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

Dear Mr. Crawford:

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

I. Introduction

We thank you for the opportunity to provide comments on the Draft Report, which provides a very comprehensive review of major recommendations for change proposed to be made to the Securities Act (Ontario). As you may be aware, TSX Venture Exchange (the "Venture Exchange") lists over 2,500 companies, most of which are junior issuers. Venture Exchange listed issuers are small issuers. We believe a thorough appreciation of the size of this large population of issuers is essential for future policy directions. Our comments are made from the perspective of these junior issuers and their security holders.

II. Major Comments

Overall, we support most of your recommendations and believe that they will result in improved efficiencies in the Ontario capital markets.

We do, however have some comments in respect of certain of your recommendations. Our comments are numbered in a manner that corresponds to the numbering of your recommendations, as set forth in the Executive Summary portion of the Draft Report.

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

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

2. In the meantime, we recommend that certain steps be undertaken by securities regulators to continue to harmonize securities regulation across Canada.

We are of the view that greater emphasis must be placed upon the harmonization of securities regulation across Canada. It is only through such harmonization that the capital markets of Canada can operate most efficiently. Although the CSA has been moving in this direction for quite some time, most notably with the MRRS regime in terms of prospectus offerings and exemptive relief applications, there have been some set-backs. For instance, Multilateral Instrument 45-103 *Capital Raising Exemptions,* which applies in Alberta and British Columbia and OSC Rule 45-501 *Exempt Distributions*, which applies in Ontario, both deal with exempt distributions. Although similar in nature, they provide for fairly different capital raising exemptions. We submit that this lack of uniformity should be avoided.

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.

We support this proposal in part. The CSA recently published proposed National Instrument 51-102 *Continuous Disclosure Obligations* (the "CD Proposals"). The CD Proposals would permit the above use of US GAAP only for SEC registrants. We feel this is a more prudent step. Many junior issuers seriously underestimate the complexities of U.S. GAAP. We believe most junior issuers are not competent to prepare financial statements in accordance with US GAAP. If all junior issuers were permitted to use US GAAP we believe there would be widespread material financial reporting errors and omissions. The CD Proposals strike a better balance. For the most part, SEC registrants are larger and more sophisticated and therefore more capable of reporting accurately under US GAAP.

We point out to the committee that US GAAP expertise is not easy to come by. Even under the CD Proposals, CSA members will have to make a significant investment in acquiring, and then retaining, sufficient US GAAP expertise to discharge their duties.

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.

We believe the encouragement should be tempered with a note of caution. We do not dispute the benefits of International Accounting Standards. However, we believe such standards are not as far along in terms of detailed interpretation and practice to be viable in the short to medium term. As well, there is a significant competency gap that issuers, auditors, regulators and, most importantly, financial statement readers need to bridge before such standards are useful in practice.

We also are concerned that to date, we have seen little in International Accounting Standards that focuses on the costs and benefits of certain standards to readers of small issuer financial statements. The costs of creating international standards may, as a practical matter, be a significant barrier to any due consideration to all but the biggest of international enterprises.

Part 3 – Regulation of Market Participants

30. We recommend that the Commission and the CSA consider whether to require QATRS (quotation and trading reporting system) and the unlisted market to obtain recognition under securities legislation and to develop a harmonized approach to QATRS and the unlisted market.

In order for the public interest to be served on a consistent basis, regardless of the quotation and trading system or market, we support this recommendation.

31. We recommend that SROs be required to report to the Commission any breaches or possible breaches of securities law that they believe have occurred or may have occurred.

As you point out in the Draft Report, we have previously indicated that, "it is not appropriate to delegate responsibility for enforcement of securities legislation to SROs ... SROs not being government bodies have different burdens of proof; different evidentiary standards and different procedures than do Securities Commissions." In our view the role of securities commissions and SROs should be kept distinct.

Although you do not recommend that SROs enforce Ontario securities laws, you do recommend that SROs immediately report any activity to the OSC that appears to be a contravention of Ontario securities laws. You further state that this should be contained in the terms and conditions of any recognition order given to the SRO.

We are concerned that this could place an increased onus on an SRO to examine and investigate each file in order to make a determination as to possible breaches of securities laws, rather than simply report breaches that are clear. This would also have the effect of revising our current reviewing mandate such that staff legal counsel would be required to review each file in order to ensure compliance with securities legislation. We are of the view that compliance with securities legislation should be a matter left largely to the issuer, its legal counsel and the appropriate securities commissions that are charged with enforcing securities legislation.

The Venture Exchange is not intended to act as an enforcer of securities legislation and should not be required to take on the role of investigator to determine whether an issuer has violated securities legislation. Rather, the Venture Exchange proposes that it continue its current practice of reporting to securities commissions clear breaches of securities legislation, when such breaches come to the attention of the Venture Exchange.

The Draft Report states that "we do not believe that the Act needs to be amended to provide SROs and Exchanges with powers to do what they can do contractually and corporately, there may be a need to give SROs authority to conduct investigations and obtain evidence from non-members. We invite further comment on this point."

In this regard, please be advised that sections 69 and 70 of the Securities Act (Alberta), gives recognized exchanges, self-regulatory organizations and quotation and trading systems increased powers in respect of hearings (i.e. subpoena power) as well as the right to apply for court orders respecting the appointment of receivers, managers, trustees or liquidators. If you have not already done so, you may wish to consider these provisions in your deliberations.

Part 4 - The Closed System and Secondary Markets

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.

