NOTICE
REQUEST FOR COMMENT

PROPOSED NATIONAL POLICY 58-201
CORPORATE GOVERNANCE GUIDELINES

AND

PROPOSED NATIONAL INSTRUMENT 58-101
DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES,
FORM 58-101F1 AND FORM 58-101F2

This Notice accompanies proposed National Policy 58-201 *Corporate Governance Guidelines* (the **Proposed Policy**) and proposed National Instrument 58-101 *Disclosure of Corporate Governance Practices*, Form 58-101F1 and Form 58-101F2 (together, the **Proposed Instrument**).

On January 16, 2004, the securities regulatory authorities in Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories and Nunavut published for comment proposed Multilateral Policy 58-201 *Effective Corporate Governance* and proposed Multilateral Instrument 58-101 *Disclosure of Corporate Governance Practices* (the **January Proposal**). On April 23, 2004, the securities regulatory authorities in British Columbia, Alberta and Québec published for comment proposed Multilateral Instrument 51-104 *Disclosure of Corporate Governance Practices* (the **April Proposal**). The Proposed Policy and the Proposed Instrument that we are publishing today are an initiative of every securities regulatory authority in Canada, and reflect elements of, and the comments received on, each of the January Proposal and the April Proposal.

The purpose of the Proposed Policy is to provide guidance on corporate governance practices. The purpose of the Proposed Instrument is to provide greater transparency for the marketplace regarding issuers' corporate governance practices.

We expect the Proposed Policy to be adopted as a policy in every jurisdiction in Canada. We expect the Proposed Instrument to be adopted as a rule in British Columbia, Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador, as a Commission regulation in Saskatchewan, as a regulation in Québec, as a policy in Prince Edward Island and the Yukon Territory, and as a code in the Northwest Territories and Nunavut.

Summary and Discussion of the Proposed Policy and the Proposed Instrument

The Proposed Policy

The Proposed Policy provides guidance on corporate governance practices. Although the Proposed Policy applies to all reporting issuers, the guidelines in the Proposed Policy are not

intended to be prescriptive; rather, we encourage issuers to consider the guidelines in developing their own corporate governance practices.

The following corporate governance guidelines are contained in the Proposed Policy:

- maintaining a majority of independent directors on the board of directors (the **board**)
- appointing a chair of the board or a lead director who is an independent director
- holding regularly scheduled meetings of independent directors at which members of management are not in attendance
- adopting a written board mandate
- developing position descriptions for the chair of the board, the chair of each board committee, and the chief executive officer
- providing each new director with a comprehensive orientation, and providing all directors with continuing education opportunities
- adopting a written code of business conduct and ethics (a **code**)
- appointing a nominating committee composed entirely of independent directors
- adopting a process for determining what competencies and skills the board as a whole should have, and applying this result to the recruitment process for new directors
- appointing a compensation committee composed entirely of independent directors
- conducting regular assessments of board effectiveness, as well as the effectiveness and contribution of each board committee and each individual director

The Proposed Instrument

The Proposed Instrument applies to reporting issuers, other than investment funds, issuers of asset-backed securities, designated foreign issuers, SEC foreign issuers, certain exchangeable security issuers, certain credit support issuers and certain subsidiary issuers. The Proposed

Instrument establishes both disclosure requirements and the requirement to file any written code that the issuer has adopted.

The Proposed Instrument requires an issuer to disclose those corporate governance practices it has adopted. The specific disclosure items are set out in Form 58-101F1. However, because we appreciate that many smaller issuers will have less formal procedures in place to ensure effective corporate governance, the Proposed Instrument requires issuers that are "venture issuers" to disclose only those items identified in Form 58-101F2.

The Proposed Instrument requires every issuer that has a written code to file a copy of the code (or any amendment to the code) on SEDAR no later than the date on which the issuer's next financial statements must be filed, unless a copy of the code or amendment has previously been filed.

We recognized that corporate governance is in a constant state of evolution. Consequently, we intend to review both the Proposed Policy and the Proposed Instrument periodically following their implementation to ensure that the guidelines and disclosure requirements continue to be appropriate for issuers in the Canadian marketplace.

Summary of Written Comments Received

We received submissions from 34 commenters regarding the January Proposal. In addition, 15 commenters provided written submissions regarding the April Proposal. We have considered all the comments received and thank all the commenters. The names of the commenters are contained in Schedule A of this Notice.

A significant number of commenters on both the January Proposal and the April Proposal urged us to adopt a national corporate governance initiative. Many commenters were generally supportive of the January Proposal, but were also supportive of the broader disclosure requirements of, and the flexibility afforded by, the April Proposal.

In the notices that accompanied the January Proposal and the April Proposal, we posed a number of specific questions for consideration. Some commenters provided responses with specific reference to the questions set out in the notice that accompanied the January Proposal. The questions, together with a summary of the responses we received, is contained in Schedule B of this Notice. A summary of the comments we received, generally, and our responses to those comments, is contained in Schedule C of this Notice.

Upon considering the comments, we determined to incorporate into the Proposed Policy and the Proposed Instrument elements of both the January Proposal and the April Proposal. A summary of the significant changes to each of the proposals is set out below.

Summary of Principal Changes to the January Proposal

Proposed Policy

The Proposed Policy differs from the January Proposal in a number of ways. In particular, the Proposed Policy:

- clarifies that the guidelines are not mandatory; instead, we encourage issuers to consider the guidelines in developing their own corporate governance practices; (see paragraph 1.1)

- clarifies how the guidelines may be applied to issuers that are income trusts; (see paragraph 1.2)

- deletes guidance contained in the January Proposal which recommended that a board's mandate set out (i) decisions which require prior approval of the board, and (ii) the board's expectations of management; (see paragraph 3.4)

- deletes the guideline recommending that the board develop a written position description for directors, but adds guidance recommending that the board mandate set out expectations and responsibilities of directors; (see paragraphs 3.4 and 3.5)

- adds guidance regarding conduct of directors and executive officers that violates an issuer's code, reminding issuers that a material departure from a code will likely constitute a "material change" within the meaning of National Instrument 51-102 *Continuous Disclosure Obligations*; guidance has also been added regarding the content of a material change report filed in that regard; (see paragraph 3.9)

- revises the "two step" nomination process recommended in the January Proposal to clarify that the process may be applied flexibly; (see paragraph 3.12)

- clarifies that a compensation committee may either determine the CEO's compensation level or make a recommendation regarding the compensation level to the board; (see paragraph 3.17) and

- adds flexibility to guidance regarding regular board assessments. (see paragraph 3.18)

Proposed Instrument

Similarly, the Proposed Instrument differs from the January Proposal in the following manner:

- the definition of independence contained in the Proposed Instrument both (i) clarifies the appropriate cross reference to Multilateral Instrument 52-110 *Audit Committees*, and (ii) adds a definition of independence applicable to British Columbia reporting issuers; (see section 1.2) [1]

- the Proposed Instrument contains an exemption applicable to wholly-owned subsidiaries, similar to the exemption currently found in Multilateral Instrument 52-110; (see section 1.3)

[1] We are also proposing certain changes to Multilateral Instrument 52-110's definition of independence. See "Consequential Amendments to Multilateral Instrument 52-110 *Audit Committees*", below.

