Securities Review Advisory Committee
Responses to Issues Raised In Questionnaire

1. *Does the current statutory regime effectively balance the dual objectives of protecting investors and fostering efficient capital markets?*

The statutory regime for securities regulation in Canada has done a capable job of protecting the investing public and contributing to liquid and efficient capital markets. Regulators have generally been less focused on a proactive agenda to promote liquid markets than on efforts to ensure investor protection, but have been fairly careful to structure the regulatory framework in a way to avoid interfering with market efficiency. The provincial commissions have been open and receptive to various points of view expressed by self-regulatory bodies and market practitioners in respect of regulatory proposals.

The task for regulators going forward will be increasingly difficult. Provincial commissions must not only find the right balance between regulations to safeguard integrity and promote efficient capital markets, but must gauge their actions by an international yardstick. More than ever before, the users and providers of capital are influenced by developments in competing markets and are prepared to raise capital and trade securities where the cost of capital is the cheapest and execution costs are the lowest. Canadian regulatory policy must, in general terms, be congruent with SEC standards, and in some cases recognize US standards to ease the regulatory burden for Canadian companies, and facilitate cross-border financing and trading.

The major Canadian securities regulators have recently gained self-funding status and are embarked on a proactive agenda to strengthen the rules governing market participants and the enforcement of regulatory standards. Some reform is long overdue. Provincial regulators are more likely to achieve regulatory efficiency if rule-making is carried out in concert to ensure uniform regulation across the country and an effective system of deemed reliance for disclosure and registration. Needed consensus in rule-making brings its own set of problems, notably the difficulties in reaching timely decisions on regulatory policy. Provincial regulators must develop an efficient cooperative decision-making structure to respond quickly to rapid changes in capital markets.

2. *Securities regulation could be based on a statute that sets out broad principles and standards of market behaviour, as well as powers to deal with contravention of these standards. In this model, any detailed rules that might be required would be reflected in subordinate instruments, such as rules. Such a model would be flexible in its ability to adapt to market changes and trends. Is such a model desirable? If so, what broad principles and standards of market behaviour should be included in the legislation?*

The existing model for securities regulation which is premised on broadly-drafted legislative statutes, supplemented with detailed rules and regulations amplifying these statutes, is an approach consistent with a responsive regulatory framework relevant in a rapidly changing marketplace. The provincial commissions have the authority to approve

rules and regulations appropriate for the marketplace and consistent with the overriding statutes.

There are obvious dangers, however, in an approach which relies heavily on the discretion of appointed non-elected securities commissions to impose rules and regulations which have a significant influence on market behavior. These concerns are exacerbated now that the major commissions have self-funding status to discharge their rule-making and surveillance powers. Sufficient funding is essential for the commissions to meet their responsibilities. However, the OSC has the ability, in practice, of determining its own revenue flow and budget, subject to government oversight (which raises the issue of financial accountability). Therefore, it is important that the Commission not overstep its regulatory mandate, neither usurping legislative authority nor intruding on the activities of self-regulatory organizations.

Although the existing regulatory framework provides the flexibility to achieve responsive regulation, the legislative statutes should be written in sufficient detail to set the direction and temper of securities regulation. The statutes should go further than defining broad principles. As a case in point, legislation should set out a detailed framework for disclosure in respect to public offerings and continuous disclosure, leaving the specific requirements to regulation. A similar model could apply for takeover bid legislation. Legislative statutes, however, can only be effective if the procedures for legislative amendment are sufficiently flexible and responsive to accommodate needed change in a relatively short timeframe.

3. *Does the Act adequately account for the marketplace shift from trade execution towards "assets under management" and "advice giving"? Should these activities be regulated differently than they are now?*

The traditional services provided by the marketplace have not shifted. Registrants have been advising their clients since the inception of the investment business. Registrants have also offered execution services without advice. What has shifted is the way clients are charged for services.

Up to the mid 1970's, commissions were fixed and included both execution and advice services. When fixed commissions were eliminated, Members continued on the previous commission schedules but started offering discounts in particular circumstances. That tradition has carried through to recent times and discounts are normally offered when clients are initiating their own ideas. With the advent of Discount Brokers, the execution and advice services are increasingly becoming unbundled and that is the "shift" in the marketplace.

The IDA continues to regulate these activities through its self-regulatory review of the Members. We do not believe there has been a fundamental change in business activities and therefore the current regulatory practices are appropriate. Technical changes to the Act may be appropriate to review the acting in furtherance of a trade concept, but not regulatory oversight procedures.

4. *Is there a simpler approach that could replace the closed system but which would still protect investors, foster fair markets and maintain an appropriate balance between private and public offerings?*

The private placement market for "closed system" was designed to address the institutionalization of the market and the informational advantage of institutional investors. The hold period regime for privately placed securities was designed to permit the broad dissemination of information related to the issuer of these securities before permitting the sale and purchase of the securities, in this way mitigating the informational advantage of certain investors in the marketplace. However, the closed system becomes obsolete for those reporting issuers eligible for the integrated disclosure system and subject to the requirements of the continuous disclosure system.

5. *What exemptions from the prospectus and/or registration requirements of the Act should be added or removed?*

The private placement market could be transformed into a more effective market for capital-raising by broadening investor access to securities distributed in these private markets. The OSC Task Force on Small Business Financing in October 1996 made several recommendations to widen investor access to exempt markets and reduce the regulatory burden for small issuers – reshaping the prospectus exemptions, revising premarketing rules to permit the "testing of waters", the liberalization of escrow requirements and elimination of statutory civil liability for dealers underwriting the public offerings of small companies. The Task Force recommendations have laid dormant for several years, partly due to shifting priorities to other areas, but, as well, because of apparent disagreement among regulators on fundamental principles related to small business financing. In respect of this latter consideration, the commissions should make every effort to reach consensus on the tradeoff between reduced disclosure requirements and cost-effective financing on the one hand, and investor protection on the other. Until a consensus tradeoff can be reached, the log-jam in designing effective regulations for small business capital raising will remain.

The OSC recommendations to reform the exempt market represent a positive step to improve the efficiency of private placement markets. The proposal would reduce the existing four exemptions – seed capital exemption, private company exemption, government incentive exemption and the $150,000 purchase exemption – to two exemption categories. These two proposed exemptions include a closely-held exemption to permit small companies to raise capital from "angel investors" and the accredited investor or sophisticated investor exemption.

