5650 Yonge Street
Toronto, Ontario M2M 4H5

416 228.5900 or
1 877 812.7989

fax: 416 730.5349

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April 27, 2009

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Saskatchewan Securities 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

Attention:

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage, C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
Email: consultation-en-cours@lautorite.qc.ca

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-8145
Email: jstevenson@osc.gov.on.ca

VIA EMAIL

Dear Sirs and Mesdames:

Re: Request for Comment - Proposed Repeal and Replacement of National Policy 58-201 *Corporate Governance Guidelines,* National Instrument 58-101 *Disclosure of Corporate Governance Practices*, and National Instrument 52-110 *Audit Committees* and Companion Policy 52-110CP *Audit Committees* (the "Proposed Governance Replacement Policy")

Ontario Teachers' Pension Plan Board ("Teachers'") with net assets as of December 31, 2008 of $84.7 billion, invests to secure the retirement income of 284,000 active and retired teachers in Ontario. Teachers' is the largest single profession pension plan in Canada, with significant equity and debt investments in Canadian reporting issuers.

Teachers' has reviewed the Proposed Governance Replacement Policy from our perspective as an active institutional investor that reviews and relies on public disclosure information of Canadian reporting issuers, and in particular on reporting issuers disclosures regarding their corporate governance practices. Further, Teachers' believes it is important to note its status as a co-founding member of the Canadian Coalition for Good Governance and our active involvement in global governance organizations. Teachers' has a fundamental interest in the rules that govern regulation and disclosure of governance practices. We appreciate the opportunity to submit comments on the Proposed Governance Replacement Policy.

GENERAL COMMENTS

We wish to submit the following general thoughts for your consideration.

Supplement the Current Regime

Teachers' is generally supportive of the new disclosure requirements introduced in the Proposed Governance Replacement Policy. However, we think it is a drastic step backwards to replace the current "comply or explain" regime with the Proposed Governance Replacement Policy. As noted by the Canadian Securities Administrators in 2007, reporting issuers do not comply with disclosure requirements unless they are clearly described and mandated (CSA Staff Notice 58-303). Replacing the current regime, in our view, will lead to deterioration of corporate governance practices at a time where need for transparency around these practices has grown even further since 2007. We urge the CSA to supplement the current regime rather than replace it altogether with a principles based approach. We believe that supplementing the current regime will have the desired effect of enhancing corporate governance practices and transparency relating to these practices.

Introduce Certain Additional Basic Requirements

In addition to supplementing the current "comply or explain" regime, Teachers' believes that it is necessary to introduce certain addition requirements regarding corporate governance practices. In particular, Teachers' believes that the CSA should mandate that reporting issuers must provide shareholders with the ability to elect directors on an individual rather than slate basis, and that a majority vote against a director results in action taken by the board which may include the director's resignation from the board. Slate structures force shareholders to adopt a "take all or none" approach which is neither in the reporting issuers' nor the shareholders' best interests because it fails to (a) publicly encourage good performance by exemplary directors, and (b) hold individual directors accountable for poor performance. Majority voting allows for meaningful election of directors by a representative majority of shareholders in a democratic fashion. The plurality voting system does not permit shareholders to elect directors meaningfully and should have no place in a regime that promotes good governance practices.

As well as mandating a majority voting regime, Teachers' believes that the CSA should mandate the separation of chair and CEO roles for reporting issuers. Teachers' believes that a chair that is also the CEO is not in a position to have independent oversight over his/her own performance and objectives. Consequently, we believe that it is necessary for effective governance to mandate a separate chair role independent of management.

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?**

   We believe that Principles 6, 7 and 9 provide useful and appropriate guidance. We have the following comments, which we believe would enhance the clarity of these principles.

   Principle 6 –We believe that conflicts of interests should not be qualified by the word "significant". Any conflict of interest, regardless of size, has the potential to lead to a lack of independence and therefore questionable judgment and decision-making. Therefore, we recommend removal of the word "significant" as a qualifier of potential conflicts of interest.

