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Accountants
Comptables généraux
accrédités

**The Certified General Accountants Association of Canada's
Submission to the Expert Panel on Securities Regulation in Canada**

July 17, 2008

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INTRODUCTION

The Certified General Accountants Association of Canada (CGA-Canada) is pleased to participate in discussions that are intended to identify opportunities and the best ways in improving securities regulation in Canada. This issue deserves the attention of market participants, leaders and policy-makers alike. The prospect of making significant strides toward providing capital markets with the necessary predictability, removing internal barriers to the flow of investment, all-the-while ensuring investors are adequately protected is before us. This, in our opinion, will significantly improve Canada's ability to compete for domestic and foreign capital and investment.

CGA is Canada's fastest growing accounting designation. With 68,000 members and students in Canada and abroad, CGA-Canada is at a unique vantage point to provide input into the work of the Expert Panel. The association is a long-standing advocate for public interest driven policies that will improve competition for professional accounting services through fair regulation and the maintenance of high, internationally driven standards of education, experience and ethics. Our members can be found in every sector of the economy and are very interested in this issue; whether they are acting as auditors, financial advisers, corporate financial leaders or as investors. This year marks the 100th anniversary of the CGA designation.

CGA-Canada thanks the Expert Panel for the helpful consultation paper issued on April 18, 2008 (<http://www.expertpanel.ca/eng/index.php>). We also appreciate the opportunity afforded to CGA-Canada to meet with Panel members during its consultations this spring.

As an interested and informed participant in matters relating to the regulation of accounting and the setting of financial reporting standards, CGA-Canada's submission will address issues related to the securities regulator structure. It is our contention that an opportunity would be clearly missed if Canadian policy makers did not take advantage of momentum to improve the securities regulatory structure by reforming the process by which financial reporting standards are set in Canada and the manner in which auditor oversight activities are entrusted. We submit that our proposal will result in legitimate, transparent, accountable, efficient and effective regulatory structure that is as robust as those of our international trading partners.

CGA-Canada supports principle-based regulation that reflects the unique make-up of Canadian capital markets and the needs of small and mid-sized businesses. We appreciate that the work of the Expert Panel will contribute to the mobilization of consensus to move this issue forward. Equally, we recognize that unanimity from all levels of government is not necessary to forge ahead. In this respect

though, the work accomplished by governments in implementing the passport model serves as a good building block towards a new structure for securities regulation in Canada.

CURRENT SITUATION –

Federal and provincial statutes confer the responsibility of setting accounting, auditing and assurance standards to the Canadian Institute of Chartered Accountants (CICA). In satisfying that mandate, the CICA has established the Accounting Standards Board to set Generally Accepted Accounting Standards (GAAP) for Canadian public and private companies; the Public Sector Accounting Board to set accounting standards for public sector organizations; and the Auditing and Assurance Standards Board to set Generally Accepted Auditing Standards (GAAS) that govern the function of independent assurance engagements by all professional accountants engaged in public accounting. These bodies are subject to the oversight of the Accounting Standards Oversight Council and the Auditing and Assurance Standards Oversight Council respectively which have likewise been struck by the CICA. This grouping of bodies are funded and resourced by the CICA.

It has been determined by the Accounting Standards Board that effective January 1, 2011, the basis for preparing financial statements in Canada for publicly-accountable entities will change over from GAAP to International Financial Reporting Standards (IFRS) as set by the International Accounting Standards Board. The Canadian Securities Administrators have further supported consideration of the early adoption of IFRS through its February 2008 Concept Paper 52-402 – *Possible changes to securities rules relating to International Financial Reporting Standards*.

