Box 348, Commerce Court West
199 Bay Street, 30th Floor
Toronto, Ontario, Canada M5L 1G2
www.cba.ca

Warren Law
Senior Vice-President, Corporate
Operations and General Counsel

Tel.: [416] 362-6093 Ext. 214
Fax: [416] 362-7708
wlaw@cba.ca

August 29, 2002

Purdy Crawford Q.C.
Osler, Hoskin & Harcourt LLP
Barristers and Solicitors
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Dear Mr. Crawford:

Re: Five-Year Review of Ontario's Securities Legislation

The Canadian Bankers Association (CBA) appreciates this opportunity to provide comments on the Draft Report of the Five-Year Review of Ontario's Securities Legislation.

While the Draft Report contains 85 recommendations, our comments focus only on those issues that our members consider to be of particular concern. We have organized our comments below under headings and with numbers that correspond to the headings and numbering in the Executive Summary to the Draft Report.

We note by way of introduction that significant developments relating to securities regulation in Canada are underway concurrently with the Five-Year Review of Securities Legislation. These developments include the British Columbia Securities Commission's New Proposals for Securities Regulation, the CSA's Harmonized Continuous Disclosure proposals and the Uniform Act project. These developments will need to be taken into consideration by Canadian securities regulators in order to ensure a balanced regulatory regime in Canada. We also note, with interest, the recent Sarbanes-Oxley Act of 2002 and pending SEC rules that will follow in the US, as part of the context in which the responses to the Draft Report will have to be considered.

Recommendations 1 and 2: Single Securities Regulator, Harmonization

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 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 broad goals that the creation of a single national securities regulator or the harmonization of securities legislation are meant to achieve.

The CBA has been an active proponent of a national form of financial services regulation in Canada. We believe that the current system of regulation, with separate overlapping provincial securities and financial services regulators, is inefficient and expensive to administer, and makes compliance unnecessarily complex and burdensome.

The report specifically recommends that Canada opt for a single national securities regulator. At this point in time, the CBA does not prefer a particular model or form of national regulation. It may be that a single national regulator is the most appropriate model; alternatively, another model of national regulation, such as a mutual recognition model or a pan-Canadian regulator into which some or all jurisdictions opt to be a part, may be appropriate. We, therefore, strongly support the report's further recommendation to incorporate delegation authority into the *Securities Act*, as it would open up the options for a national form of regulation.

The report also expresses support for regulatory harmonization efforts such as the Uniform *Securities Act* initiative. Regulatory harmonization would facilitate mutual recognition. Harmonization is, however, difficult to achieve and even more difficult to maintain. As the report points out, "Even if securities laws across the country were harmonized, this would not eliminate the administrative duplication inherent in having 13 regulators administering and enforcing those laws." In view of this, it is more important that governments in Canada concentrate on finding a national approach to securities and financial sector regulation to eliminate the problems of having to deal with multiple regulatory bodies.

Recommendation 3: U.S. GAAP

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. GAAP should be required to reconcile the statements 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.

The CBA agrees with this recommendation.

Recommendation 4: International Accounting Standards

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.

The CBA agrees that the move to International Accounting Standards should be considered, but this should be co-ordinated with the Canadian standard setter, the Canadian Institute of Chartered Accountants (CICA). The timing of such a move should also be in line with any such move by the US standard setter, the Financial Accounting Standards Board (FASB), so that no new US/Canadian GAAP differences are created.

Recommendation 5: Securities transfer legislation: revised Article 8, UCC

5. We encourage the Commission and the CSA to continue developing securities transfer legislation modeled on revised Article 8 of the Uniform Commercial Code in the United States and we urge governments across Canada to ensure that such legislation is adopted on a uniform basis.

In June 2000, the CBA commented: "We believe that the Tiered Holding System issue deserves to be accorded the highest priority in view of its impact both on domestic laws governing securities holdings and also on the international competitiveness of Canadian financial institutions. Canadian laws should provide a clear and certain legal foundation for the indirect holding system and should recognize 'security entitlements' as a form of property interest. We believe that there is an urgent need for work to be done by the OSC towards developing a set of Canadian rules in this area."

