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Securities Commission of Newfoundland and Labrador
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Dear Members of the Canadian Securities Administrators,

Re: Request for Comments on:

- **Proposed Multilateral Instrument 58-101 *Disclosure of Corporate Governance Practices* ("MI 58-101")**

- **Proposed Multilateral Policy 58-201 *Effective Corporate Governance* ("MP 58-201"), and**
- **Proposed Multilateral Instrument 51-104 *Disclosure of Corporate Governance Practices* ("MI 51-104")**

TSX Group Inc. welcomes the opportunity to comment on behalf of both Toronto Stock Exchange ("TSX") and TSX Venture Exchange ("TSX Venture") (collectively, the "Exchanges") on proposed MI 58-101 and MP 58-201 published by certain members of the Canadian Securities Administrators (the "CSA") on January 16, 2004, and on proposed MI 51-104 published by the securities commissions of British Columbia and Alberta and the Autorité des marchés financiers on April 23, 2004.

Goal of Corporate Governance Disclosure

The goal of corporate governance disclosure is to provide shareholders with meaningful information about an issuer's system of corporate governance in order to make informed investment decisions. We are concerned that by making corporate governance guidelines and disclosure requirements a securities commission rule and policy, the motivation of issuers to disclose may be based on regulatory compliance rather than on the need to provide meaningful disclosure to investors. As such, securities commission rules on corporate governance disclosure may compromise the quality of disclosure currently provided.

TSX has devoted considerable efforts to educating issuers on how to provide meaningful disclosure to investors. Examples of these efforts include TSX's booklet "Corporate Governance: A Guide to Good Disclosure", the various corporate governance disclosure workshops held for TSX issuers, and the corporate governance programs held for TSX Venture issuers as part of its comprehensive Mentorship Program.

Rationale for the Commissions Taking Over Corporate Governance

We question the rationale of the securities commissions in proposing to assume responsibility for corporate governance guidelines and disclosure requirements. Perhaps the perception is that the Exchanges are not doing a satisfactory job in monitoring corporate governance disclosure; or perhaps the commissions are responding to international pressure, primarily in light of recent events and initiatives occurring in the U.S. We will address each possibility below.

The Exchanges' Role in Corporate Governance

Capital Markets Alignment

The Exchanges have consistently imposed high quality, market appropriate standards on their issuers. This can be seen not only in their governance disclosure standards but also in their timely disclosure policy. By having these quality standards, the Exchanges are aligned with ensuring the overall health of Canadian capital markets. The Exchanges understand that it is in the long term interests of capital markets that high standards for corporate governance be established and monitored.

A Single Voice

The Exchanges have been, and continue to be, leaders in corporate governance oversight in Canada. TSX has been setting disclosure standards for corporate governance for almost ten years – it has the experience in reacting quickly to changes in capital markets. In addition, TSX disclosure guidelines are currently the only comprehensive guidelines applicable to listed companies in Canada.

Three different proposals, including the recent proposal for federal guidelines issued by Industry Canada, have now been published, each recommending a different approach monitored by different bodies assuming responsibility for corporate governance disclosure. With the addition of the Industry Canada proposal, which applies only to federally incorporated companies, to the multiple governance proposals by the provincial commissions, the overall fragmentation of Canadian securities regulation, and corporate law, continues.

Investor confidence, essential to the success of Canadian capital markets, requires a strong, undivided approach to corporate governance, not a fragmented one. The Exchanges are in a unique position to provide a single voice.

Experience

The Exchanges, and TSX in particular, have historically recognized the value of arming shareholders with information about an issuer's system of corporate governance. TSX sponsored the 1994 Dey Report "Where Were the Directors?" (the "Dey Report"), and co-sponsored the follow up report in 1999 "Five Years to the Dey". TSX also co-sponsored, along with TSX Venture and the CICA, the 2001 Saucier report "Beyond Compliance: Building a Governance Culture".

In 1995, TSX adopted the 14 guidelines recommended in the Dey Report and has provided a single set of national corporate governance guidelines since that time. TSX Venture requires its Tier 1 issuers to disclose using the "comply or explain" model and to follow TSX corporate governance disclosure requirements as a reference, and suggests the same for its Tier 2 issuers. It also incorporates a number of corporate governance requirements throughout its issuer policies.

