CIPF
Canadian Investor Protection Fund

Rozanne E. Reszel, FCPA, FCA, CFA, MBA, ICD.D
President & Chief Executive Officer

VIA EMAIL: LegislativeReview-ExamenLegislatif@canada.ca

November 15, 2016

Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa ON K1A 0G5
Telephone: 613-369-9347

Dear Sirs/Mesdames:

Re: Department of Finance Canada's Consultation Document for the Review of the Federal Financial Sector Framework, dated August 26, 2016

Amendments Recommended by the Canadian Investor Protection Fund ("CIPF") to the Bankruptcy and Insolvency Act, R.S.C., 1985, c.B-3 ("BIA")

We are writing in response to the consultation document published by the Department of Finance Canada, entitled 'Supporting a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future', dated August 26, 2016 (the "Consultation Document").

CIPF is a "customer compensation body" pursuant to section 253 of BIA. CIPF provides limited protection for property held by a member firm on behalf of an eligible client, if the member firm becomes insolvent. Member firms are investment dealers that are members of the Investment Industry Regulatory Organization of Canada ("IIROC"). These investment dealers are also automatically members of CIPF. IIROC is the self-regulatory organization ("SRO") that oversees all investment dealers in Canada.

CIPF has been in communication with Innovation, Science and Economic Development Canada ("ISED") with respect to our recommendations for amendments to the BIA. We would like to take the opportunity to bring these recommendations to your attention given the Department of Finance Canada's focus on stability as a policy objective to frame further policy development.

Summary of Recommendations

CIPF recommends that the following housekeeping amendments be made to the BIA. For more detailed background and descriptions of these proposed amendments, please see attached as Appendix A, our letter dated December 29, 2015 to ISED. Although we do not view these amendments as substantive in nature, we continue to view them as necessary and critical to the continued stability and effective functioning of bankruptcy and insolvency legislation in Canada.

1. Paragraph (1)(b) of section 256 of the BIA be amended to permit securities industry SROs (being IIROC and MFDA) to file an application for a bankruptcy order pursuant to Part XII of the BIA in respect of an insolvent securities firm which is a member of the SRO;

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2. Paragraph (2)(b) of section 256 of the BIA be amended to permit a customer compensation body (being CIPF and MFDA IPC) to file an application for a bankruptcy order pursuant to Part XII of the BIA in respect of an insolvent securities firm which is a member of the relevant SRO and which has been suspended by an SRO;

3. Subsection 256(2) of the BIA be amended such that the grounds for suspension by a securities commission or SRO (on the assumption that the Recommendations in 1 and 2 above are effected) of an insolvent securities firm under Part XII of the BIA, and on which an application for a bankruptcy order filed by an SRO or customer compensation body may be made, not be restricted to capital inadequacy but include serious compliance defaults and which result in the firm failing to meet capital adequacy requirements; and

4. Section 253 of the BIA be amended in respect of the definitions of "security" and "customer" to reflect the enactment of uniform securities transfer legislation in several provinces of Canada and the resulting creation of a new kind of property, being a securities entitlement.

We would also like to acknowledge that the above four recommendations for amendments to the BIA have also been previously communicated to ISED by IIROC, the Mutual Fund Dealers Association of Canada ("MFDA"), and the MFDA Investor Protection Corporation ("MFDA IPC"). IIROC, the MFDA and the MFDA IPC continue to support these suggested amendments.

We believe that the above-noted amendments would promote efficiency in securities firm bankruptcies, and lead to the timely transfer of customer accounts. In particular, ensuring that an SRO suspension is a deemed act of bankruptcy is a crucial component of CIPF's ability to apply, in a timely manner, for a bankruptcy order against a failing firm. To provide a concrete example: In the December 4, 2015 bankruptcy of Octagon Capital Corporation, CIPF applied for a bankruptcy order following suspension of the firm by IIROC. It would have been helpful, from an efficiency and timeliness perspective, for CIPF to have relied directly on the IIROC suspension order as a deemed act of bankruptcy rather than have to prove an act of bankruptcy by the suspended firm. We also view these amendments as critical to the overall promotion of investor protection in the Canadian capital markets, as well as stability in those markets.

