ONTARIO TEACHERS' PENSION PLAN

SUBMISSIONS TO

THE "FIVE YEAR REVIEW COMMITTEE"

DRAFT REPORT

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Introduction: The Need for Reform

Teachers' welcomes the thoughtful and comprehensive Five Year Review Committee Draft Report.[1] While the prime areas of concern and comment for Teachers' are improved disclosure, relaxed shareholder communications, and increased powers of enforcement for regulators, we do applaud the central conclusion of the Review Committee that the provinces, territories and federal governments must work towards the creation of a single securities regulator that has prime responsibility for the capital markets across Canada. The following are Teachers' comments on the numbered recommendations made by the Review Committee:

Executive Summary – Short Form

This is an executive summary of the specific issues that we wish to highlight in our submissions to the Review Committee. We are in general agreement with most of the recommendations of the Review Committee. The following are issues where we disagree with the interim findings of the Review Committee or we believe are deserving of special note:

Recommendation 2: In the Meantime

Teachers' believes that while there must be a transitional period to allow for the harmonization of the various securities legislation across Canada, it is far more prudent for the overall health of the capital markets that all jurisdictions in Canada be held to the highest possible standards. Teachers' is concerned that some provincial requirements are not as strict as others so that in the process of harmonizing there may be an overall weakening of the standards. We caution against this sort of approach.

Recommendations 9 and 10: Amendments to the Act Reflecting Current Law

Teachers' submits that there is a distinct need to update the Act to address situations where policies and rules have superceded the specific provisions of the Act. We support a comprehensive review of the Act in an effort to clarify and settle the confusion between the Act and its rules and policies. We submit this project is of top priority.

Recommendation 19: Future Review Committees

In addition to the recommendation that future review committees be appointed five years after the delivery of the final report of the previous committee, we suggest that the Act be

amended so that future review committees are required to deliver their final report within a prescribed period after their appointment.

Recommendations 22 and 23: Alternative Modes for Delivery of Documents: In Particular the "Access Equals Delivery" System

Teachers' submits that in the case of the small investor, the assumption that "access equals delivery" is a dangerous assumption to make, especially in the case of management information circulars and documents requiring immediate response. We believe that issuer disclosure should still be delivered in hardcopy form to the investor. We are of the opinion that in the case of disclosure that does not require immediate action, the Commission may wish to consider whether there should be a limited recognition of "access equals delivery".

Recommendation 32: Real Conflict Between Trade Association Role and SRO Duties

Teachers' submits that there is a potential for meaningful conflict, as well as an appearance of conflict between the dual roles of "trade association" and "self-regulatory body", hence we recommend a separation of those two roles.

Recommendation 35: A Statutory Civil Liability Regime for Breaches of Continuous Disclosure

Since the vast majority of securities transactions occur in the secondary market, we are very much in favour of a civil liability regime for continuous disclosure not just for Ontario but for the whole of Canada.

Recommendation 40: Structuring Transactions to Avoid Control Block Hold Periods

Teachers' requests that the Commission immediately examine both transactions that allow control block transfer restrictions and hold periods to be reduced through the use of derivatives, and the use of monetization structures that allow control block holders to change their economic exposure to their holdings despite transfer restrictions.

Recommendation 42: Disclosure of "Material Information"

Teachers' recommends that reporting issuers should be compelled to disclose "material information" rather than "material changes" on an ongoing basis.

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[1] The "Five Year Review Committee Draft Report" will be referred throughout this text as the "Draft Report" as authored by the "Review Committee".

Recommendation 43: "Reasonable Investor" Standard

Teachers' requests that the test for materiality should proceed along the lines of the American test.

Recommendation 48: Elimination of GAAP Exemption for Banks and Insurance Companies

Teachers' does not support the special exemption from GAAP requirements for banks and life insurance companies. We call for these institutions to issue financial disclosure to the same standards as other reporting issuers in Canada.

Recommendation 49: Effective Audit Committees

Teachers' recommends that all jurisdictions in Canada should work with the Commission to set standards and responsibilities that will ensure effective audit committees for reporting issuers across the country.

Recommendations 50 and 51: Auditor Independence and Disclosure of Audit Fees in the Proxy Circular

Teachers' recommends that there be a disclosure of the audit fees and non-audit fees paid to the external auditor with a specific fee breakdown in the proxy circular for each of the non-audit functions.

Recommendation 52: Proxy Solicitation

Teachers' urgently requests that the **Ontario Business Corporations Act** and Part XIX of the Act be amended to reflect the recent amendments to the **Canada Business Corporations Act**.

Recommendation 54: The Need to Regulate Arrangements and Takeover Bids – Break Fees

Teachers' submits that parties to a commercial transaction should have the freedom to structure their business transactions so long as the transactions are fair to all parties. Teachers' submits that an egregious break fee can violate the public interest in the same fashion as a poison pill.

Recommendation 55: Policy Statements on Poison Pills

Teachers' requests that the Commission issue a policy statement to provide guidance as to when a poison pill has outlived its usefulness.

Recommendation 85: Reporting of Insider Trading

Teachers' suggests that the Committee's recommendation requiring insiders to report changes in their economic interests be modified, so that insider reporting requirements would apply only to changes in economic interests in the securities of an issuer. We believe that the insider reporting requirements should not be extended to require reporting of economic interests that insiders may have with issuers that are not related to securities ownership (such as customer-supplier, advisory, or employment relationships).

Other Enforcement Recommendations:

The recent U.S. Sarbanes-Oxley Act of 2002 has introduced protections for "whistleblowers" who provide information to authorities concerning possible violations of securities laws. We suggest that the Committee recommend that the Act be amended to protect from retaliation, discipline or discrimination employees who inform authorities (including recognized SROs) of reasonably suspected violations of the Act by their employers or persons associated with their employers. Appropriate whistleblower provisions could enhance the Commission's enforcement efforts.

In Depth Discussion

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

Recommendation 1: Single Securities Regulator

Since it is accepted that Canada represents approximately 2% of the world's capital markets, it is a foregone conclusion that if Canada is to remain competitive in attracting foreign capital, there must be an immediate unification of securities laws, implementing the highest possible standards. We stress that the unification of the securities laws across Canada must provide investors not only with a consistent approach but also with an effective and strong regulator.

Recommendation 2: In the Meantime

Teachers' recognizes that a single regulator may be a time in coming to Canada and we agree on the need for action in the meantime. We note your recommendation for a three-step approach to the "meantime" solution:

1) A harmonization of the 13 different sets of securities legislation as administered by the 13 provincial and territorial regulatory authorities.

