APPENDIX B

SUMMARY OF COMMENTS AND RESPONSES

No.	Section/Topic	Comment	Response
	Part One Definitions and Application		
1.	**Section 1.1 (*Definitions — Definition of Audit Committee Financial Expert*)**	One commenter suggested that the definition of "audit committee financial expert" should be harmonized with the definition utilized by the SEC, and that the Instrument should specify how a person can acquire the requisite attributes. One commenter suggested that paragraph (b) of the definition of "audit committee financial expert" be broadened to read "the ability to assess the general application of such accounting principles to the activities and the affairs of the issuer". Another commenter suggested that paragraph (b) be deleted as it is unclear and is captured by paragraph (c). One commenter also questioned whether paragraph (e) of the definition was necessary, as all directors and senior officers would be expected to have such knowledge.	The definition of "audit committee financial expert" has been deleted. See comments regarding Topic 36, below.
2.	**Section 1.1 (*Definitions — Definition of Immediate Family Member*)**	Several commenters raised concerns about the definition of "immediate family member".	See the comments regarding Topic 13, below.
3.	**Section 1.1 *(Definitions – Financially Literate)***	A number of commenters considered the definition of "financially literate" to provide sufficient guidance to allow an issuer to adequately assess a member's compliance with the Instrument. One commenter did not. One commenter suggested that the definition of "financially literate" be revised to expressly give the board the power to determine the requisite level of financial literacy for its audit committee members.	We have clarified in the Companion Policy that, in our view, it is not necessary for an audit committee member to have a comprehensive knowledge of generally accepted accounting principles and generally accepted auditing standards to be considered "financially literate". We disagree. In our view, an audit committee member must at least have the ability required by the definition.
4.	**Section 1.1 (*Definitions – Definition of Non-Audit Services*)**	One commenter believed that the definition of "non-audit services" was unhelpful, as it merely referred to services other than audit services. The commenter recommended that services provided to an issuer in connection with the issuer's statutory and regulatory filings be excluded from the definition of "non-audit services".	We have revised the definition of "audit services" to mean the professional services rendered by the issuer's external auditors for the audit and review of the issuer's financial statements or services that are normally provided by the external auditor in connection with statutory and regulatory filings or engagements. We believe this will address the commenters concerns about "non-audit services".

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5	**Section 1.1 (*Definitions – Definition of Venture Issuer*)**	One commenter noted that an issuer that only has securities quoted on an "alternative trading system" in Canada or the U.S. is a "venture issuer". The commenter suggested that it was anomalous that an issuer that has its securities listed or quoted on any marketplace outside of Canada or the U.S. would not be a "venture issuer". Three commenters recommended that the definition of "venture issuer" be based upon the size or market capitalization of the issuer.	The definition of "venture issuer" is based upon the definition used in National Instrument 52-102 *Continuous Disclosure Obligations*. To ensure harmony between these two instruments, we have not revised the definition to address these comments.
6.	**Section 1.2 (*Application — Subsidiary Entities*)**	One commenter recommended that the Instrument contain a clear definition of "equity securities". The commenter suggested that the definition include only voting securities and exclude preferred securities where the security holders do not ordinarily have a right to vote. One commenter noted that a subsidiary entity that has no equity securities displayed for trading on a marketplace is exempt from the Instrument if its parent entity is subject to the requirements of the Instrument. The commenter suggested that the exemption should be expanded to include those situations where the parent is subject to the equivalent provisions under SEC rules.	A definition of "equity securities" has not been incorporated into the Instrument, as this term is defined in the securities legislation of various jurisdictions. However, we have revised section 1.2 so that subsidiary entities that only have non-convertible, non-participating preferred securities displayed for trading on a marketplace are not subject to the Instrument, provided that the parent issuer is subject to the Instrument or to comparable US requirements. We agree, subject to the issuer having it securities listed on a U.S. marketplace and the issuer being in compliance with the requirements of that marketplace. We have revised section 1.2 accordingly.
7.	**Section 1.2 (*Application —Exchangeable Securities and other Issuers Exempt from Continuous Disclosure Requirements*)**	Several commenters recommended that the Instrument provide an exemption for issuers of exchangeable securities, as the financial statements of such issuers are not relevant to security holders. Another commenter noted that many issuers of medium term notes **(MTNs**) are exempt from both the continuous disclosure requirements in securities legislation and the audit committee requirements in corporate statutes. Consequently, the commenter recommended that MTN issuers be exempt from the requirement to have an audit committee that complies with the Instrument.	We agree. We have revised section 1.2 so that the Instrument will not apply to these issuers. We agree. We have revised section 1.2 so that the Instrument will not apply to these issuers who are credit support issuers.

