SOCIAL INVESTMENT ORGANIZATION

The Canadian Association for Socially Responsible Investment

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Alberta Securities Commission
British Columbia 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, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Government of Yukon
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

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

Dear Sirs and Mesdames:

Re: Comments on proposed Corporate Governance Policy and proposed instruments, 58-201, 58-101, 52-110 and 52-110CP

I am writing on behalf of the members of the Social Investment Organization, the national association for socially responsible investment. Our members include about 40 investment funds, financial institutions, investment consultants, asset managers, credit unions, and institutional investors, as well as more than 100 investment advisors across Canada. Our members serve more than a million Canadian depositors and investors. I am writing in response to your request for comment on your proposals related to proposed National Policy 58-201, and the associated instruments 58-101 and 52-110 and the companion policy 52-110CP.

General Comments

First, let me preface our comments by saying that the socially responsible investment industry believes that effective corporate governance is key to delivering shareholder value as well as ensuring that corporations act in a socially responsible and sustainable fashion. Effective corporate governance is critical in ensuring that corporate management is aware of, and sensitive to, the broad range of stakeholder and investor interests. Without mechanisms of transparency, responsibility and accountability, corporate management risks falling into short-term and myopic thinking that not only threatens shareholder value, but also imperils the global environment, local communities, and a host of other stakeholder interests.

We argue that the current financial crisis in which the world now finds itself is largely a crisis of corporate governance. One of the key lessons of the last eight months is that management of many global financial corporations placed short-term financial gain ahead of long-term economic and environmental sustainability, resulting in a catastrophic decline in global credit and investment markets.

To what extent does Canadian corporate governance practice share these same weaknesses? We have documented the impact of weak disclosure rules which contributed to this crisis in Canada and abroad in our earlier brief to you on the non-bank asset-backed commercial paper market in Canada (http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part1/Comments/11-405/com_20090216_11-405_ellmene.pdf). While weaknesses in Canadian and global disclosure regimes are at the heart of the current financial crisis, we do not believe the same can be said of Canada's corporate governance framework.

The proposed corporate governance policy does not improve the current regime

We believe that, unlike many jurisdictions, Canada has a robust corporate governance framework. While improvements can be made, it is important to recognize the strength of the current corporate governance regime in Canada. As a result of the standards adopted by the Toronto Stock Exchange following the Dey Report, the work of the Joint Committee on Corporate Governance, and the existing corporate governance regime requiring the "comply or explain" model, Canada has consistently scored at the top or near the top of international rankings of corporate governance. In fact, in its most recent ranking published September 23, 2008, Governance Metrics International scored Canada in second place among corporate governance performance worldwide. (See appendix to this letter.)

Therefore, SIO strongly questions the need for your proposed new corporate governance policy, and its associated instruments. We agree with you that "corporate governance has evolved both domestically and internationally." However, we do not believe that your proposed corporate governance policy represents an improvement on the current regime, based on the "comply or explain" framework. Issuers in Canada have expended significant time, staff resources and compliance costs in meeting the "comply or explain" model. We believe that the proposed principles-based model would inject unnecessary confusion into the corporate governance framework. Further, companies that are corporate governance laggards would escape the requirement under the current rules to explain their weak corporate governance structures, thereby encouraging lower corporate governance standards, not higher standards. The result would be higher costs for issuers, uncertainty for issuers' management, and a gradual lowering of Canada's corporate governance standards.

Recommendations concerning corporate governance guidelines

However, while we believe that Canada has a strong corporate governance framework, we also believe that it is possible to make improvements.

The addition of your Principles 6 (conflicts of interest), 7 (risk oversight) and 9 (shareholder engagement) do represent improvements on the existing regime. We would like to offer the following specific recommendations on each of these issues.

