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Schedule 10 A

Description of Research Commissioned by the Task Force

J. Sarra, "Modernizing Disclosure in Canadian Securities Law: An Assessment of Recent Developments in Canada and Selected Jurisdictions"

- In the first part of Professor Sarra's study she was asked to examine the effectiveness of disclosure in the Canadian regulatory system. It examines the current regulatory framework for primary market disclosure, including proposed changes to the short-form prospectus to update and streamline requirements; and explores the efficacy of current rules and instruments for primary market disclosure, including long form prospectuses, shelf prospectuses, post-receipt pricing, standards of disclosure for oil and gas activities and the multi-jurisdictional disclosure system (MJDS) with a view to determining whether the current processes are in need of revision.
- The study was also to examine British Columbia's proposed "continuous market access model", which was intended to replace the prospectus disclosure system for all issuing companies with a streamlined public offering process based on a requirement to disclose all material information at all times and comment on whether this offers an alternative to the more codified process in the rest of Canada. It was also to examine whether this model is likely to be limited in its applicability to companies with a smaller market capitalization, given Canada's highly integrated capital market with the United States and the need for medium and large capitalization issuers to comply with U.S. securities regulatory requirements.
- The study was also to examine secondary market disclosure in Canada and assesses whether the current system provides sufficient disclosure to investors of material information or constitutes overreach in terms of the requirements placed on issuers. It examines National Instrument 51-102 – *Continuous Disclosure Obligations* (adopted March 2004) and National Instrument 81-106 – *Investment Fund Continuous Disclosure Obligations* (adopted June 2005), as well as other policies and instruments to assess whether they offer a sufficiently integrated disclosure regime for primary and secondary markets.
- The study was also to prospectively analyze the implications of introducing into the Canadian framework an effective statutory civil remedy for continuous disclosure violations through Ontario's secondary market disclosure liability regime and similar provisions proposed under British Columbia's securities legislation.

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- Professor Sarra's study was also to examine the methods and mechanisms by which disclosure is made to retail investors, including an examination of requirements for paper delivery versus electronic delivery, the growth of the internet as a means of meeting disclosure objectives, and the question of whether access to a prospectus equals delivery in terms of transparency and accessibility of information.

R. Deaves, "How Are Investment Decisions Made?"

The Task Force requested that Deaves et al. produce their study around the following parameters:

- Delineate the context of the research regarding how investors make investment decisions. What does the literature say about how investors make investment decisions? What biases are they subject to? What information do they use? To what extent do they use disclosed financial information?
- The study was to detail what the researchers learned from a survey of retail investors. For example, does this class of investor make use of the mutual fund prospectus? If so, which parts? Is the document difficult to follow? What changes are deemed desirable? What other information would be of use to investors? Also, it would be useful to elicit preferences on presentation mode (paper vs. web). Would certain classes of investors benefit from simpler versions of disclosure items? Perhaps such user-friendly items should be mandated. What currently undisclosed items might be of benefit (e.g., rate of return calculations on statements)?
- The study was to detail what the researchers learned from interview of institutional investors using open ended questions such as "what additional items would you require companies to disclose?"
- Finally, the researcher was asked to summarize "lessons learned" and discuss policy implications going forward. What lessons have been learned by canvassing Canadian investors of all types? What can the Task Force use going forward as it strives to make recommendations on changes to securities legislation?

C. Leuz & P. Wysocki, "Capital-Market Effects of Corporate Disclosures and Disclosure Regulation"

- Professors Leuz and Wysocki were commissioned to produce a survey of the academic literature on the costs and benefits, as well as the economic consequences of securities and disclosure regulation. The survey was to focus primarily on recent and up-to-date research studies in accounting, economics and finance, and to a lesser extent on closely related legal studies. The researchers were asked to summarize the key theoretical arguments as well as discuss the empirical evidence, reviewing studies that exploit international variation in securities regulation as well as research papers that study major changes in regulations. The survey was to conclude with a number of potential policy recommendations or important messages for regulators that follow from the academic research or the researcher's thinking on these issues.

