

May 25, 2004

Mr. John Stevenson
Ontario Securities Commission
20 Queen Street West
Suite 1800, P.O. Box 55
Toronto, Ontario M5H 3S8

Dear Mr. Stevenson,

Re: CCGG Comments to the Ontario Securities Commission

- **Multilateral Policy 58-201**
 - **Multilateral Instrument 58-101**
-

The Canadian Coalition for Good Governance (CCGG) represents the governance interests of its 31 full members and 18 observer members. We estimate, that combined, our members have assets under management of approximately \$600 billion (Cdn).

1. Philosophy (58-201)

We are in favour of the “comply or explain” philosophy behind the proposed guidelines. We also believe the Audit Committee “rules” (MI 52-110) are appropriate.

You should consider referring explicitly to the CCGG Best Practices Guidelines to give issuers guidance on specific items not covered in the policy. These guidelines supplement your policies in the same way the listing requirements remaining at the NYSE/NASDAQ supplement SEC rules.

2. Disclosure (58-101 and Form 58-101F1 and 101F2)

We believe that the primary vehicle for disclosure should be the Management Information Circular (MIC), not the Annual Information Form (AIF). The MIC is mailed to all shareholders while the AIF is not.

We also think it would be helpful to add to the disclosure requirements the matters as found in Appendix A. We are particularly anxious that the Auditor’s Engagement Letter be published in the Management’s Discussion and Analysis (MDA) or the MIC.

We would also encourage you to suggest that issuers disclose compliance to the guidelines in a manner that makes it clear, requirement by requirement, whether the issuer has complied to the guideline or not. One way of achieving this goal is a tabular format.

3. Detailed Comments (58-201)

We have listed in Appendix B our views on the details of the proposed guidelines reflecting our meeting with you.

- (a) **Ethics** – Following a poll of our members, we unanimously support Codes of Business Conduct for all reporting issuers.

A significant majority of the respondents to our poll felt that having such a code should be made a rule!

- (b) **Committee Guidelines** –The Coalition believes that the independence rules as envisaged will make it difficult for companies with controlling shareholders to manage their board committees if 100% independence is the guideline.

Our members are evenly split on a 100% independent nominating committee: half being for and half being against. However, two-thirds of the members who responded to the poll favour a 100% independent compensation committee.

On balance, as our guidelines call for a ‘majority’, it would be my recommendation to the commission to maintain the ‘majority’ position until both you and we have further examined the matter.

4. **Independence**

The current proposal is to take the Audit Committee definition and remove two components:

1.4 (3) (f) (i) – deals with directors who get paid extra as consultants or advisors

We do not see why this particular definition of a “material relationship” was removed. Perhaps you might wish to establish a threshold of materiality as you did in the next section on immediate family members.

5. **Other Matters – Proxy Voting**

The Coalition is strongly in favour of being able to vote FOR or AGAINST individual directors, as is the case in the United Kingdom proxy ballots. This would require a change from WITHHOLD to AGAINST and a requirement to vote each director separately rather than slates.

The Coalition is strongly in favour of not allowing custodians that hold shares for investors, to vote for incumbent directors without the permission of the actual owners. The SEC is currently considering such a rule.

* * * *

The Canadian Coalition for Good Governance looks forward to working with the Ontario Securities Commission, its provincial colleagues and the CSA on good governance policies and best practices in the years ahead.

Submitted on behalf of the Canadian Coalition for Good Governance by:

Original signed by DRB: delivered hard copy

David R. Beatty O.B.E.
Managing Director

PROPOSED MULTILATERAL INSTRUMENT 58-101
DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES

Additions Requested by the CCGG:

1. Composition of the Board

- a. Include disclosure on why each board member deemed not to be independent was so assessed.

2. Code of Business Conduct and Ethics

- a. Annual disclosure of the code in the proxy or on the corporate web site.
- b. Might be the first item in 58-101F.
- c. Might be made a “rule”.

3. Compensation

- a. The compensation philosophy of the organization should be disclosed, showing the links between management compensation and meaningful and measurable performance targets.
- b. All forms of executive compensation (*including SERPs*) should be disclosed and estimates of the present value of pensions for “named officers” (including SERPs) disclosed.

4. Regular Board Committee and Peer Assessments

- a. The disclosure of the assessment processes should be with a level of detail to assure that a strong and viable program is in place.

**PROPOSED MULTILATERAL POLICY 58-201
EFFECTIVE CORPORATE GOVERNANCE**

**COMMENTS TO THE ONTARIO SECURITIES COMMISSION BY THE CANADIAN
COALITION FOR GOOD GOVERNANCE**

Reference by Section:

Part One – Introduction

1.1 Background and Purpose of this Policy

Purpose

Make some statements about the role of the board in a general sense as found in PIAC Corporate Governance Standards, section A.

