

Dear CSA Members and Associates,

I have reviewed the proposed changes to NI 58-201 (Corporate Governance Guidelines), NI58-201 (Disclosure of Corporate Governance Practices) and NI52-110 (Audit Committees). I have to ask, why now? Is there some triggering event that requires the CSA to review and repeal these National Instruments, some scandal or crisis of corporate governance impacting the Canadian capital markets? Other than a commitment to review the original instruments regularly, I see absolutely no reason to suggest the wholesale changes put forward by CSA. Consider your timing as Boards struggle with survival issues, attracting and retaining directors and credit crises, the pending imposition and transition to IFRS reporting and the short time that the existing instruments have been in place. I see absolutely no reason to change these national instruments and, in fact, can think of many reasons not to change them.

By contrast, I do however see several high profile securities issues in the Canadian and North American capital markets that are in pressing need of attention by the CSA and other authorities. For example, the continuing destruction of our capital markets by rampaging hedge funds and much needed reform in the whole short selling process. I strongly suggest that today's capital market crisis is not corporate governance, but the unregulated activities of speculative and opaque hedge funds and their uncontrolled activities and value destruction. They need to be strongly regulated immediately and their activities severely limited. Short selling needs to return to the price uptick rule, permit only covered short selling and I suggest that more disclosure needs to be required of short sellers. It is child's play now for hedge funds to short a stock and then attack it in the media and on the internet leading to value destruction and injury to the long term shareholders, the corporation and its employees and suppliers. Corporate governance is not an issue in today's capital market in Canada.

The Canadian capital market is dominated by smaller companies and start up companies. We have very few large public companies and we even have a very useful and unique capital market in Canada, the TSX Venture exchange. Several years ago, the TSX Venture companies were rife with scandal and Boards had non-existent or minimal good corporate governance practices. To the credit of security regulators in Canada, they chose to keep the Venture exchange, but improve its reputation. A large part of this process included improving the quality of directors and their corporate governance practices. This was done by requiring an annual disclosure of corporate governance practices; the so-called comply or explain system currently in place. This was new territory for many smaller Canadian companies. The larger public companies were already more advanced in good corporate governance practices in general and have lots of resources to commit to advancing their policies to best practices. Institutional investors, activist investors, security regulators and even the Globe and Mail "Board Games" provided feedback and pushed good corporate practices forward, and that evolution continues today. I question why the CSA would want to change that momentum in mid-flow by changing to a broader principle-based system? For smaller companies, the vast majority of Canadian public companies, the introduction of corporate governance practices and standards was a challenge. Few directors of small companies had any knowledge of corporate governance and very few resources to catch up. That is why the list of corporate governance questions (guidelines) in the current National Instruments 58-201 and 58-101 are a very useful minimum standard. Yes, originally it was a check the box system for small companies, but it introduced good corporate governance as a concept and provided a standard for all companies. It forced great changes in smaller companies and created the beginnings of good corporate governance cultures in many small companies. What began as a check the box and move on exercise, has evolved, and is still evolving, into creation of an awareness of corporate governance standards and a culture of real change. Canadian Venture companies are currently punching above their weight in the corporate governance arena and this has translated into credibility for our capital markets, even in our unique Venture market. Our current corporate system has served us well. The currently

proposed “Principle- Based” is, in my opinion, a step backward for small public companies and represents a decline in disclosure. It could certainly be argued that a principle-based system may be more appropriate for larger TSX-listed companies, but I suggest that it certainly is not ideal for the vast majority of smaller Canadian public companies. It might be quite suitable for larger companies, although I’d argue that the resulting disclosure may not be as transparent and is open to abuse. However for smaller companies, I would argue that it is unsuitable and the resulting disclosure will very likely be opaque and, possibly, incomplete. This could result in abuses and loss of reputation for our capital markets.

Finally, I would argue that the private sector should take the lead in proposing fundamental changes to the existing corporate governance regulations. I would submit that, in the absence of any clear corporate governance crisis, the private sector can more readily sense any corporate governance gaps or trends. The private sector is also acutely aware of what other pressures currently exist in these challenging times which require priority for corporate time and resources. It is also not clear from your “Request for Comments” what “concerns” have been expressed to you by market participants. This would have been very useful information to provide. Finally, it is clear that the current proposal for a principle-based approach to corporate governance disclosure would be a distinctly different approach than that used by the US and European capital markets. This departure from the broader corporate governance disclosure approach runs the risk of being perceived as less stringent, sub-standard and may attract a corporate governance discount to our markets.

I have no problem with the nine proposed principles. They are the basis of good corporate governance, but they are also very broad and general. In the interest of time and the fact that I also participated in the Directors’ Roundtable, which has supplied a more detailed analysis of your proposals, I will not comment in your specific questions. In my opinion, your proposal is a solution looking for a problem. I would strongly recommend that the CSA retain National Instrument 58-201 in its current form.

Sincerely,

Dave Constable, ICD.D

Vice President,

FNX Mining Company Inc.