June 22, 2000

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Register of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

Dear Mr. Stevenson:

The Corporate Finance Committee of the Investment Dealers Association is pleased to respond to the CSA Concept Proposal for an integrated disclosure system (the "IDS"). As you know, the central aspects of the proposal are: (i) the proposal integrates prospectus disclosure with the continuous disclosure system to provide a seamless and comprehensive disclosure regime for reporting issuers; (ii) the traditional corporate disclosure documents, the Annual Information Form (AIF) and quarterly reporting (defined as the Quarterly Information Form (QIF)) become the centerpiece of the disclosure process; and (iii) reduced emphasis is placed on prospectus documents for disclosure purposes, and the related regulatory review and approval process will shorten the offering period for issuers. We are pleased that this will enable many companies, especially small companies that heretofore have not had access to the Prompt Offering Prospectus System, to structure and quickly launch public offerings in capital markets. This will improve the efficiency of the capital-raising process and is a concept which we heartily support.

The IDS upgrades continuous disclosure requirements, notably by making modifications to the AIF and to the reporting interim financial statements on the QIF, supplemented by event-triggered disclosure (referred to as the Supplementary Information Form). This improvement in the quality of disclosure addresses shortcomings expressed by investors, most recently in the investigations of the TSE Committee on Corporate Disclosure (the Allen Committee). Enhanced disclosure, coupled with the bolstered financial resources of provincial commissions which enable them more effectively to carry out their responsibilities for the enforcement of rules, should contribute importantly to investor confidence in domestic markets.

Reporting Issuer in All Jurisdictions

The proposed IDS involves eligible companies being designated as reporting issuers in all provincial jurisdictions. The CSA believes this requirement would encourage greater uniformity in the rules governing securities distributions. However, as the CSA points out, all-jurisdiction reporting issuer status is not essential to ensure secondary market access to timely, high-quality information about an issuer -- a key aspect of the proposed IDS.

The Corporate Finance Committee concludes that requiring reporting issuer status in all jurisdictions is an onerous requirement for small issuers and could act as a serious disincentive to these companies accessing the IDS. The all-jurisdiction requirement would add significantly to the regulatory burden upon eligible companies, including filing fees in all jurisdictions, the translation requirements and compliance with reporting issuer rules in all jurisdictions. The Committee further concludes that uniformity in rules governing distributions in provincial jurisdictions can be achieved through close coordination among provincial jurisdictions, without requiring individual companies to become reporting issuers in all jurisdictions as a condition for joining the IDS. The Committee recommends that reporting issuer status in any provincial jurisdiction should be sufficient for eligibility to the IDS. The disincentive for small companies from entering the IDS, because of the costs of complying with all-jurisdiction reporting issuer requirements, exceeds any benefit from promoting greater uniformity in provincial regulations. If an issuer wishes to distribute its securities benefiting from the IDS in more than one jurisdiction it would, of course, have to be a reporting issuer in each relevant jurisdiction.

Disclosure Burden

The proposed IDS upgrades the disclosure requirements of reporting issuers, particularly through modifications to the Annual Information Form, and the quarterly reports (Quarterly Information Form). In this regard, a positive step taken by the regulators is to strengthen requirements for interim financial statements included in the QIF, notably by requiring the review of financial statements by audit committees and approval by boards of directors. The Committee cautions that regulatory requirements for the IDS should not be more onerous than existing SEC requirements. More burdensome requirements could provide a disincentive for Canadian companies to join the IDS and refrain from offering securities in domestic markets and listing on Canadian stock exchanges. The Committee believes the CSA is aware of increasing competitive pressures on domestic markets, both for issuers and investors, and the need for harmonization between Canadian and SEC regulations.

Due Diligence

The streamlined prospectus review contemplated under the IDS, essentially comprising a term sheet document, will shorten the timeframe for public offerings from roughly seven business days to three business days. This reduced timeframe will put further pressure on underwriters to carry out their due diligence responsibilities rapidly. The due diligence of information disclosed, and incorporated by reference, in the offering documents is an integral part of the underwriting process. Due diligence comprises an examination of the disclosed facts, and reasonable inquiry into the information provided in disclosure documents, related discussions with management and board members, and receipt of favourable opinions from issuer's and underwriter's counsel.

