Canadian Investor
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Submitted in Adobe PDF via e-mail (pcrawford@osler.com) and in duplicate via courier to:

Five Year Review Committee
c/o Purdy Crawford
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Box 50, 1 First Canadian Place
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Re: Five Year Review

The Canadian Investor Relations Institute (CIRI) is pleased to make these written comments to the Five Year Review Committee.

Canadian Investor Relations Institute

CIRI is a professional, non-profit organization of corporate executives and consultants responsible for communication between public companies and the investment community. With 750 members, CIRI is the world's second largest society of investor relations professionals. The majority of CIRI's public company members are listed on The Toronto Stock Exchange. CIRI is headquartered in Mississauga and has active chapters in Toronto, Montreal, Calgary and Vancouver.

CIRI's mission is to "advance the practice of investor relations, the professional competency of its members, and the stature of the profession". The prime focus of the organization is the education of its members about investor relations best practices through regular and ongoing professional development programs.

Definition of Investor Relations vs. Promotional Activities

(Reference: Recommendation 73, chapter 20, pages 134 and 135)

In the context of CIRI's stated mission and its success in fostering the practice of investor relations in Canada over the past 12 years, we take strong exception to Recommendation 3 of Chapter 20, which calls for the Act to "be amended to include a definition of touting of securities or promotional activities, similar to the definition of 'investor relations activities' in the British Columbia Act."

CIRI emphasizes the importance of clearly distinguishing between promotion which is contrary to the public interest, and investor relations which is a legitimate and increasingly vital corporate function, contributing to the liquidity and realistic valuation of the company, and to the credibility of capital markets generally. The British Columbia Securities Commission (BCSC) used the terms interchangeably by including promotion under the definition of investor relations. In 1997, CIRI corresponded and met with the BCSC and the Vancouver Stock Exchange to discuss this issue, but no steps were taken to accommodate our concerns.

CIRI supports the broadening of the powers of the Ontario Securities Commission (OSC) in this respect, and particularly with regard to prohibiting a person from becoming or acting as a promoter where such activities are found to be contrary to the public interest. Promotion can defraud people of their hard-earned savings and undermines the credibility of capital markets.

The Ontario Securities Act currently restricts the definition of a promoter to include persons who have directly or indirectly taken "the initiative in founding, organizing or substantially reorganizing the business of an issuer." CIRI agrees with the review draft that this definition should be expanded to include persons or companies who promote the purchase or sale of the issuer's securities without having been involved in founding, organizing or reorganizing the business, where their activities are contrary to the public interest.

The Five Year Review Committee draft on page 134 recognizes a distinction between promotion and investor relations, and therefore we find the wording of the recommendation on page 135 disappointing.

We believe it is not only incorrect, but also damaging to the reputation and effectiveness of investor relations professionals, to issuers' credibility, and potentially to capital markets, for the OSC to perpetuate what we consider to be the BCSC's misguided definition of investor relations to encompass promoters.

CIRI defines investor relations as: "a corporate activity, combining the disciplines of finance, marketing and communications, which provides current and potential investors with an accurate portrayal of a company's performance and prospects so that they can make informed investment decisions. Properly executed, IR enables the company to achieve the highest possible sustainable valuation for its securities. Marketing in the context of investor relations, involves identifying investors who might have an interest in investing in the company's securities and educating them about the present and potential value of the company."

CIRI has adopted guidelines for the proper practice of investor relations and, through its educational and chapter programs and an association with the National Investor Relations Institute (NIRI) in the United States, is building a substantial body of knowledge that is increasing the professionalism of our members.

Through our issues committee, we are making our voice heard on behalf of public companies on such important issues as those addressed by this review draft, and other documents dealing with disclosure and corporate governance, which are central to corporate credibility. Underlining the high standards to which investor relations professionals aspire, NIRI has adopted a code of ethics which must be signed and adhered to as a condition of membership.

Recommendation: We recommend that the Act expand its current definition of promoters to include "those who promote or tout shares, with emphasis on the potential share price rather than on the quantitative and qualitative fundamentals of the company's business", and refer specifically to promoters in the context of Recommendation 3, Chapter 20. We would like to see a definition of promoters adopted by the CSA, leading to a change in the B.C. Securities Act. If the term "investor relations" is referenced in the Act we recommend a proper definition, to clearly distinguish it from promotion or touting.

The Need for a National Securities Regulator

(Reference: Recommendations 1 and 2, chapter 1, pages 21 to 28)

CIRI fully agrees with the Review Committee's support for a national securities regulator. In view of the level of globalization and integration in securities markets and Canada's relative share of the international capital market, CIRI believes that Canada cannot afford the luxury of maintaining numerous regulatory regimes.