   Principle 7 – We support the introduction of this principle to the guidelines. However, we note conflicting language regarding who is responsible for managing risk. Principle 1 states that the board is "usually" responsible for identifying principle risks of the issuer's business and ensuring that appropriate systems are in place to manage these risks. Principle 7 states that the issuer should establish a sound framework of risk oversight and management and that the board is "usually" responsible for identifying the principal risks of the issuer's business. Teachers' believes it is the board's responsibility to oversee risk and management's responsibility to manage within the risk parameters presented to and accepted by the board and that these subtle but important distinctions between the roles ought to be made clear.

   Principle 9 – We support the introduction of this principle to the guidelines. We support the notion that "The board should endeavor to stay informed of shareholders' views through the shareholder meeting process as well as through ongoing dialogue." We recommend that commentary and examples of practices include specific methods of permitting direct ongoing dialogue between directors and shareholders. It has been Teachers' experience that contacting certain, not all, board members outside of the annual general meeting timeframe can be an onerous task. We believe that boards and shareholders ought to have opportunities to engage in discussions, without management present, throughout the course of the year, and encourage the CSA to augment its commentary and examples of practice to encourage this dialogue. Also, we believe that the CSA should address reporting issuers concerns of "selective disclosure", such that those concerns do not hamper this dialogue.

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"?**

   We believe that in the following circumstances, the commentary and examples of practices fall short in providing guidance and detract from what are the current global "best practices".

   Principle 1 – This principle makes reference to the roles and responsibilities of each standing committee of the board, "if any". We believe that to not have certain key board committees, specifically audit, compensation and nomination committees, would be a step back from generally accepted good governance practices. Therefore, we suggest that the principle be modified to remove the suggestion that reporting issuers may not have such committees. We also believe that the term "usual" and "usually" be removed from the description of the responsibilities of the board and the words "include, but are not limited to" be added to the examples listed in order to clarify that the enumerated list of responsibilities should be responsibilities of the board but that the list is not exhaustive.

Principle 2 – This principle refers to the separation of chair and CEO roles as being an example of a practice that the board may wish to consider in meeting their obligation to this principle. As noted above, Teachers' has long advocated for a separation of these roles as a chair that is CEO is not in a position to have independent oversight over his/her own performance and objectives. This is an example where a bright-line test to maintain a "best practice" has received mainstream acceptance and should be a rule and not a guideline. We also note that having board committees comprised of independent directors is missing from the list of practices related to composition of the board.

Principle 3 – Teachers' believes that nominating committees ought to be comprised entirely of independent directors. More independent directors on boards, brought about by a committee structure that supports nominating independent directors, enables directors to have more balanced perspective in a boardroom where only management is present and shareholders are noticeably absent. We believe this practice should be included in this principle.

Principle 4 – We support the guidance provided in this principle.

Principle 5 – We support the guidance provided in this principle.

Principle 8 – Compensate appropriately, makes an exception for smaller boards. The principle allows for the fact that smaller boards might not need a formal committee to achieve the objectives of developing and recommending appropriate compensation policies and practices. Teachers' disagrees. It is the smaller boards that typically have problems meeting independence standards and it is those boards which should be mandated with having a formal committee of independent directors who oversee compensation, otherwise we have the situation of management determining their own compensation which is clearly not in the shareholder's best interest. We also note that the principle states that the *issuer* should ensure that the compensation policies align with the best interests of the issuer. We believe that the first instance of issuer should be replaced with *board* as compensation oversight is core responsibility of the board.

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

As stated above, Teachers' believes that the benefits of a principles based approach are outweighed by the need for a 'comply or explain' model. The CSA states that the proposed principles are expected to provide greater flexibility, or perceived flexibility, to issuers and their boards, and improve the quality of disclosure. Both models allow for increased flexibility not contemplated by a rules based approach. From a shareholder perspective, the 'comply or explain' model is favourable to the principles based approach in that the former model sets a minimum disclosure standard that issuers must either adhere to or explain why not. We feel that such minimum disclosure and practice standards enhance comparability among issuers, and absent a "floor" standard, the tendency is for practices and disclosures to become less transparent over time.

