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Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Securities Administration Branch, New Brunswick
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut
Ontario Securities Commission
Office of the Attorney General, Prince Edward Island
Commission des valeurs mobilières du Québec
Saskatchewan Securities Commission
Registrar of Securities, Government of Yukon

c/o John Stevenson, Secretary
Ontario Securities Commission
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Ms Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
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Dear Sirs and Mesdames:

Re: CSA Request For Comment Notice 51-402 - Illegal Insider Trading In Canada: Recommendations on Prevention, Detection and Deterrence Report

The Canadian Bankers Association ("CBA") appreciates this opportunity to provide comments on the recommendations concerning Prevention, Detection and Deterrence of Illegal

Insider Trading in Canada (the "Recommendations") that were issued last November by the Illegal Insider Trading Task Force, in response to CSA Request for Comment Notice 51-402.

Our specific comments are as follows:

Recommendation #1: Make CSA Disclosure Best Practices and CIRI Guidelines mandatory

We feel that CSA Best Practices and CIRI Guidelines were not drafted so as to be mandatory policies or rules. A number of these best practices and guidelines are not relevant to banks and large issuers. In our view, it would not be appropriate to mandate compliance with all of these best practices and guidelines without first undertaking a thorough review.

Recommendation #2: Information Package

We note that our member banks send their new insiders an information package as a matter of course. We would suggest that any mandated requirements should permit issuers to tailor specific information packages to their specific circumstances.

Recommendations #3 to 6:

As a general comment, our member banks would prefer that the exchanges not involve themselves in regulating the various professions. With respect to lawyers and accountants, we believe a better approach would have the CSA work with the relevant professional organizations to ensure that they have the opportunity to participate in the development of standards.

Recommendation #4: Lawyers who have adopted best practices

We do not think this recommendation is necessary. Lawyers are already required to abide by rules of professional conduct and professional ethics that are established by law societies. Given the obligations of lawyers to ensure the confidentiality of client information, additional requirements for lawyers to confirm their compliance with best practices on information containment (or for clients to verify their lawyers' compliance) would be superfluous. Banks retain hundreds of lawyers each year in the course of innumerable consumer and small business transactions and lawsuits. Accordingly a requirement that banks should only retain lawyers who have adopted best practices for information containment would be of no particular benefit in the vast majority of cases, as they do not involve any potentially material undisclosed information about the bank or any other issuer.

Recommendation #6: Equity marketplaces and issuers' best practices

We believe that a better approach to ensuring that accountants abide by best practices on information containment may be for the governing bodies of the accounting profession to set these standards. We note that banks usually employ only the largest of accounting firms, which adhere to best practices.

Recommendation #7: CSA should ask OSFI to develop regulations for the management of inside information received by banks

Canada's banks already have policies and procedures in place to prevent the dissemination of material non-public information concerning their public-issuing customers. Section 157(2) of the Bank Act specifically requires bank directors to "establish procedures ... for restricting the use of confidential information." Subsection (d) of s. 157(2) of the Act requires bank boards of directors to designate a committee of the board to monitor such procedures.

As well, the requirement that banks properly manage confidential information is subject to the provisions of s. 643 of the Act, that require the Superintendent of Financial Institutions to make such inspection of banks as necessary or expedient to satisfy the Superintendent that they are observing the provisions of the Bank Act. Thus, the existing legislative framework already requires that banks manage confidential information, and also requires the bank regulator to conduct appropriate Inspections.

In its examinations of banks, OSFI follows a risk-based approach that seeks to ensure that banks have in place appropriate systems to identify, monitor and manage risk.

However, if OSFI is to develop additional regulations or guidelines in this area, we would suggest that OSC Policy 33-601 – Guidelines for Policies and Procedures Concerning Inside Information, would offer a suitable model that could be adapted to the banking context, using specific examples that are tailored to the industry.

Recommendation #8: IDA should mandate best practices for information containment, modelled on OSC Policy 33-601, private placement best practices developed by the Vancouver dealer group and bought deals.

We believe that this recommendation is too narrow in its scope, and best practices for information containment should not be mandated solely by the IDA for its members, since not all securities firms are IDA members. Information containment best practices should apply equally to all market intermediaries.

While we note that bought deals are already the subject of legislation that prohibits pre-marketing. As well, as the best practices developed by the Vancouver dealer group have not been released for public comment or review, we are not in a position to comment concerning, them.

Recommendation #9: SROs should form a committee to amend procedures relating to information containment by dealers

We agree with the proposal to establish an SRO committee to amend procedures relating to information containment by dealers, provided that this would result in regulatory efficiencies rather than adding another layer of bureaucracy.

Recommendation #11: RS amend UMIR to enable the disclosure of insider trading markers in real time to the public.

We agree with this recommendation. However, we would suggest that a related regulatory change that would contribute substantially to the goal of disseminating information about trading by insiders would be to require insiders to declare their trades as insider trades at the time of entry.

Recommendation #12: Clarify the legislative prohibition on persons in possession of inside information trading after the announcement of the event, but before there has been sufficient time to evaluate the materiality of the event.

We agree with the above-noted recommendation. Since it is possible to have effective widespread information dissemination in today's society, an additional prohibition on persons in possession of inside information trading after the announcement of the event, but before there has been sufficient time to evaluate the materiality of the event is not necessary. The Canadian Securities Administrator's National Policy 51-201 Disclosure Standards indicate that information is non public if it has not been effectively disseminated to the general public. Examples of effective public dissemination include a press release carried over a major news service, or a public filing with a regulatory agency etc. Dissemination may not be effective if a company hosts a webcast over the Internet but no notice is given to the public to access the information or if sufficient notice is not given to the public.