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		One commenter suggested that any issuer eligible to rely on an exemption, waiver or approval granted to it by a regulator or securities regulatory authority relating to continuous disclosure be entitled to rely upon a similar exemption from the Instrument.	We believe that such an exemption would be too broad. However, when applying for relief from the continuous disclosure requirements in securities legislation, issuers may also seek exemptive relief from the Instrument. Applications for such relief will be considered on a case-by-case basis.
8.	**Section 1.2 (*Application – Limited Partnerships, Income Trusts and Holding Company Structures, etc.)***	Several commenters questioned how the Instrument would apply, generally, to issuers such as limited partnerships, income trusts and holding company structures. Another commenter recommended that an exemption from the independence requirements be made for arm's length qualifying transactions for capital pool companies (**CPCs**) and reverse take-over bids of public company shells. The commenter noted that in both cases, the directors and officers of the CPC or public shell company will often continue with the post-transaction entity, but may not meet the definition of independence on account of their association with the former CPC or public shell company. The commenter suggested that, because the director's or officer's association with the former CPC or public shell company would not have been in a managerial role, it would be inappropriate to preclude those officers and directors from being independent of the resulting entity.	Paragraph 1.2 of the Companion Policy describes our views regarding how the Instrument should apply to entities such as limited partnerships and income trusts. In our view, where the Instrument or this Policy refers to a particular corporate characteristic, such as a board of directors, the reference should be read to also include any equivalent characteristic of a non-corporate entity. In other words, in the case of an income trust, we expect that the trustees will appoint a minimum of three independent trustees to act as an audit committee and fulfil the responsibilities of the audit committee imposed by the Instrument. Similarly, in the case of a limited partnership, we expect the directors of the general partner to appoint an audit committee which fulfils these responsibilities. However, where the structure of an issuer would not permit it to comply with the Instrument, the issuer may seek exemptive relief. In addition, we have also added guidance to the Companion Policy regarding the application of the term "executive officer" to individuals who are employed through management companies. Notwithstanding that the transaction in question may be arm's length, we do not believe that the directors and officers of a former CPC or public shell company will necessarily be independent of the resulting issuer. Consequently we are not prepared to incorporate such an exemption.
9.	**Section 1.3** ***(Meaning of Affiliated Entity, Subsidiary Entity and Control)***	Two commenters noted that the definitions of affiliated entity, control and subsidiary entity were very fuzzy or difficult to follow. Two other commenters noted that the definitions were borrowed from U.S. securities law, but that neither the Instrument nor Companion Policy provided guidance as to	We considered the comments related to the definitions used in this section, but determined to retain them as they are the same as those contained in Rule 10A-3 under the 1934 Act (or **Rule 10A-3**).We believe that this is necessary for the Instrument to be as consistent as possible with the equivalent U.S. regulation.

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		how these terms were to be interpreted. The commenters strongly urged the CSA to adopt bright line definitions that reflect how these terms are commonly understood in Canada. One commenter suggested that it was unclear what was meant by "managing member" in subsection 1.3(1)(b)(ii). One commenter noted that subsection 1.3(1)(b) was an example of an incomplete definition, as it did not follow an "if this, then that" formula.	 The term "managing member" is meant to capture individuals who occupy positions of authority with entities other than corporations or limited partnerships (*i.e.*, limited liability companies, etc.). We believe that the definition in subsection 1.3(1)(b) is complete and, accordingly, have not modified it.
10.	**Section 1.4 (*Meaning of Independence — General*)**	A number of commenters endorsed the definition of independence contained in subsections 1.4(1) and (2). Seven commenters suggested that any examination of a member's independence should focus on the member's independence from management, rather than on his or her independence from the issuer. One commenter was concerned that issuers operating in regulated industries, especially those issuers designated as "common carriers", would find it difficult to locate directors who did not have a material relationship with the issuer. Two commenters suggested that a director should be considered to be not independent only if the director had a material relationship with the issuer that might interfere with the exercise of the director's judgement with respect to matters that might come before the audit committee. One commenter suggested that where a director had a material relationship with the issuer, the board should be permitted to override this determination if the independent directors unanimously approve the decision and disclosure of the decision is made in the issuer's annual disclosure.	- We concur that an audit committee member's independence from management is a critical component of the member's independence. However, in addition, a member should not be affiliated with the issuer, as affiliated entities can exert control over management. Furthermore, a member must also be independent of the issuer's internal and external auditors, to facilitate auditor independence. As noted in subsection 1.4(2), a material relationship means a relationship that could, in the view of the issuer's board of directors, reasonably interfere with the exercise of a member's independent judgement. We believe that there is likely a pool of directors who are not related to the common carrier in a manner that, in the view of its board, would reasonably interfere with the exercise of their independent judgement. We do not agree that the scope of the independence definition should be restricted to those matters that might come before the audit committee. Independence requires objectivity on the part of the director with respect to all matters related to the issuer. Further, this suggestion would be inconsistently applied given the subjectivity that would be involved in determining whether a matter might come before the audit committee. We also do not agree that the board should be able to override the independence provisions where a director has a material relationship with the issuer. Both of these suggestions would detract from consistency in the application of the independence provisions included in the Instrument.

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11.	**Section 1.4 (*Meaning of Independence — Prescribed Relationships, General*)**	One commenter commended the CSA for providing such a comprehensive test for independence. However, 14 commenters suggested that the prescribed relationships set out in subsection 1.4(3) were either too stringent or unnecessary. Eight commenters recommended that a board be permitted to designate a director as being independent notwithstanding that the director would be deemed to be not independent under subsection 1.4(3) of the Instrument. Five commenters suggested, however, that any such determination by the board be publicly disclosed by the issuer, together with the board's reasons for making the determination. Two commenters suggested that the specific relationships identified in subsection 1.4(3) should be moved to the Companion Policy, where they would provide guidance to the board in applying the test set out in subsection 1.4(1). Another commenter believed that it was unnecessary to specifically deem directors with the identified relationships to be not independent. With respect to the specific relationships prescribed by subsection 1.4(3), one commenter considered them to be generally appropriate. Two other commenters, however, noted that the prescribed relationships did not capture some relationships (such as close friendships) and other factors that could influence board independence. One commenter suggested that only the independence restrictions imposed by SOX (i.e., those found in subsections 1.4(3)(e) and (f)) should apply to audit committees. Another commenter suggested that, if the prescribed relationships were to be included in the Instrument, they should go no further than those proposed by the SEC and NYSE.	We appreciate the concerns that have been expressed and have made the following accommodations. Subsection 1.4(3) has been revised such that an immediate family member must be an executive officer, rather than merely an employee, in order to preclude a finding of independence. The Instrument has also been revised to provide a temporary exemption for a director who is not independent to be a member of the audit committee in limited and exceptional circumstances. While we have made these accommodations to address the concerns expressed, we consider the prescribed relationships set out in subsection 1.4(3) to be of a sufficiently fundamental nature as to preclude a finding of independence. Further, in the revised Instrument, they generally mirror the relationships that have been prescribed by the SEC in Rule 10A-3 and the NYSE listing requirements. We do not agree that the board should be able to designate a member as being independent notwithstanding that the member would be deemed to be not independent under subsection 1.4(3) of the Instrument. We also do not agree that the specific relationships identified in subsection 1.4(3) should be moved to the Companion Policy. The underlying premise of subsection 1.4(3) is that individuals in these relationships lack the independence to be audit committee members. We recognize that subsection 1.4(3) does not capture all possible relationships that could influence a member's independence. However, it is the responsibility of the board to consider all relationships in exercising its discretion under subsection 1.4(2) of the Instrument. We do not agree that only the independence provisions imposed by SOX should apply to audit committees. This would be inconsistent with broader regulation that is imposed by U.S. exchanges. The SEC has recognized the importance of U.S. exchange regulation in approving the listing requirements of such exchanges. We have revised the Instrument to ensure that the prescribed relationships included in the Instrument are no broader than those prescribed by the SEC and the NYSE.
12.	**Section 1.4 (*Meaning of Independence — Non-Executive Chairs*)**	Five commenters noted that many non-executive chairs and vice-chairs would be deemed to be not independent under the proposed Instrument. One commenter noted that the term "full time" was not very helpful.	We acknowledge that a full-time chair and vice-chair would be deemed to have a material relationship with the issuer under the proposed Instrument. The presumption is that, if a person is performing the function on a full time basis, they are acting in the capacity of an executive officer regardless of their designation. The Instrument has been revised to clarify that fees paid to a non-executive chair or vice-chair will not, alone, cause that person's independence to be impeded.

