

IN THE MATTER OF THE *SECURITIES* ACT  
R.S.O. 1990, c. S.5, AS AMENDED

AND IN THE MATTER OF CI FINANCIAL CORP..

AND IN THE MATTER OF A DECISION OF  
THE TORONTO STOCK EXCHANGE

**REQUEST FOR HEARING AND REVIEW**

May 9, 2011

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**TO: THE ONTARIO SECURITIES COMMISSION**

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**AND TO: THE TORONTO STOCK EXCHANGE**

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**CI FINANCIAL CORP.** ("CI") REQUESTS A HEARING AND REVIEW by the Ontario Securities Commission (the "Commission"), pursuant to section 21.7 of the Ontario Securities Act, R.S.O. 1990, c. S.5 as amended (the "Act") of two decisions made by the Listings Committee of the Toronto Stock Exchange (the "TSX") on April 20, 2011 and April 29, 2011 (the "Decisions"), requiring CI to submit a resolution ratifying the continuation of CI's Shareholder Rights Plan Agreement (the "Plan") to a vote of all shareholders rather than a vote of just the Independent Shareholders (as that term is defined in the Plan), at such time as the Commission may advise, at the 17<sup>th</sup> Floor Hearing Room, 20 Queen Street West, Toronto, Ontario.

CI is directly affected by the Decisions.

**CI REQUESTS:**

1. A hearing date that permits a decision to be made on or before May 26, 2011, as CI and its shareholders may be irreparably harmed by a later hearing date;
2. An Order pursuant to ss. 8(3) and 21.7 of the Act setting aside the Decisions;
3. An Order pursuant to s. 8(3) of the Act upholding the specific terms of section 5.19 of the Plan and confirming that only the Independent Shareholders of CI are entitled to vote on a resolution ratifying the continued existence of the Plan at CI's 2011 Annual General Meeting; and
4. Such further and other relief as counsel may advise and the Commission may deem just.

## **THE GROUNDS FOR REVIEW ARE AS FOLLOWS:**

### *Background*

1. CI is a diversified wealth management firm and one of Canada's largest investment fund companies. It became a public company in June 1994, listing on the Toronto Stock Exchange under the symbol CIX.
2. The Bank of Nova Scotia (the "Bank") is CI's most significant shareholder, and owns approximately 36.3% of CI's issued and outstanding common shares.
3. At a special meeting on December 19, 2008, CI's shareholders (including the Bank) voted overwhelmingly in favour of the Plan.
4. The purpose of the Plan is to ensure, to the extent possible, that all shareholders of the Corporation are treated fairly in connection with any take-over offer for the common shares of CI or other change of control, and to ensure that the board of directors of CI from time to time is provided with sufficient time to evaluate unsolicited take-over bids and to explore and develop alternatives to maximize shareholder value.
5. The Plan was filed with the TSX as required by s. 635 of the TSX Company Manual, and by letter dated October 27, 2008, the TSX consented to the implementation of the Plan and agreed to list the rights referred to in the Plan, subject to ratification of the Plan by CI's securityholders, which as noted above was obtained on December 19, 2008. .
6. The Plan has a fixed term and will expire in 2014. Moreover, the Plan will expire at the termination of CI's 2011 annual general meeting (scheduled to be held on June 1, 2011) unless its continued existence is ratified by the shareholders in accordance with the Plan's terms. This is described in s. 5.19 of the Plan, which reads as follows.

### **5.19 Shareholder Review**

If required by the rules and regulations of any stock exchange on which the Common Shares are then listed, at or prior to the annual meeting of the shareholders of the Corporation in 2011, provided that a Flip-in Event has not occurred prior to such time, the Board shall submit a resolution

ratifying the continued existence of this Agreement to all holders of Common Shares for their consideration and, if thought advisable, approval. If such approval is not required by the rules and regulations of any stock exchange on which the Common Shares are then listed, at or prior to the annual meeting of the shareholders of the Corporation in 2011, provided that a Flip-in Event has not occurred prior to such time, the Board shall submit a resolution ratifying the continued existence of this Agreement to the Independent Shareholders for their consideration and, if thought advisable, approval. Unless the majority of the votes cast by all holders of Common Shares or the Independent Shareholders, as applicable, who vote in respect of such resolution are voted in favour of the continued existence of this Agreement, the Board shall, immediately upon the confirmation by the Chairman of such shareholders' meeting of the results of the votes on such resolution and without further formality, be deemed to elect to redeem the Rights at the Redemption Price.