2) An amendment of all provincial securities legislation to allow for a delegation of power, duties, functions and responsibilities conferred upon one security regulatory authority to another within Canada.

3) Amendments to all provincial securities legislation to provide for a mutual recognition system where compliance by a market participant with legislation in one specified Canadian jurisdiction will provide compliance in any of the other jurisdictions.

Teachers' has a continuing concern with these recommendations, consistent with a concern raised in our May 2000 comments to the Review Committee.[2] We are concerned that some provincial requirements are not as strict as others so that in the process of harmonizing, there may be an overall weakening of the standards. Teachers' believes that while there must be a transitional period, it is far more prudent for the overall health of the capital markets that all jurisdictions in Canada be held to the highest possible standards from the various pieces of legislation. We note that the securities legislation across Canada is sufficiently different to make co-ordination a real challenge, but to do otherwise would be to promote a mediocre market.

[2] See Clauses 32 and 33 of Ontario Teachers' Pension Plan Board submissions dated May 2000 (p.6).

Recommendation 3: US GAAP

In November of 2001 Teachers' filed a response paper to a solicitation for comments on the CSA Discussion Paper 52-401 "Financial Reporting in Canada's Financial Markets" (the "Financial Reporting Discussion Paper"). This paper is available on our website at the following address: http://www.otpp.com/web/website.nsf/web/CGHotTopics. Our submission to the CSA and our submission to the Committee is essentially the same: the rapid globalization of financial markets over the past ten years has surely heightened the need for harmonized accounting standards. In the short term, we recommend the harmonization of Canadian and US GAAP. We promote the use of US GAAP, in the interim, because we believe that there is a danger associated in allowing an issuer to simply choose its GAAP standard – this is the risk of "standards shopping" in the marketplace. We are mindful of the two key issues of best accounting standards and comparability when recommending one standard over the other. Also, Canada needs to be in a position of attracting and retaining international capital. We must acknowledge the relative size of our market and then make every effort to remain competitive. We agree with the Review Committee that the time has come to move away from Canadian GAAP. We support the imposition of an obligation upon issuers to provide reconciliations of financial statements in the hopes of promoting comparability.

We note your comments at the bottom of p.32 of the Draft Report that the recent Enron crisis has raised some questions regarding US GAAP. Teachers' indicated in our submissions to the CSA that US accounting standards do not necessarily represent the most useful or conservative approach. We highlighted the example of the far superior Canadian GAAP standard for life insurance over the US GAAP counterpart in that the revenues and expenses of life insurance companies are more appropriately recognized under the Canadian standards. Nonetheless, we recognize that comparability must win out. When it comes to situations such as the Enron crisis we have faith in the US GAAP standards and we are of the belief that the real issue is with the actual application of the rules rather than with the rules themselves.[3]

Recommendation 4: International Accounting Standards

The goal that we must all work towards is the adoption of a single set of accounting standards that may be used anywhere by all issuers and investors. When that day finally arrives,

the goal of absolute comparability for investors will be achieved. With that goal in mind, we urge the International Accounting Standards Board to continue in its search for the highest set of standards globally. We refer to our recent submissions to the International Accounting Standards Board on the issue of how to account for share-based payment, July 2001: http://www.otpp.com/web/website.nsf/web/CGHotTopics. We commend the International Accounting Standards Board for it efforts to seek out and recommend the highest set of accounting standards on a global basis.

Recommendation 5: Securities Transfer Legislation

Teachers' supports the efforts of the Commission and the CSA in calling for the development of new legislation and in pushing for amendments to the **Business Corporations Act** and the **Personal Property Security Act** that will allow for the harmonizing of the regulatory regime that oversees the holding, transferring and pledging of securities in Ontario and Canada. We strongly recommend that in the development of new legislation, a special effort be made to rectify this situation for the whole of Canada. As long as there continues to be uncertainty over the actual transfer or pledge of a security in a book-based system, Canada will continue to be in a position of distinct disadvantage in the day-to-day trading of securities.[4]

Recommendation 6: Participation in the International Organization of Securities Commissions (IOSCO)

As a global investor, Teachers' views organizations such as IOSCO to be very beneficial in unifying international regulatory matters, particularly when it comes to the promotion of the best international accounting and disclosure standards. Future participation in IOSCO's initiatives should be supported and maintained especially once Canada has a unified regulatory system.

Recommendation 7: Harmonized Functional Regulation

As well as supporting the unification of the securities legislation throughout Canada, Teachers' supports the unification of functional regulation nationally. In Ontario, we are generally in favour of the proposed combination of the Commission and the Financial Services Commission of Ontario. We are disappointed with the apparent lack of meaningful progress concerning this initiative since the release by the Minister of Finance in September 2000 of the

[3] See Clause 21 of Ontario Teachers' Pension Plan Board submissions dated May 2000 (p.5).
[4] See Clause 7 of Ontario Teachers' Pension Plan Board submissions dated May 2000 (p.2).

discussion paper entitled "Financial Services Regulation: Establishing a Single Financial Services Regulator". Teachers' agrees that there must be a distinction between market conduct on one hand and prudential issues on the other, but in both cases there should be a move towards the unification of each of the regulating groups.

Part 2: Flexible Regulation

Recommendation 8: Certain Amendments to the Ontario Securities Act (the "Act")

Teachers' supports all of the Review Committee's proposed amendments to the objectives of the Act because we believe these will encourage the globalization of Canadian capital markets. We also support the promotion of programs of continuing education for investors in Ontario and the rest of Canada. In this area we promote heightened awareness of best corporate governance. For example our website reports Teachers' votes at all shareholder meetings and the reasons therefor, at the following site: http://www.otpp.com/web/website.nsf/web/CGIntroduction.

We also believe that the enforcement of violations of securities laws should be given top priority and this viewpoint is addressed in more detain in Part 6 of these submissions. However, the maintenance of the competitive nature of capital markets in Canada is of tremendous importance to Teachers' as an institutional investor. We note once again that amendments of this nature should not be made in Ontario only; the Commission should be encouraged to work with the CSA to promote similar amendments to legislation in other Canadian jurisdictions.

