

**ALBERTA SECURITIES COMMISSION
NOTICE**

Corporate Governance and Accountability Survey

December 2, 2002

The Alberta Securities Commission, in response to the new corporate governance and management accountability provisions introduced in the United States, is examining whether, and to what extent, additional corporate governance provisions should be adopted in Alberta.

The Commission recognizes that changes in corporate governance and management accountability provisions may have a significant impact on market participants. Accordingly, feedback from stakeholders will be an important factor considered by the Commission when formulating its response. As a result of this recognition, the Commission has constructed and circulated a survey to obtain feedback from these stakeholders. The complete survey questions and participant responses can be found under the “What’s New” section of the Commission website.

The Survey Scope

The survey and a table comparing the proposed U.S. initiatives to existing provisions of Alberta corporate and securities laws and policies of the TSX and the TSX Venture Exchange were sent to over 3000 market participants, including all issuers listed on the TSX Venture Exchange, all other Alberta based reporting issuers, the Investment Dealers Association, and the Institute of Chartered Accountants of Alberta. The survey was also placed on the Commission’s website, a press release was issued that described the consultation process and provided a link to the survey and table, and an email containing information regarding the survey was sent to all subscribers to the Commission’s Summary Service.

In addition to distributing the survey, the Commission invited market participants including practising securities lawyers and accountants, investment dealers, and public company representatives to participate in focus groups to discuss the U.S. corporate governance initiatives.

Participant Feedback

The major themes that surfaced from the survey results and the focus group discussions can be summarized as:

- Although there are no serious problems with the current Canadian corporate governance standards, to enhance investor confidence Canadian regulators need to be seen to be taking action.

- We need a made-in-Canada solution that recognizes that:
 - one size does not fit all,
 - the Canadian capital markets have unique characteristics - including that a majority of Canadian issuers are small-cap or micro-cap issuers,
 - it is very important that any new rules not conflict with the U.S. initiatives,
 - Canadian regulators are not under the same time constraints faced by U.S. regulators and therefore should take time to consider each U.S. initiative thoroughly before adopting any specific initiative,
 - the securities commissions, not the stock exchanges, should lead a coordinated response to corporate governance issues,
 - strict detailed rules do not ensure good corporate governance - we need to promote a culture of ethical behaviour and critical assessment on boards,
 - effective enforcement is a key factor in instilling confidence in the integrity of our capital markets,
 - education of board members is important and regulators should consider instituting mandatory courses,
 - implications to MJDS should be considered, and
 - the U.S. initiatives would not have prevented the Enron problems.

In addition to the general themes as identified above, participants also provided the Commission with feedback regarding the specific requirements found in the U.S. initiatives. Examples of this feedback include:

- There is little objection to requiring management to certify that there are no misrepresentations in the financial disclosure and that financial statements present fairly the issuer's financial circumstances.
- There are some concerns regarding the costs associated with the certification of internal controls; however, there may be some value in putting these in place provided that the standard is clearly defined and that the controls recognize the differences between large-cap, small-cap, and micro-cap issuers.
- Audit committee independence is preferable, but again the differences between large-cap, small-cap, and micro-cap issuers must be taken into account.
- It is not necessary to prohibit loans to directors and executive officers. There are certain legitimate loans and these should not be prohibited. Loans may be best dealt with through disclosure.
- There is no strong objection to giving employees whistle blowing protection.

Going Forward

In addition to canvassing the market participants identified above, the Commission is currently conducting a separate survey directed at retail investors that focuses on the current level of investor confidence. It is anticipated that the results of this survey will be available by the end of the year.

The information gained by the Commission through these surveys, in addition to providing the Commission with valuable information regarding investor confidence and corporate governance matters, will be shared with a special CSA committee that has been struck to examine investor confidence issues and to co-ordinate a harmonized CSA response to the U.S. initiatives.