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13.	**Section 1.4 (*Meaning of Independence — Restrictions regarding Immediate Family Members*)**	Various commenters raised concerns regarding the definition of "immediate family member" and its role in determining a member's independence under section 1.4 of the Instrument. Many of the commenters noted that the relationships identified in subsections 1.4(3)(a) through (d) were derived from the listing requirements of the NYSE and use the NYSE definition of "immediate family member" which is broader than the definition of "immediate family member" used by the SEC. They suggested that the test in subsection 1.4(3)(e), which was derived from Rule 10A-3, use the narrower SEC definition of immediate family member.	The Instrument has been revised accordingly.
		Five commenters suggested that it was inappropriate to deem a director to be not independent merely because their immediate family member was employed by the issuer. Instead, they suggested that the determination of independence in such circumstances be left to the board of directors.	The Instrument has been revised so that the immediate family member must be an executive officer of the issuer to preclude independence. However, we do not agree that the determination of independence in that circumstance should be left to the board of directors.
		Other commenters suggested that a director's independence should be impaired by an immediate family member's employment with the issuer only if the immediate family member worked full time for the issuer and occupied a senior position that involved a policy-making function. They suggested that the board be given discretion to override these prohibitions.	See our response above.
		Six commenters suggested that a monetary threshold be used to measure the seniority of an employment relationship. One commenter suggested a $75,000 threshold, while others suggested a threshold of $100,000 or $150,000. A seventh commenter noted that any monetary threshold would be arbitrary.	Subsections 1.4(3)(a) and (b) of the revised Instrument focus on employment while subsection 1.4(3)(f) focuses on compensation. As noted above, an immediate family member must now be an executive officer of the issuer to preclude independence. We continue to believe that if a member is an employee of the issuer, that person should be precluded from being considered independent.
14.	**Section 1.4 (*Meaning of Independence — The Prescribed Period*)**	Several commenters noted that, unlike the Instrument, the SEC requirements did not impose a "look-back" position. These commenters recommended that the Instrument be more closely harmonized with the U.S. requirements.	We agree that the provisions that have been derived from Rule 10A-3 should not impose a "look-back" period. The Instrument has been revised accordingly.
		Two commenters recommended that a two year cooling off period would be more appropriate. Another commenter suggested a one year period. A fourth commenter	We do not agree with these comments and continue to believe that three years is an appropriate cooling off period. The NYSE has also adopted a three year cooling off period in its director independence requirements. We

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		recommended either a one or two year period, while a fifth commenter recommended a one year cooling off period, to be used as a guideline only. Generally, the commenters recognized that a balance must be achieved between directors who are independent and those that have knowledge and expertise in the business and industry. One commenter suggested that a three year cooling off period for former partners, members or executive officers of entities that provide consulting, legal, investment banking or financial advisory services is too restrictive. Instead, this presumption should be rebuttable by the board. One commenter suggested that the policy include an example of how the prescribed period should be applied.	do not agree that the three year cooling off period should be rebuttable by the board.
15.	**Section 1.4 (*Meaning of Independence — Persons Employed by Auditor*)**	Two commenters suggested limiting the prescribed relationship in subsection 1.4(3)(b) to those employed in a "professional capacity", in the same manner that they are used in subsection 1.4(3)(c). Another commenter recommended that the restrictions in subsections 1.4(3)(b) and (c) relating to former partners and employees of the current or former external auditors only apply to those persons who provided services to the issuer.	We do not agree. These prescribed relationships are consistent with those included in the NYSE listing requirements.
16.	**Section 1.4 (*Meaning of Independence — Prohibition Against Certain Compensatory Fees*)**	Five commenters recommended that the prohibition against compensatory fees be subject to a *de minimis* threshold. Two commenters suggested that a monetary threshold for various independence requirements would not be successful, as the number would be either arbitrary or otherwise insufficient. One commenter questioned whether being in a lawyer-client relationship necessarily created a situation of non-independence. In the experience of the commenter, the reverse was often true, as the commenter believed that lawyers were often very conservative and risk-averse by training.	We are of the view that the prohibition against compensatory fees should not be subject to a *de minimis* threshold. The application of a *de minimis* threshold may not be appropriate for all types of fees and services and may not be consistently applied by issuers. Further, the absence of a *de minimis* threshold is consistent with the parallel restriction included in Rule 10A-3. As noted above, it is desirable that the Instrument be as consistent with equivalent U.S. regulation as possible. We disagree.
17.	**Section 1.4 (*Meaning of Independence — Limited***	One commenter questioned the use of the term "limited partner" in subsection 1.4(5) because, to the knowledge of the commenter, no accounting firm was organized as a limited	We agree and have amended subsection 1.4(5) accordingly.

