Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8
CP 55, 19e étage
20, rue queen ouest
Toronto ON M5H 3S8

Web site: www.osc.gov.on.ca

Date: August 18, 2004

Subject: **Five Year Review Committee Final Report: *Reviewing the Securities Act (Ontario)* - Status of Recommendations**

The attached chart lists the 95 recommendations of the Five Year Review Committee and describes the action which has been taken to date with respect to these recommendations.

The Five Year Review Committee's recommendations may be broadly characterized as:

- **Recommendations requiring Government action.**
  - Just over one-third of the recommendations made by the Five Year Review Committee involve legislative or structural reform or study or other action by the Government.

- **Recommendations requiring OSC action.**
  - The balance of the Five Year Review Committee's recommendations require action by the OSC or, in some cases, a third party. For the most part, these recommendations involve either rule-making or operational matters that can be and are being dealt with by the OSC. As indicated in the attached chart, several of the Committee's recommendations in the rule-making area already have been implemented and work on a number of others is currently in progress. In addition, the OSC has already responded to or is in the process of responding to a number of the Committee's operational recommendations.

We hope that this status report will be of assistance to the Standing Committee on Finance and Economic Affairs in the course of its review of the Five Year Review Committee's Final Report.

August 18, 2004

Five Year Review Committee Final Report: *Reviewing the Securities Act (Ontario)*
Report of the Ontario Securities Commission on the Status of Implementation of the Committee's Recommendations

Recommend-ation No. Page # in Report	Recommendation	Requires Government action in order to proceed[1]	Comments
Part 1: The Role of the Commission in Capital Markets Regulation			
1 p. 41	Provinces, territories and federal government work towards the creation of a single securities regulator with responsibility for the capital markets across Canada.	Y	The Premier of Ontario and Minister Phillips are supportive of this recommendation. Discussions are ongoing at the Canadian Securities Administrators (CSA) and provincial Ministers' levels.
2 p. 41	Harmonize securities regulation across Canada.	Y	Progress has been made at the regulatory level through the CSA's Uniform Securities Law project (USL). Requires Government action to advance this initiative.
2 p. 41	Securities regulators should be given the authority to delegate any power, duty, function or responsibility conferred on them to another securities regulatory authority within Canada. The Act should be amended to give the Commission the authority to delegate. Necessary consequential amendments should be made to the immunity provisions in the Act.	Y	Delegation is being pursued as a CSA initiative. Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL.
2 p. 41	Securities legislation across Canada should be amended to provide for "mutual recognition".	Y	Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL.

[1] This includes recommendations that require legislative amendment, structural reform, or further study or other action by the Government. (Some of these also require study or action by the OSC.) Areas not identified as requiring Government action are items that require action by the OSC or third parties.

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3 p. 48	Committee encourages the move by both Canadian regulators and standard setters to International Accounting Standards.		The OSC continues to be an active participant in the process of creating and strengthening International Financial Reporting Standards (IFRS). National Instrument 52-107 - *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, which is now in effect, permits foreign issuers in our markets to file financial statements prepared in accordance with IFRS without reconciliation to Canadian GAAP. The OSC participates in Standing Committee #1 of the International Organization of Securities Commissions (IOSCO) and the OSC's Chief Accountant participates as a member of the Standards Advisory Council of the International Accounting Standards Board (IASB).
4 p. 48	Permit both foreign and Canadian companies to prepare their financial statements in accordance with U.S. GAAP (with reconciliation to Canadian GAAP during a transitional period).		NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* permits Canadian companies that are Securities and Exchange Commission (SEC) registrants to file financial statements prepared in accordance with U.S. GAAP (with a reconciliation to Canadian GAAP for at least the first two years after adopting U.S. GAAP). At this point, there are no plans to permit Canadian companies other than those that are SEC registrants to use U.S. GAAP. Foreign issuers are permitted to use U.S. GAAP in certain circumstances, particularly where they are also SEC registrants.
5 p. 50	Continue developing securities transfer legislation modelled on revised Article 8 of the *Uniform Commercial Code* in the U.S. and ensure that such legislation is adopted on a uniform basis across Canada.	Y	The *Uniform Securities Transfer Act* (USTA) project is an ongoing CSA project. A revised consultation paper, including draft legislation, was published for comment in May 2004. The comment period ended July 30, 2004.

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6 p. 51	Continue ongoing participation in IOSCO initiatives.		The OSC is continuing to actively participate in IOSCO initiatives.
6 p. 51	Adopt changes to rules to implement the international standards emanating from IOSCO.		The OSC is continuing to take steps to ensure implementation of IOSCO standards as they are adopted.
7 p. 58	CSA and governments should move to adopt a system of harmonized functional regulation across Canada.	Y	Additional policy analysis recommended. (Note: Quebec and Saskatchewan have adopted systems of harmonized functional regulation.)
Part 2: Flexible Regulation			
8 p. 63	The Minister of Finance and the Commission should consider whether studies of specific aspects of the Commission's operations, similar to those conducted of the SEC by the General Accounting Office [now the Government Accountability Office] in the U.S., should be undertaken.	Y	
9 p. 65	The current structure of the Commission as a multi-functional agency should be given further thought and study by the Commission and the Minister on a priority basis.	Y	The OSC struck an external committee to research and comment on the structure of the OSC. The committee's report is provided to the Standing Committee as part of the submissions of OSC Chair, David Brown.

