John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

April 20, 2009

Dear Sir,

Re: **Request for Comment – Proposed Repeal and Replacement of NP 58-201 *Corporate Governance Guidelines*, NI 58-101 *Disclosure of Corporate Governance Practices and* NI 52-110 *Audit Committees.***

We are submitting comments on the proposed changes to Corporate Governance Guidelines and related disclosure requirements on behalf of Financial Executives International Canada (FEI Canada), an all-industry professional association for senior financial executives. With eleven chapters across Canada and more than 2000 members, FEI Canada provides professional development, thought leadership and advocacy services to it members.

We have prepared our response in the form of answers to the specific questions raised in the Request for Public Comment. These are presented in the attachment to this letter.

Overall, we support the concepts in the proposed principles-based Governance Guidelines. However, we have concerns specific to Principle 9 related to the feasibility of adherence, and concerns surrounding Principles 6&7 as they relate to disclosure. We also believe that the current 'comply or explain' regime is not substantially enhanced by the move to the 'apply and explain' proposal.

Further, we are concerned with the timing of the implementation of the Proposed Governance Materials. With publicly accountable entities required to comply with International Financial Reporting Standards by January 1, 2011, coupled with the challenge of corporate survival under current economic conditions, we believe that the costs of implementation of the Proposed Governance Materials as they currently read will far outweigh the benefits in the near term.

Yours truly,

Michael Conway, CA, ICD.D
Chief Executive and National President

Lisa Dorian
Chair, Corporate Governance Committee

Encl.

Request for Comment – Proposed Repeal and Replacement of NP 58-201 *Corporate Governance Guidelines*, NI 58-101 *Disclosure of Corporate Governance Practices* and NI 52-110 *Audit Committees.*

Comments by FEI Canada

The following comments are responses to the specific questions raised in the Request for Public Comment:

1. Do you think Principles 6, 7 and 9 provide useful and appropriate guidance? Does this guidance appropriately supplement other corporate law and securities law (including legislation and decisions of Canadian courts) relating to these areas?

Principle 6 provides useful and appropriate guidance. We would suggest that it is in fact a continuation of Principle 5, which provides guidance surrounding conflicts of interest. Having the two principles separated out does emphasize the importance of managing conflicts of interest, however the disclosure may seem repetitive or confusing. We recommend either combining Principles 5 and 6, or removing all conflict of interest references in Principle 5 and including them in Principle 6.

Principle 7, while a sound principle in practice, does not provide enough guidance. Risk management is an extremely important component of an organization's overall governance, risk and compliance structure and many companies struggle with how to implement an appropriate framework. The examples of practice could include references to frameworks such as *COSO's Integrated Enterprise Risk Management Framework* or *Australia/New Zealand's Standard 4360:2004* to provide boards with a starting point.

We agree with the details of Principle 9 but find the wording "Effectively engage with shareholders" to be imprecise and unclear. We suggest that it be replaced with "Adopt measures for receiving feedback from shareholders"; i.e. based on the wording used in paragraph (i) of the board responsibilities in Principle 1.

We cannot comment as to whether the guidance appropriately supplements other corporate law and securities law.

2. Does the level of detail in the commentary and examples of practices successfully provide guidance to issuers and assistance to investors without appearing to establish "best practices"?

Overall, the level of detail appears to provide good guidance without appearing to establish "best practices". As noted above, we would encourage clarity surrounding the Principles to better organize the disclosure information to avoid repetitive or redundant disclosures.

3. In your view, what are the relative merits of a principles-based approach for disclosure, compared to a "comply or explain" model?

We support the concepts in the proposed principles-based Governance Guidelines and the move from 'comply or explain' to 'apply and explain'. On review of the proposed NI 58-101 versus the current NI 58-101, it would appear that there is little change regarding the required disclosures with the only difference being there is more disclosure required through the

addition of Principles 6, 7 & 9. Therefore, although the CSA was aiming to move away from the 'comply or explain' model, we do not believe that the proposed principles-based approach achieves the goal of substantially improving current corporate governance practices or disclosures.

We consider the "comply or explain" approach used in the current (2005) form to be satisfactory and could be readily enhanced with some of the additional practical guidance provided.

4. Is the level of disclosure required under each of the principles appropriate both from an issuer's and an investor's point of view? Specifically, do you think the disclosure in respect of Principles 6, 7 and 9 provides useful information to investors?

As stated above, the move to the principles-based approach does not provide any improvement to the current disclosure regime. In fact, we are concerned that by moving away from the 'comply or explain' regime, the issuers may have opportunities to disclose less information than previously, which may lead to a lessening of transparency rather than an enhancement of such. For example, under the current requirements, there is more disclosure required surrounding independence and objectivity of board directors than under the proposed materials.

5. Should venture issuers be subject to the same disclosure requirements concerning their corporate governance practices as non-venture issuers?

Although venture issuers are normally smaller operations that are usually starting up, they are nonetheless higher risk for investors and should therefore be subject to the same disclosure requirements as non-venture issuers.

6. *In your view, what are the relative merits of the proposed approach to independence compared to the current approach. In particular:*

a) *basing the determination of independence on perception rather than expectation; and*
b) *guiding the board through indicia rather than imposing bright line tests?*

We are not convinced that the changes made to the independence definition and guidelines will do anything to enhance governance and disclosure. In fact, by removing the bright line tests, issuers may find it more difficult to apply independence criteria especially surrounding a control person or significant shareholder.

7. Is it sufficiently clear that the phrase "reasonably perceived" applies a reasonable person standard?

Although we understand that the phrase "reasonably perceived" is meant to strengthen the definition of independence, especially in the absence of the bright line tests, we do not believe this alone will achieve the intended outcome.

8. Is the guidance in the Proposed Audit Committee Policy sufficient to assist the board in making appropriate determinations of independence?

We believe the removal of the bright line tests, even with the inclusion of specific guidance in the Companion Policy, will make it more difficult for issuers to determine whether true/perceived independence exists or is impaired.

9. The proposed definition provides that independence is independence from the issuer and its management, and not from a control person or significant shareholder. Given this definition:

a) *should a relationship with a control person or significant shareholder be specified in section 3.1 of the Proposed Audit Committee Policy as a relationship that could affect independence?*
b) *should such a relationship be solely addressed through Principle 6 – Recognize and manage conflicts of interest as proposed?*
c) *Is it appropriate to include as an example of a corporate governance practice that an appropriate number of independent directors on a board of directors and audit committee be unrelated to a control person or significant shareholder?*

Although we understand the concept of 'less is more' for a more principles-based approach to governance, we believe the proposed definition is inferior to that currently provided for in MI 52-110. Given this belief, we would therefore support that a relationship with a control person or significant shareholder be specified in the Companion Policy and not just solely be addressed through Principle 6.

We also believe it to be appropriate to provide an example of corporate governance practice that includes a statement regarding an appropriate number of independent directors on a board and audit committee be unrelated to a control person or significant shareholder.

10. Does the required disclosure on director independence provide useful and appropriate information to investors?

As previously indicated, we believe the current independence definition and guidance to be superior to the proposed definition and guidance.

11. Do you think our proposal regarding the effective date adequately addresses the needs of both venture and non-venture issuers?

We are concerned about the timing of the implementation of the Proposed Governance Materials including the revised Form 58-101F1. With publicly accountable entities required to comply with International Financial Reporting Standards by January 1, 2011, coupled with the challenge of corporate survival under current economic conditions, we believe that the costs of implementation of the Proposed Governance Materials as they currently read may outweigh the benefits in the near term.