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Tuesday, July 15, 2008

Mr. David Murchison
Executive Director
Expert Panel on Securities Regulation
Ottawa, ON
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Dear Mr. Murchison:

Re: Creating an Advantage in Global Capital Markets

Advocis appreciates the opportunity to comment on the consultation paper issued by the Expert Panel on Securities Regulation*, Creating an Advantage in Global Capital Markets*.

Advocis is a national professional association that is committed to preparing, promoting and protecting financial advisors in the public interest. We do this by providing a professional platform including career support, designations, best practices direction, education, timely information and professional liability insurance. This strengthens the relationship of trust and respect between financial advisors and their clients, the public, and government. Advocis is Canada's largest association of financial advisors, representing life and health insurance licensees, and mutual fund and securities registrants across the country for over a century. Our members are individuals, the majority of whom carry on business as either sole proprietors or independent, small businesses. A smaller proportion of Advocis members operate under employee-employer arrangements of financial services firms. We represent advisors at all stages of the business cycle, ranging from new entrants to the industry through to mature practices led by leaders in the industry serving a significant client base.

On February 21, 2008 the federal Minister of Finance established the Expert Panel on Securities Regulation in Canada. The Expert Panel is charged with providing advice and recommendations to the Minister of Finance, and the provincial and territorial ministers responsible for securities regulation on the best way forward to improve securities regulation. The Expert Panel has been asked to provide recommendations on the content, structure, and enforcement of securities regulation in Canada.

Prior to responding to the Panel's questions we are providing our general comments. For ease of reference, our responses will follow the ordering and headings provided in the consultation document.

General Comments:

Advocis supports a regulatory system that is principles-based, especially considering the piling on of rules and regulations that currently exist, and believes the use of prescriptive regulation should be reserved for situations that clearly require more detailed and prescriptive intervention. A regulatory framework must be instituted whereby the action of regulators is in response to clearly identified market failures, information asymmetries or consumer protection matters that adversely impact investors and investor confidence in the market. The actions adopted by the regulators should be properly designed to address only the identified problem. Under any reform process, a mechanism must be built into regulation that provides for the gathering of information that will allow regulators and capital market participants to measure, or verify the success of regulatory intervention, ensuring the object of the regulation has been successfully dealt with.

This entails that regulators adopt a sound approach to regulation, one based on detailed consultation with industry and individual participants in the capital markets. Capital market participants must take an active interest and participate in the formulation of regulation and rules. In brief, Advocis believes in a principles-based approach to regulation where the proper balance is struck between the use of principles and prescription. Advocis believes that capital market participants must be proactive and a partner with regulators in achieving a progressive, vibrant and globally competitive market place.

A framework of regulation designed to meet the above noted principles will be more efficient, responsive and cost efficient. As costs are passed along to the consumers, any framework should aim to minimize costs through the removal of redundancies which provide no added benefit to consumers or added efficiencies to capital markets.

We appreciate the political impediments from both a federal and provincial perspective making broad reform of the securities markets challenging, however, we feel the need for reform is necessary and should be dealt with decisively. Regional concerns can be addressed through many methods of reform and it would be helpful to the process if those jurisdictions which oppose a move to a common regulator would provide a clear response indicating how a common regulator would disadvantage market participants or be counter productive to the modernization of the Canadian capital markets. A discussion in a single forum where all opinions are presented will greatly improve the prospects of meaningful and speedy reform. To-date we are not aware of any such joint action, where all provincial regulators, market participants, and the federal government are directly engaging each other on the same issues with respect to reforming securities regulation. There must be full engagement from all interested and affected parties if comprehensive and meaningful reform is to be achieved. As in all consultations, there is room for divergent opinions, but it is critical to the process that all points of view are clear, public and thoughtfully presented.

The current rate of reform towards achieving economic efficiency, and effective and efficient capital markets in Canada is unsustainable if we hope to advance our international image and actively participate in a meaningful way to address systemic risks in the global capital markets.

Consultation Item 1: Objectives, Outcomes, and Performance measures

Should Canada have a common set of objectives? What should be the objective of securities regulation in Canada? Given the current context in global financial markets, should the reduction of systemic risk be an implicit objective of securities regulation? If so, how broadly should it be defined? Are there objectives for Canada that go beyond

those defined by IOSCO? For example, should an objective be to enhance the competitiveness of Canada's capital markets?