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(i) Objectives of the Act			
10 p. 69	Section 2.1 of the Act should be amended to direct the Commission to have regard to the following additional principles in pursuing the objectives of the Act: • Effective and responsive securities regulation should promote the participation of informed investors in the capital markets. • Capital markets are international in character and it is desirable to maintain the competitive position of Ontario's capital markets. • Innovation in Ontario's capital markets should be facilitated. • The administration and enforcement of Ontario securities law should not unnecessarily impede or distort competition among persons carrying on regulated activities.	Y	
(ii) Structure of the Act			
11 p. 72	The Act should be amended to ensure that the basic principles underlying our approach to securities legislation are contained in the Act.	Y	This approach is reflected in USL, which consists of "platform" legislation supported by rules, regulations and policies. Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL.
12 p. 72	The Commission and the Government should seek to streamline the Act by incorporating detailed requirements in the rules. The Act should accurately reflect current law. This may result in certain exemptions being removed from the Act	Y	This is the approach taken under USL, which contemplates the development of uniform registration, exemption and take-over bid rules. It is also intended that other national instruments already being developed would dovetail with USL (e.g., National Instrument 51-102 *Continuous Disclosure*

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	where they have been superseded by a rule.		*Requirements*, now in force, and Proposed National Instrument 81-106 – *Investment Funds Continuous Disclosure*).
(iii) Rule-making			
13 p. 76	The Act should be amended to give the Commission "basket" rule-making authority that is substantially identical to that conferred on the Lieutenant Governor in Council under clause 143(2)(b) of the Act.	Y	The USL includes a basket rule-making provision in section 11.3, paragraph 63 of the Uniform Securities Act (USA). Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL.
14 p. 78	The Minister should indicate the names of commenters who have raised concerns about a particular proposed rule during the Ministerial review period and the nature of the concerns raised.	Y	
15 p. 80	The Act should be amended to require that the Commission republish for comment a proposed rule where the Commission proposes material changes to a rule having regard to: (a) the nature of the changes proposed to the rule as a whole; and (b) whether the final rule is a logical outgrowth of the rule-making process when viewed in light of the original rule proposal and request for comments. A similar test should be adopted for republication of proposed policies.	Y	Re rules: This is a proposed modification of the current requirement under section 143.2 of the *Securities Act.* Re policies: This is a proposed modification to section 143.8 of the *Securities Act*.

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16 p. 80	The Commission should publish black-lined versions of its rules and policies when (i) making changes to existing rules and policies; and (ii) republishing for comment a proposed rule or policy.		Currently being considered by the CSA (Policy Coordination Committee) and by the OSC. A standardized practice is expected to be introduced in the next several months. In the meantime, black-lined versions of some rules have already been published.
17 p. 81	Limit the number of projects taken on and focus resources on fewer critical policy issues.		This process is under way at both the OSC and CSA levels. At the OSC, the Executive Management Team Policy Group is in the process of reclassifying and prioritizing all OSC projects.
17 p. 81	Streamline internal rule-making process by establishing internal standards for the development of rule and policy proposals, including benchmark timeframes for reviewing and responding to comments on a rule or policy proposal. The Commission should publish the standards and report on its performance against the standards.		This process is under way at both the OSC and CSA levels.
18 p. 81	In order to enhance the timely implementation of policy changes, the Commission and the CSA should be willing to adopt practical, if not perfect, solutions.		

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19 p. 83	When the Commission is conducting cost-benefit analyses of proposed rules, as required under the Act, the Commission should conduct or commission empirical studies to assess the effectiveness, costs and benefits of the proposed rule.		Empirical studies are conducted as part of the OSC and CSA policy project management process.
20 p. 83	Each cost-benefit analysis that the Commission conducts concerning a proposed rule should specify whether a proposed rule contributes to harmonizing securities laws across Canada and should discuss the expected effect of the new rule on harmonization and co-operation. If the adoption of the new rule is expected to lessen harmonization or co-operation, the Commission should describe why it should nevertheless be adopted.		This practice has not yet been adopted, but will likely be included in the new internal guidelines on project management and will also be coordinated at the CSA level.
21 p. 85	The Act should be amended to allow the Commission to issue blanket rulings and orders that provide exemptive relief only.	Y	
22 p. 86	The Commission should publish exemption orders granted from the requirements of securities rules.		Further review has determined that most of these orders are, in fact, published. OSC staff are in the process of reviewing where this can be enhanced.

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22 p. 86	The Commission should provide notice when exemptive relief applications are not granted, and of the reason for the refusal.		See note above.
23 p. 87	The Act should be amended to require that future review committees be appointed five years after the date of delivery of the final report of the previous committee. Committee membership should represent a diversity of backgrounds and interests relevant to the capital markets.	Y	This is a proposed amendment to section 143.12 of the *Securities Act*.
(iv) The impact of the Internet			
24 p. 90	CSA should consider whether NP 11-201 *Electronic Delivery of Documents* and NP 47-201 *Trading Securities Using the Internet and Other Electronic Means* conflict with provincial legislation such as the *Electronic Commerce Act*.		Additional policy analysis recommended.
25 p. 92	In light of investor protection concerns, do not eliminate the need for dealer registrant involvement in Internet offerings.		There are no plans to eliminate the need for dealer registrant involvement in internet offerings.

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26 p. 94	The CSA should monitor the success of the limited form of access-equals-delivery contemplated by proposed National Instrument 51-102 *Continuous Disclosure Obligations* with a view to determining whether the access-equals-delivery model can be expanded to encompass additional documents which securities legislation requires be delivered to investors.		Monitoring/additional policy analysis recommended. National Instrument 51-102 *Continuous Disclosure Obligations* is now in effect.
Part 3: Regulation of Market Participants			
(i) Registration			
27 p. 100	Move registration requirement relating to trading to a model requiring the person or company to be "in the business" of trading. This change must be adopted across Canada.	Y	USL incorporates a business trigger (section 3.1 of the USA). Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL.
28 p. 102	Retain current requirement in the Act to be registered either as an adviser or to trade in a security (or, as recommended above, to be in the business of trading in securities). The Commission and the CSA should review proficiency, experience and suitability requirements applicable to dealers and employees to ensure they are sufficiently flexible to permit various models for delivering advice, while at the same time are sufficiently rigorous to match the role of "incidental advice" being delivered by dealers and their employees.		Additional policy analysis recommended. Work is in progress in several areas with respect to a number of these issues.

