Annex B

Summary of comments and responses

Proposed Repeal and Replacement of
National Instrument 52-108 *Auditor Oversight*

AND

Proposed Amendments to
National Instrument 41-101 *General Prospectus Requirements,*
National Instrument 51-102 *Continuous Disclosure Obligations* and
National Instrument 71-102 *Continuous Disclosure and Other*
Exemptions Relating to Foreign Issuers

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1. General comments

Comments Pertaining to NI 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

1. General comments

Legend:

CPAB: Canadian Public Accountability Board
CPAB Act: Ontario CPAB Act, 2006
CSA: Canadian Securities Administrators
PCAOB: Public Company Accounting Oversight Board
Protocol: Protocol between CPAB and the audit firms it oversees for increasing the extent of information made available to audit committees
SEC: Securities and Exchange Commission

#	*Theme*	*Comments*	*Responses*
	COMMENTS PERTAINING TO NI 52-108 *AUDITOR OVERSIGHT*		
	A. <u>General Comments</u>		
1.	General support for principles underlying the proposals for NI 52-108	Five commenters express their support for the principles in the proposed materials.	We thank the commenters for their support.
2.	Scope of Instrument	One commenter questions whether the Instrument, or another future National Instrument, should contain provisions that are more specific than the general terms of the CPAB Act regarding the supervision, oversight, accountability and transparency of the conduct of CPAB in fulfilling its important mandate and role as "Canada's audit regulator" which include responsibilities to regulate public accounting firms in the public interest.	This comment is beyond the scope of this project, but may be considered at a future date.
3.	Use of "remedial actions" as a trigger for when notice is provided	Two commenters express their support for the change to the triggers for notice in the proposed materials to specified remedial actions of CPAB, rather than categories of remedial actions. One commenter notes that the companion policy describes a remedial action as a recommendation, a requirement, a restriction or a sanction, or a different term. The commenter believes that the terms in the Instrument should be consistent with the language contained in Section 600 of the CPAB Rules regarding requirements, restrictions and sanctions.	We thank the commenters for their support. We have deliberately avoided using the terms "recommendation", "requirement", "restriction" and "sanction" in the Instrument since those terms are not defined and subject to change. The companion policy clarifies that CPAB may refer to a remedial action in subsection 5(1) of the Instrument as one of these terms or CPAB may use a different term.
4.	Additional situations that should trigger a notice	<u>Triggers for a notice to the regulator</u> Two commenters recommend that a notice to the regulator be triggered when CPAB issues an Engagement Finding Report Type 1 (EFR 1) to an audit firm, and that the audit firm's response to the EFR 1 should be disclosed to the regulator. An EFR 1 is described as an audit deficiency that is a file-specific significant GAAS or GAAP deficiency that requires the audit firm to respond in writing and which has the potential to result in a material misstatement in the financial statements.	We considered whether notice should be provided to the regulator when an EFR 1 is issued or CPAB imposes remedial actions other than those specified in the Instrument. Based on discussions with CPAB about their processes and basis for imposing certain remedial actions, we have determined that the triggers set out in Section 5 of the Instrument will provide

