OSLER, HOSKIN & HARCOURT

Osler, Hoskin & Harcourt LLP
Barristers & Solicitors
Box 50, 1 First Canadian Place, Toronto, Ontario, Canada M5X 1B8
T 416·362·2111 F 416·862·6666 osler.com

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May 31, 2004

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Nova Scotia Securities Commission
Securities Administration Branch, New Brunswick
Office of the Attorney General, Prince Edward Island
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

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

Dear Sirs & Mesdames:

Proposed Multilateral Instrument 58-101 (the "Instrument") – Disclosure of Corporate Governance Practices

Proposed Multilateral Policy 58-201 (the "Policy") – Effective Corporate Governance

This letter is in response to the request for comments relating to the proposed Multilateral Instrument 58-101 and Multilateral Policy 58-201.

We would like to commend the proposing regulators for undertaking this initiative. Our firm has a long history of active involvement in the debate on corporate governance standards and practices and the role of regulators in promoting effective corporate governance. We believe that the time has come for Canada's provincial securities regulators to take a more direct role in the promotion of corporate governance "best practices" and the enforcement of appropriate disclosure requirements.

We would like to make some general observations before providing our detailed comments.

First, we note that the securities administrators in British Columbia and Québec are not currently parties to the Instrument or the Policy and that the securities regulatory authorities in those provinces (and in Alberta) have proposed multilateral instrument 51-104 ("MI 51-104") as an alternative to the Instrument. We will provide specific comments on MI 51-104 in a separate letter, however we strongly believe that it is critical that Canada's securities administrators agree on a uniform approach to corporate governance matters.

Second, given the diversity of issuers which will be subject to the corporate governance disclosure requirements and the diversity of views regarding which corporate governance practices are fundamental, we believe that issuers must have the flexibility to develop an approach to corporate governance that reflects their own particular circumstances. In the corporate governance arena "one size does not fit all" and some practices and standards which are viewed as necessary or desirable by some issuers and investors may not be necessary, and in some cases may in fact be inappropriate, for other issuers. This fact is implicitly recognized in the Instrument by not requiring venture issuers to make disclosure of some of the corporate governance practices. However, the Policy is not sufficiently clear that issuers are free not to adopt one or more of the practices referenced. Section 1.2 of the Policy encourages issuers to adopt the measures and states that "they should implement them flexibly and sensibly to fit the situation of individual issuers". Instead, the Policy should make it clear that the practices and standards set out in the Policy are ones that have achieved a substantial degree of acceptance and may prove useful to issuers, but that with respect to any particular practice an issuer may decide in light of its own circumstances to adopt an alternative measure or not to adopt a particular measure.

Third, we respectfully submit that several of the provisions of the Policy are inappropriate in that they impose unrealistic obligations on directors. Some provisions of the Policy appear to assign responsibilities to the chair or the board of directors to provide assurances as to outcome rather than process. For example, the independent chair or independent lead director has the responsibility to "ensure that the board's agenda will enable it to successfully carry out its duties". The board is given the mandate to assume responsibility for "ensuring the integrity of issuer's internal control and management information systems" and to "ensure that all new directors receive a comprehensive orientation". In addition, the board is given the responsibility for monitoring the code of business conduct and ethics, which we submit is inappropriate for reasons later discussed. Finally, some provisions of the Policy overstate matters, for example, there are references to a "comprehensive" orientation and to "fully" understanding matters.

In the remainder of our comment letter, we address the specific requests for comment, then some of the implications of the Instrument and Policy for income trusts and similarly structured entities. Finally, we provide our additional comments and concerns about the provisions of the Instrument and the Policy.

SPECIFIC REQUESTS FOR COMMENT

1. *The Proposed Policy and Proposed Instrument describe best practices and require issuers to make disclosure in relation to those best practices.*
   (a) *Will these initiatives provide useful guidance to issuers?*
   (b) *Will these initiatives provide meaningful disclosure to investors?*
   (c) *Would disclosure be more meaningful to investors if issuers were required to describe their practices by reference to certain categories of governance principles rather than by reference to the best practices described in the Policy?*
   (d) *What will be the effect on market participants, including investors and issuers, of our publishing best practices in Canada?*

We believe that the publication of a non-mandatory policy of corporate governance "best practices" will provide useful guidance to issuers and investors with respect to practices and procedures which are generally accepted or have proven to be successful for a large number of reporting issuers. It is also important for issuers to be required to describe their own corporate governance practices. Mandating disclosure against guidelines forces issuers to undertake an ongoing assessment and enhancement of their approach to corporate governance. This disclosure framework also provides relevant decision making information for the benefit of investors and other market participants in determining whether to invest in the issuer or to seek improvements in corporate governance practices.

