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Canadian Public Accountability Board Act (Ontario), 2006

S.O. 2006, CHAPTER 33 SCHEDULE D

Consolidation Period: From June 30, 2009 to the [e-Laws currency date](#).

Last amendment: 2006, c. 33, Sched. D, s. 17.

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Purpose of Act

1. The purpose of this Act is to promote the integrity of financial reporting in Ontario's capital markets. 2006, c. 33, Sched. D, s. 1.

Definitions

2. (1) In this Act,

“audit” means an examination by a public accounting firm that is intended to be in compliance with generally accepted auditing standards of financial statements of a reporting issuer that are intended to be filed with a Canadian or foreign securities regulator; (“vérification”)

“Board” means the Canadian Public Accountability Board as described in section 3; (“Conseil”)

“Commission” means the Ontario Securities Commission; (“Commission”)

“designated professional” means an officer of a participating audit firm, or a partner, employee or independent contractor of a participating audit firm who is involved in a professional capacity in audits of the financial statements of reporting issuers; (“professionnel désigné”)

“document” means any physical embodiment of information or ideas and includes written or electronic documents, electronic or computerized data compilations and any disc, tape, film or other device in which sound, visual images or other data is embodied; (“document”)

“foreign auditor oversight body” means an auditor oversight body carrying out a mandate substantially similar to the Board’s in a foreign jurisdiction, in respect of which the Board has determined under its rules, that to the extent specified by the Board, reliance may be placed upon inspections, investigations and determinations carried out by such a foreign auditor oversight body; (“organe étranger de surveillance des vérificateurs”)

“generally accepted auditing standards” means,

(a) in the case of an audit report which references auditing standards generally accepted in Canada, the auditing standards for audits of corporations, the shares of which are publicly traded, as set out in the Assurance Handbook of the Canadian Institute of Chartered Accountants, or

(b) in the case of an audit report which references generally accepted auditing standards of a jurisdiction other than Canada, the standards generally accepted in that jurisdiction; (“normes de vérification généralement reconnues”)

“Minister” means the Minister responsible for the administration of this Act; (“ministre”)

“Ontario securities law” means the *Securities Act* and the regulations and rules under that Act and, in respect of a person or company, a decision of the Commission or of a Director, as defined in the *Securities Act*, to which the person or company is subject; (“droit ontarien des valeurs mobilières”)

“participating audit firm” means a public accounting firm that has entered into a participation agreement with the Board and has not had its status terminated, or, if its participant status was terminated, has been reinstated in accordance with the Board’s rules; (“cabinet de vérification participant”)

“participation agreement” means a written agreement between the Board and a public accounting firm in connection with the Board’s program of practice inspections and the establishment of practice requirements; (“convention de participation”)

“professional regulatory authority” means an entity, other than a securities regulator, that has, in a province or territory of Canada, statutory inspection, investigatory or disciplinary responsibility for a participating audit firm, a practice office of the firm or a designated professional of the firm; (“autorité de réglementation professionnelle”)

“professional standards” means the auditing, ethical and independence standards applicable to participating audit firms under the Board’s rules; (“normes professionnelles”)

“public accounting firm” means a sole proprietorship, partnership, corporation or other legal entity engaged in the business of providing services as public accountants and authorized under the laws of Ontario to issue audit reports on financial statements; (“cabinet d’experts-comptables”)

“reporting issuer” means a reporting issuer as defined under Ontario securities law; (“émetteur assujéti”)

“violation event” means,

(a) an act or practice, or omission to act, by a participating audit firm or a designated professional in violation of the Board’s rules or professional standards that in either case may have a negative effect on the provision of audit services to reporting issuers,

(b) a failure by a participating audit firm or a designated professional to supervise appropriately a person with a view to preventing violations of the Board’s rules or professional standards, and that person has committed an act or has failed to act, such that in either case there is a violation of the Board’s rules or professional standards that may have a negative effect on the provision of audit services to reporting issuers,

(c) a failure by a participating audit firm or a designated professional to co-operate in an inspection or investigation by the Board, or

(d) a failure by a participating audit firm or a designated professional to comply with the terms of any requirement, restriction or sanction imposed by the Board. (“cas de violation”) 2006, c. 33, Sched. D, s. 2 (1).

Same

(2) In the definition of “Ontario securities law”, clause 6 (3) (b) and section 13, “person” and “company” have the same meanings as in the *Securities Act*. 2006, c. 33, Sched. D, s. 2 (2).