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		One commenter recommends that notice should be triggered for all remedial actions relating either to failure to comply with professional standards or to a defect in quality control provisions that the CPAB imposes on an audit firm. One commenter recommends that notice should be triggered when an audit firm fails to comply with a remedial action within the time period specified by CPAB. <u>Triggers for a notice to the audit committee</u> One commenter recommends that the Instrument require an audit firm to disclose receipt of an EFR 1 to the audit committee.	us with the appropriate level of information. As noted in our October 2013 Notice, we are not, at this time, proposing any substantive changes to the existing requirements for when a public accounting firm must deliver a notice to the audit committees of its reporting issuer clients about remedial actions imposed by CPAB. We are deferring consideration of any changes to the notice to audit committee requirements until the costs and benefits associated with the Protocol have been assessed.
5.	Confidentiality considerations for notices delivered to the regulator	One commenter has concerns regarding privacy and the Freedom of Information (FOI) Acts, which are understood to be different across each province. The commenter believes the CSA should take steps to ensure that information that will be provided pursuant to NI 52-108 will be kept private. One commenter advises that it is desirable that the CSA ensure that no conflicts arise between current requirements of firms under CPAB participating agreements (e.g., with respect to confidentiality)	The FOI legislation in effect in most jurisdictions has not changed since the inception of the original Instrument. The CSA cannot ensure that information provided pursuant to the Instrument will be kept private, however if an FOI request were made then it would be considered based on its own individual merits. We have been in discussion with CPAB throughout the process of developing the Instrument, and are not aware of any conflicts between the requirements and the CPAB participation agreements.
6.	Consideration of Protocol	One commenter recommends that it is desirable that the CSA ensure that no conflicts are created relating to CPAB's Enhancing Audit Quality initiative, and in particular the proposed Protocol that is currently out for comment.	As noted in our October 2013 Notice, we are not, at this time, proposing any substantive changes to the existing requirements for when a public accounting firm must deliver a notice to the audit committees of its reporting issuer clients about remedial actions imposed by CPAB. We are deferring

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			consideration of any changes to the notice to audit committee requirements until the costs and benefits associated with the Protocol have been assessed.
	B. <u>Section 1 Definitions</u>		
1.	Definition of participating audit firm	One commenter notes that the proposed companion policy states that the securities regulatory authorities consider any remedial action imposed by CPAB on an individual acting in a professional capacity with a participating audit firm to be a remedial action imposed on the firm. The commenter believes that this is a substantive provision and if the provisions are to be interpreted in this manner this provision should be included within the definitions of the proposed Instrument.	CPAB has the ability to impose a remedial action on a participating audit firm that specifically pertains to an individual acting in a professional capacity, but does not have the ability to impose a remedial action on the individual. The companion policy has been clarified to explain this point and notes that a remedial action on a participating audit firm pertaining to a specific individual would be included in the content of a notice to the regulator in accordance with paragraph 5(2)(c).
2.	Definition of remedial action	One commenter thinks it would be preferable to have a definition of remedial action in the Instrument rather than express a "view" in a policy.	The term "remedial action" is to be interpreted based on its plain English meaning, which is why a definition is not included. We disagree that the companion policy expresses a "view" on what a remedial action is. The discussion in the companion policy on this subject is included to clarify that a remedial action in subsection 5(1) is determined without regard to how CPAB refers to it.
3.	Definition of quality control systems	One commenter believes the Instrument would be improved if the term 'quality control system' is defined so that there is understanding by all parties as to the nature of the defects expected to be disclosed under Section 6(1).	To provide further clarity the Instrument has been amended to refer to the term "system of quality control" since this is the term used in the CPA Canada Handbook - Assurance. The term has not been defined. It is commonly understood that an audit firm must maintain a system of quality control that complies with the standards in the CPA Canada Handbook - Assurance.

