

INVESTMENT DEALERS ASSOCIATION OF CANADA

DISCLOSURE STANDARDS FOR FORMAL VALUATIONS AND FAIRNESS OPINIONS

By-law 29 is amended by enacting By-laws 29.14 through 29.25 reading as follows:

29.14 In these By-laws 29.14 to 29.25 unless the context otherwise requires, the expression:

"Applicable Securities Laws" means:

- (i) Ontario Securities Commission Rule 61-501 relating to Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions; and
- (ii) section 190 of the *Business Corporations Act* (Ontario);

"Association Standards" means the disclosure standards specified in By-laws 29.14 through 29.24;

"Fairness Opinion" means a report of a Valuer that contains the Valuer's opinion as to the fairness, from a financial point of view, of a transaction;

"Formal Valuation" means a report of a Valuer that contains the Valuer's opinion as to the value or range of values of the subject matter of the valuation;

"Professional Opinion" means a **Formal Valuation** or a Fairness Opinion;

"Subject Transaction" means an insider bid, issuer bid, going private transaction or related party transaction as each such term is defined in Applicable Securities Laws; and

"Valuer" means the person who provides a Professional Opinion.

The terms "**disclosure document**", "**interested party**" and "**prior valuation**" as used in these By-laws 29.14 to 29.25 have the same respective meanings as in Applicable Securities Laws.

29.15 No Member shall prepare a Professional Opinion in connection with a Subject Transaction unless it complies with Association Standards.

29.16 Association Standards apply only to Professional Opinions that are prepared either pursuant to a requirement of Applicable Securities Laws or for the express purpose of publication, in whole or in part (including summaries thereof), in a disclosure document to be filed with any Canadian securities regulatory authority or delivered to security holders in connection with their consideration of the Subject Transaction. For greater certainty, Association Standards do not apply to Professional Opinions (i) rendered in connection with transactions other than the Subject Transactions, whether or not they are reproduced or summarized in a disclosure document, or (ii) reproduced or summarized in a disclosure document in response to a legal or regulatory requirement for the disclosure of prior valuations in respect of an issuer.

29.17 The requirements relating to the preparation and disclosure of Professional Opinions prescribed herein shall not be a substitute for the professional judgment and responsibility of the Valuer. Compliance with the Association Standards, without the Valuer also exercising professional judgment and responsibility regarding disclosure in a Professional Opinion, shall not be considered compliance with Association Standards. Professional judgment and responsibility may, in appropriate cases, justify a departure from the strict application of the requirements under the Association Standards.

29.18 Professional Opinions prepared in connection with the Subject Transactions shall contain disclosure sufficient to enable the directors and security holders of the particular issuer to understand the principal judgments and principal underlying reasoning of the Valuer in its Professional Opinion so as to form a reasoned view on the valuation conclusion or the opinion as to fairness expressed therein.

29.19 A Valuer shall consider the level of disclosure described in By-laws 29.20 through 29.24 when considering the appropriate level of disclosure in a Professional Opinion concerning valuation methodologies or matters not specifically addressed in such By-laws but that are important in reaching a valuation or fairness conclusion.

20.20 A Professional Opinion that is a Formal Valuation prepared by a Member shall disclose the following information:

1. the identity and credentials of the Member, including the general experience of the Member in valuing other businesses in the same or similar industries as the business or issuer in question or similar transactions to the Subject Transaction, the Member's understanding of the specific marketable securities involved in the Subject Transaction and the internal procedures followed by the Member to ensure the quality of the Professional Opinion;
2. the date the Valuer was first contacted in respect of the Subject Transaction and the date that the Valuer was retained;
3. the financial terms of the Valuer's retainer;

4. a description of any past, present or anticipated relationship between the Valuer and any interested party or the issuer which may be relevant to the Valuer's independence for purposes of the Applicable Securities Laws;
5. the subject matter of the Formal Valuation;
6. the effective date of the Formal Valuation;
7. a description of any specific adjustments that have been made in the Valuer's conclusions by reason of an event or occurrence after the effective date;
8. the scope and purpose of the Formal Valuation, including the following statement:

