.

3.10 Notice of Board Meetings. Notice of the time and place of any meeting of the Board shall be telephoned or sent by electronic means (including facsimile and e-mail) to each Director not less than 2 days before the meeting is to take place or shall be mailed to each Director not less than 14 days before the meeting is to take place. The statutory declaration of the Chief Executive Officer or of any other person authorized to give notice of a meeting that notice has been given pursuant to this By-law No. 1 shall be sufficient and conclusive evidence of the giving of such notice. The Board may appoint a day or days in any month or months for regular meetings at an hour to be named and no notice need be sent of such regular meeting. A meeting of the Board may also be held, without notice, immediately following the first general meeting of the Members and any subsequent annual meeting of the Members in each year.

3.11 Meetings Without Notice. A meeting of the Board may be held at any time and place without notice if all Directors are present, or if those who are not present, either before or after the meeting, waive notice or otherwise consent to such meeting being held, and at such meeting any business may be transacted which the Corporation, at a meeting of Directors, may transact, provided that a quorum of the Board is present.

3.12 Adjourned Meetings. Notice of an adjourned meeting of the Board is not required if the time and place of the adjourned meeting is announced at the original meeting.

3.13 Meetings by Telephone. If all the Directors of the Corporation consent thereto generally or in respect of a particular meeting, a Director may participate in a meeting of the Board or of a committee of the Board by means of such conference telephone facilities as permit all persons participating in the meeting to hear or otherwise communicate with each other, and a Director participating in such a meeting by such means is deemed to be present at the meeting. Quorum shall be established and votes shall be recorded by voice or televisual identification of each Director by a roll-call of Directors participating in the meeting.

The Board may also meet by any other electronic means that permits each Director to communicate adequately with each other, provided that the Board has passed a resolution addressing the mechanics of holding such a meeting, including how security issues should be handled, the procedure for establishing quorum and recording votes. Each Director must have equal access to the specific means of communication to be used and each Director must consent in advance to meeting by electronic means using the specific means of communication proposed for the meeting.

3.14 Error or Omission in Notice, Board. No error or omission in giving notice of a meeting of the Board or any adjourned meeting of the Board shall invalidate such meeting or invalidate or make void any proceedings taken or had thereat and any Director may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat.

3.15 Chair. The Chair or, in his absence, the Vice-Chair, shall act as chair of all meetings of the Board. If no such person is present, the Directors present shall choose one of their number to be chair of the meeting.

3.16 Voting. Subject to the Letters Patent and the By-laws, any question arising at any meeting of the Board shall be decided by a majority of votes. Each Director is entitled to exercise one vote. In the case of an equality of votes, the chair of the meeting shall not have a second or casting vote. All votes at any such meeting shall be taken by a show of hands in the usual manner of assent or dissent. A declaration by the chair of the meeting that a resolution has been carried and an entry to that effect in the minutes shall be admissible in evidence as *prima facie* proof of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

3.17 Powers. The Board shall administer the affairs of the Corporation in all things and may make or cause to be made for the Corporation, in its name, any kind of contract which the Corporation may lawfully enter into and, save as hereinafter provided, generally, may exercise all such powers and do all such other acts and things as the Corporation, by its

Letters Patent or otherwise, is authorized to exercise and do. The Board may appoint such agents and engage such employees as it may deem necessary from time to time and such persons shall have such authority and shall perform such duties as shall be prescribed by the Board at the time of such appointment.

- 3.18 Committees.** The Board may from time to time constitute such committee or committees as it deems necessary, and for such purposes and with such powers as may be prescribed by the Board. Any member of any such committee shall be removable from such committee at any time at the discretion of the Board. The members of any such committee or committees shall serve at the pleasure of the Board. Any such committee may formulate its own rules of procedure subject to such regulations and/or directions as the Board may from time to time make in respect thereof.
- 3.19 Declaration of Interest.** It shall be the duty of every Director who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Corporation to declare such interest and to refrain from voting thereon in accordance with the Act.
- 3.20 Remuneration of Independent Directors.** Independent Directors shall be entitled to receive such remuneration, if any, for acting as Directors as the Board may from time to time determine.
- 3.21 Expenses.** Directors shall be entitled to be paid their reasonable expenses properly incurred in the performance of their duties, including their travel and other expenses properly incurred by them in attending meetings of the Board, of any committee thereof, or of the Members, or otherwise properly incurred by them in connection with carrying out the activities of the Corporation.
- 3.22 Confidentiality.** Each Director shall treat and keep as confidential all information which he becomes possessed of in the course of the execution of the duties of his office as a Director of the Corporation.