Flexibility

Corporate governance standards are evolutionary and the Exchanges are in the best position to react to new developments in a timely fashion. TSX corporate governance guidelines have been revised to address changes in Canadian markets:

- In 2000, TSX clarified that its disclosure requirement was as against each of the 14 guidelines; and
- In 2002, TSX proposed amendments to its guidelines reflecting the evolution in corporate governance.

We note that MI 58-101 and MP 58-102 reflect, to a large degree, many of the changes recommended in the 2002 TSX proposal.

The Exchanges, owned by TSX Group, can arguably adopt changes faster than could 13 separate jurisdictions seeking to come to consensus. This can occur even though changes to Exchange guidelines and disclosure requirements remain subject to regulatory approval – for TSX, subject to the approval of the Ontario Securities Commission and indirectly that of the Autorité des marchés financiers, and for TSX Venture, subject to the approval of both the British Columbia and Alberta securities commissions (respectively, the "BCSC" and "ASC").

Consistent Monitoring

Uniform disclosure requirements need to be enforced consistently - this may not be achieved if they are being enforced by 13 separate jurisdictions. The Exchanges currently have in place a consistent monitoring regime that is flexible in dealing with breaches:

- TSX actively reviews disclosure by issuers in their information circulars – every issuer is reviewed at least once every three years.
- To date, approximately 750 issuers have been reviewed and comment letters have been sent to approximately 130 issuers for non-compliance with our disclosure requirements.
- Although we have stated publicly that we will publish the name of those issuers who are non-compliant, TSX first issues a comment letter to the issuer requesting them to comply.

- Issuers to date have responded appropriately to the comment letters and no further action has been required.
- Currently, any egregious behaviour by TSX issuers would be reported to the OSC under its public interest mandate; similarly, such behaviour by TSX Venture issuers would be reported to the ASC/BCSC.
- TSX Venture conducts annual reviews of its listed issuers to ensure they meet tier maintenance requirements, and since 2003, to ensure that they comply with TSX Venture corporate governance requirements relating to independence of the composition of boards and audit committees.
- Where TSX Venture determines at any time that a listed issuer has shown serious non-compliance with any TSX Venture tier maintenance or corporate governance requirement, it conducts a comprehensive review of that issuer's compliance with all TSX Venture requirements.

TSX acknowledges however, that it did not begin to monitor disclosure until 2002.

We recognize the importance of vigilant monitoring of disclosure of corporate governance matters, both to the commissions and to the investing public. TSX, as part of its obligation to monitor disclosure, proposes that it will:

- continue to review each of its issuer's corporate governance disclosure every three years;
- complete a report with the results of its disclosure review (including compliance with the disclosure requirement and adoption of guideline practices), which report will be provided to the commissions;
- require any revised disclosure by an issuer to be published in the issuer's next set of financial statements;
- publish the names of issuers who fail to comply with a request to revise their disclosure;
- report egregious behaviour by any issuer immediately to the commissions; and
- maintain a continuous dialogue with the commissions to ensure their satisfaction with our monitoring obligation.

The importance of vigilant monitoring of disclosure of corporate governance matters applies equally to the public venture capital market. Consistent with the views expressed in this letter, we believe that the corporate governance proposal contained in MI 51-104 contain an inherent flexibility that is highly suited for issuers listed on TSX Venture, and that the public venture market will be best served by a single set of corporate governance principles or guidelines contained

in TSX Venture policies. These matters in respect of TSX Venture will be discussed in the days ahead with the ASC and BCSC.

Subject to the outcome of these discussions, in principle we support the same measures for the monitoring of corporate governance disclosure for TSX Venture issuers as that proposed above for TSX issuers.

Commissions Responding to International Pressure

International Initiatives

Based on our review of major international markets and their involvement in corporate governance, the approaches currently taken by the Exchanges in Canada is consistent with the international experience. Regulators in developed markets have not assumed responsibility for corporate governance guidelines and disclosure requirements to the extent that has been proposed in Canada.

In the United States, Sarbanes-Oxley has mandated compliance with various CEO/CFO certification requirements, audit committee requirements, and auditor independence - much like we have done in Canada with the Investor Confidence Rules. Note, however, that only one of the three Investor Confidence Rules is a National Instrument; in fact, the most substantive rule, the audit committee rule, remains a Multilateral Instrument.

