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BY EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick 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

To the attention of:

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Dear Sirs/Mesdames:

RE: Proposed Repeal and Replacement of National Policy 58-201, National Instrument 58-101, National Instrument 52-110 and Companion Policy 52-110CP

This letter is submitted in response to the Request for Comment (the "Request for Comment") published by the Canadian Securities Administrators (the "CSA") on the proposed repeal and

replacement of National Policy 58-201 *Corporate Governance Guidelines* ("NP 58-201"), National Instrument 58-101 *Disclosure of Corporate Governance Practices* ("NI 58-101"), National Instrument 52-110 *Audit Committees* ("NI 52-110") and Companion Policy 52-110CP ("CP 52-110") (together, the "Proposed Amendments"). It reflects comments generated from capital market participants having a combined market capitalization of more than $50 billion (the "Participants").

GENERAL

The Participants support the general philosophy expressed as the basis for the Proposed Amendments; namely to allow issuers to disclose their corporate governance practices with more flexibility, as opposed to the current "comply or explain" regime.

Notwithstanding this, many Participants are of the view that the disclosure requirements prescribed by proposed NI 58-101 are too cumbersome and may result in increased costs for issuers, especially for smaller issuers. Because of the level of details required under the Proposed Amendments, some Participants believe that the resulting disclosure will, in the end, be similar to what is already disclosed and will not result in any corresponding benefit for investors.

In addition, many Participants have questioned the timing of the Proposed Amendments. Given the economic situation, many companies would prefer to focus on operational and strategic issues in the current year rather than overhaul their governance practices and the disclosure of same.

Some Participants emphasized the importance of issuing quickly revised governance principles for controlled corporations. The CSA had announced in 2005 that they would, within the next year, consider concerns related to the governance of controlled corporations. Amendments to NI 58-101, NI 52-110 and NP 58-201 should be made as soon as possible to include guidelines and principles that are better adapted to their circumstances.

With respect to the proposed definition of independence, many Participants endorse the position of the Alberta Securities Commission, pursuant to which the board of directors of an issuer is in the best position to determine if a director is independent or not. The "reasonable perception" test is individualistic and subjective and may result in inconsistent application.

You will find below our general comments regarding the disclosure requirements for each of the principles set forth in Form 58-101F1 of NI 58-101 ("Form 58-101F1"), followed by our answers to the specific questions set forth in the Request for Comment.

COMMENTS ON THE DISCLOSURE REQUIREMENTS RELATED TO EACH PRINCIPLE

We believe that the information to be provided by the issuers in Form 58-101F1 should be qualified by a materiality test, as is the case for other disclosure obligations in CSA rules. The information to be provided should be the information that is likely to influence a reasonable investor's decision whether or not to buy, sell or hold securities in an issuer. Providing too much information could be confusing for an investor and issuers should thus focus on material information.

Many Participants have also mentioned that the electronic posting of corporate governance documentation on issuers' websites should be encouraged and recognized as a practice leading to more accessible disclosure and reduced size of management proxy circulars.

Principle 1 - Create a framework for oversight and accountability

The requirement to describe the roles and responsibilities of the board and its committees, as well as the terms of any written mandate or formal charter (Item 1(c) and (d)), should specifically allow a reference to a written mandate or charter posted on the website of the issuer.

Many Participants are concerned that the requirement to describe the qualifications of all board members (Item 1(d)(iii)) could potentially lead to increased liability. They think that the CSA should not make that disclosure mandatory.

With respect to the obligation to describe any directors' authority and responsibilities that have been delegated to an executive officer or officers of the issuer (Item 1(e)), Participants believe that such requirement is too broad, as corporate law allows issuers to delegate a whole range of responsibilities. We would suggest limiting the disclosure to responsibilities that were specifically delegated to the Chief Executive Officer ("CEO"), and we would allow a reference to the website of the issuer if the position description of the CEO is posted on the website.

Principle 2 - Structure the board to add value

The requirement to describe any practices the board uses to address the commitment of its directors (Item 2(a)) should be clarified, given the current existence of requirements to disclose the attendance record (time commitment) (Item 2(h)) and the number of shares and other securities held by each director (Form 51-102F6) (financial commitment).

