

Notice of Proposed Amendments to the Securities Act and Commodity Futures Act

On October 30, 2002, proposed amendments to the *Securities Act* and the *Commodity Futures Act* were introduced by the Minister of Finance as part of the Government's Fall 2002 Budget Bill. The proposed amendments are included in Bill 198, *Keeping the Promise for a Strong Economy Act (Budget Measures)*, 2002.

The proposed amendments are not yet in effect. When, and if, the Budget Bill receives Royal Assent, the proposed *Securities Act* and *Commodity Futures Act* amendments are proposed to come into force on a day to be named by proclamation of the Lieutenant Governor.

The proposed amendments to the *Securities Act* and *Commodity Futures Act* are intended to bolster the protection of Ontario investors and improve investor confidence in the integrity of Ontario's capital markets. Generally, the proposed amendments are aimed at improving transparency and disclosure, strengthening corporate governance, and broadening the sanctions and remedies available to the Commission and investors for violations of securities law. Many of the amendments are based on the recommendations contained in the May 2002 Draft Report of the Minister of Finance's Five Year Review Committee, chaired by Purdy Crawford.¹ Part of the Five Year Review Committee's mandate was to ensure that securities legislation in Ontario is up to date and enables the Commission to proactively enforce clear standards to protect investors and foster a fair and efficient marketplace.

Among the most significant changes being proposed to the *Securities Act* are amendments to:

- Enshrine in the legislation the concept of reviews of the continuous disclosure record of a reporting issuer.
- Increase the maximum penalties that can be imposed by the court for offences under section 122 of the *Securities Act* from a fine of \$1 million and imprisonment for two years to a fine of \$5 million and imprisonment for five years less a day.
- Create express prohibitions against securities fraud, market manipulation and making misleading or untrue statements.
- Give the Commission the power to impose an administrative fine of up to \$1 million where there has been non-compliance with Ontario securities law.
- Give the Commission the power to order a person or company to disgorge amounts obtained as a result of non-compliance with Ontario securities law.
- Create a statutory right of action for investors in the secondary market to sue companies and other responsible persons for misrepresentations (written or oral) or a failure to make timely disclosure.²
- Give the Commission rule making authority to require reporting issuers to appoint audit committees and to prescribe requirements relating to the functions and responsibilities of audit committees, including independence requirements.
- Give the Commission rule making authority to require reporting issuers to establish and maintain internal controls and disclosure controls and procedures and requiring chief executive officers and chief financial officers to provide certifications related to internal controls and to disclosure controls and

¹ See (2002) 25 OSCB (Supp).

² The proposed civil liability regime is based on the draft legislation previously published by the Canadian Securities Administrators (the "CSA") in November 2000. The CSA's draft legislation arose out of the CSA's review and support of The Toronto Stock Exchange Committee on Corporate Disclosure's (the "Allen Committee") final report issued in March 1997. The Allen Committee made a number of recommendations in this report including that a statutory civil liability regime be created whereby issuers and others responsible for misleading disclosure could be held liable in civil actions brought by injured investors to recover their damages. For more information also see CSA Notice 53-302 *Proposal for a Statutory Civil Remedy for Investors in the Secondary Market and Response to the Proposed Change to the Definitions of "Material Fact" and "Material Change"* ((2000) 23 OSCB 7383).

procedures. The Commission's current rule making authority would permit it to address other aspects of the certification regime as appropriate.

Parallel amendments are also being proposed, where appropriate, to the *Commodity Futures Act*

The relevant portions of Bill 198 are reprinted below and may also be viewed on the Ontario Legislative Assembly's web site at www.ontla.on.ca and the Commission's web site at www.osc.gov.on.ca.

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