"This Formal Valuation has been prepared in accordance with the Disclosure Standards for Formal Valuations and Fairness Opinions of the Investment Dealers Association of Canada but the Association has not been involved in the preparation or review of this valuation.";

9. a description of the scope of the review conducted by the Valuer, including a summary of the type of information reviewed and relied upon (such as the documents reviewed, individuals interviewed, facilities visited, other expert reports considered and management representations concerning information requested and furnished to the Valuer);
10. a description of any limitation on the scope of review and the implications of such limitation on the Valuer's conclusions;
11. a description of the business, assets or securities being valued sufficient to allow the reader to understand the valuation rationale and approach and the various factors influencing value that were considered;
12. definitions of the terms of value used in the Formal Valuation (such as "fair market value", "market value" and "cash equivalent value");
13. the valuation approach and methodologies considered, including the rationale for valuing the business as a going concern or on a liquidation basis and the reasons for selecting a particular valuation methodology and a summary of the key factors considered in selecting the valuation approach and methodologies considered;
14. the key assumptions made by the Valuer;

15. any distinctive material value that the Valuer has determined might accrue to an interested party, whether this value is included in the value or range of values arrived at for the subject matter of the Formal Valuation and the reasons for its inclusion or exclusion;
16. a discussion of any prior *bona fide* offers or prior valuations or other material expert reports considered by the Valuer pertaining to the subject matter of the transaction and, where the Formal Valuation differs materially from any such prior valuation, an explanation of the material differences where reasonably practicable to do so based on the information contained in the prior valuation or, if it is not reasonably practicable to do so, the reasons why it is not reasonably practicable to do so; and
17. the valuation conclusions reached and any qualifications or limitations to which such conclusions are subject.

29.21 A Professional Opinion that is a Fairness Opinion prepared by a Member shall disclose the following information:

1. the identity and credentials of the Member, including the general experience of the Member in providing Fairness Opinions in connection with transactions similar to the Subject Transaction, the Member's understanding of the specific marketable securities involved in the Subject Transaction and the internal procedures followed by the Member to ensure the quality of the Professional Opinion;
2. the date the Member was first contacted in respect of the Subject Transaction and the date that the firm was retained;
3. the financial terms of the Member's retainer;
4. a description of any past, present or anticipated relationship between the Member and any interested party which may be relevant to the Member's independence for purposes of providing the Fairness Opinion;
5. the scope and purpose of the Fairness Opinion, including the following statement:

"This fairness opinion has been prepared in accordance with the Disclosure Standards for Formal Valuations and Fairness Opinions of the Investment Dealers Association of Canada but the Association has not been involved in the preparation or review of this fairness opinion.";

6. the effective date of the Fairness Opinion;
7. a description of the scope of the review conducted by the Member, including a summary of the type of information reviewed and relied upon (such as the documents reviewed, individuals interviewed, facilities visited, other expert reports considered and management representations concerning information requested and furnished to the Member);
8. a description of any limitation on the scope of review and the implications of such limitation on the Member's opinion or conclusion;
9. a description of the relevant business, assets or securities sufficient to allow the reader to understand the rationale of the Fairness Opinion and the approach and various factors influencing financial fairness that were considered;
10. a description of the valuation or appraisal work performed or relied upon in support of the Member's opinion or conclusion;
11. a discussion of any prior *bona fide* offer or prior valuation or other material expert report considered by the Member in coming to the opinion or conclusion contained in the Fairness Opinion;
12. the key assumptions made by the Member;
13. the factors the Member considered important in performing its fairness analysis;
14. the statement of opinion or conclusion as to the fairness, from a financial point of view, of the Subject Transaction and the supporting reasons; and
15. any qualifications or limitations to which the opinion or conclusion is subject.