Given the diversity of issuers which will be subject to the corporate governance disclosure requirement, we believe that requirements to disclose corporate governance practices must allow issuers flexibility to adopt practices which reflect their own particular circumstances. We are concerned that the approach to disclosure reflected in the Instrument will not result in meaningful corporate governance disclosure and may reduce the level of meaningful disclosure provided by issuers which are currently required to disclose their corporate governance practices against the TSX corporate governance guidelines.

For some of the disclosure requirements under the Instrument it would only be necessary to make disclosure if the issuer is unable to comply with the "best practice". As a result, investors may receive less meaningful disclosure since issuers which already comply with the best practice may provide less disclosure, as there will be no explanation of why the issuer considers the practice to be an important element of its corporate governance practices or the means by which the issuer has implemented that practice. For those issuers which do not follow the best practice, the obligation to disclose why not may result in, rather than meaningful disclosure of the corporate governance systems actually in place, lengthy explanations of why non-compliance is appropriate. Alternatively, some smaller issuers may adopt the same response to each aspect of non-compliance – i.e. that the issuer is too small to justify the cost – without giving the issue proper consideration.

We believe that issuers should be required to describe their corporate governance practices by reference to categories of governance principles, but there is value in also requiring issuers, when describing their corporate governance practices, to do so with reference to best practices such as those described in the Policy. Disclosure by category facilitates harmonization nationally and with corresponding requirements in the U.S. and internationally, but is still sensitive to the needs of issuers to maintain flexibility to adopt the corporate governance practices which work best for them. However, disclosure should also reference best practices in order to focus the issuer's attention better in considering whether the adoption of a different approach by the issuer is appropriate. The approach adopted by the Instrument, however, is not to mandate disclosure with reference to best practices, but rather to require the issuer to justify why an approach other than the best practice has been adopted. The lack of flexibility in the proposed approach to disclosure makes it necessary to impose more divergent standards between larger and smaller issuers.

2. *The Proposed Instrument does not require an issuer to adopt a code of ethics, but issuers who do not have one must explain why they do not. If an issuer does adopt a code, the Proposed Instrument requires the issuer to file the code, as well as any amendments on SEDAR. It also requires an issuer to prepare and file a news release respecting any express or implied waiver of the code.*
   (a) *Will the text of the code of ethics provide useful disclosure for investors?*
   (b) *Will disclosure of waivers from the code provide useful disclosure for investors?*
   (c) *Since there is no requirement to have a code of ethics, will the obligations respecting filing the code and any amendments and reporting waivers from the code have the effect of discouraging issuers from adopting a code of ethics?*

We agree that the existence of and effective monitoring of compliance with a code of business conduct and ethics should be encouraged as an important element of good corporate governance. Many issuers already have codes of business conduct and ethics in place. We also support a requirement to disclose publicly the content of the code of business conduct and ethics in the interests of transparency.

We note that there is no definition of "code of business conduct or ethics" under the Instrument. The U.S. rules include a definition of "code of ethics" and require that disclosures be made only with respect to the matters encompassed by that definition, even though the issuer's "code of ethics" is included in a broader document that addresses additional topics. It would provide greater certainty and enhance harmonization with the U.S. if a definition of "code of business conduct or ethics" were to be included which corresponded to the definition of "code of ethics" under U.S. securities laws and if disclosure obligations under the Instrument were limited to the matters encompassed by the defined term.