1. We recommend that Principle 6 be integrated into the current Corporate Governance Guidelines and Disclosure of Corporate Governance Practices, so that the commentary and examples of practices can provide additional guidance for issuers under the "comply or explain" model.
2. Further, Principle 6 should clarify that Boards should establish a sound system of "independent" oversight to emphasize the importance of independent board supervision of conflicts of interest.
3. We recommend that Principle 7 be integrated into the current Corporate Governance Guidelines and Disclosure of Corporate Governance Practices, so that the commentary and examples of practices can provide additional guidance for issuers under the "comply or explain" model. However, we note a significant deficiency in Principle 7 in that it does not include any mention of environmental, social and governance (ESG) risks that need to be attended to by Boards. Under current continuous disclosure rules outlined in National Instrument 51-102, companies are mandated to report "important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future." Increasingly, these trends and risks are being interpreted to include ESG factors that have traditionally been excluded from risk assessment. For example, the Canadian Institute of Chartered Accountants has recently released guidance on climate change issues for reporting under Management's Discussion and Analysis. In addition, we note that the Ontario legislature has recently mandated the Ontario Securities Commission to conduct a consultation on disclosure of ESG issues. These developments demonstrate that ESG issues are expected to become more important in the continuous disclosure regime.
4. Therefore, we recommend that Principle 7 provide guidance for boards to include ESG factors as part of their risk assessment process.
5. We recommend that the commentary in Principle 9 be integrated into the current Corporate Governance Guidelines and Disclosure of Corporate Governance Practices. However, SIO also strongly believes that Boards should be encouraged to facilitate on-going dialogue with investors through a shareholder engagement process on specific issues, including material ESG issues. This process can include investor-management meetings, communications with investors through letters and telephone, and discussions concerning shareholder proposals.
6. Therefore, SIO recommends that the commentary include a more expansive definition of shareholder engagement to include all the processes in which management can engage with investors on specific issues.
7. We <u>do not</u> recommend that the examples of best practices in Principle 9 be included in the current Corporate Governance Guidelines and Disclosure of Corporate Governance Practices. The SIO is troubled by the suggestion in this Principle that fundamental shareholder rights' issues such as a "clear description of the voting process" should be left to voluntary action under best practice guidelines. Voting practices, including electronic voting, are fundamental issues of shareholder enfranchisement, and should not be left to voluntary action by issuers. Therefore,

SIO recommends that CSA conduct further consultations on the issue of shareholder voting practices, and issue an additional National Instrument specifically mandating required voting practices for shareholders.

Recommendation to engender a spirit of consultation

We believe that the CSA can do more to keep abreast of the evolution in corporate governance by creating a permanent consultative mechanism. Such a mechanism would function in a way similar to the OSC's continuous disclosure or investor advisory committees, which provide on-going advice on disclosure and investor protection issues to the Commission.

However, these bodies have encountered some criticism in that they are charged with responsibility for advising the Commission on important policy issues, but that they do not have budget, staff, or public consultation resources with which to conduct their work. An alternative model would be the Financial Services Consumer Panel in the United Kingdom, which assesses the performance of the UK Financial Services Authority from a consumer perspective. The Panel has its own budget from the FSA, which includes allocations for staff and office space. It also produces its own publications and research reports, maintains a website, issues its own news releases, and solicits public comment. We believe that such a model deserves serious consideration to encourage better consultation on such issues as corporate governance. Therefore, our final recommendation is:

8. That CSA consider establishing one or more permanent consultative bodies to bring forward the views of the public and important stakeholder groups on emerging securities issues, such as corporate governance, continuous disclosure and investor protection. These bodies should have sufficient resources to independently conduct research and gather opinion on their mandates.

Conclusion

The SIO strongly cautions the CSA against moving forward on your current proposal. We believe it would add unnecessary costs to issuers, create confusion in the market, and lower corporate governance standards.

However, we do believe that there are some improvements to the existing regime that could be made by some of your proposals, and we encourage you to integrate these into the existing framework.

Finally, we invite CSA to consider creating an innovative consultative mechanism to improve your own consultative process to ensure that you are receiving the best advice on emerging corporate governance issues in the future.