- the Proposed Instrument requires issuers to include their corporate governance disclosure principally in their management proxy circulars, rather than their annual information forms; (see sections 2.1 and 2.2)

- the requirement in the January Proposal that issuers file a press release where the board grants a waiver of its code in favour of a director or officer of the issuer has been removed; (see section 2.3)

- the Proposed Instrument requires disclosure for issuers (other than venture issuers) both in connection with specific corporate governance guidelines and also more generally; (see Form 58-101F1)

- the Proposed Instrument requires issuers to disclose the identity of any independent directors on the board; in addition, issuers will also be required to disclose the identity of any non-independent directors and to describe the basis for that determination; (see Item 1 of Form 58-101F1, see also Item 1 of Form 58-101F2)

- the Proposed Instrument requires issuers to disclose any other directorships held by its directors, as well as the identity and function of any other board committees; (see Items 1 and 8 of Form 58-101F1, see also Items 2 and 7 of Form 58-101F2)

- the Proposed Instrument requires venture issuers to provide disclosure regarding their corporate governance practices, generally, in the manner put forward for consideration in the April Proposal. (see Form 58-101F2)

Summary of Principal Changes to the April Proposal

Proposed Policy

The April Proposal did not include a policy containing corporate governance guidelines.

Proposed Instrument

The Proposed Instrument differs from the April Proposal in the following manner:

- for issuers, other than venture issuers, the Proposed Instrument requires disclosure of corporate governance practices relative to specific corporate governance guidelines as well as broader disclosure of the issuer's practices; (see Form 58-101F1, generally)

- the Proposed Instrument contains an exemption applicable to wholly-owned subsidiaries, similar to the exemption currently found in Multilateral Instrument 52-110; (see section 1.3)

- the Proposed Instrument requires issuers that have a written code to file a copy of the code on SEDAR, along with any amendments to that code; (see section 2.3)

- the Proposed Instrument requires issuers to disclose any other directorships held by its directors. (see Item 1 of Form 58-101F1, see also Item 2 of Form 58-101F2)

Consequential Amendments to Multilateral Instrument 52-110 *Audit Committees*

The securities regulatory authorities in every jurisdiction other than British Columbia are also proposing changes to the definition of independence contained in Multilateral Instrument 52-110. Because the Proposed Instrument and the Proposed Policy largely incorporate the concept of independence set out in Multilateral Instrument 52-110, readers are encouraged to consult these proposed amendments and the accompanying notice.

Authority for the Instrument — Ontario

In Saskatchewan, securities legislation provides the Saskatchewan Financial Services Commission (the **SFSC**) with regulation-making authority regarding the subject matter of the Proposed Instrument.

- Clause 154(1)(r) of *The Securities Act, 1988* (Saskatchewan) (the **Act**) authorizes the SFSC to prescribe requirements, in addition to the requirements pursuant to the Act respecting the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure, including requirements in respect of an annual information form.

- Clause 154(1)(ii) of the Act authorizes the SFSC to make regulations requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act or the regulations and all documents determined by the regulations to be ancillary to the documents.

- Clause 154(1)(kk) of the Act authorizes the SFSC to vary the Act to permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of (a) documents or information required under or governed by the Act or the regulations, and (b) documents determined by the regulations to be ancillary to documents required under or governed by the Act or the regulations.

Related Instruments

The Proposed Instrument is related to National Instrument 51-102 *Continuous Disclosure Obligations,* National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and Multilateral Instrument 52-110 *Audit Committees*.

Anticipated Costs and Benefits of Proposed Instrument

The Proposed Instrument will provide greater transparency for the marketplace regarding the nature and adequacy of issuers' corporate governance practices. We anticipate that the benefits

of such transparency, including enhanced investor confidence in Canadian capital markets, will exceed the relatively nominal cost for issuers to provide the disclosure required by the Proposed Instrument. We note that many issuers currently incur equivalent costs to comply with the corporate governance disclosure requirements of the Toronto Stock Exchange and the TSX Venture Exchange.

Reliance on Unpublished Studies, Etc.

In developing the Proposed Policy and Proposed Instrument, we did not rely upon any significant unpublished study, report or other written materials.

Comments

Interested parties are invited to make written submissions on the Proposed Policy and Proposed Instrument. Submissions received by December 13, 2004 (December 28, 2004 in Manitoba) will be considered.

Submissions should be addressed to:

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 the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Please deliver your comments to the addresses below. Your comments will be distributed to the other participating CSA members.

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-8145
E-mail: jstevenson@osc.gov.on.ca

Anne-Marie Beaudoin

Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal (Québec) H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

A diskette containing the submissions (in Windows format, preferably Word) should also be submitted.

Comment letters submitted in response to requests for comments are placed on the public file and form part of the public record, unless confidentiality is requested. Comment letters will be circulated among the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed in the public file, freedom of information legislation may require securities regulatory authorities to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to the following people:

Rick Whiler
Ontario Securities Commission
Telephone: (416) 593-8127
E-mail: rwhiler@osc.gov.on.ca

Michael Brown
Ontario Securities Commission
Telephone: (416) 593-8266
E-mail: mbrown@osc.gov.on.ca

Susan Toews
British Columbia Securities Commission
Telephone: (604) 899-6764
E-mail: stoews@bcsc.bc.ca

Kari Horn
Alberta Securities Commission
Telephone: (403) 297-4698
E-mail: kari.horn@seccom.ab.ca

Barbara Shourounis
Saskatchewan Financial Services Commission
Telephone: (306) 787-5842
E-mail: bshourounis@sfsc.gov.sk.ca

Bob Bouchard
Manitoba Securities Commission
Telephone: (204) 945-2555
E-mail: bbouchard@gov.mb.ca

Sylvie Anctil-Bavas
Autorité des marchés financiers
Telephone: (514) 395-0558 x. 2402
E-mail: Sylvie.Anctil-Bavas@lautorite.qc.ca

Text of Proposed Policy and Proposed Instrument

The text of the Proposed Policy and the Proposed Instrument follow.

Date: October 29, 2004.

SCHEDULE A

List of Commenters

January Proposal

Institute of Corporate Directors
Canadian Society of Corporate Secretaries
NAV Canada
Gilbert S. Bennett
Winpak Ltd.
Purdy Crawford, O.C.
The Institute of Internal Auditors
Canadian Investor Relations Institute
Association for Investment Management and Research
Hammurabi Consulting
Transparency International Canada Inc.
EnCana Corporation
Ethics Practitioners' Association of Canada
EthicScan Canada Ltd.
Canadian Coalition for Good Governance
MVC Associates International
Davies Ward Phillips & Vineberg LLP
Embersoft Inc.
Ogilvy Renault
The Canadian Centre for Ethics & Corporate Policy
Canadian Bankers Association
TSX Group*
Shareholder Association for Research and Education (SHARE)
Torys LLP*
Osler, Hoskin & Harcourt LLP
Power Corporation of Canada
Social Investment Organization
Goodmans LLP
The Ethical Funds Company
AGF Management Limited
Aliant Inc.
Talisman Energy Inc.*
Pension Investment Association of Canada

April Proposal

Canadian Imperial Bank of Commerce
Talisman Energy Inc.*
Canadian Listed Company Association
TSX Group*
Torys LLP*

Canadian Investor Relations Institute
Osler, Hoskin & Harcourt LLP
Ogilvy Renault
Canadian Bankers Association
Roger Levens
Eel Resources
Pacific Opportunities
Canadian Society of Corporate Secretaries
J.G. Stewart
Power Corporation of Canada

* These commenters included comments respecting both proposals in one letter.

SCHEDULE B

Summary of Responses to Specific Questions

In the notice which accompanied the publication of the January Proposal, we posed five specific questions for consideration. The questions, and a summary of the responses we received, are set out below.