We strongly agree with the Recommendation to encourage the development of securities transfer legislation modeled on revised Article 8 of the Uniform Commercial Code in the United States, and to urge governments across Canada to adopt such legislation on a uniform basis.

Recommendation 7: Harmonized Functional Regulation

7. We recommend that the CSA, provincial and territorial governments and the federal government move to adopt a system of harmonized functional regulation across Canada, whereby all Canadian capital market activities, products and conduct are regulated by a single market conduct regulator and fiscal solvency matters are regulated by a single prudential regulator.

Recommendations 1 and 2 are concerned with the overly complex system of securities regulation that now exists in Canada and call for the creation of a single securities regulator. In the interim, the Recommendations call for the harmonization of securities regulation across Canada and the authority to delegate regulatory powers to another body in Canada. The CBA supports the broad objectives upon which Recommendations 1 and 2 are based, namely to create an efficient capital market and reduce regulatory compliance costs.

Recommendation 7 goes beyond securities to propose reforms for the financial sector as a whole. It calls for the creation of national regulators that would be structured along functional lines.

There is clearly a problem of regulatory structure that needs to be addressed in the securities field. However, while there is no single prudential or market conduct regulator in the securities field, some national bodies do exist for other parts of the industry. OSFI for instance, is the single prudential regulator for banks and most insurance, trust and loan companies in Canada. Although each province and territory has a market conduct regulator that deals with some aspects of insurance, trust and loan company activities in the marketplace, banks (and certain aspects of federal insurance, trust and loan companies) are subject to one national market conduct regulator, the FCAC. This is in sharp contrast with the regulatory structure for the securities industry.

While attempts to streamline the regulatory structure for the securities industry are important, care must be taken that these attempts do not lead to distorting the national regulatory structures for banks that currently exist and that work well. Attempts to create a "functional" regulatory system based on the current structure of multiple provincial and territorial governments could compromise efficiency of the regulatory environment for the banking industry. Indeed, in addition to the significant constitutional issues, such an approach would worsen regulatory fragmentation and complexity in Canada.

Recommendation 11: Basket rulemaking authority

11. We recommend that the Commission be given "basket" rulemaking authority that is substantially identical to that conferred on the Lieutenant Governor in Council pursuant to clause 143(2)(b) of the Act. The Commission should be given the authority to make rules respecting any matter that, in the opinion of the Commission, is "necessary or advisable for carrying out the purposes of the Act."

We agree with the Recommendation that the Commission be given "basket" rulemaking authority that is substantially identical to that conferred on the Lieutenant Governor in Council pursuant to clause 143(2)(b) of the *Securities Act*.

Recommendations 12, 13, and 14: Expedite comment process by reducing timeframes

12. We recommend that the minimum initial comment period for rules be reduced from 90 to 60 days and that the minimum initial comment period for policies be reduced from 60 to 30 days.

13. We recommend that the Act be amended to require that the Commission republish for comment a proposed rule only if the Commission proposes changes to a rule that the Commission considers to be material, having regard to:
(a) the nature of the changes proposed to the rule as a whole; and
(b) whether the final rule is a logical outgrowth of the rulemaking process when viewed in light of the original rule proposal and request for comments.
We further recommend that a similar test be adopted for the republication of policy statements.

14. We recommend that the period for Ministerial approval of rules be shortened from 60 to 30 days.

These three recommendations attempt to address concerns about the length of the rule-making process by reducing the amount of time that interested parties have to review and comment on the new or amended rules, and further, to reduce the number of amendments that are to be subjected to public scrutiny. While we support the goal of expediting the regulatory development process in Canada, we do not believe that these recommendations will achieve this objective.

We are strongly opposed to the proposed reduction of the comment periods to 60 days for proposed rules and 30 days for proposed policies. The proposed reduced time frames would not provide adequate time to obtain input from market participants.

We think regulators should take particular care to ensure that these proposed changes to the initial comment periods and to the requirements for re-publication do not result in the adoption of significant rules and policies without affected parties being afforded a reasonable opportunity to comment.