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29 p. 105	The Commission and the CSA should continue to monitor the use of financial portals by market participants, and facilitate their development, where appropriate.		Involves monitoring by OSC and CSA.
30 p. 106	Securities legislation in the provinces should be amended to provide consistent substantive registration requirements across the country.		Proposed National Instrument 31-103 *Registration Requirements* contemplates the harmonization of registration requirements. (Note: Proposed National Instrument 31-101 – *Requirements under the National Registration System* and Proposed National Policy 31-201 – *National Registration System* provide for a mutual reliance system that allows an applicant for registration to deal with only its principal jurisdiction for registration. Expected implementation date is January 2005.)
30 p. 106	The National Registration Database (NRD) should be modified following its launch to permit investors to access relevant information about registrants, including industry experience, any previous disciplinary proceedings to which the registrant was subject, and the products which the registrant is licensed to sell.		Access to NRD is not currently available to investors. NRD continues to be updated and access to NRD for investors is intended to be made available at some point in the future. (The OSC website has a list of registrants and the products which each registrant is licensed to sell).
31 p. 107	The Act should be amended to eliminate the universal registration requirements.		Universal registration will be examined in the context of proposed National Instrument 31-103 *Registration Requirements*.
(ii) Self-Regulation			
32 p. 110	The Act should be amended to authorize the Commission to require self-regulatory organizations (SROs) to apply for recognition	Y	Similar authority included in USL. (Section 2.2 of the USA authorizes the Commission to designate an SRO as requiring recognition.)

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	where an SRO is taking on activities which are properly discharged by, or subject to the oversight of the Commission if the SRO has not otherwise applied for recognition.		Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL. In the context of USL, the OSC proposed to go further and would include in the Ontario Securities Administration Act a provision for mandatory recognition for SROs. (See OSC Notice 11-732 *Proposal for the Ontario Securities Administration Act.*)
33 p. 111	The Act should be amended to require clearing agencies to obtain recognition.	Y	
33 p. 111	Re-examine the definition of "clearing agency" in the Act to ensure that it properly captures the activities which should trigger the requirement to be recognized. Consider the definition of "clearing agency" under U.S. legislation.	Y	Revised definition included in USL (section 1.2(1) of the USA). This definition does not conform to the U.S. legislation that was referred to in the recommendation. Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL.
34 p. 113	The Commission and the CSA should consider whether to require quotation and trade reporting systems (QTRS) to obtain recognition under securities legislation and to develop a harmonized approach to QTRS, including re-examining the current definition of QTRS in the Act.	Y	Included in USL (section 2.1 of the USA). This section requires a QTRS to be recognized. USL does not include a definition of QTRS. Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL.
35 p. 114	The Commission should complete its review of the Canadian Unlisted Board (CUB) as soon as possible, focusing particular attention on concerns		This review has been completed. OSC staff are working on drafting an OSC rule, and the Investment Dealers Association (IDA) and Market Regulation Services Inc. (RS) are working

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	relating to transparency and reducing the Canadian Unlisted Board's exposure to abuse.		on drafting rules and making rule amendments, to bring transparency to over-the-counter (OTC) trading in Ontario and reduce CUB's exposure to abuse. In order to address/prevent previous abuses in OTC trading, the sales practice rules (including a rule regarding mark-ups) for the trading in unlisted securities are being drafted and the application of certain sections in the Uniform Market Integrity Rules to reported OTC trades is being considered.
36 p. 116	The Commission should study whether the Act should be amended to give SROs the following statutory powers: • jurisdiction over current and former members or "regulated persons" and their current and former directors, officers, partners and employees; • the ability to compel witnesses to attend and to produce documents at disciplinary hearings; • the ability to file decisions of disciplinary panels as decisions of the court; • statutory immunity for SROs and their staff from civil liability arising from acts done in good faith in the conduct of their regulatory responsibilities; and • the power to seek a court-ordered "monitor" for firms that are in chronic and systemic non-compliance, close to insolvency or for other appropriate public interest criteria. In considering these issues, the Commission	Y	OSC action also required. Some aspects of this are included under USL. See: • section 2.6(2) (jurisdiction) • section 2.10 (witnesses and evidence) • section 2.16 (filing with court) • section 10.7 (statutory immunity where acting pursuant to delegated authority) • section 2.11 (appointment of receiver to manage affairs). Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL. With respect to the other aspects, additional policy analysis is recommended.

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	should consider what checks and balances, if any, are necessary to ensure procedural fairness and protections are available to those who will be subject to the new statutory powers.		
37 p. 117	Stock exchanges and recognized SROs should be required to report to the Commission any breaches or possible breaches of securities law that they believe have occurred or may have occurred.		Additional policy analysis recommended.
38 p. 120	The IDA should consider whether improvements can be made to certain of its structures, such as the composition of its disciplinary panels and the membership of its board of directors, to lessen perceptions of conflict of interest in self-regulation.		Amendments to By-law 20 -*Association Hearing Processes* that respond to recommendation #38 were recently approved by the OSC and the Alberta Securities Commission (ASC) and were not disapproved by the B.C. Securities Commission (BCSC) (published in the OSC Bulletin on May 14, 2004). The amendments are intended to address concerns with respect to conflicts of interest and to improve the composition of the IDA's disciplinary panels.
Part 4: Regulating Issuers: Disclosure, the Closed System and Corporate Governance			
(i) Continuous Disclosure			
39 p. 129	Committee supports CSA initiatives to harmonize Canadian continuous disclosure requirements. The CSA should assign a high priority to this proposal and ensure its timely adoption across Canada.		National Instrument 51-102 *Continuous Disclosure Obligations* is now in effect.

