British Columbia Securities Commission
Saskatchewan Securities Commission
Ontario Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Registrar of Securities, Government of Yukon

Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Alberta Securities Commission
Manitoba Securities Commission
Autorite des marches financiers
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories

Dear Sirs and Madams:

Re: Response to Request for Comment – Proposed Corporate Governance Materials NP 58-201, NI 58-101, NI 52-110 and NI 52-110CP

We write to provide our comments on the above referenced proposed corporate governance materials. Please find attached our comments on certain of your specific requests.

In addition, we would like to highlight our concern that the definition of "independence" as currently contemplated in the proposed materials provides an inappropriately lowered threshold for considering a director to be non-independent. The lower standard of perception, as opposed to expectation, is further diminished by incorporating a reasonable person test. This result may be a standard lower than what was intended by the Commissions Additionally, the subjectivity of perception as opposed to expectation may lead to inconsistent application of the concept amongst issuers. As a result, the definition of an independent director may have a large variance from issuer to issuer and, accordingly, shareholders will not be provided with comparable information from each issuer upon which to base their investment decisions.

We would prefer to have the current test remain in effect or, if a change is unavoidable, to have the test based on the reasonable judgement of the board of directors.

Please feel free to contact the writer to follow-up on any of the points raised in the attachment. We appreciate the opportunity to provide input on this proposal.

Sincerely,

Leah Dickie
Senior Legal Counsel
WestJet

westjet.com

Hangar
21 Aerial Place NE
Calgary, Alberta
Canada T2E 8X7
Tel: 403 444 6100

Deerfoot
5055 11 Street NE
Calgary, Alberta
Canada T2E 8N4
Tel: 403 444 2600

Specific Requests for Comment	Response
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 the Canadian courts) relating to these areas?	The disclosure requested in Principle 6 regarding the retention of a consultant or advisor exceeds any requirements of corporate or securities law and is unlikely to be useful to the average shareholder As consultant and advisor are not defined within the instrument or NI 58-101, there is the risk that this disclosure would trespass upon privileged communications such as in the case where a legal opinion is sought as to a conflict of interest. In this case, providing disclosure as to what other work the advisor has performed for the issuer would be inappropriate and unnecessarily invasive. We respectfully suggest that this requirement should be removed from the proposed instrument. If an issuer wants to make this disclosure, they are free to do so but this should not be mandated.
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"?	The level of detail in the commentary and the examples of practices provide the issuers with substantial guidance and multiple options for achieving the intent of the principles. However, in the absence of a bright-line test, there is always a question of "compliance" and whether the steps taken by the issuer are sufficient. Anytime that a concrete example of an acceptable practice or conforming practice is provided, it is natural for it to be seen as a "best practice" This risk exists not only from the standpoint of the issuer who is trying to conform but also from the standpoint of the observer making an argument that the issuer is non-compliant if it does not adhere to the examples provided. In order to avoid establishing "best practices," we would suggest efforts be made to provide conceptual examples as opposed to the examples being concrete behaviours.
3 In your view, what are the relative merits of a principles-based approach for disclosure, compared to a "comply or explain" model?	The principles-based approach is beneficial in that it provides issuers with the ability to formulate corporate governance practices that are workable for their particular organization. Most issuers will welcome the flexibility.

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?	Please see our response to request #1
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 on perception rather than expectation; and (b) guiding the board through indicia rather than imposing bright line tests?	(a) Perception is a much lower standard than expectation. Add to this that the standard is not whether the relationship **would** be perceived to affect independence but whether the relationship **could** be perceived to affect independence. This distinction adds a level of subjectivity which further lowers the standard. This lower standard could have the effect of inappropriately labelling those potential directors who are only tangentially related to the company as "non-independent" As stated in our covering letter, we would prefer to see the current approach retained or, if that is not feasible, to have the approach based on the reasonable judgement of the board. (b) While it is helpful to provide the board with indicia, there exists the likelihood that these indicia will instead be interpreted as a "checklist" for independence, albeit that the criteria may now be rebuttable. The risk in this approach is that other relationships or interactions that may have a profound effect on independence but which are not contained within the indicia may be overlooked. Conversely, something that has little effect on the potential director's independence may receive an inappropriate emphasis in the analysis simply because it has been identified as a possible factor to be considered. As stated in our response to request #2, we would favour criteria that are conceptually based rather than a list of specific criteria which are at risk of being considered "bright line" tests.
7 Is it sufficiently clear that the phrase "reasonably perceived" applies a reasonable person standard?	On a plain reading of the language, the most probable interpretation is that reasonable perception is to be measured based on the reasonable perception of the board of directors.

