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July 8, 2003

Mr. Michael Phelps (Chair)
WPC Committee to review the structure of securities regulation in Canada
P.O. Box 10026
700 West Georgia Street
Vancouver, B.C.
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Dear Mr. Phelps:

The Ontario Securities Commission welcomes the opportunity to comment on the direction of securities regulation in Canada.

The Finance Minister of Canada's decision to appoint a Committee of Wise Persons to consider a national approach to securities regulation is a demonstration of the kind of political will needed to reform our regulatory structure and keep up with the changing nature of financial markets.

Over the past few decades, a number of market participants have advocated a level playing field across Canada, with issuers and dealers subject to the same rules and regulations in each province. Many have stressed the need to keep down the costs of review, enforcement and policy development, by taking advantage of economies of scale and scope – economies that can be maximized by dealing with one, rather than multiple, jurisdictions. A recent study conducted for the Investment Dealers Association of Canada (IDA) found that adopting a single national securities regulator would save the brokerage industry, issuers and investors $73 million a year directly, not including intangibles and potential indirect costs.

Market participants have emphasized the need to ensure efficiency and reduce costs for issuers, costs that ultimately flow through to investors. The Ontario Teachers' Pension Plan, one of Canada's largest institutional investors, has said: "The discretion of provinces and territories in securities law matters is an example of provincial and territorial jurisdiction getting in the way of common sense, which results in increased costs to investors and the Canadian economy."

The Investment Counsel Association of Canada also argues that Canada's regulatory structure is a competitive disadvantage, stating: "We feel that the current decentralized structure has contributed to the decline in Canada's ability to attract investment and maintain vibrant and competitive capital markets, not to mention the disadvantage it puts us in on the world markets."

Many have cited the need to maintain consistency, so that one jurisdiction cannot be leveraged against another. There is a recognition of the need to offer one common face to investors and companies. The Ontario Teachers' Pension Plan also stated: "The existing Canadian system of

multiple security regulators and inconsistent securities laws is both a puzzle and a deterrent to non-Canadians when they compare our system to single regulators in other countries."
There is a growing recognition of the importance for Canada to speak with a common voice – in international regulatory fora and in providing fair and effective regulation within our country. This is increasingly vital as the importance of borders recedes, both within nations and between them. Many have focused attention on Canada's uniquely disparate structure for securities regulation, and asked whether it makes sense for Canada to remain the only country in the G7 not to have a single national securities regulator. Barclays Global Investors told a committee of the Canadian Securities Administrators: "Of all the jurisdictions in which BGI does business globally, Canada is likely the most complicated and costly from a regulatory perspective. The single most problematic aspect of the Canadian securities regulatory regime is the absence of a national or federal regulatory authority charged with enforcing a single or uniform set of securities laws and rules."

In fact, to our knowledge, of the 103 countries (including 20 with federal political structures) represented in the International Organization of Securities Commissions, only two lack a national or supra-national securities regulator: Canada and Bosnia-Herzegovina. (Bosnia-Herzegovina is a federal state consisting of (1) the Federation of Bosnia and Herzegovina and (2) the Republic of Syrpska. Each of these regions has its own securities regulator.) The eight members of the West African Economic and Monetary Union have a single supra-national securities regulator.

The issues raised by the Wise Persons' Committee are relevant and timely. Indeed, they are overdue. They require a comprehensive response, one that takes into account the history of the development of securities regulation in Canada, the strengths and weaknesses of the current structure, and the changing issues and emerging needs which securities regulators must address.

The Ontario Securities Commission has been an active participant in and enthusiastic supporter of efforts to more effectively pool regulatory authority and deploy resources. We are convinced the market is no longer prepared to bear the cost of a fractured system, and we recognize that a single regulator would lead to better coordination, significant economies, and greater creativity in the regulatory process.

However, we also recognize political reality. Attempts to create a national securities commission have foundered in the past because of resistance to the notion of a *federal* commission. Such a significant transfer of responsibility from provincial to federal hands may be politically difficult to achieve. For this reason, a *national* commission does not necessarily have to be a *federal* commission. It may be more politically feasible to create a Pan-Canadian Commission, one that is created by the provinces and territories with the support, cooperation and some involvement of the federal government. A Pan-Canadian commission would provide the national focus, coordination and harmonization that is needed – without disturbing the existing constitutional distribution of powers or aggravating regional concerns that have frustrated progress in this area in the past.