The IDA supports these proposals for reforming the exempt market. The IDA has suggested that, to provide greater financing flexibility, the 35 investor limit and $3million cap in respect of the "closely-held" exemption should not be binding on the employees of the company, consistent with the existing principle that employees have never been restricted from using the private company exemption. This modification would provide greater flexibility in using the "closely held" exemption.

The IDA also concluded that the accredited investor exemption, based on net income and net worth criteria, is a significant improvement over the $150,000 purchase exemption. The new exemption is a more effective test of the sophisticated investor. Further, removing the designated purchase amount from the definition provides flexibility in purchasing exempt securities, enabling investors to tailor risk and return to individual portfolios. This will promote greater investor participation in exempt securities.

The IDA also noted that existing legislation does not define an offering memorandum. The uncertainty surrounding the definition poses a risk for investment dealers providing documents on a potential exempt offering that fail to include a contractual right of action for misrepresentation. These dealers may find that regulators conclude these documents in fact constitute an offering memorandum and, without a contractual right of action, would lead to loss of the exemption. The possibility of such an occurrence would be a deterrent to exempt financing. The IDA recommended that, if exploratory materials provided investors are deemed an "offering memorandum", the issuer could, subsequent to such a decision, provide the said offering memorandum containing the right of action for information contained within the memorandum, and notification that earlier materials were not covered by the contractual right of action.

6. *Securities transactions are often artificially structured to avoid hold periods under the Act which result from the closed system. Should another approach be adopted to prevent sophisticated persons from being able to structure transactions to avoid control block restrictions?*

Investors and securities firms should be able to convert seed, founders and other privately placed shares with hold periods into freely tradable shares, through a public offering or business combination with an existing listed company, within a relatively short timeframe, in this way abridging hold periods. Rapid access to equity capital in public markets to obtain the lowest cost of capital is a desirable objective, and transactions designed to achieve this objective should not be prevented. However, the opportunity for major investors, such as those with control block positions, to utilize public markets to cash out quickly at significant premiums over the price paid for privately placed shares results in unfairness in the marketplace.

Investors holding a control block position in privately placed securities should be permitted to abridge the hold periods in securities, and participate in private placements on an equal footing with other investors, as long as the securities subject to hold periods meet certain conditions. In particular, control block investors should be permitted to abridge applicable hold periods if (i) the securities were issuable on the exercise of warrants issued by the reporting issuer listed on a recognized stock exchange. These warrants can only be issued at a discount as specified by the relevant stock exchange or (ii) the securities are received as the result of an arms-length merger or take-over bid for the shares.

7. *The legending of security certificates to indicate and give notice of restrictions on resale is a concept that is incompatible with the holding of securities in book-based form. In view of this reality, as well as the fact that securities are fungible, legends on certificates may not be transparent or effective. What alternatives exist, assuming the closed system continues in effect?*

The legending of securities to indicate resale restrictions can, in certain cases, lead to complications for book-based clearing and settlement systems. The complications, however, occur mainly for constrained ownership shares that stipulate investment restrictions on non-resident holdings. These securities relate to the offerings of recently privatized government enterprises such as Air Canada and CN.

The legending of resale restrictions in connection with privately placed shares in the closed system is not a problem for book-based systems. Most of these securities are issued and held outside the book-based system and only move into the system once the privately placed warrants or securities are converted into publicly traded shares. Further, if the privately placed securities are placed in the book-based system, these securities with trading prohibitions related to hold periods can be handled effectively within the book-based system. Operational inefficiencies that arise for legended privately placed securities are minimal.

While book-based systems can deal appropriately with securities with legends, practices surrounding legending of physical certificates vary widely from security to security. In some cases, it is very difficult, if not impossible, to tell from examining the physical certificate that there are restrictions attached to the security. It should be clear that the issuer has a responsibility to inform the transfer agent of any restrictions placed on the security. Any such communication with the transfer agent should clearly describe the nature of the restriction, the methodology used to restrict a security and the methodology to lift the restriction. This communication should also require the transfer agent to ensure that a description of any trading restrictions be clearly visible on the face of the physical security certificate.

8. *The regulation of financial services in Canada is structured around the nature of the institution (bank, insurance company, dealer) which is providing the service, rather than around the service itself. This has produced a rising number of circumstances where similar activities or products are regulated in a different fashion, depending on the nature of the financial conglomerate offering the product or service.*

   a) *Should securities regulation be amended to reflect the shift in the way financial markets are structured? For example, are the current exemptions from regulation of securities based on the issuer still appropriate?*
   b) *Should legislation include some formal requirement to facilitate the coordination between financial services regulators?*

The regulatory framework for the Canadian financial sector has evolved from an institutional structure based on the "four-pillar" concept. The four pillars include banks subject to federal regulation, insurance companies and trust companies regulated by federal and provincial authorities, and the provincially regulated securities industry. The convergence of financial products and services offered across competing institutions, subject to either federal or provincial regulation, raises the specter of institutions offering similar products and services and being subject to differing regulations. This has given rise to regulatory "gaps" and inequities in the regulation of similar financial products and

services. These gaps and inequities open up the system to investor risk and unfair regulatory treatment of competing institutions.

The so-called "gaps" and inequities have to date been minimal as the securities-related activities involving the regulation of prudential standards, and sales compliance standards, have been carried out within SRO firms and other provincially regulated affiliates of federal institutions. The establishment of the Mutual Fund Dealers Association, the new self-regulatory body for the mutual fund industry, should achieve progress in raising both the standards and uniformity of rules governing the sale and distribution of mutual fund products.

However, federally regulated institutions in response to competitive pressures, particularly the wealth management business, now offer various complex capital markets products, including marketable debt instruments. While many of these products are exempt from securities registration, they are nonetheless subject to market and event risk. These circumstances dictate the sale and distribution of these products should be subject to similar standards of business conduct, disclosure requirements and proficiency requirements, and similar compliance/enforcement procedures. It is our understanding from federal officials that market conduct regulation of federally regulated institutions will be carried out by the newly established Financial Consumers Agency. The alternative would be to delegate this regulation to provincial authorities. In this regard, the recent amalgamation of the OSC and FSCO should facilitate the harmonization of market conduct and prudential rules governing securities firms, mutual funds and the provincially regulated insurance and trust industry.

It is important that federal regulators, including OSFI and the Financial Consumers Agency, and provincial commissions, coordinate their regulatory activities to ensure correspondence between market conduct rules and regulations, and compliance procedures for institutions offering similar financial products and services. A coordinated regulatory approach at the federal and provincial level is essential to promote efficient, fair and liquid capital markets. OSFI and the IDA will continue to consult on a frequent basis to ensure equivalence in prudential standards, notably capital rules for federal institutions and securities firms carrying out similar activities, and to avoid duplication in the regulation of bank-owned securities firms that fall within the ambit of OSFI regulation.