Article 4 OFFICERS

- 4.1 Officers.** The Council of Governors shall appoint a Chair and a Vice-Chair of the Corporation and the Board shall appoint a Chief Executive Officer. The Board may also from time to time create such other offices of the Corporation and appoint such other individuals from time to time to fill such offices, including one or more assistants to any of the officers so appointed. The Board may specify the duties of all officers and, in accordance with this By-law and subject to the Act, may delegate to such officers powers to manage the business and affairs of the Corporation. Subject to Section 4.4 hereof, an officer may, but need not, be a Director and one person may hold more than one office.
- 4.2 Chair.** The Chair shall be chosen by the Council of Governors from among the Independent Directors (but not, if any, a Professional Director) and shall be the Chair of the Corporation. Subject to Section 3.15, the Chair shall act as the chair of all meetings of the Board and shall have such other powers and duties as the Board may determine. The Chair shall receive such remuneration as the Board may from time to time determine. The Chair shall be the custodian of the seal of the Corporation, which the Chair shall deliver only when authorized by a resolution of the Board to do so and to such person or persons as may be named in the resolution.
- 4.3 Vice-Chair.** The Vice-Chair shall be chosen by the Council of Governors from among the Independent Directors and shall have such powers and duties as the Council of Governors may determine.
- 4.4 Chief Executive Officer.** The Chief Executive Officer shall be appointed by the Board and shall be the chief executive officer of the Corporation. Subject to the authority of the Board, the Chief Executive Officer shall have general supervision of the activities and affairs of the Corporation and such other powers and duties as the Board may specify. The Chief Executive Officer shall not be a member of the Board.
- 4.5 Powers and Duties of Other Officers.** The powers and duties of all other officers shall be such as the terms of their engagement call for or as the Board may specify.
- 4.6 Variations of Powers and Duties.** The Board may from time to time and subject to the provisions of the Act, vary, add to or limit the powers and duties of any officer, other than the Chair and the Vice-Chair.
- 4.7 Term of Office.** The Board, in its discretion, may remove any officer of the Corporation (other than the Chair and the Vice-Chair who shall be removable by the Council of Governors), without prejudice to such officer's rights under any employment contract or in law. Otherwise, each officer appointed by the Board shall hold office until his successor is appointed, or until his earlier resignation.
- 4.8 Remuneration of Officers.** The officers shall be paid such remuneration for their services as the Board may from time to time determine. They shall also be entitled to be reimbursed for their travel and other expenses properly incurred by

them in the exercise of the duties of their respective offices. The remuneration of any employees or agents shall be such as the terms of their engagement call for or as the Board may specify.

- 4.9 Agents and Attorneys.** The Corporation, by or under the authority of the Board, shall have power from time to time to appoint agents or attorneys for the Corporation in or outside Canada with such powers (including the power to sub-delegate) of management, administration or otherwise as may be thought fit by the Board.

Article 5 PROTECTION OF DIRECTORS AND OFFICERS

- 5.1 Limitation of Liability.** No Director or officer of the Corporation shall be liable for the acts, neglects or defaults of any other Director or officer or employee, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by order of the Board for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any of the monies, securities or effects of the Corporation shall be lodged or deposited, or for any loss occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of his office or in relation thereto unless the same are occasioned by his own willful neglect or default.

- 5.2 Indemnity.** Every Director and officer of the Corporation and his heirs, executors, administrators, and estate and effects, respectively, shall from time to time and at all times, be indemnified and saved harmless out of the funds of the Corporation, from and against:

- (a) all costs, charges and expenses whatsoever that such Director or officer sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him or her, for or in respect of any act, deed, matter or thing whatever, made, done or permitted by him or her, in or about the execution of the duties of his office; and
- (b) all other costs, charges and expenses that he sustains or incurs, in or about or in relation to the affairs of the Corporation;

except such costs, charges or expenses as are occasioned by his own willful neglect or default.

- 5.3 Expenses Paid in Advance.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of the action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation.