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40 p. 133	Committee supports CSA proposal to create a statutory civil liability regime for continuous disclosure and urges the Government of Ontario to move forward as soon as possible to proclaim the legislation in force. Encourage governments in other CSA jurisdictions to adopt the same regime.	Y	Bill 198 *(The Keeping the Promise for a Strong Economy Act (Budget Measures), 2002)* was passed but the provisions in Bill 198 that relate to the "civil liability package" have not yet been proclaimed in force. The other unproclaimed provisions of Bill 198 are the provisions containing the prohibitions against market manipulation and fraud and the making of misleading or untrue statements.
41 p. 133	The Commission should study the appropriateness of amending the existing primary offering civil liability regime to parallel the civil liability regime for continuous disclosure in the following areas: • changing the joint and several liability scheme to a proportionate liability scheme; • extending a due diligence defence to the issuer; and • introducing a safe harbour for forward-looking information.	Y	OSC action also required. Bill 41 *(The Right Choices Act (Budget Measures), 2003)* (first reading May 22, 2003) contained a safe harbour for forward-looking information in a primary market context. Additional policy analysis recommended with respect to the other aspects of the recommendation. USL includes a safe harbour for forward-looking information in a primary market context but does not include a change to a proportional liability scheme or extend a due diligence defence to the issuer in a primary offering context.
(ii) The Closed System			
42 p. 136	Encourage the CSA to proceed with further reforms to the prospectus exemptions and the closed system with the goal of harmonizing and simplifying the requirements relating to private placements.		Reforms are proceeding at the CSA level - See proposed National Instrument 45-106 *Exempt Distributions.* (Expected publication date: Fall 2004.) Contemplated by USL as being included in future national rules under USL.

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43 p. 139	Eliminate hold periods for securities of reporting issuers (once other reforms are implemented, such as civil liability for continuous disclosure, enhanced continuous disclosure standards for all reporting issuers and a more integrated disclosure system overall).		Committee's recommendation premised on there being: civil liability for continuous disclosure (pending), enhanced continuous disclosure standards for all reporting issuers (now in effect), more independent due diligence in connection with continuous disclosure, a more integrated disclosure system, and appropriate escrow restrictions.
44 p. 140	Revisit the need for seasoning periods in the case of reporting issuers with a view to their elimination if the reforms contemplated in the Five Year Review report are implemented.		Committee's recommendation premised on there being: civil liability for continuous disclosure (pending), enhanced continuous disclosure standards for all reporting issuers (now in effect), more independent due diligence in connection with continuous disclosure, a more integrated disclosure system, and appropriate escrow restrictions.
45 p. 140	Closed system (hold periods and seasoning periods) should continue to apply to non-reporting issuers.		No change is necessary. Closed system continues to apply to non-reporting issuers. (See Multilateral Instrument 45-102 *Resale of Securities* which came into force on March 30, 2004.)
46 p. 141	The Commission should examine the practice whereby control block holders reduce applicable hold periods through the use of derivatives and other monetization structures.		Multilateral Instrument 55-103 *Insider Reporting for Certain Derivative Transactions (Equity Monetization)* requires reporting of certain derivative transactions. The increased transparency of derivative transactions as a result of the reporting requirements in MI 55-103 may impact on the frequency of these transactions. Additional analysis is required.
(iii) Disclosure Standards			
47 p. 147	Do not amend the Act's timely disclosure provisions to require disclosure of "material information".		No action required.

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48 p. 147	The Commission should study whether the current definition of "material change" and timely disclosure reporting obligations should be amended to encompass: • a broader scope of discloseable events; • itemized particular company-specific events requiring timely disclosure similar to the SEC's 8-K approach; and • a requirement that agreements relating to the reported disclosure be filed as a schedule to the public report.		OSC staff researched this question and concluded that the material change reporting requirements in Ontario do already capture the events discloseable pursuant to the SEC's Form 8-K. However, some have suggested that a hybrid approach including a material change requirement and additional enumerated material events, as in the SEC's Form 8-K, would be appropriate.
49 p. 150	Change the existing materiality standard for all purposes under securities legislation to a "reasonable investor" standard.	Y	See USL (section 1.2(1) of the USA - definition of "material change" and "material fact"), which reflect the reasonable investor standard. Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL.
50 p. 154	Legislative change not required in Ontario to address the issue of selective disclosure. The Committee supports the CSA's policy statement and an increased emphasis on enforcement in this area.		No change is required.
51 p. 154	The CSA should introduce a 24-hour safe harbour for "unintentional" selective disclosures along the lines of the safe harbour that exists in the U.S. under Regulation FD.		Additional policy analysis recommended.