In our view, the Recommendation that proposed rules should be re-published "only if the Commission proposes changes to a rule that the Commission considers to be material***"***, is too narrow. It would permit the Commission to rely solely on its own view of the materiality of proposed changes, and could result in some changes not being re-published even though market participants reasonably consider them to be material.

As well, we do not believe that the Committee's recommendations for shorter timeframes will achieve the objective of expediting the process. The reason that some regulatory initiatives have taken an excessive amount of time to conclude is not that they were subject to an excessive amount of scrutiny but rather that, in some instances, the proposed regulations were poorly designed. As such, we suggest that the solution to expediting the regulatory development process is not to **reduce** the comment period **after** publication but rather to **increase** the amount of consultation with industry **prior** to publication.

Recommendation 15: Focus on fewer critical policy issues and develop internal standards for proposals

15. We urge the Commission to limit the number of projects that it takes on and focus its resources on fewer critical policy issues. We further recommend that the Commission streamline its internal rulemaking process by, among other things, focussing on fewer policy projects and establishing 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.

The CBA agrees with this recommendation.

Recommendation 16: Cost-benefit analysis

16. The Commission should undertake, as appropriate, cost-benefit analyses to assess the effectiveness of proposed regulations. The Commission should make public these cost-benefit analyses. If no analyses are completed, the Commission should specifically explain why they were not.

The CBA strongly supports the principle that regulations should be effective in meeting their objectives and should do so in an efficient manner, i.e. the benefits must outweigh the costs. To help ensure that this is indeed the case, regulations should be required to pass a comprehensive, credible cost-benefit analysis prior to their implementation. We believe, however, that for any cost-benefit analysis to be comprehensive and credible, it must be transparent and open to scrutiny. Therefore, we would recommend that the publication of the cost-benefit analysis include a detailed description of the underlying factors or measures that were used in the cost-benefit evaluation rather than simply a release of the general findings.

Recommendation 17: Blanket rulings

17. We recommend that the legislation be amended to allow the Commission to issue blanket rulings and orders that provide exemptive relief only. We further recommend that blanket rulings and orders be used only as an interim measure. Therefore, they should be subject to a sunset period under which any blanket ruling or order issued by the Commission will automatically expire in three years unless converted sooner into a rule.

We agree with the recommendation to restore to the Commission the authority to issue blanket rulings and orders on an interim basis, subject to a sunset clause.

We agree that blanket rulings and orders should be used as an interim measure, and the substance of such relief should be incorporated into proposed rules and published for comment. However, we consider that there are likely to be situations where the automatic sunset should not apply, or should be overridden in order to permit the blanket ruling or order to continue in effect for a further period of time.

Recommendation 18: Publish reasons for refusing relief

18. We recommend that the Commission publish exemption orders granted from the requirements of securities rules. We also urge the Commission to consider whether there should be some notice when exemptive relief applications are not granted, and of the reason for the refusal.

We agree with the recommendation to publish exemption orders granted from securities rules.

We assume that the recommendation to publish reasons for refusal of exemption applications relates only to refusals that follow a contested hearing before the Commission or before the Director acting pursuant to delegated authority. We agree that reasons for such decisions should be published, provided that the identity of the parties is not disclosed in cases where confidentiality has been requested and granted.

Recommendation 21: Retain registrant involvement in Internet offerings.

21. In light of investor protection concerns, the Committee is of the view that it would not be prudent to eliminate the need for registrant involvement in Internet offerings.

We agree that the involvement of registrants should continue to be required in Internet offerings.

Recommendations 22 and 23: Electronic Delivery of Documents to Shareholders

22. The CSA should begin to consider alternative models for delivery of documents, whether the implementation of an alternative delivery model is feasible, the substantive rules that would underpin an alternative delivery model and how the model could be implemented.

23. In considering the implementation of an alternative model for delivery of documents, the CSA should consider distinguishing between disclosure documents that contain corporate information but do not require any immediate action by a shareholder (such as financial statements) and disclosure documents that require shareholders to take some form of specific action in connection with a particular corporate transaction (such as a take-over bid circular). Such an alternative communication model might introduce the "access-equals-delivery" approach only with respect to documents that do not require the shareholder to take any specific action.