- 5.4 Other Remedies Available.** The indemnification provided by this Article 5 shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under the Letters Patent or By-laws or any agreement, vote of the Members or disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding any office with the Corporation, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

- 5.5 Insurance.** The Board may purchase such directors' and officers' insurance or any other insurance as it deems necessary or advisable to be paid for out of the funds of the Corporation.

Article 6 EXECUTION OF DEEDS AND BANKING

- 6.1 Signatories.** The following are the only persons authorized to sign any document on behalf of the Corporation, other than in the usual and ordinary course of the Corporation's business:

- (a) any person or persons appointed by resolution of the Board to sign a specific document, that type of document, or generally on behalf of the Corporation; or
- (b) the Chair together with any other Director.

Any document so signed may, but need not, have the corporate seal applied.

- 6.2 Facsimile Signatures.** The signature of any person authorized to sign on behalf of the Corporation, may, if specifically authorized by resolution of the Board, be written, printed, stamped, engraved, lithographed or otherwise mechanically reproduced. Anything so signed shall be as valid as if it had been signed manually, even if that person has ceased to hold office when anything so signed is issued or delivered, until revoked by resolution of the Board.
- 6.3 Banking.** The banking business of the Corporation shall be transacted with such banks, trust companies or other financial institutions as may from time to time be designated by or under the authority of the Board. Such banking business or any part of it shall be transacted under such agreements, instructions and delegations of powers as the Board may, from time to time, prescribe or authorize.

**Article 7
MEMBERS**

- 7.1 Membership Classes.** There shall be two classes of Members in the Corporation, namely, the Council of Governors and the Industry Members.
- 7.2 Withdrawal.** Members may withdraw from the Corporation by delivering to the Corporation a resignation in writing, which shall be effective upon acceptance thereof by the Board.

**Article 8
COUNCIL OF GOVERNORS**

- 8.1 Council of Governors.** The Council of Governors shall consist of 5 Governors in number and shall be comprised of the individuals who hold the following offices and/or appointments:
- (a) the President of CICA;
 - (b) the Superintendent of Financial Institutions of Canada;
 - (c) the Chair of the OSC;
 - (d) the Chair of the CVMQ; and
 - (e) the Chair of the Canadian Securities Administrators, except where such individual is also the Chair of the OSC or Chair of the CVMQ, in which case, the Canadian Securities Administrators shall select the fifth Governor.
- 8.2 Voting.** Each Governor shall have the right to notice of, and attendance at, all meetings of the Members. Subject to the provisions, if any, contained in the Letters Patent, each Governor shall, at all meetings of the Council of Governors, be entitled to one vote in respect of any matter on which such Governor is entitled to vote in accordance with the provisions of the Letters Patent and this By-law No. 1 including, without limitation, the right to vote on proposed amendments to the By-laws, the sole right to vote for the appointment of the Independent Directors and the sole right to appoint the Chair and the Vice-Chair of the Corporation. Except as aforesaid, the Governors shall have no other voting rights as Members of the Corporation.
- 8.3 Annual and Special General Meetings.**
- (a) An annual meeting of the Council of Governors shall be held not later than 18 months after the incorporation of the Corporation and thereafter, at least once in every calendar year and not more than 15 months after the holding of the last preceding annual meeting. At every annual meeting, in addition to any other business that may be transacted:
 - (i) the financial statements and the report of the auditors shall be presented to the Council of Governors; and
 - (ii) Directors shall be elected by the Council of Governors in accordance with the provisions set out in this By-law No. 1.
 - (b) The Chair of the Council of Governors, or any 2 Governors, shall have the power to call, at any time, any meeting of the Council of Governors.
- 8.4 Notice of Council of Governors' Meetings.** Notice of the time and place of any meeting of the Council of Governors shall be telephoned or sent by electronic means (including facsimile and e-mail) to each Governor not less than 2 days before the meeting is to take place or shall be mailed to each Governor not less than 14 days before the meeting is to

take place. Notice of a special general meeting of the Council of Governors shall state the nature of the business to be transacted thereat in sufficient detail to permit the Council of Governors to form a reasoned judgment thereon. The statutory declaration of the Chief Executive Officer or of any other person authorized to give notice of a meeting that notice has been given pursuant to this By-law No. 1 shall be sufficient and conclusive evidence of the giving of such notice. The auditor of the Corporation is entitled to receive all notices and other communications relating to any meetings of the Members.