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	C. <u>Section 3 Notice to Reporting Issuer if Public Accounting Firm Not in Compliance</u>		
1.	Implementation of notification	One commenter questions whether the introduction of these notifications will have benefits in excess of the potential confusion in the marketplace. The commenter is concerned that, in the absence of education and clear communication with the marketplace as to what these remedial actions mean, the notices may bring about unintended outcomes. Prior to imposing notifications by audit firms to their reporting issuer clients, the commenter suggests that the regulator further communicate with the entire marketplace as to how these new "triggers" are meant to work and what implications it is intended to have on the marketplace. One commenter is concerned that the obligation to notify all reporting issuer clients if a public accounting firm is not in compliance with any remedial action under subsection 5(1) may be too broad. The CPAB remedial action may relate only to one reporting issuer or a particular category of reporting issuers, and disclosure of non-compliance to other reporting issuer clients may not provide meaningful information to such other reporting issuer clients in all circumstances, especially if the non-compliance is a technical or temporary matter.	This notice requirement has been introduced so that a reporting issuer is aware of any instance where their auditor would be unable to sign an auditor's report because it is not in compliance with the Instrument. Without this notice, a reporting issuer would not be aware that there could be issues with obtaining an auditor's report if needed. This notification will allow a reporting issuer to initiate a dialogue with their auditor in order to ensure that they will continue to meet their filing obligations in a timely manner. We think it is important that all reporting issuer clients be notified when their audit firm is not able to sign an audit report for their client because of the inability to comply with the Instrument. We further note that the remedial actions identified in the Instrument would frequently pertain to a systemic issue at a public accounting firm, and not necessarily relate to one reporting issuer.
2.	Requirement for audit firm to provide notice within 2 days	One commenter believes the reporting deadline of 2 days is too short to effectively allow audit firms to comply. The commenter recommends that the deadline be extended to 10 days, which is consistent with the timelines required in subsection 6(3) of the proposed Instrument and the timelines for material change reports. One commenter is concerned that a 2-day lag potentially could result in the delivery of a notice after the signing of the audit report by the public accounting firm and the filing of the financial statements on SEDAR	We think that non-compliance with the Instrument should be reported to reporting issuers in a timely manner. However, to provide further clarity subsections 3(1) and 5(3) of the Instrument have been amended to refer to "business days". We do not anticipate this will be an issue since the public accounting firm would not be in compliance with Section 2 of the Instrument in the situation described, and therefore should not sign the audit report.
3.	Requirement to notify reporting	One commenter notes that if an audit firm were to fail to be in compliance with the notice to the regulator	Paragraph 2(c) of the Instrument has been amended to only refer to the notice

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	issuer if it fails to provide notice to the regulator	requirement in subsection 5(3) (e.g., the audit firm does not deliver a notice to the regulator within the 2 day timeline), then subsection 3(2) states that the audit firm would not be able to notify a reporting issuer that it is in compliance until it has been informed by CPAB that the circumstances that gave rise to the notice no longer apply. The commenter is of the view that CPAB would not be in a position to inform the audit firm that this violation to notify the regulators no longer applies since it is not a remedial action imposed by CPAB. The commenter believes that there is a step missing to address this scenario. One commenter sees little value in having a reporting issuer receive a notice that the public accounting firm is not in compliance with its obligation to notify securities regulators. The commenter recommends removing the reference to paragraph 2(c) in subsection 3(1) of the Instrument.	requirements in subsections 5(1) and 5(2), which results in a change to the requirements in subsections 3(1) and 3(2). As a result of this change, a notice will not be triggered if the only non-compliance is a failure to deliver a notice to the regulator within the time required or if a copy of the notice to the regulator was not delivered to CPAB on the same day it was delivered to the regulator. Despite the changes described above, a public accounting firm will not be in compliance with paragraph 2(c), or be able to notify a reporting issuer that it is in compliance (as contemplated in subsection 3(2)), until it has delivered a notice to the regulator in the form required. The notice requirements in section 3 are necessary to allow a reporting issuer to comply with the requirement in section 4.
4.	Other comments	One commenter recommended that CPAB report required information directly to the regulator at the same time it notifies a respective auditor to report, rather than having information reported by the audit firm in question. One commenter questions why the Instrument requires public accounting firms to deliver a copy of a notice of non-compliance to CPAB instead of leaving it up to CPAB to specify notice requirements pursuant to its rules.	The Instrument imposes requirements on public accounting firms and reporting issuers, not CPAB. As a result, consistent with the previous Instrument, public accounting firms are required to deliver the notice to the regulator. We require a copy of the notice to be delivered to CPAB to help ensure that the information we receive is consistent with CPAB's understanding.
	D. <u>Section 5 Notice of Remedial Action to the Regulator or the Securities Regulatory Authority</u>		
1.	Potential disclosure of confidential information to the regulator	One commenter is concerned that the proposed content of a notice could lead to a violation of section 9 of the *Quebec Charter of Human Rights and Freedoms* and of the obligation imposed on chartered professional accountants to protect their clients' confidential	The notice content requirements in subsection 5(2) of the Instrument have been amended to permit a participating audit firm to describe how it failed to comply with professional standards.