We also note that U.S. securities law requirements respecting a "code of ethics" apply only to the principal executive officer, principal financial officer, principal accounting officer or controller,

or persons performing similar functions and, therefore, disclosures of amendments and waivers of the code of ethics under U.S. securities laws are required only if they relate to such officers. By contrast, the Instrument would require disclosure of any waiver in favour of any officer of the issuer (including officers who may be exempt from insider trade reporting requirements) as well as any waiver in favour of any director of the issuer. We think it is overreaching to apply the requirements with respect to all officers. We also note that there is an inconsistency between the obligation to issue a press release disclosing waivers of a code of business conduct and ethics granted in favour of officers and directors of the issuer or a subsidiary entity of the issuer and the obligation to disclose in the AIF information respecting waivers of a code of business conduct and ethics granted in favour of officers and directors solely of the issuer. (We also note that the Instrument requires disclosure of waivers respecting "officers" while the Policy refers to waivers respecting "senior officers".) We are concerned that if Canadian issuers are faced with a substantially broader waiver requirement than is required for U.S. issuers, they will be reluctant to adopt or retain codes of business conduct and ethics or, if a code of business conduct and ethics is retained, the obligations under the code of business conduct and ethics will be substantially lessened so as to reduce the likelihood of a waiver being required.

The definition of an "implicit waiver" should refer to a failure by the issuer rather than by the board of directors to take action within a reasonable time. As drafted, if there has been a material departure from the code of business conduct and ethics known to senior management but not to the board, it is arguable that no disclosure is required since no waiver actually has been granted by the board and no implicit waiver has occurred since the directors (as opposed to senior management) have not failed to take action within a reasonable time. The circumstances which appear to give rise to an obligation to disclose an implicit waiver under the Instrument are where the board of directors is aware of a material departure from the code of business conduct and ethics and takes no action, but later decides that it ought to have taken action earlier. This seems like an unlikely circumstance. Instead, the requirement should apply where there has been an "implicit waiver" because management (i.e., the issuer) and not the board knew about the material departure.

We are concerned that Form 58-101F1 overstates the role of the board of directors in respect of monitoring compliance with the code of business conduct and ethics. It is the responsibility of management to create a culture of integrity throughout the organization and that necessarily includes implementing effective systems to monitor compliance with a code of business conduct and ethics approved by the board of directors. The board of directors is not in a position to monitor compliance with the code of business conduct and ethics, although it does have responsibility for overseeing whether management has implemented an effective monitoring system.

3. *The Proposed Instrument does not require issuers to have a compensation committee, nor does it require that committee to be entirely independent or to have a charter, but if an issuer does not have these structures, it must explain why not. An issuer is required to*

state whether it has a compensation committee, whether that committee is independent and whether it has a compensation committee charter. If there is a charter, the text of the charter must be disclosed. Additionally, the Proposed Instrument requires an issuer to disclose the process used to determine compensation, but that disclosure is only required if the issuer does not have a compensation committee.

(a) *Would it be useful to investors for the issuer to disclose the process used to determine compensation, regardless of whether it has a compensation committee?*

(b) *Is disclosure of the text of the compensation committee's charter useful to investors?*

Currently issuers are required to disclose not only the terms under which the CEO is compensated, but also the process used to determine the CEO's compensation pursuant to Form 51-102F6. Form 51-102F6 requires disclosure of the terms under which directors are compensated, but does not require disclosure of the process followed by the board to determine such amounts. We believe that it would be useful to investors for the issuer to disclose the process used to determine the compensation of the senior officers of the issuer other than the CEO and the directors. However, any requirement to provide disclosure respecting the processes used to determine compensation should avoid duplication of disclosure mandated in Form 51-102F6. In disclosing the process used to determine compensation, issuers should be required to describe the scope of authority of the independent directors with respect to management compensation and the extent to which the discretion of the board or the applicable committee of directors is limited in setting the terms for director compensation.

We note that no disclosure respecting executive compensation is required if the issuer has a "compensation committee". However, there is no definition of "compensation committee" or the minimum functions of such a committee in the Instrument. In the absence of a description in the Instrument of the functions to be performed by such committee, some issuers may be inclined to establish a "compensation committee" in name, but in fact without any substantive authority, to give the appearance of meeting the "best practices".

If the process used for determining compensation of directors and senior officers is disclosed as described above, we do not believe there is any additional value in requiring disclosure of the text of the compensation committee's charter. In any event, we are concerned that in light of potential civil liability concerns if the charter is included in the issuer's AIF (which is a "core document" under the continuous disclosure civil liability provisions in Ontario) as discussed below, the charter will be drafted cautiously, undermining its value.

4. *The Proposed Instrument does not require issuers to have a nominating committee, nor does it require that committee to be entirely independent or to have a charter, but if an issuer does not have these structures, it must explain why not. An issuer is required to state whether it has a nominating committee, whether any such committee is independent and whether it has a nominating committee charter. If there is a charter, the text of the*

charter must be disclosed. Additionally, the Proposed Instrument requires an issuer to disclose the process by which candidates are selected for board nomination, but that disclosure is only required if the issuer does not have a nominating committee.