As requested in the Consultation Document, we acknowledge that our submission may be made public, and we consent to the disclosure of our submission.

We appreciate the opportunity to provide comments and would welcome the opportunity to discuss in the future.

Yours very truly,
CANADIAN INVESTOR PROTECTION FUND

Rozanne Reszel
President and Chief Executive Officer

c.c. Mark Schaan, Director General, Marketplace Framework Policy Branch, Innovation, Science and Economic Development Canada
Ilana Singer, Vice-President & Corporate Secretary, CIPF
Doug Harris, Vice-President, General Counsel and Corporate Secretary, IIROC
Mark Gordon, President and Chief Executive Officer, MFDA
Dorothy Sanford, President, MFDA IPC

Rozanne E. Reszel, FCPA, FCA, CFA, MBA, ICD.D
President & Chief Executive Officer

CIPF
Canadian Investor Protection Fund

December 29, 2015

Ms. Patricia Brady
Acting Director General
Marketplace Framework Policy Branch
Innovation, Science and Economic Development Canada
235 Queen Street
Ottawa, Ontario
K1A 0H8

and

Mr. Paul Morrison
Policy Analyst
Innovation, Science and Economic Development Canada
235 Queen Street
Ottawa, Ontario
K1A 0H8

Dear Sirs/Mesdames:

Re: Bankruptcy and Insolvency Act, R.S.C., 1985, c.B-3 ("BIA")

Amendments Recommended by the Canadian Investor Protection Fund ("CIPF")

This letter is a follow-up to your in-person meeting with Ms. Barbara Love, CIPF Senior Vice-President and Secretary and Ms. Ilana Singer, CIPF Vice-President, on November 17, 2015. As you suggested, we are re-submitting our recommendations for amendments to the BIA, for consideration during the upcoming round of BIA-related amendments. We intend to provide a follow-up letter regarding potential derivatives-related amendments to the BIA in the coming months, as we discussed at the November meeting.

Summary of Recommendations

As described in our letter to you dated June 13, 2012, a copy of which is attached as Attachment A, CIPF is continuing to recommend that the following amendments be made to the BIA:

1. Paragraph (1)(b) of section 256 of the BIA be amended to permit securities industry SROs (being IIROC and MFDA) to file an application for a bankruptcy order pursuant to Part XII of the BIA in respect of an insolvent securities firm which is a member of the SRO;
2. Paragraph (2)(b) of section 256 of the BIA be amended to permit a customer compensation body (being CIPF and MFDA IPC) to file an application for a bankruptcy order pursuant to Part XII of the BIA in respect of an insolvent securities firm which is a member of the relevant SRO and which has been suspended by an SRO;
3. Subsection 256(2) of the BIA be amended such that the grounds for suspension by a securities commission or SRO (on the assumption that the Recommendations in 1 and 2 above are effected) of an insolvent securities firm under Part XII of the BIA, and on which an application for a bankruptcy order filed by an SRO or customer compensation body may be made, not be

restricted to capital inadequacy but include serious compliance defaults and which result in the firm failing to meet capital adequacy requirements; and

4. Section 253 of the BIA be amended in respect of the definitions of "security" and "customer" to reflect the enactment of uniform securities transfer legislation in several provinces of Canada and the resulting creation of a new kind of property, being a securities entitlement.

The particulars of the recommendations described above are reflected in the draft suggested amendments to the BIA submitted as Attachment B to this letter (and as noted in the letter previously submitted to you).

We acknowledge that the above four recommendations for amendments to the BIA were previously communicated to Industry Canada by the Investment Industry Regulatory Organization of Canada ("IIROC"), the Mutual Fund Dealers Association of Canada ("MFDA"), and the MFDA Investor Protection Corporation ("MFDA IPC"). IIROC, the MFDA and the MFDA IPC continue to support these suggested amendments.