29.22 If concern is expressed to a Member regarding the proposed disclosure in a Professional Opinion of competitively or commercially sensitive information regarding an interested party or issuer, the Member may seek a decision of the special committee of the issuer's independent directors (the "special committee") as to whether the perceived detriment to an interested party, the issuer or its security holders of the disclosure of such information in the Professional Opinion outweighs the benefit of disclosure of such information to the readers of the Professional Opinion. Compliance with any such decision of a special committee shall also constitute compliance with the Association Standards in respect of the matters that are the subject of the decision.

29.23 A Professional Opinion that is a Formal Valuation prepared by a Member in connection with a Subject Transaction shall disclose the following:

1. **Annual Financial Information.** Unless otherwise disclosed through the Canadian continuous disclosure obligations of the issuer or in a disclosure document published in connection with the transaction to which the Professional Opinion applies, the Professional Opinion shall disclose a summary of selected material financial information derived from the most recent year-end balance sheet and income statement and statement of changes in financial position for the most recently completed fiscal year as well as from the balance sheet, income statement and statement of changes in financial position for the immediately preceding fiscal year.

2. **Interim Financial Information.** Unless otherwise disclosed through the Canadian continuous disclosure obligations of the issuer or in a disclosure document published in connection with the transaction to which the Professional Opinion applies, the Professional Opinion shall disclose a summary of selected material financial information derived from the most recent interim balance sheet (if any), income statement and statement of changes in financial position for the current fiscal year and the comparable statements for the same interim period of the immediately preceding fiscal year.

3. **Discussion of Historical Financial Statements or Financial Position.** The Professional Opinion shall include comment on material items or changes in the issuer's financial statements together with appropriate commentary on items which may have particular relevance to the Professional Opinion. Examples of such items include unusual capital structures, unrecognized tax-loss carryforwards and redundant assets.

4. **Future-Oriented Financial Information.** To the extent that the Valuer has relied upon future-oriented financial information ("FOFI"), the Valuer shall disclose the FOFI, at least in summary form, unless otherwise determined by a decision of the special committee referred to in By-law 29.22. To the extent that the FOFI relied upon by the Valuer varies materially from the FOFI provided to the Valuer by the issuer or the interested party, the Valuer shall disclose the nature and extent of such differences and the rationale of the Valuer supporting its judgments.

5. **FOFI Assumptions.** To the extent that FOFI is relied upon (whether or not the FOFI itself is disclosed), key financial assumptions (such as sales, growth rates, operating profit margins, major expense items, interest rates, tax rates, depreciation rates, etc.), together with a brief statement supporting the rationale for each specific assumption, shall also be disclosed, unless otherwise determined by a decision of the special committee referred to in By-law 29.22.

6. **Economic Assumptions.** Any key economic assumptions having a material impact on the Professional Opinion shall be disclosed, noting the authoritative source used by the Valuer, including interest rates, exchange rates and general economic prospects in the relevant markets.

7. **Valuation Approach, Methodologies and Analysis.** The Professional Opinion shall set out the valuation approach and methodologies adopted by the Valuer, together with the principal judgments made in selecting a particular approach or methodology, a comparison of valuation calculations and conclusions arrived at through the different methods considered and the relative importance of each methodology in arriving at the overall valuation conclusion. Depending upon the valuation techniques used by the Valuer, the specific information referred to in items 8 through 12 below shall be disclosed.

8. **Discounted Cash Flow Approach.** The Professional Opinion shall include a discussion of all relevant qualitative and quantitative judgments used to calculate discount rates, multiples and capitalization rates. If the Capital Asset Pricing Model is used, disclosure shall include the basis for determining the discount rate including the risk-free rate, market risk premium, beta, tax rates and debt-to-equity capital structure assumed. The Valuer shall also disclose the basis for the determination of the terminal/residual value together with the underlying assumptions made. The source of the financial data which formed the basis of the discounted cash flow analysis, summary of major assumptions (if not already disclosed) and the details and sources of any economic statistics, commodity prices and market forecasts used in the valuation approach shall also be disclosed. In addition, a summary of the sensitivity variables considered and the general results of the application of such sensitivity analysis shall be disclosed along with an explanation of how such sensitivity analysis was used in the determination of the range of valuation estimates resulting from the discounted cash flow approach. Where the nature of the FOFI and the subject matter of the valuation make it reasonably practicable and meaningful to do so, selected quantitative sensitivity analyses performed by the Valuer shall be disclosed to illustrate the effects of variations in the key assumptions on the valuation results. In determining whether quantitative sensitivity analyses would be meaningful to the reader of the Professional Opinion, the Valuer shall consider whether such analyses adequately reflects the Valuer's judgment concerning the inter-relationship of the key underlying assumptions.