Ethics

Consider putting in more on ethical behaviour and securing people of integrity to serve as directors in the Introduction (see 2.2.4 Board Mandate comment below). Corporate governance is more than guidelines. It is culture, ethics and business smarts.

Consider the establishment of a Code of Business Conduct and Ethics and annual review that is mandatory (ICD recommendation and CCGG will poll its members).

History

Consider including a reference to the Coalition’s Good Governance Principles and Best Practices that were released in September 2003.

Part Two – Effective Corporate Governance

We agree that the policy should provide guidance on corporate governance and should be implemented flexibly and sensibly to fit the situation of individual issuers.

2.1 Meaning of Independence

- The writing was obscure as to what was and what wasn’t independence. We understand this section will be re-drafted to be in one place (“self-standing”) rather than cross-referenced.
- We now understand you will use the independence definition for Audit Committees (MI-52-110) for boards, excluding 1.4(f)(i) and 1.4(g).
 - More explanation of the reasons for having a different determination of independence for the audit committee than for the board is needed.
- David still has a problem with the specificity in 1.4(f)(ii) of \$75,000. He thinks you should make this less specific with words such as “material in the opinion of the Governance Committee” and then forced disclose.

2.2.2 Composition of the Board

- This is a process not a ‘Composition’ point. Possibly include this section under 2.2.4 as a new point.
- Drafting point: include “each” prior to “regularly scheduled” to read, “at each regularly scheduled...”

2.2.4 Board Mandate

2.2.4(a)

- Take out “to the extent possible” as words; but more importantly, make the ethics point in the Background and Purpose of the Policy section.

2.2.4(c) and (d)

- Should be a process or policy framework not the act of the Board doing it itself.
- In part (d), the board generally does not directly monitor senior executives, the CEO does and recommends to the board.

2.2.4(e)

- The statement “*In developing an effective communication policy for the issuer, issuers should also refer to the guidance set out in National Policy 51-201 Disclosure Standards*” should be moved from its present position after 2.2.4(iii) to be included as part of 2.2.4(e).

Section 2.2.4(i) might be deleted as being too much work.

Section 2.2.4(ii) should be included as a new point in 2.2.4.

Section 2.2.4(iii) should be placed within the Position Descriptions (2.2.5).

2.2.5 Position Descriptions

- Consider changing the title of this section. Boards use the word “mandate” or “charter of expectations” and refer to position descriptions as managerial terms.
- Footnote below 2.2.12 on attendance should be deleted as a footnote and included in 2.2.5, if at all.

2.2.8 Code of Business Conduct

- Put the whole thing into 1.1 Background and Purpose of this Policy or into an entire new section on Ethics/Integrity (see Guideline One of the Canadian Coalition for Good Governance’s Corporate Governance Guidelines for Building High Performance Boards).
- OPEN QUESTION: Should a Code of Business Conduct not be mandatory and become a rule? We will poll our membership.

2.2.10 Nomination of Directors¹

- OSC wants ENTIRELY independent directors on the Nominating Committee; CCGG guideline is a MAJORITY.
- The NYSE (Company Manual Section 303A.04) requires the nominating/corporate governance committee be composed ENTIRELY of independent directors.
- Higgs (UK Combined Code, July 2003), states that the nomination committee should have a MAJORITY of independent, non-executive directors (A.4.1).

2.2.11 Nomination of Directors

- Change "...member appointment and removal" to "...member appointment and committee renewal".

2.2.13 Nomination of Directors

- This section should be added as STEP 3 to 2.2.12.

2.2.14 Nomination of Directors

- This section is a repeat of the existing STEP 1 identified in 2.2.12 and should be eliminated.

2.2.15 Compensation Committee

- Same as for Nominating Committee, the OSC wants ENTIRELY independent Compensation Committee.
- The NYSE (Company Manual Section 303A.05) requires the compensation committee be composed ENTIRELY of independent directors.
- Higgs (UK Combined Code, July 2003) states that the compensation committee should be comprised of FULLY independent, non-executive directors (B.2.1).
- OPEN QUESTION. We will poll our members on the required degree of independence on both the Nominating and Compensation Committees.

2.2.16 Compensation Committee

- Change "...member appointment and removal" to "...member appointment and committee renewal".

2.2.17 Compensation Committee

2.2.17(b)

- The board would approve the compensation plans and policies but often not the specific application of those plans below a certain level of management.

¹ Note on Nominating/Compensation Committee Independence

From our records of our drafts on the CCGG Guidelines, all we could find on this matter was a "flexibility" point, i.e. a sitting CEO would be useful in describing complex compensation and pension plans. As long as the committee meets *in camera* each and every time, then whatever conflicts may arise can be dealt with then.