August 9, 2002

Five Year Review Committee
c/o Purdy Crawford, Chair
Osler, Hoskin & Harcourt LLP
Barristers & Solicitors
Box 50, 1 First Canadian Place
Toronto, Ontario
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Dear Mr. Purdy:

Thank you for providing the opportunity to offer thoughts and comments on the draft report of the Five Year Review Committee following its comprehensive review of the Securities Act (Ontario). For ease of reference, we submit our comments using the outline and numbering system of the Executive Summary provided with the Report. As suggested in the invitation to comment, we have restricted our submission to those matters of interest or concern to our Association given its particular professional focus.

"Themes" Reflected in the Report

The Committee attention to the developing global competition for capital and investment opportunities and the impact of the regulatory regime on our competitive advantage in such a market relate well to the themes of national harmonization, flexibility, and investor confidence that are evident throughout the Report. The Committee, while emphasizing the positive, investment side of the competitive equation, has also been very conscious of the negative, disinvestment hazards to be avoided.

Comments on the Recommendations

Part I: The Role of the Commission in Capital Markets Regulation

1. We strongly support the recommendation for working towards the creation of a single national securities regulator. We believe that it is essential for our federated jurisdictions to compete effectively and efficiently in a global setting. We are pleased to advise that every provincial and territorial CGA Association, and our national body CGA Canada, join us to support this view.

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2. This recommendation stems naturally from the first, and is, self-evidently, the only way to get to a national regulator in a federated setting. Within our CGA provincial/national affiliation structure, harmonization of philosophies, standards and processes has brought enormous returns in efficiency and effectiveness, and facilitated our involvement in the global accounting community. The approaches—including delegation and mutual recognition—described by the Committee for application to securities regulators across Canada, are precisely those that have in our experience been very successful.

3.&4. We support the recommendations to move towards the adoption of International Accounting Standards through the intermediary step of allowing both foreign and Canadian issuers to prepare their statements in accordance with U.S. GAAP. The requirement to provide reconciliation to Canadian GAAP from U.S. GAAP during a transitional period is essential. We suggest that the transitional requirement should be in effect until Canadian GAAP and U.S. GAAP are themselves harmonized. That process has already begun, as has the move towards International Accounting Standards. We agree that the North American orientation of our economy dictates a two-stage process.

Although we agree that U.S. GAAP is more prescriptive, or rule-based, and Canadian GAAP in some respects more principles-based, we do not believe the differences were as significant a factor in the Enron and other, more recent accounting and business fiascos, as some have claimed. We believe that corporate governance, business practices, conflicts and willful behaviour were major factors in those events. Recent legislative and regulatory moves in the U.S. to address these issues—the Sarbanes-Oxley act, for example—should in our view do much to resolve many of the behavioral issues recently impacting on U.S. financial reporting.

Part 2: Flexible Regulation

8. We support the addition of the four principles relating to education; maintenance of competitive position in the international arena; market innovation; and competition between those who are subject to regulation.

We suggest that minor changes be considered to the wording of the first and second additional principles, as follows:

(a) That the words “advance investor education in order to” be added to the first, so the principle would read:

“Effective and responsive securities legislation should advance investor education in order to promote the participation of informed investors in the capital markets.” This would capture the intent that the Commission take some direct responsibility for the education necessary to ensure that investors are informed.

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(b) That Ontario's capital markets be changed to domestic capital markets. This would, we suggest, better capture the underlying theme that Canada's capital market be competitive in the international arena.

9. We support the recommendation to amend the Act to the extent necessary to ensure that basic underlying principles are contained in the Act. This would facilitate rule-marking for detailed implementation of the principles without recourse to legislative change or cabinet-level approval of regulations to ensure that the Act works as intended. This is obviously of paramount importance in a rapidly—changing market environment.

In terms of additional suggestions for core concepts to be enshrined in the Act, we believe that in addition to those noted in the Report at page 42, the following could be useful:

(i) that management of an issuer will be held directly accountable to the Commission for the accuracy of financial and other information reported.

(ii) that the independent auditors will be held directly accountable to the Commission for the integrity of their audit opinions and review assurances.

11. While we appreciate the rationale for giving the Commission "blanket" rulemaking authority now basically conferred on the Lieutenant Governor in Council under Clause 143(2)(f) of the Act, we have some difficulty supporting the recommendation unequivocally because it is premised on the need to ensure that all underlying principles are contained in the Act as amended under recommendation 9.

The concern obviously has to be that the Commission could modify or create new principles, and effectively change the substantive nature of the Act without recourse to the government or legislature. At the same time, we strongly endorse the argument that "piecemeal legislative amendments to broaden the heads of rulemaking authority unnecessarily slow down the rulemaking process."

17. We have no difficulty supporting the recommendation that the Act be amended to allow the Commission to issue blanket rulings and orders that provide exemptive relief only, as an interim measure, subject to a sunset provision of automatic expiry after three years unless converted by then into a formal rule.

19. The recommendation that the date of the previous review Committee's final report, rather than the date of its appointment, be used to calculate the period between reviews is practical and efficient.

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21. We strongly support the view that in the current climate it would be inappropriate to eliminate the need for registrant involvement in Internet offerings.

23. We have some difficulty with the recommendation to adopt the "access-equals-delivery" approach in respect of documents that "do not require the shareholder to take any action." In general, we have concerns with the notion that means of information equals information. In particular, we have concern with the implication that financial statements do not require any action (vis-à-vis the corporation) by a shareholder. This recommendation seems to us to cater to the corporation at the expense of the shareholder—in an area that speaks directly to the "informed investor" principle.

Part 3: Regulation of Market Participants

26. We strongly support the continued monitoring of the various uses of financial portals by market participants. On the one hand, they speak to the principles of innovation, and investor education which are so important. On the other hand, as the Committee eloquently notes, they are susceptible to misuse in various ways that can undermine the integrity of the capital markets—especially the secondary market.

Part 4: The Closed System and Secondary Markets

33,34, 35 We support the recommendations to amend the Act to provide explicitly for continuous disclosure reviews; to encourage the harmonization of continuous disclosure requirements through the CSA; and to create a statutory civil liability regime for continuous disclosure.

42 Given the analysis provided by the Committee, we support the recommendations not to amend the Act's timely disclosure provisions to require disclosure of "material information" and to change the existing materiality standard for all purposes under securities legislation to a "reasonable investor" standard. First, it does not amount to a change of application in reality; and second, it supports the approach to harmonization with U.S. securities law.

45. We support the proposed reduction in the periods for filing annual statements to 90 days after the fiscal year-end, and 45 days after the end of each quarter.

49. We agree that the Commission should have the authority to prescribe requirements relating to the functioning and responsibilities of audit committees of reporting issuers. The goal should indeed be to make Canadian audit committees "best in class" internationally.

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50,51. We also support the recommendations to pro-actively monitor U.S. developments relating to auditor independence, and disclosure requirements regarding audit and non-audit consulting services.

We are following with particular interest the development of public accountability legislation in the U.S., and the closely-related development of a similar public accountability scheme with respect to Auditors in Canada, and will be making further submissions in this regard directly to the Commission and other related agencies.

In the meantime, we have welcomed the opportunity to comment on the Review Committee's work. The Report is comprehensive, timely and well-reasoned.

Yours truly

Glen M. Schmidt, BA, FCGA
President

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