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	***Partners*)**	partnership. Instead, the commenter recommended the use of the term "fixed income partner".	
18.	**Section 1.4 – (*Meaning of Independence — Indirect Acceptance of Compensatory Fees*)**	Three commenters noted that the indirect acceptance provisions in subsection 1.4(7) are phrased differently than the corresponding provisions in the U.S. The commenters thought that this may result in confusion. The commenters also believed that the language in subsection 1.4(7) captured a broader group of persons and companies than the comparable U.S. provisions. Another commenter suggested that subsection 1.4(7)(b) be amended to clarify that the exception included therein extends to associates (*i.e.*, non-partner employees of professional firms) whose compensation does not depend directly on the fees received from the issuer. Three commenters were unclear regarding the meaning of "member" or "non-managing member".	The provisions of subsection 1.4(7) have been revised to more closely parallel the equivalent U.S. provisions. The term "member" is meant to capture individuals who occupy positions of authority with entities other than corporations or limited partnerships (*i.e.*, limited liability companies, etc.). The term "non-managing member" has the reciprocal meaning.
	Part 2 Audit Committee Responsibilities		
19.	**Section 2.2 – (*Relationship with External Auditor*)**	One commenter suggested that the Instrument include some direction regarding the scope of the work that may be performed by the external auditor for the benefit of the audit committee. At the very least, the commenter suggested revising subsection 2.3(4) to prohibit the audit committee from pre-approving any non-audit work which, in the opinion of the audit committee, would result in the external auditors auditing their own work. One commenter suggested that the Instrument go further to strengthen the interaction between the auditor and the audit committee. The commenter suggested that the audit committee be required to meet with the external auditor at least once per year, and to discuss with the external auditor his or her professional judgements with respect to all critical	We believe that the restrictions on the scope of work that can be performed by an external auditor are appropriately dealt with by the Canadian Institute of Chartered Accountants (**CICA**) standards on independence. We have therefore not added the suggested guidance to the Instrument. We believe that it would not be appropriate to include such responsibilities in the Instrument. If the external auditors are unable to fulfil their professional obligations, they will be unable to complete the issuer's audit.

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		accounting policies and practices used by the issuer and all alternative accounting treatments. The commenter also recommended that material written communication between the auditor and the issuer's management be discussed. Further, the commenter suggested that the audit committee be required to disclose the number of times per year that such meetings were held and whether such discussions took place. One commenter suggested that the relationship of the audit committee and the internal audit function be formalized in the Instrument. The commenter suggested that where an internal auditing function does not exist in an issuer, the audit committee be required to annually assess whether its absence creates unacceptable risk for the organization.	At this time, we have decided not to require issuers to maintain internal audit functions.
20.	**Subsection 2.3(2) (*Audit Committee Responsibilities – Recommendations to the Board*)**	One commenter suggested that, rather than requiring the audit committee to recommend to the issuer's board of directors the compensation of the external auditors as provided in subsection 2.3(2)(b), an issuer's board of directors should be permitted to delegate to the audit committee its authority to approve the compensation of the external auditors. The commenter noted that, under the *Canada Business Corporations Act* and the *Alberta Business Corporations Act*, the delegation of the director's authority to fix the remuneration of the auditors is not restricted as it is for other director actions.	We agree that the board of directors may delegate such matters to the audit committee. However, the directors may only fix the remuneration of the external auditors if the shareholders fail to do so (s.162 (4), CBCA; s.162(4), ABCA) Although in practice, the directors may fix the remuneration, the right to fix the remuneration is, nevertheless, a right of the shareholders. We therefore believe that it is inappropriate to include in the Instrument a presumption that the right will not be exercised.
21.	**Subsection 2.3(3) (*Audit Committee Responsibilities – Oversight of Work of External Auditors*)**	One commenter was concerned that the responsibility to "oversee" the work of the external auditors would preclude the external auditors from providing their views directly to the shareholders if the external auditors disagreed with the approach being taken by the audit committee. The commenter viewed the responsibility to oversee the "resolution of disagreements between management and the external auditors regarding financial reporting" as reinforcing this interpretation. The commenter believed that the matter of whether the external auditors are performing their function appropriately should be left to the standards established and maintained by the accounting profession and its various oversight bodies. One commenter questioned whether the phrase "directly	We have included a paragraph in the Companion Policy to clarify that the external auditors have the authority to also give their views directly to the shareholders if they disagree with the approach being taken by the audit committee. We agree that the external auditors are subject to professional standards and oversight by professional oversight bodies. We believe that specific decisions regarding the execution of the audit committee's oversight responsibilities, as well as decisions regarding the extent of desired involvement by the audit committee, are best left to the discretion of the audit committee of the issuer in addressing the issuer's individual circumstances. The phrase "directly responsible" is used to clarify that the oversight