CIRI looks to securities regulation to foster an open, fair and credible investment climate for Canadian issuers and investors. We believe a move to a national regulator would encourage the Canadian and international investment community to perceive our regulatory framework as stronger, more effective and efficient. Instituting a national securities regulator would also relieve the burden of compliance with multiple regulatory regimes, which in itself creates no benefit for investors while imposing additional costs on the issuer. It seems only logical that there should be a single, unified set of rules and one national body responsible for them.

Recommendation: CIRI applauds the Review Committee's recognition of the need for alternative means of alleviating these concerns pending creation of a national regulator. We support the Review Committee's call for initial harmonization and "mutual recognition" among securities commissions.

Rulemaking – Shorten the Review Process

(Reference: Recommendation 12, chapter 6, pages 46 to48)

CIRI, in general, agrees with the recommendations on rulemaking made by the Committee. We note that the process, after 1994, of rule and policymaking has been arduous and lengthy. The process of proposing policies or rules, receiving comments, and making and issuing revisions has generally taken anywhere

from one to two years and, in some cases, the proposals have been dropped entirely during this extended process.

Indeed, the Committee's report notes that "it generally takes a minimum of 18 months to put a national or multilateral rule in place. Changes occur in the markets much more quickly than that."

Given the global nature of today's capital markets and the speed at which changes are taking place, it is imperative that the OSC and the CSA and its participating commissions act with far greater alacrity in anticipating and responding to regulatory issues. Failure to speed up the process places the Canadian markets in danger of constantly responding to situations or crises after they have arisen, damaging investors' confidence and threatening our competitiveness with other markets around the world.

We disagree with the Committee in its view regarding the time needed to comment on proposed policies and rules. On the one hand, the Committee suggests that 30 days is too short a period to comment on rules, and that 60 days are needed, given the fact that there are "other matters competing for the attention of the people from whom the Commission wishes to have input…". The same is, of course, true for obtaining comments on policies; however, the Committee viewed rules as being more critical as they have the force of law, while policies are only used for guidance.

Without discussing the relative importance of rules and policies, CIRI believes that the length of time needed to examine and comment on either should be comparable. Further, if a rule or policy is believed important enough to be proposed, then it should merit timely consideration and move toward a final version as quickly as possible.

Recommendation: CIRI believes that the minimum initial comment period for both rules and policies should be reduced to a maximum of 30 days.

We agree with the Committee that the Commission should be required to republish a rule or a policy for further comment only where the changes made to a previously published draft are considered material because they change the nature or intent of the rule or policy as a whole.

In the same spirit of expediting this entire process, we agree with the Committee's recommendations that Ministerial approval of proposed rules should be shortened from the current 60 days to a maximum of 30 days. We would add that, if the Minister takes no action by the end of the 30-day period, the rule should come into force 15 days later (as is currently the case after the lapse of the 60-day period).

Rulemaking – Cost/Benefit Analyses Focused on Issuers and Investors

(Reference: Recommendation 16, chapter 6, page 49)

Significantly higher reporting costs for issuers – without some sort of commensurate benefit to investors – are inadvisable considering the need to enhance the global competitiveness of Canadian capital markets.

Since issuers vary in size and complexity of operations, it may be difficult to generalize about the costs/benefits of certain new rules. Cost is an important factor that should be considered (also in the context of compliance costs between Canada and the U.S.) before major recommendations for change are made. CIRI believes the OSC should conduct its own cost/benefit analysis on any major recommendations before proceeding with new rulemaking. Cost analysis should also take into account "soft costs" (i.e. personnel costs) for issuers. For example, many smaller Canadian companies may need to increase the size of their finance departments to accommodate faster quarterly reporting times, if adopted.

Recommendation: CIRI strongly supports the Committee's recommendation that the OSC should undertake cost/benefit analyses to assess the effectiveness of proposed regulations. Further, we believe it should be clearly stated that these cost/benefit analyses should be focused on the costs and benefits that accrue to issuers and investors, respectively.

Rulemaking – Widen the Composition of Future Five Year Committees

(Reference: Recommendation 19, chapter 6, pages 51 and 52)

Since the Five Year Committee brings forward issues affecting all market participants, CIRI feels Committee membership should be more diverse. More specifically, in making future appointments to the committee, CIRI recommends the Minister of Finance consider selecting representatives from both an interlisted (Canada/U.S.) issuer and a TSX-only issuer to ensure that vital compliance topics are addressed from a first-hand perspective.

(While it has reservations about the exclusion of issuer participants in the make-up of the Committee, CIRI believes it is important to note that it believes the current Committee has done a thorough and professional job.)