In the context of the IDS, the due diligence process consists essentially of a review inquiry into the continuous disclosure documents, including the Annual Information Form and Quarterly Information Form. The offering prospectus simply incorporates by reference these periodic disclosure documents. The need for underwriters to complete due diligence within a shorter offering period may lead to several consequences. First, it may encourage issuers to establish formal relationships with investment banks to enable these banks to develop a familiarity with the company and reporting documents, and effectively carry out due diligence responsibilities in advance of a specific offering of securities. Second, since some issuers desire the flexibility of soliciting bids from competing underwriting syndicates and should be permitted to do so, this process may require that the designated underwriter extend the offering period in order to enable the syndicate to complete the due diligence process properly. We are concerned that competitive pressures may make it difficult for underwriters that do not have a "relationship" to extend the offering period in this manner. The Committee concludes that the requirement for senior officers and directors to certify "full, true and plain" disclosure of "interim" documents when filed will have a positive impact on the disclosure process. This certification requirement will compel boards to submit the disclosure process to more rigor thereby ensuring greater accuracy and completeness.

The Committee concludes that several additional modifications could be made to the Proposal to assist underwriters in carrying out the due diligence obligation. In particular, the CSA could provide explicit guidance to underwriters on those practices that would constitute "a reasonable investigation" under securities regulation. For example, in connection with proposals to reform the regulation of corporate offerings (the Aircraft Proposal), the SEC enumerated several practices it believed the courts should consider as positive factors when reviewing the competence of due diligence carried out by an underwriter in the content of an expedited offering. These practices are as follows:

i) review of the registration statement and reasonable inquiry into any fact or circumstance that would cause a reasonable person to question the contents;

ii) discussion with management (including, at a minimum the Chief Financial Officer and accounting officers) and receipt of certification as to compliance from those officers;

iii) receipt of a "comfort letter";

iv) receipt of a favourable opinion from issuer's counsel;

v) receipt of a favourable opinion from underwriters counsel;

vi) employment of and consultation with an appropriately experienced and informed analyst.

The Committee concludes the identification of specific practices would greatly assist underwriters in carrying out due diligence and provide comfort in managing the task effectively. The Committee recommends that the CSA formally recognize the aforementioned or similar practices as constituting competent due diligence.

The Committee also concludes that underwriters have the responsibility for reviewing the accuracy of disclosure information prepared by issuers and not the actual prepration of this disclosure information. In recognition of this distinction, the Committee recommends that underwriters should not be held to the standard of "full, true and plain" disclosure of material facts, as is the case for senior officers and boards of directors. Rather, underwriters should certify, subsequent to the due diligence process, to being unaware of any misstatement of disclosed material facts. The Committee proposes the following alternative certification "to the best of the underwriters knowledge, the underwriter is unaware of any misstatement of a material fact in the prospectus or continuous disclosure documents incorporated by reference".

Premarketing Restrictions

The proposal for an IDS would eliminate restrictions governing the premarketing of securities offerings. Marketing communications could be permitted at any time without the need to file a preliminary prospectus before soliciting expressions of interest from investors. The decision to take a liberal approach to premarketing is, we assume, based on regulators concluding that comprehensive disclosure connected with the integrated disclosure system addresses concerns of unequal access to information. Further, regulators consider the premarketing restrictions as a source of some confusion in the marketplace.

The majority of the membership of the Committee supports the elimination of the pre-marketing restrictions in the context of the proposed IDS regime based on the view that it provides greater flexibility in the capital raising process and acknowledges the diminished role of the prospectus and the increased emphasis on continuous disclosure. However, some members have indicated that there is potential for abuse and that premarketing should be closely monitored. Certain members of the Committee have particular concerns regarding the elimination of the existing pre-marketing rules in the absence of the formulation, adoption and enforcement of a new framework to address pre-marketing issues and potential abuses under the proposed IDS regime. We understand that one or more members with these particular concerns may make a separate submission to the CSA for its consideration.

The Committee recognizes that the misuse of material undisclosed information in respect of a reporting issuer acquired through premarketing would constitute a serious abuse in the capital markets and encourages regulators to take appropriate steps to ensure that such abuse does not occur under the IDS. As a first step, regulators should remind investors and dealers that upon

receipt of material undisclosed information, such as information related to a forthcoming offering, an investor or dealer becomes a "person or company in a special relationship with the reporting issuer" and is ineligible to purchase or sell securities of the reporting issuer so long as the material fact or material change has not been generally disclosed. Further, regulators should remind IDS issuers that they have an obligation to make timely disclosure of material information (by the SIF), such as a forthcoming public offering, once issuers have formed a reasonable expectation of proceeding with the offering. Regulations should also ensure enforcement of these obligations.