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 the respect of Principles 6, 7 and 9 provides useful information to investors?**

As stated under the previous question, we feel that minimum disclosure standards will be diminished absent clearly defined disclosure "best practice" standards.

The disclosure in respect of Principles 6, 7 and 9 provides useful information to investors. In the case of Principle 6, we would suggest adding to (b) that in the case of appointing an ad hoc committee to address a significant conflict of interest, there be disclosure as to how the conflict was resolved.

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

Venture issuers are, by their nature, riskier investments than non-venture issuers. They suffer from resource constraints and as mentioned under question 2 above, they may not meet certain independence standards at the board level, which we believe to be paramount to adequately representing shareholder interests. As such, we believe that venture issuers ought to be subject to minimum standards of practice and disclosure which are specific to their constraints but which balance the needs of shareholders. We support that these standards be clear and not subject to the issuer's discretion (i.e. either a rules-based or 'comply or explain' model).

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?**

We are in favour of the proposed approach to independence as it contemplates circumstances that go beyond those specified in bright-line tests. Teachers' revised our guidelines with respect to independence for the 2009 proxy voting season to include that board independence is a function of each individual director's state of mind whereby independence is represented by expertise and the will to act. These characteristics cannot be measured by bright-line tests. As such, we favour, with some modifications, the proposed approach to independence.

The Canadian Coalition for Good Governance, in its submission to the CSA, recommends amended wording to the proposed definition of independence to read:

> "any relationship.... which could, in the view of the issuer's board of directors having regard to all relevant circumstances, be perceived by a reasonable person, having the knowledge possessed by the board, to interfere with the exercise of his or her independent judgment".

Teachers' supports the Coalition in its belief that the proposed revision elevates the "reasonable person" standard and therefore the notion of perception to a standard which is acceptable to shareholders.

We would also like to take this opportunity to comment on the Proposed Audit Committee Instrument and in particular, sections 3.8 and 3.9. With respect to the section 3.8, we feel that the period over which an audit committee member may rely on the exemption from independence should be limited to the next annual meeting of the reporting issuer, rather than a period of two years. We also believe that section 3.9 should be removed in its entirety. We see no circumstances where an audit committee member should not be financially literate while sitting on the committee, particularly given that being financially literate is fundamental to the member's ability to fulfilling his or her duties.

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

Please see our response to question 6.

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

We believe that, with the modifications proposed in question 9, the Proposed Audit Committee Policy is sufficient to assist in the board making appropriate determinations of independence.

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?**
    b. **Should such a relationship be solely addressed through Principle 6 – Recognize and Manage Conflicts of Interest as proposed?**
    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 committees be unrelated to a control person or significant shareholder?**

    a. We do not think a relationship with a control person or significant shareholder needs to be specified in Section 3.1 of the Proposed Audit Committee Policy as a relationship that could affect independence. We believe our proposed definition of independence is sufficient to capture the circumstances in which a control person or significant shareholder would not be independent.
    b. A relationship with a significant shareholder should be addressed through Principle 6.
    c. We believe this is addressed in our response in 9 a.) above.

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

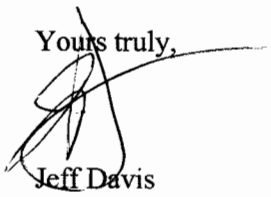
    Taking into consideration our proposed amendments to the definition of independence, we believe that the required disclosure is useful and appropriate.

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

    We are not in a position to respond to the needs of issuers on this matter.

We appreciate the opportunity to respond to your request for comment and hope that you find our feedback relevant. Feel free to contact us at corpgovernance@otpp.com if you would like to discuss our comments in more detail.

Yours truly,



Jeff Davis
Senior Legal Counsel, Investments