



Transparency International Canada Inc.

6 May 2004

Mr. John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1900
Toronto, ON M5H 3S8

Saskatchewan Financial Services Commission
6th Floor, 1919 Saskatchewan Drive
Regina, SK S4P 3V7

Dear Sirs:

This is our response to the OSC's Request for Comments on:

- Multilateral Policy 58-201 Effective Corporate Governance, and
- Multilateral Instrument 58-101 Disclosure of Corporate Governance Practices.

About Ourselves

Transparency International ("TI") is a global, non-government, anti-corruption movement based in Berlin. Established in 1993, TI now has autonomous National Chapters, formed or forming, in almost 90 countries in every continent and at every level of development. The Canadian chapter was established in November 1996. TI is independent and politically non-partisan. TI works to build national, regional and global coalitions with government, business and other stakeholders - much of its efforts being directed at combating corruption internationally. However, TI does not investigate or expose cases of corruption.

TI has created a number of tools to help both measure and combat corruption. Among those tools are:

"Corruption Perceptions Index", which ranks countries, regarding the degree to which corruption is *perceived* to exist, among politicians and public officials;

"Bribe Payers' Index", which ranks leading export countries in terms of the degree to which their companies are *perceived* to pay bribes abroad;

“Bribery in Business Sectors Index”, which ranks those sectors, where senior public officials are *perceived* to demand or accept bribes; and

“Integrity Pacts”, which help governments, business and civil society work together in combating corruption, for example, in the field of public contracting.

Transparency International Canada’s -purpose is to inform the Canadian business community, all levels of the government and the general public of the effects of corruption in the international marketplace, and to provide support and resources for public and private sector initiatives to prevent corrupt business practices.

TI-Canada was instrumental in ensuring Canadian legislation was passed in time to allow for the implementation of the OECD Anti-Bribery Convention. TI-Canada continues to work closely with the Canadian Government and with other NGOs to ensure the ongoing viability of the OECD Anti-Bribery Convention and the OAS Inter-American Convention Against Corruption. To these activities will be added similar activities regarding the recent UN Convention against Corruption, including encouraging the Canadian Government to ratify this Convention as soon as possible.

TI-Canada works closely with the TI Secretariat in Berlin to promote various TI tools, viz. the Indices mentioned above and the Integrity Pacts. It also works with other National Chapters, where its expertise can be helpful and supportive.

Corruption - the antithesis of good governance

Corruption can be defined in many ways, and it takes many forms. For the purpose of this submission, we will use a simple definition:

the wilful misuse of power and authority for private gain.

This definition covers almost all the recent corporate excesses in the U.S.A. and in Europe as well as those in our own experience in Canada. While all the offending activities may not have been illegal or criminal (in fact, in some of the most egregious cases, the acts were within existing regulatory frameworks), they were all unethical and related to the topic of corruption in that they constituted misuse of entrusted authority.

TI-Canada’s Comments on the OSC documents

TI-Canada’s first comment follows from the foregoing: it is that the recommended Code of Business Conduct and Ethics (*paragraph 8 of the Multilateral Policy 58-201*) should be made **mandatory and prescriptive**, but with a provision permitting exemptions in exceptional cases with prior explanation to, and permission from, the OSC. In the present world, we see no justification for even the smallest issuer (which, by definition, has sought after, and has been entrusted with, public subscription to its equity and/or debt) not to place before the investing world a brief statement of its business beliefs and ethics - except in very rare and extraordinary situations.

Our second comment is that the list of issues to be covered in the Code (*paragraph 8 as aforesaid*) should be amended to include specifically an item **prohibiting corrupt behaviour**. We feel that the

present language (“compliance with laws”, “reporting of any illegal or unethical behaviour”) is inadequate. In particular, we recommend that there be a requirement that every Code contains an express abjuration by the issuer of the commonest form of corrupt behaviour - which is bribery.

Bribery, like corruption, takes many forms. Bribery, or even attempted bribery, is criminal in Canada in many cases, not the least of which is the bribery of foreign public officials. The latter was written into the Criminal Code in 1999, following Canada’s ratification of the OECD Anti-Bribery Convention. However, it is a sad reflection on Canadian corporate ethics that general awareness of this crime is lacking. For instance, the statute (*Corruption of Foreign Public Officials Act 1999*) is largely unheard of - and thus largely ignored - in the Canadian export business community.

The elimination of bribery from corporate accounts can only be achieved through **higher and more rigorous accounting standards** and **heavier certification obligations** on CEOs and CFOs. The OSC has already initiated steps for the latter, which we applaud. Our third comment is that the OSC should pressure the Canadian Institute of Chartered Accountants for the raising of accounting and auditing standards with the express object of detecting - and thus eliminating - corporate bribery, however well it may be disguised or camouflaged.

Our fourth comment is directed at the OSC itself - that it should raise even further the rigour and intensity of its examination and scrutiny of issuers’ financial reporting towards the same end - that of eliminating corruption. This will require the allocation of additional resources in people and money. We believe that this additional effort will be facilitated in future with the new CEO/CFO certification rules mentioned above as well as with corporate whistleblowing becoming easier than in the past.

Our fifth and final comment concerns the pending enactment of Bill C 13 which will strengthen the Canadian Criminal Code with regard to capital market offences. The Bill has stringent provisions dealing with insider trading, whistle-blower protection, evidence-gathering and sentencing of aggravated corporate offences. It also reflects some of the severe aspects of the Sarbanes-Oxley Act of the U.S.A. First introduced in Parliament in June 2003 as Bill C 46, the Bill was approved by the Commons and had even passed the first reading in the Senate. It was reinstated in the present Parliament as Bill C 13; it has been approved by the Commons and is now before the Senate again.

The OSC has taken interest in this Bill and has asked the Canadian Government for a small but significant strengthening of its wording. We support the OSC, and strongly urge the OSC to continue to press Government for the rapid enactment of the Bill. When enforced, this new act will add important weapons to Canada’s anti-corruption arsenal.

TI-Canada’s offer to the OSC

In the interest of brevity, we have not analyzed the aforementioned points at greater length in this letter. If the OSC is willing to consider our suggestions, we at TI-Canada are prepared to assist in the research and in the formulation of amended language for the Multilateral Policy 58-201 and the Multilateral Instrument 58-101. We would like to assure the OSC of our ability to provide fruitful assistance in these areas, including insights into parallel practices and developments in the U.S.A.

Yours sincerely,

Original signed by

Wesley Cragg
Chair and President

Copies enclosed for distribution to:

Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Nova Scotia Securities Commission
Securities Administration Branch, New Brunswick
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