Another potential issue exists, however, regarding possible market distortion resulting from the misuse of information concerning the existence of a proposed offering. For example, an institutional investor learning of a proposed equity offering may anticipate ensuing weakness in the market price of the security and sell the security placing downward pressure on its market price. Alternatively, institutional investors may not sell after learning of a proposed equity offering but may not buy either if it anticipates a pricing fall or announcement.

Marketing Communications

Marketing communications relate both to written and oral communications with investors, including material information disclosed in prospectuses and continuous documents, as well as all available information on the issuer. All written marketing communications by the issuer, or by agents of the issuer, in connection with the distribution of the securities offering, would be subject to "full, true and plain" certification standards.

The Committee recommends the IDS proposal include several exceptions to the certification standards. Research reports and other written commentary on the issuer, published in the ordinary course, should not be included in the definition of marketing communications and subject to certification, unless the issuer makes specific reference to these materials during the distribution period. It would be a costly, time-consuming and problematic exercise to subject research reports and commentary, published in the normal course widely in the financial sector, to the due diligence process and to certify to the "full, true and plain" disclosure standard. Whereas the CSA may be concerned about underwriters "conditioning" the market, it is equally important that investors receive continuous, comprehensive and timely disclosure.

The Corporate Finance Committee has responded in detail to the thirty-four questions raised in the Concept Proposal to assist CSA staff in structuring the proposed integrated disclosure system. Our answers are appended to this letter. The Committee respectfully requests CSA staff to consider carefully the summary points outlined in this letter and the responses to specific questions asked in the Concept Report. Representatives of the Corporate Finance Committee would be pleased to discuss our comments in greater detail with CSA staff.

Yours sincerely,

Joseph J. Oliver

M E M O R A N D U M

June 22, 2000

To: **The Canadian Securities Administrators ("CSA")**

From: **The Corporate Finance Committee of the Investments Dealers' Association of Canada (the "Committee")**

Re: **Request for Comment in respect of the Concept Proposal for an Integrated Disclosure System ("IDS")**

This memorandum provides the Committee's responses to the thirty-four questions raised in the Request for Comment of the IDS Concept Proposal.

A. IDS ELIGIBILITY

Reporting Issuer in all Jurisdictions

1. *Should reporting issuer (or equivalent) status in all CSA jurisdictions be a condition of IDS eligibility? What are the advantages and disadvantages of this approach? Would requiring all-jurisdiction reporting issuer status be a deterrent to IDS participation? If so, why?*

   The Committee agrees with the CSA that market information cannot be artificially constrained behind geographical borders and acknowledges the mechanics of filing documents in multiple jurisdictions on SEDAR may be relatively straightforward. Requiring reporting issuer status in all CSA jurisdictions, however, would add significantly to the regulatory burden of an IDS issuer including the cost of filing fees, translation of documents and on-going compliance efforts. Further, from a practical point of view, information filed in a single jurisdiction would already be available on SEDAR on a national basis. The Committee believes that the individual jurisdictions through close coordination can rationalize regulatory fees and harmonize reporting issuer requirements without requiring an IDS issuer to become a reporting issuer on a national basis. As the IDS is intended to be a voluntary system, it must provide an attractive alternative for issuers in order for it to be successful. The Committee recommends that reporting issuer status in any jurisdiction should be sufficient for eligibility to the IDS.

2. *Do you agree with the CSA's approach to language requirements under the IDS? If not, why not? Should IDS issuers be obligated to translate all continuous disclosure filings in jurisdictions in which they have previously filed a prospectus (IDS or otherwise) or in which they have a substantial investor base? If so, how would you suggest the CSA define "substantial investor base" for this purpose? Would the imposition of such a requirement be a significant disincentive to IDS participation? Do issuers normally provide investors on a voluntary basis with translated continuous disclosure documents to accommodate their language preferences?*

   The Committee supports the CSA's approach to language requirements which would only require translation of an IDS prospectus (and any continuous disclosure documents incorporated by reference in the IDS prospectus) to the principal language or languages

of the jurisdiction in which the IDS prospectus is filed. It represents a reasonable trade-off between the IDS issuer's costs in relation to being a reporting issuer on a national basis and the needs of investors for disclosure information.

The Committee suggests that obligating an IDS issuer to translate all continuous disclosure filings in jurisdictions in which they have previously filed a prospectus (IDS or otherwise) or in which they have a substantial investor base would be a significant disincentive to IDS participation and that such translation decisions should remain in the discretion of the IDS issuer.