Because it is a national organization, with members who are affiliated with the full range of financial services firms, the IDA can play a constructive role in a coordination and harmonization process involving SROs, regulators and governments with different functional and geographic responsibilities.

9. *Should financial service regulators, including self-regulatory organizations, have the ability to handle consumer complaints through ombudsman or arbitration schemes? If so, what type of complaint handling schemes would be desirable in Ontario?*

The IDA created the arbitration program in the belief that it is important to the confidence in the capital markets for clients to have an efficient and timely alternative to the courts in resolving disputes. The IDA continues to increase public awareness of the

program by requiring Members to send a brochure to all new clients and complainants describing the procedures for arbitration.

The Ombudsman scheme may be appropriate for large financial institutions where the organization has an internal Ombudsman department for a broad range of clients to approach on disputes. The federal Ombudsman would only become involved if the internal process failed and would use moral suasion to correct any deficiencies.

The IDA would argue that there is an effective regime in the securities industry. Each Member firm must have a compliance department that is equipped to deal with client complaints. If the client remains dissatisfied, the client has the option of forcing the Member to binding arbitration. While there is some cost involved in the arbitration process, it is a binding legal process that will produce a final result in a timely manner.

Therefore, it is the position of the IDA that both schemes should operate in Ontario. The compliance/arbitration scheme is more appropriate for our Members based both on their size and their focus on the investment industry. Nevertheless, our Association is prepared to discuss whether a non-binding ADR system, like a private sector Ombudsman, could provide an additional avenue of redress.

10. *Should the Act be integrated with the Commodity Futures Act and the Commission be given explicit jurisdiction over derivatives?*

We do not believe that integration of the Commodity Futures Act and the Securities Act is a high priority. If significant changes are being made to the acts at some point in the future there may be some benefit to having regulations of derivatives and related underlying securities in one place.

We are not aware of jurisdictional problems with respect to the role of the Commission with respect to derivatives. However, if there is any doubt, it should be clear that the Commission has jurisdiction over derivatives.

11. *Currently, securities legislation requires dealers to be registered when they "trade in securities in the capacity of principal or agent". Rather than focusing on whether or not a dealer is "trading" should the requirement to be "registered" be based on whether the dealer is engaged in, or is holding itself out as being engaged in, the business of buying, selling or otherwise advising with respect to securities.*

The IDA agrees with this fundamental concept and would point out that practically that is the current regime in the securities industry. However, registration should only be required of those dealing directly with the public. In the example cited, the portfolio manager should have the necessary training to consider the quality of the advice from the research analysts or any other source he uses in making recommendations to the public.

A Securities Industry Committee on Analyst Standards, chaired by Purdy Crawford, will address the issue of appropriate regulation of research analysts and the IDA is an active participant on the committee.

12 a) What is the role of an "intermediary" in the context of disintermediated markets? For example, are there activities or transactions that should be exempt from the need to involve a regulated intermediary? If so, what are they?

b) To what extent do traditional obligations of registrants such as assessment of suitability and "know your-client" need to be re-examined in the context of a disintermediated and electronic trading environment? In this context, do distinctions have to be drawn between registrants that are under a fiduciary obligation to their clients versus those that are not?

Fairness, transparency and confidence are essential factors to a successful capital market. The regulated intermediary plays a key role in ensuring the integrity of trading in the markets. To allow the public to have direct access to the markets with no systems to govern the trading rules would result in chaos.

It is certain that suitability has to be re-examined in the electronic age and one of the components should be a definition of fiduciary obligations. The issue is access to the markets, whether it is through discount brokers or full service dealers. Regulation should not interfere with the traditional relationship between a client and the registrant nor should it result in an uneven playing field within the industry. However, it must be recognized that some regulations may have had historical merit but no longer current relevance.

The IDA believes that the relief granted by the CSA in April 2000 creates an uneven playing field and imposes an unnecessary obligation on brokers. The CSA has given us the opportunity to comment further on the subject and industry committees are currently preparing a submission for consideration.

13. Should the concept of universal registration be eliminated? Alternatively, how might the current multiple categories of registration be simplified and streamlined?

We do not believe that the concept of universal registration should be eliminated. The core reason for universal registration was investor protection and elimination of this requirement may result in a lessening of investor protection. Whenever parts of the market are exempted from regulation, someone finds a way to exploit this exemption for unintended purposes. Further, elimination of universal registration may create a competitive advantage for unregistered entities competing in the same markets as registered entities.

In order that markets be appropriately regulated without over regulation, the various markets that registrants are involved in should be assessed for risk relative to the objectives of regulation and regulations, monitoring and enforcement mechanisms devised commensurate with these risks.

14. The Act recognizes the important role played by recognized SROs and establishes that the Commission should, subject to an appropriate system of supervision, rely on these SROs. In view of the critical role played by these recognized SROs:

a) Should the legislation be more explicit in recognizing that SROs have the authority to enforce their own rules and ensuring that they have the necessary tools to do so?

b) Should recognized SROs have the authority and obligation to enforce compliance not only under their own rules but also Ontario securities law?

c) Should securities law permit or prohibit a SRO from acting as a trade association?

SRO's currently derive their authority from a contractual relationship with their members. We believe that this current relationship has worked satisfactorily and see no compelling reason to change it by legislating the relationship.

Currently the roles of the Canadian Securities Administrators ("CSA") and the SROs are well defined. Giving SROs the authority and obligation to enforce CSA rules may well result in confusion as to these roles and could further result in double jeopardy for registrants.

The IDA has a dual mandate as a self-regulatory organization (SRO) and an industry association. The justification for the dual mandate is based on the advantages to both the investing public and our members. In addition, we believe there is no meaningful conflict, beyond the conflict inherent in self-regulation, that should concern the regulators or investors. To the extent such a conflict arises, there are mechanisms in place to deal with them constructively, in the public interest.

The dual mandate will be analyzed from both the regulatory and trade association perspectives to demonstrate that neither the public interest nor the members' interests are prejudiced.

The Regulatory Perspective

SRO Representation

The IDA is involved in two types of advocacy, one related to its SRO responsibilities and the other related to its industry association role. The bulk of the representational activities concern the self-regulatory role, which is comparable to that performed by NASDR. The SRO focus is on rules, regulations and policies enacted by governments or securities regulators and that impact on the self-regulatory responsibilities of the Association. Since self-regulation is, by definition, regulation by the members, a built-in conflict of interest exists, which must be dealt with in a variety of ways, which are discussed below.

