

BY EMAIL

April 17, 2009

Me Anne-Marie Beaudoin
Corporate Secretary
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Mr. John Stevenson
Secretary
Ontario Securities Commission
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Toronto, Ontario M5H 3S8

Subject: Request for Comment - Proposed Repeal and Replacement of National Policy 58-201 *Corporate Governance Guidelines*, National Instrument 58-201 *Disclosure of Corporate Governance Practices*, and National Instrument 52-110 and Companion Policy 52-110CP *Audit Committees*

Dear Sirs:

We are writing in response to the aforesaid Request for Comment. For your information, we have reviewed the proposed policy and related instruments with our Corporate Governance Committee, composed entirely of independent directors. The Corporate Governance Committee supports our comments expressed herein concerning the definition of "independence" found in National Instrument 52-110, in Companion Policy 52-110CP and in the comments of the Canadian Securities Administrators ("**CSAs**").

Firstly, we take note of the comments expressed by the Alberta Securities Commission as to the proposed approach to independence and concur with their concerns. We consider that the "reasonable perception test" will necessarily not be applied consistently by all reporting issuers as it is too subjective. We believe that the "reasonable expectation test" is more appropriate. A perception does not need to be reasonable nor does it need to be substantiated; it differs from one individual to the other. The factual determination must remain with the board of directors given all circumstances upon a reasonable expectation test.

Comments from the CSAs indicate that an employee or an executive officer of a reporting issuer will never be independent; some people have interpreted this as meaning that a person who, in the past, was an employee or an executive officer of a

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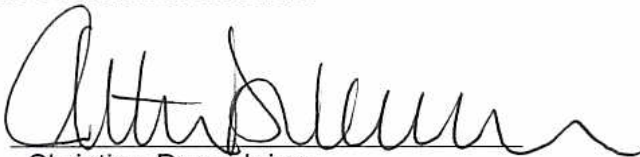
reporting issuer, will never qualify as independent, including whether or not such person ceased to be an employee or an executive officer of such reporting issuer. Currently, such person may qualify as an independent director depending on the circumstances as to when he left the employment of the reporting issuer and the judgment of the board of directors. Other people have interpreted the statement of the CSAs to mean that an employee or an executive officer of a reporting issuer will never qualify as independent only while being an employee or an executive officer of such reporting issuer. We would submit that a clarification from the CSAs as to their interpretation may be appropriate. We are of the view that the fact that a person served at a given time as an employee or an executive officer of a reporting issuer should not automatically result in the determination that such person is not independent. It is up to the board of directors to make such determination given the circumstances. Furthermore, the use of the "reasonable perception test", as opposed to the "reasonable expectation test", would most likely lead boards of directors not to consider past executive officers as independent directors. Often, the skills and expertise of past executive officers who would, under the existing rules, qualify as independent directors, would well serve reporting issuers, particularly in certain industries.

In certain circumstances, boards of directors may ask a director to assume certain specific and limited duties or to fulfill a specific mandate, usually on an interim basis (i.e. as a result of a departure of a senior executive officer, negotiations of employment conditions due to a potential conflict of interest, etc.). Directors would usually be compensated for these responsibilities if they require a certain time commitment which goes beyond their usual responsibilities as a director. We are concerned that the "reasonable perception test", once again, will disqualify any director assuming these responsibilities as independent. In this regard, we take note of the comments made in Section 3.1 of Companion Policy 52-110CP, but we do not believe this matter is expressly dealt with. Boards of directors would probably need to disqualify such director as being independent if they rely on the "reasonable perception test". We believe that any director fulfilling such responsibilities should not be automatically disqualified in such circumstances given the nature and scope of the duties being assumed.

We thank you for your consideration of the enclosed comments.

Sincerely,

TRANSCONTINENTAL INC.

Per: 

Christine Desaulniers
Vice President, Chief Legal Officer
and Corporate Secretary