Provinces participating in the Pan-Canadian Commission would delegate to it responsibility for administering securities laws. With substantially harmonized or uniform securities laws, the new agency would result in one regulator administering a single set of securities laws. Regional offices would improve the Commission's national effectiveness and draw upon existing provincial expertise, such as oil and gas in Alberta and derivatives in Quebec. Such offices would also have an important role to play in compliance and enforcement.

Of course, there would be a number of issues for the governments at both levels to address, including governance and accountability issues.

The Ontario Five Year Review Committee has added its voice to the "urgent need to assign the highest priority to this issue on the policy agenda of our respective governments and regulators". The Committee makes no recommendation about how a single Canadian securities regulator should be constituted and points to both a federal regulator and a supra-provincial body as possible options. Although we believe that a Pan-Canadian Commission may be more politically feasible, we concur with the Five Year Review Committee's recommendation that the principal goal is a single national securities regulator.

All of Canada's securities regulators share the same objective – serving the interests of investors and fostering fair and efficient capital markets. Increasingly, these provincial and territorial interests are coming into closer alignment. It is becoming harder to distinguish investment concerns in one region of Canada from another. It is becoming harder to draw a physical line anywhere in Canada and to argue that any industry begins or ends at any specific point on the map. One way or another, because of its impact on spin-off industries, suppliers, customers, or tax revenues, the vitality of an industry in one part of the country is important to all Canadians. A single national securities regulator would be a recognition that we share a national economy and are part of an international one.

Securities Reform: One Step Forward, Two Half-Steps Back

Over the past three decades, there has been considerable activity in the area of securities reform in Canada. Unfortunately, the existence of distinct commissions and separate regulatory structures across the country inevitably causes uniformity to dissolve into multiple sets of rules and regulations administered independently. In the 1970s, the provinces pursued a plan for uniformity, when many adopted a Uniform Act based on Ontario securities law. However, each province retained the option of amending the code when justified by local circumstances. Over time, the exceptions once again became the rule, driving provincial securities laws further apart.

More recently, interprovincial and territorial harmonization has been pursued through the Canadian Securities Administrators (CSA), a largely informal and somewhat ad hoc body voluntarily serving as a national council for the 13 provincial and territorial regulators. The CSA has contributed significantly to harmonizing Canada's securities laws, and their administration and enforcement. Its achievements include the Mutual Reliance and Review Systems (MRRS), which allows all of the securities regulators across Canada to rely on the review of one regulator in assessing applications for discretionary relief and review of prospectuses and annual information forms; the National Registration Database (NRD), a web-based system that allows dealers and advisors to file registration forms electronically; the System for Electronic Document Analysis and Retrieval (SEDAR), which makes available on the Internet public documents filed by reporting issuers; and the System for Electronic Disclosure by Insiders (SEDI), a central electronic system for insider reporting that was launched in May.

The CSA has advanced legislative harmonization in a number of areas important to securities policy, through the development of “National Instruments” – rules and regulations developed through the cooperative efforts of the CSA and subsequently adopted in each of the provinces and territories. There are now approximately twenty-five such “National Instruments”, dealing with a wide range of issues.

Regulators serve as the point of contact for Self-Regulatory Organizations (SROs). Reliance on SROs (including exchanges) has been seen by some as a way to achieve a form of national regulation, as well as more timely and efficient regulation. However, the same rules are applied differently in different jurisdictions, and there are differences in how regulators interact with and oversee SROs. For example, the IDA has member firms with clients in every jurisdiction in Canada, but less than half of the jurisdictions recognize it. (Quebec participates but does not recognize the IDA.) Each SRO has a principal regulator, but the process is inefficient given that the principal regulator must spend significant time performing administrative, consolidation and coordination functions that would be obviated by a national regulator.