Many Participants believe the requirement to describe the competencies and attributes of directors (Item 2(b)) may create increased liability for directors and should not be mandatory. This comment also applies to the new requirement to describe the relevant competencies and other attributes that each director brings to the board (Item 2(c)).

With respect to the disclosure of relationships between a board member and the issuer or its executive officers (Item 2(d)), we would limit the disclosure to the material relationships and only in the case of non-independent directors. In the case of a director who has been determined by the board to be independent, being required to disclose "any relationship" may result in immaterial relationships being identified and in directors' judgment being second guessed.

Similarly, we would not require disclosure regarding "business or other relationships" between directors (Item 2(f)), as such requirement is too broad. It should be qualified by a materiality test and limited to relationships that the board considers affect the independence of a director. The board should be trusted in its determination of relationships that can impair independence.

Principle 3 - Attract and retain effective directors

We would rename Principle 3 "Identify and nominate effective directors", as it is more representative of the disclosure required under that principle.

We would remove the requirement to describe what the issuer does to attract and retain directors (Item 3(a)), as such requirement is generally more appropriate in the attraction and retention of management. Indeed, directors are generally elected every year and many mechanisms to "retain" them, such as option plans, have been put into question in recent years. Furthermore, the issue of retention of directors is not currently at the forefront of board governance issues.

We would delete the requirement to disclose whether a consultant or advisor has assisted the board in the nomination process (Item 3(b)), as we do not find such disclosure particularly relevant for an investor and it leads to the inference that retaining such a consultant is necessary, which is not the case for all issuers.

Principle 4 - Continuously strive to improve the board's performance

We would remove the requirement to describe the outcome of an assessment process (Item 4(a)(iii)), as this may increase liability. Perversely, the requirement for disclosure could stifle genuine assessment and discussion of individual directors' short comings. Assessments and their outcome will become *pro froma*, with a view to non-controversial disclosure.

Principle 5 - Promote integrity

Issuers should be permitted to refer to their website, if their code of business conduct is posted on it, instead of having to summarize such code (Item 5(b)).

Principle 6 - Recognize and manage conflicts of interest

We would remove the requirement to disclose details as to the consultant or advisor who assists the board with respect to conflicts of interest (Item 6(c)). Such information is often privileged

attorney/client information. The name of the advisor, the type of work and other work performed for the issuer by such advisor should be kept strictly confidential. Again, such disclosure suggests a consultant or advisor should be retained, which is not necessarily appropriate for all issuers.

In addition, reference to an issuer's conflict of interest policy posted on the issuer's website should be specifically allowed.

Principle 7 - Recognize and manage risk

Policies on risk oversight and management should be disclosed in the annual information form and MD&A of the issuer and a cross-reference to these documents should be specifically allowed.

Principle 8 - Compensate appropriately

Practices of issuers related to executive compensation are already covered by Form 51-102F6. Disclosure should not therefore be required in Form 58-101F1 (Item 8). The duplication of disclosure only creates lengthier management proxy circulars, with limited additional meaningful information for investors. A cross-reference to the disclosure in Form 51-102F6 is more appropriate.

Principle 9 - Engage effectively with shareholders

Requiring disclosure on practices that facilitate the board obtaining meaningful information on shareholder views (Item 9(a)(ii)) could potentially result in selective disclosure practices for issuers that are less sophisticated.

SPECIFIC REQUESTS FOR COMMENTS

Our comments below relate to the questions set forth in the Request 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?*

   We believe that the topics covered by Principles 6 and 9 are generally of interest to investors and should thus be included as part of the Proposed Amendments. With respect to Principle 7, that topic is the focus of MD&A and AIF disclosure and should not be repeated. Please also refer to our specific comments related to Principles 6, 7 and 9 under "Comments on the disclosure requirements related to each principle" above.

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"?*

   Many of the Participants are of the opinion that best practices, which are ever increasing, can become a hurdle for smaller issuers.

