CANADIAN BANKERS ASSOCIATION

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BY COURIER

September 25, 2003

Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Commission des valeurs mobilières du Quebec
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

c/o Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Ms. Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Tour de la Bourse
800, square Victoria
C.O. 246, 22e étage
Montréal, Québec H4Z 1G3

Dear Sirs and Madames:

Re: CSA's Investor Confidence Rules
(Proposed Multilateral Instruments 52-109 and 52-110)

The Canadian Bankers Association appreciates the opportunity to provide comments on the Canadian Securities Administrators' (CSA) proposed Multilateral Instruments 52-109 and 52-110 and related documents (the "Investor Confidence Rules").

We support the objective of the CSA to harmonize its proposed Investor Confidence Rules with provisions of the Sarbanes-Oxley Act of 2002 and the U.S. Securities and Exchange Commission and New York Stock Exchange requirements (collectively, the applicable "U.S. legislation"). On balance, the approach taken appears to be generally consistent with the U.S.

legislation in providing comparable principles for good corporate governance.

We have provided a number of detailed comments in the attached Appendix. We appreciate the opportunity to express our views on this matter and would be pleased to answer any questions that you may have in respect of our comments.

Sincerely,

Original signed by Kelly Shaughnessy

RKS/gp

Attachment

APPENDIX

PROPOSED MULTILATERAL INSTRUMENT 52-109
-CERTIFICATION OF DISCLOSURE IN COMPANIES' ANNUAL AND INTERIM FILINGS

Fairly Presents Certification
With respect to the "fairly presents" certification, in the U.S. certificate the period referred to for certification is "as of and for the periods presented in the annual report". In the Canadian certificate, it is "as of the date and for the period presented in the annual filings". The different interpretation to be drawn from these terms is not entirely clear, but the distinction may be that the balance sheet is made "as of a date" and the income statement and statement of cash flows are made "for the period". This terminology would be consistent with a typical audit opinion. We request clarification by the CSA that "as of the date" means as of the date of the balance sheet.

Certification of Executive Compensation
In response to the Request for Comment, relating to certification of executive compensation, we agree with the CSA's view that including Form 40 disclosure in the definition of "annual filings" and/or requiring the annual certificate to capture executive compensation disclosure is unfair to certifying officers who have personal liability for the information and would be called to certify the information in advance of when it would be available or filed.

Availability of exemptions for issuers that comply with U.S. laws
Under the proposal, an issuer is exempt from the requirements to file an annual certificate signed by the Chief Executive Officer and Chief Financial Officer if 1) the issuer is in compliance with U.S. federal securities laws implementing the annual report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and 2) the issuer's most recent annual report and signed certificates are filed on SEDAR as soon as reasonably practicable after the SEC filing. Many of our members comply these U.S. laws and, therefore, will be exempt from the proposed requirement to file an annual certificate.

There is a similar exemption for the proposed requirement to file an interim certificate. A foreign private issuer is not required by U.S. law to file a certificate of the Chief Executive Officer and Chief Financial Officer with its quarterly reports. However, some of our members do so voluntarily. We request clarification as to whether such a voluntary filing allows an issuer to rely on the exemption in section 4.1(2).

Clarification on content of filing under section 4.1 exemption
Our inter-listed members file their "annual report" with the SEC using a prescribed form called Form 40-F. The Form 40-F attaches specific documents as exhibits, including an issuer's audited financial statements, management's discussion and analysis and annual information form. Other foreign private issuers file their "annual report" with the SEC using other prescribed forms (eg., Form 20-F).

A condition of the exemption in section 4.1(b) is that "an issuer's most recent annual report and signed certificates are filed on SEDAR as soon as reasonably practicable after they are filed with the SEC." It would be helpful to clarify in the proposed instrument what is meant by the term "annual report". We believe that the regulators intend to capture the prescribed form filed by foreign private issuers.

PROPOSED MULTILATERAL INSTRUMENT 52-110 - AUDIT COMMITTEES

Exemptions
Section 4.3 provides that an issuer is exempt from the requirements of this instrument so long as it qualifies for the relief contemplated by section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations. Section 13.3 of Proposed NI 51-102 provides an exemption for certain exchangeable security issuers.

We request that an exemption be added to MI 52-110 similar to the exemption provided in 13.2 of Proposed NI 51-102 dealing with existing exemptions, to read as follows: "A reporting issuer that is eligible to rely on an exemption, waiver or approval granted to it by a regulator or securities regulatory authority relating to continuous disclosure requirements of securities legislation or securities directions is entitled to rely upon such exemption, waiver or approval from the requirements of this Instrument to the same extent and on the same conditions, if any, as contained in the earlier exemption, waiver or approval."

