REALpac
Real Property Association of Canada
Association des biens immobiliers du Canada

Ms. Susan Wolburgh-Jenah
Acting Chair
Ontario Securities Commission
Toronto, Ontario

June 29, 2005

Dear Ms. Wolburgh-Jenah:

On behalf of our Members, we would like to submit the following comments on Multi-lateral Instrument 52-111 *Reporting on Internal Control over Financial Reporting*.

Although, generally, many are supportive of the idea behind the instrument, we have a few concerns about 52-111:

Where does the reporting issuer get the knowledge to implement this instrument in Canada? In the United States, the Securities and Exchange Commission (SEC) created the Public Company Accounting Oversight Board (PSAOB) and therefore, registrants can look to PCAOB Auditing Standard No. 2 for guidance. In Canada, Canadian Institute of Chartered Accountants (CICA) and the Canadian Securities Administrators (CSA) are not related. As a result, CICA has no ability to provide guidance to companies. There are two internal control frameworks: Coco in Canada and CoSo in the US. Either is acceptable but management and the auditors have to agree on its implementation.

We submit that guidance should come from the CSA (not CICA) similar to the SEC "Staff Statement on Management's Report on Internal Control over Financial Reporting". Based on the CSA direction, the CICA can then direct the auditors.

This should reduce the extensive auditor oversetting under Sarbanes-Oxley (Sox) that was experienced by most US issuers. This will hopefully result in a principles-based approach with the use of reasonable judgment by both management and the auditors. It is imperative that Canada retains its principles-based approach with key focus on entity-level controls.

Do these and similar measures give the public a false sense of security? Unfortunately, the average person thinks Sox is a standard to prevent massive fraud like Enron and WorldCom. Entity level and operational internal controls will deter fraud, but can't prevent collusion. This is not clear to the average person. Fraud is still extremely difficult to catch.

Also, there are many existing measures that reduce the risk of fraud. Changes to board independence and certain new practices for board members have been a positive step forward. Audit firms have also implemented new audit procedures and are increasingly focused on potential fraud and how to catch it.

We would encourage the CSA to consider modifying the internal control audit requirement without compromising its objectives. Both stakeholders and management derive the greatest benefits from entity level controls (which include periodic reviews of operational and fraud risk management). The auditors' review of the bottom level controls is not providing a lot of benefit to anyone. That being said, we submit that management should be required to publicly report on all internal controls (entity and bottom level) as currently proposed.

Finally, Given the difficulties including the costs that US entities had in implementing in year one, both companies and their auditors can learn from the year one experience to be able to deliver a lower cost product that will achieve the perceived benefits, i.e. reliable financial and other continuous disclosure reporting to facilitate restoring the investing public's confidence in the reliability of the financial statements they receive.

We request that you delay the implementation of each phase by one additional year. For example, the phase for issuers with market capitalization of $500 million or more would move from June 30, 2006 to June 30, 2007. This would allow the CSA to determine how to provide guidance for companies attempting to implement changes required by 52-111.

We encourage you to take the time to implement the Canadian solution right the first time. Please don't hesitate to contact me if you would like any further information.

Regards,

Michael Brooks
Executive Director

REALPAC Summary- we are a national association comprised of the largest owners, developers and managers of commercial real estate in Canada including publicly traded and large private companies, banks, brokerages, crown corporations, investment dealers, life insurance companies, pension funds and real estate investment trusts (REITs). Our members currently own in excess of CDN $100 billion in real estate assets located in the major centers across Canada.