CSA policies, systems and programs play an important role in ensuring consistency, efficiency and fairness in the development and enforcement of securities regulation across Canada. The CSA contributes to national debate and discussion of regulatory issues. It facilitates the work of securities commissions.

But it cannot substitute for a single national regulator. As the law firm Torys LLP stated to the Five Year Review Committee, which recently completed its legislatively mandated review of Ontario’s *Securities Act*: “ With respect to the efficiency of our regulatory model, we believe that much work needs to be done to reduce the duplicative and costly system of provincial regulation that exists in Canada. While much effort has been expended in making our current system operate more effectively, it is simply not credible to argue that the involvement of multiple regulators that exists within the CSA can achieve the efficiency of a national securities regulator.”

The Steep Cost of Incremental Progress

Consider the progress of MRRS. Its development has clearly been an example of progress in Canadian securities regulation, allowing issuers to deal with one principal regulator rather than all 13 for a number of issues. Staff of the principal jurisdiction makes recommendations on behalf of all jurisdictions, and the issuer receives a single decision document rather than 13.

It is easy to see the advantages MRRS offers. It takes the informal cooperation that the CSA has fostered and begins to formalize it. It streamlines the regulatory process in a number of areas. It does this without legislative change and without disrupting the existing balance of regulatory power, or requiring any jurisdiction to cede any existing authority. But the limitations that have made it possible for it to be implemented under the existing structure also severely restrict its benefits. In this respect, the Canadian Association of Insurance and Financial Advisors (CAIFA) has said: “While we have come to appreciate the ability of a lead regulator to coordinate a series of interprovincial applications, we believe the potential for mutual reliance remains to be realized. For example, there can be little justification for the continuing need to file individual paper applications to each regulator and to pay fees for amounts that vary from $0 to $750 to each regulator when the lead or coordinating regulator charges $450 and does most of the work.”

As CAIFA points out, MRRS does not reduce costs to industry, as fees generally have remained constant and any jurisdiction, not just the principal jurisdiction, can conduct its own review. It does not ensure uniformity, with each jurisdiction retaining the right to opt out of MRRS decisions. It has not led to uniform securities laws across the country; differences remain in several areas, including prospectus and registration requirements, takeover bids, continuous disclosure and enforcement powers. It does not provide market participants with any relief from the need to comply, be familiar with, and seek advice on 13 separate sets of rules and regulations.

In other words, MRRS does little to solve the principal problems that are caused by the lack of a single national regulator. It does not substitute for the national regulator that exists in every other major competitive nation and all other IOSCO countries except Bosnia-Herzegovina and Canada.

MRRS does take some of the burden off market participants – but even then, it shifts that burden within regulatory bodies. Resources are diverted from other priorities that regulatory bodies could and should be pursuing, such as improvements in registration and the creation of national systems to facilitate the administration of securities laws. It is like sticking your finger in a dike; it just creates a flood of pressure elsewhere. It should be noted that protocols like MRRS do not come into place and cannot be maintained in the absence of significant allocation of resources. It took the efforts of many staff, from commissions across Canada over many years, to bring it into being. Significant resources were allocated to compensate for the absence of a national regulator, which could have provided a more efficient process.

As noted earlier, a significant investment of resources has been made in other regulatory tools such as NRD, SEDAR and SEDI -- systems that add considerable value to the efforts of regulators across the country. However, our regulatory structure and decision-making processes have resulted in significant delays and increased costs for these systems.

SEDI was established by the CSA to catch up with the shift from paper to electronic communications. Through SEDI, information regarding insider trading will be available across the country virtually as soon as the information is filed. For reporting issuers, SEDI provides ease of use and the ability to file statutory reports electronically on a 24/7 basis. For investors, it provides free, searchable public access to insider trading information. For our market system, it will provide transparency and deter insider trading on confidential information.

SEDAR was established by the CSA in 1997 to facilitate the electronic filing of securities information, allow for its public dissemination, and provide electronic communication between electronic filers, agents, and regulatory agencies.

