September 25, 2003

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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

Re: Proposed Multilateral Instrument 52-110 *Audit Committees*

The following comments are provided by Talisman Energy Inc. ("Talisman") in response to the CSA's notice and request for comments regarding the proposed Multilateral Instrument 52-110 *Audit Committees*, its two forms and companion policy (the "Instrument").

Talisman is a large, independent, Canadian-based oil and gas producer with oil and gas operations and related activities, whether directly or through its subsidiaries, in Canada and in more than ten countries around the world. As a cross-border issuer with shares listed on the Toronto Stock Exchange and the New York Stock Exchange, Talisman makes use of the Multijurisdictional Disclosure System for U.S. Securities and Exchange Commission filings. Accordingly, Talisman generally supports initiatives proposed by the Instrument that harmonize Canadian and U.S. requirements.

Talisman supports the CSA's efforts to make the Instrument's audit committee requirements consistent with U.S. requirements and to provide exemptions for U.S. listed issuers. This type of harmonization and consistency makes the task of complying with requirements in multiple jurisdictions much easier. Talisman appreciates and applauds the CSA's approach of uniformity across the two countries.

Talisman suggests that an issuer's board of directors should be permitted to delegate to the audit committee its authority to approve the compensation of the external auditors. As it is currently drafted, Section 2.3(2)(b) of the Instrument provides that "an audit committee must recommend to the board of directors… the compensation of the external auditors." Commentary published with the draft Instrument states that "under Canadian corporate law, an audit committee cannot appoint, compensate or retain the external auditors." Talisman disagrees with this statement as a matter of law because under the CBCA and the ABCA, the delegation of the directors' authority to fix the remuneration of the auditor is not restricted as it is for other director actions. (See CBCA and ABCA ss. 162(4) and 115(3).) Absent a corporate law prohibiting such a delegation, Talisman proposes that this duty be delegable to the audit committee for two reasons. First, the audit committee is well-placed to perform this task as its members are all independent directors who oversee and are aware of all the tasks performed by the external auditors. Second, allowing such a delegation would make the requirement consistent with a similar requirement in the *Sarbanes-Oxley Act*. Rule 10A-3(b)(2) of the Securities Exchange Act of 1934, enacted under section 301 of the *Sarbanes-Oxley Act*, as well as proposed Section 303A(7)(c) of the New York Stock Exchange's Listed Company Manual, state that the audit committee must be directly responsible for the compensation of the external auditors. Accordingly, Talisman proposes that Section 2.3(2)(b) of the Instrument be amended to provide that the board of directors may delegate to the audit committee the responsibility to determine the compensation of the external auditors.

Talisman believes the requirement proposed in Section 2.3(5) of the Instrument that would require the audit committee to review earnings press releases before they are publicly disclosed is unnecessary. A company's audit committee reviews all primary financial documents, which include the financial statements, the notes thereto, and the MD&A. Earnings press releases are written with information derived from such primary financial documents. It is implicit that in drafting an earnings press release, management may not change the tenor or substance of the financial information taken from the primary financial documents. Accordingly, a company's audit committee already reviews all financial information included in an earnings press release. Further review

would, in practical terms, constitute a wordsmithing exercise. Such wordsmithing is an investor relations function of management and is not an appropriate board or committee role.

This distinction between primary financial documents and derivative documents is implicitly reflected in recent and pending amendments to the *Securities Act (Ontario)*. *An Act to implement Budget measures and other initiatives of the Government* (Bill 198) and *An Act to implement Budget measures* (Bill 41) distinguish between core documents and other disclosure documents in establishing liability for secondary market disclosures. For non-management directors, core documents include prospectuses, various circulars, MD&A, AIFs and annual and interim financial statements. Earnings press releases are not core documents. The distinction is important because directors, and others, will potentially be more exposed to liability for misrepresentations in core documents than for misrepresentations in other disclosure documents. The conclusion to be drawn from this distinction is that non-management directors should be held responsible for the content of core documents (i.e. financial statements), but not for the content of other disclosure documents (i.e. press releases), unless there are exceptional circumstances where a non-management director had knowledge of a misrepresentation in such a disclosure document or was guilty of gross misconduct.

Talisman believes that there is a logical inconsistency in the proposed rule and we believe Ontario's distinction between core documents and other disclosure documents recognizes this inconsistency. An earnings press release is just one of several investor relations materials derived from the primary financial documents. Other derivative materials include road show speeches, conference call scripts and unscripted Q&A responses and investor presentations, most of which are also made available on websites, i.e. are printed materials just like the earnings press release and in many cases are released more or less simultaneously. In any case, management of a large company like Talisman makes literally hundreds of statements about the company and its prospects, mostly unscripted. At Talisman, these derivative materials are constantly reviewed and altered to suit the purposes at hand. Obviously, actual information contained in the primary financial documents is not changed for any of these purposes. All of these materials contain summaries and highlights of financial information derived from the primary financial documents. There is no logical reason to distinguish between these derivative documents. Accordingly, there is no logical reason to single out the earnings press release as the one such document an audit committee must review. Reviewing investor relations materials, including those derived from the primary financial documents, falls squarely within the role of management and is an active, ongoing task. The CSA should not blur the functions of management and directors by regulation.

Further, the consequences of the board approving earnings releases are fundamental although the exercise might seem trite. Unlike the primary financial documents, which are rule-driven and derived within a well established regulatory framework involving independent experts, the company's third party auditors, the press release and management's statements are judgmental and discretionary. Requiring an audit committee to approve these statements before they are released would effectively render them board statements. Talisman believes this dangerously crosses the line between

management and the board. Because the board must assess and judge management's performance, including its dialogue with the market, it should not be effectively conducting that dialogue, which prior review implies.

For the reasons given above, which are supported by Ontario's new distinction between core documents and other disclosure documents, Talisman respectfully submits that an audit committee not be required to review and approve earnings press releases before they are publicly released.

Yours truly,

M. Jacqueline Sheppard
Executive Vice-President,
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