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SENT VIA 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 the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

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Dear Sirs and Mesdames:

Re: Request for Comment: Proposed Repeal and Replacement of National Policy 58-201 *Corporate Governance Guidelines,* National Instrument 58-101 *Disclosure of Corporate Governance Practices,* and National Instrument 52-110 *Audit Committees* and Companion Policy 52-110 CP *Audit Committees*

This submission is provided in response to the above Request for Comment published on December 19, 2008 and is made on behalf of the Risk Management and Governance Board (RMGB) of the Canadian Institute of Chartered Accountants (CICA).

The RMGB is made up of senior business leaders who offer their expertise to the CICA. Our mission focuses on improving the quality of corporate governance and the oversight of risk management in organizations. To that end, our primary responsibility is to communicate pragmatic, authoritative information on corporate governance and risk oversight to meet the needs of boards of directors, senior management and chartered accountants at large. We do so through our "20 Questions Directors Should Ask…" publications addressing questions directors might ask in fulfilling their responsibilities, our "Director Alerts" on emerging issues, our guidance on the control environment and other publications.

We wish to provide a few comments on the proposals in the interests of improving the quality of corporate governance and the oversight of risk management in organizations. However, before we do so we would like to express our general concern regarding the timing of the proposed amendments.

Corporate governance is an evolutionary process, and we agree with the need to review periodically guidance on corporate governance practices and disclosure obligations; however, now is not an appropriate time for a complete overhaul of the regulatory approach to corporate governance in Canada. Issuers are wrestling with a multitude of challenges stemming from the turmoil in the capital markets and the current economic situation and many will not be in a position to give proper consideration to the extensive changes proposed. In addition, it is worth reflecting on whether there are any lessons arising from the current environment which should be incorporated into the CSA's governance proposals. Rather than an overhaul of the current, well-understood regulatory regime, we recommend the CSA make just necessary incremental changes for now.

Proposed Corporate Governance Guidelines

Although we do not recommend that the extensive changes contemplated in the proposed revised Corporate Governance Guidelines (Proposed Guidelines) be made now, we do think that the proposed approach of identifying key corporate governance principles and providing additional commentary and specific examples of practices furthering the principles provides better guidance than the current version of the Corporate Governance Guidelines. The tone of the current version of the Corporate Governance Guidelines is prescriptive and fails to recognize the rich diversity of practices which enable issuers to achieve good governance.

However, we have concerns regarding some of the enumerated principles (some of which are noted in this letter). We are also of the view that some of the statements made in the Proposed Guidelines are inconsistent with the board's oversight responsibility. For example, the commentary in Principle 1 states that the board sets the vision and direction of the issuer and the strategy must meet the board's vision and direction. In fact, the responsibility of the board is to assess and approve the vision and direction of the

issuer developed by management. Moreover, in several places the board is given responsibility for "ensuring" certain processes are in place or outcomes occur. In our view, the board's oversight responsibility means that it should require management to implement practices in furtherance of the issuer's objectives, but the board is not in the position of being able to guarantee outcomes.

New Principles 6, 7 and 9

Principle 6: Recognize and Manage Conflicts of Interest

While we agree that it is essential that boards of directors recognize and manage conflicts of interest, we do not feel that the addition of Principle 6 contributes anything new to corporate governance in Canada, as the oversight and management of conflicts of interest is a long-standing fiduciary principle which has been enshrined in modern business corporations statutes and securities legislation. We therefore recommend that Principle 6 be omitted from the Proposed Guidelines.

With respect to the related disclosure obligation, we are concerned that requiring annual disclosure relating to ad hoc committees could result in premature disclosure of potential transactions. Moreover, the extent of proposed disclosure, in the absence of a transaction to be considered by shareholders, is excessive.

Principle 7: Recognize and Manage Risk

We applaud the inclusion of Principle 7 as the oversight and management of risk is a key element of effective corporate governance. We agree that a sound framework of risk oversight and management is essential. We believe that responsibility for assessing the issuer's tolerance for risk as well as overseeing the management of risk must ultimately rest with the directors. However, management of risk is the responsibility of management, not the board.