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(iv) Financial Statement Issues			
52 p. 157	The Committee supports the CSA proposal to shorten the periods for filing annual financial statements to 90 days after the fiscal year for senior issuers and 120 days for junior issuers and to reduce the time periods for filing interim financial statements to 45 days after the end of each quarter for senior issuers and to maintain the 60-day deadline for junior issuers. The CSA should consider classifying senior issuers as those issuers whose securities are listed on the TSX and junior issuers as those listed on the TSX Venture Exchange.		National Instrument 51-102 *Continuous Disclosure Obligations*, contains the shortened filing periods as recommended (see sections 4.2 and 4.4). Several regulatory instruments define "venture issuer" to mean a reporting issuer that is not listed on the TSX, a U.S marketplace, or a marketplace outside of Canada and the U.S. (This definition is currently used in: NI 51-102 *Continuous Disclosure Obligations* (sections 4.2 and 4.4.); Multilateral Instrument 52-110 *Audit Committees* (Part 6.); and Proposed Multilateral Instrument 58-101 *Disclosure Of Corporate Governance Practices* (sections 2.1(1) and 2.2).
53 p. 157	The CSA should consider shortening even further the filing deadlines for annual and interim financial statements to 60 and 35 days respectively to parallel recent rule changes made by the SEC.		
54 p. 158	Ontario securities law should be amended to require that quarterly financial statements must be reviewed by the issuer's external auditor, subject to an exemption for junior issuers. Any issuer subject to an exemption from the requirement should be required to disclose that its quarterly statements have not be reviewed by an external auditor.		See section 4.3(3) of National Instrument 51-102 *Continuous Disclosure Obligations* which requires disclosure when an issuer has <u>not</u> had its auditor perform a review of interim financial statements. See also section 3.4 of Companion Policy 51-102 which gives further guidance with respect to auditor involvement with interim financial statements.

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55 p. 161	Ontario securities law should be amended to require that all press releases of reporting issuers be filed on SEDAR.		National Instrument 51-102 *Continuous Disclosure Obligations* Part 11, section 11.4 requires that a reporting issuer must file a copy of any news release issued by it that discloses information regarding its historical or prospective results of operations or financial condition for a financial year or interim period.
56 p. 163	Remove the GAAP exemption available to banks and insurance companies in section 2(3) of the Regulation.		Section 2(3) of the Regulation was revoked effective March 30, 2004 in conjunction with the adoption of NI 51-102 *Continuous Disclosure Obligations*. This change was contemplated in the June 2002 Notice and Request for Comment with respect to NI 51-102.
57 p. 166	The Commission and the Public Interest and Integrity Committee of the Canadian Institute of Chartered Accountants (CICA) should adopt auditor independence standards on a priority basis, proactively monitor ongoing U.S. developments relating to auditor independence and consider what further reforms are necessary to ensure that Canada does not fall behind international standards.		The Public Interest and Integrity Committee of the CICA has completed the development of new independence standards that have now been adopted across Canada by each of the Provincial Institutes/Orders of Chartered Accountants. With respect to listed entities, these standards are largely consistent with auditor independence rules adopted by the SEC. Canadian independence standards also match or exceed comparable standards internationally.
58 p. 166	The Commission should adopt amendments to proxy disclosure rules to require public companies to disclose in their proxy statements their expenditures for both audit and non-audit consulting services. (These amendments should take place once the Public Interest and Integrity Committee of the CICA has finalized its proposed independence standards and should take into account these standards as well as recent proposed		See Multilateral Instrument 52-110 *Audit Committees*, Form 52-110F1, section 9 which requires the disclosure of external auditor service fees in the issuer's AIF under the captions, "Audit Fees", "Audit-Related Fees", "Tax Fees" and "All Other Fees". See also Form 52-110F2, section 6 which requires similar disclosure of external auditor service fees by a venture issuer.

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	SEC rule changes for auditor independence.)		
(v) Corporate Governance and Accountability of Public Companies			
59 p. 170	The Committee endorses the recent amendments to the Act that, when proclaimed in force, will give the Commission rule-making authority to address all aspects of the certification regime recently adopted by the SEC. The Government of Ontario should proclaim the rule-making amendments in force on a timely basis to permit the Commission to embark on rule-making in this area.		This authority has been added to the *Securities Act*. The Commission has proceeded with rule-making in this area. See, for example, Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, which has been adopted by all CSA jurisdictions except B.C., in the form appropriate to each jurisdiction.
60 p. 173	The Committee endorses the recent amendment to the Act that, when proclaimed in force, will give the Commission rule-making authority to prescribe requirements relating to the functioning and responsibilities of audit committees of reporting issuers. Other CSA jurisdictions should give their commissions similar powers, and the CSA should work together on an expedited basis to establish standards for audit committees that will make Canadian audit committees "best in class" internationally.		See Multilateral Instrument 52-110 *Audit Committees.* All CSA jurisdictions (except B.C.) have adopted Multilateral Instrument 52-110 in a form appropriate to each jurisdiction.
61 p. 174	The Act should be amended to give the Commission rule-making authority over corporate governance matters more generally (for example, rule-making authority to make rules relating to the composition, functioning and responsibility of boards of directors and nominating and	Y	Pending the obtaining of this rule-making authority, the Commission has proposed Multilateral Policy 58-201 - *Effective Corporate Governance* and Multilateral Instrument 58-101 - *Disclosure of Corporate Governance Practices*, Form 58-101F1 and Form 58-102F2.