The Committee understands that it has been the experience that many larger issuers and issuers with a substantial investor base in a jurisdiction have provided investors on a voluntary basis with translated continuous disclosure documents to accommodate their language preferences.

3. *Although the proposed IDS would harmonize the continuous disclosure requirements for participating issuers across Canada, differences in other reporting issuer requirements would continue to exist. Would this pose a significant burden on issuers? If so, why?*

The Committee hopes that the CSA will continue efforts to harmonize the reporting issuer requirements nationally. The existence of differing requirements would add significantly to the complexity of compliance efforts and would pose a significant burden particularly for smaller sized issuers. The mere fact that an IDS issuer must comply with the regulatory rules of thirteen individual jurisdictions (with the consequent necessity of monitoring such rules for amendments) will be a consideration for potential participants.

"Seasoning" Requirement

4. *Should "seasoning" be included as a condition of IDS eligibility? If so, what would be an appropriate seasoning period? Should the imposition of a seasoning requirement be dependent upon an issuer's revenues, assets or market capitalization?*

Recognizing the importance of the CSA's goal of allowing broad access to the IDS, the Committee has no fundamental objection to the lack of a "seasoning" requirement as a condition of IDS eligibility. However, the Committee believes that it is essential that the CSA, as proposed, provide more frequent and extensive review of each IDS issuer's disclosure base to ensure disclosure materials of high quality will be available in the marketplace.

Increased regulatory scrutiny may also prompt issuers to seek additional guidance from professional advisors which may lead to an improvement in the quality of continuous disclosure. Requiring a fixed time period prior to IDS eligibility provides no certainty that an issuer will become better known in the market as there is no certainty that the issuer will develop an analyst or institutional following.

5. *Are there any advantages or disadvantages of a seasoning requirement not discussed above?*

The Committee is not aware of any advantages or disadvantages not already discussed.

Quantitative (Size) Requirement

6. *Should the IDS impose quantitative IDS eligibility criteria? If so, what should these criteria be, and why?*

To the extent that the CSA, as proposed, will provide more frequent and extensive review of each IDS issuer's disclosure base, the Committee has no fundamental objection to the lack of a "size" requirement.

7. *Do larger issuers provide a higher quality of disclosure than smaller ones? Please explain.*

In general, larger issuers would have greater resources to devote to all matters including compliance with continuous disclosure requirements. However, the Committee does not believe that smaller issuers are incapable of such compliance, particularly if measures are taken to harmonize the rules nationally and rationalize filing fees.

Whereas in the past some issuers may have been reluctant to expend resources on disclosure unless a near certain transaction was on the horizon, issuers under the IDS will have an incentive to maintain a strong and up-to-date disclosure base in order to be in position to act quickly on capital market opportunities.

8. *Do you believe that the "analyst following" argument is relevant in today's markets? Please explain.*

The Committee believes that investment analysts are a valuable part of an efficient marketplace for securities. It is not realistic to expect the majority of investors to have the time, educational background and experience necessary to perform the equivalent level of analysis as is performed by professional analysts even with timely access to an upgraded disclosure base in respect of IDS issuers. The qualifications of professional analysts often include industry experience, advanced university degrees and professional certification. While analysts employed by dealers may not be "independent" by all definitions, they are rated by independent organizations and have a strong incentive to publish unbiased research reports to develop and maintain a strong professional reputation. Such reports offer comparative industry analysis which is not available as part of an IDS issuer's disclosure base and can provide a useful "filter" of the vast amount of information available in respect of an issuer.

B. IDS CONTINUOUS DISCLOSURE

9. *Are there any disclosure items that should, or should not be, included in the proposed IDS AIF or QIF?*

In general, the Committee supports the upgrading of the disclosure requirements of reporting issuers and the proposed modifications to the AIF and QIF. In this regard, the strengthening of the interim financial statement requirements and, in particular, the addition of the requirement that the interim statements be reviewed by the issuer's audit committee and approved by the board of directors are viewed positively by the Committee.

The Committee notes, however, that the QIF requirement for a reconciliation to Canadian GAAP would be more onerous than the current SEC requirements. This requirement could be a significant disincentive to Canadian companies to join the IDS and to access the Canadian capital markets generally. Given the continued integration of the North American capital markets and the competitive pressures placed on domestic markets, the Committee supports efforts to harmonize Canadian and SEC securities regulations and recommends the proposed reconciliation requirement be dropped.