1. ***Proposed Multilateral Policy 58-201 (MP 58-201) and Proposed Multilateral Instrument 58-101 (MI 58-101) describe best practices and require issuers to make disclosure in relation to those best practices.***

(a) Will these initiatives provide useful guidance to issuers?
(b) Will these initiatives provide meaningful disclosure to investors?

Eight commenters believed that the initiatives would provide useful guidance to issuers and meaningful disclosure to investors.

One commenter suggested that issuers with alternative structures (such as income trusts and limited partnerships) might find it useful to receive more extensive guidance on the application of MP 58-201 and MI 58-101 to such structures.

Another commenter submitted that the publication of non-mandatory best practices would provide useful guidance to issuers and investors but that it was important, given the diversity of issuers to which the best practices and disclosure requirements relate, to allow issuers flexibility to adopt practices which reflect their own particular circumstances.

One commenter believed that the initiatives would provide solid guidance to issuers, but argued that the proposed "best practices" would be significantly more effective if they were mandatory. The commenter also submitted that the initiatives will provide meaningful disclosure, but that the effectiveness of MP 58-201 would be enhanced if timely monitoring, assessment and feedback processes were also required.

Another commenter noted that if issuers are motivated to comply based on regulatory compliance as opposed to the need to provide meaningful disclosure, the quality of disclosure may suffer.

(c) Would disclosure be more meaningful to investors if issuers were required to describe their practices by reference to certain categories of governance principles rather than by reference to the best practices described in MP 58-201?

Seven commenters favoured disclosure made in reference to best practices rather than to certain categories of governance principles. A number of these commenters noted that a requirement for a description with reference to mere categories would leave too much latitude for boilerplate responses.

Four commenters, however, noted that the danger of a list of "best practices" is that issuers would not necessarily consider what is best for their particular situation. One of these commenters suggested blending the two approaches. Another commenter noted that the risk that issuers will develop a "check-the-box" mentality was mitigated by allowing issuers to deviate from best practices when a good reason is provided. This commenter did not feel that innovation will be stifled by MP 58-201, and did not expect issuers to be penalized by the market when they adopt other practices that are better suited to their needs if they clearly articulate their reasons for doing so. The commenter believed that the lack of a benchmark against which to compare practices would not encourage innovation, but rather would permit those issuers who do not take governance seriously to pay less attention to their practices. The commenter also believed that it is often difficult for directors to stand-up to a dominating personality unless they have a legal "stick", and that the best practices contained in MP 58-201 would provide this stick. Finally, the commenter noted that to abandon a comparison with best practices approach would negatively impact the credibility of the Canadian markets internationally.

(d) What will be the effect on market participants, including investors and issuers, of our publishing best practices in Canada?

Two commenters believed that the effect on market participants would be positive and would lead to the adoption of best practices by more issuers.

Another commenter submitted that publishing best practices would provide "aspirational goals" for market participants, but would not accomplish meaningful adoption and confidence of investors unless the best practices were made mandatory.

One commenter noted that, to the extent provisions not previously established by the Toronto Stock Exchange or the New York Stock Exchange were introduced, issuers would need to devote additional time to integrating these areas into their existing governance practices.

Another commenter feared that securities regulation would become further fragmented if the commissions proceed with publishing MP 58-201 and MI 58-101 on a multilateral, rather than a national, basis.

2. ***MI 58-101 does not require an issuer to adopt a code of ethics, but issuers who do not have one must explain why they do not. If an issuer does adopt a code, MI 58-101 requires the issuer to file the code, as well as any amendments on SEDAR. It also requires an issuer to prepare and file a news release respecting any express or implied waiver of the code.***

(a) ***Will the text of the code of ethics provide useful disclosure for investors?***

Eight commenters agreed that disclosure of the text would contribute to clarity and transparency.

One commenter believed that the specific contents of a code might not be useful (as such codes were becoming increasingly standardized) but the fact that an issuer has a code of ethics in place would be insightful as it would reflect the result of a positive corporate process. Another commenter suggested that the text of a code of ethics, which would be the result of extensive legal discussions and careful phraseology, would probably not provide significant utility for the average investor, but that disclosure would nevertheless aid in the overall transparency of the governance model.

(b) ***Will disclosure of waivers from the code provide useful disclosure for investors?***

Four commenters agreed that disclosure would provide useful guidance and could create a deterrent to granting a waiver.

Four other commenters believed that waivers should be disclosed, but that the provisions governing the disclosure should be refined. Two of these commenters believed that the disclosure should be made only with respect to waivers in favour of directors and executive officers. Five commenters suggested that waivers should only be press released if the waiver was material, as the marketplace may draw adverse inferences from otherwise immaterial press releases.

One commenter disagreed with the principle of waivers. They believed that if there was a significant problem, the issuer should fix its code, and that if there was a minor problem, the issuer should "disclose the explanation of the action taken".

(c) ***Since there is no requirement to have a code of ethics, will the obligations respecting the filing of the code and any amendments and reporting waivers from the code have the effect of discouraging issuers from adopting a code of ethics?***

Two commenters suggested that the filing and reporting requirements would not discourage issuers from adopting a code of ethics. A third commenter was of the view that the obligations may discourage some issuers, but suggested that issues of time and expense are likely to be more significant considerations.

Three commenters believed that the obligations may discourage adoption. One of these three commenters suggested that issuers should therefore be required to adopt a code. The other two commenters recommended that the issuers should post the code on their websites.

One commenter submitted that as MI 58-101 requires an issuer to file a code only if the issuer has chosen to adopt such a code, it will create a dual standard, with the result that issuers who chose to adopt a code being subject to a higher regulatory review than those who chose not to comply with the best practice.

3. MI 58-101 does not require issuers to have a compensation committee, nor does it require that committee to be entirely independent or to have a charter, but if an issuer does not have these structures, it must explain why not. An issuer is required to state whether it has a compensation committee, whether that committee is independent and whether it has a compensation committee charter. If there is a charter, the text of the charter must be disclosed. Additionally, MI 58-101 requires an issuer to disclose the process used to determine compensation, but that disclosure is only required if the issuer does not have a compensation committee.

(a) Would it be useful to investors for the issuer to disclose the process used to determine compensation, regardless of whether it has a compensation committee?

Seven commenters believed that this disclosure would be useful and would promote accountability.

Two commenters noted that disclosure regarding the process for determining compensation is already required in an issuer's report on executive compensation and that additional or duplicative disclosure would not be helpful. One of these commenters also suggested that disclosure be provided regarding the process used to determine the compensation of senior officers other than the CEO and directors, as this disclosure is not required in Form 51-102 F6. The commenter also noted that there is no definition of "compensation committee" (or "nominating committee") which could lead issuers to establish such committees in name but without any substantive authority.

(b) ***Is disclosure of the text of the compensation committee's charter useful to investors?***

Six commenters agreed that such disclosure would be useful to investors. One of the commenters also believed that establishing accountability in the absence of

disclosure of the process used to determine compensation would be of limited value in discouraging inappropriate compensation practices or creating transparency or confidence.

Another commenter submitted that if disclosure was made regarding the process used to compensate senior officers and directors, there would be no additional value in requiring disclosure of the charter.

4. ***MI 58-101 does not require issuers to have a nominating committee, nor does it require that committee to be entirely independent or to have a charter, but if an issuer does not have these structures, it must explain why not. An issuer is required to state whether it has a nominating committee, whether any such committee is independent and whether it has a nominating committee charter. If there is a charter, the text of the charter must be disclosed. Additionally, MI 58-101 requires an issuer to disclose the process by which candidates are selected for board nomination, but that disclosure is only required if the issuer does not have a nominating committee.***

(a) ***Would it be useful to investors for the issuer to disclose the process by which candidates are selected for board nomination, regardless of whether it has a nominating committee?***

Eight commenters agreed that such disclosure would be useful to investors. Two of these commenters noted that such disclosure would promote rigor and due care in the nomination of qualified candidates that will lead to improved confidence. One of these commenters submitted that establishing accountability in the absence of disclosure of the process used to determine qualifications and selection of appropriate candidates would be of limited value in discouraging inappropriate nominations or creating transparency or confidence.