We believe that the above noted amendments would promote efficiency in securities firm bankruptcies, and lead to the timely transfer of customer accounts. In particular, ensuring that an SRO suspension is a deemed act of bankruptcy is a crucial component of CIPF's ability to apply, in a timely manner, for a bankruptcy order against a failing firm. To provide a concrete example: In the December 4, 2015 bankruptcy of Octagon Capital Corporation, CIPF applied for a bankruptcy order following suspension of the firm by IIROC. It would have been helpful, from an efficiency and timeliness perspective, for CIPF to have relied directly on the IIROC suspension order as a deemed act of bankruptcy rather than have to prove an act of bankruptcy by the suspended firm. We also view these amendments as critical to the overall promotion of investor protection in the Canadian capital markets.

We appreciate the opportunity to provide our recommendations and look forward to the implementation of these amendments to the BIA.

Yours very truly,
CANADIAN INVESTOR PROTECTION FUND

Rozanne Reszel
President and Chief Executive Officer

c.c. Barbara Love, Senior Vice-President and Secretary, CIPF
Ilana Singer, Vice-President, CIPF
Doug Harris, General Counsel and Corporate Secretary, IIROC
Mark Gordon, President and Chief Executive Officer, MFDA
Dorothy Sanford, President, MFDA IPC

CIPF
Canadian Investor Protection Fund

Rozanne E. Reszel, FCA, MBA, CFA, ICD.D
President & Chief Executive Officer

June 13, 2012

Mr. Gerard Peets
Senior Director
Corporate and Insolvency Law Policy and Internal Trade
Industry Canada
235 rue Queen, 10 étage est
Ottawa, Ontario
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and

Ms. Elisabeth Lang
Deputy Superintendent of Regulatory Affairs
Office of the Superintendent of Bankruptcy Canada
Industry Canada
Heritage Place
155 Queen Street, 4th Floor
Ottawa, Ontario
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Dear Sirs/Mesdames:

Re: Bankruptcy and Insolvency Act, R.S.C., 1985, c.B-3 (BIAC)
- **Minister's Report to Parliament pursuant to Section 285 of BIAC (2009-2014)**
- **Amendments to BIAC recommended by Canadian Investor Protection Fund**

We are writing to you for the following purposes:

1. to submit recommendations for amendments to BIAC to be considered and included in the next report of the Minister of Industry to Parliament pursuant to Section 285 of BIAC; and

2. to request a meeting with the appropriate representatives of Industry Canada (including the Office of the Superintendent of Bankruptcy) to explain the recommended amendments and clarify the process for their implementation.

CIPF is a "customer compensation body" pursuant to Section 253 of BIAC. CIPF was established in 1969 and is the customer protection fund for customers of insolvent investment dealers and brokers which are members of the Investment Industry Regulatory

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Organization of Canada ("IIROC", formerly the Investment Dealers Association of Canada ("IDA")). IIROC is the self-regulatory organization ("SRO") to which effectively all investment dealers registered with a Canadian provincial securities commission or authority are required to belong. The other customer compensation body is the MFDA Investor Protection Corporation ("MFDA IPC") which is CIPF's counterpart for mutual fund dealers which are members of the Mutual Fund Dealers Association of Canada ("MFDA") and which has been prescribed pursuant to Section 1.1 of the Bankruptcy and Insolvency General Rules, C.R.C., c.368 ("Rules"). Mutual fund dealers registered with a provincial securities commission (other than in Quebec) are required to belong to MFDA.

Summary of Recommendations

CIPF recommends that the following amendments be made to BIAC:

1. Paragraph (1)(b) of section 256 of BIAC be amended to permit securities industry SROs (being IIROC and MFDA) to file an application for a bankruptcy order pursuant to Part XII of BIAC in respect of an insolvent securities firm which is a member of the SRO;

2. Paragraph (2)(b) of section 256 of BIAC be amended to permit a customer compensation body (being CIPF and MFDA IPC) to file an application for a bankruptcy order pursuant to Part XII of BIAC in respect of an insolvent securities firm which is a member of the relevant SRO and which has been suspended by an SRO;

3. Subsection 256(2) of BIAC be amended such that the grounds for suspension by a securities commission or SRO (on the assumption that the Recommendations in 1 and 2 above are effected) of an insolvent securities firm under Part XII of BIAC, and on which an application for a bankruptcy order filed by an SRO or customer compensation body may be made, not be restricted to capital inadequacy but include serious compliance defaults and which result in the Firm failing to meet capital adequacy requirements; and

4. Section 253 of BIAC be amended in respect of the definitions of "security" and "customer" to reflect the enactment of uniform securities transfer legislation ("USTAs") in several provinces of Canada and the resulting creation of a new kind of property, being a securities entitlement.