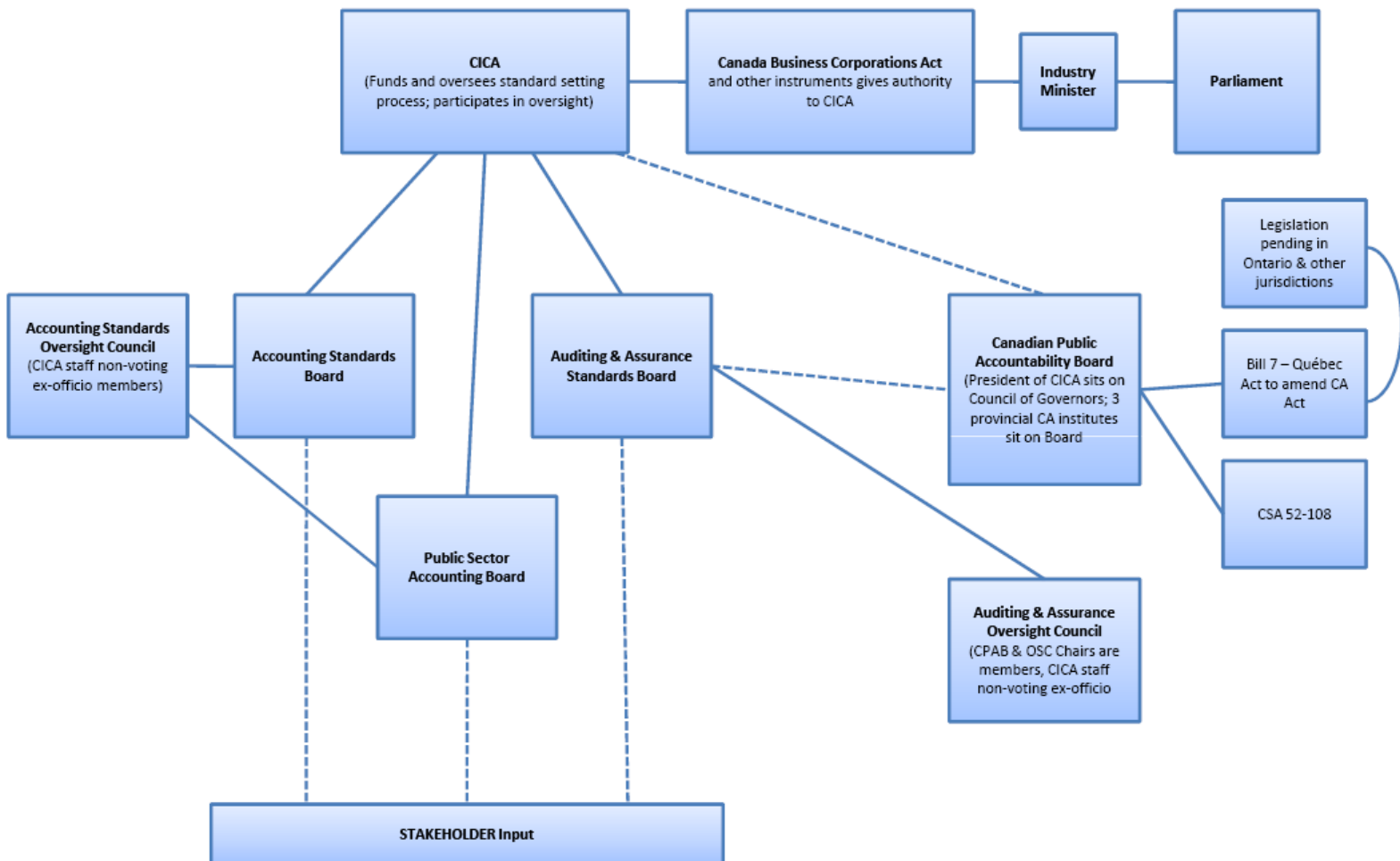
As of March 2008, there are in excess of 110 countries having adopted or otherwise permitted the use of IFRS as their basis of financial reporting.

In early 2006, the Canadian Auditing and Assurance Standards Board (AASB) likewise obtained significant support from stakeholders for adopting International Standards on Auditing (ISAs). ISAs are developed and issued by the International Auditing and Assurance Standards Board (IAASB) which is currently undertaking an initiative to render the ISAs more understandable and to help facilitate their adoption by 2009.

Currently, more than 100 countries are now using or in the process of adopting or incorporating ISAs into their national auditing standards and increasingly more national regulatory bodies are accepting financial statements audited using ISAs.