9. **Asset Based Valuation Approach.** The Professional Opinion shall separately disclose the values of each significant asset and liability including off-balance sheet items (unless otherwise determined by a decision of the special committee referred to in By-law 29.22). If a liquidation-based valuation approach has been utilized, the Professional Opinion shall set out the liquidation values for each significant asset and liability together with summary estimates for significant liquidation costs.

10. **Comparable Transaction Approach.** The Professional Opinion shall disclose (preferably in tabular form) a list of relevant transactions involving businesses the Valuer considers similar or comparable to the business being valued. Adequate disclosure shall include the date of the transaction, a brief descriptive note, and relevant multiples implicit in the transaction which may include earnings before interest and taxes ("EBIT"), earnings before interest, taxes depreciation and amortization ("EBITDA"), earnings, cash flow and book value multiples and take-over premium percentages. In the body of the Professional Opinion there shall be a discussion of such transactions together with an explanation as to how such transactions were used by the Valuer in arriving at a valuation conclusion with regard to the comparable transaction approach.
11. **Comparable Trading Approach.** The Professional Opinion shall disclose (preferably in tabular form) a list of relevant publicly traded companies the Valuer considers similar or comparable to the business being valued. Adequate disclosure shall include the date of the market data, the relevant fiscal periods for the comparable company, a brief descriptive note regarding the comparable company and relevant multiples implicit in the trading data which may include EBIT, EBITDA, earnings, cash flow and book value multiples. In the body of the Professional Opinion there shall be a discussion as to the comparability of such companies, together with an explanation as to how such data was used by the Valuer in arriving at a valuation conclusion with regard to the comparable trading approach.
12. **Valuation Conclusions.** The Valuer shall develop a final valuation range by using a single valuation methodology or some combination of value conclusions determined under different methodologies/approaches. The Professional Opinion shall include a comparison of the valuation ranges developed under each methodology and a discussion of the reasoning in support of the Valuer's final conclusion.

29.24 A Professional Opinion that is a Fairness Opinion prepared by a Member in connection with a Subject Transaction shall include the following:

1. **Fairness Opinion Valuation Analyses.** While it is generally acknowledged that both the scope and the objectives of a Fairness Opinion differ from those of a Formal Valuation (whether or not the Fairness Opinion is delivered in a transaction where a Formal Valuation exemption is being relied upon), a Fairness Opinion shall include a general description of any valuation analysis performed by the opinion provider or specific disclosure of a valuation opinion of another Valuer which is being relied upon. However, the opinion provider is not required to reach or disclose specific conclusions as to a valuation range or ranges in a Fairness Opinion.
2. **Fairness Conclusions.** The specific reasons for the conclusion that the Subject Transaction is fair or not fair to security holders, from a financial point of view, shall be set out in the conclusion section of the Professional Opinion. Support for

each of these specific reasons shall be contained in the body of the Professional Opinion in sufficient detail to allow the reader of the opinion to understand the principal judgments and principal underlying reasoning of the opinion provider in reaching its opinion as to the fairness of the transaction.