If the legal concept of the "average reasonable person" test is to be applied – that the board is expected to surmise what the average man on the street would reasonably perceive – this is not clear from the instrument as written.

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

Please see our response to requests #6 and #7.

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

The determination of independence is to be conducted by the board. If disclosure is to be provided on why a director is considered to be independent, it invites a shareholder, the "reasonable person", to second guess the determination, particularly where one of the specified indicia was considered and found not to adversely affect independence. This would likely contribute to (1) the use of the indicia as a checklist for independence determinations and (2) the tendency for boards to be overly cautious in their analysis of independence, at the price of disqualifying otherwise capable directors.

If the relationships in section 3.1 are simply suggestions of considerations to be made in a holistic evaluation of independence, it would seem contrary to this position to require disclosure of these relationships or a discussion of why the director is independent regardless of the relationship. To make such a requirement would be tantamount to the Commissions treating the relationships as presumptions of non-independence or "best practices"

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

Given the potential for a substantial change in the definition of independence, issuers may need more time to reassess the independence of their board members under the revised standard and, if necessary, to identify potential alternate directors. For this reason, a one year time frame for implementation would better meet the needs of issuers.

Response to Requests for Comments Contained in Appendix A

Specific Requests for Comment	Response
1 Instead of the "reasonable person" test, do you think the definition of independence should. (a) allow the board to subjectively determine whether or not a director is independent; and (b) require that the board's subjective decision be reasonable (i.e., there is a line of analysis that could reasonably lead the board from the factors it considered to the conclusion it reached, even if it is one with which others may disagree)?	(a) and (b) A test based on the reasonable judgement of the board would be a more appropriate standard than the reasonable person test. By replacing: (1) perception for expectation; and (2) the reasonable person for the reasonable board the standard for independence has been lowered exponentially and potentially set at a lower level than was intended by the Commissions
3. Given that it is in all market participants' interests for issuers to have the best directors available: (a) is it appropriate to require that the board explain why a director was found to be independent? (b) Could requiring such an explanation create a presumption that each relationship enumerated in 3.1 of the Proposed Audit Committee Policy affects the exercise of independent judgement unless the contrary is proven? (c) If so, do you think it is preferable that the disclosure requirements oblige an issuer to disclose the referenced relationships with respect to any director whom the board determines is independent without requiring an explanation for why that director is independent?	(a) Please see our response to Request #10 above. (b) As discussed in our previous answers, it is likely that the relationships enumerated in section 3 1 will become a checklist for independence. Rather than examples, they will be treated as rebuttable presumptions. Again, the provision of conceptual examples rather than specific relationships would lessen the likelihood of such interpretation. (c) It would be preferable to require material relationships, as determined by the board of the issuer, as part of the disclosures that issuers are required to provide in their proxy However, the issuer should not be required to disclose each of the relationships on the list of "examples" If the relationships in section 3.1 are simply suggestions of considerations to be made in assessing independence, it would seem contrary to this position to require specific disclosure of the relationships on the list. To make such a requirement would be tantamount to the Commissions treating the relationships as presumptions of non-independence. Requiring disclosure of these relationships would effectively then require a discussion of why the director was independent despite the existence of the specified relationship. In other words, the board would be forced to rebut the presumption.

For such reason, it would be preferable not to require disclosure of a specified list of relationships but instead to require the disclosure of any relationships that the board reasonably believes are material.