

December 13, 2004

John Stevenson, Secretary
Ontario Securities Commission
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**RE: Canadian Securities Administrators' Proposed National Instrument
58-101 - Disclosure of Corporate Governance Practices and
Multilateral Policy 58-201 - Effective Corporate Governance**

Dear Mr. Stevenson and Ms. Beaudoin:

On behalf of the Canadian Society of Corporate Secretaries, I am pleased to provide further perspectives in respect of Proposed National Instrument 58-101 and Multilateral Policy 58-201.

Having studied the revised guidelines, we are pleased that input from interested stakeholders is clearly reflected in this work. In particular, I would like to express appreciation on behalf of the 375 professionals across Canada who make up the Canadian Society of Corporate Secretaries for the work done to:

- establish a single set of governance-related guidelines for Canadian publicly traded companies;
- adopt the proxy circular as the preferred vehicle for disclosing governance practices;
- take a less prescriptive approach to some board processes and the continued recognition that good governance is achieved by applying broader principles to an issuer's specific circumstances; and,
- adopt a definition for director independence that ensures greater clarity and consistency.

Even though the Canadian Securities Administrators chose not to address several of the issues the Society highlighted in its submission dated March 29, 2004, we believe they remain relevant. These perspectives are included in the appendix to this correspondence for your information. Rather than reiterate what has already been communicated, we will use this invitation for public comment to focus on the leadership role corporate secretaries will have to play if these guidelines are to achieve their intended purpose.

It is generally recognized that corporate secretaries provide essential support to boards of directors to enable them to effectively carry out their oversight accountabilities. While responsibility for good governance must reside with boards, the guidelines, in their present form, overlook the pivotal role corporate secretaries play in helping boards deliver on this accountability. While an increasing number of corporate secretaries are being assigned the role of chief governance officer in recognition of their specialized expertise and contribution, the guidelines overlook the role played by a key member of the governance team that also includes the Board Chair and Chief Executive Officer.

The Canadian Society of Corporate Secretaries strongly believes that the cause of good governance can be greatly served by recognizing the role of the corporate secretary in the guidelines and encouraging issuers to appoint chief governance officers.

It is interesting to note that the U.K. Combined Code and the governance guidelines adopted by the Hong Kong Stock Exchange and Organization of Economic Co-operation and Development make explicit reference to the role corporate secretaries play on the governance leadership team. While both the Board Chair and Chief Executive Officer are represented in the revised guidelines, the omission of the corporate secretary role should be addressed. In these governance guidelines from foreign jurisdictions, the corporate secretary is recognized as:

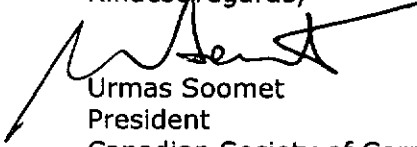
1. an advisor to the chairman and board members on all governance matters
2. having direct accountability to the board
3. the facilitator of information critical to the board's work
4. a resource in the director recruitment, orientation and evaluation processes
5. a monitor of director conflict of interests
6. a relationship manager on behalf of the board with management

The role of the corporate secretary has always played a critical role in ensuring the quality of corporate governance in Canada. It is our contention that the reliance on the corporate secretary for supporting an issuer's good governance will increase significantly. Indeed, in a recent survey of members of the Canadian Society of Corporate Secretaries, 70 percent of respondents confirmed their direct accountability, either in whole or in part, for their organizations' regulatory compliance function. Investor confidence in Canada's capital markets would be enhanced by the knowledge that an issuer's corporate secretary is providing leadership, expertise, and resources to ensure good governance in their organizations.

The purpose of this submission is to express support for the work of the Canadian Securities Administrators in defining governance standards and to contribute to their development. We trust the perspectives offered are helpful in this regard. Should any clarification or elaboration of our submission be required, I would be available at your convenience to do so.

We expect that governance practices will continue to evolve. The Canadian Society of Corporate Secretaries appreciates the invitation to contribute to this process and welcomes future opportunities to partner with the Canadian Securities Association in this important work.

Kindest regards,

A handwritten signature in black ink, appearing to read 'Urmas Soomet', with a long horizontal stroke extending to the right.

Urmas Soomet

President

Canadian Society of Corporate Secretaries

Appendix

Summary of Canadian Society of Corporate Secretaries Recommendations

The following is a summary of key points communicated to the Ontario Securities Commission during the first public comment opportunity in respect of the Proposed Multilateral Policy 58-201 regarding Effective Corporate Governance and the Proposed Multilateral Policy 58-101 regarding Disclosure of Corporate Governance Practices:

- **Board Mandate: Integrity of the CEO and Senior Officers**

The integrity of the CEO and the management team, and how it is fostered within an organization, is critically important to investors and the confidence they have in an issuer. However, the primacy that integrity should hold as a corporate value suffers when given the status of a guideline. Integrity is and should be positioned as a moral imperative.

As stated, this guideline acknowledges the difficulty directors will have gauging the level of integrity of the CEO and senior management. This recognition begs the following questions:

1. What is the practical application of this guideline, particularly in respect of disclosing the status of compliance?
2. Is this point redundant in light of the attention given to the section that addresses the code of ethics?

