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VIA E-MAIL& COURRIER

Five Year Review Committee
c/o Purdy Crawford, Chair
Osler, Hoskin & Harcourt LLP
Barristers & Solicitors
Box 50, 1 First Canadian Place
Toronto, Ontario M5X 1B8

Dear Mr. Crawford:

Re: Five Year Review Committee Draft Report – Reviewing the *Securities Act* (Ontario)

On behalf of the Toronto Stock Exchange ("TSX"), we are pleased to provide you with our comments on the Draft Report. We appreciate the time and effort of the Committee in developing the Draft Report and we believe that it will significantly contribute to the evolution of the Canadian capital markets. Overall, we are generally supportive of the recommendations. Given the extensive scope of the Draft Report, we have focused our comments on those recommendations in the Draft Report which will primarily impact our listed issuers and their investors. In light of the first two recommendations to harmonize the securities regulatory regime, we would caution against making any changes as a result of the other recommendations that would lead to further differences among the provinces and territories.

Any inquiries from the Committee in connection with this submission may be directed to:

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For your reference, our enumerated responses below correspond to the recommendations in the Executive Summary of the Draft Report.

Part 1: The Role of the Commission in Capital Markets Regulation

1. *We recommend that the provinces, territories and federal government work towards the creation of a single securities regulator with responsibility for the capital markets across Canada.*

2. *In the meantime, we recommend that certain steps be undertaken by securities regulators to continue to harmonize securities regulation across Canada. Harmonizing provincial securities legislation would significantly simplify securities regulation in Canada. We also recommend that securities regulators be given the authority to delegate any power, duty function or responsibility conferred on them to another securities regulatory authority within Canada, and that they actively engage in delegation among themselves. We recommend that the Act be amended to give the Commission this authority, and that the necessary consequential amendments to the immunity provisions in the Act be made. In addition, we recommend that securities legislation across the country be amended to provide for "mutual recognition" – that a securities regulator may deem that compliance by a market participant with securities laws in another specified Canadian jurisdiction constitutes compliance with securities laws in the regulator's own jurisdiction.*

We support the recommendation to simplify securities regulation in Canada, however we believe that this goal may be accomplished by a number of different approaches, including a single securities regulator. We echo the concerns of our listed issuers that the additional costs and time associated with dealing with thirteen different regulatory regimes places a competitive disadvantage upon their efforts to raise capital, with limited additional protection for the investing public.

We recognize that regional differences may have existed and that historically, certain provinces and territories have developed unique regulatory regimes to provide support for their issuers. However, we believe that the fundamental distinction among issuers is based on their stage of development and size, rather than regional differences. Accordingly, the additional costs associated with Canada's multi-jurisdictional regulatory regime far outweigh the benefits of such a regime. We believe that any significant differences can be adequately addressed either by a single regulator or through harmonization. Consequently, TSX supports the Commission's continued work towards a simplified regime.

We support the inter-provincial harmonization efforts to date, which have significantly improved Canada's multi-jurisdictional regulatory regime. Accordingly, we are supportive of the interim harmonization measures recommended in the Draft Report.

3. *We recommend that the Commission and the CSA permit both foreign and Canadian companies to prepare their financial statements in accordance with U.S. GAAP. Issuers who prepare their financial statements in accordance with U.S. GAPP should be required to reconcile the statement to Canadian GAAP during a transitional period. The duration of the transitional period should be determined by the regulators taking into account whether significant comparability issues will arise if no reconciliation is provided.*

4. *We encourage the move by both Canadian regulators and standard setters to International Accounting Standards and hope that Canada will continue to play a leadership role in this area.*

6. *We encourage the Commission to continue its ongoing participation in IOSCO initiatives and urge the Commission to adopt, in a timely fashion changes to its rules to implement the international standards emanating from IOSCO.*

We believe that issuers are in the best position to determine whether Canadian GAAP or U.S. GAAP is the most appropriate accounting standards to use in the preparation of their financial statements and therefore support the recommendation that the CSA permit financial statements to be prepared in accordance with U.S. GAAP. We cannot assume that the majority of investors in Canadian based issuers are Canadian and therefore best served by requiring all such issuers to prepare financial statements in accordance with Canadian GAAP. Because issuers must compete globally to raise capital, financial statements must be prepared having regard to the appropriate audience, namely the issuer's potential investors and existing security holders.

We agree that issuers who prepare their financial statements in accordance with U.S. GAPP should be required to reconcile the statement to Canadian GAAP during a transitional period. Further consideration should be given to the duration of the transitional period following consultation with interested parties.

We are also supportive of the initiative to move toward International Accounting Standards, particularly as our listed issuers continue to seek capitalization globally. Worldwide acceptance of International Accounting Standards would assist our listed issuers in raising capital globally. TSX is supportive of the continued examination of the application of a principal-based International Accounting Standard.