8.5 Meetings Without Notice. A meeting of the Council of Governors may be held at any time and place without notice if all Governors are present and waive notice or otherwise consent to such meeting being held, and at such meeting any business may be transacted which the Governors may transact.

8.6 Meetings by Telephone. If all the Governors of the Corporation consent thereto generally or in respect of a particular meeting, a Governor may participate in any annual or special general meeting or any adjourned meeting of the members of the Corporation by such conference telephone facilities as permit all persons participating in the meeting to hear or otherwise communicate with each other, and a Governor participating in such a meeting by such means is deemed to be present at the meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Members. Quorum shall be established and votes shall be recorded by voice or televisual identification of each Governor by a roll-call of Governors participating in the meeting.

The Governors may also meet by any other electronic means that permits each Governor to communicate adequately with each other, provided that the Board has passed a resolution addressing the mechanics of holding such a meeting, including how security issues should be handled, the procedure for establishing quorum and recording votes. Each Governor must have equal access to the specific means of communication to be used and each Governor must consent in advance to meeting by electronic means using the specific means of communication proposed for the meeting.

8.7 Chair of COG. The Council of Governors shall select from among themselves a Governor to act as the chair of all meetings of the Council of Governors (the "COG Chair"). If the COG Chair is not present within fifteen minutes from the time fixed for holding the meeting, the Governors shall choose some person, who need not be a Governor, to be the chair of the meeting. The Governors shall also appoint some person, who need not be a Governor, to act as secretary of the meeting.

8.8 Persons Entitled to be Present. The only persons entitled to attend at meetings of the Council of Governors shall be the Governors, a secretary for the meeting and the auditor of the Corporation and others who, although not entitled to vote, are entitled or required under any provision of the Act, the Letters Patent or the By-laws to be present at the meeting. Any other persons may be admitted only on the invitation of the chair of the meeting or with the consent of the meeting.

8.9 Error or Omission in Notice. No error or omission in giving notice of any meeting or any adjourned meeting of the Council of Governors shall invalidate such meeting or make void any resolutions passed or proceedings taken thereat and the Governors may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat.

8.10 Adjournments. Any meeting of the Council of Governors may be adjourned to any time and from time to time and such business may be transacted at such adjourned meeting as might have been transacted at the original meeting from which such adjournment took place. No notice shall be required of any such adjournment. Such adjournment may be made notwithstanding that no quorum is present.

8.11 Quorum. The presence of not fewer than 3 Governors shall be necessary for the transaction of business at any meeting of the Council of Governors.

8.12 Show of Hands. Any question at a Council of Governor's meeting may be decided by a show of hands. Whenever a vote by show of hands shall have been taken upon a question, a declaration by the chair of the meeting that the vote upon a question has been carried or not carried and an entry to that effect in the minutes of the meeting shall be *prima facie* evidence of the fact.

8.13 Casting Vote. In the event of an equality of votes on any question before a meeting of the Council of Governors, the chair of the meeting shall not have a second or casting vote.

8.14 Location of Meetings. The Council of Governors may hold its meetings either at the head office of the Corporation or at any place within or outside Canada as they may from time to time determine.

Article 9
INDUSTRY MEMBERS

9.1 Industry Members. Industry Members shall be comprised of a representative of each of the 10 provincial Institutes/Ordre of Chartered Accountants which are, hereby, admitted as Industry Members of the Corporation. Subject to a future by-law amendment, the Board will evaluate how and when to extend eligibility for membership as an Industry Member to a wider group. In so doing, the Board may establish criteria for such admission including, without limitation:

- (a) the number or market capitalization of public companies audited by the firms for which the prospective Industry Member has jurisdiction;
- (b) the disciplinary process of such prospective Industry Member, if any;
- (c) the code of ethics (including auditor independence requirements) implemented by such prospective Industry Member, if any; and
- (d) such other criteria as the Board sees fit.