The particulars of the foregoing recommendations are reflected in the draft suggested amendments to BIAC submitted as an attachment to this letter.

History of Recommendations

The four specific recommendations for amendments to BIAC have been made previously to Industry Canada by CIPF as well as by IIROC, MFDA and MFDA IPC. For convenience, and by way of background, we are including with this letter copies of some of such submissions.

We note that certain changes to the Rules previously requested on behalf of the securities industry have been made and are of assistance to the safety of Canadian investors and capital market participants. In particular, MFDA IPC has been prescribed as a customer compensation body pursuant to the Rules (SOR/2011-94, s.1). Previously, IIROC and MFDA were prescribed as a regulatory body for the purposes of Section 69.6 of BIAC pursuant to Section 103.1 of the Rules: SOR/2009-218, s.16.

Part XII of BIAC was developed over many years and was based in most material respects on the legislation in the United States governing the insolvency of broker/dealers. This included the role of the Securities Investor Protection Corporation ("SIPC") which is the functional equivalent of CIPF. However, since the development of Part XII and its enactment in 1997 the regulation in Canada of securities firms (including investment dealers and mutual fund dealers) has changed in a number of material respects. Since January 1, 2005, IIROC (formerly the IDA) has been the only self-regulatory organization carrying out member regulation activities in respect of investment dealers. It assumed such responsibilities from the Toronto Stock Exchange in 1997, the Vancouver and Alberta Stock Exchanges (then the Canadian Venture Exchange) in 1999 and the Bourse de Montréal in 2005. Member regulation includes prudential regulation effecting the capital adequacy requirements and sales compliance activities of securities firms. This aspect of regulation is distinct from market regulation which refers to the trading conduct of securities firms on recognized stock exchanges and other public markets.

Another change to securities legislation in Canada that has become effective since the enactment of Part XII in 1997 is uniform securities transfer legislation. As representative of such legislation, we refer to the *Securities Transfer Act, 2006* (Ontario), S.O. 2006, c.8, which came into force on January 1, 2007. Most other provinces and territories in Canada have effected corresponding legislation. The enactment of uniform securities transfer legislation has been beneficial in a number of ways to Canadian capital markets and the functioning of the securities industry but new legal concepts introduced by such legislation have affected the definitions of the terms "customer" and "security" for the purposes of Part XII of BIAC. These inconsistencies are technical and we are enclosing with this letter a memorandum of our counsel, Borden Ladner Gervais LLP, describing the legal concerns that have arisen.

Discussion

1. *Paragraph (1)(b) of section 256 of BIAC be amended to permit securities industry SROs (being IIROC and MFDA) to file an application for a bankruptcy order pursuant*

to Part XII of BIAC in respect of an insolvent securities firm which is a member of the SRO.

Paragraph (1)(b) of section 256 of BIAC refers to a "securities exchange recognized by a provincial securities commission" being permitted to file applications for bankruptcy orders in respect of securities firms. The fact is that securities exchanges in Canada no longer conduct member regulation or concern themselves with setting the capital adequacy requirements of member firms. This is the role of the SROs – IIROC and MFDA.

Accordingly, CIPF submits that the authority to file an application for a bankruptcy order against a securities firm which is a member of an SRO should be vested in the SRO. The addition of an SRO to paragraph (1)(b) of section 256 would effect such change. CIPF does not object to securities exchanges retaining their authority under such paragraph but it is unlikely that such authority would be exercised to the extent that matters of member regulation are concerned such as capital adequacy.