10. *Are there any other continuous disclosure enhancements that should be included as part of the IDS? If so, should these enhancements be extended to all issuers?*

The Committee has no additional enhancements at this time but suggests the CSA should carefully monitor whether the IDS leads to enhanced disclosure in Canada's capital markets during the proposed pilot period and beyond.

11. *Are there any specified events that should, or should not, trigger the filing of a SIF?*

The Committee recommends that triggering events for filing a SIF be restricted to those events which constitute a "material change" in respect of the issuer. By introducing a prescribed list of triggering events, the IDS may lead to unnecessary expense for issuers and create "noise" in the marketplace by requiring the public dissemination of non-material information.

12. *As an alternative to requiring the filing of a SIF for changes in an IDS issuer's name and auditor as outlined in Part III.C.1(a)(iii) of the Concept Proposal, should an IDS issuer's SEDAR profile (which could include such information) be included in its IDS disclosure base? Given that an issuer's SEDAR profile is a changing document, an IDS issuer would disclose these changes by filing an amended copy of its SEDAR profile under cover of a SIF.*

As the information contained in an issuers' SEDAR profile should be consistent with that contained in a SIF, the Committee supports the disclosure of changes to an issuer's name and auditor by filing an amended copy of its SEDAR profile under cover of a SIF. However, if the SEDAR profile is to become part of an IDS issuer's disclosure base generally, the contents of the profile should be examined to ensure that no unintended consequences result. For example, the SEDAR profile currently includes a field "Size of Issuer (Assets)" which categorizes the issuer's size as being between certain specified ranges (e.g. $0 to $5,000,000 etc.). Conceivably, if the SEDAR profile forms part of the disclosure base as proposed, an IDS issuer would have to monitor its size and file an amended SEDAR profile and SIF once its assets have passed the (arbitrary) line dividing the ranges.

13. *The CSA propose to require IDS issuers to file SIFs containing prospectus-level disclosure about all completed business combinations within 75 days. Is the 75 day deadline appropriate? Are there business combinations for which the 75 day deadline or the prospectus-level disclosure requirement cannot be met?*

The Committee is of the opinion that 75 days is generally sufficient to prepare the necessary disclosure. The CSA should grant relief upon reasonable requests by IDS issuers requiring additional time to prepare such disclosure.

14. *The CSA believe that IDS AIFs and QIFs should be delivered to investors in compliance with existing statutory requirements. As discussed in Part III.E of the Concept Proposal, the CSA would permit the delivery of all IDS disclosure documents by electronic means in accordance with the principles set out in National Policy 11-201 Delivery of Documents by Electronic Means. Should alternative methods of delivery of IDS AIFs and QIFs be permitted under the IDS? If so, which methods would you suggest?*

With respect to delivery mechanisms, the Committee strongly supports all efforts to add flexibility and to allow procedures to adapt to new technologies provide they do not compromise investor protection.

15. *The CSA propose to require that interim financial statements filed as part of an issuer's continuous disclosure record have been reviewed by the issuer's audit committee and approved by the issuer's board of directors or equivalent. The CSA are also considering requiring that interim financial statements have been reviewed by an auditor, as required in the United States. Would such a requirement be appropriate? If not, why not?*

The Committee supports the requirement that interim financial statements be reviewed by an auditor. As a practical matter, requiring the issuer's audit committee to approve the interim statements is likely to trigger an audit review in most cases.

Certification

16. *Would the proposed certification requirements materially affect the extent to which signatories participate in the preparation of IDS continuous disclosure documents? Are there practical impediments to the certification of such documents?*

The Committee concludes that the requirement for senior officers and directors to certify disclosure (the manner of which is discussed below in Question 17) will have a positive impact on the disclosure process. This certification requirement will compel boards to submit the disclosure process to more rigor thereby ensuring greater accuracy and completeness.

17. *Is the "full, true and plain disclosure of all material facts" standard of disclosure attainable on a timely basis in connection with IDS continuous disclosure filings? If not, why not? What alternative disclosure standard would be appropriate given the objectives of the integrated disclosure system? Would an alternative misrepresentation standard be more appropriate for some continuous disclosure documents (i.e. "The foregoing does not make a statement that, in a material respect and in the light of the circumstances is misleading or untrue and does not omit a fact that is required to be stated or that is necessary to make the foregoing not misleading")?*

The Committee believes it would be more appropriate that an alternative misrepresentation standard of certification be used in respect of continuous disclosure filings. Unlike a prospectus filing, an IDS issuer cannot choose the specific timing of a continuous disclosure filing. Situations may arise in which uncertainties surrounding an event may make it difficult or detrimental for an issuer to provide "full, true and plain" disclosure of that event. The amount of time available to issuers for preparing continuous disclosure filings is also limited.