Recommendations 9 and 10: Amendments Reflecting Current Law

We agree that all current and fundamental principles of Ontario securities legislation should be enshrined in the Act and that the policies and rules made under the Act should contain detailed explanations and examples to those principles. While we agree that starting from scratch would involve a tremendous amount of effort and time, there is a distinct need to update the Act to address situations where policies and rules have superceded the specific provisions of the Act. The current situation can lead to incorrect interpretations of the law and inaccurate applications based on those interpretations. We support a comprehensive revision of the Act in an effort to clarify and settle the confusion between the Act and its rules and policies that have emerged over the years. This task should be given top priority.

Recommendation 11: "Basket Rulemaking Authority" for the Commission

The Alberta and British Columbia Securities Commissions and the SEC already possess a "basket provision" as an option in their rulemaking authority. This provision allows these commissions discretion to introduce rules that are still within its legislated mandate although not specifically within one of the enumerated heads of rulemaking authority as set out in the enabling legislation. We agree that a similar power should be enacted to the rulemaking provisions in the Ontario Act. We believe the Commission has demonstrated itself to be an effective regulator and would be even more effective with this additional power.

Recommendations 12, 13, 14 and 15: Streamlining the Rulemaking Process

Teachers' supports the proposal to reduce the length of comment periods for rules and policies. We agree that a proposed rule or policy should only be re-published if the proposed changes to it are considered to be "material" in the opinion of the Commission as outlined in detail in Recommendation 13. We applaud the shortening of the ministerial approval period and are hopeful that these measures will streamline the entire rulemaking process considerably. As the Commission establishes internal standards for the development of rule and policy proposals, including benchmark timeframes for reviewing and responding to comments on a rule or policy proposal, we believe that the Commission should publish the standards and report to the public on its success in meeting them, in an effort to enhance transparency, accountability and timeliness.

Recommendations 17 and 18: Blanket Rules and Orders for Exemptive Relief and their Publication

Teachers' agrees that a re-instatement of the blanket ruling power for the Commission will not only allow the Commission to respond to individual market situations in a timely fashion but it will also streamline the process and reduce the myriad of applications for exemptive relief that constantly bombard the Commission. However to allow for appropriate stakeholder input in the regulatory process and for marketplace participants to anticipate regulatory changes, we believe that proposed blanket rulings should be published and subject to a thirty-day period of public review and comment. We further agree that the publication of exemption orders in respect of securities rules is essential in the interests of public education and regulatory transparency. We believe that publication of Commission refusals for exemptive relief and the reasons therefor are essential, for the same reasons.

Recommendation 19: Future Review Committees

In addition to the Committee's recommendation that future review committees be appointed five years after the delivery of the final report of the previous committee, we suggest that the Act be amended so that future review committees are required to deliver their final report within a prescribed period after their appointment. We agree with the Committee's expectation that subsequent committees will be able to focus their mandate more narrowly than the current Committee. A period of 24 months may be a reasonable time for delivery of a final report.

Recommendation 20: Reconciliation of the Policies as Specified by National Policy 11-201 and National Policy 47-201 and the Electronic Commerce Act, 2000

The disclosure of information and corporate transparency are particularly important to Teachers'. We are encouraged to see the Internet being used for the purposes of increased disclosure of corporate and regulatory information. This has been especially helpful to us in our efforts to promote and encourage best governance practices across Canada. We are encouraged by the provisions of the **Electronic Commerce Act, 2000** which in many ways gives electronic documents the legal status of hardcopy documents. While we are encouraged to see that more and more issuers are making their corporate documents available on their websites for inspection by investors, we believe that corporate documents should continue to be delivered in hardcopy form, even where the issuer has received consent for electronic delivery. We agree with the Review Committee that where there are inconsistencies and conflicts between the two CSA National Policies and provincial legislation such as the **Electronic Commerce Act, 2000**, the CSA should address these situations by either:

- amending the policies;
- reformulating the policies as rules; or
- issuing a note of guidance with respect to the application of the policies in conjunction with the provincial legislation.

We are disappointed with the Ontario Securities Commission's own website. We have indicated to the staff of the Commission on numerous occasions that the search engine of the website is not effective. Even more disappointing is the method of arranging the orders, rules, policies and other CSA instruments on the site under the general heading of "Rules and Regulation". There is no concise method of keeping track of all of the CSA and OSC instruments that are released for comment unless one is keeping specific track of the instrument's numbering or exact title. We are of the opinion that if the Commission wishes comments on its proposed policies, rules and regulations, it should indicate at a special sub-site on the web that certain

documents are available for public scrutiny. At the very least, a functioning search engine would allow all investors to retrieve documents with the knowledge of a couple of key words.

Recommendation 21: Registrant Involvement with Internet Offerings

Teachers' firmly supports any reasonable legal policy or practice that serves to protect investors. In the case of a direct public offering, we are in agreement that registration requirements do not become less pertinent simply because the issuer has decided that the offering will be made by way of the Internet. In fact, the offering of securities through a medium that is appropriately described by the Review Committee as being "fast, cheap, easy to use, and relatively anonymous"[5] demands that registration requirements be maintained.

Recommendations 22 and 23: Alternative Modes for Delivery of Documents: In Particular the "Access Equals Delivery" System

Teachers' is very aware that issuers would like "access to equal delivery". Simply requiring that proxy circulars and other corporate information be posted on a website would remove a whole host of responsibilities from issuers and provide a relatively uncomplicated method of document transmittal. But the problems are that not all investors are computer literate, not all investors have access to computers and the Internet, and not all investors will be aware of the documentation or even know of the annual shareholder meetings if the information is only left on a website for investors to access. One of the advantages of receiving proxy circulars in the mail is that they serve as an alert to the shareholder of an upcoming meeting. We hope that having the copy in hand, the shareholder will vote in a reasonably informed manner. If the onus is shifted solely onto the shareholder to monitor the company website and participate in annual elections without a hardcopy notice, we fear that the participation rate at annual meetings will become even lower than it already is. A recent study conducted by Fairvest[6] indicated that the average voter turnout for the companies comprising the TSE 300 Index was 63.3% for the 2001 annual meeting period. Average voter turnout for non-TSE 300 companies was an even more depressing 50.1%. If Canada were to move to a recognition that "access equals delivery", we expect that proxy voting in Canada would drop to even more distressing levels, particularly in terms of the retail investors who would then be left in a relatively uninformed position. On the

[5] See p. 53 of the Draft Committee Report – overview comments to Chapter 7: The Impact of the Internet
[6] Fairvest – An ISS Company conducted the proxy voting study and it is published in **The Corporate Governance Review**, v.14, no.1, December/January 2002

other hand the distinction made by the Review Committee between disclosure documents that require immediate shareholder action and those that do not require specific action should form the basis of future consideration on the part of the Commission for a limited recognition that "access equals delivery".