M. Gillen, "The Role of Securities Regulation in Promoting a Competitive Capital Market"

- Professor Gillen was commissioned to analyze the essential attributes of a competitive capital market that encourages investment by both domestic and foreign investors. The study was to analyze the role of law and public policy in providing the foundation for and improving the development of these essential attributes. The study was also to examine ways in which improvements could be made to the current regulatory structure in Canada (assuming the current multiple regulatory structure remains in place) to enhance the integrity and competitiveness of our capital market.
- The first portion of the study was to identify the attributes of a competitive capital market. The next portion was to examine how the law can foster, or impede, the essential attributes of a competitive capital market. This was to involve an examination of how primary and secondary market disclosure requirements, and the regulation of market manipulation, insider trading, takeover bids, and securities industry participants can work to promote the essential attributes of a competitive capital market. Debates about the need for securities regulation in these areas were to be briefly reviewed to focus on how these areas of regulation may serve to promote, or impede, a competitive capital market.
- Professor Gillen was also requested to consider how the Canadian regulatory structure can be improved.

C. Nicholls, "The Characteristics of Canada's Capital Markets and the Illustrative Case of Canada's Legislative and Regulatory Response to *Sarbanes-Oxley*"

- The Task Force requested that Professor Nicholls undertake a study of those special or unique aspects of Canada's capital markets that require recognition in the design of a regulatory system.

D. Cumming, "Do Companies Go Public too Early in Canada?"

- Professor Cumming was commissioned to produce a study which included descriptive statistics of the time between incorporation and initial public offering (IPO) in Canada, with a comparative reference to other countries. The study was to further provide empirical analyses of the time taken to go public in order to account for differences among firms in Canada. The study was to further examine the time taken to go public on the TSX-V (and predecessor exchanges) relative to the TSX, and which types of companies go public on the different exchanges in relation to recent regulatory developments.
- The study was also to analyze the predicted time to IPO with comparison to actual time to IPO to enable one to ascertain the 'readiness' of going public among companies (and the extent of scrutiny among regulators) at the time of going public.
- It was requested that the study also examine the performance of the IPO over 1-day, 6-month, 1-year and 2-year horizons after the IPO date. Differences in performance were to be assessed in relation to the age of the firm at the time of going public, among other firm-specific and market factors that affect IPO performance.

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- The study was also to compare the time to go public for venture capital backed companies relative to the time that it takes to go towards other types of venture capital sale transactions (acquisitions, secondary sales, buybacks and write-offs).
- The analyses above were to be used to form policy prescriptions as to whether companies go public too early in Canada.

R. Morck & B. Yeung, "Some Obstacles to Good Corporate Governance in Canada and How to Overcome Them"

- Professors Morck and Leung were commissioned to conduct research regarding the prevalence of each of control block holdings, voting caps, dual-class share structures and business groups among Canadian public companies and to compare this to the experience in the United States and the United Kingdom. The study was to determine the effect of these characteristics on the governance of Canadian public companies.

A. Pritchard, "Well-Known Seasoned Issuers in Canada"

- The United States has recently relaxed the restrictions that it imposes on large public companies making public offerings. Companies that file periodic reports with the SEC qualify as "well-known seasoned issuers" (or "WKSIs" as they are more popularly known), for purposes of offering regulation, if they satisfy one of two criteria: (1) Has outstanding a minimum $700 million in market value of common equity held by non-affiliates; or (2) Has issued $1 billion aggregate in non-convertible securities over the past three years. The second category only allows the company to issue non-convertible securities under the more lenient standards. If the issuer has a public float of $75 million in common equity, it can also issue common equity under the relaxed rules applicable to WKSIs. WKSI eligibility allows a company a number of advantages in making registered public offerings, including immediate effectiveness for its registration statements and no "gun-jumping" restrictions on its public statements prior to the filing of a registration statement. According to the SEC, WKSI-eligible issuers represented approximately 30% of listed issuers, accounting for about 95% of U.S. market capitalization in 2004. The purpose of this proposal is to analyze and evaluate the criteria used by the SEC in defining WKSI status (trading volume, underwriting practices, analyst coverage, etc.).
- Professor Pritchard was commissioned to prepare a study comparing the criteria relied upon by the SEC with relevant data for the Canadian market. If Canada were to streamline offering regulation for certain public companies, which companies should receive the benefit of that reduced regulatory burden? Would the criteria adopted by the SEC for the U.S. market unduly limit the availability of offering reform in the Canadian markets, where market capitalizations are typically somewhat smaller? Are there regulatory differences between the U.S. and Canada, such as the regulation of analysts that would need to be taken into account in developing appropriate criteria for Canada?

