ASSOCIATION FOR
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15 April 2004

Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
The Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Government of Yukon
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Re: Request for Comment—Notice of Proposed Multilateral Policy 58-201, Effective Corporate Governance and Proposed Multilateral Instrument 58-101, Disclosure of Corporate Governance Practices

Dear Sirs and Mesdames:

The Canadian Advocacy Committee (CAC) of the Association for Investment Management and Research (AIMR)[1] is pleased to respond to the request for comments on the CSA's proposed Multilateral Policy 58-201, Effective Corporate Governance and proposed Multilateral Instrument 58-101, Disclosure of Corporate Governance Practices. The CAC represents members of AIMR and its 12 Member Societies and Chapters across Canada. The CAC membership includes portfolio managers and other investment professionals in Canada who

[1] With headquarters in Charlottesville, VA, and regional offices in Hong Kong and London, the Association for Investment Management and Research® is a non-profit professional association of more than 69,500 financial analysts, portfolio managers, and other investment professionals in 116 countries of which more than 56,800 are holders of the Chartered Financial Analysts® (CFA®) designation. AIMR's membership also includes 129 Member Societies and Chapters in 48 countries.

review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada.

Discussion

The CAC appreciates the Canadian Securities Administrators' (CSA) efforts through this proposed Multilateral Policy and Instrument to address the important issue of corporations' establishing and disclosing corporate governance practices. We agree with the proposal that corporate governance principles (and the correlated focus on individual responsibilities) warrant greater emphasis, attention, and improvement. In particular, we think it is appropriate to imbue corporate executives and others in decision-making positions, as the stewards for the interests of shareowners, with the separate and collective responsibility for maintaining appropriate policies and procedures to ensure that shareowners' interests are paramount. These executives set the tone regarding the types of practices that will be accepted in the workplace, and thus establish the corporate culture.

Therefore, we support the underlying objectives of the proposed governance standards and guidelines. We believe that, while ethics per se cannot be legislated, setting high standards and refocusing corporate officers on their responsibilities to the shareowners and the investing public sends an important message to corporate entities and investors alike. We believe that overall the best practices set forth in this proposal, together with other recent CSA initiatives focusing on market integrity, will help raise the overall level of corporate governance practices throughout the Canadian markets.

Our support for the specific recommendations in the proposal is tempered, however, by its preference for disclosure of corporate governance practices rather than requiring implementation of best practices. We appreciate that the CSA is seeking to achieve such implementation by encouraging rather than prescribing certain corporate governance practices in the belief that companies will implement rather than have to disclose non-compliance. While, in theory, this approach allows investors to decide for themselves the importance of certain practices when evaluating the corporations and making their investment decisions, we believe this places an undue burden on investors and that requiring disclosure alone will not be sufficient to deter poor or non-existent corporate governance at some companies. Investors, even institutional investors with substantial holdings and expertise, have limited, if any, ability to force companies to implement appropriate governance policies.

The events of the last several years have taught us that some corporate governance policies must be mandatory in order to provide sufficient investor protection. In particular, we would prefer that the CSA require companies to have a majority of independent directors on their boards and to create, maintain, and disclose a written code of ethics. We believe that these two requirements are fundamental and establish a baseline of good corporate governance practices that will work to achieve the appropriate balance between the smooth functioning of corporations and safeguarding investor interests.

Comments on these and certain other specific aspects of the proposal follow below.

Composition of the Board

(a) Independent Directors
The proposal provides that as a best practice the board be composed of a majority of independent directors. We strongly agree with this, and believe that it must be required if real change in corporate behavior is to take place.

We believe that the board of directors must be an independent force committed to safeguarding the interests of shareowners, and not just a group overly influenced by or beholden to corporate management. Since the board serves as a watchdog for investor interests, it must be structured to foster independent decision-making and to mitigate against conflicts of interest that may arise. In fact, we believe that an independent board may be the most critical factor in corporate governance.

In keeping with proposed Form 58-101F1—Corporate Governance Disclosure Required in an AIF, an issuer would be required to disclose whether or not a majority of the directors are independent. If they are not, then the issuer is required to explain why the board considers this to be appropriate. Considering how important boards of directors are in serving shareowner interests, we believe that this disclosure is simply not enough. We believe that such disclosures will be cursory at best and devolve into "boilerplate" statements that communicate very little to shareowners. Shareowners who dislike corporate decisions have very little ability to effect changes in those decisions, especially if the board is not independent. If the CSA expects companies to implement this practice, we believe the CSA has no alternative but to require it.

We therefore urge the CSA to make an independent board a requirement, rather than a recommendation. Only by doing so will investor interests move to the forefront of corporate governance practices. We believe that such a requirement will significantly reduce the potential for conflicts of interest that work to the detriment of investors.

(b) Separate Meetings
The proposal contemplates that the independent board members would schedule meetings and meet separately from management. We endorse this approach. Separate meetings will foster a more open consideration of issues. We would anticipate that the independent directors will have discussions that might not materialize in the presence of management. We suggest that the issuer disclose as part of these best practices, the number of meetings held by the independent directors in its AIF.

(c) Board Chair
The proposal also provides that the chair of the board be an independent director, where appropriate, with the alternative of appointing an independent director as a "lead director".