Documents

(3) For the purposes of this Act,

- (a) a draft document or non-identical copy is a separate document within the meaning of the term “document”; and
- (b) the term “document” is not limited to audit working papers. 2006, c. 33, Sched. D, s. 2 (3).

Board’s mandate in Ontario established

3. The Canadian Public Accountability Board, a corporation without share capital incorporated under the *Canada Corporations Act* by letters patent dated April 15, 2003, with the object of contributing to public confidence in the integrity of financial reporting by public companies, among other things, is hereby authorized to,

- (a) maintain a register of public accounting firms that audit reporting issuers; and
- (b) oversee the audit of the financial statements of reporting issuers. 2006, c. 33, Sched. D, s. 3.

Chair of OSC, member of Governing Council

4. Despite subsection 3 (7) of the *Securities Act*, the Chair of the Commission may be a member of the Board’s Council of Governors so long as the Board’s by-laws provide that he or she is a member of the Council. 2006, c. 33, Sched. D, s. 4.

Not a Crown agency

5. (1) The Board is not an agent of Her Majesty nor a Crown agent for the purposes of the *Crown Agency Act*. 2006, c. 33, Sched. D, s. 5 (1).

Independent from but accountable to the Government of Ontario

(2) The Board, in carrying out its mandate and in exercising its powers and duties under this Act, is independent from, but accountable to, the Commission and the Government of Ontario as set out in this Act. 2006, c. 33, Sched. D, s. 5 (2).

Powers and duties

General

6. (1) The Board may, subject to this Act, its by-laws and its rules, do such things as are necessary to carry out its functions under section 3. 2006, c. 33, Sched. D, s. 6 (1).

Specific duties

- (2)** Without limiting the generality of subsection (1), the Board shall, subject to this Act, its by-laws and its rules,
- (a) establish and maintain requirements for the participation of public accounting firms that audit reporting issuers in the Board’s oversight program;
 - (b) publish and maintain on its website a register of public accounting firms that are participants in the Board’s oversight program;
 - (c) conduct inspections of participating audit firms directly or through or in co-operation with professional regulatory authorities in order to assess the compliance of each participating audit firm with professional standards, the Board’s rules and the firm’s own quality control policies in connection with the issuance of audit reports on the financial statements of reporting issuers and,
 - (i) receive and evaluate reports and recommendations resulting from such inspections, and
 - (ii) require remedial action by participating audit firms when necessary or appropriate, following an inspection;
 - (d) conduct investigations of participating firms and impose, where indicated, restrictions, sanctions or requirements to upgrade supervision, training or education;
 - (e) conduct review proceedings when the recommendations made by the Board or the requirements, restrictions or sanctions applied by the Board in connection with an application for membership, an inspection or an investigation are contested by the participating audit firm that is the subject of the Board’s decision; and
 - (f) account to the Commission and the Government of Ontario on its activities in the manner set out in this Act. 2006, c. 33, Sched. D, s. 6 (2).

Specific powers

- (3) Without limiting the generality of subsection (1) or (2), the Board may, subject to this Act, its by-laws and its rules,
- (a) assist professional regulatory authorities in their supervision of public accounting firms, including referring cases of individual conduct to a professional regulatory authority and co-ordinating its disciplinary measures for a designated professional or an audit firm with those of the professional regulatory authority;
 - (b) notify the Commission, any regulatory authority, any law enforcement agency and any professional regulatory authority if, in the circumstances set out in section 13, it appears that there may have been a contravention of the law by any person or company;
 - (c) assist, and receive assistance from, foreign auditor oversight bodies in investigations of participating audit firms; and
 - (d) provide comments and recommendations on accounting and assurance standards to professional regulatory authorities and other relevant standard setting and oversight bodies. 2006, c. 33, Sched. D, s. 6 (3).

Board's letters patent, by-laws, rules

7. (1) The Board, in carrying out its mandate and in exercising its powers and carrying out its duties under this Act, shall operate in accordance with its letters patent, its by-laws and its rules, all as amended from time to time. 2006, c. 33, Sched. D, s. 7 (1).

Rule changes

(2) No rule made by the Board after the coming into force of this Act, including any amendment or repeal of any rule of the Board, takes effect in Ontario until it has been approved by the Minister and notice of the approval has been published in *The Ontario Gazette* and on the Board's website. 2006, c. 33, Sched. D, s. 7 (2).