Further Information

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**~ RESULTS OF
SURVEY OF CORPORATE GOVERNANCE & ACCOUNTABILITY ISSUES ~**

		Other	TSX Exempt	TSX Non-Exempt	TSX Venture Tier 1	TSX Venture Tier 2	Total
A Goal: Enhance Disclosure made by Public Companies							
1. Do you think that it is important for us to make new rules in Canada to enhance the disclosure made by public companies?	Yes	7	5	5	1	6	24
	Neutral	6	3	6	3	8	26
	No	6	1	8	6	15	36
2. Most Canadian corporate law requires corporate directors and officers to exercise the care and diligence of a reasonably prudent person. Should this obligation be supplemented by requiring management of all public issuers to include a report with the annual financial statements which states:							
	(a) management's responsibility for establishing and maintaining internal control structures and procedures for financial reporting? (SOX)						
	Yes	9	6	7	3	8	33
	Neutral	3	2	3	2	4	14
	No	7	1	8	5	16	37
(b) the results of management's assessment of those controls? (SOX)							
	Yes	7	4	3	1	5	20
	Neutral	4	1	4	4	7	20
	No	8	4	10	5	17	44
3. Currently, it is an offence under securities legislation to make a misrepresentation in financial statements. Further, the Canadian Institute of Chartered Accountants ("CICA") has proposed a new guideline to deal with the consolidation of special purpose entities. Assuming the CICA guideline is adopted, are further rules needed to:							
	(a) ensure that off-balance sheet transactions are properly reported?						
	Yes	6	2	9	2	9	28
	Neutral	3	3	3	1	2	12
	No	10	4	6	7	18	45
(b) require companies to publicly disclose auditor adjustments? (i.e., material correcting adjustments to financial statements)							
	Yes	5	3	6	0	5	19
	Neutral	2	0	3	2	4	11
	No	11	6	9	8	20	54
(c) require pro forma financial statements to be reconciled to actual results? (SOX)							
	Yes	10	5	8	0	11	34
	Neutral	2	0	1	3	9	15
	No	7	4	9	6	9	35
B. Goal: Strengthen Corporate Governance							

		Other	TSX Exempt	TSX Non-Exempt	TSX Venture Tier 1	TSX Venture Tier 2	Total
1. Most Canadian corporate law requires directors and officers to act honestly and in good faith with a view to the best interests of the company and also requires public companies to have audit committees. However, most other corporate governance requirements or guidelines are imposed by stock exchanges. (e.g., TSX companies and Tier 1 TSX Venture Exchange companies must disclose how their corporate governance practices compare to TSX's recommended standards. TSX Venture Exchange companies must also comply with certain minimum corporate governance requirements). Are there serious problems with the current corporate governance practices of Canadian public companies that should be addressed by new rules or legislation?	Yes	3	1	0	0	2	6
	Neutral	5	3	4	2	2	16
	No	10	5	15	8	25	63
2. Independence							
(a) Should a majority of the directors of a public company be required to be "independent"? (i.e., not a member of management, not a controlling shareholder, not a material business partner or an affiliate of one and does not receive compensation from the company other than for acting as a director) (NYSE)	Yes	9	6	10	5	10	40
	Neutral	4	2	6	4	7	23
	No	6	1	3	1	12	23
(b) Should there be a minimum period (e.g., 3 or 5 years) before a proposed director who was not independent can be considered independent? (NYSE)	Yes	7	3	6	2	6	24
	Neutral	6	0	4	1	10	21
	No	6	5	9	7	13	40
3. Audit committees							
(a) Given that under corporate law, shareholders must generally approve the appointment of the auditor, is it necessary to also require that they be appointed by the audit committee? (SOX)	Yes	5	4	7	2	4	22
	Neutral	3	1	0	1	5	10
	No	10	4	12	7	20	53
(b) Should we require all public companies to have audit committees comprised entirely of "independent" directors? (i.e., not a member of management, not a material business partner or an affiliate of one and does not receive compensation from the company other than for acting as a director) (SOX)	Yes	8	4	7	4	3	26
	Neutral	2	1	2	0	5	10
	No	9	4	10	6	21	50
(c) If a person or company owns more than 50% of a public company, is it important that all members of the audit committee also be independent from the controlling shareholder? (NYSE)	Yes	12	7	13	6	15	53
	Neutral	2	2	2	1	3	10
	No	5	0	4	3	11	23
(d) Should we mandate that the audit committee is responsible for overseeing the auditors and establishing their compensation? (SOX)	Yes	9	9	6	4	12	40
	Neutral	3	0	3	2	8	16