(b) ***Is disclosure of the text of the nominating committee's charter useful to investors?***

Five commenters agreed that such disclosure would be useful.

5. ***MI 58-101 requires an issuer to disclose the process used to assess the performance of the board, committee chairs and CEO, but that disclosure is only required if the issuer does not have written position descriptions for those roles. Would it be useful for investors for the issuer to disclose the assessment process, regardless of whether it has written position descriptions?***

Six commenters believed that such disclosure would be useful to investors regardless of whether or not the issuer has written position descriptions. Another commenter noted that disclosure would only be useful to the extent it encourages a board to have an assessment process and demonstrates to investors that an issuer has such a process.

One commenter believed that position descriptions should be required and that, in addition, it would be useful to disclose the assessment process for these roles.

SCHEDULE C

Summary of Comments

A. General Comments on the January Proposal and the April Proposal

No.	Section/Topic	Comment	Response
A.1	**General Support**	Eleven commenters believed that issuers would benefit from a uniform approach to corporate governance adopted and applied by all jurisdictions across Canada. Six commenters expressly agreed with the "comply or explain" approach. Five commenters suggested that the Proposed Policy be clarified with respect to the freedom of issuers to adopt their own practices that differ from "best practices". One commenter suggested that issuers need flexibility to adopt appropriate requirements as opposed to comparing themselves to "best practices". Another commenter suggested that MP 58-201 and MI 58-101 be less prescriptive and more flexible for small cap and closely-held companies and noted that the guidelines should, in general, allow companies the flexibility to achieve good corporate governance in a way that meets each issuer's needs and circumstances. Three commenters supported the approach proposed in MI 51-104 for all of the specific areas outlined in the request for comments. One of these commenters noted that MI 51-104 provided sufficient flexibility to accommodate the needs of different industries. Another commenter endorsed the starting point that MI 51-104 applies to all reporting issuers. Three commenters believed that the guidelines in MP 58-201 should be made mandatory. One commenter suggested that corporate governance guidelines and the related disclosure instrument remain	The Proposed Policy and the Proposed Instrument are the initiative of every securities regulatory authority in Canada. The proposals reflect elements of, and the comments received on, both the January Proposal and the April Proposal. In particular, • the Proposed Policy clarifies that issuers are not required to adopt the guidelines; instead, issuers should consider each of the guidelines in developing their own corporate governance practices; • the Proposed Instrument requires issuers, other than venture issuers, to provide disclosure not only with respect to specific guidelines, but about their corporate governance pratices, generally; and • the Proposed Instrument requires venture issuers to provide disclosure only about their corporate governance practices, in the manner contemplated by the April Proposal. We believe that making the guidelines mandatory would detract from the flexibility which, in our view, must be afforded Canadian issuers given their diversity, particularly small issuers and closely held companies. We disagree. In our view, it is more appropriate that corporate governance guidelines and the related disclosure instrument remain with the CSA for two

No.	Section/Topic	Comment	Response
		with the Toronto Stock Exchange, since, as a single body, it could adapt to change more quickly, and would regulate more consistently, than 13 separate regulators. Also, the commenter noted that an "exchange-based" approach would be more consistent with the U.S. and Australia.	reasons. First and foremost, this regulation is inconsistent with the business model of the Toronto Stock Exchange. Second, the CSA have a broader array of sanctions at their disposal to enforce the related disclosure requirements. We also note that international practice in this area is mixed. For example, in the UK, the authority for corporate governance resides with the Financial Services Authority.

B. Comments Specifically About the January Proposal

No.	January Proposal Section/Topic	Comment	Response
	General Comments		
B.1	**Application of MI 58-101**	Four commenters suggested there be an exemption for a subsidiary issuer that is a reporting issuer if it has no equity securities trading on a marketplace and its parent company complies with MI 58-101 or the comparable U.S. rules. This exemption would parallel an existing exemption in paragraph 1.2(e) of Multilateral Instrument 52-110 Audit Committees (**MI 52-110**).	We agree. We have included this exemption in the Proposed Instrument.
B.2	**Application to Non-Corporate Entities**	One commenter suggested that additional guidance be provided regarding application of the principles to non-corporate issuers. Two commenters suggested that, with respect to income trusts, disclosure be made in respect of the underlying business as opposed to the reporting issuer which is separate from the underlying business.	Although the Proposed Policy and the Proposed Instrument have been drafted in contemplation of a corporate issuer, we expect that non-corporate issuers will apply the guidelines and disclosure requirements flexibly. We have provided additional guidance with respect to the application of the Proposed Policy and the Proposed Instrument to income trusts. Specifically, income trust issuers should apply the guidelines and disclosure requirements in a manner which recognizes that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board and management of a subsidiary of the trust, or the board, management or employees of a management company. For the purposes of the Proposed Policy and Proposed Instrument, references to "the issuer" include not only the trust but also any underlying entities, including the operating entity.
B.3	**Location of Disclosure**	Several commenters suggested that the disclosure required by proposed Form 58-101F1 be included in either the issuer's proxy circular or annual report, rather than its AIF. Another commenter suggested that the disclosure be included in an issuer's proxy circular or posted on its website with a notice in its annual report or proxy circular.	The Proposed Instrument now requires issuers to provide the disclosure primarily in their management information circulars.

No.	January Proposal Section/Topic	Comment	Response
		One commenter suggested that disclosure be required on a guideline by guideline basis, perhaps in tabular format.	We do not believe it is necessary to prescribe the format of the disclosure.
B.4	**Venture Issuers**	One commenter was of the view that venture issuers should have an open-ended approach to disclosure rather than a comply or explain" approach. The commenter supported the exemption for venture issuers from many of the disclosure requirements in MI 58-101. Another commenter suggested that guidelines be more explicit regarding the unique challenges facing smaller issuers. Two commenters suggested that there be no modified disclosure for venture issuers.	We recognize that it may not be productive to require venture issuers to comply with the same disclosure requirements applicable to larger issuers. The venture issuer disclosure requirements in the Proposed Instrument have therefore been modelled on those in the April Proposal, which require disclosure of an issuer's corporate governance practices, generally, rather than against specific guidelines.
B.5	**Meaning of Independence**	A number of commenters made suggestions regarding the definition of independence. Four commenters suggested that the definition of independence appear in either MI 58-101 or MP 58-201, rather than being cross-referenced to MI 52-110. One commenter also suggested that more explanation be provided for having different measures of independence for the audit committee and for the board.	We have published, concurrently with the publication of this Notice, amendments to the definition of independence in MI 52-110. These amendments were designed (i) to make the cross-reference in the Proposed Instrument to the definition of independence in MI 52-110 easier to follow; and (ii) to more closely harmonize our definition of independence with corresponding requirements in the United States. For more details relating to these changes, see the notice accompanying the proposed amendments to MI 52-110 (the **Audit Committee Amendment Notice**).
B.6	**Controlled Companies**	Two commenters suggested that it would be helpful to provide guidance on how shareholding impacts independence. Two other commenters suggested that MP 58-201 clearly state that independence means independence from management. A fifth commenter suggested that guidelines be more explicit regarding the unique challenges facing controlled companies. One commenter also suggested that MP 58-201 state that controlled companies need not have either a majority of independent directors or a chair/lead director who is independent from the controlling shareholder. Another commenter recommended that the exemptions regarding audit committees found in sections 3.2 through 3.6 of MI	Although shareholding alone may not interfere with the exercise of a director's independent judgement, we believe that other relationships between an issuer and a shareholder may constitute material relationships with the issuer, and should be considered by the board when determining a director's independence. In our view, these proposed revisions are unnecessary. Unlike MI 52-110, which generally requires issuers to have an independent audit committee, the guidelines are not mandatory, and so issuers are free to adopt those corporate governance practices that they determine to be appropriate for their particular circumstances. Issuers are only required to disclose the corporate governance practices that they have adopted. Furthermore, we note that many of the