The prohibition should be clarified so that individual issuers' contexts are taken into account. Large Issuers that have liquid securities and extensive analyst coverage will see the impact of the release of information more quickly than smaller issuers whose securities trade less frequently and are not as closely followed.

Recommendation #13: Through the USL, the CSA should adopt a uniform approach to exemptions from insider trading prohibitions, and the exemptions should be limited to exclude transactions between an insider (or other persons in a special relationship) and the issuer.

We agree that the CSA should adopt a uniform approach to exemptions from insider trading prohibitions.

However, we are not certain that we understand fully the rationale for excluding from the exemption all transactions between an insider (or other persons in a special relationship) and the issuer. We believe there could be specific types of instances where the exemption would be appropriate.

Recommendation 16: The CSA should, as a priority, coordinate the development of an electronic database integrating client data with data from trading conducted on Canadian equities and derivatives markets, in order to improve surveillance, data-mining and investigative capabilities.

We have a number of questions and concerns about the above-noted recommendation for an electronic database of client trading data:

- We are concerned that the development of a national electronic database would be costly and would involve substantial downloading of systems costs onto the industry.
- We are also concerned that regulators may not be able, in the context of a nation-wide electronic database, to adequately protect data security, restrict access to personal information and protect information privacy rights.

- We note that banks and their subsidiaries must comply with applicable federal privacy legislation. This legislation prohibits the disclosure of personal information, including that contemplated by this recommendation, without the knowledge and consent of the subject, except in very limited circumstances. It may be appropriate for the CSA to work with the federal privacy Commissioner to develop this database so that these privacy protection issues are addressed.

- We are not certain that the incidence of illegal insider trading in Canada is sufficiently great and that there is a problem of sufficient magnitude to justify such a costly and intrusive venture.

Recommendation #17: Securities regulators encourage more complaints and tips by raising the profile of illegal insider trading in Canada through educational programs that provide market participants and the public with an understanding of how illegal insider trading and tipping happen and the harm they cause.

In principle we favour public education to raise the profile of insider trading. However, we note the following concerns:

- There is a risk that such programs could foster entirely unwarranted public perceptions to the effect that illegal insider trading is widespread and pervasive, that would ultimately taint all Canadian issuers and do not appear to be warranted based on the statistical data from the Task force's report; and
- The cost-effectiveness of such educational programs, whether through publications, advertisements or other means, is uncertain, and is in any event difficult to assess.

Recommendation #18: RS and MX should evaluate a marker for trading by offshore accounts.

We would assume that the establishment of a marker for trading by offshore accounts would entail possibly substantial systems and compliance costs that would be borne by the industry. Given the lack of empirical evidence of extensive illegal insider trading in Canada and of insider trading in Canada involving offshore accounts based on the statistical data contained in your report, we doubt that the development of such a marker would be appropriate. If a marker is to be developed, we believe that its application should be limited to accounts of clients who are located in "non-co-operative" offshore jurisdictions.

Recommendation #19: IDA to provide "red flags" for detection of possible insider trading, including nominee and offshore accounts.

We agree in principle that red flags can be helpful compliance tools. Securities dealers in our member banks financial groups already have highly developed compliance systems, and use tools such as red flags. There is a risk that by providing red flags, the IDA could be adding a superfluous new layer of compliance requirements.

Once again, we question the focus on offshore accounts in the context of insider trading, given the lack of either empirical evidence of extensive illegal insider trading in Canada or of illegal insider trading in Canada disproportionately being conducted through offshore accounts.

Recommendation #20: CSA should approve IDA revised Regulation 1300, re: dealings with shell banks, offshore financial institutions, identity of beneficial owners of accounts.

Recommendation #21: Jurisdictions that lack a satisfactory regulatory regime.

Recommendation #22: Evaluate identification requirements where certain offshore financial institutions are involved.

Recommendation #23: IDA should consult on whether to revise Regulation 1300 to prohibit trading until beneficial ownership is verified.

Recommendation #24: Market access for persons not resident in place with satisfactory regulatory regime, only if information made available.

We would refer the CSA to the comments that we submitted to the Investment Dealers Association, concerning IDA Regulation 1300, in August, 2003. Although we endorsed the policy objectives of the Regulation relating to monitoring and supervision of account activity and the exercise of due diligence to combat money laundering and terrorist financing, we also outlined serious concerns about the proposed Regulation in some detail.

The key issue in recommendations #20 through #24 appears to be whether regulators should rely on market intermediaries' KYC and due diligence under securities and anti-money laundering laws, or whether regulators should instead impose an across-the-board prohibition of dealing with customers who reside in blacklisted jurisdictions as described in recommendation #21.

In our view, any prohibition on trading or retention of funds would need to be implemented by legislation in order to protect members from civil lawsuits. Absent such protection, existing account agreements would have to be reviewed to ensure that the customer has agreed to the IDA member abiding by IDA rules in force from time to time. We would be inclined to support recommendation #23 subject to our comments above.

Recommendation #28: change of "personal connection" model

We note that this recommended change from the present "personal connection" model to the proposed "information connection" model could have inappropriate results in some circumstances. For instance, the "information connection" model would serve to prohibit trading where the person initiating the trade has no way of knowing that he or she possesses inside information (i.e., where a tip was overheard in the street or at a restaurant and the recipient had no way of knowing that an insider was speaking, or no way of evaluating the credibility of that information). Further, it may be difficult to enforce an "information connection" model because it is often impossible to make accurate conclusions about the subjective knowledge of an individual.

We have appreciated the opportunity to express our views regarding the Recommendations. We would be pleased to answer any questions that you may have about our comments.

Yours truly,

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