There presumably can be no problem with SRO advocacy, whereby IDA staff and members use their expertise and practical experience to assist regulatory authorities and others in developing, implementing and monitoring policies designed to achieve the dual goals of investor protection and efficiency of the capital markets. To preclude the Association from such activity would deprive the Commissions of the experience they frequently seek and prevent the industry from participating in the public interest debate on issues affecting the industry and markets. Indeed, to preclude such activity would be

tantamount to eliminating a key advantage of self-regulation. There has been no suggestion, of which we are aware, to that effect.

Industry Association Representation

The concern, if any, would seem to be directed at advocacy, not directly related to securities regulation, but designed to achieve more narrow commercial objectives on the part of our members, with less focus on the broader public interest. There are very few instances of this kind of activity, although they may occur.

First, it may be helpful to indicate what such activity is not. For example, Executive Committee visits to the Premiers, Provincial Treasurers, the Minister of Finance and the Bank of Canada do not concern, as a rule, securities regulation. Rather, they deal with fiscal and monetary policy and are generally aimed at advancing policies we perceive to be in the public interest, rather than just the interest of our members. Indeed, fiscal restraint and concerns about inflation may be at odds with the short and intermediate-term profitability of our member firms.

What people may have in mind when they raise the apparent conflict may concern matters such as cross-border trading or reciprocity for trading system, which relate to the level playing field for Canadian dealers, compared to foreign competitors. However, these matters, while they affect the commercial interest of our members (and almost always others as well), do not relate to our SRO functions. Therefore, no incremental conflict of interest need result from the industry representation function and the SRO responsibilities fall under the same Association umbrella.

Functional Separation

Even though there is no practical conflict between the self-regulatory and association functions, optics dictate an organizational distinctiveness in the form of a clear organizational structure, with identifiable nomenclature and Chinese Walls, where appropriate. This distinction has always existed and was strengthened with the recent strategic review.

Resolving the Conflict in Self-Regulation

The nature of self-regulation implies a potential conflict which must be addressed in a wide variety of ways, each of which contributes in some measure and all of which, when combined, make for an ethical, objective and effective self-regulatory organization.

(a) Goals, objectives, strategies and action plans are developed, implemented and supervised, consistent with a self-regulatory regime that is designed to be objective, professional, rigorous, open, and monitored.

(b) An appropriate number of Public Directors are elected to the Board and to the Executive Committee, Regulatory Review Committee, Compensation Committee and Audit Committee.

(c) Transparency is maintained regarding by-laws adoption, adjudicative procedures, governance structure and the committee system, as well as public submissions to regulatory authorities and the government.

(d) The Securities Commissions monitor the Association in accordance with the conditions of its recognition.

(e) There is accountability to the public, regulators and our members, directly and through the Executive Committee and the Board of Directors.

(f) A Regulatory Review committee of the Board was established this year to oversee the Association's regulatory responsibilities.

(g) Attracting and retaining high caliber and ethical professionals is critical in any organization.

(h) Compensation policy insulates compliance and investigative staff from membership evaluation.

Contribution of Self-Regulation

A highly constructive role is played by self-regulation that is an integral part of the Canadian regulatory environment as well as that of most other developed capital markets.

As measured by a host of statistics, Canada's markets are highly competitive. In proportion to the size of our economy and our population, our markets raise twice the amount of capital and trade more bonds and stocks than the United States. Large and small companies access private and public capital in Canada, at a comparatively low cost. As well, institutional and individual investors have access to investments in a market that is liquid, transparent and fair.

Our highly evolved market is taken for granted, but it should not be since it impacts favorably on Canada's economic growth, investment, savings and employment.

The capital market's efficiency is inextricably related to its sophisticated regulatory environment, including the self-regulatory organizations (SROs). Self-regulation can play an extremely helpful role in complementing direct government regulation, which is why it is integral to most developed capital markets.

Self-regulation promotes investor protection, as the industry is able to establish and enforce standards of business conduct at higher levels than governments may practically prescribe. Losses caused by the insolvency of a member firm are borne directly by the other investment dealers through the Canadian Investor Protection Fund, providing a substantial incentive to ensure that standards are adequate and rules strictly enforced. Since public confidence is critical to the business, self-policing is consistent with members' interests.

Another important advantage is the expertise available to the SROs through their permanent staff and large volunteer network of market professionals working for the investment firms. They are close to the market and have hands-on experience in dealing with practical problems that are becoming increasingly complex and interrelated. They also have the sensitivity to understand the workability of regulation. In addition, innovative and rapidly changing products require proactive decision-making and timely responses, a challenge which knowledgeable practitioners can meet.

Self-regulation is cost effective and the regulatory cost is borne by the securities industry, not the taxpayers. Finally, the accountability of SROs to their members, and the acceptance of regulation developed cooperatively with those subject to it, tend to result in recommendations that are effective and balanced.

Self-regulation that is objective and transparent is in the public interest. Checks and balances are essential and the securities commissions, which regularly monitor our activities, achieve this. A regulatory structure that combines the strengths of government regulation with the benefits of self-regulation results in the most effective overall system.

In summary, we have a highly efficient capital market in which self-regulation plays a constructive role. We should use all our resources, including the self-regulatory system, to enhance fair and competitive markets that are respected around the world.

15. *Currently stock exchanges are precluded from carrying on business in Ontario unless recognized by the Commission. Should other SROs, clearing agencies, and quotation and trade reporting systems be required to obtain recognition from the Commission?*

Clearing Agencies and Depositories play a critical role in the capital markets of Canada. Their rules have a significant impact on the operation of these markets. As such, it is logical that these entities should be subject to some type of regulatory oversight.

While quotation and trade reporting systems play a significant role in the capital markets they operate in a competitive market and, as such, the marketplace affects the quality of their services. It is important that these markets remain competitive in order to foster high quality service in these markets. We believe that regulation of these entities could affect the decision of some entities to enter the Canadian marketplace and could instead result in deterioration of services in a marketplace the size of Canada. Thus, we are not in favor of regulation of such entities.

16. *Does the Act need to address in a more comprehensive fashion the SRO regulatory oversight function and provide for the necessary tools to ensure that such oversight remains effective?*

We believe that the SRO oversight function is currently effective and does not need further definition in the Act. We also believe that the necessary tools are available to the Commission without changes to the Act.