In the aftermath of major corporate failures in the United States and elsewhere, most of the G-20 countries moved quickly to set up agencies or boards to oversee the audit function. The Canadian Public Accountability Board (CPAB) was created in 2003 by the Canadian Securities Administrators, the Office of the Superintendent of Financial Institutions and the CICA. CSA multilateral instrument 52-108 requires that public companies' financial reports be audited by firms which participate in the CPAB inspection and oversight program. Unlike many similar organizations, CPAB does not set auditing and assurance standards. That authority remains within CICA's Auditing and Assurance Standards Board purview.

Figure 1 – Current Structure of accounting and auditing standard-setting and auditor oversight in Canada



CPAB's governance structure is comprised of three levels – a Council of Governors, a Board of Directors and a membership class called Industry Members. The five member council has oversight responsibility for the operation of CPAB and comprises chairs of the Canadian Securities Administrators, the chairs of the Ontario Securities Commission and the Québec Autorité des marchés financiers, the federal Superintendent of Financial Institutions and the President of the Canadian Institute of Chartered Accountants. The Board of Directors is composed of 11 members, four of which are Chartered Accountants (of which, three are employed as advocates for the profession). There are currently 11 Industry Members – 10 from the provincial institutes of Chartered Accountants and one from the Certified General Accountants of British Columbia. CPAB is funded directly by the audit firms that participate in the oversight process.

CPAB has indicated that its scope is expanding and that it sees inclusion of public interest entities, crown corporations and governments within its mandate. Yet, CPAB admits that its ability to fulfill its mandate is restricted because of structural governance issues, the lack of legal protection for directors and officers, and the inability to access papers. The dominance of CAs on the board and the membership has created a “hammerlock” on change.¹

It is reasonable to argue the audit inspection process in Canada lacks independence from the profession generally and from a specific designation, the chartered accountants. The composition of the governance structure may create, at minimum, a perception of access and influence unavailable to other stakeholders. These deficiencies in the governance structure may serve to undermine its legitimacy and its ability to act in the public interest. To the extent that even a reasonable perception of a conflict of interest may exist or potentially exist, such a perception would ultimately serve to undermine investor and public confidence.

Since the creation of CPAB in 2003, CGA-Canada and its provincial and territorial affiliates have advocated for increased accountability, transparency and independence by CPAB. We have advocated that governments introduce legislation that would:

- require CPAB to act in the public interest;
- provide CPAB with a statutory basis for its existence;
- mandate its accountability to those providing it with local authority;
- ensure balanced representation from all three national accounting bodies in its activities.

¹ CPAB presentation to Canadian Academic Accounting Association Conference, May 30, 2008;
<http://www.cpab-ccrc.ca/CPAB%20English%20%20HOME.htm?language=English>

Currently Québec is the only province that has passed legislation to provide some legislative protection for CPAB. Ontario's *Canadian Public Accountability Board Act* (2006) has yet to be proclaimed. The Provincial and Territorial Securities Task Force comprising of all jurisdictions (except Ontario and Canada) has been examining ways in which to accord CPAB with its required legislative protection. It is our understanding that Ministers are considering a model whereby CPAB would be recognized as a modified self-regulatory organization oversight model, based on the current recognition / oversight framework for SROs now used by securities regulators in Canada. Accepting this model would result in three or more models in Canada to provide legislative basis for CPAB.²

Canada is at odds with the rest of the world in that both functions, standard setting and oversight, lack independence from the profession it oversees. This in turn may create a perception that the organizations created to fulfill those important roles are unable to carry out these functions with the requisite rigour necessary to preserve the public interest.³

Having observed CPAB in operation for several years, and following a careful review of the structure of auditing oversight bodies in other leading jurisdictions, CGA-Canada believes that CPAB “lags behind the others.” We believe that much can be done to enhance CPAB’s legitimacy, transparency, accountability, efficiency and overall effectiveness. In the global marketplace for capital, CPAB’s ineffective governance structure and inefficient operations must be addressed.

Five years after its creation, it may be time to consider establishing CPAB within an authentic and solid legislative framework so as to give it the powers it needs to fulfill its mandate – at arm’s-length of the profession it oversees without perception of bias or prejudice.

² CGA-Canada in consultation with its provincial affiliated members has made submissions to the Provincial and Territorial Securities Taskforce’s Working Group. Copies of briefs can be made available to the Expert Panel.