New York Stock Exchange ("NYSE") and NASDAQ, however, have retained responsibility for other corporate governance standards, and have mandated compliance with director independence requirements, compensation and nominating committees, adoption and disclosure of a code of business conduct and ethics, and disclosure of committee charters. The key difference - the U.S. rules remain with the U.S. exchanges and mandate compliance, while your proposals suggest moving the rules to the regulators while maintaining the existing guidelines and the comply or disclose approach. Mandated compliance for the U.S. market is reasonable however, given the larger size of U.S. public issuers.

NYSE has also provided an exemption to its corporate governance rules for foreign private issuers who comply with the home country practices and rules of their principal foreign stock exchange, so long as an explanation is provided where those home practices and rules differ from those of NYSE.

In Australia, disclosure by issuers of their corporate governance practices is mandated by the Australian Stock Exchange ("ASX") and not by the Australian Securities & Investments Commission.

The London Stock Exchange example is different in that authority for governance in the United Kingdom resides with the Financial Services Authority. However, it should be noted that this dynamic occurs within a country that has a single regulator that is also the listing authority.

So the question has to be asked – why should the regime be any different in Canada? In our view, the Exchanges should retain similar corporate governance responsibilities as do NYSE, NASDAQ and the ASX. A fractured governance regime will adversely affect Canada's ability to attract foreign investment.

The Current Proposals

We raise the following points should the commissions decide to proceed with the proposals as drafted.

Need for National Policy and Instrument

If the Proposals do move ahead, it is critical that any policy and instrument implemented be national – multilateral policies and instruments will not effectively serve capital markets, would create confusion and would make enforcement inconsistent. This would affect smaller issuers disproportionately given their limited resources to deal with ongoing compliance matters, especially in an environment that has multiple sets of guidelines.

We believe that the regime should be as follows:

- one National Policy that provides guidelines for issuers and describes the objectives of corporate governance; and
- one National Instrument that sets out disclosure requirements, the level of which would depend upon which exchange the issuer is listed on.

Any National Policy would require a detailed preamble establishing the context in which to apply the guidelines. We recognize that where the guidelines in the policy do not complement the size and nature of an issuer, it does not lead to better governance, nor does it lead to meaningful disclosure. As such, a detailed preamble would put the guidelines into context and provide flexibility in relation to their application to TSX Venture and smaller TSX issuers.

Role of the Exchanges

The Exchanges recognize that it is in the best interests of issuers and shareholders not to duplicate corporate government disclosure requirements. If

the proposals come into force, the Exchanges would repeal their corporate governance guidelines and disclosure requirements if we are satisfied that the final version of the proposals are appropriate and duplicate or enhance the Exchanges' corporate governance regime. TSX has a responsibility to its issuers to ensure that any transition of enforcement of such standards is done with sufficient notice and instruction to issuers and investors.

Should a shift in responsibilities occur, we strongly recommend that the commissions commit to a public education campaign so that issuers and investors are well informed about the changes and understand exactly where the responsibilities reside as a result. Failure to do so would serve the interests of no party. Indeed, the recent OECD principles of corporate governance state that the division of responsibilities among different authorities regarding governance in any given jurisdiction should be clearly articulated and ensure that the public interest is served.

Detailed Comments

We refer you to the Annexes attached to this letter for detailed comments on the proposed instruments and policy (Annex 1 – comments on MI 58-101, MP 58-201 and MI 51-104, and Annex 2 – Specific Request for Comments to MI 58-101 and MP 51-104).

Thank you for the opportunity to comment on the proposed corporate governance policy and instruments. Should you wish to discuss them with us in more detail, I would be pleased to respond.

Sincerely,

"Barbara Stymiest"

ANNEX 1

PROPOSED MULTILATERAL INSTRUMENT 58-101 *DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES* ("MI 58-101")

Part One – Definitions and Application

Section 1.2 – Meaning of Independence

Although the TSX continues to believe that the definition of "independence" as proposed in MI 52-110 *Audit Committees* is too onerous, we support the effort to remain consistent by adopting the same definition. We suggest, however, that the entire definition be repeated in MI 58-101 rather than cross referenced as this should be a stand alone document.

Part Two – Disclosure and Filing Requirements

Section 2.1 – Required Disclosure

We support MI 58-101's "comply or explain" model for TSX issuers, which is based on the current TSX disclosure requirement. However, for TSX Venture issuers, we support the open-ended approach to disclosure proposed by MI 51-104.