17. *Should the provision of custody services be a registrable activity or be subject to express requirements under the Act?*

Most custody services providers are already regulated. The IDA's rules and those of various regulators and self-regulators contain restrictions on entities that may act as custodians. These restrictions have been developed with the degree of regulatory oversight of various parties in mind. Requiring registration of all custody services providers under the Act would impose another layer of regulation on what is already a highly regulated group and we feel that this is not necessary.

18. *Canadian law governing transfers and secured lending transactions involving investment securities relies upon concepts of possession and delivery of security certificates to complete a transfer or to perfect a pledge. The use of these concepts reflects an era when actual physical delivery of security certificates was the normal method of settling transactions and perfecting pledges. The concepts of actual or deemed possession and delivery work less well, however, when applied to the modern indirect holding system which now exists in Canada. How should Ontario and other Canadian provinces modernize laws that govern the holding, transferring and pledging of securities held through the indirect holding system? How closely should Article 8 of the U.S. Uniform Commercial Code ("Revised Article 8") be followed?*

Current processes at The Canadian Depository for Securities Limited ("CDS") in combination with current laws appear to have worked well to facilitate collateralization of borrowing arrangements. However, conforming Canadian laws to mirror U.S. law in this area would be valuable in facilitating cross-border transactions that are a significant and growing part of the market. Any changes to law in this area should be done in consultation with CDS, which has significant experience in this area.

19. *In response to the increasing importance of the secondary markets, the Commission has taken action on a number of fronts as outlined in the Commentary.*
    a) *Does the present structure of the Act adequately respond to the increasing importance of the secondary market? For example, a successful continuous disclosure monitoring system requires effective regulatory tools to deal with misleading of inappropriate disclosure practices to encourage issuer compliance. Are additional powers or remedies needed to facilitate the Commission's enhanced role in monitoring continuous disclosure?*
    b) *Are there any changes which should be made to the Act to improve the content, quality and timing of continuous disclosure?*
    c) *Should there be statutory civil liability for misrepresentations in continuous disclosure documents?*

Secondary markets have grown rapidly in terms of transaction volume and investor participation. While secondary markets now dwarf the size of primary markets, the disclosure system remains rooted in the prospectus system. The principal drawback of the system is that investors in secondary markets have less direct access to comprehensive disclosure, relying on continuous disclosure documents distributed periodically in the marketplace. Further, these investors lack the legal protection of prospectus disclosure – the lack of a contractual right of action for misrepresentation. Finally, the detailed process of completing prospectus disclosure, and obtaining necessary

regulatory review and approval, prevents timely access to capital markets to raise new equity shares through public offerings.

The TSE Committee on Corporate Disclosure, established in 1998 to evaluate the effectiveness of corporate disclosure in capital markets, observed that many investors hold the view that continuous disclosure in Canada is inadequate largely because mandated disclosure falls short of SEC standards. The IDA recommended in September 1998 that the continuous disclosure system should be upgraded to SEC standards. It was noted the OSC has extensive powers under Section 128 of the Ontario Securities Act to enforce statutory disclosure requirements and should invest sufficient resources to meet these standards. The IDA also expressed reservations that extending a statutory right of action for discontinuous disclosure violations could create a more litigious environment in Canada and add significantly to issuer costs. The IDA did make the point, however, that, if analysis concluded investor confidence in market liquidity would be adversely affected by imposing a continuous disclosure requirement without a statutory right of action, then the IDA would favour such an approach. With respect to the extension of statutory civil liability to continuous disclosure, particularly in the context of the integrated disclosure system (IDS), the IDA recommends the CSA monitor carefully whether the introduction of IDS leads to enhanced disclosure in Canada's capital markets.

The CSA has recently brought forward proposals for an integrated disclosure system. The IDA supports this initiative which should improve the quality and timeliness of corporate disclosure and enable investors to make informed market decisions. Enhanced disclosure, coupled with bolstered resources of provincial commissions to enforce these new rules, should improve confidence in the marketplace. The integrated disclosure system will also strengthen the efficiency of the capital-raising process, particularly for smaller companies.

The integrated disclosure regime combines prospectus disclosure with the continuous disclosure system to provide a seamless disclosure regime for reporting issuers. The traditional corporate disclosure documents the AIF and the interim reports are upgraded -- notably modifications to the AIF and reporting of interim financial statements in the QIF -- become the centerpiece of the disclosure system. Reduced emphasis on prospectus documents for disclosure purposes, and the related regulatory review and approval process, will shorten the offering period for issuers and enable many companies, especially smaller companies that heretofore have not had access to the POP System, to structure and launch public offerings on a timely basis in capital markets.

The IDA has suggested several modifications to the proposed system. First, the reduced timeframe to complete a public offering will put pressure on underwriters to carry out due diligence obligations. The IDA proposed several measures to assist underwriters in meeting their due diligence obligation within the shortened offering period. The CSA could provide explicit guidance to underwriters on practices that constitute "a reasonable investigation" under securities regulations. The SEC has provided such guidance for expedited offerings in its proposal to reform the regulations governing the corporate offering process. Also, in recognition of the fact that underwriters review the accuracy of material facts disclosed to investors, and are not responsible for producing the disclosed

information, the IDA recommends underwriters not be held to the standard of certifying "full true and plain" disclosure but rather should certify to being unaware of any misrepresentation of disclosed facts.

Members of the Corporate Finance Committee are divided on the proposed removal of premarketing restrictions. Some members support the change as it provides flexibility in the capital raising process and acknowledges the diminished role of the prospectus and the increased emphasis on continuous disclosure under the proposed IDS regime. One potential issue exists, however, regarding possible market distortion resulting from the misuse of information concerning the existence of a proposed offering. For example, an institutional investor learning of a proposed equity offering may anticipate ensuing market weakness in the security and sell the security short placing downward pressure on its market price. As a result of this issue, recipients of the information will have to be reminded by regulators that in acquiring such knowledge each becomes a "person or company in a special relationship with their reporting issuer" ineligible to purchase or sell securities of the reporting issuer so long as the material fact or material change with respect to the reporting issuer has not been generally disclosed. Some other Committee members argue for retention of the restrictions to ensure the fair treatment of all investors in accessing newly offered securities and also because US regulations impose premarketing restrictions.

The requirement that issuers obtain reporting issuer status in all jurisdictions for access to the IDS system will act as a disincentive for small companies to join the system. The all-jurisdiction requirement will add significantly to issuer costs without providing concomitant benefits. The IDA recommends that an all-jurisdiction reporting issuer requirement not be the eligibility standard for access to the IDS system. Greater uniformity in the rules governing securities distributions can be achieved through closer coordination among provincial regulators without requiring individual companies to become reporting issuers in all jurisdictions.