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		52-110 also apply to other board committees.	exemptions from the independence requirements of MI 52-110 referred to by the one commenter also require an issuer to disclose that they are relying on such exemptions.
	Comments on Specific Guidelines and Disclosure Requirements		
B.7	**Majority of Independent Directors – Guideline and Disclosure Requirement**	One commenter suggested that each issuer's board be required to have a majority of independent directors. Another commenter suggested that the guidelines recommend that two-thirds of the directors on each board be independent. Three commenters suggested that issuers identify independent directors and explain why each one is independent. Another commenter suggested that issuers disclose which directors are not independent, together of an explanation as to why they are not. Three commenters suggested that issuers publish a list of boards on which directors serve. One commenter also suggested that there should be disclosure of director attendance at board and committee meetings.	We believe that these recommendations would be inconsistent with the objective of flexibility afforded by the "comply or explain" approach which underlies the Proposed Policy and the Proposed Instrument. We have therefore not adopted these suggestions. We believe that recommending two-thirds of the directors on a board be independent would be inappropriate and out-of-step with international standards. We agree that issuers should identify both independent and non-independent directors. We also agree that issuers should disclose their basis for determining that a director is not independent. However, we believe that requiring issuers to disclose the basis for determining that a director is independent would be impractical. We have revised the Proposed Instrument accordingly. We agree that issuers should publish a list of boards on which directors serve and have included this requirement in the Proposed Instrument. However, in light of the other guidelines and disclosure requirements, we do not believe it to be necessary to require all issuers to disclose directors' attendance.
B.8	**Independent Chair or Lead Director – Guideline and Disclosure Requirement**	One commenter suggested that the guidelines be amended to provide that if the chair is not an independent director, a lead director should be appointed. However, the commenter further suggested that the lead director's role be limited to matters involving independent directors. Another commenter suggested that MP 58-201 require that the chair be an independent director.	The guideline now recommends that where a chair is not independent, an independent director should be appointed to act as a lead director. However, the guideline continues to recommend that the independent lead director act as an effective leader of the board, and ensure that the board's agenda will enable it to successfully carry out its duties. We note that this guidance is consistent with the recommendations set out in the Saucier Report (2001). See paragraph 1 of the response to Item B.7, above.
B.9	**Meetings of Independent Directors –**	Two commenters suggested that the guideline recommending that independent board members hold	We believe that it is appropriate for independent directors to hold regularly scheduled meetings at which members of management are not in attendance.

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	Guideline and Disclosure Requirement	separate, regularly scheduled meetings be amended to conform to the NYSE listing requirements, which only require these meetings to be held by non-management (rather than independent) directors. In the view of one of these commenters, the failure to make such a change would result in a "two-tier board". In the view of the other commenter, the change would promote cross-border harmonization and further the goal of empowering non-management directors. Two commenters recommended that issuers disclose the number of meetings held by the independent directors. One of these commenters also recommended that issuers be required to disclose attendance records for such meetings.	We believe this properly empowers the independent directors. We fail to see how it would will result in a greater risk of developing a "two-tier board". The Proposed Instrument now requires issuers to disclose the number of meetings held by the independent directors over the preceding 12 month period. However, we do not believe that it is necessary to mandate disclosure of attendance at these meetings. See also paragraph 4 of the response to Item B.7, above.
B.10	**Board Mandate – Guideline and Disclosure Requirement**	One commenter recommended that boards be required to draft a written board mandate. Six commenters suggested that the level of board involvement contemplated was inappropriate (*e.g.*, directors should not be responsible for policing compliance with ethics codes; boards should not be directly responsible for risk identification and management or succession planning). The commenters generally recommended that the guidelines be revised to coincide with directors' obligations under corporate law. However, another commenter noted that while management must have the right to manage on a day-to-day basis, closer supervision by directors should be an objective. One commenter suggested that we recognize the right and responsibility of directors to monitor ethical decisions by directors. Another commenter suggested that the board's mandate include clearly defining the level of accountability of a CEO (including metrics and a time horizon during which to achieve objectives). Another commenter recommended that the board mandate also include ensuring the compensation of the CEO and senior officer is not	See paragraph 1 of the response to Item B.7, above. We believe it is fundamental to any system of corporate governance that the board assume explicit responsibility for those areas identified in paragraph 3.4 of the Proposed Policy. We note that subsection 102(1) of the *Canada Business Corporations Act* provides that, subject to any unanimous shareholder agreement, the directors shall manage, or supervise the management of, the business and affairs of a corporation. In light of this, we fail to see how the level of board involvement contemplated by the guidelines is inconsistent with a director's corporate law obligations. Furthermore, we note that these guidelines are substantially similar to the guidelines adopted by the TSX in 1995. The Proposed Policy recommends that the board monitor compliance with its code, including compliance by its own directors. We believe this guideline adequately addresses the concerns raised by the commenter. The guidelines recommend that the board, together with the CEO, develop a clear position description for the CEO and that the board develop or approve the corporate goals and objectives that the CEO is responsible for meeting. The guidelines also recommend that the compensation committee review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and

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		constructed in such a way as to encourage unethical behaviour.	determine or make recommendations to the board with respect to CEO compensation based on this evaluation. We believe that these guidelines adequately address the concerns raised by the commenter.
		Three commenters recommended that more guidance be provided with respect to the steps used in assessing the integrity of a CEO and senior officers.	We believe that any determination of the steps that should be taken must be made on a case by case basis, and that any statement regarding these steps, even on a generic basis, would likely only foster a "check- list mentality".
		Three commenters suggested that more guidance be given with respect to measures for receiving feedback from security holders.	The relevant guideline now provides an example of a measure for receiving feedback from shareholders.
		Two commenters disliked the recommendation that the board mandate set out decisions requiring pre-approval by the board. The commenters noted that this could result in extensive disclosure that would be confusing to investors. Furthermore, one commenter suggested that this information could, in some circumstances, also be proprietary.	We have deleted this recommendation from the Proposed Instrument.
		One commenter suggested that, to avoid increased printing costs for an issuer's AIF, the written mandate for the board be disclosed by posting it on the issuer's website or by filing it on SEDAR. Another commenter recommended that, in addition, the mandate also be published in the issuer's circular every three years.	We do not believe that the cost of including the board's mandate in an issuer's AIF or management information circular will be onerous. Consequently, we have not revised the Proposed Instrument.
B.11	**Position Descriptions – Guideline and Disclosure Requirement**	Five commenters suggested that it was unnecessary to have a position description for each director because either (i) the director's duties were already imposed by law, or (ii) this information would be contained in the board mandate. One commenter suggested that, as an alternative, the board set out its expectations of its directors, either in the board mandate or in a separate document.	We have deleted the guideline recommending that the board develop a written position description for directors, but have added guidance recommending that the board mandate set out expectations and responsibilities of directors, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials. This guidance is now substantially similar to the requirements of the NYSE.
		Several commenters were concerned that the guidelines suggested each individual director have their own position description tailored to their particular skills and	

