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

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
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Montréal (Québec) H4Z 1G3

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
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Dear Me. Beaudoin & Mr. Stevenson,

Re: Revised Corporate Governance Regime – Proposed Replacement of NP 58-201 Corporate Governance Guidelines, NI 58-101 Disclosure of Corporate Governance Practices, and NI 52-110 Audit Committees (the "proposed Corporate Governance Framework")

The Canadian Advocacy Council of CFA Institute Canadian Societies (CAC)[1] is pleased to respond to the Request for Comments dated December 19, 2008 in which the Canadian Securities Administrators (CSA) invited interested parties to submit comments on the proposed Corporate Governance Framework.

General Comments

The CAC believes that full disclosure and transparency are a critical part of ensuring investor confidence and trust of the capital markets. We believe that the principles and guidance found within the CFA Institute's Code of Ethics and Standards of Professional Conduct can serve as a roadmap for companies developing their corporate governance policies.

[1] The CAC represents the 12 Canadian member societies of the CFA Institute constituting over 11,000 members who are active in Canada's capital markets. Members of the CAC consist of portfolio managers, investment analysts, corporate finance professionals, and other capital markets participants. The CAC's has been charged by Canada's CFA Institute member societies to review Canadian regulatory, legislative and standard setting activities.

Responses to Specific Requests for 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?

Conceptually, these Principles provide good guidance. However, implementation may be difficult in practice. Controlling or significant shareholders who choose to participate in the management process are unlikely to be perceived as independent owing to the inherent conflicts. At the same time, it may not be reasonable to force a company to trade with a competitor for a product or service that a significant shareholder is able to provide. The key would be to have a mechanism in place to ensure that the transaction is done at or below a fair market price. Transactions of this nature should be properly disclosed.

The board of directors should have an effective mechanism in place to monitor management performance coupled with risk analysis of operations. One could argue that had proper risk management systems been operating, many financial organizations would have been less affected by the recent credit crisis and the crisis itself might have been avoided or at least mitigated. If their boards of directors had had a better understanding of what was actually taking place at an operational level, a whole series of recent corporate failures, such as Enron, Hollinger and Parmalat, might have been avoided.

Even registered shareowners have a limited opportunity to be heard at the corporation's annual meeting. Companies should be required to put in place avenues to increase the access of ordinary shareholders to senior management and directors. At the risk of being inundated with irrelevant comments, consideration should be given to establishing a corporate website for shareholders to ask questions, leave general comments or direct questions to specific board members.

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"?

"Best Practices" can be used as a shield for non-compliance. At the same time, many issuers will not institute appropriate practices without some guidance regarding minimum standards, particularly with respect to transparency on conflicts of interest and management oversight..

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

The difficulty with relying on a "comply or explain" model is that it effectively allows a firm to claim compliance with a code even if they only comply with a small part of the code. Moreover, it provides far too much leeway for companies to avoid having to comply with the requirements, in this case the requirement to disclose certain matters of importance to shareowners.

We favour neither an exclusively principles-based nor rules-based approach to securities regulation, including corporate governance requirements. We believe that even the most principles-based system requires prescriptive rules to provide contextual clarification for users of the system and that rules-based systems have to provide some broad principles for users to understand the contextual basis for the rules. Therefore, we believe that one of the most important

components of the system is the breadth of the disclosure regime that is prescribed and the enforcement of this disclosure regime.

Given that there are differences in corporate management structures and responsibilities the biggest advantage of a principles-based approach is that it allows issuers to tailor their corporate governance practices to their particular circumstances in a manner that they can best implement and monitor. At the same time, we do believe that the governance framework should provide some minimum standards that all should be required to meet. A purely principles-based approach is not going to make the poorest performers raise their governance standards, or for that matter, materially improve their disclosure.