T. Baker, "Insurance Against Misinformation in the Securities Market"

- Professor Baker was commissioned to produce a study with respect to the provision of insurance against misinformation in the capital markets. Professor Baker's study was to explore the following:
- The goals of insurance against misinformation
    - Would it improve investor confidence in the Canadian securities market?
    - Would it maintain (and ideally improve) the deterrent effect of Canadian securities laws?
    - Would it compensate investors who are damaged by violation of Canadian securities laws?
    - Would it minimize insurance loading costs?
- Design variables for insurance against misinformation
    - Financing:
        - Who pays the premiums? (e.g., issuers? purchasers? How? When?)
        - Who sets the premiums? With how much discretion? Subject to what review?
        - How often and how quickly can premiums be adjusted?
        - To what degree will premiums be risk rated? On what basis?
        - Will there be events or market conditions that will trigger an "automatic" obligation to make additional premium payments?
        - How strong is the commitment to pre-funding?
- How will shortfalls be funded?
    - Mandatory purchase/issue:
        - Will purchase of the insurance be mandatory? For all? For certain classes of issuers, securities or investors?
        - Will the insurance issuer(s) have the authority to refuse to issue insurance? If so, on what basis?
- If there are private market issuers, will there be a residual market mechanism? How will it manage adverse selection?
    - The scope of the indemnification:
        - What kinds of losses will be indemnified?
        - Will there be deductibles, coinsurance or other related investor moral hazard provisions?
        - Will there be any limits on the maximum protection provided?

- Per loss? Per year? Other?
  - Claim procedures and determinations
    - What will be the procedures for making a claim?
    - What entity will make the factual and legal determinations that bear on the merits of the claim? Subject to what procedures and review?
  - Will subrogation be permitted?
    - If so:
      - Against which individuals or entities?
      - Should there be any restrictions on the liability insurance they can purchase?
      - What institution will be responsible for bringing subrogation actions?
    - If not, how will issuer/gatekeeper moral hazard be managed?
  - Is there a role for private sector insurance organizations (in addition to directors' and officers' and other liability insurance in the event that subrogation is permitted)?

H. Panjer, "Insurance Against Misinformation in the Securities Market: Actuarial Aspects"

- Professor Panjer was commissioned by the Task Force to produce a report focusing on the actuarial aspects of insurance against misinformation, including the following:
  - Review work of Professor Baker.
  - Consider traditional insurer/reinsurer pricing issues.
  - Consider data issues and uncertainty levels and likely responses of insurers.
  - Consider issues of diversifiability/non-diversifiability of the risk by insurers.
  - Consider other possible strategies for "insuring" the risk using capital market solutions as alternatives to insurer solution.

M. Condon & P. Puri, "The Role of Compliance in Securities Regulatory Enforcement"

- Professors Condon and Puri were commissioned to produce a study highlighting the following:
  - The development of "compliance cultures" within market participants in Canada and an investigation of the complementary role of various regulatory entities in that task.

- Identifying and assessing useful regulatory techniques for fostering compliance, including any currently in use in various provincial jurisdictions in Canada. These might include; the development of internal codes of conduct, including methods for fostering internal information flow; external reviews of firm practices and procedures undertaken by self-regulatory organizations ("SROs") or the public regulator; whistle blowing policies; extended functions for in-house counsel; and other forms of regulation of management functions.
- International comparative research to uncover compliance-oriented strategies employed by securities regulators in other jurisdictions, such as the United Kingdom and Australia.
- The complementary roles that can be played by SROs and public enforcement in the development of "compliance cultures".