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		responsible" implied an additional responsibility for the audit committee. If so, this commenter recommended clarification in the Instrument.	responsibility rests with the audit committee. Accordingly, no additional clarification has been added.
22.	**Subsection 2.3(4) (*Audit Committee Responsibilities – Pre-approval of non-audit services*)**	Five commenters believed that the Instrument should address the use of specific policies and procedures for the pre-approval of non-audit services. Three commenters suggested that we incorporate in the Companion Policy guidance regarding pre-approval requirements similar to that provided in the SEC's FAQ on Auditor Independence Two commenters suggested that the pre-approval requirements in subsection 2.3(4) should also extend to audit services. Two commenters suggested that the pre-approval requirement in subsection 2.3(4) should not be extended to the external auditors of an issuer's subsidiary if they are not the auditors of the issuer. One of the commenters limited this suggestion to the situation where the subsidiary, itself, is subject to the Instrument. Another commenter suggested that the pre-approval requirement should relate to all audit services provided to the issuer whether by its external auditors or the external auditors of subsidiary entities, that non-audit services provided to subsidiary entities by their external auditors (where they are not also the issuer's external auditors) should not be subject to pre-approval by the audit committee of the issuer, and that fee disclosure requirements should relate to all services provided by the external auditors of the issuer but not to any services provided to subsidiary entities by their external auditors (where they are not also the issuer's external auditors.) One commenter suggested that that it is the responsibility of the audit committee and the board of directors to establish pre-approval policies and procedures that are appropriate to	The discussion of pre-approval policies and procedures previously found in paragraph 5.1 of the Companion Policy has been incorporated into the Instrument. Guidance related to monetary thresholds and the appropriate level of detail necessary for such pre-approval has been included in the Companion Policy. We disagree with this suggestion. Under Canadian corporate law, the shareholders have the right to appoint the external auditor. By requiring the audit committee to pre-approve the provision of audit services, we believe that we would interfere with this right of the shareholders. Subsection 2.3(4) has been revised so that non-audit services that are provided by the issuer's external auditors to either the issuer or its subsidiary entities must be pre-approved by the issuer's audit committee. Paragraph 9 of Form 52-110F1 and paragraph 6 of Form 52-110F2 have been revised to clarify that the fee disclosure requirements contained therein relate to all services provided to the issuer or its subsidiary entities by the issuer's external auditors. They do not relate to any services provided by the external auditors of a subsidiary entity if they are different than the external auditors of the issuer. We agree. We do not believe that the provisions of the Instrument regarding pre-approval polices and procedures constitute "detailed rules and interpretations".

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		assess auditor independence. Consequently, detailed rules and interpretations should not be prescribed in this respect.	
23.	**Subsection 2.3(5) (*Audit Committee Responsibilities — Review of Financial Statements, etc.*)**	One commenter noted that the requirement for the audit committee to review an issuer's earnings press releases prior to public disclosure was unnecessary as such releases were derived from an issuer's primary financial documents which must also be reviewed by the audit committee. The commenter suggested that it was logically inconsistent to single out earnings press releases from the other statements an issuer might make about itself and its prospects, many of which would be unscripted. The commenter argued that this logical inconsistency was recognized in the recent and pending amendments to the *Securities Act* (Ontario). By requiring the audit committee to review earnings press releases, the commenter suggested that such releases would effectively become "board statements", and dangerously cross the line between management and the board.	We believe that earnings press releases, unlike many of the other statements that an issuer may make about itself or its prospects, are high profile documents which can often trigger media attention and affect an issuer's share price. Consequently, we believe such documents are sufficiently important to be reviewed by the audit committee prior to public release.
		Another commenter requested clarification as to whether the phrase "earnings press releases" included profit warnings and similar guidance. If so, the commenter recommended that a temporary exemption be provided where an earnings press release was used in the context of a "material change", as the issuer has an obligation to make prompt disclosure of information to the marketplace.	We do not consider the phrase "earnings press releases" to include profit warnings or similar guidance. To clarify this point, subsection 2.3(5) has been revised by replacing the phrase "earnings press releases" with "annual and interim earnings press releases".
24.	**Subsection 2.3(6) (*Audit Committee Responsibilities — Procedures for review of Other Financial Disclosure*)**	One commenter suggested that subsection 2.3(6) be clarified as to whether the review of financial information must occur before or after its public disclosure.	In our view, to be meaningful, the review must occur prior to the public disclosure of such financial information.
25.	**Subsection 2.3(7) (*Audit Committee Responsibilities – Establishing Complaint Procedures, etc.*)**	One commenter recommended that issuers also be required to establish procedures for the treatment of reports of alleged fraud and illegal acts.	Subsection 2.3(7) presently encompasses fraud and possibly illegal acts to the extent they relate to accounting, internal accounting controls, or auditing matters. As such, we do not believe it necessary for subsection 2.3(7) to be revised.
		One commenter recommended that there be a six month	We disagree. We believe issuers will have sufficient time to establish such

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		transition period to allow meaningful procedures to be established.	procedures given the proposed effective date of July 1, 2004. See Topic 41, below.
		One commenter suggested that anonymity not be required to be maintained in subsection 2.3(7)(b) if, in the reasonable opinion of the audit committee, the maintenance of anonymity would significantly impair the audit committee's ability to investigate and deal with concerns initially submitted by an employee. Another commenter suggested that anonymous submissions by employees should not be allowed, but that each submission should be required to be signed by the employee.	We disagree. We believe that anonymity is essential for employees to communicate their concerns.
26.	**Section 2.4 (*De Minimis Non-Audit Services*)**	Two commenters suggested that subsection 2.4(a) should refer to services that are "reasonably expected to constitute" a maximum percentage of the total amount of revenues, since one may not know the total revenues until year end.	We agree. Section 2.4 has been revised accordingly.
		One commenter suggested that the *de minimis* exemption for pre-approval of non-audit services should be increased from 5% to 10% of total audit fees paid by both the issuer and its subsidiary entities to the issuer's external auditors in subsection 2.4(a).	Subsection 2.4 has been revised to clarify that the *de minimis* exemption relates to 5% of the fees paid by the issuer and the issuer's subsidiary entities to the issuer's external auditors. It does not relate to the fees paid for any services provided by the external auditors of a subsidiary entity if those auditors are different than the external auditors of the issuer.
		This commenter also suggested that the issuer and the auditor should not have to not recognize the services as non-audit services for the *de minimis* exemption to be available and, accordingly, that subsection 2.4 (b) should be deleted.	We do not agree that subsection 2.4(b) should be deleted. The purpose of section 2.4 is to provide relief only in the circumstances where there has been an oversight.
		One commenter suggested that subsection 2.4(c) should require that non-audit services be brought to the attention of , and approved by, the audit committee of the issuer prior to the public release of the audited financial statements rather than prior to completion of the audit. Another commenter suggested that the appropriate deadline be the next scheduled meeting of the audit committee. Both commenters suggested that the word "promptly" be deleted from subsection 2.4(c).	We consider it to be important that the provision of non-audit services be reported promptly, and that they be approved by the audit committee prior to completion of the audit, so that the audit committee can assure itself that the non-audit services did not detract from auditor independence.
27.	**Section 2.5 (*Delegation of Pre-Approval***	One commenter suggested that by expressly allowing pre-approval of *de minimis* non-audit services to be delegated to	See our response to Topic 28, below.

