

TO:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission - Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Newfoundland and Labrador Securities Commission
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavit

Section 4.5 of proposed National Instrument 51-102 requires Interim Financial Statements to be reviewed by the audit committee and approved by the board of directors prior to filing. The explanatory note indicates this change was to clarify the distinction between review and approve by replacing the concept of board review with board approval. It is unclear to me why commenters were concerned with the distinction as I don't believe the liability of a board would differ whether the interim financial statements were reviewed or approved before the statements are filed.

What is important to the Board of Shell Canada Limited ("Shell Canada") is whether this change is intended to restrict its right under Section 115 of the *Canada Business Corporation Act* to delegate the approval of the interim financial statements to its audit committee. One major Toronto law firm has indicated in a commentary on the proposed Instrument that the board will not be permitted to delegate the approval to the audit committee. I do not agree with that view, but the question has been raised and should be clarified.

On behalf of Shell Canada, I submit that a board should be entitled to delegate the authority to approve interim financial statements to its audit committee. The Shell Canada board has delegated to its audit committee the authority to approve the interim financial statements for the first nine months of the year because the board does not schedule a board meeting in October. Scheduling a board meeting solely to approve interim financial statements is onerous for a board that has directors resident across Canada and in Europe. I would not question this inconvenience if I believed that board approval added any further protection to investors. I do not believe this to be the case for the following reasons:

- delegation of approval to the audit committee does not reduce the liability of the non audit committee directors;
- recent U.S. and draft Canadian securities rules have focussed on the competence and expertise of an issuer's audit committee by requiring at least three audit committee members to be financially literate and at least one member to have accounting or related financial expertise
- non audit committee directors can and will receive interim financial statements for review and comment prior to approval by the audit committee.

I submit that investor protection is not reduced by allowing a board to continue to delegate approval of interim financial statements to the audit committee, and that proposed Instrument No. 51-102 be clarified to avoid conflict with the authority granted to a board under Section 115 of the *Canada Business Corporations Act*.

Harold Lemieux
Vice President, General Counsel, Secretary
Shell Canada Limited