It is our view that issuers who have received relief from continuous disclosure requirements (commonly as a result of agreeing to provide the financial statements of the parent, itself subject to the requirements of proposed MI 52-110) should not be required to have an audit committee in accordance with these provisions. Certain additional conditions are included in Proposed MI 51-102.

Meaning of Independence
The drafting of S.1.4(3)(e) is vague and appears to lead to the conclusion that a non-executive director acting as Chair would be prohibited from acting on an Audit committee, except in the case in which the Chair acts for no compensation in respect of this role. Such an interpretation would be an undesirable and presumably unintended result and just as likely to hinder good corporate governance. We do not agree that a non-executive Chair, receiving compensation as such should be prohibited from acting on an Audit committee if such individual is otherwise independent. We would ask that the CSA amend section 1.4(3)(e) to read: “a person who accepts…acting in his or her capacity as a member of the audit committee, the board of directors, including any non-executive chair thereof, or any other board committee.”

We also would ask that the CSA amend the independence criteria to (i) restrict the definition of immediate family and/or (ii) to provide the board the authority to negate the deemed relationships (or at least certain of the relationships) enumerated in the definition. Alternatively, we would suggest amendments to particular provisions, such as, amending the provision that would result in non-independence of a director if any member of his or her immediate family was an officer or employee of the issuer, a subsidiary or an affiliate to apply only to immediate family members if they are executive officers of the issuer.

We are of the view that the independence criteria set out in section 1.4(3)(a) should include a threshold of $150,000, particularly in respect of immediate family members. Both the concept of negatable relationships and the concept of a threshold for remuneration exist under the NYSE proposals and we believe are helpful nuances to focus on potentially significant relationships.

Extension to Auditors of Subsidiaries
Section 2.3(4) extends the pre-approval requirement to the external auditors of the issuer's subsidiary entities. We believe it is sufficient to focus on the auditors of the reporting issuer and we do not understand the extension to the subsidiary auditor if such auditor does not audit the reporting issuer. This extension would contribute to the workload of the audit committee without an obvious benefit.

Financial Literacy
We would propose that a reasonable transition period be provided with respect to financial literacy tests for existing Audit committee members.

U.S. Listed Issuers
Under proposed NYSE requirements, a foreign private issuer is required to comply only with certain requirements regarding the role and composition of audit committee and disclose any discrepancies between its corporate governance practices and those followed by U.S. issuers under the NYSE rules.

We request clarification as to whether the exemption from audit committee requirements under the instrument is available to a foreign private issuer if the latter complies only with the NYSE requirements with which it is obliged to comply or whether the foreign private issuer must comply with all of the NYSE's audit committee requirements, with which it may otherwise be complying voluntarily.

Timing for Implementation
We understand it is proposed that this instrument be effective on the earlier of (i) the first annual meeting of the issuer after January 1, 2004 and (ii) June 30, 2004. As a general proposition we support a later date given that the rules are not yet in force and could impose significant new requirements for issuers. It would also accelerate the requirements for those already subject to the U.S. rules as the effective date under MI 52-110 would precede certain requirements under the U.S. rules if the proposed effective date under MI 52-110 is adopted. Pursuant to SEC Release 33-8220, our inter-listed members will be required to comply with audit committee requirements by July 31, 2005.

In addition, we would recommend that the effective date relate to year-ends or filings of annual reports but not annual meeting dates. The January 1, 2004 date may be appropriate for issuers with December 31 year ends, however, any issuer with a year end between now and the effective date of January 1, 2004 could conceivably be planning on filing its AIF prior to January 1 in respect of a meeting to be held after January 1, 2004. Those issuers would be required to comply with this instrument, which is not yet final and would not be effective at the time of filing. We believe this is an unintended gap in the effective timing.

Audit Committee Financial Expert - Safe Harbours
As you are aware, the SEC has created an explicit 'safe harbour' for the Audit Committee Financial Expert required for U.S. companies by the Sarbanes-Oxley Act. The Companion Policy states the position of the CSA that the designation of the Audit Committee Financial Expert should not impose additional duties, obligations or liabilities on the Audit Committee Financial Expert nor should it diminish those of other members of the Audit Committee.

The CSA is of the view that it would not be an appropriate result if the courts were to find that the designation altered the individual's duties, obligations or liabilities. The Companion Policy further indicates that the Audit Committee Financial Experts are not deemed experts for other purposes. It appears that the U.S. provisions have provided more protection than the Canadian provisions for this important role. We request the CSA consider this matter and determine if further legislative assurances can be promulgated to provide an equivalent to a safe harbour to Audit Committee Financial Experts prior to implementing the disclosure requirement.