We support the formulation of an alternative model for the delivery of documents by electronic means on the basis of "access-equals-delivery". To the extent that any documents are excluded from the "access-equals-delivery" model, we request that issuers still be permitted to take advantage of National Policy 11-201 with respect to such documents. In addition, as the Committee is aware, certain corporate statutes, including the *Bank Act*, impose requirements concerning the method of delivery of certain documents which may not include "access-equals-delivery" without further communications. We would therefore encourage harmonization of the delivery requirements in such statutes with any "access-equals-delivery" alternative model implemented by the CSA in order to permit the issuers regulated by them to realize the economies and other benefits afforded by "access-equals-delivery" electronic means of delivery.

Recommendation 24: Registration based on being "in the business of" trading

24. We recommend that the registration requirement relating to trading should be moved to a model requiring the person or company to be "in the business" of trading. However, we would only support such a change if it were to be adopted across the country.

The *Bank Act* authorizes banks to engage in a broad array of activities in the ordinary course of conducting the business of banking. These activities are under the exclusive regulation of the federal government and it is important that securities laws provide for appropriate exemptions so that such activities are not inadvertently brought under the ambit of securities regulation. Indeed, securities laws already provide for a number of such exemptions, for example, the exemption for issuing guaranteed investment certificates and taking a pledge of securities from a control block. These exemptions are accorded to banks in recognition of the powers that are conferred on the business of banking under the *Bank Act*. The Report suggests that one of the purposes of the recommendation is to reduce the number of exemptions from the registration requirement. We are not opposed to reducing the number of exemptions, as long there are no extra-jurisdictional implications and the exemptions are retained for activities related to the business of banking or the change is implemented in a manner that does not purport to require registration for activities that fall within the ambit of the business of banking.

We would submit that Canadian securities regulators should not take retrograde steps and construct additional regulatory barriers, in the form of registration requirements, that will further segment already inefficient markets.

Recommendation 25: Registration requirements and "ancillary advice"

25. The current requirements in the Act to be registered either as an adviser or to trade in a security should be retained. However, the Commission and CSA should carefully review the proficiency, experience and suitability requirements applicable to dealers and employees to ensure that they are sufficiently rigorous to match the increasingly important role of "ancillary advice" delivered by dealers and their employees.

We support the recommendation provided that the additional proficiency, experience and suitability requirements do not apply to those dealers, such as discount brokers, who do not give advice at all.

We would also not be in favor of eliminating the exemption for giving incidental advice altogether, and do not see any policy reason given in the Report for doing so where the advice is truly incidental. Accordingly, we recommend that clear guidance be given on what will amount to incidental advice and therefore come within the exemption, and what will entail more rigorous registration requirements. This will allow those who rely on the exemption to consider whether their activities fit within the exemption and, if not, either to comply with the increased registration requirements or adjust their practices.

Recommendation 27: Universal registration requirements

27. We recommend the Act be amended to eliminate the universal registration requirements.

We would repeat the comment that we made in June 2000: We believe there is no public benefit flowing from the concept of universal registration, given the costs that are imposed both on regulators and market intermediaries. Accordingly, we agree with the recommendation that universal registration requirements should be eliminated.

Recommendation 34: Harmonized minimum Canadian continuous disclosure requirements

34. We encourage the CSA to harmonize Canadian continuous disclosure requirements and to create a base or minimum level of continuous disclosure requirements applicable to all reporting issuers.

We agree that the CSA should harmonize basic continuous disclosure requirements so that they are uniform across Canada. The CBA is currently reviewing the recently published proposed National Instrument 51-102.

Recommendation 35: A statutory civil liability regime for continuous disclosure

35. We support the CSA proposal to create a statutory civil liability regime for continuous disclosure and urge the Government of Ontario to move forward as soon as possible to adopt such a regime by legislative amendment. We also encourage the governments of the other CSA jurisdictions to adopt the regime.