Although we generally support the harmonization of Canadian continuous disclosure requirements, we do have concerns based on the recent proposals made by the CSA in respect of National Instrument 51-102 *Continuous Disclosure Obligations* (the "CD Proposals"). These concerns are reflected in detail in our separate comments on the CD Proposals.

In summary, the main thrust of our concern was that the CD Proposals fail to adequately take into account the circumstances of junior issuers, particularly in terms of disclosure requirements. The Venture Exchange currently regulates many of the acquisitions contemplated by the CD Proposals, including reverse takeovers, changes of business and fundamental acquisitions. The Venture Exchange policies provide for various investor protections in respect of these transactions through a review process, including a review of the accompanying disclosure documents, prior to the transaction being permitted to proceed. In accordance with this review process, the Venture Exchange may require that proposed disclosure documents (i.e. an information circular) be amended prior to submission to securityholders. In addition, the Venture Exchange may also impose various restrictions on the transaction such as escrow requirements. In fact, we have taken the view that the Venture Exchange requirements, including the review of accompanying disclosure documents, are more appropriate to junior issuers than are the CD Proposals, as the Venture Exchange reviews these transactions prior to their being effected, rather than on a post-transaction basis.

Instead of being able to rely on current Venture Exchange flexibility as to disclosure that takes into account the particular circumstances of junior issuers, the CD Proposals will require that our listed issuers obtain discretionary relief from securities regulatory authorities, which relief is expected to be less timely and more costly to obtain than the relief which may be granted by the Venture Exchange. This is anticipated to impact negatively on the efficiency of the capital markets, particularly as if effects junior issuers.

Our position is that as the Venture Exchange already provides for various investor protections respecting such transactions, junior issuers should not be required to be subject to certain of the CD Proposals provided that they comply with applicable Venture Exchange requirements. At best, the CD Proposals will involve a duplication of effort for such issuers and, at worst, they will result in increased costs and time delays on various transactions.

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

We wholeheartedly agree with this recommendation and echo your concerns relating to recent reforms dealing with prospectus exemptions that have been adopted in Alberta, British Columbia and Ontario where the regulators seem to be moving in different directions. It is fundamental to a harmonized set of hold periods and seasoning periods as found in Multilateral Instrument 45-102- *Resale of Securities*, that the underlying prospectus exemptions also be harmonized. Our preference is that such harmonization should be in accordance with the exemptions found under Alberta and British Columbia's Multilateral Instrument 45-103, rather than the more restrictive exemptions found in Ontario's Rule 45-501, which, in our view, do not adequately address the circumstances of junior issuers.

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.

Although this recommendation may be appropriate for senior issuers, we do not agree with this recommendation for our junior issuers. In fact, the CD Proposals do not make this recommendation. In terms of junior issuers, those proposals advocate a reduction in the filing period for annual financial statements from 140 days to 120 days. No change is recommended to be made to the current 60 day filing period for interim financial statements.

We have commented to the CSA that a reduction of the filing period from 140 days to 120 days has not been supported by analysis of shareholder needs.

We also point out that most recently the SEC has chosen to exempt issuers with less than U. S. $75 million market capitalization from a proposal to further reduce the filing period for annual financial statements to 45 days. We suggest that this exemption recognizes differing shareholder needs and issuer abilities to prepare and have audited annual financial statements. Substantially all of our issuers have less than Cdn. $25 million market capitalization, with a majority of our issuers having somewhat smaller market capitalization.

Alternatively, if you choose to proceed with this recommendation, we would suggest that such a recommendation include a provision for an automatic exemption from these requirements for junior issuers.

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

We are strongly opposed to this proposal. There is no research of Canadian companies supporting a Canadian public interest in this proposal. The proportional costs to junior issuers of quarterly reviews is much higher than it is for other issuers. We believe this cost exceeds any purported benefits to the public of the added assurance of an auditor's review of interim financial statements.

We do, however, suggest that issuers, including junior issuers, be required to have quarterly financial statements reviewed by the audit committee of the board of directors of the issuer.

57. 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.

This point is most illustrative of a fundamental, but overlooked, difference between small and large issuers. Historically, auditor independence concerns, including most recent history, focus on auditor compensation and auditor independence. As it relates to small issuers there is no significant independence issue related to auditor compensation for services. Small issuer professional fess are simply too small to ever have been an independence threat to the auditor. The proposed disclosure has no benefit to small issuer shareholders whatsoever.

Part 6 – Enforcement

74. We recommend that a new paragraph be created under subsection 127(1) of the Act, authorizing the Commission to order that a person or company:

- comply with or cease contravening:
  - (i) Ontario securities law; 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.
- take steps to ensure future compliance with Ontario securities law, or a discretion, decision, order or ruling made under a by-law, rule or other regulatory instrument or policy of a recognized SRO or exchange.

We fully support this amendment particularly as it relates to the Venture Exchange. We believe it will be a useful tool in assisting us in enforcing our policies.

Conclusion

We trust that this gives you a perspective on the effect of the proposals on Venture Exchange listed issuers and their shareholders.

Although overall, we support the majority of the recommendations, we are concerned that certain of the proposals do not consider factors of importance to junior issuers. We are of the view that certain of the recommendations that you have made appear to be based on a "one size fits all" concept, which we believe is inapplicable to the capital markets of this country which are made up of both junior issuers and more senior issuers.

We are of the view that certain of the recommendations need to be refined to more adequately take into account the needs of junior issuers and their shareholders.

We thank you for the opportunity to comment. Naturally if you require any further particulars, please advise.

Yours truly,

TSX VENTURE EXCHANGE INC.

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President

cc: Julie Shin, TSX
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