7. Section 5.19 requires the Board of CI to submit a resolution ratifying the continued existence of the Plan to a vote of the Independent Shareholders, in the absence of rules and regulations of the TSX requiring otherwise. The term Independent Shareholders is defined in s. 1(z) of the Plan as follows.

(z) "**Independent Shareholders**" shall mean holders of outstanding Common Shares of the Corporation excluding (i) any Acquiring Person, or (ii) any Person (other than a Person referred to in clause 1.1(d)(B) who at the relevant time is deemed not to Beneficially Own Common Shares) that is making or has announced a current intention to make a Take-over Bid for Common Shares (including a Permitted Bid or a Competing Permitted Bid) but excluding any such Person if the Take-over Bid so announced or made by such Person has been withdrawn, terminated or expired, or (iii) any Grandfathered Person, or (iv) any Affiliate or Associate of such Acquiring Person, Grandfathered Person or a Person referred to in clause (ii), or (iv) any Person acting jointly or in concert with such Acquiring Person, Grandfathered Person or a Person referred to in clause (ii), or (v) a Person who is a trustee of any employee benefit plan, share purchase plan, deferred profit sharing plan or any similar plan or trust for the benefit of employees of the Corporation or a Subsidiary of the Corporation, unless the beneficiaries of the plan or trust direct the manner in which the Common Shares are to be voted or direct whether the Common Shares are to be tendered to a Take-over Bid.

8. Many senior issuers listed on the TSX have shareholder rights plans with sections substantially the same as to s. 519 of the Plan. Sections such as these have been a feature of shareholder rights plans in TSX-listed companies for at least 10 years.

*The Bank*

9. The Bank is a “Grandfathered Person” under the terms of the Plan. “Grandfathered Persons” are defined (*inter alia*) as shareholders holding 20% or more of the issued and outstanding common shares of CI as of the date of the Plan (being January 1, 2009) and are exempted from the operation of the Plan notwithstanding the fact that on implementation of the Plan their interest exceeded the ownership threshold included in the definition of Acquiring Person.

10. The TSX rules acknowledge in clause 636(b) of the Company Manual that there will be circumstances in which a particular security holder will be “grandfathered” and in such circumstances require an additional separate vote of security holders, excluding the exempted security holder for the implementation of a shareholder rights plan. This additional separate vote was held on December 19, 2008 on the adoption of the Plan.

11. Prior to voting to adopt the Plan in 2008, the Bank knew or ought to have known that as a Grandfathered Person it would not be an Independent Shareholder and it would have no right to vote on the continued existence of the Plan in 2011 or on other fundamental matters regarding the Plan such as amendments (section 5.4(b) of the Plan) or early termination of the Plan (section 5.1(b) of the Plan).

12. Non-independent shareholders, including the Bank are prevented from voting on the continued existence of the Plan because their interests are very different than the interests of other shareholders as regards the Plan. The Persons excluded from the definition of Independent Shareholder are parties that intend or have the ability to effect a change of control of the issuer and as such their interests cannot be reconciled with the shareholder value maximization interests of the other shareholders.

13. Recently, the Bank became the sole shareholder of one of CI’s competitors, DundeeWealth Inc. and as such cannot be considered to have interests that are aligned with the Independent Shareholders of CI.

14. On April 1, 2011, the Bank complained to the TSX that the Bank did not have the right to vote on the continued existence of CI's Plan at the 2011 annual general meeting, and asked the TSX to intervene.

*The Decisions*

15. On April 1, 2011, the Bank through its counsel asked the TSX to require CI to permit the Bank to vote on whether the Plan should be continued.

16. CI's submissions to the TSX were delivered through CI's counsel on April 5, 2011.

17. The Bank made a further submission dated April 7, 2011.

18. CI then made a further submission to the TSX dated April 8, 2011.

19. On April 20, 2011, the TSX advised CI and its counsel, by telephone that the Listings Committee was acceding to the Bank's request.