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	compensation committees).		The policy describes best practices and the rule requires disclosure of whether the issuer meets these practices and if not, why not. Additional rule-making authority included in USL (section 11.3, paragraphs 29-34 of the USA). Draft legislative provisions have been agreed to among the CSA and published for public comment as part of USL.
Part 5: Enhancing Fundamental Investor Rights			
(i) Shareholder Rights			
62 p. 180	Part XIX of the Act should be amended to ensure that shareholders are able to communicate with each other in prescribed circumstances without having to file an information circular (similar to CBCA reforms).	Y	
62 p. 180	The Commission should co-ordinate with the provincial government so as to ensure that proxy related amendments adopted under the OBCA and the Act are uniform.	Y	

Recommend-ation No. Page # in Report	Recommendation	Requires Government action in order to proceed[1]	Comments
62 p. 180	The Commission should consider whether it has the authority to incorporate by reference the proxy solicitation requirements of another Canadian statute (like the OBCA or CBCA).		Additional analysis required.
(ii) Take-over Bid Regulation			
63 p. 181	The Commission and the CSA should undertake further study to determine whether amendments to securities laws to relax the requirements relating to communications with and among shareholders in the context of a take-over bid should be enacted.		Additional analysis required to determine whether an amendment is necessary. In the U.S., simply communicating can trigger take-over bid requirements which is why amendments of this nature were necessary there. In Canada, a take-over bid only commences when an offer is made, therefore communicating does not trigger take-over bid requirements for shareholders to communicate.
64 p. 181	Nothing has come to our attention that would support the need to regulate arrangements and take-over bids in an identical fashion. We believe that, as a matter of public policy, parties to commercial transactions should have the freedom to structure transactions to achieve their business purposes as long as these transactions, and the legislation that governs these transactions, are fair to all interested parties.		No change is necessary.

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65 p. 184	The Commission should consider preparing a policy statement setting out guidance as to the factors to consider in determining when in a take-over bid a poison pill should be terminated.		CSA staff are considering amending National Policy 62-202 *Take-Over Bids – Defensive Tactics* to address the concerns of the Committee regarding the significant resources and costs expended on hearings. Staff have developed a preliminary policy proposal which is intended to enhance fairness to security holders of issuers that are bid targets and provide greater regulatory clarity, which would in turn reduce the need for hearings. Staff are in the process of conducting additional industry consultation with respect to their preliminary proposal.
(iii) Mutual Fund Governance			
66 p. 197	The Commission and the CSA should introduce a requirement for all publicly offered mutual funds to establish and maintain an independent governance body.		Proposed National Instrument 81-107 *Independent Review Committee for Mutual Funds* was published for first comment by the CSA in January 2004 (Proposed National Instrument 81-107). It proposes to establish an independent governance body (independent review committee) which will consist of at least three members and will focus on conflicts of interest. Public comments on Proposed National Instrument 81-107 have been received and are currently being considered by CSA staff.
66 p. 197	This body should have the right to terminate the manager or tell unit holders about the manager's actions and provide them with a period of time within which to redeem their units at no cost when, in the reasonable opinion of the independent directors, the manager has placed its interests ahead of those of the unit holders through self-dealing, conflict of interest transactions or other breach of fiduciary duty.		Proposed National Instrument 81-107 contemplates that the manager will present conflict of interest situations to an independent review committee which will review these conflicts and provide a recommendation to the manager as to what would be a fair and reasonable result for the fund. If the manager does not follow the recommendation, this must be disclosed in the prospectus or the periodic continuous disclosure documents. The proposed rule does not give the independent review committee the power to make binding recommendations or to terminate the manager.

Recommend-ation No. Page # in Report	Recommendation	Requires Government action in order to proceed[1]	Comments
			Proposed National Instrument 81-107 requires the manager to refer certain specified changes to the mutual fund to the independent review committee before taking any action. In addition, the manager must give securityholders in that mutual fund the right to transfer, free of charge, to another mutual fund managed by the manager.
67 p. 199	The process by which potential directors of mutual fund governance bodies are identified and nominated should be expanded to include a broader range of potential directors.		
67 p. 199	The majority of directors of mutual fund governance bodies should be independent of the management company.		Proposed National Instrument 81-107 goes further than the recommendation and requires that each independent review committee member must be independent.
67 p. 199	The potential liability of and defences available to directors of mutual fund governance agencies needs to be settled in legislation.	Y	OSC staff are undertaking analysis with respect to the need for legislative amendments to settle the liability and defences available to mutual fund governance agencies.
68 p. 200	The mutual fund governance body should have certain characteristics including: (a) independence from the manager; (b) a majority of independent directors; (c) the right to retain counsel and other independent advisers; (d) the right to set its compensation and establish the obligation of each member to disclose annually all fees received from the fund and all affiliated funds; and		Proposed National Instrument 81-107 addresses these characteristics, other than the right to terminate the manager. Public comments on Proposed National Instrument 81-107 have been received and are currently being considered by CSA staff.

Recommend-ation No. Page # in Report	Recommendation	Requires Government action in order to proceed[1]	Comments
	(e) the right to terminate the manager in specified circumstances.		
69 p. 201	Fundamental responsibilities of the mutual fund governance body should include: (a) overseeing the establishment and implementation of policies related to conflict of interest issues; (b) monitoring fees, expenses and their allocation; (c) receiving reports from the manager concerning compliance with investment goals and strategies; (d) reviewing the appointment of the auditor and meeting with the fund's auditor; and (e) approving material contracts.		As indicated in the comments relating to recommendation #66, the focus of the independent review committee is on conflicts of interest. To the extent that a conflict of interest occurs that is related to an area of responsibility set out in the recommendation, the independent review committee would review the conflict and make a recommendation to the manager.
70 p. 203	Regulators and the mutual fund industry should work together to determine what standards or requirements should be satisfied by mutual fund managers before they are permitted to establish, promote and run a publicly offered mutual fund; who is best positioned to establish those standards or requirements and to monitor compliance with them; and whether registration of mutual fund managers is necessary and justifiable, from a cost-benefit point of view, as a means of imposing and monitoring compliance with the applicable standards or requirements for mutual fund managers.		This will be the subject of further analysis and consideration as the OSC and the CSA develop their thinking on various policy initiatives.