(a) *Would it be useful to investors for the issuer to disclose the process by which candidates are selected for board nomination, regardless of whether it has a nominating committee?*

(b) *Is disclosure of the text of the nominating committee's charter useful to investors?*

We believe that it would be useful to investors for the issuer to briefly describe the process used to identify candidates for board nomination regardless of whether there is a nominating committee, although the two-step process set out in the Policy seems overly prescriptive. The election of directors is the most fundamental right of investors and investors should have an understanding of the process by which nominees for director have been identified for submission to shareholders. We note that such a disclosure requirement would enhance harmonization with recent changes in the U.S. which require issuers to disclose:

- whether the company has a standing nominating committee and, if it does not, an explanation of why this is viewed as being appropriate plus the identification of each director who participates in the consideration of director nominees,

- if there is a nominating committee, the text of the charter, which must be disclosed on the company's website or in the proxy statement at least once every three fiscal years,

- whether the members of the nominating committee are independent,

- if the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, the material elements of that policy, including a statement as to whether the committee will consider director candidates recommended by security holders and, if there is no such policy, an explanation of why this is viewed as being appropriate,

- a description of the procedures to be followed by security holders in submitting such recommendations for director,

- a description of any specific, minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the company's board of directors, and a description of any specific qualities or skills that the nominating committee believes are necessary for one or more of the company's directors to possess,

- a description of the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any

differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder,

- with regard to each nominee approved by the nominating committee for inclusion on the company's proxy card (other than nominees who are executive officers or who are directors standing for re-election), a statement as to who first recommended that nominee,

- the function performed by any third party who is retained to assist in identifying or evaluating potential nominees, and

- the name of any nominee for director received in the prior year from holder(s) of more than 5% of the company's common shares and the name(s) of the holder(s) that recommended the candidate and whether the nominating committee chose to nominate the candidate.

We note that as with compensation committees, no disclosure is required if the issuer has a "nominating committee", but there is no definition of "nominating committee" or the role that the committee should serve in the Instrument. Again, we think the absence of such a definition or description may result in compliance with the "best practice" in form but not substance.

5. *The Proposed Instrument requires an issuer to disclose the process used to assess the performance of the board, committee chairs and CEO, but that disclosure is only required if the issuer does not have written position descriptions for those roles. Would it be useful for investors for the issuer to disclose the assessment process, regardless of whether it has written position descriptions?*

The director assessment process has been one of the most difficult areas for boards to tackle. We believe that disclosure of the process followed is useful not only in terms of providing information to investors with respect to the seriousness with which the board of the issuer takes its duties, but disclosure also provides information which is useful to directors of other issuers as to alternative or more effective practices and procedures for providing critical feedback to their own directors on performance.

We note that section 3 of Form 58-101F1 requires the issuer to explain how the performance of directors is assessed only if there is no position description for a director. This would appear to be redundant in light of the requirement in section 8 to disclose how the board assesses the effectiveness and performance of each board member.

INCOME TRUSTS AND SIMILARLY STRUCTURED ENTITIES

For many income trusts, as well as for limited partnerships, decision-making in respect of the consolidated business is carried out by an entity other than the issuer. For example, in the income trust structure, the trust which is the reporting issuer cannot take part in the operations of the underlying business without losing the tax advantages to that structure. Accordingly, the responsibilities of the trustees of a trust which is a reporting issuer are largely administrative. In fact, in some trust structures, the trustee of the trust is a corporate trustee whose responsibilities are largely administrative in nature. For limited partnerships, the operating entity is the general partner, which is often a corporate entity.

For both income trusts and limited partnerships it does not make sense to implement corporate governance practices at the reporting issuer level. The reporting issuer should be free to disclose the corporate governance practices in place at its principal underlying businesses instead, provided that the disclosure is clear respecting which entity has adopted the particular practice. This makes particular sense in the case of structures where the holders of the income trust units are given an ability to elect representatives on the board of the underlying business.

We note that MI 52-110 also fails to adequately address income trust structures as it requires the reporting issuer (i.e. the income trust) to establish an audit committee to discharge certain functions with respect to the consolidated financial reporting of the trust, even though the trustees may not have sufficient contractual rights to discharge such functions and even though the trustee's duties are largely administrative in nature.