Further, the proposed alternative standard should be extended solely to misrepresentations of material facts (as opposed to any facts) and applied only in the context of the issuer's current disclosure base as indicated below:

> The foregoing when read with the issuer's current disclosure base does not make an untrue statement of a material fact relating to securities of the issuer and does not omit a material fact that is required to be stated or that is necessary to make a statement not misleading in a material respect and at the time and in the light of the circumstances in which it is made.

Involvement of Advisors in Continuous Disclosure

18. *Is it realistic to expect that advisors will become more involved in continuous disclosure in order to address increased time pressure at the time of an IDS prospectus? Alternatively, will the expedited offering process result in a deterioration of the due diligence conducted by advisors in respect of information incorporated by reference in a prospectus? If so, how would this affect the ability of underwriters to certify the prospectus?*

Under the proposed regime, it is expected that IDS issuers will have faster and more predictable access to the capital markets as an IDS prospectus will be subject to only limited review by regulators. This streamlining of the process may also have the effect of reducing the time frame for underwriters' due diligence in respect of an offering. As a result, the Committee believes that the CSA should provide explicit guidance to underwriters as to those practices which would constitute a "reasonable investigation" under securities legislation. For example, in connection with the "aircraft carrier" proposal, the Securities and Exchange Commission proposed the following practices that it believed courts should consider as positive factors when reviewing an underwriter's due diligence in an expedited offering:

- review of the registration statement and reasonable inquiry into any fact or circumstance that would cause a reasonable person to question the contents;
- discussion with management (including, at a minimum the chief financial and accounting officers) and receipt of certification as to compliance from those officers;
- receipt of a "comfort letter";
- receipt of a favourable opinion from issuer's counsel;
- receipt of a favourable opinion from underwriters' counsel; and
- employment of and consultation with an appropriately experienced and informed research analyst.

The Committee concludes that the identification of specific practices would greatly assist underwriters in carrying out due diligence and managing the task effectively. This is of particular importance given the expedited timetable proposed under IDS and the consequent reduction in the underwriter’s opportunity to conduct due diligence activities.

The Committee recommends that the CSA formally recognize the aforementioned or similar practices as constituting competent due diligence.

The Committee also notes that underwriters have the responsibility for reviewing the accuracy and completeness of material facts disclosed to investors and not the actual preparation of this disclosure information per se. In recognition of this distinction the Committee recommends that the underwriters should not be held to the standard of "full, true and plain" disclosure of all material facts as is the case for senior officers and directors of the issuer. Rather, the underwriters should certify, subsequent to the due diligence process, to being unaware of any misstatement of material facts. The Committee proposes the following alternate certification: "to the best of the underwriter's knowledge, the underwriter is unaware of any misstatement of a material fact relating to the securities offered hereby in the prospectus or disclosure documents incorporated by reference".

The above can be compared to the legislation in the United States under which underwriters do not have to "certify" a prospectus but are subject to the civil liability standard absent a "due diligence" defence.

C. IDS PROSPECTUSES

Delivery of the Preliminary IDS Prospectus

19. *Do preliminary and final prospectuses assist investors in making their investment decisions and is it relied upon for this purpose today? If not, on what basis are investors in the primary market currently making their investment decisions?*

The Committee believes that it is fair to say that not all investors make full use of the issuer disclosure provided by the preliminary and final prospectuses in making their investment decisions. Many investors rely on their adviser's recommendation, on analysts' reports or on other secondary sources of information.

20. *As discussed in Part III.D.4(a) of the Concept Proposal, the CSA considered specifying the timing of delivery of the preliminary IDS prospectus to ensure that a prescribed minimum period of time would be available to an investor before an investment decision becomes binding. Would a prescribed minimum preliminary IDS prospectus delivery period (for example, a specified number of days before pricing or the signing of a subscription agreement) be suitable for all investors and all situations? If so, what would be an appropriate period of time? If not, why not?*

The Committee believes that a prescribed minimum preliminary IDS prospectus delivery period would not be appropriate as it would unduly interfere with the distribution process. In particular, it would be impractical to either exclude investors identified "late" in the distribution process or, alternatively, stop the process to allow newly identified investors to "catch up". Further, the availability of the preliminary prospectus on the SEDAR website would provide investors with ready access to this document.

