



## FRASER MILNER CASGRAIN LLP

April 20, 2009

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

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Dear Sirs/Mesdames:

**Subject: Request for Comment - 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"), and National Instrument 52-110 ("NI 52-110") and Companion Policy 52-110CP ("CP 52-110") *Audit Committees***

We would like to commend the Canadian Securities Administrators (the "CSA") for taking the initiative and improving the corporate governance regime for Canadian issuers.

We are pleased to provide our comments to the CSA on the proposed repeal and replacement of NP 58-201, NI 58-101, NI 52-110 and CP 52-110.

It is our general view that the proposed amendments are more flexible and better suited for the Canadian market place and recognize that governance practices are bound to evolve over time and that each issuer, depending on its own set of circumstances, should have greater latitude in determining the practices that are best appropriate to it.

We will limit our specific comments to the proposed repeal and replacement of the definition of "independence" found in NI 52-110 and CP 52-110 (the "**Proposed Definition**").

We fully support the proposed principles-based approach for determining a director's independence.

The Proposed Definition provides for a pragmatic examination of a board of directors of a reporting issuer. The current rigid standards used in determining an individual's independence have often unjustifiably disqualified competent people from serving on a board and its committees. We welcome these improvements which will ultimately allow for highly qualified and skilled representatives of control persons and significant shareholders of an issuer to actively contribute within the board of directors.

The Proposed Definition correctly emphasises the importance of a director's independence from the issuer and its management. It is our view that the current definition of independence unfairly categorizes individuals without allowing for a subjective examination of their specific relationship with the issuer. Bright-line tests, although offering a clear and precise response, do not always properly attain the objective of selecting directors that are independent of the issuer and its management. The current prescriptive approach fails in comparison with the proposed, more subjective, case-by-case analysis.

Shareholders will often seek guidance from trustworthy sources when investing. It is comforting for minority shareholders to invest in issuers where there is an actively involved controlling



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shareholder. These shareholders recognize the potential value added that flows from the presence of representatives of the controlling shareholder on the issuer's board who are fully involved as professionals and follow the issuer very closely.

This is especially significant in the Canadian context where, due to historical and sociological factors, a relatively small number of corporate groups have long been at the core of economic development and control a much larger proportion of business entities than in the United States.

Minority shareholders can also take solace in knowing that Canada has a well developed body of corporate and securities laws that make all directors, regardless of their relationship with a controlling shareholder, subject to the same fiduciary duties, thus protecting the reasonable expectations of minority shareholders.

Thank you for the opportunity to comment on the proposed amendments. If you have any questions or would like any further clarification on any of the above, please do not hesitate to contact the undersigned.

Yours truly,

**FRASER MILNER CASGRAIN LLP**

A handwritten signature in black ink, appearing to be "Charles R. Spector", written over a horizontal line.

Charles R. Spector