Competitive capital markets are critical to our domestic economic health. The global capital markets have undergone extraordinary, and increasingly rapid change over the last 20 years with no foreseeable slow down to the speed of innovation anticipated. In tandem with the change has been the increasingly important role the capital markets play in the overall health of the global economy. The immobilization and dematerialization of securities have provided solutions to the technical barriers that once limited the volume and speed of transactions. It has also benefited consumers as the cost of products, which factor in systemic risks, are adjusted to account for the reduction in failed trades and the subsequent legal actions which often follow. The resulting interests in securities allow for the continued creation of innovative investment vehicles that professional investment advisers and their clients use in developing, reviewing and revising long term investment plans aimed at providing the client with financial security and independence. These innovations also place increased stresses on regulators who are under constant pressure to provide the necessary environment that allows market participants to maximize investment opportunities. While many risks are minimized through innovation, other risks may materialize. Given the increasingly automated and global nature of trading, there is the added risk that financial crises are no longer isolated domestic events, but global in nature. Proactive management of global financial risk is necessary.

The provincial securities acts rightly identify the protection to investors from unfair practices, the fostering of fair and efficient capital markets and confidence in the capital markets as central tenants to securities regulation. Unstated in the provincial securities acts, yet supported in principle, is the need to advance investor education, maintain Canada's competitive position in the face of increasing internationalization, facilitate innovation, and promote competition among market participants. These additional objectives should be explicitly stated.

Every effort should be made to ensure that principles-based regulation is employed to address identified market failures, information asymmetry, and consumer protection. We recognize that there are times when prescriptive policy intervention may be necessary, however, we feel that regulators, in general, are not fully utilizing the regulatory tools available to them in achieving policy objectives and resorting to prescription prematurely. The net effect is to remove creativity and innovation that market participants can provide and to incorrectly identify problems without considering the markets ability for self-correction. In cases of consumer protection, information asymmetry or market failure we believe that more coordination is required between, regulators, including SRO's and market participants in finding the proper regulatory response and solution.

Global financial markets are inextricably linked. A failure in one market often has global consequences. The reduction of systemic risk should be an objective of securities regulation. Great care must be exercised in this area, and must be dealt with at both the domestic and at the international level. In order to enhance Canada's international voice, a more unified (ideally a completely unified) approach is required. It should be noted that the Ontario Securities Commission is the only Ordinary member of the International Organization of Securities Commission (IOSCO) from Canada, and our only representative on the IOSCO Executive Committee.

Enhanced competitiveness, while ensuring that core objectives are observed will benefit Canada and should be supported.

What criteria should be used to evaluate securities regulation in Canada?

An outcomes based criteria should be used to evaluate securities regulation in Canada.

Consultation Item 2: Principles-Based Securities Regulation

Could a more principles-based approach improve securities regulation in Canada? Are there areas of securities law or regulation that are overly prescriptive and could benefit from a more principles-based approach? What core regulatory principles should constitute the foundation of securities law? What are the risks and challenges of a more principles-based approach to regulation?

We must strike the right balance between prescription and principles when crafting regulation. A principles-based approach allows greater freedom and flexibility on the part of market participants to operate in the capital markets, create new and innovative products and processes, while meeting the principles established by regulators that are viewed as essential for consumer protection and sound capital markets. As an ongoing process, regulators should review existing regulation to determine if the appropriate balance has been struck in crafting regulation.

The core regulatory principles that should guide regulators are: act only in the case of market failures, information asymmetries or matters of consumer protection; identify the problem through detailed consultation and analysis; and employ principles-based regulatory responses unless there is clear evidence that absent a prescriptive policy response, harm will be done to the market or consumers. It is also critically important that filing requirements allow regulators to gather information that will help them determine if the policy response has properly identified and corrected the identified problem. Built into every policy instrument should be a requirement for a five year review. If the evidence gathered through the filing requirements indicate that the policy instruments has not achieved its stated purpose, or has ancillary effects that are harmful or inadvertently restrict market practices, then the policy must be set down for immediate review. The review should consider whether the regulation is justified, needs amendment or should be repealed. As capital markets are increasingly international, it is imperative that we regulate in a manner that encourages innovation and investment without compromising consumer protection. In striking the right balance between investor protection and increased market efficiency there is a need on the part of regulators to provide a robust cost/benefit analysis for all proposed rules and regulations. The onus is on regulators to demonstrate that the benefit to investors and markets clearly outweigh the costs of the regulation.

There will be challenges in moving to a more principles-based approach. In some instances market participants will not have a completely “clear” answer to what is required of them when viewing regulation, rules, national instruments, and notices. Market participants will have to become comfortable with relying on their business acumen, internal compliance departments and external legal experts to provide clarification and direction. Smaller operations and independent operators will likely rely more heavily on trade and professional associations, and expert legal counsel during the initial period to address their compliance needs. Advocis has and will continue to provide guidance on regulatory matters to its members. For example, members have benefited through Advocis’ guidance on the Anti Money Laundering legislation. Members not only receive updates on policy initiatives, but their practices are directly aided through the publication of a best practices manual and regulatory bulletins that interpret legislative and regulatory requirements. The increased use of principles-based regulation will mean that trade and professional associations will play an increasingly vital role through the provision of practice standards. However, this also provides the opportunity to be more

entrepreneurial and for market participants to distinguish themselves in a highly competitive market place. Initially enforcement may prove more difficult as actions will be based upon interpretation of principles of securities regulation. Tribunals will, over time, develop precedence that will bring greater certainty to the process.

