June 9, 2000

Securities Review Advisory Committee
c/o Mr. Purdy Crawford
Osler, Hoskin & Harcourt LLP
Barristers & Solicitors
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Dear Mr. Crawford:

Re: OSC's Five-Year Review of Securities Legislation in Ontario

The Canadian Depository for Securities Limited ("CDS") appreciates having this opportunity to comment on the Ontario Securities Commission's ("OSC") *Five-Year Review of Securities Legislation in Ontario*. We look forward to a continued constructive dialogue with the Securities Review Advisory Committee, as you embark on the important task of ensuring that securities legislation in Ontario is up-to-date and that it properly enables the OSC to proactively enforce clear standards to protect investors and foster a fair and efficient marketplace.

Our comments are focussed on areas of concern to CDS and are aimed at improving Canada's capital market efficiency, enhancing equal access to information for investors and promoting the global competitiveness of Canadian securities markets. In summary, our recommendations are as follows:

* A review of legislation relating to legending of certificates and constrained shares is required to eliminate remaining barriers to dematerialization and immobilization of securities.
* Self-regulatory organizations, clearing agencies and quotation and trade reporting systems should also be required to obtain recognition from the OSC.
* Further support and commitment of resources should be given to the Tiered Holding System Project by the OSC and other Canadian regulators so that uniform Canadian legislation can be adopted in all provincial and federal jurisdictions at the earliest possible time.

* A regulatory, technological system is required for the mandatory filing by reporting issuers of all securityholder entitlement events to a central, electronically-accessible database.
* Legislation needs to be reviewed to ensure that there are no statutory impediments to electronic communications to and from issuers or among shareholders.
* The OSC has a role to play in advancing regulatory harmonization and in moving the Canadian markets to match best practices emerging around the world through technological innovations such as the Insider Trade Reporting System and the National Registration Database.
* Regulations should be established requiring all reporting issuers to make their entitlement payments by LVTS funds.

7. Legending of Security Certificates

Legending of security certificates is one of the primary barriers remaining to the full dematerialization or immobilization of securities within a book-based depository such as CDS. A similar problem for the industry relates to constrained shares, which must often be handled physically outside of the depository due to the constraints upon ownership imposed in most cases by incorporating statutes for the issuers. These are both complicated problems at the intersection of government legislation and policy, on the one hand, and operational realities, on the other. Assuming that the policy objectives underlying legended certificates and constrained shares cannot be eliminated, the alternatives will require emulating the physical, certificated world within an electronic environment. As noted in your Request, the fundamental problem derives from the fungibility of the securities held within a depository or other custodian of securities. The alternative of establishing separate securities identification numbers for legended or constrained shares held by certain types of beneficial owners creates operational inefficiencies and costs.

A review of these issues and the amendment of legislation as required to implement agreed-upon solutions is very timely and will be welcomed by CDS and the participants in our depository.

15. Recognition by the OSC

The Request for Comments does not set out the policy behind the requirement for recognition of a stock exchange by the OSC. Presumably, the requirement reflects a public interest in the regulation of stock exchanges through various obligations to report to the OSC, to submit rule changes to the Commission and to be subject to directives and reviews of decisions by the government regulator. If this is the case, then it would appear that the other organizations listed, self-regulatory organizations, clearing agencies and quotation and trade reporting systems should also be required to obtain recognition from the OSC and the ensuing regulation.

The benefits of recognition to the regulated organization need to be considered also. In the case of clearing agencies, only a clearing agency recognized by the Commission enjoys the statutory rights in section 85 of the *Ontario Business Corporations Act*, namely the legal validation of book entry transfers upon the records of the clearing agency. Accordingly, although a clearing agency is not strictly required to seek OSC recognition, the lack thereof would be a serious impediment to the successful operation of a securities depository and clearing corporation.

18. Tiered-Holding System

CDS supports the Tiered-Holding System Project of the Uniform Law Conference of Canada, more recently endorsed by the Canadian Securities Administrators. The description of the general problem within your Request for Comments summarizes the problems which this Project is seeking to address. We appreciate the stronger support and commitment of resources given to the Project by the OSC recently and respectfully request the Advisory Committee to lend its support to this effort as well.

Internationally, many countries with developed securities markets have already amended their securities transfer and pledging laws to reflect the realities of tiered holdings and to dispense with the outdated concepts of deemed possession. The competitive position of Canada is eroding as other countries follow suit. The legislative amendments are following a number of generally-agreed upon principles relating to conflict of laws rules and the new property concept of a security entitlement. The actual wording of the legislative provisions has varied widely, but the intended results have been uniformly similar. As a result, the closeness of the Canadian statutory wording to the U.S. Uniform Commercial Code is not critical. The speed with which uniform Canadian legislation can be adopted in all provincial and federal jurisdictions is of the utmost importance.

19, 20. Continuous Disclosure Obligations

It is generally agreed that the most risky function within the so-called "back office" of the securities industry, is the processing of entitlement events relating to the ownership of securities. Most major custodians, including CDS, have been involved in events where the failure to receive timely and accurate notification of securityholder entitlements has resulted in substantial losses to the custodians and/or their clients. At the present time in Canada, there is no centralized, comprehensive, authoritative source for the provision of information ranging from simple dividend and interest payments to the most complex reorganizations of reporting issuers.

