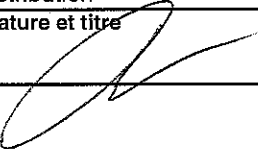
 <b>Industry Canada</b> <b>Industrie Canada</b>	<b>POLICY STATEMENT</b> <b>ÉNONCÉ DE POLITIQUE</b>  6 8
<b>Corporations Canada</b>	<b>Date</b> March 19, 2008
<b>Reference or division - Référence ou division</b> External Distribution	<b>Cancels - Annule</b> September 22, 2004
<b>Signature and title - Signature et titre</b> 	<b>Page</b> 1 of - de 8

**APPLICATION UNDER SUBSECTION 171(2) OF THE CBCA TO EXEMPT  
A DISTRIBUTING CORPORATION FROM HAVING AN AUDIT COMMITTEE**

**1. STATEMENT OF GENERAL PRINCIPLES**

- 1 01 The September 22, 2004 exemption policy is repealed and replaced with this policy.
- 1 02 This policy sets out information to facilitate an application to the Director appointed under the CBCA for an exemption authorizing a distributing corporation to dispense with an audit committee.
- 1 03 The obligation placed on distributing corporations to have an audit committee is designed to enhance the integrity and reliability of the financial statements by providing an oversight function for the benefit of the board of directors and shareholders. The Director will only exempt a distributing corporation if satisfied that the shareholders will not be prejudiced by the absence of an audit committee to review the financial statements
- 1 04 Nothing in this policy is intended to constitute a binding statement of what position the Director will take with respect to a particular application. This policy is intended to reflect the Director's understanding of the Director's role in processing an application under subsection 171(2) of the CBCA

**2. LEGISLATIVE FRAMEWORK**

- 2 01 Subsection 171(1) of the CBCA provides that a distributing corporation shall *have an audit committee composed of not less than three directors of the corporation, a majority of whom are not officers or employees of the corporation or any of its affiliates*
- 2 02 According to subsection 171(3) of the Act, the audit committee *shall review the financial statements of the corporation* before they are approved by the directors and circulated to shareholders. Subsections 171(4) through 171(9) articulate the role and responsibilities of various parties vis-à-vis the audit committee
- 2 03 Subsection 171(2) of the Act provides however that *the Director may, on application of a corporation, authorize the corporation to dispense with an audit committee, and the Director may, if satisfied that the shareholders will not be prejudiced, permit the corporation to dispense with an audit committee on any reasonable conditions that the Director thinks fit*
- 2 04 A distributing corporation that circulates financial statements that have not been reviewed by an audit committee and that fails to obtain an exemption by the Director is in contravention of section 171 of the CBCA which can result in civil and/or criminal liability.

**3. APPLICATION NOT NECESSARY FOR NON-DISTRIBUTING CORPORATIONS**

- 3 01 The provision in subsection 171(1) of the Act to have an audit committee is not required for non-distributing corporations or corporations that have received an exemption under subsection 2(6) (see Policy on making an application under subsection 2(6) of the Act).
- 3 02 The term "distributing corporation," defined in section 2 of the Regulations, incorporates by reference the definition of "reporting issuer" found in provincial securities legislation. Note that where a corporation is subject to an exemption under provincial securities legislation or to an order of the

relevant provincial regulator to the effect that the corporation is not a "reporting issuer", that corporation is not a distributing corporation for the purpose of the definition of the term in section 2.

- 3 03 The process of creating or dismantling an audit committee in a non-distributing corporation is purely internal and need not involve the Director. The Director will not grant an exemption in those circumstances

#### **4. GUIDELINES FOR MAKING AN APPLICATION**

##### **A. General Considerations**

- 4 01 The general test used by the Director is whether shareholders, if an exemption were granted, would be prejudiced by the lack of an audit committee to review the financial statements. The Director will assess the potential for prejudice by determining whether the integrity of the financial statements would be compromised by the lack of an audit committee
- 4 02 Audit committees play an important role. The primary function of an audit committee to incite directors to better supervise the work of the corporation's officers for the benefit of shareholders. Consequently, the Director will only grant an exemption in limited circumstances.