		Other	TSX Exempt	TSX Non-Exempt	TSX Venture Tier 1	TSX Venture Tier 2	Total	
	No	7	0	10	4	9	30	
(e)	Should we require auditors to report to the audit committee all written communication with management and all discussions with management about critical accounting policies, possible different GAAP accounting treatments, their ramifications, and the auditor's preferred approach? (SOX)	Yes	12	6	13	7	21	59
	Neutral	5	1	2	1	6	15	
	No	2	2	4	2	2	12	
(f)	Should we require companies to disclose whether they have a financial expert on the audit committee? (SOX)	Yes	8	6	7	5	8	34
	Neutral	3	2	5	2	9	21	
	No	8	1	7	3	11	30	
(g)	Should we require public companies to have a financial expert on the audit committee? (NYSE)	Yes	8	6	10	5	6	35
	Neutral	1	3	1	1	8	14	
	No	10	0	8	4	15	37	
(h)	Should audit committees be required to have a written charter setting out their goals and responsibilities? (NYSE)	Yes	9	5	10	2	6	32
	Neutral	3	4	2	5	12	26	
	No	7	0	7	3	11	28	
(i)	Should we require public companies to provide funding to audit committees so that the audit committee can hire outside experts to help them? (SOX)	Yes	7	4	6	2	1	20
	Neutral	3	1	4	3	8	19	
	No	9	3	9	5	20	46	
4.	Should we mandate that non-management directors meet regularly and separately from management? (NYSE)	Yes	6	3	4	2	1	16
	Neutral	5	3	6	4	4	22	
	No	8	3	9	4	24	48	
5.	Is it important that non-management directors select a lead director for their non-management meetings and publicly disclose the identity of the lead director? (NYSE)	Yes	2	3	2	0	1	8
	Neutral	6	3	4	5	7	25	
	No	10	3	13	5	21	52	
6.	Should we require each public company to have a corporate governance committee, a compensation committee, and a nominating committee, with each committee - having a written charter setting out its goals and responsibilities, and - being comprised entirely of independent directors? (NYSE)	Yes	2	5	3	2	3	15
	Neutral	7	1	2	0	3	13	
	No	9	3	13	8	23	56	

		Other	TSX Exempt	TSX Non-Exempt	TSX Venture Tier 1	TSX Venture Tier 2	Total
7.	Should we mandate that each public company disclose on its website - its corporate governance charter - the charters of its most important board committees, and - its code of business conduct and ethics? (NYSE)						
	Yes	5	4	2	2	2	15
	Neutral	6	3	7	2	6	24
	No	8	2	10	6	21	47
C.	<i>Goal: Expand Insider Accountability</i>						
1.	Do management of Canadian public companies need to be made more accountable to shareholders for their actions? (e.g., held to higher standards, required to disclose their obligations)						
	Yes	9	3	5	2	5	24
	Neutral	3	2	4	3	8	20
	No	7	4	10	5	16	42
2.	Should the CEO and CFO be required to state that the annual and quarterly financial statement reports “fully comply” with securities laws and fairly present in all material respects the financial condition and results of operations of the company? (SOX)						
	Yes	8	5	5	4	10	32
	Neutral	5	2	7	2	5	21
	No	6	2	7	3	13	31
3.	Currently, it is an offence for financial statements to contain a misrepresentation and if there is a misrepresentation, the company and each director or officer who “authorized, permitted or acquiesced” in making the misrepresentation is also liable. In addition, currently, two directors are required to sign the balance sheet to evidence approval of the financial statements. Should we also require the CEO and CFO to certify all annual and quarterly financial statement reports indicating that they - have reviewed the report and it does not contain a misrepresentation - are responsible for establishing controls to ensure material information is available to them - have assessed the effectiveness of those controls and have reported on them, and - have reported any material weaknesses, deficiencies or fraud to the auditors and audit committee? (SOX)						
	Yes	9	6	6	4	8	33
	Neutral	4	0	5	2	6	17
	No	6	3	8	4	15	36
4.	(a) Should the auditor be required to report on and attest to the assessment of internal controls performed by management? (SOX)						
	Yes	11	3	7	4	10	35
	Neutral	1	2	1	2	11	17
	No	7	4	11	4	8	34
	(b) Can the auditor’s report and attestation requirement be added without significantly increasing the auditor’s fees?						
	Yes	7	0	2	3	6	18
	Neutral	0	2	1	2	6	11
	No	12	5	16	5	17	55