Part 3: Regulation of Market Participants

Recommendation 24: Trading Registration Requirement of Being "In the Business"

Teachers' agrees that moving to a registration requirement based on "being in the business of trading" would simplify the Securities Act by removing the need for numerous exemptions for various kinds of "trades". We also agree that the model advocated in the Report should not be adopted unless it is adopted across Canada by the CSA.

Recommendations 25 and 26: The Proficiency, Experience and Suitability Requirements of Dealers and Employees

Teachers' supports the recommendation that the Commission and the CSA should review proficiency, experience and suitability requirements applicable where dealers and their employees engage in an expanded role by providing "ancillary advice" along with trade execution services. We also agree with the Review Committee that where dealers offer only a trade execution service and nothing else, they should be exempt from all "know-your-client" and suitability requirements.

Recommendation 26: Financial Portals

We agree that the Commission should continue to monitor the Internet and bring enforcement proceedings against the sponsors of financial portals that are offering services that are fraudulent or contravene the Act in any other way.

Recommendations 28, 29 and 30: SROs, Clearing Agencies and QATRS – Subject to Commission Oversight

If an SRO purports to regulate the operations, standards of practice and the business conduct of its members, Teachers' agrees that it should first be recognized under the Act in order that it may submit itself to Commission oversight. Similarly, in the interests of investor protection and marketplace efficiency and fairness, all organizations that carry on a clearing and settlement business in Ontario should be subject to Commission oversight. Teachers' supports the recommendation that the Commission work with other jurisdictions to ensure a harmonized approach to QATRS across Canada and to consider whether regulatory recognition of QATRS

and the unlisted market is appropriate in light of both the possible costs and benefits afforded by requiring recognition.

Recommendation 31: SRO Duty to Report to the Commission

Teachers' agrees that an SRO must report possible breaches of securities laws to the Commission. Through their monitoring role, all SROs obtain information about the degree of compliance with the securities legislation. On the other hand, we agree that a sharing of the enforcement duties of the Commission with the SROs would result in confusion over the burden of proof, the evidentiary standard and the rules and procedures to be followed in enforcement proceedings. There also would be a very clear problem of "double jeopardy" if there were more than one prosecutorial function. It is clear that the Commission must maintain responsibility for the enforcement of securities violations in the province.[7]

Recommendation 32: Real Conflict Between Trade Association Role and SRO Duties

There is a potential for meaningful conflict, as well as an appearance of conflict between the dual roles of "trade association" and "self-regulatory body" found in SROs such as the IDA and MFDA. Teachers' agrees that a separation of these two distinct roles would be effective in reducing this conflict of interest. Further, we recommend that best governance practices be maintained in the board of directors of the new entities. It would be crucial that a majority of the members of the board of directors of the disciplinary body be composed of individuals who are not connected with the member firms of the trade association. An independent board of directors for the disciplinary body would go a long way to minimize the inherent conflict between the lobby/trade function and the regulatory function.

Part 4: The Closed System and Secondary Markets

Recommendations 33 and 34: Continuous Disclosure Reviews

Ensuring that an issuer provides current, material and continuous disclosure is a cornerstone in the maintenance of an efficient and fair market. In order to ensure the health of the Canadian capital markets, it is essential that issuers come to understand their continuous disclosure obligations and to treat these obligations with the same respect as they would the level of disclosure required with a prospectus. Teachers' agrees that the Act should be amended so that

continuous disclosure reviews will be accorded legislative force. Similarly, we agree that an important area for the harmonization of securities legislation across Canada is the unifying of the continuous disclosure requirements as is currently being examined by the CSA.

Recommendation 35: A Statutory Civil Liability Regime for Breaches of Continuous Disclosure

Continuing from our May 2000 submissions[8], we indicated that there is now little disclosure liability in Canada outside the disclosure requirements for a prospectus offering. Since we made the point that the vast majority of securities transactions occur in the secondary market, it will come as no surprise that we are very much in favour of a civil liability regime for continuous disclosure not just for Ontario but for the whole of Canada. We are hopeful that the Civil Liability Amendments[9] will increase the scope for meritorious secondary market disclosure lawsuits. These amendments require that the plaintiff in any suit must first obtain leave of the court before filing a statement of claim. In order to be in a position to grant leave to file, the Court must be satisfied that the proposed action fills two pre-conditions:

(1) that it is brought in good faith;

(2) that is has a reasonable prospect of success at trial.

This latter pre-condition is especially comforting because it mandates a preliminary review of the proposed action by a judicial body, thus preventing class action suits that do not have a firm basis in law. We are encouraged to read that the Committee believes that the case for statutory liability has been made and we agree that this issue is one of high priority. We submit that the Civil Liability Amendments could give investors the added support they need in order to address material lapses in disclosure by issuers.

Recommendations 37, 38 and 41: Hold/Seasoning Periods

We expect that the threat of meaningful civil action will go a long way to ensure that continuous disclosure is maintained and upgraded and made available to purchasers of securities in the secondary market. We are given some comfort by the fact that the Commission is committed to continue its push for a more integrated system of enhanced overall disclosure. We believe that statutory civil liability for continuous disclosure and enhanced and integrated

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[7] See clause 14 of Ontario Teachers' Pension Plan Board submissions dated May 2000 (p.3).

[8] See clauses 19, 20 and 22 of Ontario Teachers' Pension Plan Board submissions dated May 2000 (pp.4-5).

disclosure requirements will eliminate the need for hold and seasoning periods in the case of reporting issuers, given present-day levels of access to publicly-released information.

Recommendation 40: Structuring Transactions to Avoid Control Block Hold Periods

We are pleased that the Review Committee has addressed the issue we raised in our submissions of May 2000[10]. We join the Committee in requesting that the Commission immediately examine both transactions that allow control block transfer restrictions and hold periods to be reduced through the use of derivatives, and the use of monetization structures that allow control block holders to cash out their holdings despite transfer restrictions.

