



January 11, 2016

Ms. Josée Turcotte  
Secretary  
Ontario Securities Commission  
20 Queen Street West  
22<sup>nd</sup> Floor  
TORONTO, Ontario  
M5H 3S8

Dear Ms. Turcotte,

I am writing in response to the Commission's request for comments on *Proposed OSC Policy 15-601 – Whistleblower Program*.

Our comments are focused in two specific areas. First, the best policy is one that does not work at cross purposes with internal compliance systems that are a key means for issuing companies to ensure that they maintain high standards of ethical business practices. Second, we believe the policy should not reward those who are complicit in the illegal activity.

**The policy must not undermine internal corporate compliance systems.** Section 16 of the proposed policy indicates that the Commission “encourages” employees to report potential violations of securities laws through their employer’s internal reporting and compliance mechanism. However, we believe that such internal reporting must be a requirement of any eligibility to qualify for a whistleblower award. Anything else is likely to undermine the rigorous reporting protocols that issuing companies have put in place to identify potential problems and take remedial measures.

There may be circumstances where an employee can justify going directly to the OSC. This could include situations where the company in question does not have an internal reporting and compliance system. But the policy should clearly spell out those specific conditions. Most large issuers already have sophisticated internal reporting systems as they understand the importance of responding quickly and

proactively to any signs of wrongdoing, and of taking the necessary steps to ensure it does not happen again. As well, there already are common law and workplace standards to protect employees against retaliation. And we would support the Commission's stated intention to seek legislative change to further protect whistleblowers, provided that it is clear that the employer is still able to take disciplinary action, appropriate to the circumstances of the case, to deal with an employee's participation in illegal activities.

We note that section 9 of the proposed policy may also work against the interests of companies' internal compliance systems. This section requires the employee to keep confidential all information submitted under the whistleblower program, including the fact that a report has been made to the OSC. This could have the rather perverse effect of an employee refusing to cooperate with a subsequent internal company investigation in order to preserve their eligibility for an award.

**Whistleblowers complicit in the violation of securities laws should not be eligible for an award.** Section 17 of the proposed policy suggests that a complicit whistleblower may still be eligible for an award, although the degree of his/her involvement can be a factor that decreases the amount of the award. We fundamentally disagree that those who participate in an illegal act should be eligible for any compensation. This would run counter to efforts by both governments and corporations to promote ethical business conduct. There will still be an incentive for such complicit whistleblowers to come forward, since the OSC has discretion to treat more leniently those who provide information that is helpful to an investigation.

Thank you for the opportunity to comment on this proposed policy. Our member CEOs stand ready to work with the OSC and other provincial securities commissions in forging stronger corporate governance practices across the country.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Manly".