21. *Should the IDS require filing and delivery of the preliminary IDS prospectus? Should alternative methods of delivering the preliminary IDS prospectus be permitted? If so, how?*

Given the ready availability of the issuer's preliminary prospectus on SEDAR and the requirement that marketing communications in respect of an issuer's offering of securities include a statement regarding how a potential investor may obtain the preliminary IDS prospectus, the Committee recommends that the delivery requirement be eliminated.

Content of IDS Prospectuses

22. *Are the preliminary IDS prospectus disclosure items outlined in Part III.D.2(a) of the Concept Proposal appropriate to ensure than an investor can make an informed investment decision? Please explain.*

The Committee generally agrees with the appropriateness of the preliminary prospectus requirements proposed by the CSA and is not aware of any significant items that are missing. The Committee recommends, however, that there should be certain exceptions to those documents which are incorporated by reference in the prospectus. The exceptions are discussed with regards to the definition of "marketing communication" in the response to Question 24 below.

23. *What are the advantages and disadvantages of a streamlined form of final IDS prospectus? Which form of final IDS prospectus would issuers and investors prefer? Should the traditional form of final IDS prospectus be mandatory? If so, why?*

The Committee believes the streamlined "checklist" form of final IDS prospectus would be preferable in most cases for both issuers and investors as it would do away with the unnecessary repetition of already available information and allow any new information to be highlighted.

D. IDS MARKETING REGIME

24. *Is the proposed definition of "marketing communication" in the IDS appropriate? What types of communications should be excluded from the definition, and why?*

While the Committee generally supports the proposed removal of the existing pre-marketing restrictions (see Question 25 below), the proposed definition of "marketing communication" coupled with the requirement that an IDS prospectus incorporate by reference all written marketing communications disseminated by or on behalf of the issuer during the course of distribution of securities may have an unintended "chilling" effect. For example, some underwriters may decide to conduct roadshows without written materials to avoid the requirement to certify and file such materials. Whereas the elimination of "selective disclosure" of information to investors is an important goal, the CSA should not confuse the responsibility of the issuer to provide equal access to all disclosed material information with: (i) a responsibility of the issuer to provide equal access to all information; or (ii) a responsibility of the underwriter to provide equal access to its proprietary materials.

The Committee believes that research reports and other written commentary on the issuer, published in the ordinary course, should be excluded from the definition of marketing communications and the certification requirement, unless the issuer or the issuer's agent makes specific reference to, or widely disseminates, such materials during the distribution period. It would be a costly, time-consuming and possibly problematic

exercise to subject research reports and commentary, published in the normal course widely in the financial sector, to the due diligence process and to certify the "full, true and plain" disclosure standard. The IDS marketing restrictions would also prohibit such reports from containing forecasts, projections or forward looking information which are not otherwise contained in the issuer's disclosure base. Whereas the CSA may be concerned about underwriters "conditioning" the market, it is also equally important that investors receive continuous, comprehensive and timely disclosure information.

As the categorization of a communication as a "marketing communication" may depend on a determination of whether it has been "disseminated by or on behalf of the issuer", the CSA should provide additional guidance to issuers and market intermediaries in this regard. In particular, guidance should be given to assist interpretation in the context of electronic media e.g. the criteria that would be examined in determining whether a hyperlink or other reference to third party materials on the issuer's website would constitute "dissemination" of such materials by the issuer.

25. *What are your views concerning the proposed IDS marketing restrictions? Are others necessary for investor protection purposes? Would the proposed IDS marketing restrictions restrict valid corporate communications?*

The majority of the membership of the Committee supports the elimination of the pre-marketing restrictions in the context of the proposed IDS regime based on the view that it provides greater flexibility in the capital raising process and acknowledges the diminished role of the prospectus and the increased emphasis on continuous disclosure. However, some members have indicated that there is potential for abuse and that premarketing should be closely monitored. Certain members of the Committee have particular concerns regarding the elimination of the existing pre-marketing rules in the absence of the formulation, adoption and enforcement of a new framework to address pre-marketing issues and potential abuses under the proposed IDS regime. We understand that one or more members with these particular concerns may make a separate submission to the CSA for its consideration.

