



**SOCIAL INVESTMENT ORGANIZATION**

*The Canadian Association for Socially Responsible Investment*

184 Pearl St. 2<sup>nd</sup> floor  
Toronto, Canada M5H 1L5  
416-461-6042 t  
416-461-2481 f  
[info@socialinvestment.ca](mailto:info@socialinvestment.ca)  
[www.socialinvestment.ca](http://www.socialinvestment.ca)

May 31, 2004

Alberta Securities Commission  
Saskatchewan Securities Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Office of the Administrator, New Brunswick  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
The Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunavut

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

Dear Sirs and Mesdames:

**Re: Comments on proposed Multilateral Policy 58-201, Effective Corporate Governance and Proposed Multilateral Instrument 58-101, Disclosure of Corporate Governance Practices**

I am writing on behalf of the members of the Social Investment Organization, the national association for socially responsible investment. Our members include more than 400 staff and directors of financial institutions, asset management firms and fund companies, as well as financial advisors and investors. Our members are committed to the development of socially responsible investment, which is the application of social and environmental analysis to investment selection and management. Our members serve more than half a million Canadian depositors and investors.

With this letter, we are responding to your request for comments on proposed new National Policy 58-201 and National Instrument 58-101, on effective corporate governance.

### **General Comments**

First, let me commend the CSA for mounting this important initiative. We believe that recent corporate scandals in Canada, the US and elsewhere are undermining investor confidence in the financial markets. Clear guidelines for board responsibility are now more important than ever.

However, we believe that the proposed policy focuses almost entirely on the financial aspects of board governance. In this brief we argue for a broader definition of good corporate governance. Specifically, we call for an expanded definition of the Code of Business Conduct and Ethics to include issues of social responsibility and environmental sustainability.

The SIO maintains that social and environmental analysis is an integral part of a well-managed portfolio. There is a growing body of evidence showing that corporations with positive social and environmental records have superior stock performance. By requiring Boards to consider social and environmental risks and policies, governance reforms will enhance shareholder returns over time.

The recent National Corporate Social Responsibility Report published by the Conference Board of Canada (*Managing Risks, Leveraging Opportunities*) found that corporate social responsibility is being formally integrated into business conduct and will continue to be a key business issue.

*Global pressures are challenging corporations to think differently about the scope of their societal impact. Stakeholders have new standards of business conduct. Corporations need to ensure that all dimensions of their performance reflect the values, interests and expectations of society. Corporate social responsibility (CSR) has become a vital part of a long-term, comprehensive approach to business success.*

Managing Risks, Leveraging Opportunities  
The National Corporate Social Responsibility Report  
Conference Board of Canada, June 2004

The SIO agrees with this perspective. By linking transparency, responsibility and sustainability to corporate governance, we believe that corporations will be able to enhance returns through numerous non-financial factors contributing to bottom-line performance. As well, by taking account of social and environmental risks, corporations will be able to apply a greater level of care and due diligence to the management of their businesses.

The link between social responsibility, environmental sustainability and corporate governance is being recognized by other jurisdictions. Reforms put in place in the United Kingdom by the Turnbull Committee have resulted in greater expectations for social and environmental reporting for LSE-listed companies. The document *Internal Control: Guidance for Directors on the Combined Code* (published by the UK Institute for Chartered Accountants) states that companies need to consider and report on significant risks including those related to "health, safety and environmental, reputation and business probity issues."

Under current Turnbull Committee practices, Boards are tasked with ensuring that management has developed appropriate, sensible, internal controls for identifying and mitigating attendant risks.

British directors will also be required to report on material non-financial issues as part of the Operating and Financial Review, recently outlined in a UK government consultation document, part of the Company Law Review initiative.

The UK government states that the OFR will provide the directors' overview of the company and will give shareholders key information on a company's objectives, strategy, past performance and future prospects. The OFR will also be expected to cover issues, such as the company's policy toward its employees, customers and suppliers, as well as its impact on the environment, social impacts and impacts on the wider community where that information is necessary for an assessment of the company.

As well, the 2002 King Report on Corporate Governance in South Africa now mandates directors of companies listed on the Johannesburg Stock Exchange to undertake regular Social and Ethical Accounting, Auditing and Reporting (SEAAR) exercises as well as safety, health and environment (SHE) disclosures.

The SIO believes that these forward-looking jurisdictions recognize the benefit of requiring companies to report on their social and environmental risks and opportunities. By incorporating similar rules here, Canadian policymakers could help Canadian investors acquire a truer and more complete picture of publicly-listed companies in this country.

### **Proposed Multilateral Policy 58-201**

In terms of the proposed policy, SIO would like to focus its comments on the section of the proposed policy on a *Code of Business Conduct and Ethics*. Under the proposed Policy, issuers would be required to disclose the existence of a Code or to provide an explanation for the lack of a Code.

Business Codes are a long-established vehicle for corporations to declare their fundamental values and beliefs, and communicate those to their employees, customers, shareholders and other stakeholders. As such, they represent a critical tool in effective management of the corporation's social and environmental issues.

Because of this, SIO believes that Business Codes should not be voluntary, as is currently proposed in Policy 58-201. Since Business Codes represent a key tool for communicating basic values and beliefs, all publicly-listed companies should be expected to create a Business Code. Otherwise, the basic operating ethics of the company will go unstated, leaving a major gap in corporate communications with stakeholders and the public.

On this point, we agree with the brief, filed by David Yu and Linda Rittenhouse on behalf of the Association for Investment Management and Research, on April 15 which argues: "It is inconceivable to us that this would be optional. Given the proposed flexibility that companies will have in tailoring a code of ethics to its size or type of business, we do not believe that making this a requirement to be an undue burden."

While issuers would be required to create and disclose their Business Codes, some guidance is required to help them in drafting their Codes.

We recommend that five out of six of the issues cited in the Policy are important to define as required content in the mandatory Business Code. If corporations do not address any or all of these items of required content, we recommend that they be required to explain why they do not. The items we recommend to be included as required content are:

- o Conflicts of interest
- o Protection and proper use of corporate assets and opportunities
- o Confidentiality of corporate information
- o Compliance with laws, rules and regulations; and
- o Reporting of any illegal or unethical behaviour.

SIO recommends that the proposed item on “fair dealing with the issuer’s security holders, customers, suppliers, competitors and employees” be deleted from the Policy, and replaced with:

- o Reporting of and compliance with social responsibility guidelines with regard to the issuer’s key stakeholders (employees, customers, suppliers, competitors and security holders)
- o Reporting of and compliance with sustainability guidelines on the issuer’s impacts on the environment.

SIO favours this wording as opposed to the Policy’s “fair-dealing” wording to make it clear that companies are to examine their social and environmental obligations in a holistic manner, encompassing the total social and environmental impacts of the issuer’s operations. To use the “fair-dealing” phrase would encourage companies to simply look at the financial impact of their operations on stakeholders, rather than the total social and environmental impact of their operations.

### **Conclusion**

By requiring issuers to have a mandatory Business Code, and encouraging companies to examine their social and environmental impacts through these Codes, the CSA can help to expand the practice of good governance to include important human and sustainability issues that have long been ignored by the corporate sector.

Without being unnecessarily prescriptive, our recommendations would go a long way toward encouraging Boards to take a holistic view of their impacts on the environment and the wider society. Such a view would help to enhance shareholder return over the long-term and to improve corporate social responsibility.

Sincerely,

Eugene Ellmen  
Executive Director