Mr. Purdy Crawford
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June 9, 2000

Dear Mr. Crawford

Five Year Review of Securities Legislation in Ontario – Request for Comments

We appreciate the opportunity to comment on the Five Year Review of Securities Legislation in Ontario. We wish to comment from the point of view of our role as auditors of the financial statements of reporting issuers; accordingly, we shall respond to only certain of the questions raised in the April 28, 2000 Request for Comments.

II Focus and Scope of Legislation - Continuous Disclosure Obligations

19. General – Civil Liability for Continuous Disclosures

KPMG believes that it is critically important for the Canadian economy that the participants in Canada's capital markets have faith in the integrity, effectiveness and efficiency of those markets. Such faith depends especially on the quality, timeliness, reliability and relevance of the disclosure system that drives those markets. A key element of that disclosure system is audited financial statements, as such financial statements provide critical information to investors. Accordingly, KPMG supports any cost-effective initiatives that enhance the integrity of the disclosure system in Canada's capital markets. We believe that the current provisions of the Ontario Securities Act over-emphasize the primary capital market and under-emphasize the secondary markets, particularly with respect to the remedies available to investors for inadequate or misleading continuous disclosure documents.

We particularly believe that the implementation of an integrated disclosure system, which we firmly support, is critically dependent on improvements in the quality of continuous disclosure documents.

Based on evidence documented in the Final Report of the Toronto Stock Exchange Committee and our own experience, we have concluded that some form of compensation/retribution system, such as that set forth in the Proposal for a Statutory Civil Remedy for Investors in the Secondary Market issued for comment on May 29, 1998 (the "Proposals"), is one such initiative that likely is necessary at this time in order to further the objective of improving the continuous disclosure system. We have come to this conclusion reluctantly, because, if implemented, a civil remedy regime for continuous disclosure documents will expose our firm and its partners to increased legal liabilitiy.

Furthermore, we believe that any civil remedy provisions imposed on continuous disclosure documents and the civil liability provisions of the current Securities Act should be conformed. In that regard, we are strongly in favour of the following provisions of the Proposals which, we believe, should be incorporated into the Securities Act civil liability provisions applicable to prospectuses (Section 130) and take-over bid circulars (Section 131):

- The proposal to assess damages proportionately, rather than on the basis of joint and several liability. In our view, proportional liability is just and long overdue. In our experience, auditors have been perceived by plaintiffs to have "deep pockets", and have been included in civil law suits primarily because of the joint and several liability provisions of current law. This joint and several aspect, coupled with the significant expense and adverse publicity of defending an allegedly deficient audit and the sometimes unpredictable outcome of litigation usually means that auditors are virtually forced to settle, rather than fight, such allegations.

- The proposal to limit damage awards to reasonable amounts. Again, in our experience, auditors have been forced to settle civil law suits for enormous sums - sums which in many cases are many multiples of any fees the auditor received from the client - because traditionally there has been no reasonable limit on the auditor's liability for damages.

- The proposal to limit damage awards if the defendant can prove that the alleged loss was not caused by the alleged misrepresentation. We believe that it is important that plaintiffs not be able to obtain compensation from parties who did not cause their loss. However, we would much prefer that the definition of "material fact" not be changed, and that the burden of proof of loss remain with the plaintiff.

- The proposal that auditors (and other professionals), do not have to "whistle-blow" if, in doing so, they would be in breach of professional confidentiality rules, such as the "client confidentiality" rule contained in the Rules of Professional Conduct of the Institute of Chartered Accountants of Ontario.

However, we also believe that certain aspects of the Proposals are unclear, or difficult to interpret, as they relate to auditors in their role as "experts". We provided our detailed suggestions for improvements to the Proposals in our comment letter dated August 28, 1998. We would be pleased to provide you with a copy of that letter.

We believe that a second necessary, but not sufficient, component of an effective continuous disclosure system is strong and effective regulatory review of continuous disclosure documents. Accordingly, we would support any legislative changes that would improve the resources the Commission devotes to promoting compliance with, and enforcement of, the continuous disclosure requirements of the Act.

With respect to the details of continuous disclosure of financial and other information, we have commented separately on proposals issued by the Ontario Securities Commission to implement Rules, Forms and/or Companion Policies dealing with annual and interim financial statements, Annual Information Forms, Management's Discussion and Analysis and long-form and short-form prospectus requirements. We believe that the details regarding the form and content of financial and other disclosures can be dealt with adequately and appropriately through the rulemaking process, and does not require amendment of the Securities Act.

20. Materiality

We would generally support a broader concept of "materiality" for purposes such as prospectus disclosure and continuous disclosure obligations. Auditors have already embraced such a broader concept. In that regard, we draw your attention to the discussion of materiality in the CICA Handbook - Section 5130 - Materiality and Audit Risk in Conducting an Audit, as follows:

> ".05 A misstatement or the aggregate of all misstatements in financial statements is considered to be material if, in the light of surrounding circumstances, it is probable that the decision of a person who is relying on the financial statements, and who has a reasonable knowledge of business and economic activities (the user), would be changed or influenced by such misstatement or the aggregate of all misstatements. Misstatements in financial statements arise from departures from generally accepted accounting principles and include departures from fact, inappropriate determination of accounting estimates, and omissions of necessary information."

However, we would also point out that a broader concept of materiality is unworkable without concrete criteria as to what constitutes a "misstatement". With respect to audited financial statements, those criteria are provided by "generally accepted accounting principles". A broader concept of "materiality" outside of financial statements would, in our view, require explicit and concrete criteria against which reporting issuers and their advisors could judge the fairness and completeness of disclosures.

21. Financial Disclosure

As stated above, KPMG believes that a key elements of an effective disclosure system are annual and interim financial statements, as such financial statements provide critical information to investors. However, KPMG also strongly supports the development of accounting standards by the Accounting Standards Board of the Canadian Institute of Chartered Accountants. We believe that the benefits of a strong, independent standard setting body has been clearly demonstrated by the Financial Accounting Standards Board in the United States. In fact, we believe one of the reasons for the dominant position of the US capital markets is the high quality of US accounting standards. However, we also believe that certain experiences in the United States and other countries clearly

demonstrate the compromises and partisan political decisions that are made when government and/or regulators have too much say in the development of accounting standards. Thus, we would not support any amendments to the Securities Act that would give the government or the Ontario Securities Commission more power to specify accounting standards in Canada.

As for adopting reforms to facilitate international accounting standards, we believe that the Accounting Standards Board is taking all reasonable measures to harmonize Canadian accounting standards with US and international accounting standards. It is our belief that providing the Ontario Securities Commission with more power to create its own "enhancements" to generally accepted accounting principles, through its Rules and Regulations, would be a major step in the wrong direction. In our view, it is now appropriate to debate whether the Securities Act should be amended to permit all reporting issuers, both domestic and foreign, to use Canadian generally accepted accounting principles, United States generally accepted accounting principles, or International Accounting Standards to prepare the annual and interim financial statements required by the Act to be sent to shareholders and filed with the Commission.

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We would be pleased to discuss any of our comments at your convenience.

Yours very truly

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