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14 August 2002

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

**Re: Five-Year Review Committee Draft Report**

Dear Sirs and Mesdames:

The Canadian Advocacy Committee (CAC) of the Association for Investment Management and Research (AIMR)[1] is pleased to respond to the request for comments of the Five Year Review Committee regarding its Draft Report Reviewing the Securities Act (Ontario), (the Report). The CAC represents members of AIMR and its 11 Member Societies and Chapters across Canada. The CAC membership includes portfolio managers and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada.

## General Comments

The CAC supports most of the recommendations made in the report. We believe strongly that the creation of a single Canadian securities regulator and harmonization of securities laws across Canada are the two most critical elements necessary for the continued health and growth of Canadian capital markets. Moreover, we believe that the two initiatives should be pursued jointly and in parallel with one another to ensure that securities regulations are unified. In this regard, the CAC supports the elimination of Ontario's universal registration requirements, which will bring more uniformity to registration requirements across Canada, as well as the harmonization of continuous disclosure requirements.

[1] With headquarters in Charlottesville, VA, and regional offices in Hong Kong and London, the Association for Investment Management and Research® is a non-profit professional organization of over 59,000 financial analysts, portfolio managers, and other investment professionals in 107 countries of which 45,300 are holders of the Chartered Financial Analyst® (CFA®) designation. AIMR's membership also includes 117 affiliated societies and chapters in 29 countries. AIMR is internationally renowned for its rigorous CFA curriculum and examination program, which has more than 100,000 candidates from 143 nations enrolled for the June 2002 exam. Over 7,600 AIMR members live and work in Canada.

### *Global Set of Accounting Standards*

We concur with the Report's recommendation that global harmonization of accounting standards is an essential long-term goal for improving the efficiency of Canada's capital markets. Although we agree with the recommendation that will permit foreign and Canadian issuers to use U.S. GAAP,[2] and eventually use International Accounting Standards (IAS) and IOSCO[3] international standards for preparing financial statements and disclosures, we do ***not*** agree that a reconciliation between the two bases of accounting is not necessary, and therefore, should not be required.

We believe that an itemized numerical reconciliation of material differences, along with narrative explanations of the differences, between foreign and Canadian GAAP should be required. Such disclosures will enable users of these financial statements to compare financial statements prepared using different sets of accounting principles.[4] Furthermore, this reconciliation should be provided for at least the first two years that the financial statements are presented using a set of accounting principles other than Canadian GAAP. The two-year period for reconciliation presumes a convergence and harmonization between Canadian GAAP and other accounting standards, e.g., U.S. GAAP and IAS, in the near future.

### *Simplified Securities Regulation*

We support the simplification of securities regulation by reforming the closed system, and eliminating *hold* and *seasoning* periods, upon the adoption of an enhanced continuous disclosure requirements and civil liability statutes. As part of the continuous disclosure system, we support strongly the reduction of time periods for filing annual and interim financial statements to 90 and 45 days, respectively. The reduced filing periods will not only improve the timeliness of information to investors but would be consistent with U.S. requirements. Additionally, we also believe that any GAAP exemption for banks and insurance companies should be removed. The economic substance of a transaction or activity should drive the accounting treatment, not the form or type of industry.

### *Regulatory System*

We support moving towards a regulatory system that is not based solely on detailed prescriptive rules and requirements, but sound principles coupled with adequate and clear interpretative guidance for consistent application and effective oversight by regulators. In addition, we believe it is essential that registered companies, as well as regulators, use plain and straightforward

[2] Generally Accepted Accounting Principles
[3] International Organization of Securities Commissioners
[4] Our position is elaborated in comment letter issued by the Accounting Subcommittee of the CAC dated June 29, 2001, responding to the CSA Discussion Paper, *Financial Reporting in Canada's Capital Markets - March 2001*. The letter is available on AIMR's Web site using the following link - http://www.aimr.org/advocacy/01commltr/01cac_comment.html. The CAC is also considering this issue in its response to the request for comments on the recent CSA Continuous Disclosure Proposal.

language in public disclosure and rules, respectively. While neither of these issues is expressly dealt with in the recommendations in the draft report, they are consistent with the general thrust of the report and in our view should be set out as additional recommendations.

***Auditor Independence Issues***

We concur with the Report's recommendation to monitor developments in the U.S. regarding, auditor independence and the oversight of accounting firms that audit publicly traded companies. We believe that public companies should disclose in their proxy statements any fees paid to the same accounting firm for performing both audit and non-audit consulting services.

***Investment Dealers Association (IDA)***

We agree that the IDA should be separated into two organizations to reduce the potential for conflict between its current functions as a trade association and its responsibilities as a self-regulating organization, or SRO. This division is similar to the U.S. model adopted by the National Association of Securities Dealers and Securities Industry Association. In addition, we also support the establishment of a national complaint handling system, which is independent of the government and industry. This system should cover all financial services providers, making public the statistics on the use of the system and details about filed complaints.

The following comments address specific recommendations in the Report.