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		competencies. The commenters believed that this would inappropriately focus attention on individual directors, rather than the board as a whole. Three commenters suggested that it was not necessary to have a position description for "chairs" of board committees, as the responsibilities of the chairs would be contained in the committee charter. One commenter suggested that the phrase "delineating management's responsibilities" be clarified in connection with the position description for the CEO.	The charter of a committee may set out an adequate position description for a committee chair. In such a case, we believe that this would be sufficient for an issuer to have satisfied the "position description" guideline. We believe that the phrase "delineating management's responsibilities" is sufficiently clear. We have not therefore revised this guideline.
B.12	**Orientation and Continuing Education – Guideline and Disclosure Requirement**	One commenter recommended that the guideline regarding continuing education be flexible as opposed to prescriptive. One commenter suggested that the guidelines recommend that investor relations form part of director orientation and ongoing board briefings. Two other commenters recommended that director education specifically include a component on ethics. Two commenters suggested we clarify what it means for a director to "fully understand" an issuer's business. The commenters believed that it was unrealistic to expect all new directors to fully understand the nature and operations of an issuer's business, at least in the short term. One commenter suggested that more guidance be given on the type of disclosure that is expected regarding director orientation and continuing education.	We believe the guideline, as written, is flexible. As currently drafted, the guideline suggests that all new directors should receive a "comprehensive orientation". The guideline goes on to specifically suggest that directors should understand the role of the board, the contribution that individual directors are expected to make, and the nature and operations of the issuer's business. We do not believe it is necessary to specifically recommend other areas that should be included in a director's "comprehensive orientation", as that is best left to the discretion of the board. We agree and have amended the guideline accordingly. We believe the additional guidance is unnecessary.
B.13	**Code of Business Conduct and Ethics – Guideline – General**	One commenter recommended that the preamble to MP 58-201 include a reference to the promotion of integrity throughout the organization and not just deterring wrongdoing. A number of commenters suggested that a code be mandatory for issuers.	We have amended the guidelines respecting the code of business conduct and ethics (a **code**) to specifically encourage the promotion of integrity. See paragraph 1 of the response to Item B.7, above.

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		Three commenters suggested that the provisions relating to codes be bolstered Three commenters suggested that the code include social and environmental aspects. One commenter recommended that the code specifically prohibit corrupt behaviour. One commenter suggested that the board undertake a periodic review of the code to determine its adequacy and effectiveness. Another commenter suggested that a "chief ethics officer" be designated.	The guidelines relating to the code were drafted to be broadly applicable. However, issuers are not precluded from including additional provisions in their own codes. While we agree that these measures would be useful in facilitating an ethical corporate culture, we are of the view that these measures would be encompassed in the board's mandate in connection with the creation of a culture of integrity throughout the organization.
B.14	**Code of Business Conduct and Ethics – Guideline – Monitoring Compliance with the Code**	One commenter suggested that issuers be required to report on how they integrate codes into their decision-making (*e.g.* training). Another commenter recommended that issuers report on their "ethical management structure" and specific ethics and governance tools that are in place. Two commenters recommended that the board be required to disclose the steps or mechanisms used for monitoring the code.	We believe that the measures underlying these proposed reporting requirements, together with other measures, would be considered by the board in fulfilling its mandate in connection with the creation of a culture of integrity throughout the organization. In addition, the Proposed Instrument now requires that issuers describe any steps its board takes to encourage and promote a culture of ethical business conduct. In our view, these measures adequately address the commenters concerns.
B.15	**Code of Business Conduct and Ethics – Disclosure – Filing of Code**	One commenter suggested that the voluntary adoption of a code puts issuers who have chosen to adopt a code under greater regulatory scrutiny that those issuers who do not adopt one. Five commenters suggested that codes be posted on issuers' websites rather than filed on SEDAR. Two of these commenters also recommended that codes be published in proxy circulars, either annually or every three years.	We do not intend to place issuers who adopt a code under greater regulatory scrutiny. However, we acknowledge that issuers who do not adopt a code may be subject to greater market scrutiny. As not all reporting issuers have websites, the Proposed Instrument requires issuers to file a copy of their code on SEDAR. As the code would always be available on SEDAR, we do not believe that it need also be published in an issuer's proxy circular.
B.16	**Code of Business Conduct and Ethics – Disclosure – Disclosure of Waivers from Code**	Two commenters disagreed in principle with the concept of waivers from the code, as there should be an expectation that deviation from the code is not acceptable. Another commenter believed that boards should only grant waivers if they explain the reasons for their decision. One commenter considered that a press release would be appropriate if a waiver of the code was granted. Five commenters suggested that waivers of the code should only be the subject of a press release if the waiver would be material to the issuer. One of these commenters suggested that, if regulators decide that press releases were necessary	We believe that, in some circumstances, it may be both necessary and appropriate for a provision of a code to be waived. We recognize that it may be inappropriate for issuers to press release every waiver of a code, and have therefore revised the Proposed Instrument to remove this requirement. We believe that conduct of a director or an executive officer that constitutes a material departure from the code will likely constitute a material change within the meaning of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) We note this guidance is largely consistent with that articulated in Part IV of National Policy 51-201

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		for every waiver that is granted, issuers should not be required to disclose the name of the individual to whom the waiver was granted. Another of these commenters suggested that waivers be disclosed in quarterly reports, together with the rationale for any waivers. Four commenters suggested that only waivers to executive officers should be disclosed (to be consistent with U.S. requirements). Two commenters noted that there is an inconsistency between the requirement under MI 58-101 to disclose waivers (which includes any granted to directors and officers of an issuer or subsidiary) and the requirement in an AIF which only requires disclosure of waivers granted to directors and officers of an issuer. One of these commenters also noted that there is an inconsistency between MP 58-201, which recommends that any waivers granted to the issuer's directors or senior officers be granted by the board and the disclosure requirement to disclose waivers granted to directors and officers of the issuer or a subsidiary. Two commenters suggested that the definition of "implicit waiver" should refer to a failure by the issuer as opposed to the board of directors to take action within a reasonable time.	*Disclosure Standards*. Form 51-102F3 requires every material change report to include a full description of the material change. Where a departure from the code constitutes a material change to the issuer, we expect that the material change report will disclose, among other things: • the date of the departure • the party(ies) involved in the departure • the reasons why the board has or has not sanctioned the departure • any measures the board has taken to address or remedy the departure
B.17	**Nomination of Directors and Nominating Committees – Guideline and Disclosure Requirement**	Two commenters suggested that nominating committees be comprised of a majority of independent directors. Another commenter made this same suggestion, but only until further study is conducted. A fourth commenter suggested that nominating committees be composed entirely of independent directors, while a fifth commenter recommended that a fully independent nominating committee be required. Another commenter submitted that controlled companies should not have to limit nominating committee membership to independent directors. Five commenters suggested that the two-step nominating process needed to be more flexible. One of these commenters, however, suggested that if greater flexibility is given, issuers should disclose the processes they have used	Because the nomination process is a fundamental element of corporate governance, we believe that nominating committees should be composed entirely of independent directors. As a result, we have not revised the guideline. With respect to controlled companies, see the response to Item B.6, above. While we believe that the two-step process is important, we have modified the guideline to clarify that the two steps need only form part of the nomination process. In addition, the Proposed Instrument now requires issuers to disclose the process by which their boards identify new candidates.