9.2 Voting. Industry Members shall have the right to notice of, and attendance at, all meetings of the Industry Members and shall at all meetings of the Industry Members, be entitled to one vote in respect of any matter on which an Industry Member is entitled to vote in accordance with the provisions of this By-law No. 1. Without limiting the generality of the foregoing, the Industry Members shall have the sole right to vote for the appointment of the auditors of the Corporation and for the appointment of the Ex-Officio Director referred to in Subsection 3.2(b) of this By-law No. 1, and shall also have the right to vote on amendments to the Letters Patent or the By-laws of the Corporation, and in respect of any matter which, at law, under the Act, the Letters Patent or the By-laws require or contemplate an approval or authorization of the members of the Corporation.

9.3 Voting by Proxy. Every Industry Member entitled to vote at a meeting of the Industry Members may appoint a proxyholder, or one or more alternate proxyholders, to attend and act as its representative at the meeting in the manner and to the extent authorized and with the authority conferred by the proxy. A proxy shall be in writing and executed by the Industry Member or its attorney. Any such proxyholder or representative need not be an Industry Member.

9.4 Annual and Special General Meetings.

- (a) An annual meeting of the Industry Members shall be held not later than 18 months after the incorporation of the Corporation and thereafter, at least once in every calendar year and not more than 15 months after the holding of the last preceding annual meeting. At every annual meeting, in addition to any other business that may be transacted:
 - (i) the financial statements and the report of the auditors shall be presented to the Industry Members; and
 - (ii) auditors shall be appointed by the Industry Members for the ensuing year and the remuneration of the auditors shall be fixed or the Board shall be authorized to fix such remuneration.
- (b)
 - (i) The Board; or
 - (ii) the greater of (A) two Industry Members and (B) 10% of the Industry Members,shall have the power to call, at any time, any meeting of the Industry Members.

9.5 Notice of Industry Members' Meetings. Notice of the time and place of any meeting of the Industry Members shall be telephoned or sent by electronic means (including facsimile and e-mail) to each Industry Member not less than 20 days before the meeting is to take place or shall be mailed to each Industry Member not less than 20 days before the meeting is to take place. Notice of a special general meeting of the Industry Members shall state the nature of the business to be transacted thereat in sufficient detail to permit the Industry Members to form a reasoned judgment thereon and shall have attached thereto a form of proxy. The statutory declaration of the Chief Executive Officer or of any person authorized to give notice of a meeting that notice has been given pursuant to this By-law No. 1 shall be sufficient and conclusive evidence of the giving of such notice.

9.6 Meetings by Telephone. If all the Industry Members of the Corporation consent thereto generally or in respect of a particular meeting, an Industry Member may participate in any annual or special general meeting or any adjourned

meeting of the members of the Corporation by such conference telephone facilities as permit all persons participating in the meeting to hear or otherwise communicate with each other, and an Industry Member participating in such a meeting by such means is deemed to be present at the meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Members. Quorum shall be established and votes shall be recorded by voice or televisual identification of each Industry Member by a roll-call of Industry Members participating in the meeting.

The Industry Members may also meet by any other electronic means that permits each Industry Member to communicate adequately with each other, provided that the Board has passed a resolution addressing the mechanics of holding such a meeting, including how security issues should be handled, the procedure for establishing quorum and recording votes. Each Industry Member must have equal access to the specific means of communication to be used and each Industry Member must consent in advance to meeting by electronic means using the specific means of communication proposed for the meeting.

