

**Bryna Goldberg, B.C.L., LL.B.**  
Executive Vice President, Legal Affairs,  
General Counsel and Secretary



243 Consumers Road  
Toronto, Ontario  
M2J 4W8  
Tel: 416-490-2648  
Fax: 416-490-2700

September 25 , 2003

**SENT BY SAME DAY COURIER**

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

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario M5H 3S8

Dear Sirs & Mesdames:

**Proposed Multilateral Instrument 52-110 and Proposed Companion Policy 52-110  
(collectively, "MI 52-110")**

**Proposed Multilateral Instrument 52-109 and Proposed Companion Policy 52-  
109CP (collectively, "MI 52-109")**

This letter is in response to the request for comments ("Request for Comments") relating to the proposed MI 52-109 and MI 52-110. Defined terms used in the respective Requests for Comments will be used in this comment letter. We have enclosed a diskette containing a copy of this letter.

## **Multilateral Instrument 52-110**

Shoppers Drug Mart Corporation (“Shoppers”) has the following comments and recommendations with respect to MI 52-110.

### 1. General Timing Concerns

We are concerned about the timetable for implementation of MI 52-110. More specifically, we note that the “prescribed period” is to commence January 1, 2004. This prescribed period will fall prior to or shortly after the implementation of MI 52-110 and provides very little time to effect changes necessary to comply with the instrument. In particular, certain shareholder nominees serving on our Audit Committee are employed by shareholders that receive fees in connection with consulting or advisory services to Shoppers. These arrangements would have to be terminated prior to January 1, 2004 to avoid disqualification of these nominees as independent directors. In connection therewith, termination arrangements would have to be negotiated and alternative service providers arranged. This would place Shoppers and certain of our shareholders with board nominees sitting on our Audit Committee in a difficult position because such persons would have very little time, if any, following implementation of MI 52-110 to ensure compliance.

Alternatively, we could consider changes to our board to add additional independent directors. However, we would require time to recruit and retain additional independent directors who would satisfy the independence, financial literacy and financial expert qualifications in the instrument, as well as appoint, transition and orient new members to the board and Audit Committee on very short timelines.

Accordingly, at a minimum, we submit that there should be at least a 12-month period following implementation of the Audit Committee Instrument before the prescribed period commences to run.

### 2. Definitions of “Affiliated Entity” and “Control” – Section 1.3

Based on advice from our outside counsel, we understand that the definitions of “affiliated entity” and “control” in section 1.3 of MI 52-110 are borrowed from the U.S. rules and that the meanings ascribed to these terms are inconsistent with the definitions accorded these terms elsewhere in Canadian securities legislation and securities rules. As MI 52-110 does not provide any guidance as to how these definitions are to be interpreted (apart from the exception in subsection 1.3(4)), it is unclear whether it is intended that U.S. legal principles should be used when interpreting the meaning of “control” to determine if a person is an “affiliated entity” under MI 52-110.

Specifically, we understand that the term “affiliate” in the corresponding SEC rules would include a person or company with greater than 10% of the voting stock of an issuer and a seat on the issuer’s board, whereas this would not typically be the conclusion reached under Canadian securities law. We are concerned that certain shareholders of Shoppers may be considered “affiliated entities” if U.S. legal concepts were to apply to the interpretation of “control” in MI 52-110.

For example, under Canadian securities law, in the absence of any contractual arrangements concerning the voting of an issuer’s securities, we might conclude that a

person or company would only have the “direct or indirect power to direct or cause the direction of the management and policies” of the issuer if it held more than 20% of the voting securities and no other person or company held a greater number of securities. However, under U.S. law a holding in excess of 10% of the voting securities coupled with a single board nominee would constitute control for the purposes of this particular definition. Given that Canadian reporting issuers tend to be more closely held than U.S. public companies, we submit that the U.S. interpretation of this definition of “control” would be much too broad. Specifically, application of the U.S. interpretation of “control” would preclude certain institutional shareholders of Shoppers, who have nominees on Shoppers’ board, from having a representative on the Audit Committee of Shoppers. These restrictions limit the ability to draw on the expertise of our outside board members for audit committee functions.

We recommend additional guidance be provided regarding the interpretation of the terms “affiliated entity” and “control”, and that definitions consistent with Canadian practice be used.

### **Multilateral Instrument 52-109**

Shoppers has the following comment with respect to MI 52-109.

1. Transition Period and Issue of Timing

The proposed MI 52-109 fails to clearly articulate when the instrument will take effect. For example, Shoppers’ 2003 fiscal year end will occur on January 3, 2004. As outside counsel has informed us, if MI 52-109 comes into force January 1, 2004, the CEO and CFO would be required to personally certifying the fiscal 2003 financial statements. Given the short timeline to the fiscal year end and filing deadlines, it would be difficult to implement appropriate controls and procedures to enable the CEO and CFO to personally certify our fiscal 2003 financial statements.

Yours truly,

Bryna Goldberg

cc: George Halatsis, Executive Vice President  
& Chief Financial Officer