

April 15, 2004

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

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**RE : Comments on Proposed Multilateral Policy 58-201 and proposed Multilateral Instrument 58-101**

The Canadian Investor Relations Institute (CIRI) is pleased to respond to the Requests for Comment regarding proposed *Multilateral Policy (MP) 58-201* (Effective Corporate governance) and proposed *Multilateral Instrument 58-101* (Disclosure of Corporate Governance Practices) published for comment on January 16, 2004.

CIRI is a professional, not-for-profit organization of corporate executives and consultants responsible for communication between public companies and the investment community. With 750 members, CIRI is the world's second largest society of investor relations professionals. Approximately 90% of CIRI's public company members are listed on The Toronto Stock Exchange, 8% on the TSX Venture Exchange, and 30% are interlisted on a US exchange. CIRI is headquartered in Mississauga and has active chapters in Toronto, Montreal, Calgary and Vancouver.

CIRI's mission is to "advance the stature and credibility of the investor relations profession and the competency of its members". A prime focus of the organization is the education of its members about investor relations best practices through regular and ongoing professional development programs.

CIRI takes a strong interest in governance matters as we believe that good corporate governance is an important element in allowing issuers to achieve positive sustainable performance. In addition, the perception of good corporate governance is essential to investor confidence in capital markets generally, as well as in the market valuations of issuers. A recent survey of sell-side and buy-side analysts and institutional investors in North America conducted by *Investor Relations Magazine* showed that they ranked corporate governance fourth in importance among non-financial measures when making an investment decision.

### *Guideline Needed to Formalize Communication of Shareholders to the Board*

We support the majority of guidelines but have concerns centred on omissions from an IR perspective. Our main concern is that the new guidelines continue to overlook the importance of ensuring that directors understand the concerns and expectations of shareholders and of establishing clear lines of communication with them. Directors' main role is to represent the interests of shareholders, notably minority shareholders who are not otherwise represented. How can directors represent shareholders if they do not understand their concerns and expectations? While the board is elected by, and reports directly to, its shareholders, traditionally there have been only ad hoc procedures to facilitate board understanding of shareholders' views on issues ranging from management performance to corporate governance practices.

Dissatisfied shareholders can take action – for example institutional shareholders can press for a meeting with the board (which they increasingly do as part of the Canadian Coalition for Good Governance), shareholders can take a stand at annual meetings or other forums, or they can simply sell their shares. But there is no required – or even suggested – process for boards to keep on top of shareholder issues. CIRI maintains that issuers would benefit greatly from such a process as it would surface shareholder concerns before they reach crisis proportions, and allow time to respond constructively. Such a process would also provide useful intelligence to the board, recognizing that shareholder perceptions affect share valuations. Insights gained could assist the board in its oversight functions including the oversight of strategic planning. Overall, such a process would build greater trust among shareholders which could lead to more realistic valuations and less share volatility.

We refer Canadian securities regulators to a recent US task force report on *Improving Board-Shareowner Relations* conducted by The Council of Institutional Investors and the National Association of Corporate Directors. The task force made five recommendations, two of which are particularly relevant to this discussion. They are: (1) Boards should provide detailed contact information for the corporate secretary and/or other management representative and for at least one independent director. (2) To facilitate the communications process, boards should detail which issues are appropriate for boards to address and which are appropriate for management. A copy of the Task Force report can be found at <http://www.nacdonline.org/images/White-CIITaskForce-2004-2-26-04.pdf>

With this perspective, we would like to see a guideline in MP 58-201 that specifically addresses the following:

- Formal, practical procedures for direct, specific shareholder communication with the board, or individual board members, without the intervention of management. The scope of board access would be restricted to appropriate issues. The aforementioned task force identifies such issues as “governance topics and major, fundamental business decisions such as mergers, acquisitions, divestitures and capitalization issues.” It is our understanding that most boards today have no ongoing independent process in place that allows such communication to take place.
- Processes to ensure general ongoing feedback to the board about concerns and expectations of shareholder and sell-side analysts. How well does the board understand what the Street is thinking? Again, the guidelines do not address this critical issue. We recommend that a member of management provide regular updates on the investor relations program and perceptions of shareholders and analysts [often via analyst reports] regarding key aspects of management performance and governance. Some senior investor relations officers (IROs) already report regularly to the board, while in some companies this is the role of the CFO.

Most issuers now have a disclosure policy, which clearly spells out the process for communicating *to* shareholders and investors at large. What is needed is a formalized process for receiving communications directly *from* shareholders on shareholders' own initiative, and *about* shareholders and the investment community on a proactive basis by the issuer, for the reasons outlined above.