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	***Function*)**	one or more audit committee members, it could be inferred that no other audit committee functions may be delegated. The commenter suggested that boards and audit committees should be free to determine their own functions and procedures and that audit committees should be free to delegate any powers within their responsibility and mandate to one or more audit committee members as they see fit in the context of the issuer, the membership of the audit committee and other unique factors. In the commenter's view, this would be particularly critical where timeliness is required such as in connection with the review of the issuer's financial statements, MD&A and earnings press releases as per subsection 2.3(5). According to the commenter, any matter so delegated should be presented to the full audit committee at its next annual meeting.	
	Part 3 Composition of the Audit Committee		
28.	**Section 3.1 (*Composition*)**	One commenter suggested that the Instrument be clarified such that an audit committee can set its own quorum requirements and procedures, including those related to its ability to act without all members being present.	We have revised the Companion Policy to provide clarification.
		Two commenters suggested that the Instrument permit venture issuers or other small issuers to have an audit committee composed of less than three members. Another commenter suggested that an exemption from the minimum size requirement be provided in certain transitory circumstances, such as in the case of the death, disability or resignation of an audit committee member.	We note that most Canadian corporate statutes require that an audit committee be composed of a minimum of three directors. Because any exemption from the minimum size requirement in section 3.1 would have little practical effect, we have not included such an exemption in the Instrument.
		One commenter was concerned that the composition requirements put too much emphasis on technical independence issues, and not enough emphasis on the broader business and industry knowledge that is critical for audit committee effectiveness.	While the Instrument focuses on the independence and financial skills and experience of audit committee members, we recognize the value of broader business and industry knowledge. In our view, however, it is the responsibility of the directors to ensure that audit committee members have this broader knowledge.
29.	**Section 3.2 (*Initial Public Offerings*)**	Four commenters were of the view that the exemptions were appropriate.	-

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		One commenter suggested that section 3.2 should also clearly apply to a "secondary IPO".	We believe that the exemption in section 3.2, as written, clearly applies to all initial public offerings, including those that involve the distribution of securities by selling security holders. No change to the Instrument has therefore been made.
30.	**Section 3.3 (*Controlled Companies*)**	Two commenters believed that the exemption in section 3.3 appropriately addressed the concerns of controlling shareholders. Many commenters, however, expressed concern about the inability of a controlling shareholder to fully participate in an issuer's audit committee. In particular: ● One commenter recommended that shareholdings alone should not taint independence. ● Three commenters noted that where equity and voting rights were controlled by the same person or entity, such person or entity should not (on that basis alone) be precluded from being an independent member of the audit committee. ● One commenter suggested that a major or controlling shareholder has an urgent and compelling interest in ensuring strong oversight of financial reporting and should not be prohibited from participation on the audit committee. ● Two commenters suggested that a controlling shareholder should be permitted to sit on an audit committee. The first commenter recommended that a majority of the audit committee members be unrelated to the major shareholder. The second commenter recommended that the remaining members be independent. ● Several commenters recommended that senior employees of controlling shareholders be permitted to sit on audit committees. ● Two commenters noted that the very nature of a family business almost requires that a family member sit on the audit committee. ● One commenter suggested extending the exemption in section 3.3 to any insider or associate as well as any	We acknowledge the comments received and have revised the Instrument to provide exemptions for the following persons to sit on an issuer's audit committee: - a controlling shareholder that is not a publicly traded company; and - a controlling shareholder who is a natural person.

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		affiliate.	
31.	**Section 3.4 (*Events Outside Control of Member*)**	One commenter recommended that the Instrument contain an exemption from the financial literacy requirements for a period following the introduction of new accounting standards, to provide members an opportunity to get up to speed on the new standards.	We do not believe that a person's financial literacy, as defined in the Instrument, will necessarily be affected by the introduction of new accounting standards. As a result, this comment has not been reflected in the Instrument.
32.	**Section 3.5 (*Death, Disability or Resignation of Member*)**	One commenter suggested that section 3.5 provide an exemption from the minimum size requirement of subsection 3.1(1).	We disagree. See the response to comments on Topic 28, above.
33.	**Part 3 (*Other*)**	One commenter was of the view that the Instrument required audit committee members to have industry specific financial literacy. The commenter suggested that a two year exemption from the industry specific provisions of the financial literacy requirement be provided for all new audit committee members. Another commenter recommended that a temporary exemption from the financial literacy requirements be provided for all existing audit committee members.	The Instrument has been revised whereby a director who is not financially literate may be appointed to the audit committee provided the member becomes literate within a reasonable period of time following his or her appointment.
	Part 5 Reporting Obligations		
34.	**Section 5.1 (*Required Disclosure – Location of Required Disclosure*)**	Three commenters supported including the disclosure required by Form 52-110F1 in an issuer's AIF. Another commenter suggested that an issuer should have the option of including this information in either its management information circular or its AIF. Another commenter suggested that an issuer should have the flexibility to include this information in its annual report or proxy circular provided that the location of the disclosure is referenced in its AIF. Another commenter suggested that the disclosure be included in an issuer's financial statements One commenter suggested that an issuer should be permitted to post the text of its audit committee's charter on its web site,	We are of the view that the disclosure required by Form 52-110F1 should always be included in the AIF so that an investor knows where to look for it. However, we will not object to an issuer incorporating information into the AIF by reference to another document, other than a previous AIF. See paragraph 6.1 of the Companion Policy.