Ideally, issuers would also be selected to represent the viewpoints of both small- and mid-capitalization Canadian public companies as well as large-capitalization enterprises. CIRI is aware that the public has the opportunity to comment on the work of the Five Year Committee (and therefore diverse viewpoints will be considered). However, this is not the same as having a voice directly on the Committee itself, where the agenda is set and discussion is focused.

Recommendation: CIRI strongly suggests that the Five Year Committee recommend that the Minister of Finance consider selecting a more diverse group of members for future committees. We note that issuers are not represented on the current Committee, which we believe is a significant oversight.

Separating Self-Interest and Self-Regulation

(Reference: Recommendation 32, chapter 9, pages 68 to 70)

CIRI members understand the importance of earning and retaining the trust of investors. Members of the Investment Dealers Association (IDA), like the members of CIRI, are effective in their roles only as long as they act in the best interests of investors and follow the rules and laws designed to govern their activities.

Even at the best of times, trust is difficult to maintain. Today, that tenuous bond with investors has been sorely tested around the world by events at Enron, Worldcom and other public companies. Trust has also been stretched in Canada by the published misdeeds of a small group of IDA members.

In the end, the question is not whether self-regulation works. It is whether or not investors believe it works. If investors perceive that the IDA is conflicted in its dual role as promoter and regulator of its members, then these roles should be split. CIRI supports this view.

The IDA could establish an independently financed regulatory body, emulating the TSX. Or it could reallocate its monitoring and enforcement resources to a regulatory authority, like the OSC. Or, as the Committee recommends, the IDA could adopt the Securities Industry Association model in the U.S.

Whatever such route it might choose, CIRI believes that by doing so the IDA will be taking an important step in renewing the trust and confidence of investors in the equity market.

Recommendation: CIRI strongly supports the separation of self-interest and self-regulation for self-regulatory organizations such as the IDA.

Civil Liability for Secondary Market Disclosure and the Need for Safe Harbour

(Reference: Recommendation 35, chapter 10, page 76)

CIRI shares the Committee's view that "the case for statutory liability has been made" and concurs in its urging for "the Government of Ontario to implement the proposals on a priority basis." We also support the Committee's encouragement that the governments of all other CSA jurisdictions adopt the civil liability regime.

We note that the issue of civil liability for secondary market disclosure has a history of prolonged consideration with, unfortunately, no finite resolution. In the current environment, where investors' concerns about the credibility of corporate filings has had an apparently significant effect on the capital

markets, it is both timely and essential that legislative action should be taken as quickly as possible, as the Committee recommends.

The Committee's report and recommendations, however, do not deal with one particularly important area that CIRI believes must be included in any new laws or regulations regarding civil liabilities.

That area is the need for defences available to issuers in civil matters stemming from secondary market disclosures, in particular a safe harbour for forward-looking information consistent with the model adopted in the United States several years ago. The following statement was part of CIRI's submission to the OSC on September 28, 1998 regarding proposed legislative amendments to adopt civil liability for continuous disclosure:

> "CIRI supports the concept of 'safe harbour' for FLI (forward looking information) and other measures intended to facilitate the use of FLI by public companies. …We would recommend … a standard that is harmonized with the U.S. standard and which affords the safe harbour to public companies issuing statements containing FLI if they have used cautionary language …"

Simply put, our view is that if a civil liability regime is adopted, disclosure will suffer unless it is accompanied by a safe harbour provision. The communication of FLI is clearly favoured by investors and is often the basis upon which investment decisions are made. Critical in this mix of information is FLI that may be non-financial and, on its own, essentially non-material. Much of the FLI currently provided in interim and annual MD&As, for instance, refers to industry and business trends that may not be directly or immediately relevant to revenue, earnings and cash flow forecasts, but which provide investors with a better understanding of the future prospects of the business.

We firmly believe that the flow of this kind of information would be put in jeopardy if a civil liability regime were put in place without the protection of a safe harbour provision. Because the judgement of materiality can be debated, senior executives would increasingly shy away from forward-looking disclosures – material or otherwise – in a legal environment where they could expose the issuer to statutory civil liability.

Recommendation: We suggest the Committee recommend the need for a safe harbour for forward-looking information consistent with the model adopted in the U.S. several years ago. We urge the Committee to adopt the view that this is a critical element to encourage the disclosure of FLI..

The Appropriate Standard for Materiality

(Reference: Recommendation 43, chapter 12, page 88)

CIRI supports the Committee's recommendation that the existing materiality standard should be changed for all purposes under securities legislation to a reasonable investor standard, as we have supported similar recommendations in the past when they have been proposed.

