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VIA COURIER

December 13, 2004

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

Dear Sirs:

**Re: Request for Comment - Proposed National Policy 58-201
(Corporate Governance Guidelines) and Proposed National Instrument 58-101
(disclosure of corporate governance practices)**

Ontario Teachers' Pension Plan ("Teachers'") is an independent corporation responsible for investing \$79 billion in assets and administering the pensions of Ontario's 155,000 elementary and secondary school teachers and 97,000 retired teachers. Teachers' is one of Canada's largest institutional investors, with significant equity and debt investments in many Canadian reporting issuers.

We have reviewed the proposed Policy 58-201 and National Instrument 58-101 and we have the following comments.

Proposed National Policy 58-201

Compensation committees:

Compensation committees should review and approve all compensation that is offered to chief executive officers. This includes cash compensation (salary, bonus, and otherwise), all forms of equity or equity-based compensation, pensions and other retirement allowances and benefits, loans, severance and change of control arrangements, and all other perquisites and personal benefits.

We are concerned that issuers may be taking an unreasonably narrow view of “compensation” and that many compensation committees may not have the opportunity to review and assess substantial non-traditional forms of compensation (e.g. perks and benefits) that CEOs are receiving. We note that in the United States, Securities and Exchange Commission staff has recently indicated concern that issuers may be improperly omitting perks from executive compensation disclosure and also improperly valuing perks. For an independent compensation committee to be denied the opportunity to review all forms of compensation to be offered to a CEO would be a significant departure from best practices, in our view.

We are also concerned that section 3.17 suggests that compensation committees should play a role in reviewing compensation for existing CEOs, but not for proposed CEOs. Section 3.17(a) indicates that compensation committees should determine (or make recommendations concerning) CEO compensation based on an evaluation of CEO performance in light of corporate goals and objectives. This type of review is only applicable to CEOs that have already been hired. Compensation committees should also determine (or recommend) the compensation that will be offered to a proposed new CEO – something that cannot be based on performance in light of corporate goals and objectives.

We suggest that section 3.17 be amended to expressly indicate that all forms of CEO compensation to be offered to existing and proposed CEOs should be reviewed and determined (or recommended) by the compensation committee.

Proposed National Instrument 58-101

Application to proposed directors:

Forms 58-101F1 and 58-101F2 address only an issuer’s directors as of the date of the issuer’s management information circular seeking proxies for the election of directors. However, the information in item 1 (a to d) of Form 58-101F1 and items 1 and 2 of Form 58-101F2 will be “stale” and of very limited use, if management is proposing anything other than simply re-electing all incumbent board members and no new board members. Investors will not be provided with information as to the independence of proposed new board members, while being provided with information about a departing board member’s independence, which is primarily of historical relevance.

It would be better to inform shareholders about a proposed new director's independence before a vote, rather than only after the director is elected. The issuer's nominating committee presumably will have enquired into issues such as a potential new board member's independence when considering possible nomination, so the information required to make this disclosure should be at hand for most issuers anyway and we expect that disclosure would not impose any significant burden on issuers. **We suggest that item 1 (a to d) of Form 58-101F1 and items 1 and 2 of Form 58-101F2 cover both the individual directors (and board as a whole) in place as of the date of the issuer's management information circular and any new directors (and the proposed new slate as a whole) supported by management in the management information circular.**

Disclose directors' and CEO's other board seats:

Instrument 58-101 provides that issuers should publish a list of reporting issuer boards on which directors serve. This allows investors to consider the experience and perspectives a director may bring to the issuer's board, the other commitments a director has, and what situations exist where directors overlap with one another in terms of sitting on the same board in multiple circumstances. We believe that this disclosure should extend to all boards on which each directors sits (not only the boards of reporting issuers) and all boards that the issuer's CEO sits on.

If the same two directors sit together on boards of more than one issuer, there is a perceived risk of decisions being made not wholly in the interests of one issuer, and this perceived risk is exacerbated if the "interlock" in question involves multiple CEOs sitting on boards charged with supervising one another. The proposed Instrument goes only partway in terms of adequate disclosure to investors of the facts that underlie this concern, and it does not address the most problematic area of the issuer's CEO being a director of another issuer, the CEO of which is a director of the first issuer.

