

December 13, 2004

**EMAIL**

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Nova Scotia 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 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

c/o Anne-Marie Beaudoin  
Directrice du secrétariat  
Autorité des marchés financiers  
Tour de la Bourse  
800, square Victoria  
C.P. 246, 22e étage  
Montréal, Québec H4Z 1G3

Dear Sirs/Mesdames:

**Re: Proposed Regulation of Corporate Governance  
Disclosure**

This is our firm's response to the request for comment on proposed National Instrument 58-101, *Disclosure of Corporate Governance Practices* (the "**Disclosure Rule**") and proposed National Policy 58-201, *Corporate Governance Guidelines* (the "**Best Practices Policy**") and, together with the Disclosure Rule, the "**Proposals**") published on October 29, 2004 by the securities regulatory authorities of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

We support the Proposals and appreciate the efforts made by you to merge the two earlier proposals into a national policy and rule.

We have a few very minor drafting comments on the Proposals.

**Best Practices Policy**

*Meetings of Independent Directors*

Section 3.3 states that "[t]he independent directors should hold regularly scheduled meetings at which members of management are not in attendance." The current wording of this section is ambiguous. It is not evident whether a non-independent board member who is not a member of management (e.g., a former partner of the external auditor, etc.), should be excluded from these executive sessions. We believe it was the intention to exclude all non-independent directors, but it would be helpful if section 3.3 were clarified. A similar amendment would then be required to Item 1(e) of Form 58-101F1.

*Integrity of CEO and a Culture of Integrity*

It would be useful for you to provide guidance on the steps, if any, that should be taken to assess the integrity of the CEO and other senior officers, as is recommended in section 3.4(a). What should the board assess? Presumably, the board is not required to investigate the senior officers before any evidence of a lack of integrity, but rather they are required to respond only when red flags are raised about the integrity of these persons.

*Code of Business Conduct and Ethics*

Section 3.9 suggests that the board should monitor compliance with the code of conduct. It would be useful for you to provide some guidance regarding the positive steps that the board should take, beyond merely asking directors, officers and employees to sign-off on the code annually.

## Disclosure Rule

### *Application of Disclosure Rule to Wholly-Owned Subsidiaries*

Certain wholly-owned subsidiaries that are nonetheless reporting issuers are exempt from the Disclosure Rule. The exemption in section 1.3(d) was modeled on the exemption in Multilateral Instrument 52-110, *Audit Committees*. To be consistent with section 1.2(e) of the audit committee rule, we recommend re-wording the portion of section 1.3(d) of the Disclosure Rule preceding (i) by replacing “is a wholly-owned subsidiary of another entity” with “is a subsidiary entity.” “Subsidiary entity” should be defined in section 1.1 of the Disclosure Rule in the same manner as that term is defined in MI52-110.

In addition, we question whether section 1.3(d)(ii)(B) should read “...in compliance with the corporate governance requirements of that U.S. marketplace *applicable to issuers, other than foreign private issuers*” (emphasis added). Foreign issuers listed on the NYSE are exempt from the exchange’s corporate governance listing standards if they disclose the significant differences between their governance practices and those required of U.S. domestic issuers. It is not clear to us whether you intend section 1.3(d)(ii)(B) to apply in cases where the parent company is exempt from the substantive requirements of the exchange because they disclose the differences in their approach to governance.

### *Form 58-101F1*

Item 5(b) contains a typo. We believe that the item should read “...ensure directors exercise independent judgement...”

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We appreciate the opportunity to comment on the Proposals and would be pleased to discuss any aspect of this submission with you.

Yours truly,

“Jennifer L. Friesen”

**Torys LLP**

JLF/jlf

cc: Robert Karp, *Torys LLP*