HARRY G. SCHAEFER
K400, 500 EAU CLAIRE AVENUE S.W.
CALGARY, ALBERTA T2P 3R8

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

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
Fax: (514) 864-6381
E-mail: consultation-en-cours@cvmq.com

Sent Via E-mail & Fax

And to:

British Columbia Securities Commission
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 Changes to Proposed National Instrument 51-102 Continuous Disclosure Obligations (the "Rule"), and Proposed Multilateral Instrument 52-110, Companion Policy 52-110CP, and Forms 52-110F1 and 52-110F2

I am a director on a number of Corporate Boards, Chair of the Alberta Chapter of the Institute of Corporate Directors and an interested participant in good corporate governance. My current directorships include TransCanada, Agrium and Fording. I also serve these companies as Chair of the Audit Committee. I have served on a number of Corporate Boards in the past as well as positions of CFO, President and Chair of the Board for other companies.

I wish to offer these comments and suggestions in response to your invitation for comment on the above instruments.

Proposal to require Board as well as Audit Committee to approve interim financial statements goes well beyond US practices and creates an unnecessary mandatory requirement in Canada

The proposals for continuing disclosure in Instrument 51-102 have a requirement that the Board of Directors must approve interim financials and removed the ability of the Board to delegate approval to the Audit Committee. This goes well beyond any US provisions and is more limiting than security law in a number of Canadian jurisdictions. This requirement will cause significant timing and scheduling issues for a number of companies, particularly smaller ones who must now try to schedule their Board meetings together with several other Boards into as little as a 10 day window. It is unlikely to add to the quality of governance, because of the timing congestion, and may impede the work of the Audit Committee in working in such a congested schedule without adding significantly to the quality of the governance. It is unclear why this most restrictive provision has been introduced into Canada to override existing company law provisions.

The bright line test on independence will create unintended results and exclude a number of qualified financial people from serving on Audit Committees that would be judged independent by most objective standards

The bright line test included in the independence test of the Audit Committee creates a disqualification of a number of Audit Committee members and financial experts. Independence from management and avoidance of material relationship with the company are sensible standards against which to assess independence. The Canadian Coalition for Good Governance has commented on this as follows:

> *"Build a Board where the majority of Directors are independent of management and have no material relationship with the company other than director fees and share ownership."*

Section 1.4, Paras 1 and 2 adhere to this principal but Para 3 has made a finding that a material relationship exists under a number of bright line tests. It has extended the definition of relationships to immediate family members which include relatives in and out of the home. This casts the net very broadly. The threshold tests are absolute without any consideration of the circumstances being caught by the test. I suggest that an absolute bright line test be modified to permit a director determination with disclosure of relationships that are not deemed material.

Audit Committee Expert

At the Policy Forum in Toronto on September 17, 2003, a discussion about the designation of a financial expert and the effectiveness of the safe harbor provisions occurred. The general conclusion was that the "expert" would still be very exposed and ultimately the courts would decide the matter. The Audit Committee financial expert is a defined term. The use of the phrase "expert" is unfortunate and I urge you to reflect on this matter. In the original NYSE guidelines the phrase was financial experience and in Canada the Saucier Report referred to financial expertise. The information required in the AIF is to identify the financial expert or else to explain the absence. Section 4.2(2) of the Companion Policy then goes on to state that:

> *"A person who is designated as an audit committee financial expert is not deemed to be an expert for any other purpose"* …
>
> Section 4.2(1) indicates that the designation does not impose any greater obligations than its absence.

The public explanation and expectation will be difficult to handle. We use the term "expert" and undefine it and then say by designating an expert we are not adding additional responsibilities. So why go through with this convoluted approach? It would be much more straight forward to speak of financial experience or expertise. The US got caught by the use of the word expert in Sarbanes Oxley and really had to undefine it. Why do we have to do this in Canada? I probably know the cynical answer but sometimes it is better to do the right thing. Finally a positive statement should be considered as to why a person with financial experience or expertise is desirable. The June 6, 2002 Report of the NYSE Corporate Accountability and Listing Standards Committee had some useful wording which I urge you to consider something similar. The Committee explained the rationale as follows...

> P11 – *"While it is not the audit committee's responsibility to certify the company's financial statements or to guarantee the auditor's report, the committee stands at the crucial intersection of management, independent auditors, internal auditors and the Board of Directors."*
> P12 – *"Existing NYSE listing standards require all audit committee members be financially literate, and that at least one member have accounting or financial expertise. …*
> *While all members of the audit committee should play a vigorous role, it is particularly important that the chair have the background and seasoning to assure that the committee retains control over its agenda. Further, a chair with the requisite accounting/financial background, which includes current or former senior executive officers of corporations, is more likely to develop direct lines of communication with key audit personnel, both from within the company and from the company's independent accountants."*

I appreciate the opportunity to pass on my comments.

/s/ "Harry G. Schaefer"

Harry G. Schaefer
Corporate Director with Financial Expertise