Recommend-ation No. Page # in Report	Recommendation	Requires Government action in order to proceed[1]	Comments
71 p. 203	Subsection 143(1) of the Act should be amended, if required, to give the Commission the necessary authority to address mutual fund governance reform through its rule-making power.	Y	OSC staff are undertaking analysis in this area. This rule-making authority is included in USL (section 11.3 paragraphs 20 (xv) – (xx) of the USA). Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL.
Part 6: Enforcement			
(i) What new powers should the Commission have?			
72 p. 217	The Commission should provide guidance, in the form of a set of principles or guidelines, setting out the considerations that may be taken into account in determining the appropriate sanction to be applied in the context of administrative proceedings under section 127 of the Act.		Guidance is expected to be developed as the Commission gains more experience in applying the new administrative penalty and disgorgement powers.
73 p. 221	Consideration should be given to whether it would be appropriate for the Commission to have rule-making authority to deal with issues relating to the administration and distribution of money ordered by the Commission to be disgorged.	Y	
74 p. 223	Create a new offence under section 122 of the Act for failing to fulfill, or contravening, a written undertaking to the Commission or the Executive Director.	Y	Included in USL. (Section 12.16 of the USA requires a person to comply with a written undertaking. A breach of this requirement would be an offence under the USA.) Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comment as part of USL.

Recommend-ation No. Page # in Report	Recommendation	Requires Government action in order to proceed[1]	Comments
75 p. 224	The Commission should monitor the exercise by the Manitoba Securities Commission and the Financial Services Authority in the U.K. of their respective new restitution powers and consider the practical implications thereof, with a view to revisiting in the future whether a power to order restitution would be an appropriate remedy.		Monitoring is underway.
76 p. 225	The Commission should consider exercising its discretion, in appropriate cases, to apply to the court under section 128 of the Act for a restitution or compensation order.		Ongoing consideration.
77 p. 225	Consideration should be given to the desirability and implications of amending section 128 of the Act to permit investors, in certain circumstances, to apply to the court directly for an order for restitution or compensation.	Y	
78 p. 228	The Commission should require SROs, as a condition of recognition, to require their members to participate in and agree to be bound by any national complaint-handling system that is in place, as well as any industry-sponsored dispute resolution program that may be applicable.		The IDA and the MFDA have addressed this recommendation in their respective by-laws. IDA By-law 37.2 requires that all IDA members participate in and cooperate with the Ombudsman for Banking Services and Investments (OBSI). IDA By-law 37.3 requires all IDA members to provide to new clients and to clients who submit written complaints to the member, a copy of written material approved by the IDA that describes the IDA Arbitration Program and the OBSI. Subsection 24 A.1 of MFDA By-law No. 1 requires that all MFDA members participate in and cooperate with the OBSI. Subsection 24 A.5 of MFDA By-law No. 1 requires all MFDA

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			members to provide to new clients and to clients who submit a written complaint to the member, a copy of written material approved by the MFDA which describes the OBSI. (The MFDA does not currently have an alternative dispute resolution program.)
78 p. 228	The Committee encourages the publication of statistics relating the use of complaint-handling systems and alternative dispute resolution programs, as well as particulars concerning the outcomes of cases or the resolution of complaints.		The OBSI and the IDA Arbitration Program each publish statistics on their websites. The IDA Arbitration Program statistics do not include particulars concerning the outcomes of cases.
79 p. 228	The financial services industry should monitor the national complaint-handling system, in particular in the first year of its operation, to ensure that it is working as intended. Assuming that the system is successfully implemented, the financial services industry should then consider establishing a dispute resolution system on a similar national basis.		Involves monitoring by third parties.
80 p. 228	Encourage SROs that have or may be contemplating alternative dispute resolution programs, to, at a minimum, require their members to advise customers of the availability of such programs.		See note above (under recommendation #78) re IDA By-law 37.3.
(ii) Which existing powers of the Commission should be expanded?			
81 p. 231	Paragraph 127(1)7 of the Act should be amended to give the Commission the power to order that a person resign one or more positions that the	Y	

Recommend-ation No. Page # in Report	Recommendation	Requires Government action in order to proceed[1]	Comments
	person holds as a director or officer of an issuer, *registrant or manager of a mutual fund*. (changes in italics)		
82 p. 231	Paragraph 127(1)8 of the Act should be amended to give the Commission the power to order that: • a person be prohibited from becoming or acting as a director or officer of any issuer, *registrant or manager of a mutual fund*; *and* • *a person or company be prohibited from becoming or acting as a manager of a mutual fund or as a promoter.* (changes in italics)	Y	
83 p. 223	The Act should include a new paragraph under subsection 127(1), to give the Commission the power to order that a person or company: • comply with or cease contravening: (i) Ontario securities law; or (ii) a direction, decision, order or ruling made under a by-law, rule or other regulatory instrument or policy of a recognized SRO or exchange. • comply in the future or take steps to ensure future compliance with Ontario securities law, or a direction, decision, order or ruling made under a by-law, rule or other regulatory instrument or policy of a recognized SRO or exchange.	Y	