H. Jackson, "Regulatory Intensity in the Regulation of Capital Markets: A Preliminary Comparison of Canadian and U.S. Approaches"

- Professor Jackson's study resulted from the Task Force's request for research regarding the following issues:
  - A comparison of United States and Canadian regulatory activity in securities regulation on three dimensions: staffing, regulatory budgets, and enforcement actions, both public and private. These measurements were requested to be as comprehensive as possible including federal enforcement efforts (as applicable), stock exchange and SRO enforcement efforts, state or provincial enforcement efforts, and judicial actions as well as other forms of dispute resolution such as arbitration.
  - To the extent possible, an analysis of the distribution of enforcement actions was requested – for example, distinguishing between enforcement actions that address issuer disclosure as opposed to broker dealer oversight or market regulation.

U. Bhattacharya, "Enforcement and its Impact on Cost of Equity and Liquidity of the Market"

- Professor Bhattacharya was commissioned to produce a study consisting of two parts. The first part was to be a global survey summarizing the extant literature documenting the effect on the cost of capital and liquidity of enforcing security laws. The second part was to focus on Canadian enforcement actions and their effect on the cost of capital and liquidity.

J. Black, "Involving Consumers in Securities Regulation"

- Professor Black was commissioned by the Task Force to study how securities regulators in Canada and the United Kingdom currently determine the interests of retail investors in designing regulation.
- Professor Black's study was to examine and comment upon:
  - Current methods of determining the interests of retail investors;

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- To the extent information is available, what alternative methods may have been considered and rejected; and
- The views of regulators, those on consumer adviser panels and representatives of consumer advocacy groups as to the effectiveness of the current system as a method for eliciting comment and contribution on and toward prospective policies from the retail sector.

L. Cunningham, "Principles and Rules in Public and Professional Securities Law Enforcement: A Comparative US-Canada Inquiry"

- Professor Cunningham was requested to provide an analysis of how the form of securities law standards (including legislative, regulatory and private articulations) influences enforcement effectiveness in a securities law regime. The "form of securities law standards" refers to two classifications: (a) those that articulate broad overarching principles to provide private actors with guidance (called "principles-based") and (b) those that contain highly detailed, specific rules to direct what private actors must do (called "rules-based").

J. MacIntosh, "Heard on the Street: Interviews with Market Actors on the Future of Canadian Securities Regulation"

- The Task Force commissioned a report by Professor MacIntosh which was to identify securities regulatory problems in (i) public securities markets, and (ii) private securities markets (spanning the gamut of private capital from venture capital to institutional and other private placements). Professor MacIntosh was to undertake this study by interviewing senior lawyers, investment bankers, and other "top deal makers" with respect to the principal securities regulatory barriers currently inhibiting the free flow of capital, (a) within Canada, (b) from Canada to other countries, and (c) from other countries to Canada.
- The report was intended to also, in respect of each identified impediment to the free flow of capital, indicate any potential solutions that interviewees proposed. It was to discuss why each relevant impediment exists and what policy goal was intended to be achieved through the existence of this impediment, as well as whether this goal has been achieved, and whether there have been unintended consequences and costs which impact the integrity and competitiveness of Canadian capital markets.

A. Anand, "Towards Effective Balance Between Investors and Issuers in Securities Regulation"

- Professor Anand was commissioned to complete a study dealing with the following questions:
  - To what extent do robust Canadian capital markets depend on strong investor protection laws? If at one point in time strong law was important, when if ever does it cease to be so? Whose interests does (and should) securities regulation target? In light of these interests, is Canadian securities regulation balanced and current?

S. Rousseau, "The Competitiveness of Canadian Stock Exchanges: What Can We Learn From the Experience of the Alternative Investment Market?"