##### **B. Factors Considered in Reviewing an Application**

- 4 03 An applicant must demonstrate to the satisfaction of the Director that the integrity of the corporation's financial statements will not be compromised by the lack of an audit committee.
- 4 04 The following are circumstances in which an exemption was granted in the past:
- 1 the applicant is a wholly-owned subsidiary and the function of an audit committee is carried out at the level of the parent company during the review of its consolidated financial statements;
  - 2 the applicant no longer has any shares held by the public;
  - 3 the applicant is a reporting issuer only due to securities held by investors which cannot be found or located but where moneys are held in trust for the repurchase of these securities;
  - 4 the applicant is a reporting issuer only due to the issuance of debt obligations;
  - 5 the consent of all shareholders for the exemption has been obtained

##### **C. Conditions for Issuing an Exemption**

- 4 05 In exempting a distributing corporation, the Director may find it appropriate under the circumstances to include one or more conditions in the exemption.
- 4 06 The Director may require the applicant to forward a copy of the exemption to shareholders and any securities regulators concerned.

#### **5. OTHER INFORMATION**

##### **A. Additional Information Required**

- 5 01 The Director may require other information not provided in the application in order to decide whether or not to exempt a distributing corporation from the audit committee requirements of the Act.
- 5 02 Under section 91 of the CBCR, the Director has the authority to seek additional information from the applicant or third parties. With respect to information requested from third parties, section 92 of the CBCR provides that the applicant shall be given a copy of the information obtained and be given a reasonable opportunity to respond
- 5 03 There is no statutory obligation on the Director, however, to seek information at the request of third parties nor to allow third parties to make representations regarding an application

##### **B. Access to Information Contained in an Application**

- 5 04 Pursuant to section 266 of the CBCA, a person who has paid the required fee is entitled to examine, make copies or extracts of any document required by the CBCA to be sent to the Director. The information filed with the Director in support of an exemption application is not confidential since such

information is required to be filed in order to obtain an exemption. Consequently, an application for exemption is public information.

### **C. Offences**

- 5.05 Section 250 of the Act creates an offence with respect to documents required by the Act or Regulations to be sent to the Director, or any other person, that contains a false or misleading statement about material fact or omits to state a material fact.

## **6. MAKING THE APPLICATION**

### **A. Format**

- 6.01 Along with a cover letter indicating the name of the applicant corporation, the application must provide information under three distinct headings: description and details of the exemption sought, statement of facts, and argument. These are described briefly below with further elaboration contained in the attached Annex A. We recommend the use of Annex A as a model.

- 6.02 The Director recognizes that applicants may also be making similar representations under various provincial securities legislation. The Director will accept an application made under any provincial securities legislation provided it contains all relevant information or additional information is attached so as to comply with the requirements of the CBCA and CBCR. Note, however, that provincial legislation may provide confidentiality protection that does not exist for exemption documents under the CBCA.

### **B. The Documents**

- 6.03 Detailed below is a brief description of the three major documents to submit:

- (i) Description and Details of the Exemption Sought: The applicant must describe the exemption sought and note that this is an application for an exemption under subsection 171(2) in the *Canada Business Corporations Act* (see attached Annex A, Schedule A)
- (ii) Statement of Facts: The applicant must include sufficient facts and all material information which might affect the Director's decision (see attached Annex A, Schedule B)
- (iii) Argument: Following the statement of facts, the applicant must provide convincing reasons that the exemption, if granted, will not be prejudicial to shareholders (see attached Annex A, Schedule C).

### **C. Renewals**

- 6.04 If the applicant seeks to renew an exemption that has been granted and the circumstances have not substantially changed, it is not necessary to complete a detailed application. Instead, a letter identifying the previous exemption, requesting for a renewal of the exemption, and stating that the circumstances have not substantially changed is accepted. Note that if the applicant wishes to change the wording of the decision, the applicant must refer to the changes and provide reasons for these changes in the letter.

### **D. Effective Date of the Exemption**

- 6.05 An exemption will bear the date on which it was granted.
- 6.06 Pursuant to paragraph 89(1)(f) of the CBCR, an application may be made at any time.

### **E. Duration**

- 6.07 An exemption generally takes effect on the date it is granted and is applicable for 1 financial year ending on or after the effective date of the exemption.

### **F. Revocation**

- 6.08 The Director will generally not revoke an exemption before providing notice to the applicant and the opportunity to respond by submitting new facts and arguments to support the exemption.

6 09 A revoked exemption ceases to carry effect from the date of revocation

**G. Fees & Number of Copies of File**

6 10 The prescribed fee for an exemption application is \$250.00.

6 11 Only one set of documents is required.