Recommendation 42: Disclosure of "Material Information"

We are disappointed with the Committee's decision to advise against changing the disclosure standard in Ontario. We believe that reporting issuers should be compelled to disclose "material information" rather than "material changes" on an ongoing basis.[11] Teachers' believes that by imposing an obligation upon reporting issuers to disclose material information the disclosure standard will be enhanced and the Commission will be greatly aided in its efforts to progress towards a more integrated system of disclosure. We agree that removing the confusing distinctions between a "material fact" and a "material change" will introduce simplicity and clarity to disclosure. We also are committed to the concept of transparency. We believe that investors should have as much information at their fingertips as possible to aid them in their efforts to invest. There is a concern that investors could be "deluged" with disclosure. Our answer is that excess disclosure is preferable to a paucity of disclosure. Increased disclosure obligations will only serve to encourage investor confidence in the capital markets. The Internet is a good vehicle for the provision of this kind of information to investors, offering a simple and immediate method for reporting issuers to meet continuous disclosure obligations.

Furthermore, the issue of investor confidence should be a continuous consideration of any securities commission. We do not believe that simply because each of the stock exchanges in Canada currently have policies in place which expand the timely disclosure obligations of listed companies, the Commission may rest in its efforts. We see leaving it to the exchanges as an

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[9] CSA Notice 53-302 "Proposal for a Statutory Civil Remedy for Investors in the Secondary Market and Response to the Proposed Change to the Definitions of *Material Fact* and *Material Change* (2000), 23 OSCB 7383 (hereinafter referred to as the "Civil Liability Amendments").
[10] See Clause 6 of Ontario Teachers' Pension Plan Board submissions dated May 2000 (p.2).
[11] See Clause 20 Ontario Teachers' Pension Plan Board submissions dated May 2000 (p.4).

abandonment of the Commission's duties to protect the public interest. The stock exchanges do not have the protection of the public interest legislated into their mandates in the same fundamental manner as the Commission, nor do the exchanges have the range of enforcement tools available to the Commission. We urge you to reconsider this issue and to place the disclosure of material information as a priority on your issues list.

Recommendation 43: "Reasonable Investor" Standard

We are in agreement with the Review Committee that it is time for the Canadian materiality test to proceed more along the lines of the American test which is whether there is a substantial likelihood that a reasonable investor would consider the change or fact important in making an investment decision.[12] We believe that the American test fits in better with an overall obligation upon reporting issuers to disclose "material information". The information will be left with the investor who then is free to make all informed decisions and to take whatever actions deemed necessary. Obviously, a consideration of how the information may affect market price of the security will be one consideration. The problem with the current test is plain and simple: it is too subjective and therefore very difficult to assess and apply to particular facts. The "reasonable investor" test is more objective and it already forms the current standard for disclosure of information within a prospectus. We believe that essentially the same disclosure hurdle should apply throughout the Canadian capital markets, whether in offering documents or continuous disclosure materials.

We also wish to address the argument that with the introduction of a new civil liability regime for inadequate disclosure it would be best to wait until reporting issuers are settled with the new liability scheme. We cannot disagree more. The markets need investor confidence now more than ever. To introduce change into the system on a delayed basis is to pacify those market players who refuse to adapt. We urge the Review Committee to not only argue for the rapid introduction of the new civil liability regime, but to push for prompt new rules requiring the disclosure of material information with a new test of materiality intact. Nothing short of substantial reform in capital markets regulation with high standards for reporting issuers will be effective in restoring investor confidence in the system.

Recommendation 44: Selective Disclosure

Teachers' internally reviewed proposed National Policy Statement 51-201 Disclosure Standards and we are of the opinion that this National Policy offers positive support and

interpretive guidelines for analysts and reporting issuers on the topic of best disclosure practices. We are supportive of the fact that the definitions of "necessary course of business" and "general disclosure" have been expanded through the application of caselaw and we support the proposal entirely.

Recommendation 45: Shortening of the Filing Periods

We are very supportive of the CSA initiative to shorten the filing of annual and interim financial statements from 140 and 60 days to 90 and 45 days respectively after the end of an issuer's reporting period.

Recommendation 46: Review of Quarterly Financial Statements by External Auditor

Teachers' supports the proposed amendment to Ontario securities legislation to mandate that all quarterly financial statements be reviewed by the reporting issuer's external auditor, provided that an assessment is made of the costs and benefits of such a change (being mindful of the potential costs, especially for smaller issuers). Our expectation is that the benefits would outweigh the costs. We believe this practice will result in renewed investor confidence and will promote greater confidence in financial statements in general.

Recommendation 47: Filing of Financial Information on SEDAR

We support the idea that press releases including material financial information should be filed on SEDAR and thereby made available to the investing public.

Recommendation 48: Elimination of GAAP Exemption for Banks and Insurance Companies

Teachers' does not see the need for a special exemption from GAAP requirements for banks and life insurance companies. Now that these two pillars of the financial services industries have been brought within the four corners of the CICA Handbook, the original need for the exemption is moot. We join the Review Committee in calling for these institutions to issue financial disclosure to the same standards as other reporting issuers in Canada.

You have asked for comment on the issue of whether or not one override GAAP exemption should be left for prudential purposes where the solvency of the institution or financial services system would otherwise be placed at risk. Teachers' asks why, in a time of great need

[12] ***TSC Industries*** v. ***Northway Inc.***, [1976] 426 U.S. 428 @p. 449.

for financial transparency, would our regulators want to treat one segment of the capital markets any different than the others? We do not see the need for GAAP override in any circumstances. There is a marked difficulty for Commission staff to undertake disclosure reviews of such institutions because of the GAAP override provisions. Also because of these unusual provisions, investors are left at a distinct disadvantage in making financial comparisons. We are strongly in favour of an elimination of the override provisions so that there can be a fairer and more transparent market with all reporting issuers subject to the same standards.

Recommendation 49: Effective Audit Committees

We note the prevailing trend in Canadian corporate governance has been away from legislation and regulator-oversight, especially when it comes to the functioning of boards and their committees. The TSX Company Handbook presents standards for boards to follow but they are suggestions only and they do not carry the force of law. We agree that the integrity of an issuer rests with the integrity of its financial statements. While the CSA, the TSX and the Saucier Committee have all very recently spoken to the issue of best practices for audit committees, we agree that all audit committees across the country should operate to the highest standards. We join the Review Committee in recommending that all jurisdictions in Canada should work with the Commission to set standards and responsibilities to ensure effective audit committees for the reporting issuers of this country. Cost-benefit analyses would be of particular use, we believe, in determining what requirements should be mandatory for audit committees and what may be best issued as guidelines.