Part 2: Flexible Regulation

19. *We recommend that the Act be amended to require that future review committees be appointed five years after the date of delivery of the final report of the previous committee, in contrast to the current requirement which prescribes that committees be appointed every five years.*

We agree with the Committee that the appointment of the next committee in 2004 may follow too soon upon the submission of final report. Given the extensive scope of the Draft Report, we also agree that subsequent Ministerial committees should be able to focus their mandate more narrowly so as to provide a final report within an abbreviated period. However, given the velocity of the evolution of the capital markets within the last decade, we believe that it is appropriate to continue to appoint a committee every five years.

We suggest that in light of the scope of the Draft Report and the timing of the appointment of the next committee, it may be more appropriate to make an exception regarding the timing of the appointment of the next committee, rather than changing the prescribed period of appointment. Alternatively, if a new committee is to be appointed five years after the date of delivery of the final report of the previous committee, we recommend that each committee be required to finalize its report within an appropriate predetermined period of time. Without such a requirement to produce a finalized report when combined with a five year recess between the report and appointment, a decade may pass between the appointments.

Part 3: Regulation of Market Participants

30. *We recommend that the Commission and the CSA consider whether to require QATRS and the unlisted market to obtain recognition under securities legislation and to develop a harmonized approach to QATRS and the unlisted market.*

While we support the recommendation that the Commission and the CSA consider whether QATRS and the unlisted market should obtain recognition under securities legislation, we believe that mandatory recognition of QATRS and

the unlisted market is essential in developing a harmonized approach to protecting public interest. Primarily, our concern relates to the smaller, illiquid issuers typically traded on QATRS and the unlisted market. Without a requirement to obtain recognition under securities legislation and oversight by the Commission and/or CSA, we are concerned that investors may not have adequate protection against fraudulent and manipulative practices, which may impact detrimentally on all Canadian capital markets.

Part 4: The Closed System and Secondary Markets

36. The closed system is overly inclusive, inefficient and complex. Most importantly, the system cries out for simplification and greater convergence of requirements across the country. We encourage the CSA to proceed with further reforms to the prospectus exemptions and the closed system with convergence of requirements and simplification as twin goals.

We wholeheartedly agree with this recommendation and echo the concerns expressed in the Draft Report relating to recent reforms dealing with prospectus exemptions that have been adopted in Alberta, British Columbia and Ontario where the regulators seem to be moving in different directions. We believe that with the adoption of a harmonized set of hold periods and seasoning periods, as prescribed in Multilateral Instrument 45-102 – Resale of Securities, it is fundamental that the underlying prospectus exemptions also be harmonized.

37. Once other reforms are implemented, such as civil liability for continuous disclosure, enhanced continuous disclosure standards for all reporting issuers, more independent due diligence in connection with continuous disclosure and a more integrated disclosure system overall, we believe hold period for securities of reporting issuers could be eliminated without sacrificing investor protection while contributing significantly to more efficient capital markets.

We believe that significant additional consideration is required before hold periods for securities of reporting issuers could properly be eliminated. Given the current status of the continuous disclosure reforms, we are uncertain that some elements of investor protection will not be sacrificed. Accordingly, we believe that it is too early to recommend the elimination of hold periods.

42. We recommend that the Act's timely disclosure provisions not be amended to require disclosure of "material information".

44. While the Committee does not believe that legislative change is required in Ontario to address the issue of selective disclosure, we support the CSA's policy statement and an increased emphasis on enforcement in this area.

We believe that the TSX standard of timely disclosure of material information is the appropriate disclosure standard for listed issuers. Stock prices react to both material changes and material facts. Not requiring the timely disclosure of material facts deprives investors of information that may impact their investment decision.

We appreciate the CSA explicitly stating in NP 51-201 that issuers are expected to comply with the rules of the market on which they are listed and the consequences of failing to comply. We believe that this reinforcement provides a clear direction to issuers and will reduce confusion over the applicable disclosure standard.

We concur with your recommendation that legislative change is not required to address the issue of selective disclosure and support an increased emphasis in enforcing breaches of the CSA's policy statement.

45. We recommend that the periods for filing annual financial statements be reduced to 90 days after the fiscal year end and that the time periods for filing interim financial statement be reduced to 45 days after the end of each quarter.

46. Ontario securities legislation should be amended to require that quarterly financial statement must be reviewed by the issuer's external auditor.

We are concerned that the additional costs associated with an abbreviated filing period and an auditor's review of interim financial statements may negatively impact small reporting issuers. We believe that further consideration should be given to granting such issuers relief from the requirement for an abbreviated filing period and an audit review, provided that both the audit committee and the board of directors review the financial statements.

We would be pleased to discuss our comments with you or any other matters related to the Draft Report.

Yours very truly,

“Clare Gaudet”