Repeal of Act

(3) The Lieutenant Governor, on the recommendation of the Minister, may by proclamation repeal this Act if the Board's letters patent or its by-laws are amended and the Minister is of the opinion that the amendments have a negative effect on the operation of this Act. 2006, c. 33, Sched. D, s. 7 (3).

Contents of notice

(4) The notice of approved change required by subsection (2) shall set out the date of the approval, the date the approved change takes effect and the text of the change. 2006, c. 33, Sched. D, s. 7 (4).

Legislation Act, 2006, Part III not to apply

(5) Part III (Regulations) of the *Legislation Act, 2006* does not apply to the by-laws or rules of the Board nor to any notice of the Minister under subsection (2). 2006, c. 33, Sched. D, ss. 7 (5), 17 (3).

Publication of documents

(6) The Board shall publish and maintain on its website its letters patent, its by-laws, and its rules, each as amended from time to time and, if an amendment is made, the Board shall also maintain on its website a copy of the relevant document as it read before the amendment. 2006, c. 33, Sched. D, s. 7 (6).

Duty of audit firms

8. Every participating audit firm shall comply with the applicable by-laws and rules of the Board, the terms of its participation agreement, the terms of any inspection report or investigation report made by the Board as a result of an inspection or investigation of the firm and the decision of any review panel under the Board's oversight program. 2006, c. 33, Sched. D, s. 8.

Annual report

9. (1) Within 90 days of the end of its fiscal year, the Board shall prepare and submit to the Commission, in accordance with this section and the regulations made under this Act, an annual report on the affairs of the Board for that fiscal year. 2006, c. 33, Sched. D, s. 9 (1).

Contents of report

(2) The annual report shall contain,

- (a) information regarding the register of public accounting firms in the Board's oversight program, including the number of firms that were registered in the year and the number whose registration was terminated;
- (b) the aggregate amount of fees collected by the Board from participating audit firms and the method used by the Board in the determination of those fees;
- (c) the number of inspections and the number of investigations of participating audit firms carried out by the Board during the year and a summary of the results of the inspections and investigations, including a summary of the recommendations, requirements and sanctions determined by the Board;
- (d) the number of review proceedings conducted in respect of Board decisions and the outcome of those proceedings;
- (e) the status of any appeals, applications for judicial review and arbitrations in respect of the decisions made by a review panel;
- (f) a copy of the Board's audited financial statements for the fiscal year to which the annual report relates and a copy of its budget for the current year; and
- (g) such other information related to the work of the Board as may be prescribed by the regulations made under this Act. 2006, c. 33, Sched. D, s. 9 (2).

Review by Council of Governors

(3) The Board's Council of Governors shall certify to the Commission that it has examined the annual report and that it has satisfied itself through such meetings with the Board and the Board's directors, officers and staff and through such other review as the Council considers necessary to support its opinion that, based on the information available to it,

- (a) the Board has carried out its mandate in a manner that is consistent with the public interest in maintaining the integrity of financial reporting by reporting issuers and the objectives of National Instrument 52-108 of the Canadian Securities Administrators as adopted as a rule of the Ontario Securities Commission on March 30, 2004 or of such other instrument as may be named in the regulations made under this Act; or
- (b) the Board has failed to satisfy the requirements set out in clause (a). 2006, c. 33, Sched. D, s. 9 (3).

Limitation

(4) Despite subsection (3), the members of the Council of Governors are not entitled to, and shall not be given access to, any documents or information relating to any specific audit of a reporting issuer. 2006, c. 33, Sched. D, s. 9 (4).

Submission of certificate

(5) The certificate of the Council of Governors shall be submitted to the Commission at the same time as the annual report. 2006, c. 33, Sched. D, s. 9 (5).

Commission oversight

(6) Within six weeks of receiving the annual report from the Board, the Commission shall assess the report and determine if there are any issues arising from the report that require action, and it shall provide a copy of the Board's report together with a report on the Commission's assessment of the Board's report and the Commission's recommendations, if any, to the Minister. 2006, c. 33, Sched. D, s. 9 (6).

No participation by Chair of Commission

(7) The Chair of the Commission shall not participate in the Commission's assessment of the Board's annual report or in any meeting of the Commission at which the report or the assessment are considered. 2006, c. 33, Sched. D, s. 9 (7).

