



September 17, 2002

Comments Addressed To:

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Securities Administration Branch, New Brunswick
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavit
Ontario Securities Commission
Officer of the Attorney General, Prince Edward Island
Commission des valeurs mobilières du Québec
Saskatchewan Securities Commission
Registrar of Securities, Government of Yukon

care of:

Mr. Peter Brady

Chair of the Continuous Disclosure Harmonization Committee
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
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-and-

Ms. Denise Brosseau

Secretary
Commission des valeurs mobilières du Québec
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P.O. Box 246, 22nd Floor
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**Re: Request for Public Commentary on proposed NI 51-102
and Companion Policy 51-102CP**

Continuous Disclosure Obligations



**Re: Request for Public Commentary on proposed NI 51-102
and Companion Policy 51-102CP**

Continuous Disclosure Obligations

Dear Mr. Brady and Ms. Brosseau,

On August 15, 2002 Teachers' submitted a response to the Ontario Securities Act Five Year Review Committee's request for public comment on its Draft Report. The Draft Report is a commentary on the results of the Review Committee's recommendations regarding changes to the securities legislation in Ontario. A number of the issues that are raised by the proposed National Instrument have already been addressed by Teachers' in our response to the Draft Report. Our response to the Draft Report may be found by visiting the following website <http://www.otpp.com/web/website.nsf/web/CGHotTopics> . To prevent a complete repetition of our views, we have chosen to focus this submission on three areas of particular concern to us, and we include a cross reference to our response to the Draft Report.

1. Disclosure of Material Change – Part 7 of NI 51-102. Teachers' indicated in our submissions to the Review Committee that we were disappointed with the Committee's decision to advise against changing the "material change" disclosure standard in Ontario. We believe that reporting issuers should be compelled to disclose "material information", rather than "material changes", on an ongoing basis. Since this subject was raised in the Draft Report and NI 51-102 takes a position consistent with the Draft Report, we refer to our submissions made on pages 16 to 17 of our response to the Review Committee.

2. Definition of "solicit" – Section 1.1(2) of NI 51-102. This is an area of grave concern to Teachers'. We note that the definition of "solicit" in the proposed National Instrument does not correspond with the definition of "solicit" or "solicitation" that resulted from the recent amendments that took effect in November 2001 to the Canada Business Corporations Act ("CBCA"). In particular, we are concerned about two very important omissions in the proposed National Instrument. The CBCA definitions (at section 147) indicate that "solicit" or "solicitation" does not include the two following actions:



(vi) a communication for the purposes of obtaining the number of shares required for a shareholder proposal under subsection 137(1.1), or

(vii) a communication, other than a solicitation by or on behalf of the management of the corporation, that is made to shareholders, in any circumstances that may be prescribed;

Clause (vi) is essential to institutional investors like Teachers' who may wish to communicate with other shareholders in order to meet the requirement of section 137(1.1) of the CBCA, which requires a prescribed number of shares¹ to be held in order to be eligible to submit a shareholder proposal for vote at the annual meeting of an issuer.

Clause (vii) is equally important to institutional investors because it allows us to communicate with other institutional investors freely in circumstances that are prescribed by section 68 of the regulations to the CBCA. In particular, subsection 68(1) of the regulations makes reference to the following two sorts of communications that are of utmost importance to institutional investors:

s.68(1)(a) [communications] by one or more shareholders and concerns the business and affairs of a corporation – including its management or proposals contained in a management proxy circular – and no form of proxy is sent to those shareholders by the shareholder or shareholders making the communication or by a person acting on their behalf;

(d) [communications] by a person who does not seek directly or indirectly, the power to act as a proxy for a shareholder.

Teachers' sees the two above circumstances as essential circumstances that enhance and promote healthy and fair proxy voting in Canada. Without the ability to communicate freely with other shareholders regarding the business and affairs of a corporation, the hands of institutional investors and smaller shareholders alike are essentially tied. The significant improvement in shareholder participation in Canadian corporate governance that may result from the recent amendments to the CBCA proxy solicitation rules will have been dealt a severe blow if the Canadian Securities Administrators do not adopt equivalent amendments forthwith. We urge you to revisit the definition of "solicit" and to adopt a definition consistent with that contained in the CBCA.

¹ As set out in Can. Reg. 2001-512 Canada Business Corporations Regulations, 2001 section 46.



3. Disclosure of the Results of Shareholder Meetings: Teachers' submits that a very important aspect of disclosure has been ignored in Canada for many years and that is disclosure of the results of voting at shareholder meetings. Teachers' believes that reporting issuers should be required to immediately and publicly disclose in the form of a press release the results of voting at shareholder meetings. We specifically request that the results be disclosed including the number of votes cast "for" and the number of votes cast "against" each proposal. Fairvest has estimated that the participation rate at annual meetings of shareholders for the companies comprising the TSE 300 Index in 2001 was 63.3%.² Average voter turnout for non-TSE 300 companies was an even more apathetic 50.1% for 2001. Teachers' believes that one of the reasons that voter turnout for the annual meetings of shareholders is so low is because shareholders rarely learn the accurate results of the votes held at these meetings. The large banks are the only Canadian companies we are aware of that consistently disclose this information on their websites, usually the day after the annual meeting. We have found that certain issuers are actually unwilling to respond to shareholder requests for this information. While it may be possible in some circumstances for shareholders to exercise rights under corporate statutes to access shareholder meeting minutes and thereby determine voting results, our view is that this is a cumbersome, slow and inadequate process.

Teachers' has long been an advocate for the disclosure of annual meeting proxy voting information. We made the same submission on May 31, 2001 to the Joint Committee on Corporate Governance when it requested public comment on its Interim Report and later to the TSX when it requested public comment on the proposed revisions to the Corporate Governance Policy in the TSX Handbook. We believe our request has fallen on deaf ears. In support of this request, we refer you to the Organization for Economic Co-operation and Development (OECD)³ and its Global Corporate Governance Principles. These principles are a declaration of the minimum acceptable standards for companies and shareholders around the world. The International Corporate Governance Network (ICGN) comprises shareholders, companies, financial intermediaries, academics and major institutional investors. The ICGN was involved in the formulation of the Principles and also authored the "Amplification to the Principles", which include the following:

² Fairvest – An ISS Company conducted the proxy voting study and it is published in **The Corporate Governance Review**, v. 14, no. 1, December/January 2002.



I. The Rights of Shareholders

Disclosing Results. The ICGN underlines both the OECD assertion that “equal effect should be given to votes whether cast in person or in absentia” and the Annotation’s statement that “as a matter of transparency, meeting procedures should ensure that votes are properly counted and recorded, and that a timely announcement of the outcome be made.” To implement this recommendation, the ICGN believes that corporations should disclose voting levels for each resolution in a timely manner.

Teachers’ urges the Canadian Securities Administrators to address this situation in Canada and to make prompt and full disclosure of voting results a requirement for reporting issuers in the continuous disclosure scheme.

Sincerely,

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³ In May 1999 ministers representing the 29 governments which comprise the OECD voted unanimously to endorse the Principles of Corporate Governance. These principles were negotiated in consultation with key players in the market, including the International Corporate Governance Network.