2. *Paragraph (2)(b) of section 256 of BIAC be amended to permit a customer compensation body (being CIPF and MFDA IPC) to file an application for a bankruptcy order pursuant to Part XII of BIAC in respect of an insolvent securities firm which is a member of the relevant SRO and which has been suspended by an SRO.*

The authority of a customer compensation body such as CIPF to file an application for a bankruptcy order in respect of an act of bankruptcy referred to in subsection 256(2) is dependant upon whether the securities firm has been suspended by either a securities commission or a securities exchange. For the reasons referred to above in the sections History of Recommendations and the Discussion with respect to Recommendation 1, the reference to a securities exchange does not reflect the fact that it would be a self-regulatory organization that would more likely suspend a securities firm for the failure to meet capital adequacy requirements. Accordingly, CIPF submits that paragraph (2)(b) of section 256 be amended to include a self-regulatory organization as the suspending authority. The proposed amendment would also permit a securities commission, a securities exchange or a self-regulatory organization to file an application on similar grounds.

3. *Subsection 256(2) of BIAC be amended such that the grounds for suspension by a securities commission or SRO (on the assumption that the Recommendations in 1 and 2 above are effected) of an insolvent securities firm under Part XII of BIAC, and on which an application for a bankruptcy order filed by an SRO or customer compensation body may be made, not be restricted to capital inadequacy but include serious compliance defaults which result in the firm being capital deficient.*

Paragraphs (2)(a) and (b) of section 256 refer to a suspension of a securities firm by a securities commission or a securities exchange (proposed to be amended to

include an SRO) "due to the failure of the firm to meet capital adequacy requirements". It is often the case that a securities commission, securities exchange or an SRO may suspend the registration or membership, as the case may be, of a securities firm for reasons other than the failure to meet capital adequacy requirements. For instance, if there are serious sales compliance practices, marketplace abuses or loss of customer property such that the continued compliance by the firm with regulatory requirements and the safety of customers are threatened, a securities commission, securities exchange or SRO, as the case may be, may suspend the firm. In such a case, the stated grounds of suspension may not be failure to meet capital adequacy requirements but the suspension results in the firm becoming capital deficient. The point is that in such cases the grounds of suspension relied on by the securities commission or an SRO are not capital adequacy requirements. Once the firm is suspended and subsequently becomes capital deficient, it cannot be "suspended again" for capital inadequacy. The result is that the benefits of Part XII cannot be applied in a timely manner to the firm and its customers because the grounds for an order under Section 256 do not exist.

Accordingly, CIPF recommends that subsection 256(2) be amended to provide for suspensions that are due to or result in the failure of a firm to meet capital adequacy standards or for other reasons which result in capital inadequacy.

4. *Section 253 of BIAC be amended in respect of the definitions of "security" and "customer" to reflect the enactment of uniform securities transfer legislation ("USTAs") in several provinces of Canada and the resulting creation of a new kind of property, being a securities entitlement.*

For the reasons outlined above in the section History of Recommendations and the supporting memorandum of Borden Ladner Gervais LLP, we recommend that the definitions of "security" and "customer" be amended to reflect the enactment of the uniform securities transfer legislation in Canada. The specific amendments are set out in the attachment to this letter.

In summary, the USTAs provide statutory support for the modern indirect holding system for securities (i.e. holdings by customers through intermediaries and not directly with the issuer) and create a new category of property called a "security entitlement". The important definition of "security" in BIAC does not appear to include security entitlements. Similarly, the definition of "customer" contemplates a person who has a claim against a securities firm in respect of a security "received, acquired or held by the securities firm…" A securities entitlement is not property received, acquired or held by a securities firm for a customer; rather, it is the claim against the securities firm for financial assets held. If a "security entitlement" is not a security for the purposes of Part XII, the property that vests in the trustee under subsection 261(1) and the property comprising the "customer pool fund" will not

include the majority of the value of property held by securities firms for their customers. This result would obviously undermine the intent of Part XII. Both of these amendments are technical in nature and reflect developments in the law since 1997 when Part XII of BIAC came into force. CIPF establishes its coverage limits based in large part on effectiveness of pooling in Part XII and the definitions of "security" and "customer" are critical to that concept.

