



REQUEST FOR COMMENTS

Notice and request for Comment – Adoption of New Brunswick Implementing Instrument 52-803 adopting National Instrument 52-108 - *Auditor Oversight* and Companion Policy 52-108CP

Introduction

On February 14, 2005, the New Brunswick Securities Commission (the "Commission") approved publication for comment of Implementing Instrument 52-803 *Auditor Oversight* ("52-803"). Through 52-803, the Commission would adopt National Instrument 52-108 *Auditor Oversight* ("52-108") and Companion Policy 52-108CP ("52-108CP") which came into force 30 March 2004.

The text of Implementing Instrument [52-803](#) is being published concurrently with this Notice.

The text of NI 52-108 can be obtained from the following website:

English:

http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part5/rule_20040326_52-108-aud-oversight.jsp

French: http://www.cvmq.com/Upload/fichier_pdf/norme/52-108fr.pdf

Background

NI 52-108, an initiative of the Canadian Securities Administrators, came into force in all other securities jurisdictions on 30 March, 2004. The purpose of the Instrument is to promote high quality, independent auditing and to contribute to public confidence in the integrity of financial reporting of reporting issuers.

As a result of recent accounting irregularities resulting in several corporate failures in the United States, investor confidence began to suffer. The Sarbanes Oxley Act of 2002, (the "SOX Act") enacted in July 2002, attempted to restore public confidence in the investment market by introducing accounting, disclosure and corporate governance reforms. The Public Company Accounting Oversight Board (PCAOB) was created to oversee the auditing of public companies that are subject to U.S. securities laws.

In order to address these issues in Canadian markets and to strengthen requirements in securities jurisdictions, the Canadian Public Accountability Board (CPAB) was created in July 2002. It was an initiative of federal and provincial financial and securities regulators as well as chartered accountants and was incorporated under the *Canada Corporations Act* in April 2003. The mandate to ensure high quality external audits of reporting issuers is being carried out through the CPAB Oversight Program.

Substance and Purpose

NI 52-108 requires reporting issuers to engage public accounting firms that participate in the Oversight Program and are in good standing with the CPAB. Requirements with respect to appointing a public accounting firm apply to the reporting issuer's own financial statements and not to financial statements of another issuer that the reporting issuer may file as a condition of an exemptive relief order. Public accounting firms in turn must comply with sanctions and any restrictions imposed by the CPAB. 52-108 also specifies when a firm must provide notice to the reporting issuer client and to the securities regulator if sanctions or restrictions are imposed.

Request for Comment

The Commission seeks comments on Local Implementing Instrument 52-803 as it applies to the application of NI 52-108 in New Brunswick. Comments are not being sought on NI 52-108 and Companion Policy 52-108CP.

How To Provide Your Comment

Comments are to be provided, in writing, by Monday May 2, 2005 to:

Secretary,
New Brunswick Securities Commission
133 Prince William Street, Suite 606
Saint John, NB E2L 2B5
Telephone: (506)- 658-3060
Fax: (506)-658-3059
Toll Free (866) 933-2222 (within NB only)
E-mail: information@nbsec-cvmnb.ca

If you are not sending your comments by e-mail, please send a diskette containing your comments (in PDF or Word).

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

If you have any questions, please refer them to:

Kevin Hoyt
Director Corporate Finance and Chief Financial Officer
New Brunswick Securities Commission
Telephone: 506-658-3060
Toll Free (Within NB only) 1-866-933-2222
Email: Kevin.Hoyt@nbsec-cvmnb.ca



Document Type: **Implementing Instrument**

Document N°: **52-108**

Subject: **Auditor Oversight**

Amendments: ■

Effective Date: ■

RULE 52-803 IMPLEMENTING

NATIONAL INSTRUMENT 52-108 *AUDITOR OVERSIGHT*

PART 1 DEFINITIONS

- 1.1 “NI 52-108” means National Instrument 52-108 *Auditor Oversight* of the Canadian Securities Administrators, effective 30 March 2004.

PART 2 ADOPTION AS A RULE

- 2.1 NI 52-108 *Auditor Oversight* is adopted as a Rule under the *Securities Act*.

PART 3 EFFECTIVE DATE

- 3.1 This Instrument comes into effect on ■

Chapter 5

Rules and Policies

5.1.1 National Instrument 52-108 Auditor Oversight

NATIONAL INSTRUMENT 52-108 AUDITOR OVERSIGHT

PART 1 DEFINITIONS AND APPLICATION

1.1 Definitions - In this Instrument

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

"participation agreement" means a written agreement between the CPAB and a public accounting firm in connection with the CPAB's program of practice inspections and the establishment of practice requirements;

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

"public accounting firm" means a sole proprietorship, partnership, corporation or other legal entity engaged in the business of providing services as public accountants.