Recommendations 50 and 51: Auditor Independence and Disclosure of Audit Fees in the Proxy Circular:

Teachers' has long been an advocate of disclosure of audit fees and non-audit fees paid to the external auditor with a fee breakdown in the proxy circular. Since the SEC established its rules on auditor independence, Teachers' has been able to disclose publicly on its website its intention to vote against incumbent auditors in situations where the fee breakdown contradicted an "appearance of independence" of the external auditor. In cases where the fee breakdown is found to be disproportionate, Teachers' votes against the re-appointment of the auditor. We are very well versed in the various arguments as to whether or not certain non-audit functions constitute a lack of independence. At the end of the day, we have concluded that an appearance of independence is very important to the average unsophisticated investor. This type of investor is greatly aided by a detailed disclosure of audit fees in the proxy circular and we commend the Review Committee for its recommendations on this issue.

Part V: Enhancing Fundamental Shareholder Rights

Recommendation 52: Proxy Solicitation

Teachers' welcomed the reforms introduced to the **Canada Business Corporations Act** in November 2001. We agree that the **Ontario Business Corporations Act** and Part XIX of the Act be amended to reflect the recent amendments to the CBCA.

Recommendation 53: Communications Amongst Shareholders in a Takeover Bid

Teachers' is encouraged that the Review Committee sees the need for fewer restrictions on shareholders' communications in the context of a takeover bid. The number of mergers and plan of arrangement agreements that require shareholder consent is on the increase and it would seem only fitting that the Commission be asked to examine this whole area.

Recommendation 54: The Need to Regulate Arrangements and Takeover Bids – Break Fees

Teachers' agrees that as a matter of public policy, parties to commercial transactions should have the freedom to structure their business transactions so long as these transactions are fair to all parties, including investors. One area of concern that has become topical and an issue that is important for Teachers' is that of "break fees". We believe strongly that an egregious break fee sewn into a takeover bid (or plan of arrangement), violates the public interest in just the same way as a poison pill. The Commission has no issue with striking down shareholder rights agreements that serve to entrench management and, in so doing, allow the shareholders to ultimately decide on the success or failure of a bid. We believe that a break fee can have the same desultory effect on the auction process as a poison pill. A very high break fee will certainly preclude other bids and effectively lock up the acquisition for the party that first is enticed into making the bid by the inducement the break fee may have given. There is some argument that the proper forum for a controversial break fee is the courts, rather than the Commission. Since the Review Committee has decided in many of the recommendations of this Draft Report to urge the Commission to consider matters of corporate governance, we request that the issue of break fees be added to the list. The public interest aspect of break fees suggests that the Commission should issue a comment or some other form of guidance on this issue. We also request that the Review Committee add this issue to the list of concerns under the heading of this recommendation. Harmonization between the province of Ontario and the rest of Canada is essential on this matter as well.

Recommendation 55: Policy Statements on Poison Pills

We believe that it would be useful for the Commission to issue a policy statement to provide guidance as to when a poison pill has outlived its usefulness. Teachers' currently analyzes every poison pill brought to shareholders for ratification and we are aware that there can be a range in protection afforded by poison pills. The two primary functions of a poison pill are to:

(1) lend the auction process more time than the 35 day statutory limit set forth in s.95 of the Securities Act; and

(2) ensure the equal balance of shareholders in situations of creeping acquisitions, market raids and/or purchases of control blocks.

We are of the opinion that some shareholder rights plans currently being brought to shareholders in Canada do no more than leave most of the decisions in the hands of the board of directors. However, we note that there have been great improvements recently in the pills that we have seen and we think that it would be of great value for the Commission to coalesce the surrounding issues by means of a policy statement.

Recommendation 56: Publicly Offered Mutual Fund Governance Body

We are of the opinion that the time has finally come to address the issue of the governance of mutual funds. The potential for conflict of interest is ripe when dealing in management of mutual funds and we agree with the Review Committee that it is to say that just because there have been no publicly reported cases of abuse, one can safely conclude that there is no concern. The very fact that the manager of a mutual fund is an entity apart from the mutual fund itself and is in business to make a profit for its shareholders presents a very serious conflict of interest situation for the investors of the fund and this situation cannot be overlooked longer. As the Review Committee correctly points out in the Draft Report, this situation becomes an even greater concern when the manager manages not just one mutual fund but many. It is naive to believe that the manager functions solely to protect the best interests of the mutual fund. We are encouraged that the Review Committee is suggesting a system of governance for the publicly offered mutual fund industry that would be carried out by unrelated parties who would consider the issues solely in the best interests of the investors to the investment fund and impose a certain discipline on the manager of the fund. We expect that these governance bodies will carefully scrutinize management's performance, costs and proposed fees. Written policies and procedures would ensure that management is held accountable to the governance bodies. We believe that it is fundamental to the success of the proposed model that the independent governance body be

given the power to terminate the contract of the mutual fund manager if the manager is not operating in the best interests of the investors to the fund. Failure to provide the governance body with this power will result in an ineffective body. Accountability will be impossible without delegation of the power to enforce to the independent governance body.

Recommendation 57: Independence of Directors of Mutual Fund Governance

We agree that there must be an adoption of a new approach to the selection of independent directors for mutual fund governance bodies. There is a sufficient pool of talent available in Canada; we do not believe that each candidate for such a directorship must be either a retired or current C.E.O. We are firmly of the opinion that while the qualifications of candidates must include the usual skills required for directorships of public companies,[13] equally important is the requirement that these people be independent from the mutual fund industry and that they fully understand their accountability to the investors of the mutual fund.

Recommendation 58: Characteristics of the Mutual Fund Governance Body

We have read with approval the Review Committee's suggestion for the governance of the new director bodies for mutual funds. We have the following comments to make:

- We agree that the governance body should be fully independent from the manager of the mutual fund. We suggest that the board have a written charter that includes an obligation to act only in the best interests of the mutual fund investors and how it plans to discharge this obligation.
- We agree that the majority if not all of the directors should be independent from the management of the mutual fund company.
- We believe that all fees for directors should be capped or limited. This could be set out in the board's charter or enabling document. By setting a fair and reasonable cap on the amount of compensation to directors, it is ensured that all directors are awarded alike. This is essential so that there will be no hesitation to speak at board meetings and a "creative tension" will hopefully exist between the board and management. Annual disclosure of director compensation of the independent governance body is essential in terms of accountability to unitholders of the mutual fund.

[13] For example, the ability to read and understand financial statements, the ability to participate effectively on audit committees and compensation committees and the ability to challenge and question management.