### *Role of IR in Financial Disclosure*

We see the increasing role of boards and audit committees in overseeing financial disclosure as primarily a positive step, to ensure professional reporting processes and integrity in disclosure. However, investor relations best practices involve a quality of disclosure well beyond the regulatory minimum. This is necessary for issuers

to achieve a sustainable, realistic valuation. Senior IROs or their equivalent are best equipped to represent the needs of investors and to provide the necessary communications skills to deliver to those needs. Therefore, they should be an integral part of the team in the disclosure process.

We caution that the expanded board oversight function recommended in this proposed policy, combined with increased concerns about board liability, could place greater emphasis in the disclosure process on risk aversion to the detriment of good communications, transparency and investors' best interests. We believe such a trend would increase the information risk for investors and lead to lower share valuations and higher share volatility.

#### *Reference CIRI's Model Disclosure Policy*

We agree that all issuers should have a communications policy and we draw to the attention of the participating regulators that CIRI has developed a document called *Standards and Guidance for Disclosure and Model Disclosure Policy*, which has been the starting point for many issuers when developing their communications policies. It has been recommended as a resource for issuers in the report of the Insider Trading Task Force. We recommend that the CIRI document also be referenced in MP 58-201 as a resource to issuers. The CIRI document is essentially the practical application of *NP 51-201 Disclosure Standards*, which is referenced in the proposed governance guidelines. CIRI's *Model Disclosure Policy* is updated as evolving disclosure practices warrant and was last substantially renewed in 2003. We have attached a copy with this submission.

#### *Role of IR Officer in Director Orientations and Briefings*

One of MP 58-201's proposed guidelines is that boards should ensure that all new directors receive a comprehensive orientation. CIRI believes it is important that this orientation include background on an issuer's shareholder base and a perspective on the investment community's overall perceptions of the issuer and its valuation relative to its peers. Orientation should also include an outline of the board's role in, and process for, two-way communications with shareholders, and an update on trends in IR best practices. In an increasing number of companies, the IRO has a role in the director orientation program, and provides regular quarterly or semi-annual briefings to the board on the issuer's IR strategy and activities, and perception feedback from the investment community about such issues as disclosure and governance practices. We recommend that the guidelines reference IR backgroundings as part of new director orientation and ongoing board briefings.

#### *Cost Benefit Criteria for Differing Issuer Requirements*

The proposed policy treats venture and non-venture issuers differently in some respects and we agree that the more limited resources of venture issuers are a factor to be considered. However, CIRI cautions that modifications should not increase the risk profile of venture issuers, as that would cost them more in terms of an added share price discount, and could affect overall capital markets by association.

#### *MIC for Disclosure of Governance Practices*

We believe that the management information circular (MIC) remains the best primary document for issuers to discuss their compliance with governance guidelines, rather than the annual information form (AIF) as now proposed for issuers other than venture issuers. The MIC is sent to all shareholders while the AIF is not, and the MIC includes other governance discussion including a description of executive compensation. We expect that a number of issuers would continue to provide the full discussion in the MIC rather than just referencing it, if the AIF becomes the primary disclosure document for this material.

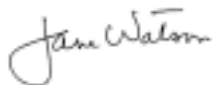
#### *Questions Raised by BC, Alberta and Quebec*

We note that the British Columbia, Alberta and Quebec securities commissions have issued a notice on effective disclosure of corporate governance in which they seek dialogue guided by three questions: (1) Are securities regulators in the best position to determine corporate governance best practices and policies appropriate for all issues? (2) Should there be a single uniform set of governance practices that should be considered best practices by all regulators or should issuers have the flexibility to decide what is most suitable

for them? (3) Should additional filings and news releases about corporate governance and practices be required to be filed on SEDAR?

Regarding these questions, CIRI believes there should be a corporate governance benchmark for issuers to compare with at a point in time, and over a period of time. The guidelines approach, rather than a rules-based approach, provides flexibility for issuers to present their particular circumstances. We believe that as the bar for good governance is raised around the world, more guidelines are likely to become rules to ensure Canadian capital markets remain competitive. Given the diversity of players in Canadian capital markets, we favour evolutionary change as long as this approach does not compromise Canadian capital markets or the interests of investors. For example, we support the new rules for audit committees given the singular importance of financial reporting integrity. We believe that a rules-based approach should be considered regarding the need for a communications policy and a code of business ethics and conduct.

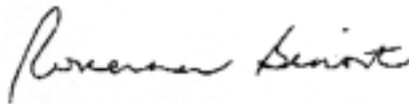
CIRI appreciates the opportunity to make this submission and we would be pleased to answer any questions you may have.



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