Issuers should disclose corporate governance practices on an annual basis in their information circular or annual MD&A, and not in the annual information form ("AIF"). Currently, the AIF is not required to be mailed out to all shareholders of an issuer whereas the circular is and annual MD&A may be, subject to elections by the shareholder. These documents push information to shareholders, increasing the likelihood that the corporate governance disclosure will be read as compared to the AIF.

Further, we are concerned with the potential risk of issuers providing "form over substance" when using a standard form to set out the disclosure. The use of a standard form may result in less disclosure if issuers rely on the form as a checklist or minimum standard of disclosure.

Finally, the proposed instruments do not specify how the commissions will monitor and undertake reviews of disclosure – there is no mention of how many issuers will be reviewed, the basis for review, how often, how comprehensive the reviews will be, or how non-compliance will be enforced.

Section 2.3 – Filing of Code of Business Conduct and Ethics

The Code of Business Conduct and Ethics is a very important document as it sets the tone for the culture of integrity throughout an organization. In fact, TSX recommended this as a continued listing requirement in its proposed amendments to its guidelines in 2002.

While an important document, the filing of the Code of Business Conduct & Ethics on SEDAR is not recommended. We believe the SEDAR filing requirement will discourage issuers from adopting an optional code of ethics. Rather, we recommend that code of ethics be posted on the issuer's web site – the website is a fair and readily accessible disclosure method for this type of document. In addition, the code of ethics should be published in the information circular every three years.

Further, any material amendments to the code should be disclosed on the issuer's web site and in the issuer's next information circular.

Waivers should be disclosed in quarterly reports, and should include the rational for the waiver during that period. A waiver to the code would only be press released if determined by the issuer to be material information. This method of disclosure would allow the investor to determine if any waiver granted was appropriate.

Section 3.1 - Exemptions

The term "securities regulatory authority" should be defined. Although this term has been introduced in the USA, it is not widely used in current Canadian securities laws.

Form 58-101F1 – Corporate Governance Disclosure Required in an AIF

1. Composition of the Board

We recommend that issuers specifically identify all independent directors and the reasons behind the decision. For investors, it will save time and reduce confusion if they can easily identify who is independent and why.

We also recommend that the issuer disclose the name of all other boards of directors on which each director sits. This will allow an investor to determine whether a director has taken on too many obligations. In addition, it allows the investor to easily determine any interrelationships.

2. Board Mandate

We support the adoption and publication of a board mandate. TSX recommended this as a continued listing requirement in its proposed amendments to its guidelines in 2002. TSX's guide "Corporate Governance - A Guide to Good Disclosure", which is distributed to issuers, also reflects our support of a board mandate. We recommend that the mandate be posted on the issuer's web site and published in the information circular every three years.

3. Position Descriptions

We support the disclosure of the assessment process, regardless of whether written position descriptions for the named positions exist. A description of the assessment process will communicate to investors that the performance of the board, chair, committee chairs, CEO and directors are assessed against written position descriptions.

4. Orientation and Continuing Education

No comment.

5. Code of Conduct

See our comments above for Section 2.3.

6 & 7. Nominating & Compensation Committees

Investors need to understand the processes used to determine compensation or the selection of board candidates, regardless of whether the issuer has a nominating and/or compensation committee. Where the processes are described in the relevant charter or elsewhere, they should be disclosed.

The charter for each of the nominating and compensation committee is an important document. We recommend that the charters be posted on the issuer's web site and published every 3 years in their information circular. If significant changes to either charter occur within the three year period, the changes should be published on the issuer's web site and published in the issuer's next information circular.

8. Regular Board Assessment

No comment.

Audit Committees

This section should include a reference to MI 52-110 *Audit Committees* and a description of the disclosure required by that instrument. Further, the audit committee disclosure should also be in the circular as opposed to the AIF. An investor should only be required to refer to one document in order to locate all relevant board charters.

Form 58-101F2 – Corporate Governance Disclosure Required in the Management Information Circular of a Venture Issuer

While the practices set out in MI 58-101 may be appropriate for TSX issuers, many of them are impractical for TSX Venture. We are pleased that this has been recognized and accommodated, as TSX Venture issuers are exempt from many of the disclosure requirements that TSX issuers are subject to.