- One troubling problem with public companies is the fact that many directors hold more than three or four board positions at a time, and one must wonder how effective anyone can be when there is such a division of time and responsibility. Therefore, we think that the Review Committee is wise to consider the number of funds for which any one independent governance body may be responsible. The Review Committee may also wish to consider how many directorships an individual can hold as well. We agree that the decision on the number of funds a governance body can comfortably govern should be made by that body and no other party.
- We support the recommendation that the independent governance body have access to outside counsel and third party consultants on an "as needed" basis. This ensures independence and keeps the directors fully informed.
- We also support the recommendation that the independent governance body have the right to review the performance of the fund manager and to remove the fund manager when the governance body is of the opinion that the fund manager is placing other interests ahead of that of the unitholders.
- Disclosure of the identity of the directors of the independent governance body along with their compensation is essential in terms of accountability to unitholders.

Recommendation 59: Fundamental Responsibilities of Mutual Fund Governance

Boards of public corporations must be very careful to not tread the line between oversight duties and the role of management. The guidance offered by a board to management of a public corporation is tempered with the duty the board owes to the shareholders to test and weigh managements' strategy and performance. We agree that in the area of mutual fund governance the independent governance body must get involved in an analysis of conflict of interest matters, especially those that involve related-party transactions, pricing of units, brokerage allocation and soft dollars. There is also a large monitoring role to be played by the governance body, in relation to fund performance, fees and expenses. Overall, however, we are of the opinion that the most significant duty of this body will be the ensuring first that the fund manager complies with the investment goals and second that any proposed changes to the fund or investment objectives are in line with the original investment philosophy of that fund. We commend the Review Committee for their thoughtful review of the fundamental responsibilities of this body.

Recommendation 60: Oversight by Independent Governance Body

Teachers' agrees that the proper body to regulate the capital adequacy, personal proficiency and standards of business practice is the independent governance body. We see a great benefit in having the independent governance body as the ultimate body to which the fund manager is accountable. Each governance body would be completely familiar with the capital requirements of its funds and with the exact proficiencies required of each manager. We also agree that the enforcement sanctions of the Securities Commission as provided in s.127 of the Securities Act be expanded to specifically include the status of both mutual fund managers and directors of publicly offered mutual fund governance bodies. Registration under the Securities Act would only pass an extra cost burden down to the unitholders of the fund. However, while it is fitting that the independent governance body supervise the capital adequacy, proficiency and business practices of the fund, all violations of applicable securities regulation should continue to be dealt with by the Securities Commission.

Recommendation 61: The Securities Commissions' Power re: Mutual Fund Rulemaking Authority

In light of the fact that it is suggested above that enforcement of mutual fund violations be prosecuted by the Commission, we agree that the Commission be given full rulemaking power in this area through an amendment to the Act.

Part VI: Enforcement

Recommendation 62 and 63: Amendments to section 127 and subsection 3.4(2) of the Act

We commend the Review Committee for its thorough examination of the power to levy fines contained within the securities legislation of the other jurisdictions in Canada and abroad. We are of the opinion that the ability to set an administrative fine is essential if the Commission is to exercise its regulatory enforcement powers in a meaningful fashion. Furthermore, in response to the Committee's recommendation that the maximum fine be set at one million dollars and in recommending that the proposed fine not be tiered in any way, Teachers' believes that the deterrent factor of this fine will be considerable and the Commission will be handed adequate flexibility to set fines under s.127.

The ability to award the disgorgement of profits is also another extremely important power that should be given to the Commission forthwith. In cases where parties have violated securities laws and profited from their actions, the ability to disgorge profits can go a long way to setting the matter straight in the eyes of wronged investors, even when the Commission's role

cannot involve punitive remedies. The ability to order an offender to disgorge profits can fit within the role of protection of the public interest.

We further commend the Review Committee for the proposed amendment to subsection 3.4(2). We agree that where harm has been done to capital markets or where investors have suffered losses, the Commission should have the power to rule that monies paid by a wrongdoer should be allocated for the benefit of third parties, in furtherance of the purposes of the Act, whether pursuant to a settlement agreement, an administrative fine or pursuant to a disgorgement order. Recommendations 62 and 63 are two very important recommendations to come from the Review Committee and we very much hope that they are enacted.

Recommendation 64: Breach of Undertaking

Without the power to enforce non-compliance with an undertaking, whether it is an undertaking originating from a filing requirement, an investigation or even from an enforcement proceeding, the Commission remains an incomplete regulator. We agree that it should be an offence under the Act to contravene, or fail to fulfill, written undertakings to the Commission or the Executive Director.

Recommendations 65 and 66: Restitution Orders

We commend the Review Committee's research in this area and we also recommend that the Ontario Securities Commission use s.128 of the Securities Act in pursuing court orders to award restitution where it is considered appropriate.

Recommendations 67 to 70: National Complaint Dispute Resolution System

We support the Review Committee's recommendation that there be a national complaint-handling or dispute resolution system for the financial services industry. We agree that the following characteristics are important:

- the system must be independent of both government and industry. However, if this system is to be funded jointly by the industry and regulators we do see a potential for a conflict of interest.
- a centralized call center is a very good idea, to provide investors with helpful information and assistance on issues that involve financial service providers. We are also of the opinion that the centralized call center could provide a useful educational service to investors as well.

- we agree that industry participation should be mandatory. As long as industry participation is mandatory and SRO recognition is based upon industry participation in the national complaint dispute resolution system, then the accountability of the financial securities industry will be enhanced.

Recommendation 71, 72 and 73: Proposed Amendments to s.127(1) of the Securities Act

The Commission currently has the power to order that a person resign one or more positions that he or she holds as director or officer of an issuer. Teachers' supports the proposed broadening of this power to include mandatory resignation from acting as a director or officer of a mutual fund manager or registrant. Also, the Commission only has the power to prohibit a person from becoming or acting as a director or officer of any issuer. We agree with the Committee's recommendation that the Commission be empowered to prohibit:

- a person from becoming or acting as a registrant,
- a person or company from becoming or acting as a manager of a mutual fund,
- a person or company from becoming or acting as a promoter, and
- a person or company from engaging in the touting of securities or promotional activities relating to the purchase or sale of an issuer's securities.

Recommendation 74: Power to Enforce Compliance

The Review Committee has recommended that the Commission be granted a very general power to order that a person or company comply with, or cease contravening (i) Ontario securities laws; or (ii) a direction, decision, order or ruling made under a by-law, rule or other regulatory instrument or policy of a recognized SRO or exchange. The Review Committee has also recommended that the Commission have the power to issue orders mandating steps to ensure *future* compliance with Ontario securities laws. We support these recommendations, as well as the efforts of the Review Committee to ensure the harmonization of the securities laws across Canada, to the highest of the various standards. In particular, we note that these types of provisions already exist, to some degree, in both British Columbia and Saskatchewan.