³ See Adam C. Pritchard and Poonam Puri, “The Regulation of Public Auditing in Canada and the United States: Self-Regulation or Government Regulation” (Fraser Institute, February 2005).

THE INTERNATIONAL CONTEXT –

There are 27 countries that currently conduct independent oversight of statutory audits. While arrangements may vary, in most comparable jurisdictions, auditing and assurance standard setting and inspections of audit firms are subject to direct governmental oversight.

In the United States⁴, the *Sarbanes-Oxley Act of 2002*, created the Public Company Accounting Oversight Board – an arm’s-length audit inspection program that also is vested with the authority of setting auditing and assurance standards. PCAOB has a broad mandate to establish “auditing, quality control, ethics, independent, and other standards relating to the preparation of audit reports” for public companies. PCAOB is subject to the Securities and Exchange Commission’s direct oversight and control. Accounting standards are set by the Financial Accounting Standards Board. Its funding is derived from capital markets and the sale of publications.

The United Kingdom’s Financial Reporting Council is an independent government body established to oversee accounting and auditing standard setting and oversee and regulate auditors. A key funding source is annual levies on publicly listed companies. Directors of the Board are appointed by the Secretary of State for Treasury and Industry.

The Australian government has established an oversight model for accounting and auditing standard setting. The Financial Reporting Council (FRC) is a legislatively established council; its members are appointed by the federal Minister of the Treasury and its funding is provided by government and the accounting profession. The FRC is responsible for overseeing the standards setting functions. In 2004, the AUASB was established as an independent statutory board to set auditing and assurance standards.

In both the UK and Australia⁵, councils have established organizations to perform the standard setting functions.

⁴ See Poonam Puri, “The Regulation of Public Accounting and Accounting and Auditing Standard Setting Under a Common Securities Regulator in Canada, February 2007. http://www.cga-canada.org/en-ca/ResearchAndAdvocacy/AreasOfInterest/Securities/Pages/ca_securities_discussion-paper_backgrounder.aspx

⁵ http://www.frc.gov.au/reports/2006_2007/frc_ar_2006-07-01.asp#P232_8314

By its own admission CPAB is hammer locked by its governance and the absence of a legislative framework inhibits its ability to fulfill its obligations.

Moving forward, CGA-Canada believes the following principles should drive change:

Legislative oversight –

Because of the role financial information plays in the economy, a future model for the standard setting and auditor oversight must be overseen by legislators and at arm's length of the accounting profession. Standard setters would then need to abide by principles of such as transparency, accountability and inclusiveness.

Regulatory efficiency –

The current structure is duplicative, complex and inefficient. It requires extensive coordination and consultation at many levels. Regulatory efficiency should drive reform.

Regulatory cohesiveness –

Various legislative models are in place for CPAB which could lead to a less than efficient process; different rules for different jurisdictions. While Québec has adopted one approach for auditor oversight, Ontario has yet to proclaim the *Canadian Public Accountability Act, 2006* and other jurisdictions are considering a modified SRO recognition model. Multiple regimes could lead to confusion in the marketplace as well as “jurisdiction hopping” and may inadvertently cause a “race to the bottom”. Canada must present a stable regulatory environment to its trading partners and investors.

Transparency –

The processes are not transparent. The complex structure enables only the most informed stakeholders' ability to participate in deliberations. Meetings are held in private contrary to other like-minded bodies internationally. Open activities, operations and decisions allow stakeholders the ability to have access to the institutions.

Independent funding –

Funding should be structured so as to avoid perceptions of bias or lack of independence. It should be raised from multiple sources; i.e. reporting issuers, governments, etc.

Professional self-regulation –

The auditing and accounting profession has a role to play. The standard setting process should be informed by the expertise of auditors and accountants but it should be free of interference to protect the public interest. In Canada, there are three professional accounting designations: Certified General Accountants, Chartered Accountants, and Certified Management Accountants who must equally be recognized in a future structure. In parallel, it is the responsibility of the profession to set high internationally comparable standards of education, professional practice and ethics. That authority has

been assigned by provincial governments. In its December 2007 study of the self-regulated professions, the federal Competition Bureau noted that the maintenance of high accounting standards does not require imposing one accounting body's detailed mandatory curriculum on others that may raise cost, limit entry and effectively exclude members of other designations from competing. Moreover, the modern benchmark has become membership within the International Federation of Accountants (IFAC) which itself establishes member body standards. All three professional accounting Canadian bodies are members of IFAC and must meet uniform member obligations.

