



April 20, 2009

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

via email: jstevenson@osc.gov.on.ca

**Re: Response to Request for Comment:
CSA Proposed National Policy 58-201 Corporate Governance Principles**

Dear Mr. Stevenson:

The BC Investment Management Corporation (bcIMC) respectfully submits this letter in response to the CSA request for comment on the proposed repeal and replacement of National Policy 58-201 *Corporate Governance Guidelines* ("the Current Guidelines") with National Policy 58-201 *Corporate Governance Principles* ("the Proposed Principles").

On behalf of hundreds of thousands of pension and trust beneficiaries in the province of British Columbia, bcIMC takes an active approach to influencing Canadian governance practices. bcIMC's thoughts and comments provided in this submission are based on our experience directly engaging with Canadian directors to help develop practices to promote shareholder accountability. We also study and make recommendations on corporate governance policy and practices in the international markets in which we invest so we are drawing upon our knowledge of "leading" governance standards from around the world.

We understand that the CSA's purpose in proposing extensive revisions to the national policy on corporate governance is to enhance the standard of governance and confidence in the Canadian capital markets (Section 2 "Background and Purpose"). bcIMC questions whether the proposed amendments will achieve this objective, and our specific concerns are set out below:

Will the Proposed Principles serve investors well?

- Under the Proposed Principles, the CSA would no longer specify any particular governance practices or minimum standards. In effect, there would cease to be a set of recommended governance practices for the Canadian market. We believe that it is not in the interests of investors to lose the generally accepted governance practices that we have today under the Current Guidelines. These practices

provide an important basis on which to evaluate a company's approach to governance, and allow investors to communicate effectively with/make more informed decisions on the companies they own, or may own.

- The “comply or explain” approach in the Current Guidelines and disclosure rules (*National Instrument 58-101 Disclosure of Corporate Governance Practices*) requires companies to report on their governance practices and, where necessary, describe how the practices diverge from the recommended standards. In contrast, under the Proposed Principles and disclosure requirements, companies would not have to provide any explanation for their governance approach or practices. Thorough governance disclosure has high value to investors and we are concerned that requiring disclosure that is more general in nature will lead to issuer opaqueness and shareholder uncertainty.

Do the Proposed Principles align with governance regimes in other jurisdictions?

- The proposals of the CSA have been presented as a change in philosophy from rules-based to principles-based in order to provide more flexibility to Canadian issuers. Despite the proposed additional flexibility in the Canadian governance regime, Canadian companies listed on a U.S. stock exchange will still have to comply with the applicable rules prescribed by the U.S. *Sarbanes-Oxley Act of 2002* and the Securities Exchange Commission. Currently, our records indicate that approximately 25% of the S&P/TSX Composite companies are inter-listed and 70% of the TSX 60 constituents have a U.S. exchange listing. Imposing very different governance regimes on companies that requires them to explain their oversight/accountability practices in multiple ways is a burden on directors, company resources and shareholder value.
- We note that, in the face of today's financial crisis, the pioneer of principles-based regulation, Britain's Financial Services Authority (FSA), is turning away from the concept. In the past, the FSA was careful not to interfere with the business judgment of firms in Britain's financial services industry. But, the regulator now concedes that markets and companies can't be left to their own devices — and that the FSA must become more interventionist. FSA CEO Hector Sants declared the shift in philosophy in a speech delivered in mid-March.

“To suggest that we can operate on principles alone is illusory...the limitations of a pure principles-based regime have to be recognized. I continue to believe the majority of market participants are decent people; however, a principles-based approach does not work with individuals who have no principles.”

Are the Proposed Principles an improvement?

There are three areas in the Proposed Principles and new disclosure instrument that are not covered by the Current Guidelines. These are areas of significant concern for investors, and we applaud the CSA for providing greater direction and clarity to companies and directors. The three new guidance topics are:

- Principle 6 – Recognize and manage conflicts of interest

An issuer should establish a sound system of oversight and management of actual potential conflicts of interest.

- Principle 7 – Recognize and manage risk

An issuer should establish a sound framework of risk oversight and management.

- Principle 9 – Engage effectively with shareholders

The board should endeavour to stay informed of shareholders' views through the shareholder meeting process as well as through ongoing dialogue.

Conclusion/Recommendations

bclMC supports the CSA focus on good corporate governance and developing a modern and effective governance regime in Canada. To this end, we believe the CSA should:

- 1) Encourage companies to adopt *at least* the recommended governance practices in the current Guidelines. They establish an important foundation of common standards that have been generally accepted by the Canadian marketplace.
- 2) Encourage companies to be *more* expansive in their disclosure of effective governance practices. The existing “comply or explain” regime sets appropriate parameters for the disclosure of best practice corporate governance in Canada.
- 3) Leave the Current Guidelines in place and supplement them with the content of new Principles 6, 7 and 9, which provide additional useful information for investors.

Should you have any questions with respect to bclMC's views, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Pearce".

Doug Pearce
Chief Executive Officer and Chief Investment Officer

cc Ms. Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
Email: consultation-en-cours@lautorite.qc.ca