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We trust the foregoing is in order and acknowledge that similar submissions have been made by CIPF, as well as IIROC, MFDA and MFDA IPC in the past. These amendments are important to CIPF and other Canadian securities industry participants and we have requested above a meeting with representatives of Industry Canada and the Office of the Superintendent of Bankruptcy to explain and clarify the basis on which they may be accepted and enacted as requested.

Yours very truly,
CANADIAN INVESTOR PROTECTION FUND

Rozanne Reszel
President & Chief Executive Officer

RR/vl
Encl.

c.c. Matthew Dooley, Acting Senior Policy Leader, Industry Canada
Doug Harris, Vice President and Associate General Counsel, IIROC
Mark Gordon, Executive Vice-President, MFDA
Joni Alexander, President, MFDA IPC

SCHEDULE

Draft amendments to Sections 253 and 256 of the Bankruptcy and Insolvency Act (Canada) (changes are marked):

Section 253:

"customer" includes

(a) a person with or for whom a securities firm deals as principal, or agent or mandatary, and who has a claim against the securities firm in respect of a securities entitlement, or a security received, acquired or held by the securities firm, in the ordinary course of business as a securities firm from or for a securities account of that person

(i) for safekeeping or deposit or in segregation,

(ii) with a view to sale,

(iii) to cover a completed sale,

(iv) pursuant to a purchase,

(v) to secure performance of an obligation of that person, or

(vi) for the purpose of effecting a transfer,

(b) a person who has a claim against the securities firm arising out of a sale or wrongful conversion by the securities firm of a security referred to in paragraph (a), and

(c) a person who has cash or other assets held in a securities account with the securities firm,

but does not include a person who has a claim against the securities firm for cash or securities that, by agreement or operation of law, is part of the capital of the securities firm or a claim that is subordinated to claims of creditors of the securities firm;

"security" means any document, instrument or written or electronic record that is commonly known as a security or is a securities entitlement and includes, without limiting the generality of the foregoing,

(a) a document, instrument or written or electronic record evidencing a share, participation right or other right of interest in property or in an enterprise, including an equity share or stock, or a mutual fund share or unit,

(b) a document, instrument or written or electronic record evidencing indebtedness, including a note, bond, debenture, mortgage, certificate of deposit, commercial paper or mortgage-backed instrument,

(c) a document, instrument or written or electronic record evidencing a right or interest in respect of an option, warrant or subscription, or under a commodity future, financial future, or exchange or other forward contract, or other derivative instrument, including an eligible financial contract, and

(d) such other document instrument or written or electronic record as is prescribed.

Section 256:

(1) In addition to any creditor who may petition in accordance with sections 43 to 45, a petition for a receiving order against a securities firm may be filed by:

(a) a securities commission established under an enactment of a province, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the petition and while the securities firm was licensed or registered by the securities commission to carry on business in Canada, and

(ii) in the case in which the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the petition is filed;

(b) a securities exchange or self-regulatory organization recognized by a provincial securities commission, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the petition and while the securities firm was a member of the securities exchange or self-regulatory organization, and

(ii) in the case where the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the application is filed;

(c) a customer compensation body, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the petition and while the securities firm had customers whose securities accounts were protected, in whole or in part, by the customer compensation body, and

(ii) in the case where the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the petition is filed; and

(d) a person who, in respect of property of a securities firm, is a receiver, receiver-manager, liquidator or other person with similar functions appointed under a federal or provincial enactment relating to securities that provides for the appointment of that other person, where the securities firm has committed an act of bankruptcy referred to in section 42 within the six months before the filing of the petition.

(2) For the purposes of paragraphs (1)(a) to (c),

(a) the suspension by a securities commission referred to in paragraph (1)(a) of a securities firm's registration to trade in securities, or

(b) the suspension by a securities exchange or self-regulatory organization referred to in paragraph (1)(b) of a securities firm's membership in that exchange or organization

constitutes an act of bankruptcy if the suspension is due to or results in the failure of the firm to meet capital adequacy requirements.

(3) Where

(a) a securities exchange or self-regulatory organization files a petition pursuant to paragraph (1)(b), or

(b) a customer compensation body files an application under paragraph (1)(c),

a copy of the petition must be served on the securities commission, if any, having jurisdiction in the locality of the securities firm where the petition was filed, before

(c) such interval preceding the hearing of the petition as may be prescribed, or

(d) such shorter interval preceding the hearing of the petition as may be fixed by the court.