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		information and documents covered by professional secrecy. The commenter believes that in order to minimize and preferably avoid any violation of professional secrecy a notice must not contain any information or document covered by professional secrecy or with respect to which there is reasonable cause to believe that it is covered by professional secrecy. One commenter has concerns regarding privacy in light of the Protection of Privacy Acts, which are understood to be different across each province. The commenter notes that, as currently drafted, it is possible that information with respect to individuals could be captured under Section 5 of the Notice.	This will allow a participating audit firm to modify the description provided by CPAB to remove reference to information protected by professional secrecy in Quebec. Despite the change to subsection 5(2)(a), we expect the description in the notice to be substantially similar to the description CPAB has provided the participating audit firm. Additional discussion has been included in the companion policy for this content requirement. In connection with the amendment described above, we amended the Instrument to specify that that the notice to the regulator must include the name of each reporting issuer whose audit file was referred to by CPAB in its communications with the participating audit firm, as the basis, in whole or in part, for CPAB's conclusion that the participating audit firm failed to comply with professional standards.
		One commenter recommends that guidance be provided on how audit firms should address the obligation in subsection 5(2)(a), to submit an explanation of how they failed to comply with professional standards, without compromising their obligations of confidentiality with respect to the reporting issuer's confidential information or loss of any claims of privilege the reporting issuer may have over information in the audit firm's possession.	As noted above, we expect the description in the notice to be substantially similar to the description CPAB provided. There may be situations in which the description may need to be modified to remove reference to information protected by professional secrecy in Quebec.
		One commenter is of the view that the inspection report issued by CPAB to the audit firm is intended to be a private communication between CPAB and the firm. To address these concerns the commenter believes the CSA should work with CPAB to have CPAB modify its rules under the participation agreement to permit disclosure of portions of their report in the event that information would qualify for disclosure under the Notice.	We have been in discussion with CPAB throughout the process of developing the Instrument, and are not aware of any conflict in the CPAB participation agreements that prevent disclosure of portions of their report.
		One commenter notes that CPAB's Rules and certain legislation provide that CPAB may, in appropriate circumstances, communicate information arising from	Subsection 5(2) is not intended to be consistent with the provisions in the CPAB Rules and CPAB Act. The