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		provided that the AIF contain an appropriate cross-reference.	
35.	**Section 5.1 (*Required Disclosure – Content of Required Disclosure – Text of Audit Committee Charter*)**	Three commenters suggested that only a summary of the audit committee's charter should be required to be disclosed rather than the full charter. One of the commenters was also of the view that the disclosure about the audit committee's charter should be restricted to the audit committee's responsibilities and the extent to which those responsibilities were fulfilled. In the view of the commenters, summary information about the charter would be more succinct and useful to readers. One commenter suggested that annually disclosing the text of the audit committee's charter was too onerous, and recommended that such disclosure only be required every three years. The commenter noted that such a change would harmonize the Instrument with the equivalent U.S. requirements. One commenter suggested that the publication of the audit committee's charter may lead to enhanced personal civil liability for audit committee members, which would discourage participation on audit committees. The commenter therefore queried whether publication should be mandatory.	We disagree. We believe that access to the complete text of an audit committee's charter is valuable to investors and other market participants. We note that the Instrument does not prohibit an issuer from providing succinct, summary information about the charter if the issuer believes such a summary would be useful to readers, provided that the full text of the charter is also disclosed in accordance with the Instrument. See our response to Topic 34, above. We disagree.
36.	**Section 5.1 (*Required Disclosure – Content of Required Disclosure - Identification of an Audit Committee Financial Expert*)**	One commenter supported the approach to the audit committee financial expert because it would provide flexibility for issuers, being only a disclosure requirement; the definition is relative to the complexity of an issuer and its affairs and therefore sensitive to the circumstances of small issuers; and it is consistent with the approach that has been taken in the United States. Four commenters were of the view that the disclosure requirement was inadequate and suggested that every issuer be required to have an audit committee financial expert on its audit committee. Another commenter made the same recommendation for all issuers other than venture issuers. 14 commenters expressed concern that the requirement for an issuer to disclose the identity of any audit committee financial expert serving on its audit committee may result in increased legal liability for that person. The commenters generally	We continue to believe that the attributes of an audit committee financial expert will be a valuable resource for an audit committee. However, we acknowledge the concerns that have been expressed about this provision including: actual or perceived incremental liability for an individual who is identified as an audit committee financial expert; the limited number of individuals who are qualified to be audit committee financial experts; and the negative impact that actual or perceived incremental liability would have on the willingness of individuals to serve as an audit committee financial expert. Accordingly, the Instrument will no longer require an issuer to disclose the identity of an audit committee financial expert. However, in order to encourage issuers to have available to their audit committees the attributes that were previously included in the definition of an audit committee financial expert, we have amended paragraph 3 of Form 52-110F1 to require disclosure of each member's education and experience that is relevant to the performance of his or her responsibilities as an audit committee member and, in particular, any education and experience that would provide the

No.	Section/Topic	Comment	Response
		noted that the CSA's clarifying views expressed in paragraph 4.2 of the Companion Policy are not binding on the courts (or even on the Commission), and many expressed the view that legislative reform will be necessary to achieve the protective goal that the Companion Policy aspires to achieve. The solutions put forward by these commenters include: • eliminating the disclosure requirement entirely; • replacing the disclosure requirement with a positive statement as at why a person with financial experience or expertise is desirable; • disclosing that the audit committee has an audit committee financial expert but not specifically identifying the individual; • permitting (but not requiring) an explanation if there is no audit committee financial expert; • requiring detailed "non-boilerplate" disclosure about the qualifications of each member of the audit committee; and • including in the Instrument itself (as opposed to in the Companion Policy) a statement that the mere designation and public identification of an audit committee financial expert does not affect that person's duties, obligations or liabilities as an audit committee member or board member. A number of commenters expressed concern about the number of audit committee financial experts that would be available to serve on boards. One of these commenters also noted that it would be of questionable value to have the same audit committee financial expert serving on the boards of numerous issuers. One commenter believed that the operation of the audit committee, being a committee of financially literate members, should be sufficient to meet the goals of good governance. One commenter was of the view that the identification of an audit committee financial expert by the issuer may be	member with certain specified attributes. These attributes are nearly identical to the attributes of an audit committee financial expert as defined by the SEC, after giving effect to the SEC instruction regarding the term "generally accepted accounting principles" in connection with the application of that definition for foreign private issuers. The guidance regarding how an individual may acquire the requisite attributes has been deleted from Form 52-110F1.

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		misleading to investors. The commenter believed that such identification would likely be relied on by investors, and may cause investors to not examine the qualifications of each audit committee member to assess whether the committee as a whole is adequately imbued with the requisite level of expertise and experience. One commenter suggested that the Companion Policy should make it clear that the conclusions with respect to minimizing financial expert liability exposure apply as well to financial experts on the audit committees of inter-listed issuers that avail themselves of the Part 7 exemption. One commenter suggested that the requirements related to the audit committee financial expert be deferred until July 31, 2005, the date by which foreign private issuers in the U.S. are required to comply with the U.S. audit committee rules.	
37.	**Section 5.1 (*Required Disclosure – Content of Required Disclosure – Disclosure Where Reliance on Certain Exemptions*)**	One commenter expressed broad support for disclosure obligations for those relying upon the exemptions in sections 3.2, 3.3, 3.4 and 3.5 of the Instrument. Two commenters suggested that there should be no requirement to disclose whether an issuer is relying on the controlled company exemption in section 3.3. The commenters noted that Rule 10A-3 does not contain a similar disclosure requirement.	- We agree. Form 52-110F1 has been revised accordingly.
38.	**Section 5.1 (*Required Disclosure– Content of Required Disclosure – Fees and Other Disclosure*)**	One commenter suggested that paragraphs (a) "Audit Fees" and (b) "Audit-Related Fees" of paragraph 7 of Form 52-110F1 and paragraph 5 of Form 52-110F2 should be collapsed into one disclosure item requiring disclosure of "any services other than non-audit services." One commenter suggested that disclosure of "Tax Fees" is not relevant and should be removed. The commenter was of the view that this disclosure could impair the capability of an issuer to plan its affairs to minimize its tax expenses.	We disagree. We note that those disclosure categories parallel those adopted in the U.S. We disagree. In our view, all fees that are paid to the external auditors should be reported to shareholders. Further, we do not believe that disclosing fees, as opposed to strategies, would impair the capability of an issuer to plan its affairs to minimize its tax expenses.