   The examples provided in NP 58-201 may quickly become part of the voting guidelines of institutional investors and be expected from issuers, thus leading to a "comply or explain" approach. In addition, rating agencies may also come to consider them as minimum standards to adopt. A careful cost/benefit analysis should be made before proposing such examples of best practices.

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

   We generally agree with the philosophy behind the Proposed Amendments. However, as mentioned above, we believe that Form 58-101F1 is too cumbersome. The model suggested requires too much disclosure and thus becomes less flexible. We would generally prefer an approach which lists principles that are not already covered by other securities regulations and that requires disclosure of material information on practices followed by the issuers with respect to broad themes.

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?*

   See our comments related to Principles 6, 7 and 9 under "Comments on the disclosure requirements related to each principle" above.

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

   The CSA should implement streamlined requirements for venture issuers.

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

   We generally are in agreement with the process of guiding the board through indicia instead of imposing bright line tests. However, as mentioned in our answer to the following question, we believe that the board should be trusted when it comes to determining which directors are independent.

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

   The board should be allowed to determine whether or not a director is independent. The "reasonable perception" test, which is not established in law, may be difficult to apply. We would simply require that the board's decision be reasonable, as suggested by the Alberta Securities Commission in the Request for Comment.

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

   We believe the guidance is appropriate. We believe that there should be only one definition of independence (as opposed to different definitions for audit committee members and for other committees and the board members).

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?*

   The independence of a control person or significant shareholder should not be affected only because of his or her equity holding in the issuer.

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

   Yes, we believe that Principle 6 is an appropriate way of disclosing mechanisms to avoid conflicts of interest.

   (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?*

   No, the disclosure under Principle 6 is enough. Furthermore, in the current NI 52-110, issuers are allowed to appoint at least one representative of a control person or significant shareholder on the audit committee. This exemption should be specifically kept. Many Participants are also of the opinion that a controlled issuer should be expressly allowed to appoint a director who is the representative of the control person or significant shareholder on every board committee.

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

As mentioned with respect to Principle 2 of "Comments on the disclosure requirements related to each principle" above, the disclosure is useful only if it relates to material information and for directors who are not independent.

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

A second public consultation should be held before the adoption of the Proposed Amendments. If the CSA do not republish for comments, we believe that the CSA should provide at least twelve (12) months advance notice of the implementation of the new regime in order to provide issuers enough time to adapt to the new requirements.

OTHER COMMENTS

In general, the Participants were of the view that the principles described under NP 58-201 are too detailed.

With respect to specific principles, they believe that the commentary under Principle 1 should be clarified to acknowledge that management generally develops the issuer's strategic plan, which is ultimately approved by the Board.

With respect to Principle 9, it seems unclear what the expression "ongoing dialogue" with shareholders means. The commentary and the examples of practices only refer to the voting process. As stated above in this letter, an ongoing dialogue could potentially result in selective disclosure practices for issuers that are less sophisticated. Hence, Participants would prefer to refer to processes in place to receive feedback from shareholders.

As for NI 52-110, in addition to the suggestions described above regarding the concept of independence, we would amend item 2.3 (5) by replacing the word "document" by "information", so that it is clear that once the information contained in or derived from an issuer's financial statements, MD&A or annual or interim earnings news releases has been reviewed by an audit committee, it does not have to be reviewed again every time an issuer discloses a document containing such information.

CONCLUSION

The general philosophy behind the Proposed Amendments is commendable. However, the disclosure should be more limited in scope and qualified by materiality thresholds. Furthermore,

as discussed in this letter, certain specific requirements may increase the risk of liability or relate to privileged information and should thus be removed. With respect to principles related to the governance of controlled corporations, they should be adopted quickly. Finally, the new concept of independence should allow the boards to determine whether or not a director is independent, provided that such determination is based on a reasonable analysis. Boards should be trusted.

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If you have any questions concerning these comments, please contact Thierry Dorval at (514) 847-4528 (direct line) or by e-mail at tdorval@ogilvyrenault.com or Tracey Kernahan at (416) 216-2045 (direct line) or by e-mail at tkernahan@ogilvyrenault.com.

Yours very truly,

Ogilvy Renault LLP