PROPOSED MULTILATERAL POLICY 58-201 *EFFECTIVE CORPORATE GOVERNANCE* ("MP 58-201")

Part One - Introduction

Section 1.2 – Application of this Policy

The preamble must stress that each issuer has its own unique circumstances with different needs. The policy should reinforce the fact that the issuer has the ability to implement practices that reflect its needs at that time and that the lack of compliance with the guidelines will not result in sanctions. The suggested practices should be referred to as "Best Practice Guidelines" to reinforce the fact that each issuer has the ability to create its own corporate governance structure. The implementation of structure for structures sake will not create better corporate governance. Large, widely held issuers will have greater ability to implement these practices, but the small and mid-sized issuers will not have the same resources.

In addition, the use of language must be taken into consideration. For example, in section 1.2 the document reads, "We encourage…" and this may put undue pressure on issuers to comply with all aspects of the policy, even where not appropriate given their circumstance.

Section 1.3 – Non-Corporate Entities

We support the application of MP 58-201 to non-corporate entities, as TSX proposed in our proposed revisions to our guidelines in 2002, particularly given the recent increase in listed income funds.

Part Two: Effective Corporate Governance

Section 2.1 – Meaning of Independence

See our comments above under Section 1.2 of MI 58-101.

Section 2.2 - Recommended Best Practices

"Best practices" should be referred to as "best practice guidelines" and not confirmed as being "best practices". Small and mid-cap issuers may be unduly prejudiced where they choose not to implement the "best practices" in favour of practices that are more appropriate to their size.

1 – 3: Composition of the Board

We support the practice guidelines proposed in this section.

4. Board Mandate

We support the creation of a board mandate as this will provide guidance to the board as to its responsibilities.

See also our comments above under Form MI 58-101F1, paragraph 2.

5. Position Descriptions

Should clearly state that it is recommended that the board assesses the CEO against the objectives that he/she is responsible for meeting with the results of the assessment reported to the board.

6 -7: Orientation and Continuing Education

We support the practice guidelines suggested in this section.

8 -9: Code of Business Conduct and Ethics

Language used in the preamble should include the promotion of integrity throughout the organization and not just to deter wrongdoing. This stresses the positive effects of the creation of a code rather than focusing only on the negative.

See also our comments above under MI 58-101, section 2.3.

10 – 14: Nomination of Directors

We support the practice guidelines suggested in this section.

15 – 17: Compensation

The policy should clearly state that the responsibility for determining director compensation falls to the compensation committee. The committee should also ensure the adequacy and form of director compensation with respect to the risks and responsibilities of such positions.

We suggest that all disclosure relating to compensation be centralized, perhaps in Form NI 51-102F6 *Statement of Executive Compensation*.

18. Regular Board Assessments

The board should be responsible for implementing a process to carry on assessments. The nominating or other appropriate committee should then carry out the process.

An additional consideration should include the disclosure of director attendance at board and committee meetings.

PROPOSED MULTILATERAL INSTRUMENT 51-104 *DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES* ("MI 51-104")

Part One – Application and Interpretation

Section 1.1 Application

As stated throughout our comments, for TSX issuers, we support the "comply or explain" disclosure model proposed in MI 58-101 and currently used by TSX. However, for TSX Venture issuers, we support the open-ended approach of disclosure proposed by MI 51-104. In fact, TSX Venture would consider revising its current corporate governance disclosure requirements to adopt the MI 51-104 approach.

However, if the approach to disclosure proposed in MI 51-104 was adopted by all commissions for application to all issuers, it would be unlikely that TSX would repeal its current corporate governance guidelines and disclosure requirements, as TSX would not be satisfied that they were being replaced by an equal or enhancing regime.

Although we support the disclosure approach proposed in MI 51-104 for TSX Venture issuers only, we do not support the adoption of two different disclosure instruments in Canada. Rather, we recommend the adoption of one National Instrument that sets out disclosure requirements, the level of which would depend upon which exchange the issuer is listed on.

Section 1.2 Meaning of Independence

For consistency, all jurisdictions should use the same definition of independence.

Part Two – Disclosure and Filing Requirements

Section 2.1 Disclosure and Filing Requirements

We support mandated disclosure in the information circular or MD&A.

Part Three – Exemptions and Effective Date

Section 3.1 Exemptions

The term "securities regulatory authority" should be defined. Although this term has been introduced in the USA, it is not widely used in current Canadian securities law.