- **Board Mandate: Directors' Accountability for Measures for Receiving Feedback from Security Holders**

The board mandate is to include measures for receiving feedback from security holders. We recommend that consideration be given to providing further guidance as to what is expected with respect to this requirement, along with examples as to what would constitute appropriate feedback.

- **Disclosure: Use of the Annual Information Form (AIF)**

Disclosure with respect to governance practices and compliance has traditionally been made using the Annual Proxy Circular or Annual Report to Shareholders. Given that the Annual Information Form typically has limited circulation, the AIF may not be the ideal vehicle to provide the level of disclosure that shareholders expect and deserve.

Given their broader distribution and public availability, a company's Proxy Circular or Annual Report would achieve a level of disclosure that is in keeping with expected levels of transparency and clarity. We support the adoption of a single model or approach to create a consistent, uniform approach to ensure appropriate disclosure.

- **Definition and Use of "Independent Director" Term**

A standard definition for the term "independent director" should be adopted to promote consistency, clarity, simplicity, ease of understanding, and compliance. By providing a simpler, clearer definition of independent director, the challenges many issuers encounter recruiting suitable board members might be addressed, at least in part.

The Canadian Society of Corporate Secretaries would support adoption of the OSC's definition of an independent director.

- **Independence of the Board Chair**

The proposed guidelines recommend that the Board Chair should be an independent director, but allows for the appointment of a "lead director" where an independent chair is not appropriate. The Canadian Society of Corporate Secretaries supports this proposal.

- **Holding of Separate Meetings without Management**

This guideline may cause some confusion with issuers who could benefit from clarification as to how this guideline should apply to members of management who are also directors, relative to members of management who regularly attend board meetings.

- **Director Nominating Process**

This guideline, as it is presently positioned, is quite prescriptive and reflects more of a rules-based approach to this particular governance process. We believe that companies and their boards should be left to create their own process for nominating directors.

Should the OSC see the merit of providing companies with a more flexible approach to director nominations and recruitment, each company should be required to provide disclosure of the process it has used.

- **Director Orientation**

The draft guideline's expectation that "all new directors should also fully understand the nature and operation of the issuer's business" is unrealistic, at least in the short term.

It is fully expected that new directors, upon joining a company's board, would be provided with appropriate orientation to ensure that they become familiar with the company and with ongoing education to increase their understanding of the issuer's business over time. This guideline would also benefit from providing clarification as to what is meant by "fully understand".

- **Monitoring Code of Ethics**

A company's code of ethics should be implemented and enforced fully and consistently. The provision for waivers from a company's code creates concern for the Canadian Society of Corporate Secretaries, as there should be an expectation set that deviation is not acceptable, except, perhaps, when unavoidable human error occurs. To suggest that the board could do otherwise does not help create the level of trust and confidence that shareholders deserve.

We recommend that issuers be required to disclose any known deviations and the reason for such deviation.

- **Board Assessment**

The Canadian Society of Corporate secretaries supports a rigorous board evaluation process, as we believe that such an assessment helps ensure that issues that could be detrimental to effective oversight can be proactively identified and addressed before shareholders and other stakeholders are adversely affected. Issuers should be given the flexibility to adopt a process that reflects their own particular needs and circumstances. Confirmation that an evaluation process is undertaken annually should be disclosed.

- **Continuing Education**

The Canadian Society of Corporate Secretaries supports the recent development of formal director training and the advent of directors' colleges. However, no mention is made of the value that ongoing education for corporate secretaries would create in respect of improving the quality of corporate governance.

The Canadian Society of Corporate Secretaries strongly supports the ongoing education of its members and believes there is value in having corporate secretaries consider accreditation. The Society is in a position to facilitate this process through its affiliation with the Institute of Chartered Secretaries and Administrators.

- **Engaging Outside Counsel**

The Canadian Society of Corporate Secretaries supports the delegation of the process for engaging outside counsel to a committee of the board. This is a constructive revision to the corresponding TSX guideline.

- **Other Perspectives**

- We recommend that the OSC encourage issuers to appoint a chief governance officer in their organizations. In many cases, the

corporate secretary is ideally suited and positioned to provide this kind of leadership. This role would provide executive leadership to an issuer's governance culture, processes and compliance. A dual reporting relationship to the Board Chair and CEO should be considered.

- It is important that the OSC identify how these guidelines will be monitored and compliance assessed.
- Smaller publicly traded companies and companies with a significant or controlling shareholder often have unique challenges complying with governance guidelines that are typically designed with larger, widely-held companies in mind. The OSC guidelines need to reflect and be more explicit regarding this reality, given the prevalence of these companies in Canada. With this in mind:
 - For closely held companies where there are a larger number of inside directors serving on the board, it may not be practical to limit membership on committees to independent directors.
 - In closely held companies where director turnover is often low relative to larger organizations, it may not be practical to have a standing nominating committee.
- The Canadian Society of Corporate Secretaries strongly supports maintaining governance guidelines that allow companies the flexibility to achieve good governance in a manner that meets the particular needs and circumstances of an organization and its owners. The OSC should continue to guard against adopting a rules-based approach and resist the trend toward greater reliance on and proliferation of governance-related rules in other jurisdictions.
- Given the broad-based agreement on what constitutes good governance, companies in Canada would benefit from a single set of guidelines adopted and applied equally by all jurisdictions across Canada to facilitate full and efficient compliance.