Report to be laid before Assembly

(8) The Minister shall lay the Board's report and the Commission's report before the Assembly by delivering them to the Clerk. 2006, c. 33, Sched. D, s. 9 (8).

Rules

10. (1) The Board shall govern the conduct of its oversight program in accordance with its rules. 2006, c. 33, Sched. D, s. 10 (1).

Same

(2) In addition to any matters that the Board is entitled to deal with in its rules, for the purposes of, and subject to the provisions of, this Act, the rules shall deal with the following aspects of its oversight program:

1. The participation and withdrawal or termination of participation by participating audit firms, including the application process, the form of the participation agreement and eligibility for audit firms to become participating audit firms.
2. The collection of personal information from designated professionals.
3. The designation of professional standards applicable to participating audit firms.
4. Procedures to be followed by the Board in conducting inspections, including the persons entitled to be present, co-operation obligations, documents to be produced, dispute procedures where the Board's request for documents is contested, confidentiality of the Board's inspection reports, reporting on violation events, and joint inspections with foreign auditor oversight bodies.
5. Procedures to be followed by the Board in conducting investigations, including the issuance of investigation orders, the designation of persons entitled to conduct investigations, the taking of testimony, demands for production, dispute procedures where the Board's demand for information is contested, requests for testimony from reporting issuers, methods of notifying the Commission or any regulatory authority, law enforcement agency or professional regulatory authority or foreign auditor oversight body for the purposes of sections 13 and 14, the imposition of sanctions in case of a violation event, and assistance to foreign auditor oversight bodies in investigations of participating audit firms under laws of foreign jurisdictions.
6. The establishment of appropriate restrictions, sanctions or requirements that the Board may impose upon a participating audit firm if the Board determines that a violation event has occurred, procedures for the notification of decisions, the rights of participating audit firms to request a review of disciplinary decisions of the Board, provisions regarding public disclosure of disciplinary decisions, and reliance upon findings of a foreign auditor oversight body.
7. Review proceedings where a participating audit firm disagrees with a decision of the Board, the appointment of hearing officers to review panels, the powers of a review panel to establish its own processes, the evidence to be considered by a review panel, the authority of a review panel to substitute its own decisions for those of the Board, the maintenance of a record of review proceedings and the responsibility to pay costs of proceedings.
8. Requiring participating audit firms to pay membership fees to the Board and establishing the types of fees, the method of calculating the fees, the manner in which the fees will be collected and penalties for non-payment of fees. 2006, c. 33, Sched. D, s. 10 (2).

Same

(3) For the purposes of this Act, the rules of the Board consist of,

- (a) the rules of the Board and the form of the participation agreement, as adopted by the Board, as they read before the coming into force of this Act;
- (b) article 11 of the by-laws of the Board as it read before the coming into force of this Act;
- (c) amendments made after this section comes into force to the rules described in clause (a), the form of the participation agreement and article 11 of the Board's by-laws that have been approved and published in accordance with subsection 7 (2); and
- (d) regulations made under this Act which specify that they shall be deemed to be rules of the Board for the purposes of this Act. 2006, c. 33, Sched. D, s. 10 (3).

Board's access to information

11. (1) The Board may require a participating audit firm to provide it with all the documents and information that the audit firm obtained or prepared in order to perform the audit firm's audit of a reporting issuer and that,

- (a) in the case of a reporting issuer to which the *Business Corporations Act* applies, are required to be supplied by the

reporting issuer to the auditor under subsections 153 (5), (6) and (7) of that Act or under any other Act; or

(b) in the case of any other reporting issuer, are required to be supplied by the reporting issuer to the auditor under the laws of the jurisdiction under which it is incorporated or organized. 2006, c. 33, Sched. D, s. 11 (1).

Confidentiality of documents, etc.

(2) All documents and other information prepared for or received by the Board in the exercise of its mandate and all deliberations of the Board and its employees and agents, in connection with an inspection, investigation or review panel proceeding carried out under the Board's oversight program, are confidential and may not be disclosed without,

(a) the written consent of all persons whose interests might reasonably be affected by the disclosure; or

(b) a court order authorizing the disclosure. 2006, c. 33, Sched. D, s. 11 (2).

Testimony, production of documents

(3) No member of the Council of Governors or the Board and no officer, employee, agent or representative of the Board shall be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to documents or information that the person is prohibited from disclosing under this Act. 2006, c. 33, Sched. D, s. 11 (3).