In 1998, in a comment letter to the CSA, the CBA expressed its opposition to a proposal for a limited statutory civil liability regime in connection with continuous disclosure in the secondary market. We noted a number of concerns at the time. These included: that “large cap” issuers such as banks would be particularly vulnerable to "strike suits"; that more analysis was needed concerning the increased personal liability of directors of public companies; that the proposal could result in reduced disclosure; that uniformity is particularly important to ensure consistent protection of investors, prevent forum shopping by plaintiffs and enable issuers to develop uniform disclosure compliance systems for national operations; and that mutual fund investors should be excluded from the group of potential plaintiffs.

We remain unconvinced that that the revisions that have been made to the proposal in the interim are sufficient to resolve our concerns. We also consider that the scope and complexity of the proposal and its potential impact are such that it deserves to be considered very thoroughly in a separate context. In our view, any recommendation to implement the proposal would enjoy greater credibility if it were to flow from a separate, focused consideration of the proposal.

We do not believe that this is an initiative that should be proceeded with by Ontario's acting unilaterally. If there is to be a workable statutory civil liability regime for continuous disclosure, it must be based on a uniform national proposal.

While we acknowledge that the proposals have been improved in the interim, we continue to have substantial concerns that, in our view, have not been addressed. Further extensive industry input and consultation is still necessary. In our view, the additional work that is required should be done in the context of a larger national initiative, rather than through the Minister's Five-Year Review of the *Securities Act*.

Recommendation 36: Reforms to prospectus exemptions and the closed system

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 agree.

Recommendation 40: Monetization of Control Blocks

40. The Commission should examine the practice whereby control block holders reduce applicable hold periods through the use of derivatives and other monetization structures. We recommend that the Commission issue guidance on this practice and, if necessary, utilize its public interest jurisdiction under section 127 of the Act to address it.

We agree that there is a need for clarification and guidance.

Recommendation 42: "material information"

42. Don't amend the Act's timely disclosure provisions to require disclosure of "material information"

The CBA agrees that the Act should not be amended to require disclosure of "material information".

Recommendation 43: "reasonable investor"

43. Change materiality standard for all purposes under securities legislation to a "reasonable investor" standard

We have concerns about the proposed recommendation and strongly urge further analysis before implementing any change of this nature.

Recommendation 45: Shortening the Period for Filing Financial Statements

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 statements be reduced to 45 days after the end of each quarter.

We support the abbreviation of the time periods for filing annual and quarterly financial statements. If the time periods are to be reduced, this should be implemented concurrently with the proposal to allow issuers to send their financial statements to shareholders at a later date than the date they are filed. This structure is contemplated by Part 4 of proposed National Instrument 51-102.

Recommendation 46: Review of quarterly financial statements by external auditor

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

The CBA considers that the review of quarterly financial statements by the issuer's external auditor may be desirable. However, we do not believe that this should be mandatory. We also would submit that any such requirement should not preclude the release of unaudited quarterly results prior to the completion of a review by the external auditor. As well, it should be made clear that a review engagement report need not be attached to interim financial statements.

Recommendation 47: Earnings Press Releases Filed on SEDAR

47. Ontario securities legislation should be amended to require that press releases containing financial information or earnings information must be filed on SEDAR.

We do not agree with this recommendation. Many of our members file earnings releases through SEDAR as a best practice. We believe that the CSA have taken the correct approach through National Policy 51-201 - Disclosure Standards by providing guidance to issuers on best practices, which includes their recommendation that earnings releases be filed through SEDAR.

Recommendation 48: Remove or limit GAAP exemption available to banks and insurance companies

48. We recommend that the GAAP exemption available to banks and insurance companies in subsection 2(3) of the Regulation to the Act be removed. Alternatively, we believe that the GAAP exemption should be limited to permit OSFI to override GAAP only where there is demonstrable prudential concern in order to contain or prevent solvency risk. The recent amendments to the GAAP override relating to bank holding companies should also be reconsidered.

We agree with the recommendation to remove the GAAP exemption available to banks in subsection 2(3) of the Regulation to the Act. The CBA is in favour of transparency and of having only one source of GAAP in Canada, namely the CICA. Canadian Banks that are SEC registrants cannot file financial statements with the SEC if the financial statements have exceptions from GAAP.