There are significant benefits to both SEDI and SEDAR. The obvious question is: Why did it take so long to set them up? Five years transpired from the time SEDI was first proposed until the time it was implemented. Five years of debate on the nature of the system and what it would include. Five years of discussion of the legal requirements. The experience was similar with both SEDAR and NRD.

It is also worth considering both the strengths and weaknesses of NRD, which was designed in consultation between securities regulators and supported by industry to harmonize and improve the registration process across Canadian jurisdictions.

Prior to the launch of NRD in March of this year, all individuals involved in trading, underwriting or advising with respect to securities were registered using a paper-based system, with an average approval period of up to four weeks. Registration could take much longer due to simple deficiencies, and prospective registrants could lose significant revenue opportunities while awaiting approval. Under NRD, registrants can submit one application electronically to register in multiple jurisdictions, rather than submitting multiple paper forms separately with each province and territory. In addition, NRD performs a completion check reducing the number of simple deficiencies.

It is interesting to note that a survey of the benefits of NRD found that registrants place at the head of the list “one-stop shopping,” the ability to register for all provinces and territories in one place. The results, based on responses from 131 out of 589 firms surveyed, representing over 80% of assets under management in Canada, provides a useful illustration of the value placed on the ability to file with one commission.

The benefits of a single, more timely process of registration as offered by NRD are clear. Unfortunately, so are the limitations. In particular, in building the NRD system, including the harmonized application form, it was necessary, for political reasons, to take into account all of the existing systems and their differences, rather than seek to harmonize the underlying requirements. This in turn made the process of developing NRD, and the system itself, more complex -- and therefore potentially more costly to applicants – than it had to be. In that respect, applicants and ultimately investors are paying for the cost of consensus.

These programs, and the time it took to launch them, are graphic reminders of the difficulties that are inherent in attempting to bring together 13 provinces and territories. The creation of SEDI, SEDAR and NRD were systems projects dealing with relatively straightforward issues that transcend political boundaries. Experience has demonstrated that given our regulatory structure, these are difficult issues to deal with on a national basis. It is unacceptable that we cannot deal with ongoing issues that reflect how business is conducted every day in a timely and more efficient way. Under Canada’s regulatory structure it seems that the issues that are often easier to deal with quickly on a national basis are problems that threaten to turn into crises. For example, Canada's system of market regulation has been able to respond to the corporate scandals in the United States and the introduction of the Sarbanes-Oxley market reforms with a Canadian solution. We need a market regulator that can address issues on a national basis, make timely decisions that bind all Canadian jurisdictions, and deal with potential crises before they become actual ones.

Harmonization:
Would Uniform Securities Legislation Provide the Cohesion Canada Needs?

In the face of duplication of resources, regulators are in the midst of a major effort to streamline and harmonize securities regulations. The Uniform Securities Legislation (USL) project is the task of a CSA committee chaired by Stephen Sibold, chair of the Alberta Securities Commission. The project is aimed at achieving uniformity among the 13 provincial and territorial sets of securities legislation. It has achieved considerable progress, including forging agreement in concept across the jurisdictions on the hundreds of changes necessary to make Canada's securities laws uniform. That includes, for example, a streamlined registration system (passport registration), delegation of decision making, uniform registration and prospectus requirements, and exemptions.

This kind of initiative is valuable, and is a significant improvement toward streamlining and harmonizing our securities legislation. However, it does not go far enough. Barclays Global Investors told the USL Steering Committee: "The USL proposal only addresses half the problem … While the USL proposal does offer some improvement over where we are today, we believe that the energy spent in its pursuit would be much better spent working jointly with the Wise Persons' Committee established by the federal government to identify and implement a truly harmonized approach to securities regulation through a single federal or national regulator."

Even if adopted by all provinces and territories, the USL proposal would still leave Canada with a system in which market participants support 13 different securities regulators. It would still leave Canadian market participants with a regulatory structure in which 13 separate regulators have the capacity to apply rules differently in similar situations. Canada would still face a situation where any one jurisdiction can add to the regulatory burden of all participants across the country. Moreover, there is one thing that Uniform Securities Legislation cannot do, and that is provide assurance that Canada will *continue* to maintain a uniform securities code. Provincial legislatures would always have the option of changing their own province's laws and regulations. Even if the current governments committed themselves to maintaining uniformity, newly elected provincial governments could decide to amend their province's own legislative code, perhaps citing unique circumstances. One such action by a provincial government could trigger others, ultimately leading Canada back down the path to 13 separate sets of securities rules and regulations. Achieving a uniform code today would be a significant achievement; unfortunately, no one could guarantee it would be a lasting achievement.