Recommendation 75: Definition of "Trade" to Specifically Include the Purchase of Securities

Paragraph 127(1) 2 provides the Commission with the power to make an order compelling a person or company to cease trading in any securities. The definition of "trade" is outlined in section 1(1) of the act and that definition specifically excludes the act of purchasing

securities. The Review Committee is astute in suggesting that s.127(1)2 be amended to specifically prohibit the purchase of securities within the definition of the word "trade".

Recommendation 76 and 77: Increase in Penalties Section

The last significant amendment of the penalties provisions of the Securities Act was in 1987 and changes to the markets and, in particular, the impact of the Internet have provided an increase in opportunities for conduct that contravenes the Securities Act. So we applaud the Review Committee for its review of the penalties issue. We agree with the Committee that the maximum fine under both the general penalty provision [s.122(1)] and under the specific provision addressing insider-trading and tipping [s.122(4)] should be increased from one million to five million dollars [in the case of subsection 122(4), subject to the higher amount of triple the profit or loss] in order to provide a clear message that such misconduct will not be tolerated. A penalty of one million dollars is no longer meaningful as a deterrent, in many situations.

We agree that the maximum term of imprisonment as set out in s.122(1) of two years is also inadequate but we also are of the opinion that five years is equally inadequate. With the recent spate of worldwide bankruptcies where millions of dollars of shareholders' money has gone missing because of accounting irregularities and other schemes amounting to market fraud, five years does not seem an adequate maximum penalty with which the courts may work. We recommend that 10 years would be a more suitable maximum, reserved for the worst case offender.

Recommendation 78: Restitution Orders

Teachers' agrees that the power for a court to order restitution should be included within the remedies outlined in section 122. The court of original jurisdiction that heard the evidence and issued the findings of fact is the logical body for a hearing of the issues connected with restitution.

Recommendation 80 and 81: Market Manipulation Provision and Misrepresentation Clauses

Teachers' agrees that the Securities Act should be amended to include an express prohibition against fraudulent activity or market manipulation. We agree that the Commission should not have to rely on its public interest jurisdiction in respect of conduct that is abusive of capital markets. The fact that a provision against market manipulation already exists in the Criminal Code is not satisfactory since the charge is rarely laid and, as the Review Committee

points out, the standard of proof in a criminal case is much higher than proceedings under the Commission's jurisdiction.

We further agree with the Review Committee that a clause prohibiting misrepresentations be included in the Securities Act. We believe that this clause should not be limited to misrepresentations made "with the intent of effecting a trade" in a security or contract, since misinformation has negative effects on the marketplace, whether or not the misinformation originated in the context of a trade. We also agree that both oral and written misrepresentations should be included in this prohibition and, since they may be made person to person, over the Internet or otherwise, there should be an effort made to include this distinction in the language of the section.

Recommendation 82: Proceedings Against Insider Trading Under s.127 and s.128 Securities Act

As the Review Committee points out on p.146 of the Draft Report, there is a higher standard of proof for proceedings brought under s.122 of the Securities Act than for civil or administrative proceedings. Teachers' is of the opinion that insider trading is an extremely serious violation of the Securities Act and, absent extraordinary circumstances, nothing short of a period of incarceration should follow proof beyond a reasonable doubt of this violation. Bringing insider trading proceedings under s.127 or s.128 would indeed lower the threshold of proof for the prosecutor, but it would also lower the potential penalty. Teachers' prefers to see the prosecution for insider trading cases be brought under section 122 of the Securities Act because of the fitting penalty for a conviction – we do not think a fine, disgorgement of profits or even a cease trade order, without the added potential of a term of imprisonment, is a fitting array of penalties for insider trading.

Recommendations 84 : Filing of Insider Trading Reports

Teachers' still has the concerns we referred to in our earlier submissions to the Review Committee[14] regarding insider trading in control block positions. Our May 2000 submissions were written before the introduction of SEDI but it would appear that the technical difficulties with this system continue to leave the problem unsolved. We believe that the period for the filing of insider reports should be shortened from 10 days to 2 days whether or not the SEDI system is operational.

[14] See Clauses 6 and 30 of Ontario Teachers' Pension Plan Board submissions dated May 2000 (p.2 and 6).

We support the CSA in its efforts to review the issues surrounding equity monetizations and we continue to push for reforms so that all shareholders and the public in general may always be aware of the insider's relation to the issuer and any change of securityholdings therein.

We are highly disappointed by the lengthy delays in launching SEDI as a functioning system, and we believe that the Committee should recommend that the Commission devote the necessary resources immediately to ensure that these prolonged delays do not continue. When available, SEDI appears to hold much promise in terms of enhancing access to information regarding insider transactions. Launching SEDI should be a high-priority item for the CSA.

Recommendation 85: Reporting of Insider Trading

Teachers' suggests that the Committee's recommendation requiring insiders to report changes in their economic interests be modified, so that insider reporting requirements would apply only to changes in economic interests in the securities of an issuer. We believe that the insider reporting requirements should not be extended to require reporting of economic interests that insiders may have with issuers that are not related to securities ownership (such as customer-supplier, advisory, or employment relationships).

Other Enforcement Recommendations:

The recent U.S. Sarbanes-Oxley Act of 2002 has introduced protections for "whistleblowers" who provide information to authorities concerning possible violations of securities laws. We understand that this legislation creates a new civil remedy for employees of public companies who believe that they have been terminated due to their disclosure of potential violations, as well as new criminal liability for retaliation against whistleblowers. Whistleblower protection is also found, for example, in the Canadian **Competition Act**, as well as in Ontario legislation such as the **Human Rights Code** and the **Occupational Health and Safety Act**. We suggest that the Committee recommend that the Act be amended to protect from retaliation, discipline or discrimination employees who inform authorities (including recognized SROs) of reasonably suspected violations of the Act by their employers or persons associated with their employers. We believe that serious damage to the Canadian capital markets can arise from violations of the Act, and that the public interest in pursuing violations generally outweighs employees' duties of loyalty and confidentiality to their employers. The Commission's enforcement activities often appear to us to be hindered by a lack of direct evidence (for example, in insider trading cases) and protection of whistleblowers from employer retaliation is one straightforward change that could encourage individuals to support the Commission in pursuing

violations. Appropriate whistleblower provisions could enhance the Commission's enforcement efforts.