- Professor Rousseau was commissioned to conduct research addressing the following issues:
    - Compare the AIM with the TSX and the TSX Venture Exchange, in terms of listing requirements and other obligations;
    - Compare the costs of listing on the AIM, the TSX and the TSX Venture Exchange, including the initial cost required to meet the exchange's requirements, periodic listing fees and reporting costs;
    - Identify and compare the specialized mechanisms/programs of the AIM, the TSX, and the TSX Venture Exchange which seek to facilitate the accessibility of the stock exchange for a particular class of issuers, including the TSX Venture Exchange's Capital Pools Program and AIM's simplified fast track process for international companies which are listed on other recognized exchanges;
    - Examine and analyze in a comparative perspective the certification role of the AIM, the TSX and the Venture exchange, concentrating namely on the impact of AIM's requirement of Nominated Advisers who must be registered with AIM and are responsible for ensuring that admitted companies qualify for AIM and comply with its listing requirements. In this regard, interviews were to be conducted with existing Canadian Nomads and other dealers who may be considering obtaining Nomad status on AIM;
    - Examine and analyse available data on which Canadian issuers have listed on AIM. Are they clustered in certain industry sectors and why? In this regard, interviews with Canadian issuers who have listed on AIM and others who are contemplating doing so will be conducted to surface the reasons for seeking an AIM listing;
    - Compare the monitoring mechanisms of the AIM with the TSX and Venture Exchange, including Market Regulation Services (RS), which serve to prevent abuses; and
    - Assess whether certain features of AIM ought to be introduced into the Canadian regulatory landscape (or avoided) as a way of increasing Canada's competitiveness internationally.

J. Board & S. Wells, "The LSE's AIM Market: Effect on Returns and Trading of Canadian Stock"

- Professor Board et al. were commissioned to produce a study considering the impact of the AIM market on dual listing by either TSX or TSX Venture Exchange companies. In particular, they were requested to determine whether there been increases in total trading volume or has trading volume on the AIM market been at the expense of trading in the Toronto market?

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A. Fok Kam, "A Canadian Framework for Hedge Fund Regulation"

- André Fok Kam was commissioned to produce a study for the Task Force dealing with the following issues:
    - The first study was to consist of an in-depth review and analysis of issues relating to hedge funds, including a review of the existing regulatory regimes in Canada and other jurisdictions, a review of hedge fund practices (in particular, as they relate to fees and marketing), an examination of existing literature, discussions with industry participants and original research. In particular, Fok Kam was to look at the question of manager registration and make recommendations on ways to establish the capital requirements of hedge fund managers. In addition, the study was to:
        - Look into the question of whether principal-protected notes should continue to be accessible to retail investors. Two issues are relevant here. First, the issue of suitability as it relates to hedge fund products and retail investors. Second, an investigation of whether there are other investment vehicles which may be used to give retail investors access to hedge fund strategies was to be undertaken. In particular, it was to focus on whether the mutual fund regulatory framework may be adapted to accommodate hedge fund strategies.
        - Investigate the possibility of requiring vehicles offering hedge fund strategies to retail investors to disclose an all-in management expense ratio, such as mutual funds are already required to calculate.
        - Consider ways of addressing the concerns regarding the valuation of hedge funds, particularly as regards funds of hedge funds.

W. Voorheis, "Collapse of Portus Alternative Asset Management Inc. and Norshield Asset Management (Canada) Ltd."

- Wes Voorheis was commissioned by the Task Force to conduct a review of the collapse of Portus Alternative Asset Management Corp. and the Norshield Financial Group (and related entities) and, in particular, examine the reasons for such collapse, the basis upon which the securities of the hedge funds managed by Portus and Norshield were issued, including any exemptions from the prospectus requirements of applicable securities legislation that were relied upon, any abuses related to the use of such exemptions and related matters.

