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Nov 4, 2004

Mr. John Stevenson
Secretary
Ontario Securities Commission
Suite 1900, Box 55
Toronto, Ontario
M5H 2S8

Submitted electronically -

Re: Proposed Multilateral Instrument 58-101 Disclosure of Corporate Governance Practices

Dear Sirs and Mesdames

In my letter of May 28, 2004 I outlined that I had received comment from two contacts who sit on the boards of 15 larger public Canadian companies. These two Directors stated that most of their Directors peers are reluctant to bring closure in the clarifying of specific goals, metrics and a multi-year time horizon for measurement that the CEO role should be held accountable for.

These Directors also confirmed that current practice of Pay-for-Performance cannot work due to the lack of clear goals and objectives and time-spans from which to tie to compensation. The reality is most CEO roles lack clearly defined accountabilities and Boards are failing in their duty to shareholders. We think this is the majority and not the minority of boards of directors.

If your posted response you outline that given that goals and objectives relevant to CEO compensation are part of the guidelines that the above issues have been adequately addressed.

I would respectfully suggest you might want to reconsider the disclosure requirement for clear details about performance metrics and the time-horizon for measurement based on the following:

- In the last two weeks I met with a respected member of the business judiciary. We discussed director's duties, the business judgment rule and that some boards are failing in their strategic duty to shareholders.

In particular, I asked if Boards have set ONLY 1 to 2 year operational metrics and accountabilities to evaluate the performance of management in using 10 to 20 year capital provided by pension funds, and have NO process and exercised NO judgment in setting 3 year + strategic metrics and

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accountabilities to evaluate management performance, have Board Directors carried out their duty of care and good faith for shareholders. The Justice said NO.

The Justice outlined there is a strategic duty and good faith requirement in providing oversight to the assets that have been entrusted by shareholders, and the setting of strategic goals to enhance the economic value of the enterprise.

Unless the time-horizon for the goals and metrics is clearly disclosed for shareholders, and how this is tied into executive compensation, then investors have no indication whether boards are fulfilling their fiduciary duty under which they are provided protection under the business judgment rule.

A detailed reading of the NORTEL class action is a perfect example of where the board failed to set longer term, 3 yr + strategic metrics, but instead ONLY set short-term 1 year metrics and compensation incentives that drove fraudulent behavior in executive management. The impact in loss of shareholder value can be measured in the \$ 100 of millions of dollars. Mandatory disclosures like the ones I am suggesting would have been a flag for investors.

While you may not be able to mandate disclosure of both strategic and operational metrics for the CEO and the enterprise, that would be ideal, at least if it was mandatory to disclosed the metrics and time horizon for measurement, then an informed investor could then decide if they wanted to invest in a corporation lacking in strategic oversight by the board and the resulting impact on the risk profile of the company for investors. Especially since the business judiciary has already outlined that this is a breach of fiduciary duty of Directors.

Based on the above I would respectfully submit that:

The 58-101 Multilateral instrument must be more specific about:

the written position description for the CEO and the description must contain the key accountabilities, metrics and the time horizon for performance measurement for the CEO role.

and

the compensation committee must ensure that all compensation policy disclosures reflect what is measured, over what time duration, that actual compensation decisions made are linked to performance metrics and executed within disclosed policy.

and

ALL compensation, retirement and severance agreements must also be disclosed

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If these were mandatory disclosures, then investors may have been able to better manage one of the worst corporate governance failures in Canadian business history.

To improve corporate performance in Canada and returns for shareholders requires raising the bar on how these governance practices are adopted and become the new boardroom reality and a minimum standard for Director conduct.

We suggest if the CSA truly wants to bring about change in boardroom behavior and to protect investors with clear CEO accountabilities and pay for performance, then these additional rules as outlined must be adopted in the Instrument.

We thank you for the opportunity to provide further comment and if we can be of any further assistance please call me at 905-640-9637.

Yours very truly

Mark Van Clieaf
Managing Director

PS enclosed is my upcoming article about new standards for the compensation committee that will be published by The Corporate Board next week.