Recommend-ation No. Page # in Report	Recommendation	Requires Government action in order to proceed[1]	Comments
84 p. 234	Paragraph 127(1)2 of the Act (power to make a cease trade order) should be amended to expressly provide that "trading" in securities for purposes of that paragraph includes the purchase of securities.	Y	
(iii) Which existing powers of the court should be expanded?			
85 p. 239	Section 122 of the Act should be amended to include a provision permitting the Ontario Court of Justice to make an order, where appropriate, that the defendant compensate or make restitution to persons who have suffered a loss of property as a result of the commission of an offence by the defendant.	Y	Alberta legislation already confers this power on the equivalent court in Alberta. Included in USL (section 12.19 of the USA). Draft legislative provisions have been agreed to among the CSA and published by the CSA for public comments as part of USL.
(iv) Other Enforcement matters			
86 p. 242	The Commission should issue a policy statement providing interpretative guidance on the scope of the confidentiality provision in section 16 of the Act and the process for making an application for disclosure under section 17 of the Act.		Additional policy analysis required.
87 p. 245	Once the provisions of the 2002 Amendments are proclaimed into force (i.e., the anti-fraud and market manipulation provisions in Bill 198), the CSA should amend subsection 3.1(2) of National Instrument 23-101 *Trading Rules* to provide that the anti-fraud and market manipulation provisions in the Act will apply in Ontario.	Y	Awaiting proclamation of those provisions of Bill 198, which contain the prohibition against market manipulation and fraud and the making of misleading or untrue statements (sections 126.1 and 126.2 of the *Securities Act*), as well as the enactment and proclamation of the technical amendment relating to these prohibitions in former Bill 41.

Recommend-ation No. Page # in Report	Recommendation	Requires Government action in order to proceed[1]	Comments
88 p. 249	In appropriate cases, the Commission should consider pursuing alternative enforcement mechanisms under sections 127 and 128 of the Act as a regulatory response to illegal insider trading.		In the past two years, the OSC has completed over ten insider trading cases under section 127 of the Act. Staff is currently assessing which cases would be appropriate ones in which to bring a proceeding under section 128 of the Act.
89 p. 249	The Government of Ontario should consider amending the Act to broaden existing insider trading civil liability provisions by deleting the privity requirement in section 134 of the Act. Consideration should be given to including a provision that limits liability under this section to the amount of profit gained or loss avoided by the insider as a result of the transaction or transactions in question. Any such liability should also be reduced by the amount required to be disgorged pursuant to an order by the court, or the Commission, if applicable, in a proceeding relating to the same transaction or transactions.	Y	
90 p. 250	The CSA should consider further reducing the period for filing insider reports (from the current requirement to file within 10 days of the date of the trade) once SEDI is fully operational.		
91 p. 250	Amend Ontario securities law to require insiders to report any effective change in, or disposition of, their economic interest in an issuer.		See Multilateral Instrument 55-103 *Insider Reporting for Certain Derivative Transactions.*

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92 p. 252	The issues raised with respect to the continuation of freeze orders under section 126 of the Act should be studied further with the benefit of public input. In particular, we suggest the following issues, at a minimum, would require consideration: • whether the Commission or the court should authorize the continuation of a freeze order; and • what is the appropriate test to be applied in determining whether to continue a freeze order.	Y	Additional policy analysis recommended.
93 p. 253	With respect to the current power to order costs under section 127.1 of the Act, the Commission should develop policies or guidelines regarding how costs should be established and in what circumstances they may be ordered. Costs orders made under section 127.1 should be subject to assessment on the application of a respondent.	Y re: costs orders subject to assessment	The development of policies or guidelines is under consideration by the OSC's Adjudicative Committee.
94 p. 253	Consideration should be given, on any future review of the Act, to whether it would be appropriate for the Commission to have the discretion to order costs payable to a respondent in Commission proceedings, and, if so, in what circumstances.	Y	Additional policy analysis recommended.

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95 p. 254	Support for whistle-blower protection in principle, but note that it does not necessarily belong in the Act. Such provisions might more appropriately be included in corporate or employment-related legislation, for example.	Y	

Note: See next page for list of recommendations from the Five Year Review Committee's Draft Report, that were implemented prior to the release of the Final Report.

Note: In May 2002 the Five Year Review Committee published for comment a Draft Report with 85 recommendations. In response to several of the recommendations in the Draft Report, the Government enacted amendments to the *Securities Act*. These amendments were introduced in Bill 198 and enacted as part of *The Keeping the Promise for a Strong Economy Act (Budget Measures) 2002*. (We refer to this as Bill 198.) These relevant recommendations from the Draft Report are set out below.

Draft Recommend-ation No. Page # in Report	Draft Recommendation	Comments
76 p. 140	Amend subsection 122(1) of the Act to increase the maximum fine to $5 million and to increase the maximum term of imprisonment to five years less one day.	Bill 198 amended the Act to increase the maximum fine to $5 million (from $1 million) and increase the maximum prison term to five years less one day (from two years).
62 p. 126	Amend the Act to authorize the Commission, if it is in the public interest, to require a person or company who has contravened Ontario securities law to pay an administrative fine of up to $1 million per contravention, and to require a person or company to disgorge profits made as a result of the contravention.	These new provisions have been added as sections 127(1)9 and 127(1)10 of the Act.
49 p. 97 **Letter** p. 7	Give the Commission rule-making authority to prescribe requirements relating to the functioning and responsibilities of audit committees of reporting issuers. Canadian regulators and the industry are urged to closely monitor the reforms emanating from the U.S. and to ensure that Canada keeps pace with international standards.	The Act was amended to include new rule-making authority for the OSC to address all aspects of the certification regime under the *Sarbanes-Oxley Act* which results in CEOs and CFOs being accountable for their companies' financial statements (including requirements relating to disclosure controls and procedures and internal controls), and rule-making authority to prescribe requirements relating to the functioning and responsibilities of audit committees of public companies. (See sections 143(1) 57 - 61 of the Act.) The OSC then proceeded to make the following rules: • Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings,* • Multilateral Instrument 52-110 *Audit Committees,* and • National Instrument 52-108 *Auditor Oversight*.
33 p. 74	Amend the Act to explicitly refer to continuous disclosure reviews.	The Act was amended to include a new provision that specifically authorizes the OSC to review the information that public companies disclose to investors. (See section 20.1 of the Act.)