

June 29, 2000

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

Dear Mr. Crawford:

Re: Securities Review Advisory Committee

This letter is submitted in response to the request for comment dated April 28, 2000 by the Securities Review Advisory Committee (“the “Review Committee”) appointed by the Minister of Finance. The request for comment was published in the Ontario Securities Commission Bulletin (2000), 23 OSCB 3034.

This submission is provided to you by the Securities Subcommittee (the “Subcommittee”) of the Business Law Section of the Canadian Bar Association – Ontario (the “CBA-O”). Please note that this submission reflects the views of the Subcommittee, and has not been approved by the CBA-O. We will be pleased to notify you once CBA-O approval has been obtained.

For your information, attached as Appendix A is a list of members of the Subcommittee.

As requested, this letter is submitted in duplicate. A diskette containing a copy of the letter in word format is included. We are pleased to offer the following comments:

General

The principal focus of our concerns is on regulatory harmonization and globalization trends, especially as it relates to Canadian and U.S. securities regulatory approaches. In our view, the Review Committee should give priority to dealing with the following general issues:

- (i) statutory civil liability for continuous disclosure documents;
- (ii) distributions by Ontario issuers outside of Ontario (including in the United States); and
- (iii) rationalization of the registration requirements under the *Securities Act* (Ontario) as it relates to the various categories of dealers and advisers.

Our comments are discussed in further detail below:

1. Statutory Civil Liability for Continuous Documents

We believe that with the globalization of the Canadian securities marketplace, it is becoming increasingly difficult to maintain a different liability standard for statements made in continuous disclosure documents filed in Canada only and those made by Canadian issuers in continuous documents filed under U.S. securities legislation.

Accordingly, we believe that the Review Committee should examine the most recent proposal for statutory civil liability for continuous disclosure documents (published for comment by the Ontario Securities Commission on May 29, 1998) with a view to determine whether the adoption of legislation in the form proposed would be in the best interest of the Ontario marketplace.

2. Offshore Distributions

The *Securities Act* (Ontario) is silent as to its extra-jurisdictional application in connection with distributions of securities by Ontario participants outside of Ontario. In its Interpretation Note (which was published in place and stead of its Policy 1.5), the Ontario Securities Commission has sought to provide some guidance as to its views on the application of the *Securities Act* (Ontario) to certain specified distributions. We believe that the marketplace as a whole would benefit from clear rules to assist participants in determining which regulatory schemes must be complied with in connection with distribution by an Ontario issuer into another jurisdiction.

3. Rationalization of Registration Requirements

The regulation under the *Securities Act* (Ontario) includes detailed registration requirements as they relate to categories of registration, minimum capital, insurance, record keeping and obligations to clients as they relate to registrants. These registration requirements have been significantly supplemented by administrative practice of the Ontario Securities Commission. We believe that the Review Committee should examine the following:

- (i) whether the current registration categories and requirements under the regulation remain consistent with the administrative practice developed by the Ontario Securities Commission; and
- (ii) whether the registration requirements for trade execution and advisory services provided by dealers should be unbundled with more emphasis being placed on continuing fiduciary obligations for advisers .

It is particularly important that any change in the current regime be co-ordinated through the CSA to ensure interprovincial harmonization in this area. The Review Committee should also consider co-ordinating its efforts with the current review of intermediary proficiency undertaken by the Joint Forum of Financial Regulators.

Conclusion

The issues list developed by the Review Committee is extensive. With the benefit of time and consultation with the Review Committee, the Subcommittee would be in a better position to provide meaningful commentary in respect of the issues and additional questions raised. The Subcommittee is prepared to devote additional resources should the Review Committee believe that detailed input from the Subcommittee on any particular issue would be useful to the Review Committee.

Yours truly,

Philippe Tardif

Appendix “A”

List of Members of CBAO Securities Subcommittee

Richard A. Lococo (Chair), *Manulife Financial*
Anoop Dogra, *Blake, Cassels & Graydon LLP*
Carol A. Dutcheshen, *Barrister & Solicitor*
Eleanor K. Farrell (Secretary), *Osler, Hoskin & Harcourt LLP*
W. Paul Fitzgerald, *Heenan Blaikie*
Allan Goodman, *Goodman, Phillips & Vineberg*
Carol Hansell, *Davies, Ward & Beck*
Henry A. Harris, *Gowling, Strathy & Henderson*
Mary Ross Hendriks, *Canadian Securities Institute*
Krista F. Hill, *Torys*
Jeffrey G. MacIntosh, *University of Toronto Faculty of Law*
Todd M. May, *Smith Lyons*
Timothy J. McCunn, *Borden Ladner Gervais LLP (Ottawa)*
Jennifer J. Northcote, *Stikeman, Elliott*
Victor R. Peter, *Borden Ladner Gervais LLP (Toronto)*
Robert J. Richardson, *McCarthy Tétrault*
Nancy J. Ross, *Association for Investment Management and Research*
Edward R. Smith, *Sun Life Assurance Company of Canada*
Robert N. Spiegel/Richard J. Steinberg, *Fasken Martineau DuMoulin LLP*
Philippe Tardif, *Lang Michener*
Francis J. Turner, *Osler, Hoskin & Harcourt LLP*
Arlene D. Wolfe, *McLean & Kerr LLP*

Liaison:

Timothy S. Baikie, *The Toronto Stock Exchange*
Robert F. Kohl, *Ontario Securities Commission*