Some market participants have also expressed concern about putting too much faith in harmonization because of the inherent difficulties in obtaining strong, timely action from a decentralized and fragmented structure. It is difficult to shape creative policies when attempting to bring together so many jurisdictions. Some observers have described the process of harmonization as a “race to the bottom” in which jurisdictions hold each other back from pursuing innovative policies in a timely fashion.

More Than a Collection of Regions

Some express concern that the unique regional and local characteristics of capital markets would be lost under a national securities regulator. But how distinct are market differences among Canada’s provinces? And to what extent do they justify regional regulatory fragmentation?

Some argue that Canada’s uniquely decentralized regulatory structure is justified by regional variations in the size of issuing companies, particularly the concentration of small-cap companies in western Canada. In fact, far more small-cap publicly-traded companies are located in Ontario than any other province. As of March 2002, more than 300 TSX companies and almost 100 CDNX companies with market capitalization between $5 million and $75 million were registered in Ontario; the second-highest concentration was in British Columbia, with roughly 100 TSX companies and a little over 150 CDNX companies in that range. The combined market value of the small-cap Ontario-based companies on the TSX exceeded $8 billion, out of a total value of $20.52 billion; the combined market value of Ontario companies in that range on the TSX Venture Exchange exceeded $1 billion, out of a national total of $6.92 billion.

Alberta and B.C. have more microcap listings (capitalization of $5 million or less). But small, entrepreneurial companies are not unique to any region. Over 95% of the firms in Newfoundland and Labrador have fewer than 50 employees. Over half of the venture capital raised in Canada last year was invested in Ontario. Small businesses exist in every province, and they all require capital. Policies which encourage small business investment, publicly or privately, should not be concentrated in one region. The fact that some Western provinces have particular experience dealing with the issues related to small business investment is not an argument for separate regulatory structures – it is an argument for consolidating them so all provinces can benefit from the combined expertise.

Some argue that the differing sectoral natures of Canada’s regional economies is what distinguishes this country from others, and what explains the absence of a national securities regulator. But is Canada truly that unique in this regard?

The economy of the United Kingdom, for example, is characterized by financial services in the City of London – with 20% of the world’s insurance business and 20% of total bank lending as well as a leading derivatives market – and manufacturing in such geographically diverse cities as Greater London, Manchester, Birmingham and Newcastle. Northern England is known for mining, southwestern England and Scotland for fishing. Scotland is characterized by the production of computers, hydroelectricity, and whiskey. The North Sea offers one of the world’s largest known reserves of oil and natural gas. Regional economic diversity is obviously not unknown in the U.K.

Nor is it unfamiliar to Australia, which is known for banking in Sydney, manufacturing in New South Wales and Victoria, diamond and gold mining in Western Australia, petroleum in Bass Strait, Barrow Island, and southern Queensland, dairy farming in Victoria and Tasmania, and wool production in New South Wales and Western Australia, which are responsible for about 25% of the world's wool output.

Our neighbour, the United States, is known for financial services and entertainment in New York, dairy and poultry farming in the upper northeast and the Midwest, agriculture and mining in the south, and forestry in the Pacific Northwest. California alone is known for agriculture in the north, high-tech companies in Silicon Valley, financial services in San Francisco, and film production in Los Angeles.

The United Kingdom, Australia, and the United States – based on the variation of regional areas of economic specialization, it is hard to believe we are talking about only three different countries. But each is one country, made up of one national market, and served by a national securities regulator.

There are, of course, regional economic concerns within Canada, but no longer is anything *just* a regional concern; no economic sector or issue is the exclusive concern of any province, territory or region. The oil industry is of as much potential interest to investors in Ontario or Quebec as it is in Alberta. The auto parts industry is of as much potential interest to investors in Alberta as it is to investors in Ontario; the biotech industry is as important to investors in Prince Edward Island as to investors in Quebec.