We recommend that the Commentary and Examples of Practices reference to the need to provide directors with appropriate risk-related education and training to enable them to carry out their mandate in this area. In addition, we would recommend that the Commentary and Examples of Practices under Principle 4 include reference to ongoing education for directors on the business and other risks specific to the company and the industry in which it operates, in order to properly equip directors to fulfill their risk oversight responsibility.

While we believe that disclosure of board practices with respect to the oversight of risk management would provide useful information to investors, we are concerned that the requirement under the proposed disclosure instrument to provide disclosure of "a summary of any policies on risk oversight and management adopted by the issuer" is extremely vague and does not provide the guidance needed to assist issuers in providing meaningful disclosure respecting their practices for the oversight of risk management.

Principle 9: Engage Effectively with Shareholders

We agree that boards need to engage effectively with shareholders. Indeed, a board which fails to do so is unlikely to remain in place for long! However, in our view Principle 9 is inadequate as we believe it is necessary that boards engage effectively not only with shareholders, but also with other stakeholders, including creditors and local communities affected by the issuer's operations. Moreover, we note that the Commentary and the Examples of Practices focus on the voting process and neglect other methods of engagement, such as effective communications and informal discussion. We recommend that Principle 9 and the related Commentary and the Examples of Practices be revised to address these matters.

Approach to Disclosure of Corporate Governance Practices

While we recognize that a principles-based approach to the Proposed Guidelines may have merit in that it may provide more useful guidance to issuers and better reflect the diversity of practices which may be consistent with achieving good corporate governance, we are not in favour of a principles-based approach to the regulation of disclosure. The focus of the disclosure requirements must be the production of useful information for investors, and this is best achieved by a more explicit articulation of what is expected of reporting issuers.

We are concerned that the approach adopted by the proposed disclosure instrument will not result in disclosure of useful information. The unstructured format and lack of guidance may lead either to the excessive disclosure of irrelevant material, or to a failure to address in the disclosure all pertinent elements of an issuer's corporate governance practices. It seems unlikely that disclosure will be either consistent or comparable, either between issuers, or for the same issuer over various reporting periods.

Furthermore, corporate governance practices have evolved over time, with the result that there are many practices which are now so commonly accepted that it is only their omission in a particular issuer's case which would be informative to investors. For example, the failure to have a board comprised of a majority of independent directors would be unusual and highlighting that difference would provide meaningful information to investors.

In addition, we are concerned that the elimination of the "comply or explain" approach and its best practice standards might lead to a lowering of corporate governance standards in Canada, due to the tendency for some issuers to gravitate to the lowest regulated requirements.

It is therefore our view that the existing "comply or explain" approach to the regulation of disclosure should be maintained for those companies listed on the Toronto Stock Exchange.

We are sympathetic to the particular challenges faced by smaller issuers listed on the TSX Venture Exchange due to their more constrained resources. However, as a general principle we believe that all

public companies, regardless of size, should be subject to the same general standards of corporate governance disclosure. Moreover, we believe that smaller issuers would find it less burdensome to comply with substantially the same current disclosure obligations as larger issues than to comply with the proposed disclosure requirements set out in the Request for Comment.

Item 4: Proposed approach to independence

We do not support the proposed changes to the definition of director independence as set out in the proposed revised instrument on Audit Committees. Attempting to base the determination of independence on reasonable perception rather than a specific, fact-based analysis will be exceedingly difficult as it forces the board into the realm of supposition and conjecture, and it also may reduce accountability for the determination.

To be blunt, we believe that a "reasonable perception" test for the determination of whether or not a director is independent is unworkable because the views of reasonable people as to which relationships affect director independence vary greatly.

Furthermore, because the views of reasonable people regarding which relationships affect independence vary greatly, we recommend that the "bright line" tests for independence in the current instrument on Audit Committees be maintained in order to provide a meaningful baseline for making independence determinations on a consistent basis between issuers.

We are pleased to have had an opportunity to provide you with our comments. If you have any questions or comments, please contact Beth Deazeley at (416) 204-3273.

Yours very truly,

Risk Management and Governance Board,
Canadian Institute of Chartered Accountants