***Recommendation 12 – Reducing Comment Periods***

We understand the rationale and urgency to address certain issues that affect the capital markets in an expeditious manner. Moreover, we observe that the length of time required to formulate a new proposal is frequently very long compared to the public comment period. Thus, shortening the comment period alone may not greatly speed the regulatory improvements process, and may extract a price in terms of informed input and consideration of proposals. Therefore, some flexibility should be provided for in regards to the length of the comment period. Proposals could be put into categories, such as (1) short, single-issue or simple rules allowing a 30-day comment period and (2) longer, more complicated rules that have a 60- or 90-day comment period, depending on the number and significance of the issues addressed and the nature (widespread vs. narrow focus) of the proposals.

For example, many of the registration rules could be grouped in the first category, which allows for a 30-day comment period. On the other hand, a 60-day period would be more appropriate for medium length or more complicated rules, or lengthy rules that primarily consolidate and update existing provisions. An example rule would be Rule 54-101 on shareholder communication. Finally, those rules that propose novel restructuring of entire areas of a regulation should have a 90-day comment period. Examples of such rules would include: (1) proposed rules on mutual

fund governance and (2) changes to investment restrictions and conflict of interest provisions. We believe that this approach would streamline the process for most rules and still allow for the appropriate amount of time to comprehend the proposal and formulate thoughtful and meaningful comments.
Additionally, the CAC recommends that proposed rules should be published in black-lined versions as are currently provided for IDA amendments. This is particularly important for amendments to existing rules or when rules are being consolidated. For those cases, such tracking of changes should be required.

Finally, we would recommend that the OSC make more use of focus groups and open industry information sessions at which attendees could ask questions. Such forums not only help to keep the industry advised of proposed changes, but also allow regulators to obtain informal input from a broader range of industry participants than the formal comment process allows. The British Columbia Securities Commission has recently made wide use of these alternatives and industry response has been very positive.

***Recommendation 28 – Mandatory Self-Regulating Organization (SRO) Recognition***

We are opposed to this recommendation because of the broad definition for a SRO. As written, the recommendation is unclear as to whether professional trade organization, such as AIMR, would fall within this definition. AIMR, being a global organization, cannot override, derogate from, or contravene Ontario securities laws or any other jurisdiction's laws for that matter. AIMR's Standards of Practice require members to "*maintain knowledge of and comply with all applicable laws, rules, and regulations of any government, government agency, regulatory organization, licensing agency, or professional association governing the members' professional activities.*"[5] As such, we believe that separate recognition and oversight processes with individual regulators such as Ontario would be virtually impossible for AIMR to comply with; therefore, we recommend that the definition of a SRO be narrowed to exclude global organizations such as AIMR.

***Recommendation 42 – Disclosure of Material Information***

We believe that the legislation should be amended to require disclosure of all material information on a continuous disclosure basis for the following reasons:

- Material information is a broader standard than material change, which is the standard currently in the legislation. Disclosure of material information, which *includes* material change, means more information is available to the marketplace sooner and there are fewer opportunities for improper insider trading.

[5] AIMR's Standards of Professional Conduct – *Standard IA: Fundamental Responsibilities.*

- The amendment will clarify requirements by removing the confusing distinctions between material “fact”, “change” and “information”, replacing them with a single standard.

- The material information standard was adopted by the Canadian exchanges over a decade ago and constitutes the existing standard in practice, regardless of what the legislation provides, and so does not change requirements for issuers. However, amending the legislation will add “teeth” to assist in enforcing these requirements, including statutory civil liability.

- Listed issuers have been required to comply with the material information standard for over a decade, and we are not aware of any serious problems with "price interference" in negotiating or setting offering prices under the current material information standard.

- We disagree with the suggestion that disclosure of material information, which includes some information external to the issuer, would impose a significant burden on issuers to continually monitor external events. Firstly, issuers are already required to comply with this standard – it is not a new burden. Secondly, it is not a significant burden. Issuers are not required to interpret the impact of all external political, economic and social developments on their affairs. Only if the external development has had or will have a direct effect on their business and affairs that is both material and uncharacteristic of the effect generally experienced by other issuers engaged in the same industry, does the issuer need to disclose the impact .[6]

We also note that the British Columbia Securities Commission has recommended in its recent proposals[7] that the material information standard described in the timely disclosure policies of the Canadian exchanges be adopted in its legislation.

## Concluding Remarks

In conclusion, we believe that the Report provides a clear roadmap for many of the important changes needed to improve Ontario securities legislation for the benefit of Ontario and Canadian capital markets. However, we ask that the Committee reconsider its recommendations for shortening comment periods, making SRO recognition mandatory, and amending the legislation to adopt a material information standard for continuous disclosure, in accordance with our comments.

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[6] See TSX Company Manual, section 409.

[7] *New Proposals for Securities Regulation*, BCSC, June 5, 2002, Appendix F.

We appreciate the opportunity to comment on this proposal. If you have any questions or seek elaboration of our views, please do not hesitate to contact Georgene Palacky at 1.434.951.5334 or gbp@aimr.org.

Sincerely,

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Canadian Advocacy Committee Co-Chair

Georgene B. Palacky
Associate, Advocacy

Cc: Canadian Advocacy Committee
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