On October 29, 2004, the Ontario Securities Commission (the "**OSC**") published for comment proposed amendments to Multilateral Instrument 52-110 *Audit Committees*, the forms thereto and to the associated companion policy (collectively, the "**Audit Committee Rule**").

The Audit Committee Rule came into force across Canada, with the exceptions of British Columbia and Quebec, on March 30, 2004. The OSC has stated that the purpose of the Audit Committee Rule is to encourage reporting issuers to establish and maintain strong, effective, and independent audit committees to enhance the quality of financial disclosure made by reporting issuers, and ultimately to foster investor confidence in Canada's capital markets.

Although there are certain other minor amendments included in the proposed amendments to the Audit Committee Rule (the "**Proposed Amendments**"), the Proposed Amendments principally serve to clarify the definition of "independence" and to bring the independence requirements of Canadian audit committees more in line with those of their U.S. counterparts.

The Audit Committee Rule currently contains a definition of independence that combines the definitions of independence applicable to members of audit committees of U.S. companies. In the United States, for an audit committee member to be considered independent, the member must satisfy two distinct requirements:•the member must be independent within the meaning of U.S. Securities and Exchange Commission Exchange Rule 10A-3; and the member must be an independent director as defined by the listing requirements of the applicable exchange or market.

The Proposed Amendments have separated the independence requirements of audit committee members into two sections, those similar to the requirements of the U.S. Securities and Exchange Commission ("**SEC Requirements**") and those similar to the requirements of U.S. stock exchanges ("**Exchange Requirements**"). Under the Proposed Amendments, to qualify as independent, an audit committee member will be required to satisfy both the SEC Requirements and the Exchange Requirements. For the purposes of draft National Instrument 58-101 *Disclosure of Corporate Governance Practices*, "independence" only includes the Exchange Requirements.

The Proposed Amendments also mirror proposed changes to the definition of "independence" proposed by the New York Stock Exchange in August, 2004. These modifications clarify the categories of persons who are not independent as follows:

- an individual who is, or who has been, an employee or partner of an issuer's auditor in the last three years; and
- the spouse or children of employees and partners of an issuer.

In addition, the Proposed Amendments clarify the categories of persons who may be found independent, despite the existence of certain relationships. The modifications clarify that an individual could still be found to be independent in the following circumstances:

- if an immediate family member has served as an interim chief executive officer or in other positions related to an issuer's board of directors; and
- if a material relationship existed between the individual and the issuer, but the relationship was terminated prior to March 30, 2004.

Finally, the Proposed Amendments clarify that the concept of "issuer" includes an issuer's parent entity and subsidiary entities.

The full text of the proposed amendments can be obtained from the Ontario Securities Commission website: www.osc.gov.on.ca.