Recommendation 49: Audit committees

49. We recommend that the Commission be given rulemaking authority to prescribe requirements relating to the functioning and responsibilities of audit committees of reporting issuers. We encourage other CSA jurisdictions to give their commissions similar powers, and we urge the CSA to work together expeditiously to establish standards for audit committees that will make Canadian audit committees "best in class" internationally.

The CBA is in favor of giving rulemaking authority to the OSC to prescribe requirements relating to the functioning and responsibilities of audit committees. However, we caution strongly that any rules must be flexible enough to allow for the differences that would be required from one company to the next.

We also believe it is important to recognize that certain framework statutes such as the *Bank Act* and the regulations and guidelines made under them contain detailed legislative requirements concerning the composition, responsibilities and functioning of audit committees. The *Bank Act* regulations and guidelines, in particular, reflect current "best practices" in this area. We recommend that any rules made by the CSA jurisdictions should be consistent with requirements under framework statutes, and should permit reporting issuers to comply instead with the requirements of the laws of the jurisdiction under which they are incorporated provided such requirements are substantially as rigorous.

Recommendation 50: Developments relating to auditor independence

50. We urge the Commission to proactively monitor ongoing U.S. developments relating to auditor independence and to consider what reforms are necessary to ensure that Canada does not lag behind international standards.

We agree that developments in the US should be monitored and, where appropriate, reforms should be considered for adoption in Canada.

Recommendation 51: Proxy disclosure - audit and non-audit consulting expenditures

51. We recommend that the Commission adopt amendments to proxy disclosure rules to require public companies to disclose in their proxy statements their expenditures for both audit and non-audit consulting services.

A number of members of the CBA already make this disclosure. However, we suggest that any requirement should allow disclosure in either the proxy circular or the annual report, as the issuer determines.

Recommendation 52: Amendments to Proxy Solicitation Rules

52. We support the reforms to the CBCA relating to proxy solicitation. We believe that Part XIX of the Act should be similarly amended to ensure that shareholders are able to communicate with each other in prescribed circumstances without having to file an information circular. We believe that the Commission should co-ordinate with the provincial government so as to ensure that amendments adopted under the OBCA and the Act are uniform. We further recommend that the Commission consider whether it has the authority to incorporate by reference the requirements of another Canadian statute such as the OBCA or CBCA with regard to proxy solicitation, rather than stating the rules explicitly in the Act.

We do not agree with the recommendation. As the Committee has indicated, a variety of governing corporate legislation deals with shareholder communication matters. We are concerned that importing these measures into the *Securities Act* would add a layer of duplicative but somewhat different regulation. This is not necessary or desirable at a time when securities commissions should be espousing streamlining and lessening of regulation.

Recommendation 54: Harmonize take-over bid regulation across the country

54. Nothing has come to our attention that would support the need to regulate arrangements and take-over bids in an identical fashion. We believe that, as a matter of public policy, parties to commercial transactions should have the freedom to structure transactions to achieve their business purposes so long as these transactions, and the legislation that governs these transactions, are fair to all interested parties. The Committee notes that it is especially important to harmonize take-over bid regulation across the country and encourages the CSA to adopt a harmonized approach to these issues.

We agree with the recommendation.

Recommendations 67-70: Complaint-Handling and Dispute Resolution

67. We encourage the establishment of a national complaint-handling system in which participation by financial services providers is mandatory. The system should be independent of government and industry, provide information and general guidance on the complaint-handling process, and have a centralized process for handling calls and compiling and reporting statistics. The system should also include an Ombudsman who would have the authority to make decisions that are binding on the financial services provider but not the investor. The investor's right to further pursue the complaint through other available avenues, such as arbitration or litigation, would be unaffected.

68. We also recommend that, as a condition of its recognition of an SRO, the Commission should require the SRO to require its members to participate in and agree to be bound by any national complaint-handling system that is in place, as well as any industry-sponsored dispute resolution program that may be applicable. We favor transparency in connection with such programs and strongly encourage the publication of statistics on the use of the programs as well as details concerning the outcomes of cases or the resolution of complaints.

69. We strongly encourage the IDA and any other SROs that have or may be contemplating alternative dispute resolution programs to, at a minimum, require their members to advise customers of the availability of such programs and publish statistics relating to the program.