		Other	TSX Exempt	TSX Non-Exempt	TSX Venture Tier 1	TSX Venture Tier 2	Total
5. Under Alberta securities law, any insider or “person in a special relationship” (e.g., someone with access to inside information) is liable to compensate anyone who loses money as a result of the insider trading on undisclosed material information. If a company is required to restate its financial statements because of misconduct, should this trigger an obligation on the CEO and CFO to reimburse the company for any profits made on the sale of the company’s securities in the last 12 months? (SOX)	Yes	8	3	8	5	9	33
	Neutral	5	1	5	1	5	17
	No	6	5	6	3	13	33
(b) bonus, incentive compensation or equity based compensation (e.g., shares or options) that the CEO or CFO received in the last 12 months? (SOX)	Yes	12	3	8	5	14	42
	Neutral	3	1	6	2	6	18
	No	4	5	5	3	8	25
6. Should public companies be prohibited from providing loans of any type to directors and executive officers? (SOX)	Yes	6	5	8	3	9	31
	Neutral	7	1	2	1	8	19
	No	6	3	9	6	12	36
7. In Alberta, insiders are required to file reports of their trades in the company’s securities within 10 days of the trade. Should this time period be reduced to 2 days? (SOX)	Yes	9	2	4	1	2	18
	Neutral	3	0	2	1	4	10
	No	7	7	13	8	23	58
8. Should public companies be required to disclose whether (and if not, why not) they have adopted a code of ethics for their senior financial officers and the contents of that code of ethics? (SOX)	Yes	4	3	5	3	8	23
	Neutral	9	3	6	4	7	29
	No	6	3	8	3	14	34
D. Goal: Increase Oversight of Auditors and Heighten Auditor Independence from Management							
1. Is auditor independence as much of a concern to shareholders of small-cap and micro-cap companies as it is to shareholders of senior issuers?	Yes	9	7	14	5	13	48
	Neutral	2	0	1	0	5	8
	No	8	2	4	5	11	30
2. Will the creation of a new self-regulating organization that oversees the auditing industry and registers auditors who prepare financial statements for public companies, significantly improve the reliability of financial disclosure? (SOX)	Yes	4	4	5	0	4	17
	Neutral	7	1	7	2	9	26
	No	7	4	7	8	16	42
3. If a company makes a misrepresentation in its financial statements, the company and each director and officer who “authorized, permitted or acquiesced” is liable. Is it necessary to also specifically prohibit a director or officer from influencing, coercing, manipulating, or misleading an auditor for the purpose of rendering financial statements materially misleading? (SOX)	Yes	5	5	4	3	10	27

		Other	TSX Exempt	TSX Non-Exempt	TSX Venture Tier 1	TSX Venture Tier 2	Total
	Neutral	1	2	3	0	2	8
	No	13	2	12	7	17	51
4.	Should accounting firms be prohibited from auditing companies where the CEO, CFO or other senior financial officer of the company was employed by the accounting firm in the last year? (SOX)						
	Yes	9	5	7	1	11	33
	Neutral	5	1	5	4	7	22
	No	5	3	7	5	11	31
5.	To ensure that auditors are independent of the companies which they audit, should						
(a)	auditors be prohibited from providing any non-audit services to companies they audit - except for minor services approved by the audit committee? (Non-audit services would include things such as general bookkeeping or accounting, appraisals, valuations, fairness opinions, internal audits, management functions, legal advice, broker-dealer functions, investment advice, and technology consulting.), (SOX)						
	Yes	9	6	7	3	12	37
	Neutral	3	0	1	2	2	8
	No	4	3	10	5	15	37
(b)	companies be required to publicly disclose any minor services permitted by the audit committee? (SOX)						
	Yes	8	6	9	1	9	33
	Neutral	5	1	0	3	9	18
	No	6	2	10	5	11	34
6.	(a) Should the partner in the firm primarily responsible for a public company's audit be required to rotate out of the position of responsibility every 5 years? (SOX.)						
	Yes	5	5	6	4	7	27
	Neutral	8	3	5	4	9	29
	No	6	1	8	2	13	30
(b)	Should companies be required to change audit firms every few years? (SOX - study of this issue to be conducted)						
	Yes	2	3	1	0	2	8
	Neutral	5	1	3	2	4	15
	No	12	5	15	8	22	62
E.	Goal: Increase Penalties and Sanctions for Wrongdoing						
1.	Do you believe that increasing the penalties for wrongdoing will improve the quality of disclosure made by Canadian public companies? (SOX)						
(a)							
	Yes	8	1	4	5	3	21
	Neutral	3	1	3	1	6	14
	No	8	7	10	4	20	49
(b)	investor confidence? (SOX)						
	Yes	8	3	11	3	7	32
	Neutral	4	0	6	2	6	18
	No	7	6	2	4	16	35
2.	A person or company who contravenes Alberta securities laws can be subject to a fine of up to \$1 million and receive up to 5 years in prison. Should the potential prison time be increased to 10 years? (SOX)						
	Yes	6	1	1	1	2	11
	Neutral	5	3	5	5	12	30