The Committee recognizes that the misuse of material undisclosed information in respect of a reporting issuer acquired through premarketing would constitute a serious abuse in the capital markets and encourages regulators to take appropriate steps to ensure that such abuse does not occur under the IDS. As a first step, regulators should remind investors and dealers that upon receipt of material undisclosed information, such as information related to a forthcoming offering, an investor or dealer becomes a "person or company in a special relationship with the reporting issuer" and is ineligible to purchase or sell securities of the reporting issuer so long as the material fact or material change has not been generally disclosed. Further, regulators should remind IDS issuers that they have an obligation to make timely disclosure of material information (by the SIF), such as a forthcoming public offering, once issuers have formed a reasonable expectation of proceeding with the offering. Regulations should also ensure enforcement of these obligations.

Another potential issue exists, however, regarding possible market distortion resulting from the misuse of information concerning the existence of a proposed offering. For

example, an institutional investor learning of a proposed equity offering may anticipate ensuing weakness in the market price of the security and sell the security placing downward pressure on its market price. Alternatively, institutional investors may not sell after learning of a proposed equity offering but may not buy either if it anticipates a pricing fall or announcement.

26. *How should "distribution period" be defined for the purposes of determining which written marketing materials must be incorporated by reference in an IDS prospectus? Should it be defined as commencing a specified number of days (e.g. 15 days) before the first offer of the securities, upon the filing of the preliminary IDS prospectus or some other event? When should the distribution period be considered terminated for this purpose?*

The Committee proposes that the distribution period extend from the earlier of the filing of the SIF (disclosing the proposed offering of securities) and the filing of the preliminary IDS prospectus to the filing of the final IDS prospectus. This definition would have the advantage of providing certainty to market participants.

E. PROPOSALS FOR CHANGES OUTSIDE THE IDS

27. *Should the IDS disclosure enhancements be broadly applied to all issuers?*

The Committee does not support the broad application of the IDS disclosure enhancements to all issuers without the further study of its impact on smaller issuers. Such issuers may have limited internal resources to allocate to the compliance function and limited financial ability to access external advisers. Smaller issuers may also be particularly impacted by the shorter time frames to file annual and interim financial statements.

28. *The CSA propose to extend to non-IDS issuers the IDS certification requirements discussed in Part III.B.1 of this Notice and Part III.C.2(c) of the Concept Proposal. Does this raise concerns unique to non-IDS issuers? If so, what are they?*

The Committee has concluded that certification by senior management and the directors will have a positive impact on the disclosure process and therefore supports the proposed extension to non-IDS issuers.

29. *Should the IDS marketing restrictions discussed in Part IV.B be broadly applied to non-IDS offerings?*

As the Committee believes that the creation of an enhanced disclosure base in respect of an IDS issuer is essential to the functioning of the proposed regime, it does not support the removal of premarketing restrictions in respect of non-IDS issuers.

30. *Are there any other elements of the IDS that should be broadly applied to all issuers?*

The Committee recommends that more frequent and extensive regulatory review of continuous disclosure materials be applied to all issuers.

F. PILOT INTRODUCTION OF THE IDS

31. *Would issuers be interested in participating in the pilot introduction of the IDS? If not, why not?*

Exchange-listed non-POP system issuers may be particularly interested in improving their speed of access to the markets. Possible deterrents could be the additional costs of preparing the enhanced disclosure and reporting on a national basis, the reduced period in which to file annual and interim financials and the regulatory uncertainty surrounding a new system.

32. *Would issuers who are currently eligible to use the prompt offering qualification system be interested in participating in the pilot introduction of the IDS? If not, why not?*

There may be less incentive for POP system issuers to migrate to the new system as timing advantages would not be significant. Under National Policy 43-201 Mutual Reliance Review System for Prospectuses and Annual Information Forms, regulators will use their best efforts to review and provide comments on short form prospectuses within three and a half days.

33. *What do you perceive as the main benefits of the IDS, as compared with the existing distribution procedures?*

In the Committee's view, the main benefits for an IDS issuer would be the potential for faster and more predictable access to the capital markets as an IDS prospectus would be subject to only limited review by regulators. The IDS has the potential to provide issuers with greater flexibility to go to the market more often, in lesser amounts, and at lower transaction costs. The main benefit for investors under the IDS is the potential for more complete and timely disclosure information.

34. *If the IDS proves to be a successful alternative to the short form prospectus and shelf distribution systems, the CSA will consider eliminating the short form and shelf distribution procedures for IDS-eligible issuers. Is this appropriate? If not, why not?*

The Committee believes that if the IDS proves to be a successful alternative to the short form prospectus and shelf distribution systems (and following the appropriate industry consultation), the CSA should consider eliminating the short form and shelf distribution procedures for IDS-eligible issuers.