Regulatory initiatives and technological developments have permitted the centralization and publication of issuers' shareholder meeting dates, set out in National Policy 41 on Shareholder Communications, and the central filing of prospectuses and other documents in

the System for Electronic Document Analysis and Retrieval ("SEDAR"), pursuant to National Instrument 13-101. In the interests of efficiency and equity of access to shareholder information by all investors, large and small, it is respectfully submitted that a similar regulatory, technological system is required for the mandatory filing by reporting issuers of all securityholder entitlement events to a central, electronically-accessible database. National Policy 40, Timely Disclosure, lists a number of events which amount to "material information" which must be reported to the relevant regulatory authority and published to the investing public, if the information is not confidential. The list of events needs to be reviewed and expanded to include all entitlement events and the Policy needs to be amended to require filing to an electronic database, such as SEDAR.

Canada is broadly recognized as lagging behind most developed capital markets in entitlement event reporting and accessibility—we must move to close the competitive gap as quickly as possible.

28. Shareholder Communications

As CDS is heavily involved in the operation of National Policy 41, we have previously communicated our interest and comments in its proposed revision to National Instrument 54. We continue to support more effective and efficient shareholder communications. We expect such communications will become increasingly electronic and the legislation needs to be reviewed to ensure that there are no statutory impediments to electronic communications to and from issuers or among shareholders. One example of a problematic clause in the *Securities Act* is section 95 (6) requiring a written notice of withdrawal of securities tendered to a takeover or issuer bid.

III. Impact of Regulatory Harmonization and Globalization Trends

Due to the size of our market and proximity to the U.S., CDS submits that we must work towards regulatory harmonization with that jurisdiction. For example, when the U.S. moves to settlement on a Trade Date Plus One Day (T+1) basis, Canada should do the same. For investment managers, this will mean faster and less risky settlements due to a reduction in direct involvement with the settlement cycle. For brokers/dealers, it will mean quicker and reduced risk in settlements, improving the use of capital and lowering operating expenditures. For global custodians, it will mean more timely notification of trade information, reduced operating expenses and improved quality of operations through standard formats in a single electronic medium. The ultimate beneficiaries would be the investors who would benefit from reduced costs. If we do not move to T+1 in lockstep with the United States, the Canadian market will be devastated by arbitraging opportunities in inter-listed securities. The OSC has a role to play in advancing regulatory harmonization and in moving the market to match best practices emerging not just in the U.S., but around the world. This role becomes all the more critical as globalization increases – cross-border trades are expected to triple by 2002.

Regulatory harmonization is important not only at an international level as discussed above, but also nationally, and in a federal country such as Canada it is vital that we work towards regulatory harmonization among our provinces. This is an important factor that will contribute to a more efficient and cost-effective Canadian market and enable us to compete globally, and we applaud the recent trend towards inter-provincial cooperation and harmonization. We are especially pleased with the OSC's work with the Canadian Securities Administrators ("CSA") and the valuable projects and principles that are being developed through that relationship. One such example is of course, the mutual reliance review system, which we believe is an effective means of achieving inter-provincial cooperation and harmonization. It is an important component of the National Registration Database Project ("NRD") being presently developed for the CSA, and one which will usher in a new era of cooperation and electronic communication for the industry at a unprecedented national level.

IV. Impact of Technology

The importance of technology in all aspects of today's world cannot be overstated, and the capital markets are no exception to this. By not taking advantage of technology, Canada will be disenfranchised in world capital markets. The recent development of projects such as NRD and the Insider Trading Reporting System ("ITRS") are certainly a reflection of the industry's desire to become more technologically efficient, but there is also a need for parallel legislative change to accommodate the new technological reality. This may mean new legislation, such as the National Instruments being drafted to deal specifically with the projects mentioned above, or changes to existing statutes including the Act. We believe that the Act should be changed to reflect the emergence of the Internet and E-commerce transactions, and to specifically mention the new NRD and ITRS systems.

Issuers' Payments of Entitlements

One technological development which requires the attention of securities regulators and, if appropriate, legislative amendments, is the recent implementation of the Large Value Transfer System ("LVTS") by the Canadian Payments Association for the making of Canadian dollar payments within the Canadian securities markets. The major advantage of the LVTS is that payments delivered through this system are final and irrevocable immediately upon receipt providing full usage of the funds to the recipient without restrictions. CDS has required that payments in the Debt Clearing Service of CDS must be made by LVTS and we are working with participants to require settlement payments for the equity services also by LVTS.

One of the primary obstacles to this process is that entitlement payments by issuing companies are not required to be made by LVTS. The result is that shareholders of some companies receive the final, irrevocable LVTS payments, whereas other companies' investors continue to receive the paper-based delayed finality payments. Due to the

differing risk factors applying to the two streams of funds, the payments cannot be commingled or netted in the securities clearing systems. Various issuers are voluntarily making payments to their shareholders by LVTS, but others continue to take advantage of the inefficiencies of the paper-based system. It is submitted that regulations should be established requiring all reporting issuers to make their entitlement payments by LVTS funds.

Conclusion

We appreciate your attention to our concerns and look forward to working with your Committee in the important legislative review. Our contact person for this project is:

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As indicated in your Request for Comments, this submission is being made in duplicate together with an electronic copy on diskette.

Yours very truly,

Allan R. Cooper