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		its inspection and investigation activity to CSA or the Superintendent of Financial Institutions Canada, but in doing so CPAB generally must exclude privileged information of a client of a participating audit firm, and specific information relating to the business, affairs or financial condition of a client of a participating audit firm (CPAB Rules 417, 516, CPAB Act (Ontario) s. 13). In order for subsection 5(2) to be consistent with these provisions, the commenter believes it should be modified so that a participating audit firm may in appropriate circumstances summarize written descriptions it receives from CPAB, in order to remove any such privileged or specific business information of an audit client	CPAB Rules and CPAB Act govern the communication relationship between CPAB and a participating audit firm, not the communications in respect of a participating audit firm and a securities regulator. Further, there is nothing in the Instrument that requires the disclosure of solicitor client privileged information. However, as noted above, we expect the description in the notice to be substantially similar to the description provided by CPAB. We acknowledge that there may be situations in which the description may need to be modified to remove reference to information protected by professional secrecy in Quebec.
2.	Ability of CPAB to trigger notice to the regulator	One commenter questions why CPAB has the discretion under paragraph 5(1)(b) to determine when a remedial action that is not listed in paragraph 5(1)(a) should trigger notice. The commenter recommends that the Instrument include supervisory and governance principles setting out how CPAB should exercise its discretion under paragraph 5(1)(b).	The remedial actions included in paragraph 5(1)(a) were based on the types of actions available to CPAB listed in Section 601 of the CPAB Rules. The list in Section 601 is not all inclusive, and contemplates that CPAB may impose other remedial actions that are not listed. In using their discretion we expect CPAB would trigger notice for a remedial action that is not listed in Section 601 of CPAB's Rules, but is considered to be of the same severity as those listed in paragraph 5(1)(a).
3.	Other comments	One commenter believes paragraph 5(1)(c) is unnecessary as it would require firms to disclose information to a regulator that is already public. One commenter is of the view that subsection 5(2)(a) implies that a remedial action in that section is related to failure to comply with "professional standards", which are defined in Section 300 of CPAB's Rules.	We disagree with the commenter. If a paragraph 5(1)(c) notice is triggered, then paragraph 5(2)(c) requires the notice to the regulator to include each remedial action that CPAB has imposed on the participating audit firm. This information required by paragraph 5(2)(c) may not be publicly available. If CPAB imposes a remedial action that requires notice in accordance with Section 5, then a participating audit firm will have failed to comply with one or

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		"Professional standards" in CPAB's rules include auditing standards, ethical standards, auditor independence, and quality control standards and procedures. The commenter asks whether it is clear or intended that a remedial action in subsection 5(1) only refers to a failure to comply with professional standards. One commenter asks whether a "requirement", "condition", "request" or a "recommendation" that is put forward by the CPAB to an audit firm to deal with any of the "professional standards" referred to in Section 300 of the Rules is a "remedial action", including recommendations to upgrade supervision, training or education.	more professional standards. We have deliberately avoided using terms such as "recommendation" or "requirement" in the Instrument since those terms are not defined and subject to change. The companion policy clarifies that CPAB may refer to a remedial action in subsection 5(1) of the Instrument as one of these terms or CPAB may use a different term.
	E. <u>Section 6 Additional Notice Relating to Defects in Quality Control Systems</u>		
1.	Reporting of a defect in quality control systems	One commenter questions why CPAB is not obligated to require the audit firm to notify the regulator (as well as the reporting issuer) at the time that the CPAB identifies a defect in the audit firm's "quality control systems", as referred to in s. 6(1), and imposes a "remedial action" on the audit firm to "address" the defect.	In response to defects in an audit firm's system of quality control, CPAB may impose one of the remedial actions specified in subsection 5(1), which would trigger a notice to the regulator under section 5. Section 6 is substantially similar to the requirement under the existing Instrument As noted in our October 2013 Notice, we are not, at this time, proposing any substantive changes to the existing requirements for when a public accounting firm must deliver a notice to the audit committees of its reporting issuer clients about CPAB's inspections. We are deferring consideration of any changes to the notice to audit committee requirements until we have had a chance to assess the application of the Protocol.
2.	Requirement to report any remedial action relating to a defect in quality control	<u>Scope of trigger</u> One commenter is concerned with the proposed requirement in subsection 6(1), to report any remedial action imposed by CPAB relating to a defect in the audit firm's quality control systems since there are no boundaries or definitions linked to "any remedial action"	Subsection 6(1) has been amended to require that notice be triggered if CPAB required a participating audit firm to comply with any remedial action relating to a defect in its system of