20. On April 21, 2011, CI (through its counsel) received a letter from the TSX, advising that the TSX had determined to accept the continued existence of the Plan following CI's 2011 annual general meeting subject to the following conditions:

1. Approval by the shareholders of CI of the continued existence of the plan, by:
  - (a) a majority of votes cast in favour of the Plan at the 2011 AGM; and
  - (b) a majority of votes cast in favour of the Plan at the 2011 AGM, without giving effect to any votes cast (i) by any shareholder that, directly or indirectly, on its own or in concert with others, holds or exercises control over more than 20% of the outstanding voting shares of CI if any; and (ii) by the associates, affiliates and insiders of any referred to in (i) above.
2. If the Plan is not approved in accordance with condition (1) above, it must be rescinded or otherwise cancelled and be of no further effect immediately after the 2011 AGM.

21. On April 25, 2011, CI requested the Listings Committee to reconsider its decision and made submissions in support of that request.

22. On April 29, 2011, the TSX advised CI that the decision had been reconsidered and had been upheld.

23. On May 2, 2011, CI received a letter from the TSX, advising that the Listing Committee with the additional participation of the Senior Vice President of the TSX reconsidered the earlier decision of the Listing Committee made on April 20, 2011 and that the original decision had been upheld.

*The Decisions should be Set Aside*

24. The Decisions are a "direction, decision, order or ruling" made by a "recognized stock exchange" pursuant to s. 21.7(1) of the Act and subject to review by the Commission.

25. Under ss. 21.7(2) and 8(3) the Commission has the power to set aside the Decisions.

26. The TSX erred in purporting to require CI to submit a resolution ratifying the continuation of the Plan to a vote of all shareholders rather than a vote of just the Independent Shareholders. The Decisions were made without jurisdiction. Although there are rules and regulations of the TSX regarding a company's *adoption* of a shareholder rights plan (all of which were complied with in this case), there are no rules or regulations of the TSX regarding the matter of shareholder approval for the continued existence of a previously-adopted shareholder rights plan.

27. Further and in the alternative, the Decisions were made without due consideration for the plain language of the Plan, and without due consideration for the purpose and intent of the Plan.

28. The Commission should set aside the Decisions because: (i) the TSX lacked jurisdiction to make such Decisions; (ii) even if the TSX did have jurisdiction to make such Decisions, the TSX proceeded on incorrect principles; (iii) the TSX made an error in law; (iv) the TSX overlooked material evidence; (v) there is new and compelling evidence before the



Commission; and (vi) the public interest requires that the Plan and agreements like it are respected.

### *Urgency of the Situation*

29. The urgency to this situation is of the Bank's doing. After voting in favour of the Plan, the Bank then waited more than two years to bring any complaint about the Plan's terms to the TSX.

30. The latest date on which CI's annual general meeting can be held is June 22, 2011. Section 94 of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16 as amended, provides that an annual meeting shall be held no later than 15 months after the last annual meeting. The last annual general meeting of CI took place on March 25, 2010.

31. The 2011 annual general meeting was originally scheduled for June 22, 2011. On April 13, 2011, the Board of Directors of CI determined that it would be appropriate to hold the meeting on June 1, 2011 in order to accommodate some other matters on the company's schedule and to ensure that certain directors could attend the meeting, including the Lead Director who is to be the Chair of the meeting. The General Counsel of the Bank was advised of this change by e-mail on April 15, 2011.

32. Delaying the annual general meeting would be detrimental to CI and its shareholders.

33. The Central Depository for Securities (CDS) will collect and tabulate proxies on May 27<sup>th</sup> for submission. The determination of this Commission may impact voting.

34. The TSX has determined that if the Plan is not approved at the 2011 annual general meeting in accordance with the conditions that the TSX has imposed, the Plan **must** be rescinded or otherwise cancelled and be of no further effect immediately after the 2011 annual general meeting.

35. Should the Bank's vote cause the Plan to not be approved in accordance with the TSX's conditions, the Bank or other parties might then immediately enter into transactions that would otherwise have been prevented by the Plan. This could include the Bank or other parties acquiring de facto control over CI, leaving other shareholders in a vulnerable position.

Should it subsequently be determined that the TSX's decision was in error, these transactions may be impossible to undo and the harm to CI's shareholders may be irreparable.

36. CI also relies on such further or other grounds as counsel may advise and the Commission may allow.

**CI INTENDS TO RELY ON**, among other things, the evidence of Sheila Murray, to be filed before the hearing of this matter, and on such other evidence as counsel may advise and the Commission may allow.

May 9, 2011

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