		Other	TSX Exempt	TSX Non-Exempt	TSX Venture Tier 1	TSX Venture Tier 2	Total
	No	8	5	11	4	15	43
3. It is an offence under the <i>Criminal Code</i> (Canada) to obstruct justice and anyone found guilty of this offence can be imprisoned for up to 10 years.							
(a) Should there be an additional specific offence dealing with knowingly destroying or creating documents to impede, obstruct or influence any existing or contemplated investigation? (SOX)	Yes	9	6	4	6	9	34
	Neutral	1	1	7	1	9	19
	No	9	2	8	3	11	33
(b) Should this be an offence under securities law that can be enforced by a court? (SOX)	Yes	9	5	6	7	9	36
	Neutral	3	2	8	1	11	25
	No	4	2	4	2	9	21
4. If a senior officer knowingly or wilfully makes a false certificate, destroys documents or perpetrates a fraud (see C.2 and C.3 above) should he or she potentially be liable for fines of \$1 million to \$5 million and imprisonment of 10 to 20 years? (SOX)	Yes	12	3	9	7	10	41
	Neutral	4	2	3	1	13	23
	No	3	3	7	2	6	21
5. Should the securities commission have the power to seek a court order freezing any extraordinary payment to directors, officers, other insiders and employees? (SOX)	Yes	10	4	10	5	12	41
	Neutral	3	1	4	2	6	16
	No	6	4	5	3	11	29
F. Miscellaneous							
1. In Canada, lawyers are subject to codes of conduct established by law societies.							
(a) Should the securities commission also adopt rules regarding the conduct of lawyers representing public companies in securities law matters and have the power to bar lawyers from practicing before it if, for example, a lawyer engages in unethical or improper conduct or wilfully violates or aids and abets a violation of securities law? (SOX)	Yes	9	4	12	7	17	
	Neutral	6	1	4	0	6	17
	No	4	4	3	3	5	19
(b) Should lawyers representing public companies be required to report material violations of securities law or breaches of fiduciary duty to a company's CEO or chief legal officer and, if neither responds, to report it to the audit committee, a committee of independent directors or the whole board? (SOX)	Yes	10	6	14	9	18	57
	Neutral	3	1	1	0	7	12
	No	6	2	4	1	4	17
2. If employees report what they reasonably believe to be a securities law violation or fraud by their employer, should they be protected from being fired or harshly treated by management? (SOX)	Yes	14	7	14	7	17	59

		Other	TSX Exempt	TSX Non-Exempt	TSX Venture Tier 1	TSX Venture Tier 2	Total
	Neutral	4	0	2	2	9	17
	No	1	2	2	1	3	9
3.	Should stock exchanges be required to provide education programs for directors and officers regarding their responsibilities?						
	Yes	9	6	10	4	13	42
	Neutral	3	2	5	4	11	25
	No	6	1	4	2	4	17
4.	Should companies be required to obtain shareholder approval for any equity compensation plan or amendment to such plan? (NYSE)						
	Yes	10	5	8	5	13	41
	Neutral	2	2	3	4	8	19
	No	6	2	8	1	8	25

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