Indeed, regional economic distinctions that once seemed fixed and rigid are now evolving and blurring with time. Energy developments in Newfoundland and Labrador, Nova Scotia, and the Northwest Territories are an important and growing feature of each of those economies. Mining is important to almost every province and territory. At the same time, all have legitimate aspirations to increased high-tech investment. The telecommunications sector, for example, is one of the largest employers in both British Columbia and Ontario.

This is truly a situation where the whole is greater than the sum of its parts. In fact, all provinces and territories could benefit from the sectoral expertise that each can bring to the table. For example, Alberta's expertise in the oil and gas industry, built up over many years, would be an asset to a national regulatory process, benefiting all Canadians.

The interests of market participants in all parts of the country depend on the economies of scope and scale that consolidation of the provincial and territorial regulatory functions can provide. By combining the resources of all commissions, it is possible to give increased depth to the service offered the entire country. By combining functions that are currently splintered among the various commissions, increased scale makes it possible to provide specific expertise in emerging economic sectors. It would be possible to pool resources in research, policy development, and all application reviews.

The truth is, fragmentation is a self-fulfilling cycle. The existence of separate markets with unique characteristics is seen to justify a fractured regulatory system, which fosters fragmentation.

The markets are more and more global and our own regulatory issues are increasingly North American, let alone national. In this context, achieving the best regulatory structure for Canada should not be impeded by outdated notions of regional markets and interests.

Facilitating Compliance

In terms of facilitating compliance, the current regulatory structure offers both strengths and weaknesses.

The National Compliance Review is an example of how the provincial securities commissions work together to review either a particular registrant or an issue on a national basis. We are able to look at an issue across Canada and determine a consistent approach to dealing with it.

Commission compliance departments across the country share information. If another Commission is planning to review a registrant that has a presence in Ontario or register a new firm, for example, they will call the OSC compliance department for information relating to any compliance field reviews conducted in Ontario.

Ontario has sometimes sought the participation of other jurisdictions when conducting reviews. A recent example is the sweep of high-risk market participants in April/May 2003.

However, compliance efforts are sometimes hobbled – or at least slowed – by political borders. Firms are subject to different rules and regulations in each province.

Because each commission has jurisdiction strictly over business activities carried out in its province, the scope of a compliance review is limited. When conducting a compliance review of a company with locations in more than one province, any terms and conditions we apply on the registration of the firm would only apply in Ontario, even though the issues identified may also be present in other provinces.

Capital requirements vary across the country. For example, Ontario requires that advisers calculate their capital requirements using consolidated financial statements. A few registrants have filed unconsolidated financial statements with the OSC on the basis that they were acceptable in another jurisdiction and should, therefore, also be acceptable to the OSC. In these circumstances, the registrant incurred an extra cost of preparing a consolidated set of financial statements to satisfy the OSC requirements.

There is considerable inconsistency from province to province. For example, Ontario imposes terms and conditions on the registration of a registrant if their audited financial statements are filed late. Ontario also requires that capital deficiencies be rectified within 48 hours. In contrast, other jurisdictions may deal with these types of situations differently.

When a firm has a national presence, resolving contentious issues may be more difficult. A registrant may be able to lobby one provincial securities commission for a more favorable interpretation or outcome and then use this in its negotiations with other provincial commissions.

Firms registered in more than one province result in considerable duplication. Although certain filings are consistent in every jurisdiction, legislation requires financial statements to be filed in every jurisdiction as opposed to just one.

Registrants with locations in more than one province could be subjected to compliance reviews from more than one jurisdiction. While this ensures that regional differences are accounted for, it is inefficient from the registrant's point of view.

Facilitating Enforcement

It is important to consider the potential impact of any change in regulatory structure on our ability to enforce securities laws. The enforcement units of the provincial and territorial commissions work together currently, and provide an effective and cooperative system for the investigation and prosecution of breaches of securities laws across Canada. While the differences in the various acts do create some minor hurdles to the process, enforcement units usually manage to overcome them without unnecessary hindrance.