S. Ben-Ishai, "A Survey of Corporate Gatekeeper Liability in Canada"

- Professor Ben-Ishai was commissioned to conduct research with two objectives in mind. First, given that a series of significant reforms with respect to the legal treatment of gatekeepers have taken place over the last five years, her research was to take stock exercise of the current duties of gatekeepers in Canada. Second, given the options for dealing with gatekeepers presented in other jurisdictions, most notably the United States, and Canada's willingness to reassess its own choices, a number of recommendations and issues for further exploration were to be put forward.

- For each of the gatekeepers studied the following features were to be addressed:
  - A description of the gatekeeper, its gatekeeping function and contribution to efficient capital markets;
  - The current state and sources of duties and responsibilities of the gatekeeper (Self Regulatory Organizations – such as the IDA and the Law Society; common law, statute – including securities law, and rules promulgated by Regulation Services); and
  - The practical realities surrounding the role played by the gatekeeper – such as conflicts of interest (e.g. many securities analysts are housed in big investment banks and may provide research reports on issuers that their firm has an underwriting relationship with).
- The study was also to consider the options offered by other jurisdictions, in particular the United States and the United Kingdom, for regulating each of the gatekeepers under consideration and to analyze whether the current Canadian position effectively addresses the practical realities facing gatekeepers, including conflicts of interest, and will consider the value of various options for reform in responding to any deficiencies identified in the current system.

S. Choi, "Thoughts on the Regulation of Investment Analysts in Canada"

- Professor Choi was commissioned to review the empirical evidence on analyst research, focusing on the problems associated with analyst research and various "cues" related to analyst accuracy. Underlying the problem of biased and flawed analyst research is a conflicts of interest problem. Many of the conflicts facing analysts, however, arise out of a need to obtain financing for analysts (who otherwise would find it difficult to sell their research due to the public goods nature of information). With this background, Professor Choi was requested to make several recommendations on how analyst research may be improved.

D. Kingsford Smith,"Importing the E-World into Canadian Securities Regulation"

- The Task Force commissioned Professor Kingsford Smith to complete a study that (i) identified the areas of Canadian securities law that currently require delivery of documents, either in paper or electronic form, and (ii) analyzed whether each particular rule mandating delivery can be modified or eliminated in favour of a rule which permits some other means of making investors aware of mandated information, such as 'access', an investor's 'duty to browse' or more radically, deeming an investor to have constructive knowledge of securities information posted on the Internet. The study was to involve an examination of recent developments in other jurisdictions, such as the United States, where, for example, a new rule on prospectus delivery indicates that access to a prospectus is equivalent to delivery.
- The study was to explore a number of substantial issues implicated by the mode of making securities documents and information available to investors:
  - Equality of access to information: should regulation assume that the reasonable investor has Internet access?

- If Internet access is assumed, at what technical capacity – enough to download multi-media documents (graphics/sound), for example?
- Should delivery still be required but electronically, and if so how should consent, notice and evidence of receipt issues be dealt with?
- If something less than delivery of information is required (e.g. internet posting is sufficient), should this be on an official site (e.g. SEDAR), or privately operated site, e.g. a corporation's investor relations website or an online underwriter or broker site?
- If something less than delivery of information is required (e.g. internet posting is sufficient), should there be a duty to alert investors to postings?
- What types of documents (prospectuses, annual reports, proxy statements) or information provision (continuing disclosure, investor account up-dating), or even supplemental selling material/advertising should be included?
- Should all documents be delivered in the same medium, or should multi-medium issues be allowed, with the danger that electronic documents may be more attention grabbing?
- Should there be a duty to maintain access to documents posted, and if so for how long, with what security and systems capacity requirements and assurances against outages?
- If hyperlinks or other means of adopting material not authored by the poster are used in posted documents, who should bear any liability flowing from these adoptions?
- Should there be any additional protections for investors in direct marketing instances where documents are available over the Internet, and no 'gate-keepers' such as underwriters or brokers have been involved in their dissemination?
- What are the privacy/account confidentiality implications of moving away from delivery?
- If documents are made available by posting on the internet, what are the implications for Canadian/provincial posters, of their inter-jurisdictional availability?