



Pension Investment Association of Canada

Association canadienne des gestionnaires de fonds de retraite

**PIAC Presentation to
Task Force to Modernize Securities Legislation in Canada
Investment Dealers Association of Canada
December 8th, 2005**

The Pension Investment Association of Canada (PIAC) is the representative association for pension funds in Canada in pension investment and related matters. The Member funds of PIAC collectively manage over \$680 billion in assets on behalf of more than six million beneficiaries.

This presentation is in response to your invitation to comment to the IDA Task Force to Modernize Securities Legislation in Canada. PIAC congratulates the Investment Dealers Association for undertaking this important work and thanks you for the opportunity to participate in the process.

PIAC notes that a number of its public sector pension plan members are also members of the Canadian Coalition for Good Governance (CCGG) and that like the CCGG, PIAC is firmly committed to promoting good corporate governance practices. We have reviewed the September 7, 2005 submission from the CCGG to the Task Force and have referenced several of their proposals below (*in Italics*).

We would like to take this opportunity to address the following issues, which we believe are of high priority and deserve the attention of your Task Force.

- ***Enforce the existing laws:*** *Many observers have noted that it is not Canadian laws that are deficient but rather the enforcement of those laws. We hope that the Task Force can devise a series of recommendations to ensure better federal/provincial coordination and adequate funding for enforcement.*

- It is important to ensure that the resources are committed to appropriate monitoring and enforcement which is crucial to credibility with the public and the market.

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- **Ensure Income Trusts provide the same protections to unit holders that are afforded to shareholders in corporations:** Legislation should be amended/introduced to address appropriate investor protections, governance and disclosure requirements for alternative public entity structures (e.g., trusts), and impose the current corporate/securities protections and requirements on such entities.

There is an urgent need of a legal mapping of rights and responsibilities for Income Trusts that compares with that of public companies; there is a need for a definition of distributable income so that auditors can give a valid and comparable opinion. CICA is aware of the problem and wants clear rules to better do their job.

- **Improve Shareholder Remedy Processes:** Consideration must be given to eliminating the protracted timeframes for shareholder remedies that exist under current legislation.
- **Proxy Solicitation Rules:** The CBCA amendments with respect to proxy solicitation rules (allowing investors to discuss issues amongst themselves for example) should be replicated in all Canadian securities and corporate laws. Amending the current NI 51-102 to include the CBCA language may be an effective short-term solution.

Provinces need to be encouraged to ensure they amend their laws so that they are consistent with the CBCA.

- **Fairness Opinions:** Eliminate conflicts of interest when financial advisors provide fairness opinions. There should be no success based fees when fairness opinions are required. This will require a change in Rule 61-501. Advisor/dealer fees and the basis of those fees must be disclosed.
- **Insider Trading in Derivatives:** Consider imposing a legal prohibition on derivative security trading when in possession of material non-public information concerning the underlying issuer. Legislation now requires reporting of derivative trading by insiders (see Multilateral Instrument 55-103), and IDA policies touch on this issue (see section 4.3 of the new IDA Policy 5).

Research is needed on this issue. In addition aggressive vs. conservative accounting remains a problem for investors and needs research.

In closing, PIAC would like to offer to assist the Task Force in its work. This could take the form of offering access to our member pension funds if there are particular issues that the IDA needs to explore through research. In addition, we look forward to the opportunity to comment on the work of the Task Force as it proceeds.

Representatives:

Michael Campbell – Member of the PIAC Board of Directors

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