- 9.7 Meetings Without Notice.** A meeting of the Industry Members may be held at any time and place without notice if all Industry Members are present and waive notice or otherwise consent to such meeting being held, and at such meeting any business may be transacted which the Industry Members may transact.
- 9.8 Chair.** The Chair or, in his absence, the Vice-Chair, shall be the chair of all meetings of the Industry Members. If no such officer be present within fifteen minutes from the time fixed for holding the meeting, the Industry Members shall choose some person, who need not be an Industry Member, to be the chair of the meeting. If the Secretary of the Corporation is absent or if he shall be presiding as the chair of the meeting in the absence of the Chair, the Industry Members shall also appoint some person, who need not be an Industry Member, to act as secretary of the meeting.
- 9.9 Persons Entitled to be Present.** The only persons entitled to attend Industry Members' meetings shall be the Industry Members, any person holding a proxy duly executed in accordance with Section 9.3, the Chair, a secretary for the meeting and the auditor of the Corporation and others who, although not entitled to vote, are entitled or required under any provision of the Act or the Letters Patent or By-laws to be present at the meeting. Any other persons may be admitted only on the invitation of the chair of the meeting or with the consent of the meeting.
- 9.10 Error or Omission in Notice.** No error or omission in giving notice of any meeting or any adjourned meeting of the Industry Members shall invalidate such meeting or make void any resolutions passed or proceedings taken thereat and the Industry Members may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat.
- 9.11 Adjournments.** Any meeting of the Industry Members may be adjourned to any time and from time to time and such business may be transacted at such adjourned meeting as might have been transacted at the original meeting from which such adjournment took place. No notice shall be required of any such adjournment. Such adjournment may be made notwithstanding that no quorum is present.
- 9.12 Quorum.** The presence of not less than a majority of the Industry Members, in person or represented by proxy, shall be necessary for the transaction of business at any meeting of the Industry Members.
- 9.13 Show of Hands.** Any question at an Industry Members' meeting may be decided by a show of hands. Whenever a vote by show of hands shall have been taken upon a question, a declaration by the chair of the meeting that the vote upon a question has been carried or not carried and an entry to that effect in the minutes of the meeting shall be *prima facie* evidence of the fact.
- 9.14 Casting Vote.** In the event of an equality of votes on any question before a meeting of Industry Members, the chair of the meeting shall not have a second or casting vote.
- 9.15 Location of Meetings.** The Industry Members may hold their meetings either at the head office of the Corporation or at any place within or outside Canada as they may from time to time determine.

Article 10 AUDITOR

- 10.1 Auditor.**
- (a) At the first meeting of the Industry Members following incorporation, the Industry Members shall appoint one or more auditors to audit the financial statements of the Corporation, and to report thereon at each annual meeting of the Industry Members, and if the Industry Members fail to do so, the Board shall forthwith make such appointment. Such auditors shall hold office until the close of the first annual meeting and thereafter, the Industry Members, at each annual meeting, shall appoint an auditor or firm of auditors to hold office until the

close of the next annual meeting of the Industry Members, and, if an appointment is not so made, the auditor in office will continue in office until a successor is appointed. The Board may fill any casual vacancy in the office of auditor, but while any vacancy continues, the surviving or continuing auditor, if any, may act. A person other than a retiring auditor is not capable of being appointed auditor at such a meeting unless the notice requirements of the Act have been met.

- (b) The auditor shall not be a director, officer or employee of the Corporation or an affiliated corporation unless all of the Industry Members have unanimously consented thereto.

10.2 Remuneration. The remuneration of an auditor appointed by the Industry Members shall be fixed by the Industry Members or by the Board if it is authorized to do so by the Industry Members, and the remuneration of an auditor appointed by the Board shall be fixed by the Board.

Article 11 PARTICIPATING AUDIT FIRMS

11.1 Eligibility. Subject to Section 11.2 hereof, all accountants and accounting firms that are authorized to audit public companies in Canada shall be eligible to participate in the Program.

11.2 Transitional Eligibility. The Board may, until December 31, 2005, restrict the number of firms eligible to participate in the Program in accordance with criteria to be established by the Board from time to time.

11.3 Rules and Regulations.

- (a) The Board may prescribe rules and regulations respecting participation by PAFs in the Program, and may amend such Rules and Regulations as it may see fit from time to time.
- (b) The Board shall not prescribe new Rules and Regulations in final form and shall not make any material amendments to any, existing Rules and Regulations unless and until it has given not less than 60 days prior written notice of such new Rules and Regulations contemporaneously to:
 - (i) all Members and PAFs; and
 - (ii) the public in a form to be determined by the Board;
- (c) The Board shall establish the initial Rules and Regulations by December 31, 2004.

11.4 Application Process.

- (a) Any audit firm seeking to participate in the Program shall demonstrate its suitability for participation in an application, which shall be in such form and contain such information as the Board may from time to time prescribe.
- (b) In connection with reviewing an applicant's application, the Corporation may examine the books and records of the applicant and make copies thereof, and take such evidence as may be desirable or appropriate to ascertain relevant facts bearing upon the applicant's qualifications and the veracity of the information contained in the applicant's application.

11.5 Participation Agreement. Upon the approval of an applicant's application, the applicant shall sign a Participation Agreement agreeing to abide by all of the provisions of the By-laws and Rules and Regulations of the Corporation pertaining to participation in the Program.

