



SOCIAL INVESTMENT ORGANIZATION

The Canadian Association for Socially Responsible Investment

184 Pearl St. 2nd floor
Toronto, Canada M5H 1L5
416-461-6042 t
416-461-2481 f
info@socialinvestment.ca
www.socialinvestment.ca

December 13, 2004

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
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, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-8145

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22^e étage
Montréal (Québec) H4Z 1G3
Fax: (514) 864-6381

Dear Sirs and Mesdames:

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

I am writing once again on behalf of the members of the Social Investment Organization, the national association for socially responsible investment. This is a follow-up to our original letter of July 26 on these proposed guidelines, in response to your Request for Comment issued on Oct. 29.

As we outlined in our July 26 letter, 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, let me express our disappointment with the revised National Policy and National Instrument. The current proposal suffers from the same weakness as the January proposal; namely that it fails to incorporate social and environmental expectations as an essential part of good corporate governance practice. This shows a lack of insight into the emerging understanding of corporate governance as including both financial and non-financial factors.

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 would enhance shareholder returns over time.

The link between social responsibility, environmental sustainability and corporate governance is being recognized by other jurisdictions. The UK Institute of Chartered Accountants in the document *Internal Control: Guidance for Directors on the Combined Code* 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 practices recommended by the British Turnbull Committee, Boards are tasked with ensuring that management develops appropriate controls for identifying and mitigating such risks. By recommending a social and environmental mandate for Boards, the Turnbull Committee and the Combined Code go beyond reporting and continuous disclosure mandates into the realm of corporate governance.

British directors will also be required to report on material non-financial issues as part of the Operating and Financial Review as part of the Company Law Review initiative.

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.

In our July letter, the SIO recommended that the CSA adapt some of these practices from other jurisdictions to encourage Boards of Canadian public companies to become involved in the creation of *Codes of Business Conduct and Ethics* that include non-financial issues.

Mandatory vs. Voluntary Codes

As we stated in July, *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. While we agree that it is important for regulators not to become too prescriptive in terms of governance practice, it is essential that securities regulators establish the basic expectations for public corporations in terms of their “operating license.” Therefore, we believe it is essential that CSA require public companies in Canada to have a *Code of Business Conduct and Ethics*. Otherwise, the basic operating ethics of the company will go unstated, leaving a major gap in corporate communications with stakeholders and the public. It is not sufficient for CSA to say – as is stated in the current proposed Policy – that public companies should have *Business Codes*.

I note that we are in agreement with David Yu and Linda Rittenhouse on behalf of the Association for Investment Management and Research (now known as the CFA Institute) in their brief of 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.”

In your Request for Comment, you note that some commenters called for mandatory Codes. However, you state that this is not in keeping with the “comply or explain” approach you take to governance, which provides maximum flexibility.

We believe that “comply or explain” is a sensible approach on the specifics of governance. However, on important matters of principle, such as the adoption of a *Business Code*, it is important for regulators to speak strongly and clearly. It is important that regulators require public companies in Canada to have a *Business Code*. We recommend that the National Instrument be changed to require companies to have written Business Codes, and that the Codes be included in the disclosure Form.

Social Responsibility and Sustainability Issues

Further to this, in our July letter, we recommended that issuers be given some guidance in helping them to draft their Codes.

In July, we recommended – and we continue to recommend -- 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 with regard to the issuer’s key stakeholders (employees, customers, suppliers, competitors and security holders)
- o Reporting of and compliance with the sustainability of the issuer’s impacts on the environment.

We propose this wording as a guideline for companies. If particular companies want to exclude such issues from their Codes, then they would need to explain the exclusion in their disclosure statements.

As we stated in July, 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.

In your response to the comments, you note that some commenters called for social and environmental issues to be included in the Codes. In response, you state: "The guidelines relating to the code were drafted to be broadly applicable. However, issuers are not precluded from including additional provisions in their own codes."

Again you show a lack of understanding of the how social and environmental issues are coming to impact the fundamentals of corporate performance and stock returns. It is important for regulators to establish that such material is *expected* from public corporations, not that it can be an "additional provision."

Conclusion

We believe it is important for CSA to take a position on the issue of social responsibility and sustainability governance. By continuing to permit voluntary Codes, and by being vague in your expectations of corporate governance on these issues, you are continuing to mandate a general lack of awareness on these issues by corporations.

As such, you are essentially saying to Boards that it is permissible not to engage on these issues. This shows a lack of leadership by the CSA in encouraging best practices on issues of critical importance to the governance of Canadian public corporations.

Sincerely,

Eugene Ellmen
Executive Director