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		in nomination and recruitment. One commenter suggested that nominating committees consider the independence status of nominees. Another commenter suggested that nominating committees look beyond traditional candidates in their searches for directors. A third commenter recommended that the committee focus on integrity and reputation in making its recommendations. A fourth commenter suggested that the guidelines recommend that investor advocates and investment professionals be considered for nomination. One commenter suggested that the charter of the nominating committee be posted on an issuer's website and disclosed in its proxy circular every three years, with any significant changes to such policy being published in the next proxy circular and posted on the issuer's website.	We believe it is sufficient for the guideline to state that a nominating committee consider both the competencies and skills the board requires, and the competencies and skills that candidates will bring to the boardroom. This does not suggest, however, that additional considerations (*i.e.*, independence) should not also form part of the committee's considerations. These additional considerations, however, should be based upon the issuer's own circumstances and needs. We have removed the requirement that an issuer disclose the text of its nominating committee charter (if any). Instead, we now propose that issuers disclose in their management information circulars the responsibilities, powers and operation of the nominating committee. We believe that this disclosure requirement will provide sufficient transparency to the marketplace while relieving issuers of the burden to reproduce, on a regular basis, the text of the nominating committee charter.
B.18	**Compensation and Compensation Committees – Guideline and Disclosure Requirement**	Two commenters suggested that compensation committees be comprised of a majority of independent directors. Another commenter made this same suggestion, but only until further study was conducted. A fourth commenter suggested that compensation committees be composed entirely of independent directors, while a fifth commenter recommended that a fully independent compensation committee be required. Another commenter submitted that controlled companies should not have to limit compensation committee membership to independent directors. Two commenters suggested that the compensation committee be permitted to both determine and approve the CEO's compensation, or to make recommendations to the board regarding such compensation. Another commenter suggested that MP 58-201 should clearly state that the responsibility for determining director compensation falls to the compensation committee. Three commenters suggested that an issuer's compensation principles and philosophy be disclosed. Two commenters recommended that the compensation committee disclose	Because the compensation process is a fundamental element of corporate governance, we believe that compensation committees should be composed entirely of independent directors. Therefore, we have not revised the Proposed Instrument as suggested. With respect to controlled companies, see the response to Item B.6, above. We have revised the applicable guideline to clarify that the compensation committee may either determine the CEO's compensation or make a recommendation to the board regarding the CEO's compensation. The Proposed Instrument now requires issuers to describe the process by which their board determines the compensation for their company's directors and officers.

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		the metrics it uses to determine compensation. One commenter suggested that all forms of executive compensation be disclosed, including estimates of the present value of pensions for "named executive officers". One commenter recommended that the provisions of the Proposed Policy relating to compensation include a statement of principle that the design of a compensation plan is more important than the size of total remuneration. Another commenter suggested that MP 58-201 provide more guidance on best practices relating to compensation policies, and that MP 58-201 recommend that the compensation committee select a "defensible peer group" from which to benchmark and establish equitable executive compensation. A further commenter recommended that the committee review the CEO's contribution to a culture of integrity in making its determination regarding recommended compensation. One commenter suggested that all disclosure relating to compensation should be centralized, perhaps in Form NI 52-102 F6 *Statement of Executive Compensation.* One commenter suggested that the charter of the compensation committee by posted on an issuer's website and disclosed in its proxy circular every three years, with any significant changes to such charter being published in the next proxy circular and posted on the issuer's website.	We believe that the disclosure of executive compensation has been appropriately dealt with in the context of National Instrument 51-102 *Continuous Disclosure Obligations*. The guidelines recommend that, in developing a position description for the CEO, the board should develop or approve the corporate goals and objectives that the CEO is responsible for meeting. Further, the guidelines also suggest that, in recommending or determining the CEO's compensation, the compensation committee also review goals and objectives relevant to the CEO's compensation and evaluate the CEO's performance in light of these goals and objectives. We have drafted the guidelines to be flexible and broadly applicable; consequently, we have not revised the guideline to include some of the more specific suggestions provided by the commenters. Nothing in the Proposed Instrument requires an issuer to repeat disclosure in more than one location in a document. The Proposed Instrument no longer requires the text of charter of the compensation committee to be disclosed. Instead, we are now proposing that issuers disclose the responsibilities, powers and operation of the compensation committee. We believe this disclosure requirement will provide sufficient transparency to the marketplace while relieving issuers of the burden to reproduce, on a regular basis, the text of the compensation committee charter.
B.19	**Regular Board Assessments – Guideline and Disclosure Requirement**	One commenter suggested that the board be assessed as a whole and that it was not necessary to assess individual directors. Another commenter suggested that the board should implement a process to carry out assessments but that the nominating or other appropriate committee should then carry out the process. A further commenter suggested that individual committees conduct performance assessments of the chairs of committees. One commenter suggested that the assessment process used by issuers be flexible and disclosed annually. Another	We disagree. We believe that the performance of individual directors is integral to the effective functioning of the board. The Proposed Policy now permits flexibility regarding who conducts the assessment. The Proposed Instrument requires issuers to disclose whether or not the board, its committees and directors are regularly assessed. If assessments are

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		commenter suggested that the assessment process be disclosed with sufficiently high level of detail to assure investors that a strong and viable program was in place. One commenter suggested that issuers perform board, committee and individual assessments on an annual basis and include summaries in the proxy circular.	regularly conducted, issuers are required to disclose the process used for the assessments. We expect that issuers will provide a sufficiently high level of detail in their disclosure to permit a reader to understand the issuer's assessment process. We do not believe it necessary to mandate this disclosure for all issuers.
	Miscellaneous Comments		
B.20	**Miscellaneous Comments – Other Corporate Offices**	One commenter noted that neither MP 58-201 nor MI 58-101 addressed who should have the principal responsibility for corporate governance matters. One commenter suggested that an issuer's internal auditors be responsible for monitoring compliance with the best practices outlined in MP 58-201. Two other commenters suggested that issuers appoint corporate governance officers. One of these commenters recommended that such role be played by the corporate secretary. Two commenters recommended that issuers have a corporate governance committee comprised of independent directors (or a majority of independent directors and an independent chair). One of these commenters also recommended that similar disclosure standards apply to this committee as apply to the nominating and compensation committees. One commenter suggested that MP 58-201 require reporting to shareholders on an issuer's corporate governance standards and practices and its evaluation of the effectiveness of such standards and practices.	We believe that the responsibility for developing an issuer's approach to corporate governance lies with the board. Where appropriate, the board may appoint a corporate governance committee to specifically consider corporate governance issues. We believe the disclosure obligations contained in the Proposed Instrument will provide sufficient transparency to shareholders. We do not believe that a requirement for a separate report to the shareholders is therefore justified.
B.21	**Miscellaneous Comments – Fiduciary Duties, Etc.**	One commenter noted that the January Proposal did not discuss the alignment of interests between board members and shareholders or the fiduciary duty of board members to shareholder. Further, the commenter noted that there were no specific guidelines on takeover protection or shareholder rights.	In our view, other legislation and policy (such as the *Canada Business Corporations Act* and OSC Rule 61-501 *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions*) provide appropriate guidance and discussion regarding these topics. Consequently, we have not revised the Proposed Policy to reflect these concerns.
B.22	**Miscellaneous**	Two commenters noted that MP 58-201 did not identify	We do not believe that this disclosure is necessary or appropriate.