11.6 Register of Firms. The Corporation shall maintain a register of all audit firms which are participants in the Program. Such register shall be made accessible to the public in a form to be determined by the Board.

11.7 Continuing Qualifications. Each PAF shall comply with all By-laws and Rules and Regulations, shall co-operate with the Corporation, and shall comply with any sanctions and restrictions that may be imposed by the Board.

11.8 Termination of Participant Status. The participant status of a PAF may be terminated upon resolution of the Board:

- (a) by submission by the PAF to the Corporation of a resignation which is accepted by the Board; or

- (b) for failure of the PAF to adhere to the requirements for participation in the Program, after following the appropriate procedure established by the Board from time to time with respect thereto.

11.9 Reinstatement of Participant Status. Where an audit firm has had its participant status terminated, the firm may be reinstated:

- (a) by complying with the admission requirements, if termination occurred by resignation; or
- (b) by complying with the admission requirements for new firms and obtaining the approval of the Board, if termination was imposed pursuant to Section 11.8 above.

Article 12 BORROWING

12.1 Borrowing. The Board may from time to time:

- (a) borrow money upon the credit of the Corporation;
- (b) limit or increase the amount to be borrowed;
- (c) issue debentures or other securities of the Corporation;
- (d) pledge or sell such debentures or other securities for such sums and at such prices as may be deemed expedient;
- (e) secure any such debentures, or other securities, or any other present or future borrowing or liability of the Corporation, by mortgage, hypothec, charge or pledge of all or any currently owned or subsequently acquired real and personal, movable and immovable, property of the Corporation, and the undertaking and rights of the Corporation; and
- (f) delegate to such one or more of the Directors or officers of the Corporation as may be designated by the Board all or any of the powers conferred by the foregoing paragraphs (a), (b), (c), (d) and (e) of this Section 12.1 of this By-law No. 1 to such extent and in such manner as the Board shall determine at the time of each delegation.

12.2 Arrangements for Borrowing. From time to time, the Board may authorize any Director or officer of the Corporation to make arrangements with reference to the monies borrowed or to be borrowed as aforesaid and as to the terms and conditions of the loan thereof, and as to the security to be given therefor, with power to vary or modify such arrangements, terms and conditions and to give such additional security for any monies borrowed or remaining due by the Corporation as the Board may authorize, and generally to manage, transact and settle the borrowing of money by the Corporation.

Article 13 NOTICE

13.1 Procedure for Sending Notices. Notice shall be deemed to have been sufficiently sent to a Member, a Director or a PAF if sent in writing to the address of the addressee on the books and records of the Corporation and delivered in person, sent by prepaid first class mail or sent by any electronic means of sending messages (including facsimile or e-mail). Notice shall not be sent by mail if there is any general interruption of postal services in the municipality from which or to which it is mailed. Each notice so sent shall be deemed to have been received on the day it was delivered or sent by electronic means or on the fifth day after it was mailed. A notice shall be deemed to be properly given to a PAF if it is given in the manner provided in this Section 13.1 to any individual who is a partner, officer or employee of such PAF.

13.2 Undelivered Notices. If any notice given to any Member, Director or PAF pursuant to Section 13.1 hereof is returned on two consecutive occasions because the addressee cannot be found, the Corporation shall not be required to give any further notice to the addressee until the Corporation is informed in writing of the new address of such Member, Director or PAF.

13.3 Computation of Time. In computing the date when notice must be given under any provision requiring a specified number of days' notice of any meeting or other event, the date of giving the notice shall be excluded and the date of the meeting or other event shall be included.

Request for Comments

13.4 Waiver of Notice. Any of the Members, Directors, PAFs, officers and the auditor may waive any notice required to be given to him under any provision of the Act, the Letters Patent, this By-law No. 1 or otherwise and such waiver, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in giving such notice.

WITNESS the corporate seal of the Corporation as of the <*> day of <*>, 2003.

Chair

Vice Chair c/s

AND AS REGARDS Article 12 of this By-law No. 1, unanimously passed by the Directors and sealed with the corporate seal of the Corporation as of the <*> day of <*>, 2003.

Chair

Vice Chair c/s

Unanimously approved, sanctioned and confirmed by the Council of Governors on the <*> day of <*>, 2003.

Chair c/s

Unanimously approved, sanctioned and confirmed by the Industry Members on the <*> day of <*>, 2003.

Chair c/s