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 noted, we believe that the CSA should be setting a baseline of minimum standards for corporate governance, but we do acknowledge that the most difficult part of designing an oversight framework is determining what the minimum baseline should be. In the case of Principle 6, the particular conflicts of interest of concern may vary by company and industry and it would not be possible (or appropriate) for the regulator to try to identify in advance all potential conflicts of interest. However, the CSA should identify the ones most likely to be present in all reporting issuers and place an express responsibility on the independent directors to monitor these via an audit process. Similarly, there should be a timely mechanism in place for companies to address proposed non-arms length transactions and to ensure that they are fair to the company as a whole. There should be some internal rules with respect to the receipt of benefits from suppliers and customers so that employees of the company do not enter into transactions for personal gain (e.g. receiving a trip in exchange for placing an order with a particular company or for a particular product). The CFA Code of Ethics and Standards[2] of Professional Conduct covers a lot of these issues through its standards on duties to employers and clients regarding conflicts of interest**.** Companies should look to the Code for guidance on the appropriate way to deal with conflicts.

Recent events in global capital markets indicate that many companies either did not have proper risk management systems in place or chose to ignore their risk exposures. Principle 7 logically would suggest that corporations should know the non-systematic risk of their business lines and customers and have systems in place to monitor the activities and manage the resulting risks. For example, companies that have significant customers (customers that generate more than 10% of their business) should be aware of the impact of a loss of that customer or a material reduction in its business.

For Principle 9, it should not be difficult to establish some baseline expectations beyond the corporation providing the required reports to all shareholders and holding the annual meeting. At a minimum, shareholders should be able to send queries or comments to a corporate e-mail address which should be acknowledged within a reasonable timeframe. Shareholder issues should be a regular item on the board of directors' agenda and responses to questions should be provided either directly to the writer or posted generally on a public website, as appropriate. It is up to the company to determine what issues are of basic information or administrative issues which can be handled by staff and which ones be put on the board agenda. Depending on the company and its resources, questions could be posted under investor relations FAQs.

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[2] https://www.cfainstitute.org/centre/codes/ethics/pdf/english_code.pdf

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

We see no reason why venture companies should not be subject to the same corporate governance practices as non-venture issuers. Frequently venture companies have more potential for conflicts of interest that should be disclosed to investors. Clear indication of the level of these risks of the enterprise should be made available to shareholders.

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?

Generally speaking, the determination/classification of any director as being independent and/or whether such a director's relationship with the management of a company would interfere with the exercise of independent judgment in fulfilling their duties on the board (such as in the functioning of the Audit Committee) on the basis of "*reasonable perception*", rather than expectation, should raise the minimum standard. It should be noted, however, that the 'smell' test for perception is critically dependent on whose standard one looks to for guidance. If a high standard is evoked then this approach should provide better guidance than imposing bright line rules or tests.

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

The phrase may be clear to the legal community, but it would be less so to the general public. A possible remedy for this would be to include a direct reference to the reasonable person standard as it might apply to what would be reasonably expected of a Director of a board of a corporation eligible to take advantage of the Prompt Offering Prospectus (POP) system.

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

Yes. Transparency of the process is very important and following the principles outlined should identify conflicts and independence issues. The additional requirement to cross reference board relationships should help to minimize indirect influence.

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?

Yes. The director with ties to the controlling shareholder may not be independent and disclosure is important for shareholders to determine whether true independence in fact exists. The test should be the same – is the director free of relationships with anyone that

would impair the director's ability to act in the best interest of the corporation and its shareholders as a whole?

(b)	should such a relationship be solely addressed through Principle 6 – Recognize and manage conflicts of interest as proposed?

Yes, coupled with clear disclosure requirements.

(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?

Yes.

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

Yes. This will allow investors to decide whether conflicts may be a concern. The disclosure should also include full details of the board members' qualifications as this will allow investors to make more informed voting decisions.

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

Yes.

Concluding remarks

We thank you for the opportunity to provide the foregoing comments. We would be happy to address any questions you may have and we appreciate the time you are taking to consider our point of view. Please feel welcome to contact us at chair@cfaadvocacy.ca.

Regards,

(signed 'Ross Hallett')

Ross E. Hallett, CFA
Chair, Canadian Advocacy Council