Form 51-104F – Disclosure of Corporate Governance Practices

We support that MI 51-104 clearly states that each reporting issuer should adopt the practices that are suitable for its business and structure. We also support its application to non-corporate entities.

However, the instrument should also clearly state that the issuer must disclose their practices even if they do not have any in place with respect to all disclosure components of the instrument. This will encourage greater disclosure as to an issuer's practices, while respecting its right not to implement inappropriate practices. As it reads now, it can be interpreted that disclosure is only required if a practice is in place.

We believe that it would be useful to provide enhanced guidance as to good practices. For example, for TSX Venture issuers, state that a board should have a majority of independent directors and provide guidance as to composition of specific committees (e.g. complete independence on nominating). This provides useful information to the issuer as to what is considered good governance practices.

ANNEX 2

Specific Request for Comment

1. The Proposed Policy and Proposed Instrument describe best practices and require issuers to make disclosure in relation to those best practices.

(a) Will these initiatives provide useful guidance to issuers?

Although the initiatives would provide useful guidance to issuers, this guidance is currently available through the guidelines and disclosure requirements set out by the Exchanges. The current TSX guidelines in place provide useful guidance to issuers and are easily adaptable to changes in the markets. The Exchanges have devoted considerable efforts to educate issuers on how to provide better disclosure to their shareholders, including TSX's "Corporate Governance: A Guide to Good Disclosure", various governance disclosure workshops held for issuers, and the corporate governance programs held for TSX Venture issuers as part of its comprehensive Mentorship Program.

(b) Will these initiatives provide meaningful disclosure to investors?

We are concerned about the risk that if corporate governance guidelines and disclosure requirements are a securities rule and policy, the motivation of issuers to comply will be based on regulatory compliance rather than on the need to provide meaningful disclosure to investors. It is important to cultivate a culture of governance in which issuers operate and investors make their decisions. As such, we fear that securities commission rules may compromise the quality and amount of disclosure currently provided.

We are also concerned with the risk that issuers may choose "form over substance" by following a standard form, as set out in the proposals. This may result in less disclosure by relying on the standard form as a checklist or minimum standard of disclosure.

Further, disclosure must be in the information circular and not in the AIF – the AIF is not required to be mailed out to all shareholders of an issuer whereas the circular is.

Finally, we support the MI 58-101 proposal's "comply or explain" model for TSX issuers, which is based on the current TSX

disclosure requirement. For TSX Venture issuers however, we support the open-ended approach to disclosure contained in the MI 51-104 proposal.

(c) Would disclosure be more meaningful to investors if issuers were required to describe their practices by reference to certain categories of governance principles rather than by reference to the best practices described in the Policy?

We do not recommend that TSX issuers describe their practices by reference to certain categories of governance principles. Rather, we recommend that the "best practices" be called "best practice guidelines" instead. Small and mid-cap issuers may be unduly prejudiced where they choose not to implement "best practices" in favour of practices that are more appropriate to their size. The open-ended disclosure approach however, would be beneficial to TSX Venture issuers, as we noted in our response to 1(b) above.

(d) What will be the effect on market participants, including investors and issuers, of our publishing best practices in Canada?

We are concerned that the securities regulation and corporate law will be further fragmented if the commissions proceed with publishing their best practices. Three different proposals, including the recent proposal by Industry Canada, have now been published, each recommending a different approach and that different bodies, other than the Exchanges, assume responsibility for corporate governance disclosure. The capital markets need a strong, undivided approach to corporate governance – not a fragmented one.

The Exchanges are in a unique position to provide a national voice in corporate governance disclosure. TSX has been setting disclosure standards for corporate governance for almost ten years – it has the experience in not only monitoring them, but in reacting to changes in the capital markets.

Further, since NYSE and NASDAQ have retained their responsibility over corporate governance, we question the rationale for implementing a different regime here in Canada in this respect.

Should the commissions implement the guidelines and disclosure requirements, we strongly recommend that the commissions commit to a public education campaign so that issuers and investors are well informed about the changes and understand

exactly where the responsibilities reside as a result. Failure to do so would serve the interests of no party.