Currently in Canada a major policy shift is occurring to provide public accounting rights to professional accountants who qualify. This, in part, has been driven by two trade challenges initiated by CGA-Canada against the provinces of Ontario and Québec. Successive panels convened under the *Agreement on Internal Trade* have found that measures that prevent qualified Certified General Accountants from providing public accounting services are unfair, have impaired trade and caused injury. In a recent study of the professions, the federal Competition Bureau concluded that provincial regulators should give all professional accountants who have the appropriate level of competence the right to practice the full extent of public accounting.

CGA-Canada notes that government in Ontario and Québec have passed legislation that when implemented should provide its members access to the practice of public accounting. In other jurisdictions, CGAs have long been providing public accounting services resulting in a competitive marketplace beneficial to consumers.

CGA-Canada is concerned with recent reports advocating for the reintroduction of barriers under the guise of a national public accounting standard. Such a call is simply window dressing to prevent qualified professional accountants from providing services to the Canadian public. Such an approach is anti competitive, contrary to the principles of effective regulation, would have the effect of restricting market entry and thus increasing cost.

We would argue that the Expert Panel reject outright the notion that public accounting standards are a responsibility of a common securities regulator. The setting of professional standards is the legislated responsibility of professional self-regulatory bodies. It is a duty that has been discharged responsibly as is demonstrated by the development and implementation of high level internationally comparable standards of qualification, continued competence and ethics.

Taken together, these principles will result in the establishment of a regulatory structure that is reasonable to protect the public, unencumbered, reduces overlap and does not impede the rights of professionals which can meet the test of international comparisons.

A PREFERRED STRUCTURE –

CGA-Canada's preferred structure is informed by international comparison. Moreover, our submission takes into account the expanding role and influence of international standard-setters domestically. High quality financial reporting and disclosure play an important role in ensuring the integrity of capital markets. A credible standard setting function and appropriate oversight of the audit function are critical to ensuring a fair, efficient and transparent market with high level of investor confidence. Canadian capital markets and their instruments must be as robust as anywhere else in order to attract investors. CGA-Canada believes a new structure for securities regulation should include both functions – financial reporting standard setting and auditor oversight in a newly created Canadian Financial Reporting Council (CFRC).

The CFRC would be created by statute under a Canadian Securities Commission Act. Much like its Australia counterpart, the CFRC would be responsible for providing broad oversight of the process for setting accounting and auditing standards as well as monitoring the effectiveness of auditor independence requirements in Canada and giving Ministers reports and advice on these matters. Five to seven members would be appointed to the CFRC by participating federal, provincial and territorial governments. These individuals would be cut across sectors such as accounting, law, corporate governance and academia as well as others who are well informed in the public policy importance of the functions. The CFRC would be funded by government, reporting issuers and private subscription much as is the case currently with the International Accounting Standards Board. The CFRC would report annually to the Conference of federal, provincial and territorial Ministers of Finance and Treasurers as well as table its annual report in Parliament.

The CFRC would in turn create two bodies: an accounting standards secretariat to administer the adoption of international standards in Canada, and a reconstituted Public Accountability Agency. The Agency would be given the powers it requires to expand its scope into other publicly accountable entities.