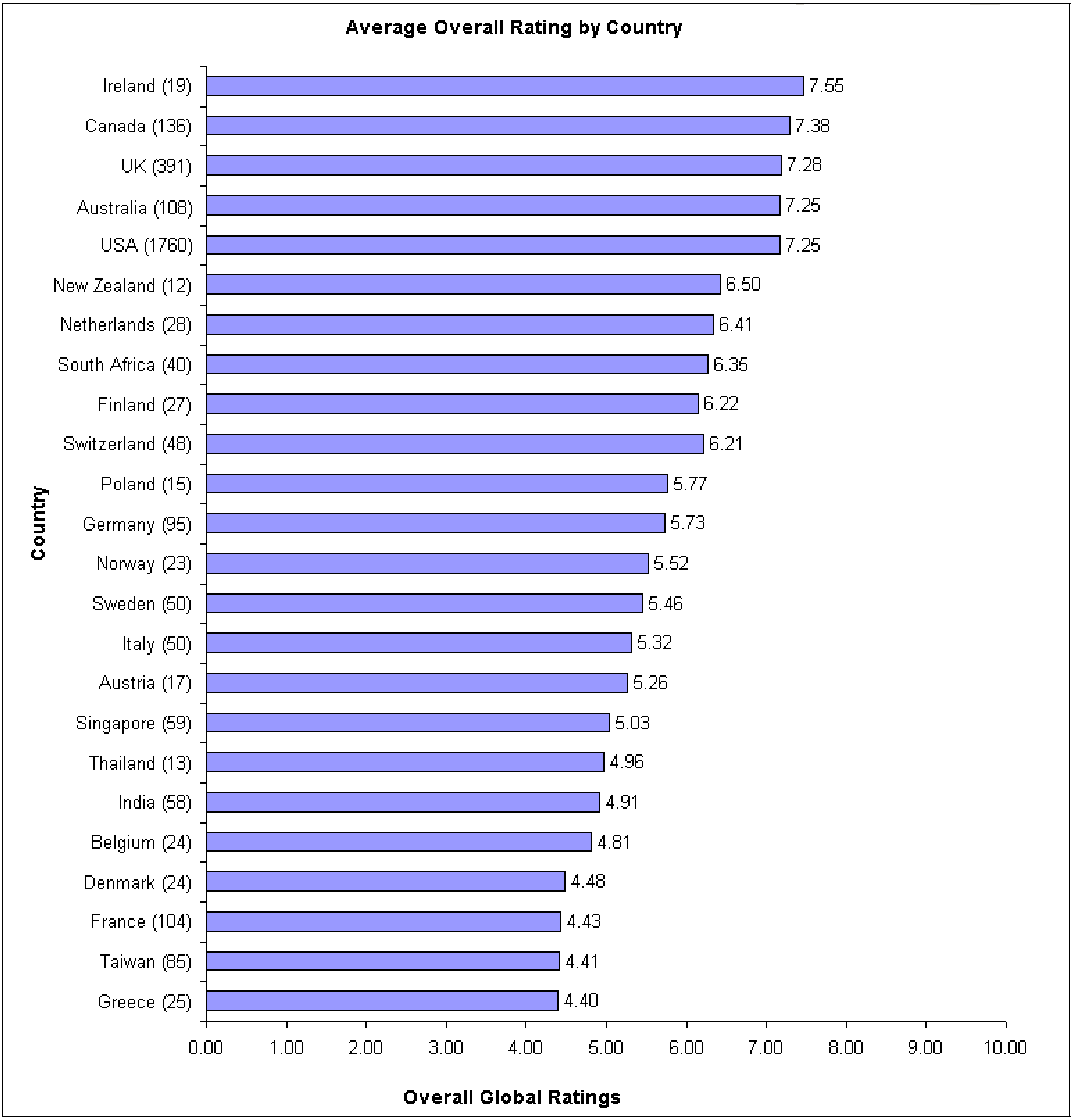
Sincerely,

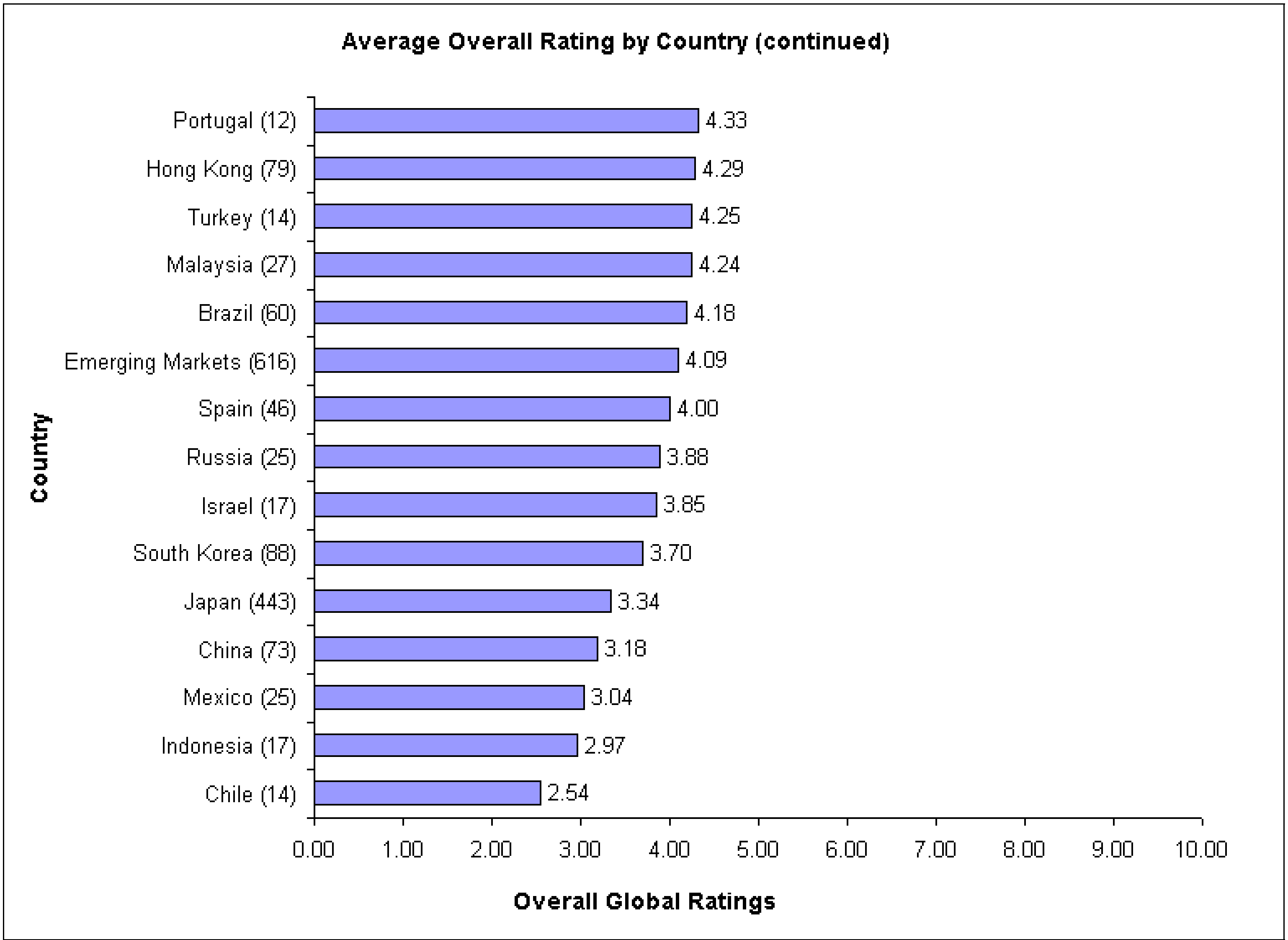
Eugene Ellmen

Eugene Ellmen
Executive Director

Appendix
Governance Metrics International
Ranking of Corporate Governance by country
Sept. 23, 2008

GMI Country Rankings as of September 23, 2008





*Emerging Markets covered by GMI are as follows: Argentina, Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Israel, Jordan, Malaysia, Mexico, Morocco, Pakistan, Peru, Philippines, Poland, Russia, South Africa, South Korea, Taiwan, Thailand, Turkey and Venezuela. GMI does not calculate country averages when the number of companies covered is less than ten.