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**September 24, 2003**

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario, M5H 3S8
Fax: (416) 593-2318
E-mail: jstevenson@osc.gov.on.ca

***Sent Via E-mail & Fax***
***Also delivered via Courier with diskette in Word format***

**And to:**

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montreal, Quebec, H4Z 1G3
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***Sent Via E-mail & Fax***
***Also delivered via Courier with diskette in Word format***

**And to:**

Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Commission des valeurs mobilières du Québec
Nova Scotia Securities Commission
Securities Administration Branch, New Brunswick
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Dear Sirs/Mesdames:

**Re: Request for Comments**
**Proposed Multilateral Instrument 52-110 – Audit Committees**

I am a Vice President and the General Counsel & Corporate Secretary of Agrium Inc. (**"Agrium"**), and I am making this submission on behalf of Agrium in response to the Notice of Request for Comments with respect to the proposed Multilateral Instrument 52-110 for Audit Committees issued by the Ontario Securities Commission (**"OSC"**) on June 27, 2003.

## Background

Agrium, headquartered in Calgary, Alberta, is a leading global producer and distributor of fertilizers and other agricultural products and services with substantial operations in Canada, the United States and Argentina.

Agrium is organized under the *Canada Business Corporations Act* (**"CBCA"**). Its common shares are listed on both the Toronto Stock Exchange (**"TSX"**) and the New York Stock Exchange (**"NYSE"**). Agrium is in compliance with the present and proposed corporate governance guidelines applicable to TSX listed issuers and is committed to attaining high standards of corporate governance. Agrium, its management and its Board of Directors, continuously seek to achieve "best practices" in the implementation of good corporate governance.

## Introduction

Agrium, its management and its Board of Directors strongly support the initiative of those members of the Canadian Securities Administrators ("**CSA**") reflected the proposed Multilateral Instrument 52-110 to encourage reporting issuers to establish and maintain strong, effective and independent Audit Committees and to enhance the quality of financial disclosure by reporting issuers in Canada. We commend the OSC and the other members of the CSA who have proposed Multilateral Instrument 52-110 on their work in this regard to bolster investor confidence in the Canadian capital markets.

We would like to note that Agrium does not have specific concerns in complying with the proposed independence criteria that arise out of any existing factual circumstances. However, we have several observations and concerns with respect to the independence criteria as proposed for members of Audit Committees in the Multilateral Instrument 52-110 as set out below.

## Consulting, Advisory or other Compensatory Fees

Section 1.4(3)(e) of the proposed Multilateral Instrument deems a "material relationship" to exist between an issuer and a person who accepts, directly or indirectly, any consulting, advisory or other compensatory fees from the issuer or any subsidiary. Section 1.4(7) states that acceptance of a fee by an "immediate family member" constitutes indirect acceptance. The SEC Rule implemented on April 23, 2003 pursuant to Section 301 of the *Sarbanes-Oxley Act* ("**SOX**") similarly (but not identically) prohibits Audit Committee members from accepting, directly or indirectly, any consulting, advisory or other compensatory fees from the issuer or subsidiary, and includes as indirect acceptance payments to "family members" (as distinct from "immediate family members"),

which is a strict prohibition with no de minimus exceptions. The SEC definition of "family members" is limited to a spouse, a minor child or stepchild, or any child or stepchild sharing a home with a member. The proposed NYSE Rule creates a rebuttable presumption of non-independence with respect to Audit Committee members and their "immediate family members" who receive more than U.S. $100,000 per year from the issuer.

The NYSE proposed Rule defines "immediate family members" to include:

(a) a spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, and brothers and sisters-in-law; and

(b) anyone (other than domestic employees) who shares such person's home.

In short, the SEC Rule applies to a relatively narrow spectrum of "family members" with no de minimus exceptions, whereas the proposed NYSE Rule applies to a broader range of "immediate family members" but permits a U.S. $100,000 de minimus exception. In addition, the NYSE Rule creates a rebuttable presumption that can be overcome by the Board with a unanimous determination by the independent directors that the relationship is not material, with such determination to be accompanied by Proxy Circular disclosure.

The proposed Multilateral Instrument 52-110 appears to adopt the most stringent aspects of the SEC Rule and the NYSE Rule, by incorporating the broader definition of "immediate family members" found in the NYSE but not permitting any de minimus exception as is found in the narrower application of the SEC Rule to "family members".

We are not aware of any particular reason as to why the Multilateral Instrument 52-110 should adopt a more stringent standard than either of the SEC Rule and the proposed NYSE Rule.

We would like to suggest that the SEC Rule (which is already in force), coupled with a Board override provision (to create a rebuttable presumption that could be overcome by unanimous determination by the independent directors that the relationship is not material) would be the most appropriate criteria. This would also harmonize the Canadian position with the SEC Rule, while permitting the flexibility of a Board override feature that, we suggest, is consistent with the Canadian tradition of a principles based plus disclosure approach rather than a prescriptive rules approach to this matter.

**Immediate Family Members**

We would also like to submit that the mere employment of an immediate family member with an issuer should not necessarily preclude the service of a director on an Audit Committee and suggest that the employment be full time employment at a senior level, and that further, a de minimus threshold perhaps be considered in this regard as well. In the interest of harmonization, the de minimus threshold as proposed in the NYSE Rule of U.S. $100,000 would not seem unreasonable.

**Material Relationship**

We are generally concerned that the material relationship criteria for Audit Committee independence may be unnecessarily restrictive under certain circumstances which may not

necessarily be foreseeable or capable of prescribing in an exhaustive list. De minimus monetary tests as proposed by the NYSE may be helpful in this regard, but more importantly, we submit, would be the explicit addition of a Board override provision that would allow the Board to rebut a presumption of non-independence by the unanimous determination from the independent directors that such a relationship is not material. Again, we would suggest that such a determination by the Board would be accompanied by Proxy Circular or Annual Report disclosure. This may in particular be an issue for large public companies that, by the nature of their business, have significant relationships with many suppliers or customers on a broad industry basis.

**Executive Officer**

We would like to suggest that the definition of "executive officer" exclude persons occupying such positions in a non-executive capacity (i.e. chairs and vice-chairs).

**Cross-Border Harmonization**

By way of general comment, we note that there are a number of independent criteria that are in force or proposed at this time by the SEC, NYSE, Nasdaq, TSX and OSC relating to the independence of directors and Audit Committee members. We would like to encourage the harmonization of Canadian requirements where reasonable and appropriate with the U.S. rules. A principles based plus publicly disclosed Board override mechanism would assist in ensuring that these criteria do not have the unintended adverse effect of precluding or discouraging experienced and knowledgeable individuals from acting as Board and Audit Committee members. While we strongly support the many Canadian and U.S. corporate governance and regulatory initiatives underway in Canada and the United States, it is apparent that it is becoming increasingly vital that publicly traded issuers are able to attract and retain highly skilled and committed individuals who are able to fulfill these challenging responsibilities.

We appreciate the opportunity to comment on this initiative and hope that the views expressed herein will receive further consideration. In the event that you have any comments or questions or if you would like to have further discussion in this regard, we would welcome the opportunity to hear from you at your convenience.

Yours truly,

*/s/ "Leslie O'Donoghue"*

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