20. Securities legislation currently focuses on "material facts" and "material changes" for various purposes such as prospectus disclosure and continuous disclosure obligations, insider trading rules and proxy solicitation rules.

a) Is the existing standard of materiality for purposes of triggering continuous disclosure obligations appropriate?

b) Would a focus on "material information" be more appropriate regardless of whether or not there has technically been a "change" in the issuer's affairs?

c) Should Ontario securities law require the reporting of specified events rather than attempting to specify whether information meets a certain standard of materiality?

The appropriate legal standard of materiality for the purposes of triggering a continuous disclosure obligation must strike a reasonable balance between the market's need to be informed on a timely basis of material developments concerning an issuer and the issuer's need for clarity as to the circumstances in which such disclosure must be legally made, particularly in light of the immediacy of the obligation. It is also essential to recognize that there are circumstances where an issuer (and its existing shareholders) legitimately have a need to keep material developments confidential. For these reasons,

the IDA believes timely disclosure is best premised on "material changes" rather than "material facts" since in the latter case the issuer will typically require more time for thoughtful reflection as to the potential impact on share price or value of the development which has not yet progressed to the status of a change in the issuer's affairs. Premature disclosure of an intended financing or acquisition that may be considered a "material fact" is not beneficial for the secondary markets and can cause significant price interference for such transactions. For this reason, the IDA prefers the existing "material change" standard to a broader standard of "material developments" and/or to a requirement to disclose specified events irrespective of meeting a certain standard of materiality.

21. *The Act requires financial statements of reporting issuers to be prepared in accordance with generally accepted accounting principles (GAAP) and audited and reported upon in accordance with generally accepted auditing standards (GAAS). The Act also provides the Commission with specific rule-making powers with respect to the accounting and auditing standards to be applied in financial statements and auditors' reports filed with Commission. To date, the Commission has chosen not to exercise its rule-making powers in any manner that overrides the standards set out in the CICA Handbook.*

a) Are traditional GAAP/GAAS financial statements adequate in today's markets? For example, should the current accounting principles applicable to compensation options be reviewed to ensure that the accounting treatment of options conforms to standards of good corporate governance?

b) What reforms should be adopted to facilitate uniform international accounting standards?

The traditional GAAP standards are adequate for today's markets. The major shortcoming from a regulatory standpoint has not been the accounting standards, but the paucity of financial information required for statutory interim financial statements. The CSA deserves credit for expanding requirements to improve the calibre of reported financial information. For example, balance sheet information and enhanced material disclosure are now required for interim reporting. If current proposals are adopted, boards of directors and audit committees will be required to review interim financial statements; senior officers and boards will be required to certify the interim and annual financial information to the "full, true and plain" disclosure standard.

The key objective of securities regulators should be to promote harmonization between Canadian and US accounting standards, given the rapid integration of North American capital markets. Regulators should be alert to changes in US GAAP and be prepared to modify regulations governing accounting standards to conform to US GAAP. At present, there is nearly full conformity in the accounting standards of both countries. The significant difference between Canadian GAAP and US GAAP, the pooling of interest treatment for acquisitions, will shortly disappear.

We understand the OSC will shortly put forward a formal proposal to permit Canadian interlisted companies to file financial statements in either Canadian GAAP or US GAAP. The IDA concluded such a proposal would be a positive step to reduce the regulatory costs for cross-border financing by avoiding the need to reconcile to two accounting

standards. Individual investors would not be disadvantaged if Canadian corporations reported in US GAAP. First, the differences between Canadian and US accounting standards are minimal. Second, investors essentially rely on secondary source material, such as research reports, in making investment decisions. This material often includes comparative cash flow analysis for Canadian and US companies to assist investors. Finally, investors already purchase many US equities that report financial results in US GAAP. The IDA recommended that the CSA broaden the ambit of its proposal to permit all listed Canadian companies, whether interlisted on US stock exchanges or not, to report in US GAAP. This modification would permit all these Canadian companies to capture the benefits of more cost-effective cross-border financings. The provincial commissions should be prepared to fund sufficient resources to review US GAAP financial statements.

We believe that the OSC and other regulators should be working to facilitate cross-border offerings and listings by multinational enterprises and to promote the further development of internationally accepted accounting standards. In this regard, we strongly support efforts by the International Organization of Securities Commissions (IOSCO) and the International Accounting Standards Committee (IASC) to develop and implement such standards.

22. *Is the practice of "selective disclosure" an issue that should be addressed by regulation? If so, what regulation would be appropriate? Is the approach of the U.S. Securities and Exchange Commission (the "SEC") one that should be adopted?*

Selective disclosure of material non-public information has become a concern for Canadian and US regulators. Unequal investor access to material information undermines investor confidence. Under US securities law, selective disclosure has been addressed through insider trading laws. However, recent court rulings had made enforcement more difficult because breach of duty, particularly by the issuer's shareholders, must be proven by demonstrated personal benefit.

In Canada, selective disclosure is dealt with through insider trading rules, notably trading prohibitions placed on the "tippee" or person in a special relationship with the reporting issuer from purchasing or selling the securities of the issuer as long as material information is undisclosed. Selective disclosure has also been addressed by commissions through the premarketing restrictions.

The SEC has recently proposed Regulation FD that places the regulatory onus on issuers for fair disclosure practices. Under proposed Regulation FD, material information should be released through public disclosure and not selective disclosure. Also, if an issuer has become aware of selective disclosure having been made, public disclosure of that information must be made.

While the premarketing restrictions, together with the existing insider trading rules, have been developed to prevent the selective disclosure of information, the premarketing rules have been a source of confusion in the marketplace. For example, it is noted that CSA proposes abolishing the premarketing rules in the integrated disclosure system, even though selective disclosure may still be possible. In this regard, the provincial

commissions might consider imposing a regulation similar to SEC Regulation FD, in this way placing the burden on issuers for fair disclosure practices. The commissions should also draw investor attention to existing legislation that prohibits investors in the possession of undisclosed material information from trading in the securities until the information is fully disclosed.

23. How do concerns with respect to selective disclosure impact on traditional views with regard to "road show" presentations?

Concerns have been raised, more recently by the Allen Committee, about the selective disclosure of material information at road shows for imminent securities offerings. These road shows have, on occasion, resulted in unequal access to information or selective disclosure, particularly institutional investors more likely to frequent road shows. The Allen Committee recommendations also referred to the likelihood of selective disclosure in telephone conference calls with research analysts. There are existing rules to guard against selective disclosure. There is perhaps a need for vigorous enforcement of these rules to prevent selective disclosures. Emphasis on enforcement should precede additional or alternative regulations such as adopting proposed SEC Regulation FD.