For many income trust structures, there is some overlap between the members of the board of trustees of the reporting issuer and the members of the governing body of the underlying business. If the Instrument and the Policy are not revised to reflect our concerns respecting controlled companies and exemptions as set forth below, there may be concerns as to whether an individual who is otherwise independent with respect to each body can be considered to be independent in light of the overlapping position and the relationship between the two entities.

OTHER COMMENTS

Director Independence

We agree generally with the approach taken in the Instrument and the Policy of adopting the definition of "independent director" as reflected in multilateral instrument 52-110 but omitting the two deeming provisions which under U.S. securities laws are unique to audit committee composition requirements. This approach facilitates harmonization with the U.S. and will lead to greater consistency in the application of the rules within an organization. However, some changes are required to the Instrument and Policy to properly implement this approach.

We note that paragraph 1.4(f)(ii) was added to the final version of MI 52-110 in order to parallel equivalent provisions included in the NYSE and NASDAQ final rules. However, the provision added to MI 52-110 is more onerous than the requirements of the U.S. exchanges because paragraph 1.4(f)(ii) includes immediate family members who are not executive officers. Paragraph 1.4(f)(ii) of MI 52-110 should be amended to apply only where the immediate family member is an executive officer.

The definition of independence for purposes of the Instrument and the Policy is flawed because although it repeats subsections 1.4(1) and (2) of MI 52-110 and incorporates by reference subsection 1.4(3) of MI 52-110, it fails to explicitly incorporate by reference subsections 1.4(4), (5), (6) and (8) of MI 52-110. Accordingly, it is not clear whether:

- the three-year look back is limited to periods since March 30, 2004,
- a partner includes a fixed income partner as described in subsection 1.4(3) of MI 52-110,
- receipt of fixed compensation under a retirement plan is excluded for purposes of the $75,000 direct compensation test, and
- an individual who previously acted as interim CEO or who is or has been a chair or vice chair of the board or of any board committee other than on a full-time basis is excluded.

With respect to the three-year look back period, we suggest that the commencement date should be several months after the Instrument and Policy are issued in final form rather than March 30, 2004 in order to enable issuers to make appropriate arrangements in advance.

Controlled Companies

In our comment letter on draft MI 52-110, we noted that the term "independence" is defined in relation to a relationship which could, in the view of the issuer's board of directors, reasonably interfere with the exercise of a member's independent judgment. We also commented that it is clear from the original Report of The Toronto Stock Exchange Committee on Corporate Governance and in the commentary to the NYSE Proposals for corporate governance purposes, that the focus is on the ability of the board to exercise judgment which is independent from management. Since the definition of "material relationship" does not specifically exclude shareholdings and there is no reference to independence being considered to be independence from management, we raised the concern that nominees of significant shareholders could be viewed as having an indirect material relationship with the issuer that would interfere with the exercise of judgment since they would not be independent of the significant shareholder (even though their judgment may be very independent of management). Accordingly, we

recommended that to assist boards of directors in assessing whether a director is free of a relationship which could reasonably interfere with the exercise of the director's independent judgement, MI 52-110 or its companion policy should include a statement that the focus of the board's inquiry should be to assess whether the individual's judgment is independent from management. The CSA declined to make a change to MI 52-110 in response to our comment in part because the CSA determined to incorporate in the definition of independent director for purposes of that instrument the U.S. concept of "affiliated entity".

Although subsection 1.4(g) of MI 52-110 is not incorporated into the definition of independent director for purposes of the Instrument and the Policy, there is still a concern that an individual who is a significant shareholder or who has a material relationship with a significant shareholder may be viewed as not independent. Either the definition of independence should make it clear that such an individual is an independent director or there should be an appropriate exemption from director independence requirements under the Instrument and the Policy.

Exemptions

The Instrument and the Policy do not incorporate any of the exemptions which are found in sections 3.2, 3.3, 3.4, 3.5 and 3.6 of MI 52-110. While there are no regulatory penalties for issuers which do not have boards, nominating committees and compensation committees which fail to meet the "best practices" respecting their composition as set out in the Policy, it is very cumbersome to apply a set of exemptions for audit committee composition purposes but not for board and other board committee composition purposes. It should be sufficient for both audit committee composition requirements and corporate governance composition "best practices" for issuers to disclose that they are relying on the availability of a particular exemption for all such purposes.