However, the effectiveness of the current structure depends heavily on cooperation of the individuals involved. Should one of the jurisdictions determine that assisting another jurisdiction is no longer a priority, that would cause a significant impediment. Thus, one advantage of a single national securities regulator would be that it would take the cooperative approach currently employed by the enforcement units of the commissions and carve it into stone.

Assuming that equivalent legislation were to be passed at the federal level, there are a few areas where the enforcement process would obtain significant benefits.

Evidence-gathering: There are several ways in which the gathering of evidence would be enhanced. In cases where the evidence is dispersed over more than one province, under current law the investigating jurisdiction must seek and obtain the assistance of the other jurisdictions to utilize their compulsory powers to gather evidence in those jurisdictions. Under a national regulatory system, a single compulsory power could be used by a single regulator to gather evidence across the country. The significance of this should not be overlooked. The increasing complexity of financial transactions means that inter-jurisdictional activity is becoming more the rule than the exception. On occasion, businesses with national scope hide behind the fragmented regulatory system as an excuse not to cooperate with commission investigations. Where some component of information we seek from the entity here is found in one of their offices elsewhere, provincial commission enforcement officials are often told to get the information directly from the out-of-province entity. A national regulator would not face such an obstacle.

Compelling Testimony: Similar to the point above, a provincial regulator lacks the ability to compel the attendance of a witness from another jurisdiction. While this can be done at the investigation stage by compelling the witness pursuant to an investigation order in the other jurisdiction, no such authority may be used at the hearing stage. A national system would overcome these hurdles by enacting legislation to provide an effective means of compelling a witness from one jurisdiction to provide evidence to a hearing in another.

Prohibiting Offenders From Market Activity: Under current procedures, when an offender is banned after a hearing from participating in the capital markets in that jurisdiction, there is nothing that prohibits the person from simply changing jurisdictions. There is substantial debate as to the extent to which a Commission can rely on an order from another jurisdiction as the basis for prohibiting the person from participation in the local capital markets. At the very least, it would have to issue its own order of prohibition. An order issued by a national commission, on the other hand, would have national effect. Similar issues arise regarding orders prohibiting the trading in the securities of an issuer.

A National Commission: Surpassing the Political Hurdles

Canada’s provincial and territorial securities commissions have been working for greater harmonization, both in rules and regulations and in systems and programs. We have seen some successes. But progress is slow, inefficient and costly, and leaves Canada at a competitive disadvantage.

This view reflects the strongly-held opinion of institutional investors, such as the Ontario Teachers’ Pension Plan, which flatly warns that “Canada needs to get on one page in securities administration if it hopes to compete globally.”

It reflects the views of financial service providers, as expressed by the Canadian Bankers Association, which states that “the only way to create a truly national capital market and achieve the full benefits of regulatory reforms would be to have a single uniform rule administered by a single regulatory body.” It also reflects the opinion of such private firms as Canaccord Capital Corporation, which states that “at some point we should move to a national securities commission with effective regional representation and uniform securities legislation.” And it encompasses the views of issuers such as Imperial Oil Limited, which describes a single securities regulator as “the real prize.”

More than thirty years ago, Australia was in roughly the same position as Canada regarding securities regulation. After a number of failed initiatives aimed at harmonizing securities regulation, the states and territories ultimately agreed to federal legislation dealing with securities law.

The high cost of fragmentation is a cost Canada can no longer bear; the market no longer finds it acceptable. The emphasis on regional differences over a consistent national approach creates perceptions in the international community of a fragmented capital market and ineffective regulatory structure. As noted by the Five Year Review Committee, capital markets are international in character and securities regulation in Canada needs to reflect this reality.

It is time for Canada to speak with one voice. It is time to put in place a regulatory structure that will maximize efficiency, take advantage of scale and scope, ensure a level national playing field, and encourage Canadian competitiveness. It is time to move to a national securities regulatory structure.

Thank you for the opportunity to add our voice to the debate in reforming securities regulation in Canada. I would be pleased to further discuss our comments with you.

Sincerely,

David A. Brown
Chair