A main benefit of the change would be that it would eliminate the "hindsight" aspect of the current definition, which can be used to judge materiality based upon whether information actually significantly affected the market price or value of securities.

Since the aim of a good definition should be to provide guidance in decision-making, the objective "reasonable investor" test is more suitable for applying when deciding disclosure questions in the context of when those decisions were made, in advance of their ultimate impact on the market.

The Impact of New Interim Reporting Requirements

(Reference: Recommendation 45 and 46, chapter 14, pages 92 and 93)

CIRI supports the general direction of the recommendations to reduce the length of filing periods for financial statements and the requirement that interim results be reviewed by outside auditors. We recognize that many issuers are currently meeting or exceeding the requirements of these recommendations.

The benefits of requiring auditor involvement with interim financial statements include quicker access to the capital markets, reduced year-end reporting risks, and harmonization with current U.S. regulatory requirements.

At the same time, we do have concerns that it may be difficult for some companies to achieve accurate financial reports within the 45 and 60-day interim time period. For companies with widespread international operations and especially those operating in third world markets, the practicalities of collecting valid, confirmed financial numbers can be difficult and frustrating.

We are also concerned that imposing a reduction in the filing period for interim financial statements at the same time as creating a requirement to have interim financial statements reviewed by the external auditor, may be difficult for some issuers to adopt.

Recommendation: CIRI recommends a phased approach whereby the requirement to have interim financial statements reviewed by the external auditor is implemented initially, followed by the proposed

reduction in the filing periods 12 months later. We also recommend that the reduction in interim filing period be limited to no more than that adopted by the Securities and Exchange Commission in its proposed new regulation. That period has been proposed at 30 days; however, opposition from issuers may see that time period extended.

While both the timing and quality of financial information are important, we believe that in the current environment, the quality of financial information should be addressed first, followed by the issue of timing.

Filing News Releases and the Role of SEDAR

(Reference: Recommendation 47, chapter 14, page 94)

In CIRI's view, two issues arise from the recommendation that "Ontario securities legislation should be amended to require that news releases containing financial information or earnings information must be filed on SEDAR."

These issues include:

1. The need to more clearly define what kind of news releases the Committee wishes issuers to file on SEDAR and,
2. The need for all of Canada's securities regulators to clarify and promote the role of SEDAR as part of their investor education efforts.

Issue 1: In the discussion preceding Recommendation 47, the Committee identifies three kinds of news releases:

- Non-material, "good news" releases that should not be filed on SEDAR to avoid burying important information or lending legitimacy to promotional announcements;
- Material change releases that are required to be appended to material change reports and made available on SEDAR; and,
- A new category of non-material releases that should form part of an issuer's "publicly available disclosure record" through a SEDAR filing. "Earnings information in advance of the release of financial statements" is specifically identified as falling under this third category.

Recommendation: CIRI recommends that Ontario securities legislation be amended to specifically capture all earnings announcements under its definition of a material change. Such an amendment would be justified by virtue of the importance of earnings announcements to the investment decision-making process. It would also reflect the fact that, to a reasonable investor, the materiality of such announcements depends less on the change or variance of results from prior periods, as it does on performance versus the expectations of the marketplace, the measurement of which remains an inexact science.

The Committee invites comment on whether there are any other definable categories of news releases that reporting issuers should be required to file on SEDAR. If there are, these too should clearly be identified in order to provide unambiguous direction to issuers.

Issue 2: CIRI believes that SEDAR remains an unfamiliar and under-utilized resource for many investors. This is unfortunate as it is clearly one of the best and most important sources of corporate information and one that is critical to the success of Ontario's continuous disclosure regime.

SEDAR filings make information available to virtually all investors at exactly the same time. SEDAR effectively creates a level playing field, and provides important information in a reliable, straightforward manner. In addition, it serves as a single information source for investors who otherwise would search wireserves and web sites of the companies in which they have an interest.

Recommendation: CIRI recommends that all of Canada's securities regulatory authorities, including those in Ontario, work to create greater awareness of SEDAR among all investors, including retail, and encourage them to use it as a primary source of information. Such an endeavour would be consistent with Recommendation 8 of the Committee's report which states: "Effective and responsive securities regulation should promote the participation of informed investors in the capital markets."

CIRI appreciates the opportunity to make this submission and we would be pleased to answer any questions you may have.

Yours truly.

Canadian Investor Relations Institute

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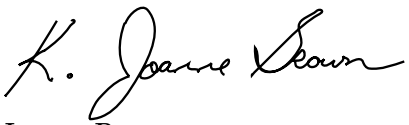

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