SCHEDULE

Draft amendments to Sections 253 and 256 of the *Bankruptcy and Insolvency Act* (Canada)[1] (changes are marked):

Section 253:

"customer" includes

(a) a person with or for whom a securities firm deals as principal, or agent or mandatary, and who has a claim against the securities firm in respect of a securities entitlement, or a security received, acquired or held by the securities firm, in the ordinary course of business as a securities firm from or for a securities account of that person

(i) for safekeeping or deposit or in segregation,

(ii) with a view to sale,

(iii) to cover a completed sale,

(iv) pursuant to a purchase,

(v) to secure performance of an obligation of that person, or

(vi) for the purpose of effecting a transfer,

(b) a person who has a claim against the securities firm arising out of a sale or wrongful conversion by the securities firm of a security referred to in paragraph (a), and

(c) a person who has cash or other assets held in a securities account with the securities firm,

but does not include a person who has a claim against the securities firm for cash or securities that, by agreement or operation of law, is part of the capital of the securities firm or a claim that is subordinated to claims of creditors of the securities firm;

"security" means any document, instrument or written or electronic record that is commonly known as a security or is a securities entitlement and includes, without limiting the generality of the foregoing,

(a) a document, instrument or written or electronic record evidencing a share, participation right or other right or interest in property or in an enterprise, including an equity share or stock, or a mutual fund share or unit,

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[1] The text of the sections of the *Bankruptcy and Insolvency Act* (Canada) are from the version that was last amended on February 26, 2015, available at http://laws-lois.justice.gc.ca/eng/acts/b-3/.

(b) a document, instrument or written or electronic record evidencing indebtedness, including a note, bond, debenture, mortgage, hypothec, certificate of deposit, commercial paper or mortgage-backed instrument,

(c) a document, instrument or written or electronic record evidencing a right or interest in respect of an option, warrant or subscription, or under a commodity future, financial future, or exchange or other forward contract, or other derivative instrument, including an eligible financial contract, and

(d) such other document, instrument or written or electronic record as is prescribed.

Section 256:

(1) In addition to any creditor who may file an application in accordance with sections 43 to 45, an application for a bankruptcy order against a securities firm may be filed by

(a) a securities commission established under an enactment of a province, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the application and while the securities firm was licensed or registered by the securities commission to carry on business in Canada, and

(ii) in the case in which the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the application is filed;

(b) a securities exchange <u>or self-regulatory organization</u> recognized by a provincial securities commission, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the application and while the securities firm was a member of the securities exchange <u>or self-regulatory organization</u>, and

(ii) in the case in which the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the application is filed;

(c) a customer compensation body, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the application and while the securities firm had customers whose securities accounts were protected, in whole or in part, by the customer compensation body, and

(ii) in the case in which the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the application is filed; and

(d) a person who, in respect of property of a securities firm, is a receiver within the meaning of subsection 243(2), a receiver-manager, a liquidator or any other person with similar functions appointed under a federal or provincial enactment relating to securities that provides for the appointment of that other person, if the securities firm has committed an act of bankruptcy referred to in section 42 within the six months before the filing of the application.

(2) For the purposes of paragraphs (1)(a) to (c),

(a) the suspension by a securities commission referred to in paragraph (1)(a) of a securities firm's registration to trade in securities, or

(b) the suspension by a securities exchange or self-regulatory organization referred to in paragraph (1)(b) of a securities firm's membership in that exchange or organization

constitutes an act of bankruptcy if the suspension is due to or results in the failure of the firm to meet capital adequacy requirements.

(3) If

(a) a securities exchange or self-regulatory organization files an application under paragraph (1)(b), or

(b) a customer compensation body files an application under paragraph (1)(c),

a copy of the application must be served on the securities commission, if any, having jurisdiction in the locality of the securities firm where the application was filed, before

(c) any prescribed interval preceding the hearing of the application, or

(d) any shorter interval that may be fixed by the court and that precedes the hearing of the application.