

September 22, 2003

www.otpp.com

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
Officer 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

in care of:

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

and

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

Dear Mr. Stevenson and Ms. Brosseau,

**Re: Notice and Request for Comments
Proposed Multilateral Instrument 52-108 Auditor Oversight**

We are submitting this comment in response to your request in the June 27th, 2003 Ontario Securities Bulletin.¹ We are supportive of the creation of the Canadian Public

¹ Ontario Securities Commission Bulletin, June 27, 2003 Volume 26, Issue 26, Pages 4883 – 5122.

Accountability Board (“CPAB”), however we must comment on the structure of this new public oversight system. We have a concern that this organization is not independent from the accounting profession. Our comments are prefaced with this caveat: we understand that the construction of the CPAB was undertaken within the constraints of the current Canadian constitutional framework and in the best of good faith, nonetheless, we still must go on the record with our concern.

We refer to the creation of the Public Company Accounting Oversight Board (“PCAOB”) in the United States. We note the fact that the PCAOB is a creation of statute, the Sarbanes Oxley Act of 2002. The Sarbanes Oxley Act of 2002 lays out the terms and conditions of the PCAOB, namely that it is to be a body corporate, and operate as a nonprofit corporation and have succession until dissolved by an Act of Congress.² The goals of the PCAOB are entrenched in the enabling legislation and are the following:

- to oversee the audit of public companies that are subject to securities laws and related matters;
- to protect the interests of investors;
- to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors.³

In order to achieve these goals, the PCAOB must have five members that have been appointed from among prominent individuals of integrity and reputation and who all have a demonstrated commitment to the interests of investors and to the public.⁴ We note that none of the individuals who have been appointed to this board have performed services and received remuneration within the past 10 years as a member of the accounting profession in the United States. Furthermore, none of the members of the PCAOB currently are employed by a public accounting firm in the United States. Furthermore, only two of the five appointments have had previous ties with the SEC. We believe that the fact that the American appointments are significantly removed from the accounting profession supports this board’s claim of independence.

The Sarbanes Oxley Act provides that funds to cover the board’s annual budget⁵ are to be collected from public companies including both U.S. companies and foreign private issuers and investment companies to which the act has jurisdiction. Finally the Securities and Exchange Commission has oversight and enforcement authority over the PCAOB.⁶

The CPAB will be incorporated as a corporation without share capital under the *Canada Corporations Act*. The purpose of the proposed instrument and the CPAB are stated in the preamble to the request for comments:

² Section 101(a) - Establishment of Board - Title 1 – Public Company Accounting Oversight Board, Sarbanes Oxley Act, 2002.

³ Ibid.

⁴ Section 101 (e)(1) Board Membership – Composition - Title 1 – Public Company Accounting Oversight Board, Sarbanes Oxley Act, 2002.

⁵ less registration and annual fees paid by public accounting firms to cover the cost of processing and reviewing registration applications and annual reports – see Section 109 Funding - Title 1 – Public Company Accounting Oversight Board, Sarbanes Oxley Act, 2002.

⁶ Section 107 – Commission Oversight of the Board – Title 1 – Public Company Accounting Oversight Board, Sarbanes Oxley Act, 2002.

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.⁷

We are struck that this laudable goal is somewhat watered down from an investor's perspective in the bylaws where the first duty of the board in Article 3.1 is described as being to:

(a) promote, publicly and proactively, the importance of high quality external audits of public companies;⁸

We are disappointed that the need to protect investors was not included within the wording of the By-Law.

We are also concerned with the structure of the CPAB. We feel that the Council of Governors is too closely related to the accounting profession in Canada and the regulator. The five member Council of Governors consists of three chairs of three provincial securities commission, the Superintendent of Financial Institutions in Canada and the President and C.E.O. of the Canadian Institute of Chartered Accountants. Similarly, the CPAB itself will have 11 members but three will be from the accounting industry⁹.

We believe that both the Council of Governors and the CPAB should be free from both the regulatory and accounting industries to ensure that the duties of the board will be carried out in an independent fashion with the highest integrity. Our fear that the board is too closely aligned with the accounting industry is also reflected in the fact that the funds for the continuation of the CPAB will not come from the capital market as in the United States but from the member accounting firms that must register with the CPAB. We are of the opinion that the accounting industry is too closely entwined with the CPAB to make this a truly independent organization.

Beyond our concerns with the structure of the CPAB, we have no further comments on the Proposed Multilateral Instrument. We thank you for the opportunity to express our views.

Sincerely,



Ontario Teachers' Pension Plan Board
c/o Grace Hession
Manager, Corporate Governance and Proxy Voting
grace_hession@otpp.com

⁷ See Introduction – Notice and Request for Comments (2003) 26 OSCB 4945.

⁸ Article 3 – 3.1 The Board “By-Law Number 1” (2003) 26 OSCB 4957.

⁹ The three will be the C.E.O.'s of the provincial Institutes of Chartered Accountants in Alberta and Ontario and the C.E.O. of the Ordre des comptables agréés du Québec.