2. ***The Proposed Instrument does not require an issuer to adopt a code of ethics, but issuers who do not have one must explain why they do not. If an issuer does adopt a code, the Proposed Instrument requires the issuer to file the code, as well as any amendments on SEDAR. It also requires an issuer to prepare and file a news release respecting any express or implied waiver of the code.***

   (a) Will the text of the code of ethics provide useful disclosure for investors?

   The Code of Business Conduct and Ethics is a very important document as it sets the tone for the culture of integrity throughout an organization. In fact, TSX recommended this as a continued listing requirement in its proposed amendments to its guidelines in 2002.

   (b) Will disclosure of waivers from the code provide useful disclosure for investors?

   Waivers should be disclosed in quarterly reports and should include the rational for the waiver during that period. A waiver to the code would only be press released if determined by the issuer to be material information. This method of disclosure would allow the investor to determine if any waiver granted was appropriate.

   (c) Since there is no requirement to have a code of ethics, will the obligations respecting filing the code and any amendments and reporting waivers from the code have the effect of discouraging issuers from adopting a code of ethics?

   We believe the SEDAR filing requirement will discourage issuers from adopting an optional code of ethics. Although TSX continues to believe that all TSX listed issuers should adopt and disclose a code of ethics, we believe that filing the code and any amendments thereto on SEDAR is not necessary. Rather, the posting of an up to date document on the issuer's web site is preferable – it is a fair and readily accessible disclosure method for this type of document. In addition, the code of ethics should be published in the issuer's information circular every three years. Any material amendments to the code should be published on the issuer's web site and in the issuer's next information circular.

3. ***The Proposed Instrument does not require issuers to have a compensation committee, nor does it require that committee to be entirely independent or to have a charter, but if an issuer does not have these structures, it must explain why not. An issuer is required to state whether it has a compensation committee, whether that committee is independent and whether it has a compensation committee charter. If there is a charter, the text of the charter must be disclosed. Additionally, the Proposed Instrument requires an issuer to disclose the process used to determine compensation, but that disclosure is only required if the issuer does not have a compensation committee.***

   (a) Would it be useful to investors for the issuer to disclose the process used to determine compensation, regardless of whether it has a compensation committee?

   Investors need to understand the process used to determine compensation, regardless if the issuer has a compensation committee. Whether this process is described in the compensation committee charter or elsewhere, it should be disclosed in any event, particularly as it relates to the process to determine director compensation.

   (b) Is disclosure of the text of the compensation committee's charter useful to investors?

   The charter for the compensation committee is an important document. Proper disclosure would entail posting it on the issuers' web site and publishing it every three years in the information circular. If significant changes to the charter occur within the three year period, the changes should be posted on the issuer's web site and in the issuer's next information circular.

4. ***The Proposed Instrument does not require issuers to have a nominating committee, nor does it require that committee to be entirely independent or to have a charter, but if an issuer does not have these structures, it must explain why not. An issuer is required to state whether it has a nominating committee, whether any such committee is independent and whether it has a nominating committee charter. If there is a charter, the text of the charter must be disclosed. Additionally, the Proposed Instrument requires an issuer to disclose the process by which candidates are selected for board nomination, but that disclosure is only required if the issuer does not have a nominating committee.***

(a) Would it be useful to investors for the issuer to disclose the process by which candidates are selected for board nomination, regardless of whether it has a nominating committee?

The investor also deserves to understand the process for the selection of board candidates, regardless if there is a nominating committee. This allows the investor to make informed decisions about the recruitment process to the board and to determine whether or not they are satisfied with the process.

(b) Is disclosure of the text of the nominating committee's charter useful to investors?

The charter for the nominating committee is also an important document. Proper disclosure would entail posting it on the issuers' web site and publishing every three years in the information circular. If significant changes to the charter occur within the three year period, the changes should be posted on the issuer's web site and in the issuer's next information circular.

5. The Proposed Instrument requires an issuer to disclose the process used to assess the performance of the board, committee chairs and CEO, but that disclosure is only required if the issuer does not have written position descriptions for those roles. Would it be useful for investors for the issuer to disclose the assessment process, regardless of whether it has written position descriptions?

It is useful information for the investor if the issuer discloses the board and committee assessment process, regardless if written position descriptions exist. A description of the assessment process will communicate to investors that the performance of the board, committee chairs, CEO and directors are assessed against written position descriptions. This will provide comfort to the investor that the people occupying these positions are meeting the obligations of their position.