**H. Time for Processing an Application**

6 12 Section 90 of the CBCR provides that *the Director shall, within 30 days after receipt of an application for an exemption, grant the exemption requested or send to the applicant written notice of the Director's refusal, together with reasons for the refusal.*

6 13 An application duly completed and filed, with no outstanding issue or concern, will usually receive a response from the Director within 15 working days after receipt of the application

6 14 An applicant requiring that the Director review the application on an expedited basis should bring the request immediately to the attention of the Director's staff, providing reasons for the urgency.

**I. Publication**

6 15 Issued exemptions are published monthly under the heading "Corporations Canada Monthly Transactions" on the following website: <http://corporationscanada.ic.gc.ca>

**J. Appeal of Director's Decision**

6 16 An applicant who feels aggrieved by a decision of the Director to grant, or to refuse to grant, an exemption may apply to the court, pursuant to paragraph 246(c) of the Act, for an order requiring the Director to change the decision.

**7. ADDITIONAL INFORMATION AND HOW TO REACH CORPORATIONS CANADA**

7 01 For additional information on Corporations Canada's products and services, please visit the Corporations Canada website [www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca) or call 1-866-333-5556.

You can also contact Corporations Canada at:

Client Services Section  
Corporations Canada  
Industry Canada  
9<sup>th</sup> Floor, Jean Edmonds Tower South  
Ottawa, Ontario K1A 0C8  
Toll free: 1-866-333-5556  
Fax: 613-941-0601  
[www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca)

ANNEX A

EXAMPLE OF DOCUMENTS TO SUBMIT WHEN  
MAKING AN APPLICATION UNDER SUBSECTION 171(2) OF THE CBCA

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SCHEDULE A

IN THE MATTER CONCERNING THE DIRECTOR APPOINTED UNDER  
THE *CANADA BUSINESS CORPORATIONS ACT*

AND

THE APPLICATION OF

***(Name of the corporation)***

(hereinafter called the "Corporation")

**DESCRIPTION AND DETAILS OF THE EXEMPTION SOUGHT**

1. This application is for an exemption under subsection 171(2) of the *Canada Business Corporations Act* to exempt the Corporation from the requirement of having an audit committee for the financial year ending ***(see 6.07 of the policy)***

SCHEDULE B

STATEMENT OF FACTS

- 1 The following statement provides sufficient facts and all material information in order to enable the Director to make an informed decision about the exemption sought:

SCHEDULE CARGUMENTS

- 1 This application is made pursuant to subsection 171(2) of the *Canada Business Corporations Act* which empowers the Director to grant an exemption authorizing the Corporation to dispense with an audit committee, if satisfied that the shareholders will not be prejudiced.
2. The Corporation is a distributing corporation (*see section 3 of the policy*).
3. The decision from the Director authorizing it to dispense with an audit committee would not be prejudicial to the shareholders.
- 4 The exemption should be granted for the following reason(s):

**For instance,**

1. the Corporation is a wholly-owned subsidiary and the function of an audit committee is carried out at the level of the parent company during the review of its consolidated financial statements.
- 2 the Corporation no longer has any shares held by the public.
3. the Corporation is a reporting issuer only due to securities held by investors which cannot be found or located but where moneys are held in trust for the repurchase of these securities.
- 4 the Corporation is a reporting issuer only due to the issuance of debt securities
- 5 the consent of all shareholders for the exemption has been obtained

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at the City of \_\_\_\_\_, Province of \_\_\_\_\_

\_\_\_\_\_  
Signature - Capacity of

SCHEDULE D

**MODEL OF A DECISION**

IN THE MATTER CONCERNING THE DIRECTOR APPOINTED UNDER  
THE *CANADA BUSINESS CORPORATIONS ACT*

AND

THE APPLICATION OF

**(Name of the corporation)**

(hereinafter called the "Corporation")

FOR AN EXEMPTION UNDER SUBSECTION 171(2) OF  
THE *CANADA BUSINESS CORPORATIONS ACT*

**EXEMPTION**

UPON APPLICATION BY the Corporation under subsection 171(2) of the *Canada Business Corporations Act* (the "Act") to dispense with the requirement of having an audit committee under section 171 of the Act, for the financial year ending on or about **(see 6.07 of the policy)**,

AND UPON reading the application documents and being satisfied that the shareholders will not be prejudiced,

IT IS HEREBY determined that **(name of the corporation)** is authorized to dispense with an audit committee, for the financial year ending on or about **(see 6.07 of the policy)**

DATED, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Deputy Director