29.25 There shall be a Business Valuations Committee of the Association appointed by the Board of Directors, membership in which shall be restricted to persons in the employ of Members who prepare Professional Opinions and similar documents and persons with similar responsibilities. The Business Valuations Committee shall make recommendations to the Board of Directors on interpretations of By-laws 29.14 through 29.24 and the Committee or individual Members thereof shall provide advice and assistance to the Board of Directors and securities regulatory authorities with respect to Professional Opinions. The Business Valuations Committee may make such rules relating to the organization and operation of the Committee as are deemed necessary and as are approved by the Board of Directors."

DRAFT - MARCH 12, 1997

INTERPRETATION NOTES

The Association has recently passed By-laws 29.14 through 29.24 dealing with Disclosure Standards for Formal Valuations and Fairness Opinions.

In certain situations the requirements specified in the disclosure standards require interpretation.

1. By-law 29.17

By-law 29.17 specifies that the specific requirements of the By-law relating to the preparation and disclosure of Professional Opinions is not a substitute for the professional judgment and responsibility of the Valuer. In certain circumstances professional judgment and responsibility may justify a departure from the strict application of the requirements. Accordingly, By-law 29.17 expressly acknowledges the important role of professional judgment and responsibility of the Valuer in Formal Valuation and Fairness Opinion disclosure.

2. By-law 29.18

By-law 29.18 requires that Professional Opinions must contain disclosure sufficient to enable the directors and security holders of the particular issuer to understand the principal judgments and principal underlying reasoning of the Valuer in its Formal Valuation or Fairness Opinion, as the case may be, so as to form a reason to view on the valuation conclusion or the opinion as to fairness expressed therein. This does not mean that Valuers are required to provide the level of detail necessary to enable the reader to perform his, her or its own valuation of the subject matter of the transaction or analysis of the financial fairness of the transaction.

3. By-law 29.23

The Association Standards describe the type and level of financial and valuation information that is required to be disclosed in Formal Valuations depending upon the valuation approach and the methodologies applied. In proposing these standards the Association recognizes that no set of disclosure standards can be constructed to suit all circumstances or combinations of circumstances that may arise nor is there any substitute for the exercise of professional judgment in determining what constitutes appropriate disclosure in a particular case.

These disclosure standards would not apply to immaterial items. While materiality should be a matter of professional judgment in the specific circumstances the Association believes that, as a general rule, the decision to disclose specific financial or valuation information in a Formal Valuation should be judged in relation to the significance of the financial valuation disclosure to the readers of the Professional Opinion and whether the omission of the disclosure would materially affect the reader's understanding of the principal judgments and underlying reasoning of the Valuer.

The Association also recognizes that, in the normal course of an engagement, Valuers have access to significant amounts of non-public information (whether from external or internal sources) which is essential in developing the Valuer's conclusions. Since appropriate disclosure of financial and valuation information is highly desirable in allowing the users of the Professional Opinion to understand the principal judgments and underlying reasoning of the Valuer in its Formal Valuation, the Association Standards provide that non-disclosure of material non-public financial and valuation information obtained from the issuer or interested party or their respective affiliates, agents or advisors, should be limited to those occasions when the

perceived detriment to the interested party, the issuer or its security holders of the disclosure of such information outweighs the benefit of the disclosure of such information to the intended recipients of the Professional Opinion, as determined by a decision of the special committee referred to in By-law 29.22. Where the information is derived from other sources, the Valuer should make the determination as to whether such information should be disclosed based on its professional judgment having regard to confidentiality and other relevant considerations.

4. By-law 29.24

Due to the fundamental differences between Fairness Opinions and Formal Valuations in both their scope and objectives and in recognition of the fact that Fairness Opinions are not furnished in response to a legal or regulatory requirement, the Association is of the view that the type and level of disclosure of financial and valuation information and analysis in a Fairness Opinion should be left to the professional judgment of the opinion provider. By-law 29.24, however, requires certain additional requirements for or commentary on disclosure in Fairness Opinions.

Investment Dealers Association of Canada

Amendment to Constitution

The Constitution is amended by repealing and replacing paragraph 2(c) as follows

"(c) To establish, and enforce compliance with, standards and requirements relating to capital market participants for the protection of Members, their clients and the public;"