Position Descriptions

We can appreciate the value in developing position descriptions for the chair of the board (and the lead director, if applicable) and the CEO in order to enable the board and management to better understand the scope of their effective responsibilities and the limits to management's authority. However, a position description for the chair of a committee does not serve such purposes. Indeed, it is unclear what purpose preparing such a document would serve that is not already addressed by the requirement to have a written charter for the committee. Similarly, it is not clear what purpose would be served by the development of a position description for a director that is not already addressed by the requirement to have a written board mandate.

Application of the Instrument

The Instrument should not apply to reporting issuers who meet the tests set out in subsection 1.2(e) of MI 52-110. An equivalent provision should be added to Section 1.2 of the Instrument.

Location of Disclosure

Some issuers may prefer to include corporate governance disclosure in their proxy circular or annual report. We encourage Canadian securities regulators to provide flexibility in the Instrument in determining the appropriate location for corporation governance disclosure

Enforcement

One of the principal difficulties faced by stock exchanges in mandating disclosure of corporate governance practices is the relatively limited means by which stock exchanges can effectively police the quality of disclosure. The principal regulatory enforcement mechanism available to a stock exchange is the delisting of the issuer, and use of this mechanism is limited in view of the substantial prejudice to the issuer's securityholders which would result from the delisting. While Canadian securities regulators have an extensive range of enforcement mechanisms available to police disclosure practices, there is no mention in the Instrument respecting the means by which Canadian securities propose to enforce the provisions of the Instrument. The possibility that the full panoply of enforcement mechanisms under securities legislation will be brought to bear in the event of insufficient or inaccurate corporate governance disclosure may well have a chilling effect on the disclosure provided. We think that it would be beneficial to issuers and investors if the Instrument set out the proposed means by which regulators will enforce its provisions, which mechanisms should entail something other than the full range of enforcement mechanisms available under applicable securities legislation.

We are concerned about the implications to issuers and directors and their senior officers of including corporate governance disclosure in the annual information form of the issuer in light of potential statutory civil liability legislation. We note, for example, that if Bill 198's provisions respecting civil liability are proclaimed in force, the corporate governance disclosure will be included in a "core document" and, in the event of an error in the issuer's corporate governance disclosure, the issuer and its directors and officers will be jointly and severally liable to investors for amounts based on the trading price of the issuer's securities and the plaintiff will not need to prove knowledge, wilful blindness or gross misconduct by the defendants with respect to the misrepresentation. We are concerned that the potential for civil liability for corporate governance disclosure may have a "chilling effect" on the quality and extent of the disclosure provided.

Venture Issuers

We think more consistent treatment of issuers with respect to corporate governance disclosure regardless of size is desirable. We note that unlike the Instrument, multilateral instrument 51-104 would require Venture Issuers, just like other issuers to:

- summarize the functions of their committees and disclose the names of the members of the committees,
- describe director orientation and continuing education programs,
- describe director, chair and CEO assessment processes, and
- describe how director compensation is set and director nomination occurs.

We support having all issuers adopt this approach to these matters.

As previously noted, however, we are concerned that the proposed approach to disclosure contemplated in the Instrument of explaining divergences from the best practice may not result in meaningful disclosure.

Comments Respecting the Policy

As previously noted in our letter, several provisions of the Policy should be revised so that they do not impose unrealistic obligations on directors. In addition, we note that paragraphs 12 and 14 of the Policy appear to be duplicative.

Matters Not Addressed in the Instrument or the Policy

Neither the Instrument nor the Policy addresses who should have principal responsibility for corporate governance matters. Issuers should be required to identify how the issuer addresses matters relating to corporate governance practices, procedures and improvements as contemplated in TSX corporate governance guideline 10.

While the audit committee is given clear authority under MI 52-110 to hire independent advisors and the Policy states that nominating and compensation committees should be given similar authority, there is no equivalent to current TSX corporate governance guideline 14 which states that an individual director should be able to hire an outside advisor at the company's expense.

This omission of best practices addressing the matters contemplated by TSX corporate governance guidelines 10 and 14 would appear to be a retrograde step for Canada.

* * * * *

If you have any questions regarding our comments or wish to discuss them with us, please contact Andrew MacDougall (416-862-4732), Janet Salter (416-862-5886) or Rob Lando (212-867-5800 .

Yours very truly,

"Osler, Hoskin & Harcourt LLP"