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SENT BY E-MAIL

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Dear Sirs/Mesdames:

Re: Proposed National Instrument No. 58-101 and Proposed Amendments to Multilateral Instrument 52-110

I am writing in response to the request for comments pursuant to notices dated October 29, 2004 issued in respect of the proposed amendments to Multilateral Instrument No. 52-110 respecting Audit Committees (the “Audit Committee Amendments”) and proposed National Instrument 58-101 respecting disclosure of corporate governance practices (the “Disclosure Instrument”).

In particular, we wish to object to a definition of “independent director” that will result in directors who are officers of a controlling shareholder being treated as not independent of a corporation on whose board they serve by virtue of that relationship. For example, proposed new subsection 1.4(8) under the Audit Committee Amendments provides that for purposes of section 1.4 of the definition

of "independent director" an "issuer" includes a subsidiary entity of the issuer and a parent of the issuer. This change substantially extends the reach of the "bright line" tests for director independence set out in section 1.4 of the Audit Committee Amendments compared to the corresponding tests under the current version of MI 52-110 (Audit Committees). It effectively would, for example, preclude the board of directors in its reasonable judgement from concluding that an employee of a parent is an independent director of the reporting issuer, even if the individual has no other relationship with the corporation and deals with it entirely at arm's length. At the same time, it would be open to a board of directors to conclude that an individual who directly controls (or who indirectly controls through a parent so long as the individual is not an employee of the parent) the reporting issuer is nonetheless an independent director.

Power Corporation and Power Financial, as international holding companies, have invested many billions of dollars of our shareholders' money directly and indirectly in subsidiaries in Canada, the United States, Europe and Asia. It has been our practice for decades to take an active role in the oversight of our subsidiaries. Representatives of Power and Power Financial form a majority on the boards of these subsidiaries. Each board also has a number of independent directors unrelated to the controlling shareholder, who represent minority shareholder interest. This takes away nothing from the obligation of all directors to represent the interests of all shareholders.

From time to time, the majority representing Power or Power Financial has been comprised of officers of either or both of these companies. Officers of Power or Power Financial generally comprise the majority on the compensation committees of our subsidiaries. The nominating function is generally performed by the entire board, with our representatives forming the majority. We believe this formula works well; as representatives of the controlling shareholder parent company, executives of Power and Power Financial are well placed to represent the interests of all shareholders in interacting with management at the board level.

Several of our subsidiaries are publicly traded. The fact that these companies have a controlling shareholder is transparent. In our view, it is because of our commitment to pro-active management of our assets in a responsible way that shareholders invest in Power and in our publicly traded subsidiaries. These shareholders expect us to play a controlling role, with proper respect for the interests of all.

It is unnecessary to define director independence in terms of independence from a controlling shareholder in order to protect the interests of minority shareholders. Canada already has a well-developed body of corporate and securities laws which protect the reasonable expectations of minority shareholders, including most recently, the decision of the Supreme Court of Canada in *Peoples v. Wise* which confirmed that directors owe a fiduciary duty solely to the corporation on whose board they serve and not with respect to any particular stakeholder.

In any event, a representative of a controlling shareholder merits different treatment from an individual who fails the "bright line" tests of director independence for other reasons. The NYSE provides an exemption for controlled companies from the NYSE independence requirements (other than with respect to the composition of the audit committee) and a controlled company listed on the NYSE simply needs to disclose that it is a controlled company, the basis for such a determination and that it wishes to rely on the controlled company exemption. The NYSE publicly stated that "The exception … was made because the ownership structure of these companies merited different treatment. Majority voting control generally entitles the holder to determine the make-up of the board of directors, and the exchange didn't consider it appropriate to impose a listing standard that would in effect deprive the majority holder of that right." While the Disclosure Instrument does not mandate the adoption of specified corporate governance structures, the additional disclosure required of issuers that do not have (i) a board comprised of a majority of independent directors, (ii) a chair or lead director who is an independent director, (iii) a nominating committee comprised solely of independent directors or (iv) a compensation committee comprised solely of independent directors, simply should not apply where the reason the issuer does not meet the specified structure is that one or more directors fail to meet the bright line independence tests solely because of an employment relationship to the controlling shareholder.

As an illustration of our concern, take the requirement to have a chair or lead director who is an "independent director". The Chair of the board of directors of Great-West Lifeco Inc. and Investors Group Inc. is Mr. Robert Gratton, the President and CEO of Power Financial. Mr. Gratton has no other relationship with either of these subsidiaries of Power Financial which would violate the "bright line" tests for director independence and is currently considered to be an "unrelated director" under the TSX definition. He provides leadership for the independent directors of each of Great-West and Investors Group and

neither of those companies has a lead director. Yet since Mr. Gratton would not be an "independent director" under section 1.4 of the Audit Committee Amendments and under the proposed Disclosure Instrument, each of Great-West and Investors Group would have to describe what its board does to provide leadership for its "independent directors". We note that neither the SEC nor the NYSE go so far as to require that the board have an independent chair or board leader, let alone preclude an individual who would be an independent director but for the individual's position as an officer of the parent from serving in such role.

Our long-established system of corporate governance, involving parent company officers, is consistent with responsible stewardship and rigorous, sound business practice. We believe they have contributed to superior long-term shareholder returns. It is compliant with governance guidelines introduced some ten years ago in Canada. Most importantly, it is our right as a controlling shareholder.

In our group, we seek to access capital markets in Canada and elsewhere. As the controlling shareholder of financial institutions, we are sensitive to the importance of compliance and, as a corollary, the importance of not appearing to be "non-compliant". We vigorously object to being placed in the unacceptable position of appearing to be offside Canadian governance guidelines.

Many large U.S. companies have relied on the NYSE exemption. It is generally acknowledged that Canada has a larger percentage of public companies with a controlling shareholder than the U.S. Canadian corporate governance disclosure requirements should take account of this fact or, at the very least, not adopt a disclosure standard that is more onerous for controlled companies than the standard which is applicable to the largest issuers in the U.S.

Yours sincerely,

SIGNED BY

Edward Johnson
Vice-President, General Counsel
and Secretary

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