70. We encourage further work by the financial services industry toward the goal of creating a national dispute resolution system and ultimately consolidating the complaint handling and dispute resolution systems into one seamless process.

The report outlines the existing dispute resolution mechanisms for the investment industry through the Canadian Banking Ombudsman and the Investment Dealers Association. It also indicates its general support for the planned creation of the Financial Services OmbudsNetwork (FSON), as it is now called, that will provide a "single window" for consumers of financial services to access the industry's complaint-handling and dispute resolution mechanisms. From the banking industry's perspective, the FSON generally meets the criteria that the Report indicates should be found in a complaint-handling system. For example,

- The FSON is **national in scope,** accepting inquiries from any consumer across Canada. Consumers can access this network at no cost to themselves, **the costs being entirely funded by the industry.**

- **Independence** is a key criterion in the standards being established for the FSON and particularly the industry-level mechanisms. In addition the initial FSON Board - which will establish, monitor and report on compliance with the standards - is being appointed by a government/consumer task force formed by the Joint Forum of Financial Market Regulators to ensure, in fact and perception, independence from the industry.

- The FSON initiative demonstrates that the financial services industry is moving towards a single, national system to handle consumer complaints. It consolidates the complaint-handling and dispute resolution systems into one seamless process. The FSON will provide a **single window access point** that will refer callers to the appropriate complaint-handling contact at the institution or industry-level mechanism. It will also provide information and guidance on how to make a complaint, compile statistics on the volume and nature of complaints referred, report publicly on the operation of the network and compliance with the standards, and generally ensure the transparency of the system.

- The FSON process relies upon the **individual financial institution as the first step** in dealing with customers' complaints. It is a consumer assistance and referral service that builds on existing consumer redress mechanisms in the financial services industry. FSON has three components: individual financial services companies and their own individual complaints management procedures; financial industry ombudservices that provide impartial and independent resolution of complaints; and the Centre for Financial Services OmbudsNetwork that guides consumers to the appropriate point in the network.

- The FSON call centre will re-direct to the financial institution any customer who has not initially taken the complaint to there.

- FSON does not address consumer complaints directly. Its role is to ensure that complaints are directed to the appropriate point in the system, including the industry-level dispute resolution mechanisms. The FSON industry-level mechanisms will provide an ombudsman function that will impartially investigate all aspects of the complaint, work to facilitate a

mutual understanding of the issues and recommend a fair resolution to the customer's concern.

- If the customer is directed by FSON to an industry-level ombudsman mechanism, the customer is under no obligation to accept the ombudsman's recommendation and can pursue the complaint through the courts. Although the financial institution would not be bound to comply with the recommendation, if it does not the ombudsman is required to publish that fact. Public disclosure is felt to be more of a penalty than a monetary fine in these circumstances. For example, the experience of the Canadian Banking Ombudsman over the last six years has been that every one of his recommendations to the banks has been followed.

- The FSON is well along in its establishment. The Board of the FSON was announced on July 31, 2002. We expect that very shortly the industry-level mechanisms will be operational and the Board of the FSON will begin the process of approving the standards for the network and overseeing the operation of the Centre for the Financial Services OmbudsNetwork (CFSON). The call centre will begin operating on a pilot basis over the summer with a view to having it fully operational by early fall 2002. Going forward, it is hoped that the FSON system will continue to develop and move in the direction of consolidating the different components of the FSON system into a single, consolidated national dispute resolution system.

- In Recommendation 67, the third and fourth sentences state that the proposed national complaint-handling system should include an Ombudsman. This would more properly fit into Recommendation 70, which calls for the creation of a national dispute resolution system.

- Recommendation 68 "encourages the publication of … details concerning the outcomes of cases or the resolution of complaints." We would suggest that the Recommendation be revised, to state that such publication should be "subject to compliance with federal and provincial privacy laws."

Recommendation 85: Insider Reporting

85. We recommend that Ontario securities law be amended to require insiders to report any effective change in, or disposition of, their economic interest in an issuer.

We agree.

We would be pleased to have further dialogue with the Committee on these issues. Please feel free to contact us at anytime if we can assist you or your staff.

Yours very truly,

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