It is arbitrary and ill-conceived to limit this disclosure to reporting issuer situations. If a director happens to sit on another board, that is relevant and important to investors – whether or not that other board is the board of a reporting issuer is not a significant distinction. Potential and actual conflicts on the part of CEOs and directors should not be hidden from investors simply because the situations in question involve something other than a reporting issuer.

We suggest that Forms 58-101F1 and 58-101F2 be amended to require disclosure of situations in which the issuer's directors and CEO serve on the board of any entity (a corporation, trust, partnership, association or other entity). This is very important information for investors, and we expect that this disclosure would not impose any significant burden on issuers.

Disclose compensation consultants:

Policy 58-201 provides that compensation committees should be permitted to engage external advisors to assist them in their deliberations. Compensation consultants now play a crucial role in informing many compensation committees about the range of alternatives available for CEO compensation, and they are hugely influential in determining how CEOs are compensated. Whether or not a CEO's compensation package as a whole aligns the interests of the CEO with the interests of investors is one of the most fundamental issues in a corporation's governance structure.

In our view, investors should have a right to know whether or not a compensation committee is engaging an external advisor for advice on the committee's most important role and, if the committee is engaging an advisor, who the advisor is, what mandate has been given to the advisor, and what work the advisor is otherwise doing for the issuer. Investors are relying on the compensation committee's judgment, and where the committee has in turn relied on a third party, investors should be informed (including with respect to independence from management). **We suggest that Forms 58-101F1 and 58-101F2 be amended to require disclosure of whether or not the compensation committee has retained any external advisor, and if it has done so, who the advisor is, the mandate of the advisor, and any other work the advisor is doing for the issuer.** Once again, this is very important information for investors, and we expect that this disclosure would not impose any significant burden on issuers.

Disclose director attendance:

We believe it is necessary to require all issuers to disclose directors' attendance. Attending board and committee meetings on a regular basis is a minimal expectation for board members of public issuers, particularly in light of both the recent focus on the roles and responsibilities of boards and the general increase in levels of director compensation. The securities regulatory authorities have indicated that the purpose of the Instrument is to require issuers to disclose the corporate governance practices they adopt. A required attendance level for board members (and the board's level of tolerance for poor attendance) is a basic governance practice that an issuer's board adopts. Board members with deficient attendance are less likely to be adequately informed about the issuer's affairs, and are also less likely to be adequately participating in the issuer's governance.

Investors such as Teachers' find attendance disclosure to be particularly useful in assessing the performance of board members, and it is simple disclosure for an issuer to provide. **Forms 58-101F1 and 58-101F2 should be amended so that attendance by board members (on a member-by-member basis) at board and committee meetings is disclosed.**

Period covered by Form 58-101F1:

Items 1(e) and 5(a)(iii) of Form 58-101F1 require disclosure of information in relation to "the preceding 12 months" – referring to the 12 months before the Form 58-101F1 is issued. We

believe that this is not the appropriate timeframe which the disclosure should cover. We believe that the disclosure should cover the period since the issuer's last Form 58-101F1 was issued. This may be more than 12 months or less than 12 months, depending on how long the period has been since the issuer most recently sought proxies for the election of directors.

Issuers often seek proxies for the election of directors at a time that isn't precisely 12 months since they previously did so. If it has been more than 12 months since the issuer previously sought proxies for the election of directors, investors should be provided with information that covers the complete time period since the previous Form 58-101F1 (not only 12 months of that period). If it has been less than 12 months, there is no need for the issuer's Form 58-101F1 to address what has already been covered in the previous Form 58-101F1. **We suggest that items 1(e) and 5(a)(iii) of Form 58-101F1 require disclosure of information for the period since the issuer last filed a Form 58-101F1 (provided that an issuer's first Form 58-101F1 should cover the preceding 12 months).**

If you have any questions concerning these comments, please contact either of us (Catherine Jackson at telephone 416 730 5006 or email catherine_jackson@otpp.com, or Michael Padfield at telephone 416 730 6178 or email michael_padfield@otpp.com).

Yours truly,

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