We are not convinced that it is necessary for the board chair to be an independent director and, therefore, support the alternative approach of having the independent directors appoint a lead director. Presumably, the lead director would chair the separate meetings of the independent

directors and address other issues that may involve conflicts of interests with management. We believe that this approach strikes the appropriate balance for ensuring the continued independence of the board deliberation and decision-making process.

Committees Composed of Independent Directors

The proposal provides that both the nomination and compensation committees should be composed entirely of independent directors. These committees would operate pursuant to written charters that establish their purpose, responsibilities, member qualifications, structure and operations, and manner of reporting to the full board. We strongly agree with this approach.

A key focus of good corporate governance practices is to act in the best interests of corporate shareowners. We believe that it is important to remove the influence of interested directors from the process of nominating future board members in order to bring on board the most qualified individuals who are judged on their experience and ability to add value to the corporate decision-making. Similarly, we believe that reviewing and approving corporate goals and objectives relevant to CEO compensation, evaluating the CEO's performance in light of them, and making recommendations to the board with respect to the level of CEO compensation are determinations that should made by independent directors. We believe that establishing and empowering these independent committees will go far in maintaining the integrity of both processes.

Definition of Independence

As defined in this proposal, a director would be considered "independent" if he or she has no direct or indirect material relationship with the issuer. For these purposes, a "material relationship" would be one that could, in the view of the issuer's board, reasonably interfere with the exercise of a director's independent judgment. We also understand that "independence" of audit committee members is defined under the stricter standard of Multilateral Instrument 52 (clause 1.4(3)(f)(i) and (g)) that was derived from recent U.S. Securities and Exchange Commission regulations applicable to audit committee members.

We generally agree with the approach for defining director independence. Given the importance of independent directors, and in keeping with current definitions, we suggest that the CSA provide a more detailed definition of "independent," including the types of affiliate relationships that would be deemed to impair that independence. We also suggest that the definition of a "material relationship" be revised to provide that whether the relationship could interfere with the director's independent judgment would be determined from the viewpoint of a "reasonable person," rather than from the view of the board. We believe that this approach will provide a more appropriate and objective evaluation of potential conflicts of interest.

Diversity of Perspective

We also believe that it is important that corporate boards incorporate a greater diversity of perspective. Many directors are themselves either chief executive officers or chief financial officers and, therefore, their "natural" perspective is in alignment with corporate management. We believe that boards need more "investor focus". We would encourage the CSA to include in

its final rule an encouragement for issuers to seek out investor advocates and investment professionals, those who best understand the needs and interests of shareowners and investors, to fill the independent director positions on their boards.

Code of Business Conduct and Ethics

The proposed best practices would require the board to adopt a written code of business conduct and ethics, which would be applicable to all directors, officers and employees of the issuer. The Code would create standards that are reasonably designed to deter wrongdoing and to address certain issues, including conflicts of interest, fair dealing, legal compliance and the reporting of illegal or unethical behavior. Issuers would be required to disclose the existence of the code or to provide an explanation for the lack of one.

Such disclosure is not sufficient. Rather we believe that every issuer must be required to have a written code of ethics in place. It is inconceivable to us that this would be optional. Given the proposed flexibility that companies will have in tailoring a code of ethics to its size or type of business, we do not believe that making this a requirement be an undue burden. It would seem to us that the benefits of creating a code would greatly outweigh the potential costs, since it will serves to highlight proper conduct and set rules for important issues, defines procedures for addressing those issues ethically, and be a roadmap for acceptable business practices.

We propose such a requirement because we make the same demands of ourselves. Investor protections depend on setting effective guidelines based on high ethical and professional standards, such as the AIMR *Code of Ethics* and *Standards of Professional Conduct* (*Code* and *Standards*). The *Code* and *Standards* require all AIMR members, CFA charterholders and candidates in the CFA Program to place their investing clients' interests first, to maintain independence and objectivity, and to endeavor to avoid situations that might even be perceived to cause a loss of independence or objectivity. When conflicts of interest do arise, the *Code* and *Standards* require full disclosure of all actual and potential conflicts that could impair the ability to make unbiased and objective decisions and recommendations. Full and effective disclosure enables the investor to evaluate the information being provided in making informed investment decisions.

We believe that it is essential that every issuer create, maintain, and disclose its code of ethics. Furthermore, we believe that such codes must clearly state the basic responsibilities owed to shareowners and identify and provide the mechanisms in place to ensure compliance with ethical practices. We thus urge the CSA to make this a requirement, rather than a recommended best practice.

Closing Remarks

We appreciate the opportunity to comment on the CSA's proposed Multilateral Policy for Effective Corporate Governance. As discussed above, we support the principles upon which these best practices are based as an important recognition of the balance to be achieved between reasonable corporate practices and the protection of investors' interests. However, in some instances, we believe that disclosure alone does not strike the right balance and we urge the CSA,

specifically, to require issuers to have a majority of independent directors on their boards and to create, maintain, and disclose codes of ethics. We also believe that the CSA should encourage issuers to include more investment professional on their boards to imbue them with a much needed investor viewpoint. If you have any questions or seek elaboration of our views, please do not hesitate to contact Linda L. Rittenhouse at 1.434.951.5333 or linda.rittenhouse@aimr.org.

Sincerely,

/s/ David L. Yu

David L. Yu, CFA
Canadian Advocacy Committee Co-Chair

/s/ Linda L. Rittenhouse

Linda L. Rittenhouse
Associate, Advocacy