

Comments on the Proposed Multilateral Policy 58-201 (Effective Corporate Governance) (“Proposed Policy”) and Proposed Multilateral Instrument 58-101 (Disclosure of Corporate Governance Practices) (“Proposed Instrument”)

By

The Canadian Centre for Ethics & Corporate Policy (“EthicsCentre CA”)

To:

Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
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, Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Introduction

The EthicsCentre CA appreciates the opportunity to comment on the Proposed Policy and Proposed Instrument. The subject matter is integral to the mandate and mission of the EthicsCentre CA and we are pleased to contribute to the dialogue with respect to corporate governance in Canada.

EthicsCentre CA is an independent not for profit organization and a registered charity. It is a volunteer-driven organization comprised of corporations and individuals dedicated to developing and maintaining an ethical corporate culture. Founded in 1988, the EthicsCentre CA is the only independent national charitable ethics centre in Canada. Our mission is simple: to champion the application of ethical values in the decision-making processes of business and other organizations. We do not represent a particular cause but are advocates for ethical behaviour in and by organizations.

The Centre is proud of its sixteen-year history of encouraging businesses and other organizations to take into account ethical dimensions in making their

business decisions and developing their policies and practices. Since 1988 over 200 corporations and individuals have supported the EthicsCentre CA in its work to promote the role of ethics in the conduct of all business.

The EthicsCentre CA serves as a forum and catalyst for constructive discussion of ethics and ethics related issues. Through its luncheon Speaker Series, business leaders and individuals have access to the most qualified speakers from across Canada on current ethics issues. In addition through its seminars, conferences, roundtables and quarterly newsletter “Management Ethics”, it fosters discussion of a wide variety of topics and issues concerning ethics in business and organizations.

Using these avenues the EthicsCentre CA has consistently championed good governance, corporate social responsibility, codes of conduct and leadership in ethical behaviour.

In short, we raise awareness, share our learning, and create strong networks to increase understanding, build bridges, and foster the development of ethically minded leaders.

General Comments

Trust and confidence, by the public at large as well as employees, investors and other stakeholders in Canadian businesses and other organizations is of critical importance. While we would like to think that individual conscience should be enough to ensure ethical behaviour in organizations, we are appreciative of the need for some sort of regulatory framework for those who access and rely upon the capital markets to help support an ethical environment and deter, to the extent possible, those who might choose wrongdoing. Therefore, on balance the EthicsCentre CA strongly supports the Proposed Policy and Instrument in an attempt to improve corporate governance in Canada in respect of Canadian issuers.

The Proposed Instrument

Recognizing that issuers are very different in more than just size, and because it is difficult to have a rule for every situation, we **generally support** the voluntary approach in the Proposed Instrument.

However, we vary from that approach when it comes to a Code of Conduct. Ethical behaviour is ultimately grounded in values not rules. In issuers and organizations generally, corporate or organizational values are the starting point, not the end point, for ethical behaviour. Shared values that guide both management and employees must be clearly articulated. However, it is not possible to have a rule to guide human behaviour for every situation, all the time. Yet everyone, management, employees, investors and other stakeholders alike, has a right to know what the behaviours are to be expected of the organization and the people operating within it. Therefore, the EthicsCentre CA would recommend that the Proposed Instrument require every issuer have a Code of Conduct.

Notwithstanding that recommendation, we do not think that the Proposed Instrument needs to be prescriptive and define what precisely needs to be covered by the Code. At this stage, unless further experience would suggest otherwise, suggestions as to subjects and content should suffice, allowing issuers to develop one suitable to their size and particular characteristics, including their industry.

We do not believe, as the Proposed Instrument would provide, that it is sufficient to require issuers who do not have a Code to simply explain why they do not.

Given our comments are restricted to the areas the EthicsCentre CA is active in promoting, we will not be responding to each of the questions posed with respect to the Proposed Instrument. Therefore, with respect to the questions about Codes of Conduct, we believe the text of the Code of Conduct or Ethics will provide useful disclosure for investors (current and potential) and needs to have a wide dissemination. We recommend that issuers be required to disclose their Code of Conduct, at a minimum in summary form and preferably in its entirety, in their annual filings- annual report, proxy related material, interim filings etc.- in addition to, rather than only filing the Code (and any amendments to it) on SEDAR. This will permit the wisest possible dissemination of the Code which will embody the ethical principles and values by which the issuer will govern itself and be held accountable for.

The Proposed Policy

The Proposed Policy outlines best practices which are recommended that issuers follow, without being prescriptive. The EthicsCentre CA supports that approach subject to two exceptions.

Firstly, we appreciate that standards in corporate governance are evolving and we believe that some of the best practices outlined in the Proposed Policy may have already evolved further than outlined. As a result, we recommend the following enhancements to a few of the best practices outlined that we believe would be beneficial:

Independence:

- ◆ We recognize that any definition of independence has its limitations. However we recommend that in addition to the definition provided there should be an emphasis on other qualities all directors are expected to possess- the importance of being independently minded so that opinions are able to be expressed freely and their independent judgement exercised.

Board Mandate:

- ◆ Regarding the responsibility to satisfy itself as to the integrity of the CEO and other senior officers and their creation of a culture of integrity throughout the organization, we recommend adding “such as creating (1) an independent internal reporting system of ethical concerns, and (2) an ongoing framework that allows for the discussion of ethical concerns and the provision of advice, with regular reports to the Board regarding their utilization.”.
- ◆ Adding that the Board’s responsibility should also include ensuring that the compensation of the CEO and senior officers is not constructed in such a way as to encourage unethical behaviour.

Director Orientation and Continuing Education:

- ◆ It should be explicit that all new directors receive a comprehensive orientation on the issuer’s Code of Conduct

(Ethics) and related processes which will support the responsibility to create a culture of integrity.

- ◆ Each year the Board, as a matter on ongoing education, review the Code of Conduct (Ethics) and related processes.

Code of Business Conduct and Ethics:

- ◆ It is not sufficient to have a Code. Regular and meaningful training and education must be provided, as well as an annual director and employee (which includes all management) sign off regarding their understanding and acknowledgement of the Code.
- ◆ It is important that the Code be developed in a transparent manner with employee involvement and that it should be thoroughly communicated and built into operating policies, performance evaluation and reward mechanisms.
- ◆ As part of the Board's responsibility for monitoring compliance with the Code, the Board must disclose the steps or mechanisms used for monitoring.
- ◆ The Board should receive regular reports of any transgressions and allegations of transgressions to the Code and the issues involved. The Board should not be the last to be advised or find out.
- ◆ Boards should undertake a periodic review of the Code to determine its adequacy and effectiveness and make recommendations for improvements.

Nomination of Directors:

- ◆ Regarding the two step process the Board should adopt, we recommend that in step two, where attention is focused on the personality and other qualities of each director, a focus should also be on integrity and reputation.
- ◆ Similarly the nominating committee should consider the integrity and reputation of each new nominee in making its recommendation.

Compensation Committee:

- ◆ A review of the contribution of the CEO towards a culture of integrity should be part of the determination of the recommendation to the Board respecting compensation.

Regular Assessments of Board Effectiveness:

- ◆ The Board should also assess adherence to the Code and contribution to creating a culture of integrity by the Board as a whole and the individual directors.

Secondly, we recommend that “internal reporting” be removed from the Proposed Policy and be added to the Proposed Instrument but be retained as a voluntary measure, with a disclosure requirement as to why not if such a reporting process is not mandated by the Board.

Respectfully submitted,

The Centre for Ethics & Corporate Policy

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