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	Comments – Compliance	how the guidelines would be monitored or how compliance would be assessed. Three commenters suggested that the enforcement mechanisms which the regulators propose to use be set out in the Instrument.	
B.23	**Miscellaneous Comments -- Other**	One commenter recommended that the auditor's engagement letter be published in the issuer's management discussion and analysis. One commenter recommended permitting votes FOR or AGAINST individual directors, as in the case in the United Kingdom proxy ballots. The commenter noted that this would require a change from WITHOLD to AGAINST and a requirement to vote each director separately rather than slates. The commenter also was in favour of not allowing custodians that hold shares for investors to vote for incumbent directors without the permission of the actual owners. Another commenter suggested that consideration be made of dual-level board structures, as seen in Germany and Ireland.	We believe that this requirement goes beyond the scope of the Proposed Instrument and the Proposed Policy. Consequently, we have not addressed this issue here. Because these comments touch on matters of corporate law, we have not addressed this issue here. See above.

C. Comments About the April Proposal

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	General Comments		
C.1	**Venture Issuers**	One commenter was of the view that venture issuers should have an open-ended approach to disclosure as opposed to using a "comply or explain" approach.	The Proposed Instrument now permits an open-ended approach to disclosure for venture issuers.
C.2	**Application**	Two commenters suggested there be an exemption for a subsidiary issuer that is a reporting issuer if it has no equity securities trading on a marketplace and its parent company complies with the rule or the comparable U.S. rules. This exemption would parallel an existing exemption in paragraph 1.2(e) of MI 52-110.	We agree, and have included the exemption in the Proposed Instrument.
C.3	**Meaning of Independence**	One commenter suggested that, for consistency, all jurisdictions should use the same definition of independence. Another commenter questioned why BC-only reporting issuers should use the definition of "independent director" set out in MI 51-104, and noted that	By using the meaning of independence set out in MI 52-110, we have ensured that there is only one set of criteria for the vast majority of issuers. Unfortunately, as MI 52-110 was not adopted by the British Columbia Securities Commission, issuers that are reporting issuers in only BC must apply a different independence standard.

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		it would introduce an added layer of uncertainty for such reporting issuers. A third commenter suggested that the BC definition of independence was too general, and suggested different tests for independence One commenter also noted that it was inappropriate for the BC-only definition of independence to refer to independence of any significant shareholder. The commenter noted that this was wrong from a public policy basis and was a material departure from other definitions of independence.	We are of the view that ownership of an issuer's voting securities may, in some circumstances, affect independence. In harmony with the BC-only definition, we have added guidance to the companion policy to MI 52-110 to clarify this. For more information, see the response to B.6, above.
C.4	**Disclosure and Filing Requirements**	Three commenters agreed that the required disclosure should be contained in an issuer's management proxy circular or MD&A. Another commenter suggested greater flexibility by giving the issuer the option to make its corporate governance disclosure in its management information circular or in its annual report or on its web site with notice in its annual report or management information circular that the information is on its website and available in print upon request. One commenter noted that NI 51-102 recently introduced the flexibility of allowing issuers to incorporate by reference other continuous disclosure filings. It would be inconsistent with the reasoning behind this recent change to preclude issuers from incorporating governance disclosure by reference. One commenter noted that it was inappropriate to require issuers to include the disclosure in the annual MD&A, as this is required to be certified by the CEO and CFO and it is not appropriate to require such officers to certify corporate governance disclosure.	The Proposed Instrument now requires issuers to generally provide the disclosure primarily in their management information circulars. Nothing in the Proposed Instrument prohibits an issuer from incorporating disclosure by reference. The Proposed Instrument requires issuers to include the required disclosure in their management information circulars. Non-venture issuers that are not required to send a management information circular must provide the required disclosure in their AIF. Venture issuers that are not required to send a management information circular may include the required disclosure in an AIF or their MD&A. Both the AIF and MD&A are included in the definition of "annual filings" under Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filing*s. We do not see a difference between the certification requirement as it relates to corporate governance disclosure and as it relates to any other disclosure required to be included in an AIF or MD&A.
	Comments on Specific Disclosure		

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	Requirements		
C.5	**Format of Disclosure**	One commenter suggested providing the required disclosure in chart format.	We do not believe it is necessary to prescribe the format of the disclosure.
C.6	**Board of Directors**	Three commenters suggested that issuers should be required to indicate which directors are independent. Two commenters recommended that, for each director who is not independent, the issuer should disclose the relationship that makes the director not independent.	We agree. These comments have been reflected in the Proposed Instrument.
C.7	**Board Committees**	One commenter did not believe it necessary or useful to describe all other committees of a board, provided that the disclosures respecting how the board addresses its responsibilities with respect to compensation and director nomination matters, whether through a committee or otherwise are already included. Another commenter added that most of the large issuers already disclose all of their board committees and membership, therefore, the disclosure requirement is not onerous and they supported mandating this requirement.	We disagree. The principal objective of the Proposed Instrument is to promote transparency to the marketplace regarding an issuer's corporate governance practices. We believe it to be important that investors understand the governance structures, including its committee structure. We agree. We have included this requirement in the Proposed Instrument.
C.8	**Ethical Business Conduct**	One group of commenters noted that the wording of this provision is too vague. They suggested deleting this provision as well as the corresponding instruction, and amending the section to be more closely harmonized with MI 58-101 and MP 58-201.	Instruction 3 in Form 58-101F2 now provides a cross-reference to paragraph 3.8 of the Proposed Policy for guidance.
C.9	**Assessment**	One commenter noted that information on the board and committee assessment process is useful for the investor, regardless of whether written position descriptions exist. A description of the assessment process will communicate to investors that the performance of the board, committee chairs, CEO and directors are assessed against written position descriptions. This will provide comfort to the investor that the people occupying these positions are meeting the obligations of their position. Another commenter suggested harmonizing the assessment provision in MI 51-104 with the corresponding NYSE rule 9 and not requiring the assessment of each director on an individual basis. This group also suggested the deletion of sections 5(1)(c) and 5(2)(b) and (c).	We agree. We have included this requirement in the Proposed Instrument. We disagree, as the performance of individual directors is integral to the effective functioning of the board. However, the Proposed Policy now permits significant flexibility regarding who conduct the assessments.
C.10	**Compensation**	One group of commenters noted that, regardless of whether the issuer has a compensation committee or not, investors	We agree. We have included this requirement in the Proposed Instrument.

No.	April Proposal Section/Topic	Comment	Response
		need to understand the process used to determine compensation. Whether this process is described in the compensation committee charter or elsewhere, it should be disclosed in any event, particularly as it relates to the process to determine director compensation. Another commenter suggested that the disclosure of any steps taken to determine compensation for the directors and chief executive officer is too far reaching. They added that existing law adequately addresses compensation disclosure, therefore, they suggested that this provision be deleted.	We disagree.
C.11	**Nomination of Directors**	One commenter recommended that the investor be able to understand the process for selection of board candidates, regardless of whether there is nominating committee. Another commenter noted that the requirement to disclose any steps taken to identify new candidates for board nomination and the process for identifying new candidates is too prescriptive and may require unnecessarily detailed disclosure. One commenter noted that the charter for the nominating committee is an important document. Proper disclosure would entail posting it on the issuer's web site and publishing every three years in the information circular. If significant changes to the charter occur within the three years period, the changes should be posted on the issuer's web site and in the issuer's next information circular.	We agree. We have included this requirement in the Proposed Instrument. We disagree. We have removed the requirement that an issuer disclose the text of its nominating committee charter (if any). Instead, we now propose that issuers disclose in the management information circulars the responsibilities, powers and operation of the nominating committee. We believe that this disclosure requirement will provide sufficient transparency to the marketplace while releasing issuers from the burden to reproduce, on a regular basis, the text of the nominating committee charter.