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	systems that is not addressed within the time period required by CPAB	that trigger a notification under paragraph 6. The commenter suggests that: (i) specific definitions or guidelines to "any remedial action" be included to clarify what type of remedial actions trigger the need for any notification, or (ii) that language similar to paragraph 5(1)(b) be utilized, whereby only those remedial actions relating to a defect in the participating audit firm's quality control systems for which CPAB notifies the participating audit firm in writing that it must disclose to the regulator would be captured under paragraph 6(1). One commenter is concerned that the scope of reportable matters in subsection 6(1) may be broader than intended since, based on the commenter's experience, certain of CPAB's repeat findings are often viewed by the regulator as a process of continuous improvement. <u>Meaning of "has not addressed"</u> One commenter requests clarification on what it means in subsection 6(1) when the audit firm "has not addressed" the defect in its quality control systems with the time period set by the CPAB. The commenter considers "addressing" to be ambiguous, and is of the view that a recommendation can be "addressed" even though the failure or defect in question is not cured for some period of time.	quality control, and CPAB notifies the participating audit firm in writing that it has failed to address the defect in its system of quality control to the satisfaction of CPAB within the time period required by CPAB. This amendment is consistent with the language in the Current Instrument and we are not aware of any scope problems under the Current Instrument. As noted above, the requirement has been amended to refer to a situation in which a participating audit firm "failed to address the defect…to the satisfaction of CPAB". We are of the view that this additional language provides sufficient clarity.
3.	Requirement to provide notice within 10 days	One commenter believes the reporting timelines under subsection 6(3) would be onerous for firms with hundreds of reporting issuer audit clients. The commenter recommends that relief to the 10 day timeframe should be made available or be extended to be 10 business days.	Subsection 6(3) of the Instrument has been amended to require notice to be delivered within 10 "business days".
4.	Other comments	One commenter recommends that that the words "in writing" be added to proposed subsection 6(1) to promote certainty and make the wording consistent with proposed paragraphs 5(1)(a) and (b). One commenter queries whether the types of matters intended to be reported under Section 6 are covered by the reportable matters in Section 5.	Subsection 6(1) of the Instrument has been amended to include the words "in writing". The matters to be reported in Section 6 could overlap with a remedial action covered in Section 5. If that

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			circumstance were to arise, two notices to the regulator would be delivered; a notice that includes the content required in paragraphs 5(2) and a notice that includes the content required in paragraph 6(2).
	COMMENTS PERTAINING TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*		
1.	General comments	One commenter believes that if prospectus disclosure is required, it is then important for an investor to be informed of how the issuer proposes to address the requirement to retain a CPAB qualified auditor once the issuer becomes a reporting issuer. Specifically, the commenter believes that the prospectus should disclose whether the incumbent auditor is expected to become a CPAB qualified auditor, or if a successor has been identified and if so, who that successor will be.	We do not believe that additional disclosure on how an issuer intends to comply with NI 52-108 upon becoming a reporting issuer is information that an investor needs in order to make an informed investment concerning an initial prospectus offering.
	COMMENTS PERTAINING TO NI 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*		
1.	General comments	One commenter believes the filing requirements under 4.11(5) present practical challenges for the predecessor auditor. For example, if an auditor resigns without a successor auditor being appointed, does the deadline for notification occur three days following the auditor's termination or three days following appointment of the new auditor? The predecessor auditor in this circumstance is relying on the issuer to notify them of the appointment, which seems contrary to the intention of this subsection. The commenter also believes the requirement for both a predecessor and successor to report non-compliance is duplicative and introduces a monitoring requirement for which the predecessor auditor may not have equal access to information. Additionally, the SEC places the onus only on the successor auditor and we believe that is where the reporting obligation should reside.	Paragraph 4.11(5) includes the reporting requirements when an auditor termination or resignation occurs. The timeline for these reporting requirements is not affected by whether a successor auditor is appointed. We do not agree that the predecessor faces a practical challenge relating to the successor auditor. We agree that the obligation to report non-compliance could be duplicative in some circumstances, however we think the obligation is needed to capture situations where a predecessor auditor resigns or is terminated without a successor auditor being appointed on the same day or shortly thereafter.

	COMMENTS PERTAINING TO NI 71-102 *CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS*		
1.	General comments	One commenter expresses their support for the amendment to require foreign issuers to comply with the Instrument.	We thank the commenter for its support.