28. Proposed amendments to the Canada Business Corporations Act have been introduced which are intended to encourage and facilitate communications among shareholders. The SEC has also amended its proxy rules to foster more open communication among shareholders. Are there complementary reforms that are necessary or desirable under the Act or Business Corporations Act (Ontario)?

The SEC has amended proxy rules to encourage more open and informal communication with securityholders in the marketplace. These changes have been prompted by the increased incidence of business combination transactions where securities are offered as consideration, an increase in hostile transactions involving proxy solicitation and advances in technology and communication that have precipitated a rapid pace of merger and acquisition activity and also provide the means to facilitate more effective and communication with securityholders and the markets. The SEC has concluded that more open communication with securityholders will also reduce the incidence of selective disclosure.

The SEC proposals would permit more open oral and written communication to securityholders before the filing of a registration statement, or a proxy statement, or prior to a tender offer statement. The new rules will promote the dissemination of material information related to business combinations on a timely basis to securityholders and will assist investors in making informed decisions on these transactions that are occurring at an accelerated pace in the marketplace.

The Canadian capital markets have been characterized by record merger and acquisition activity in the past several years, including both domestic and cross-border transactions. These transactions are often complex, and are structured and presented to the markets and securityholders quickly and with minimal time for investor response. Canadian securities regulations should be amended in a manner similar to the SEC proposals, permitting

more extensive communication with securityholders before the filing of registration statements related to take-over transactions, or before the filing of a proxy statement. This increased flexibility in the takeover regulations would enable investors to make better decisions on corporate transactions. As well, the advances in communication, particularly the Internet, enable Canadian companies to make good advantage of such flexibility by disseminating material information on corporate transactions widely to securityholders. This flexibility will also minimize the incidence of selective disclosure. In considering such an approach, the provincial securities commissions should review such proposals brought forward in connection with amendments to the Canada Business Corporations Act.

When considering changes to shareholder communication rules, consideration should be given to providing guidance to nominees as to when communication requests should be denied. For example, there have recently been situations where persons have made tenders for securities at below market value. In some of these situations, communicating these offers to the security holders did not appear to be in their best interest. Confidentiality of security holder identity and information should also be considered when making such changes. A basic principle of past shareholder communication models, which should be carried forward, is that the initiator of communication requests should bear the cost of carrying out the request.

29. *Recently the Committee of the Investment Dealers Association of Canada to Review Take-Over Bid Time Limits (the "Zimmerman Committee") issued a report which recommended a number of changes in the regulation of take-over bids. Many CSA jurisdictions, including Ontario, have now enacted legislation, subject to proclamation, which would implement the recommendations of the Zimmerman Committee.(12)*
    a) *Are additional reforms necessary or desirable in the area of take-over bid or issuer bid regulation?*
    b) *Does the current legislation properly capture those transactions that should be subject to take-over bid regulation?*

The IDA does not believe that additional reforms are necessary or desirable in the area of take-over bid or issuer bid regulation at this time and urges the provincial government to move forward with the enactment and proclamation of the necessary amending legislation to implement the recommendations of the IDA-sponsored Zimmerman Committee.

The IDA does not believe that the take-over bid provisions should be extended to “take-over” transactions not structured as take-over bids, such as arrangements. The hallmark of the statutory arrangement procedure is its flexibility to accomplish a wide range of inter and intra-corporate arrangements within an integrated procedure, including acquisitions, reorganizations, compromises and tax-driven transactions. The safeguard under the arrangement procedure is the involvement of the court which ultimately must be satisfied, after conducting a “fairness hearing”, that an arrangement is fair and reasonable to all affected classes to securityholders. We believe that determinations as to procedural and substantive fairness for securityholders in the context of statutory arrangements are best left to the courts. Accordingly, the IDA sees no need for additional regulation of statutory arrangements under securities laws.

30. Are the current detection and disclosure provisions with respect to insider trading sufficient? Does the Commission need additional enforcement authority in dealing with insider trading?

The current detection and disclosure provisions with respect to insider trading should be expanded to include related products to ensure that entities cannot effectively commit acts through the use of derivatives and other related products that they cannot do directly. Other than this one change, we think that the current detection and disclosure provisions and enforcement authority are appropriate.

31. Securities legislation in many jurisdictions includes fraud and market manipulation as specific contraventions against which securities regulators have the power to act. Should such offences be expressly included in the Act?

We think that it would be useful to amend the Act to specifically prohibit fraud and market manipulation and to give the Commission the power to act against contravention of such provisions.

32. While securities regulation continues to be administered provincially, there has been an increasing trend towards inter-provincial cooperation and harmonization in the administration of securities regulation across Canada.

a) Is the mutual reliance review system an effective means of achieving inter-provincial cooperation and harmonization?

b) Are there other areas of securities regulation where it would be beneficial to have a more "seamless" form of regulation between provincial securities regulators?

c) Should the Act explicitly recognize the ability of the Commission, in appropriate circumstances, to delegate functions to other securities regulators in Canada or elsewhere?

In a competitive, global marketplace, Canada's decentralized regulatory structure, unique in the world, is increasingly a factor to be overcome, both optically and practically. Therefore, it is critical that every effort be made not just to reduce but to eliminate policy and administrative differences and duplications, especially since they do not appear to enhance investor protection. The CSA should build on its very constructive steps towards cooperation and harmonization by proceeding to the next step – a more formalized structure with power delegated from the provinces, to mandate uniformity.

While the mutual reliance review system for prospectuses is very similar to the previous regime, the mutual reliance review system has generally resulted in a significant improvement in inter-provincial cooperation and harmonization. With respect to applications for exemptive relief, failure on the part of one province to respond to a request for comments is taken as disagreement. This may result in delays where any one province is unable to review an application on time. It may be more reasonable and would speed up the process considerably if failure to comment were taken as consent. In addition, each province is provided with a right to comment upon receipt of the application and after publication. It would seem reasonable that each province should only have the right to comment once.

We understand that the CSA are working towards harmonizing registration requirements and mechanics. We believe that such changes to make registration in one province recognized everywhere are desirable and are supportive of this initiative.

We believe that the securities commission should have the ability to delegate functions to other domestic and foreign securities regulators. This ability is currently necessary in order to continue to move toward a more "seamless" form of regulation between provincial securities regulators. In particular, it will likely be necessary to implement a harmonized registration regime. In addition, this ability is likely to be increasingly necessary to deal with increasingly international markets and to deal with securities infractions conducted over the Internet.

