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JUN - 3 2005

Ontario Securities Commission
SECRETARY'S OFFICE

June 3, 2005

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VIA SAME DAY COURIER

The Ontario Securities Commission
19th Floor
20 Queen Street West
Toronto, Ontario
M5H 3S8

Attention: The Secretary

Dear Sirs:

Re: Proposed Multilateral Instrument 52-111 – Response To Request for Comments

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Ontario Securities Commission
SECRETARY'S OFFICE

We are responding to the request for comments issued by the Commission in respect of Multilateral Instrument 52-111 entitled *Reporting on Internal Control over Financial Reporting* (the "Proposed Instrument"). Specifically, our comments focus on the scope of the application of the Proposed Instrument.

Section 1.2 of the Proposed Instrument, which deals with the application of the Proposed Instrument, provides that it applies to all reporting issuers other than investment funds and venture issuers. However, the exemptive provisions of Part 7 of the Proposed Instrument contain a staggered phase in period, which depends on whether the reporting issuer in question qualifies as a Transition 1, Transition 2 or Transition 3 issuer. In each case, a "Transition Issuer" is defined by reference to the market value of its listed equity securities. Listed equity securities is a defined term, meaning equity securities listed or quoted on an exchange or marketplace.

Based on the above, a reader is left with the impression that the Proposed Instrument applies only to reporting issuers with listed equity securities, notwithstanding the broad approach set out in Section 1.2.

We have two substantive comments concerning the foregoing. First, we believe that the current drafting is not clear. Secondly and more importantly, we believe that if the Commission intends the Proposed Instrument to apply to reporting issuers with no listed equity securities, then the approach is inconsistent with other corporate governance related instruments, namely Multilateral Instrument 52-110 dealing with Audit Committees and National Instrument 58-101 dealing with disclosure of Corporate Governance Policies. Both of those instruments

June 3, 2005

- 2 -

The Ontario Securities Commission

specifically provide an exemption for a wholly-owned subsidiary entity with no listed equity securities provided that the parent company is subject to the relevant requirements. We believe that a similar exemption should be adopted in the Proposed Instrument. We see no basis for concluding, for instance, that a wholly-owned subsidiary entity (i.e. a debt or preferred share only issuer) need not have an audit committee but should comply with internal controls over financial reporting. Alternatively, if the Commission believes that the Proposed Instrument should apply to subsidiary entity reporting issuers, we submit that Part 7 should include a specific exemption relieving issuers who have obtained discretionary exemptive relief permitting them not to distribute and file their own financial statements from the application of the Proposed Instrument. A number of reporting issuers that have publicly-held debt and preferred shares, but that are subsidiary entities, do not file their own financial statements but, instead, file financial statements of the parent entity. We submit that it would not make sense to put that type of reporting issuer to the expense of having to make an application to modify existing discretionary relief granted to it to clarify that the issuer is not required to comply with the Proposed Instrument.

Should you have any questions with respect to this letter, please contact the undersigned at (416) 601-7882.

Yours very truly,

McCARTHY TÉTRAULT LLP

Per:


David A. Judson

DAJ/mt