Restriction on disclosure

(4) The Board may require the provision of information or the production of documents under subsection (1) that is, or are, the subject of solicitor-client privilege if access to the information or the documents is absolutely necessary to the purpose of the review of the audit. 2006, c. 33, Sched. D, s. 11 (4).

Privilege preserved

(5) Disclosure of information or documents under subsection (1) does not negate or constitute a waiver of any privilege and the privilege continues for all other purposes. 2006, c. 33, Sched. D, s. 11 (5).

Appeal to Divisional Court

12. (1) A party to a hearing before a review panel established by the Board may appeal from the panel's decision to the Divisional Court in accordance with the rules of court. 2006, c. 33, Sched. D, s. 12 (1).

Question of law only

(2) An appeal under subsection (1) may be made on a question of law only. 2006, c. 33, Sched. D, s. 12 (2).

Arbitration

(3) In lieu of an appeal under subsection (1), a party, other than the Board, may refer the matter to binding arbitration. 2006, c. 33, Sched. D, s. 12 (3).

Application of *Arbitration Act, 1991*

(4) Subject to the regulations made under this Act, the *Arbitration Act, 1991* applies to an arbitration proceeding under this Act. 2006, c. 33, Sched. D, s. 12 (4).

Board a party

(5) The Board is a party to an appeal or arbitration. 2006, c. 33, Sched. D, s. 12 (5).

Right to be heard

(6) The Minister is entitled to be heard, by counsel or otherwise, upon an argument of the appeal or at an arbitration hearing. 2006, c. 33, Sched. D, s. 12 (6).

Notification of securities regulators

13. (1) Despite subsection 11 (2), if the Board is provided with any document or other information that provides reasonable grounds to believe that any person or company may have contravened any law, the Board may notify the Commission, any regulatory authority, law enforcement agency or professional regulatory authority as the Board considers appropriate that it has discovered evidence of a contravention of the law, but the Board shall not disclose,

(a) privileged documents, privileged information or information based on privileged information or documents; or

(b) any specific information relating to the business, affairs or financial condition of a participating audit firm or of the

client of any participating audit firm except to the extent that the disclosure is authorized in writing by all persons and companies whose interests might reasonably be affected by the disclosure. 2006, c. 33, Sched. D, s. 13 (1).

Same

[\(2\)](#) For greater certainty, the Board shall not use privileged documents or information in determining if it has reasonable grounds to believe that any person or company may have contravened any law for the purposes of subsection (1). 2006, c. 33, Sched. D, s. 13 (2).

Disclosure to foreign auditor oversight bodies

[14. \(1\)](#) Despite subsection 11 (2), the Board may provide documents or other information to a foreign auditor oversight body relevant to that body's review of an audit carried out on a reporting issuer that carries on business in that body's jurisdiction. 2006, c. 33, Sched. D, s. 14 (1).

Exception

[\(2\)](#) The Board shall not provide privileged documents, privileged information or information based on privileged information to a foreign auditor oversight body. 2006, c. 33, Sched. D, s. 14 (2).

Immunity from liability

[15. \(1\)](#) No action or other proceeding for damages may be instituted against any member of the Council of Governors, any industry member as defined in the by-laws of the Board, any member of the Board's board of directors or any officer, employee or agent of the Board for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, or for any neglect or default in the performance or exercise in good faith of such duty or power. 2006, c. 33, Sched. D, s. 15 (1).

Liability of Board

[\(2\)](#) Subsection (1) does not relieve the Board of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject. 2006, c. 33, Sched. D, s. 15 (2).

Regulations

[16. \(1\)](#) The Minister may make regulations,

- (a) governing the preparation and submission of annual reports and budgets under section 9 and prescribing information to be included in the reports;
- (b) naming instruments for the purposes of clause 9 (3) (a);
- (c) prescribing rules in relation to the oversight program of the Board and providing that they shall be deemed to be rules of the Board;
- (d) governing arbitrations under section 12. 2006, c. 33, Sched. D, s. 16 (1).

Same

[\(2\)](#) A regulation made under subsection (1) has effect only in Ontario. 2006, c. 33, Sched. D, s. 16 (2).

[17.](#) Omitted (provides for amendments to this Act). 2006, c. 33, Sched. D, s. 17.

[18.](#) Omitted (provides for coming into force of provisions of this Act). 2006, c. 33, Sched. D, s. 18.

[19.](#) Omitted (enacts short title of this Act). 2006, c. 33, Sched. D, s. 19.

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