No.	Section/Topic	Comment	Response
		One commenter suggested that only one year of the external auditor's service fees should be required to be disclosed by paragraph 7 of Form 52-110F1 and paragraph 5 of Form 52-110F2.	We disagree. Disclosure of the external auditor's fees should be required for each of the issuer's two most recent fiscal years to allow an investor to consider them in the context of the issuer's comparative financial statements and other financial disclosure.
		One of the commenters noted that the requirement for venture issuers to disclose their practices, fees and reliance on the exemption would provide an incentive for them to upgrade their audit committees as soon as possible.	-
		One commenter suggested that the audit committee should be required to report on its activities.	We disagree. The Instrument requires an audit committee to perform a number of activities. We believe that, in the circumstances, there is no need for a disclosure requirement.
		One commenter was concerned that the disclosure required by paragraph 5 of Form 52-110F1 would be prejudicial to the external auditors and that such disclosure could repress the dialogue amongst board members.	We disagree. We believe that such disclosure is necessary to ensure that the board seriously considers the recommendations of the audit committee.
	Part 6 Venture Issuers		
39.	**Section 6.1 (*Venture Issuers*)**	Five commenters supported the exemption for small issuers. One commenter, however, was not supportive of the exemption because, in their view, it would create a two-tier market in Canada in connection with the core principles of financial reporting, auditing and governance.	We thank the commenters for their support. We believe that the exemption constitutes a practical trade-off between the furtherance of the goals of the Instrument and the practical realities of small issuers.
		Two commenters supported the exemption based on the definition of "venture issuer" in section 1.1. Two commenters suggested that small TSX-listed issuers should also be entitled to this exemption. One commenter noted that some fairly large issuers will meet the definition of a venture issuer and that they should not be afforded the exemption. One commenter suggested that a more appropriate exemption might be based on the size or market capitalization of the issuer.	We have left the exemption unchanged. We do not agree with the suggested changes. Basing the exemption on exchange listing status provides for a readily discernible bright line test. Furthermore, the TSX is Canada's senior stock exchange and, as such, investors (particularly, international investors) expect to be accorded regulatory protection that is equivalent to that provided by the major U.S. stock exchanges. Confidence in Canada's capital markets is predicated on such equivalent regulatory protection. An investor can readily determine whether or not an issuer is complying with all of the provisions of the Instrument by the stock exchange on which its securities

No.	Section/Topic	Comment	Response
			are listed.
		One of the commenters supported the exemption but suggested that at least one audit committee member should be required to meet the independence and financial literacy requirements outlined in subsection 3.1.	We thank the commenter for their support. However, we do not agree that the exemption should be more limited. We believe that the exemption constitutes a practical trade-off between the furtherance of the goals of the Instrument and the practical realities of small issuers.
	Part 7 U.S. Listed Issuers		
40.	**Section 7.1 (*U.S. Listed Issuers*)**	One commenter suggested that the exemption in Part 7 be expanded to include unlisted issuers that are in compliance with U.S. federal securities laws implementing the audit committee requirements of the Sarbanes-Oxley Act.	The exemption in Part 7 was intended to provide relief for issuers who are subject to U.S. audit committee requirements which are comparable with those in the Instrument. The U.S. audit committee requirements include requirements imposed by U.S. exchanges and Nasdaq. Expanding the exemption to include unlisted issuers would not ensure that the issuers in question are subject to U.S. audit committee requirements comparable to those in the Instrument. Consequently, we have not adopted this suggestion.
		One commenter suggested that section 7.1 should refer to "quoted" as well as "listed" securities.	This change has been made.
		One commenter questioned why 10-Ks (which, by definition, are AIFs) that are filed by foreign issuers must include the disclosure required by paragraph 5 of Form 52-110F1.	We have revised the exemption in Part 7 to clarify that the requirement to include the paragraph 5 disclosure will only apply to Canadian issuers that use the exemption.
	Part 9 Effective Date		
41.	**Section 9.1 (*Effective Date*)**	Several commenters expressed concern about the transitional provisions included in this Part. Only one commenter was fully supportive of its provisions. Five commenters were of the view that the provisions were too restrictive. Two of these commenters suggested that the implementation dates for issuers that are interlisted on U.S. exchanges should not be earlier than July 31, 2005, the date by which foreign private issuers in the U.S. are required to comply with the U.S. audit committee rules. One of the commenters also supported a later date given that the rules are not yet in force and could impose significant new requirements on issuers. A third commenter was of the view that a six month transitional period would be appropriate.	Subsection 9.2(2) has been revised so that the Instrument applies to an issuer commencing on the first annual meeting of the issuer after July 1, 2004. We believe this effective date will provide issuers with sufficient time to arrange their affairs in compliance with the Instrument.

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		Two other commenters suggested that there should be at least a 12 month transitional period. One commenter requested clarification as to whether issuers with fiscal year ends prior to the implementation date included in Part 9 will be required to take the Instrument into account in preparing their annual proxy materials during the 2004 proxy season. Three commenters suggested revisions to the mechanics of the transitional provisions. One commenter suggested that the effective date relate to year-ends of filings of annual financial statements but not annual meeting dates. Each commenter was concerned that the existing transition period could result in a lack of consistent disclosure.	