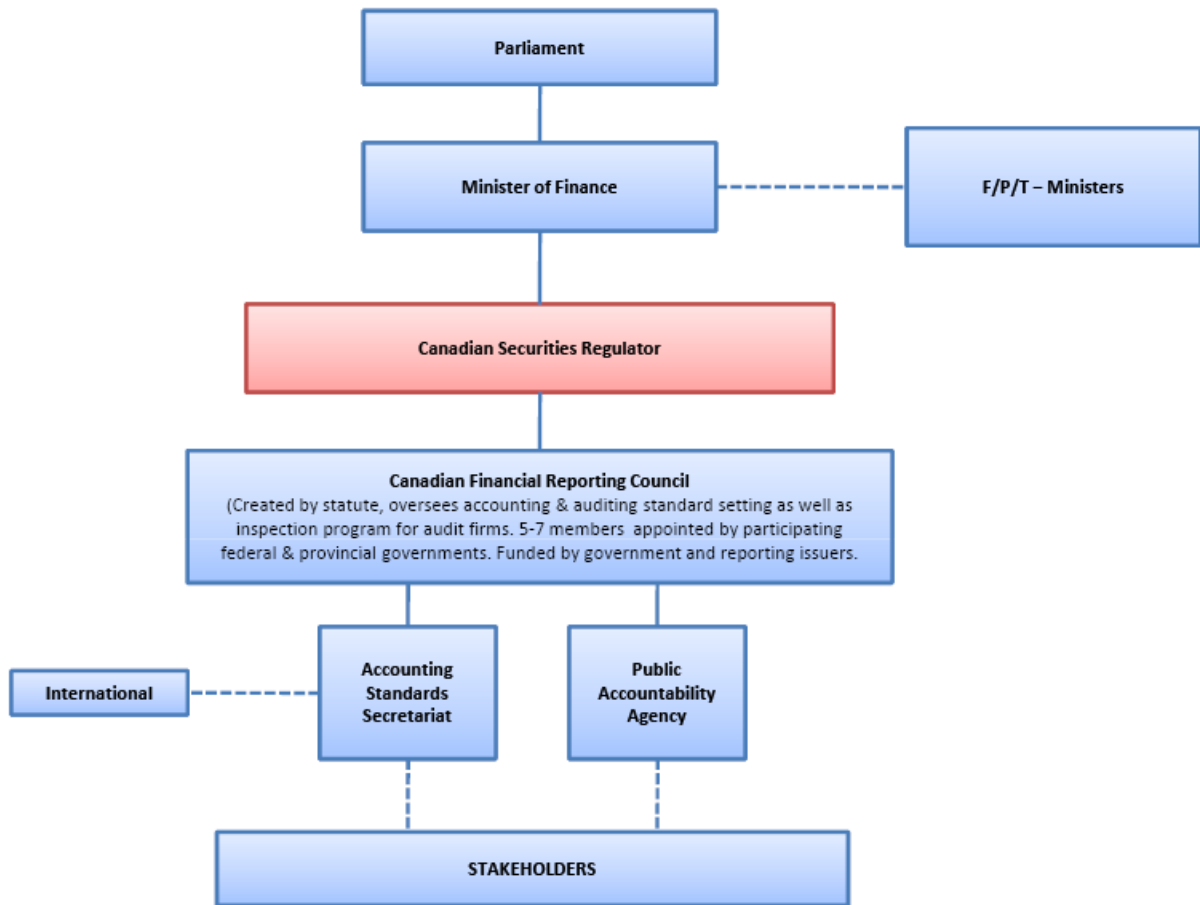
These functions would be informed by stakeholder input and active and deliberate participation in international forums such as the International Accounting Standards Board, the International Auditing and Assurance Standards Board and the International Forum of Independent Audit Regulators to

ensure that Canadian policies are informed by international developments and reciprocally Canadian concerns are represented as standards evolve internationally.

Transition issues –

The standard-setting process is complex. The current organizations have developed considerable expertise in the area. Under the proposed model, these existing organizations would be phased-into a new structure to enable the use of existing intellectual capacity.

Figure 3 – CGA-Canada’s Proposed Model



CONCLUDING COMMENTS –

While CGA-Canada acknowledges that some jurisdictions may not participate in a new common securities regulator, we do not believe this to be an impediment to change.

No legislation should remain static. Legislation is only as good as its provisions are in achieving the objectives underlying the statute. CGA-Canada’s proposal attempts to address the gaps associated

with the design, governance, powers and privileges of financial reporting standard setting structures in Canada. Our final recommendation concerns the value of retrospection and experience. We recommend that a clause be inserted into the draft securities legislation requiring a five year statutory review to ensure that the provisions continue to meet the public interest test of transparency, accountability, inclusiveness and regulatory efficiency.

We thank the Expert Panel for the opportunity to provide our comments on the proposed legislative framework, and contribute towards the evolution of a legitimate, transparent, accountable, efficient and effective regulatory structure for financial reporting and auditor oversight.

We wish you well in your deliberations.