The leadership role played by the OSC at IOSCO is important in advancing the international agenda and raising the profile of the Commission. However, more practical near-term results will likely be achieved bilaterally with the SEC or multilaterally with a number of other market regulators.

33. *Capital markets are becoming more international in character but regulation still exists only at the domestic level. The transnational nature of global trading has removed securities transactions from the full jurisdictional reach of domestic regulation. As discussed in the Commentary, this is an issue that the European Community has recently addressed. How does one ensure proper regulation from a domestic perspective without compromising global competitiveness for issuers and investors?*

We believe that the European Community model is worthy of further investigation and could well result in a more "seamless" form of regulation between provincial securities regulators.

36. *The Internet has made it possible for issuers to sell shares directly to the public without the use of an underwriter. Direct purchase plans allow individuals to contribute through a monthly bank account debit to the purchase of an issuer's shares. In the U.S. Home Depot has currently adopted this practice. A simplified prospectus in plain English is on-line and incorporates by reference its annual and quarterly financial reports. If Canadian issuers begin to raise a portion of their financing in this way, should the Act and regulations be changed to account for this type of offering?*

Before securities regulations are changed to accommodate the direct distribution of securities from issuer to investor through the Internet, the consequences of direct distribution for investor protection and efficient markets should be considered carefully. Regulators must recognize that underwriters play a key role in the marketplace that extends beyond the distribution of securities. Underwriters are integral to distributing and advising retail investors on the purchase of offered securities, in carrying out due diligence on these securities and in providing an effective aftermarket for the securities. If issuers are permitted to eliminate the underwriter and distribute the securities directly to the investor, regulators must be assured that the integrity and liquidity of markets will not be jeopardized. First, appropriate safeguards must be put in place to ensure investors, notably individual investors, are properly informed about the offered securities and

purchases are suitable for individual portfolios. Second, regulators must ensure that a competent third party carries out appropriate due diligence in terms of an examination of the disclosed information and reasonable inquiry into the affairs of the issuer. Third, issuers and regulators should be cognizant that the lack of an effective aftermarket for offered securities could adversely affect the demand and pricing of these securities.

37. *The current shareholder communication model reflected in the Act mandates that a reporting issuer "deliver" to security holders specific corporate information. In light of the communication opportunities presented by the Internet and the availability of corporate disclosure through SEDAR is this communication model still appropriate? For example, should securities regulators go further than National Policy 11-201 Delivery of Documents by Electronic Means and shift the onus on to shareholders to request information, in the absence of which they will be deemed to have requested that such information not be delivered?*

All market participants should be encouraging their stakeholders to receive necessary information electronically where possible. However, at this time it may be premature to develop a shareholder communication model that presumes widespread access to information through the Internet.

Currently, there are certain classes of information that shareholders receive regardless of whether they want to receive them. These include notice of special meetings and notice of certain corporate actions. In some cases, the initiator of a communication request is given the option of communicating with all shareholders regardless of their expressed desire to receive such information. The comments that our Members have had from their clients is that they would like the option of choosing not to receive various classes of information, including an option to receive no information at all. Where these clients choose to receive no information they should not be forced to receive it. This should hold true whether a person is a direct registered shareholder or a shareholder represented by a nominee.

39. *The Commission received rule-making authority approximately five years ago.*
   a) Is the rule-making process an effective way of regulating?
   b) In light of recent experiences, are there changes that should be made to the rule-making process? For example, should the Commission be granted flexibility and discretion when republication is warranted?

For example, under the Act, the Commission is required to republish for comment a proposed rule where the Commission proposes "material changes" to the original rule proposal that was published for comment. This requirement has often led to multiple republications of proposed rules and significant time delay. By contrast, SEC proposals are not subject to a second (or subsequent) comment period provided that the final rule is a "logical outgrowth" of the rule-making proceeding when viewed in light of the original proposal and call for comments.

We believe that the rule-making process is an effective way of regulating. We think that the Commission should have the power to levy monetary penalties. Current processes in place to extract penalties are cumbersome and overly bureaucratic. We also think that the

Commission should be able to exercise many of the powers contained in section 128(3) of the Act. However, some of the powers contained in section 128(3) of the Act are rightly within the purview of the courts. The following section 128(3) should be powers of the Commission:

- An order that the person or company comply with Ontario securities law.
- An order requiring the person or company to submit to a review by the Commission of his, her or its practices and procedures and to institute such changes as may be directed by the Commission.
- An order directing that a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, takeover bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document described in the order,
  - be provided by the person or company to another person or company,
  - not be provided by the person or company to another person or company, or
  - be amended by the person or company to the extent that amendment is practicable.
- An order prohibiting the person from acting as officer or director or prohibiting the person or company from acting as promoter of any market participant permanently or for such period as is specified in the order.
- An order requiring the person or company to produce to the court or an interested person financial statements in the form required by Ontario securities law or an accounting in such other form as the court may determine.

While we believe that the rule making process is effective, there have been times when the timeliness of this process has been less than desirable. This would include rules required to deal with the Year 2000. The requirement to republish at times may result in undesirable delays. Thus, we believe that the Commission should be granted a degree of flexibility and discretion in determining when republication is required.

40. Are the current enforcement powers of the Commission appropriate? Are there any additional enforcement powers that should be granted to the Commission?

As noted above we think that the Commission should have the power to levy monetary penalties. Current processes in place to extract penalties are cumbersome and overly bureaucratic.

41. Is the Commission's mandate as reflected in the legislation appropriate in today's market? Should the Commission's mandate recognize the importance of securing Ontario's place within global and competitive securities markets?

In today's increasingly competitive and global markets, a small capital market risks marginalization with negative consequences for issuers and investors. Domestic fairness and efficiency, while core objectives, are inadequate, if the market cannot respond to competitive inroads which force or encourage both the buy and sell side to go elsewhere, or be deprived of capital or investment opportunities. Therefore, the mandate should be expanded.

42. The Act sets out "principles" for the Commission to consider in discharging its statutory mandate. In today's market, are these principles appropriate, relevant and sufficient as bases on which the Commission should discharge its responsibilities?

The Commission's "Principles to Consider" seem somewhat detailed, dated and focused on administrative practice compared to the principles of either the FSA or the ASIC. We believe that the "Principles" should be changed to give more emphasis to:

- the responsibilities of market participants
- the facilitation of innovation
- the facilitation of competition
- the international character of financial services and markets