1.2 Application and Transition –

- (1) This Instrument applies to reporting issuers and public accounting firms.
- (2) Section 2.1 and Part 3 do not apply in Alberta, British Columbia and Manitoba.
- (3) Part 2 does not apply unless
 - (a) the CPAB's prescribed time period for the public accounting firm to submit a participation agreement has expired, and
 - (b) the auditor's report prepared by the public accounting firm is dated on or after March 30, 2004.

PART 2 AUDITOR OVERSIGHT

2.1 Public accounting firms – A public accounting firm that prepares an auditor's report with respect to the financial statements of a reporting issuer must be, as of the date of its auditor's report,

- (a) a participating audit firm, and
- (b) in compliance with any restrictions or sanctions imposed by the CPAB.

2.2 Reporting Issuers – A reporting issuer that files its financial statements accompanied by an auditor's report must have the auditor's report prepared by a public accounting firm that is, as of the date of the auditor's report,

- (a) a participating audit firm, and
- (b) in compliance with any restrictions or sanctions imposed by the CPAB.

PART 3 NOTICE

3.1 Notice of Restrictions -

- (1) A participating audit firm that is appointed to prepare an auditor's report with respect to the financial statements of a reporting issuer must, if the CPAB imposes restrictions on the participating audit firm intended to address defects in its quality control systems, provide notice to the regulator.
- (2) The notice required under subsection (1) must be in writing and include a complete description of
 - (a) the defects in the quality control systems identified by the CPAB, and
 - (b) the restrictions imposed by the CPAB, including the date the restrictions were imposed and the time period within which the participating audit firm agreed to address the defects.
- (3) The notice required under subsection (1) must be delivered within 2 business days of the restrictions being imposed.

3.2 Idem -

- (1) A participating audit firm that is subject to CPAB restrictions intended to address defects in its quality control systems and that is informed by the CPAB that it failed to address defects in its quality control systems, to the satisfaction of the CPAB, within the agreed upon time period, must provide notice to
 - (a) the audit committee of each reporting issuer for which it is appointed to prepare an auditor's report, or, if a reporting issuer does not have an audit committee, the board of directors or the person or persons responsible for reviewing and approving the reporting issuer's financial statements before they are filed, and
 - (b) the regulator, if the participating audit firm is appointed to prepare an auditor's report with respect to the financial statements of a reporting issuer.
- (2) The notice required under subsection (1) must be in writing and include a complete description of
 - (a) the defects in the quality control systems identified by the CPAB,
 - (b) the restrictions imposed by the CPAB that were intended to address defects in its quality control systems, including the date the restrictions were imposed and the time period within which the participating audit firm agreed to address the defects, and
 - (c) the reasons it was unable to address the defects to the satisfaction of the CPAB.
- (3) The notice required under subsection (1) must be delivered within 10 business days of the participating audit firm being informed by the CPAB that it has failed to address the defects in its quality control systems.

3.3 Notice of Sanctions –

- (1) A participating audit firm that is subject to sanctions imposed by the CPAB must provide notice to
 - (a) the audit committee of each reporting issuer for which it is appointed to prepare an auditor's report, or, if a reporting issuer does not have an audit committee, the board of directors or the person or persons responsible for reviewing and approving the reporting issuer's financial statements before they are filed, and
 - (b) the regulator, if the participating audit firm is appointed to prepare an auditor's report with respect to the financial statements of a reporting issuer.
- (2) The notice required under subsection (1) must be in writing and include a complete description of the sanctions imposed by the CPAB, including the date the sanctions were imposed.
- (3) The notice required under subsection (1) must be delivered within 10 business days of the sanctions being imposed.

3.4 Notice of Restrictions and Sanctions Prior to Appointment –

- (1) Prior to accepting an appointment to prepare an auditor's report with respect to the financial statements of a reporting issuer, a participating audit firm must provide notice in accordance with
 - (a) subsections 3.2(1) and 3.2(2), if the CPAB informed the participating audit firm within the 12-month period immediately preceding the expected date of appointment that it failed to address defects in its quality control systems to the satisfaction of the CPAB, and
 - (b) subsections 3.3(1) and 3.3(2), if the CPAB imposed sanctions on the participating audit firm within the 12-month period immediately preceding the expected date of appointment.
- (2) For the purposes of subsection (1), the references to "is appointed" contained in subsections 3.2(1) and 3.3(1) shall mean "is expected to be appointed."
- (3) A participating audit firm is not required to provide notice under subsection (1) if, pursuant to a notice provided under sections 3.2 or 3.3, the reporting issuer and regulator have been provided notice of the participating audit firm's failure to address the defects in its quality control systems to the satisfaction of the CPAB and of the sanctions imposed by the CPAB.

PART 4 EXEMPTION

4.1 Exemption –

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

PART 5 EFFECTIVE DATE

- 5.1 Effective Date –** This Instrument comes into force on March 30, 2004.