In a principles-based system regulators need not concern themselves with ensuring that all current and future unforeseeable developments are contemplated. A principles-based system provides the security that unforeseeable market developments can be accommodated through the application of general principles. A principles-based system will require greater industry cooperation to ensure consistency in how principles are applied and business practices are developed.

Principles-based regulation places greater emphasis on individual accountability. As noted by the Panel, the FSA in the UK has eleven regulatory principles for business including acting with skill, care, and due diligence. The focus is on regulatory outcomes and the individual participant will make their own decision, yet be accountable to the regulators and the public. Advocis' Code of Professional Conduct mirrors this approach through the establishment of broad principles regarding business conduct. The code specifically addresses the best interest of the client, acting with integrity, competently, and, in accordance with the spirit and letter of the law. These general principles are supported by explanatory notes, and demonstrate the positive effect that principles-based regulation can have through allowing those who are regulated to help define the details. The onus in a principles-based environment is placed on the individual to determine the acceptable course of action.

Supplementing the Code of Conduct which provides the broad principles that govern our members, Advocis believes that financial advice should be delivered by an accredited financial advisor who has a professional designation, maintains membership in a recognized professional body, subscribes to practice standards, acquires competency-based continuing education and maintains adequate errors and omissions (E&O) insurance coverage to protect both the consumer and the financial advisor. This helps ensure the competency of financial advisors, continued consumer protection, and the recognition of individual accountability.

In a principles-based regulatory environment the individual will no longer have available to them the argument that they have lived up to the letter of the law as has proved to be a successful defense under a prescriptive regulatory regime. As noted by the Panel, and in our discussion on enforcement, investors may be better served through a principles-based approach as the scope of enforcement actions will be broad.

Consultation Item 3: Proportionate Securities regulation

To what extent is there need for proportionate regulation in Canada? What areas of securities regulation impose undue burden and could benefit from proportionate regulation? Should the economic characteristics of a company determine how it is regulated? If so, what should be the economic characteristics? What role could risk analysis play in the regulation of businesses?

We believe there is urgent need for proportionate regulation in Canada. Any analysis and discussion of proportionate regulation in Canada must adopt a multi-tiered application. From an issuer perspective, the different regulatory needs and business interests of TSX and TSX Venture Exchange listed company, for example, should be addressed. Similarly, a professional service level provider, like financial advisors, many of who are independent operators, and others who are owner/partner of a much larger company, also require a needs based

assessment be conducted in relation to regulatory impact. Proportionate regulation must also consider the impact of cross pillar regulation. Too often, business people find themselves being regulated by both securities and insurance regulators in delivering comprehensive financial services advice to clients. The combined regulatory burden can be needlessly high as redundancies exist between the two spheres.

In the case of advisors there are different operating models. In general, financial advisors fall into two categories. In the first, the advisor works for a securities dealer that operates in the Canadian capital markets. The dealers are members of the Investment Industry Regulatory Organization of Canada (IIROC). These advisors are usually employees of the securities dealers. The second group is dual licensed as mutual fund representatives and life insurance agents.

One of the biggest challenges our members face is that the regulatory regime designed to cover employee advisors who work in the Canadian capital markets is being applied to insurance agencies who are also advising on mutual funds and securities. Agencies are already regulated under insurance regulation which covers the insurance agents who are for the most part small business owners. To have a small business meet regulatory requirements from both the insurance and securities regulators adds costs and is time consuming. A principles-based approach can eliminate much of the regulatory duplication.

The Joint Forum of Financial Market Regulators in 2005 released a document entitled *Principles and Practices for the Sale of Products and Services in the Financial* Sector. The purpose of this document was to set out best practices that should apply to the conduct of all financial intermediaries in their dealings with consumers of financial products and services, and to provide consumers with a benchmark to assess the conduct of any financial intermediary with whom they currently have a relationship, or are considering establishing a relationship. Yet we continue to see a lack of movement towards such principles by regulators in practice. Over regulation takes the advisors away from their core business and saddles them with compliance requirements, which under close scrutiny may not be justified. This also means that regulators are wasting their resources through duplicative regulation, when their energies and limited resources could be focused on areas needing closer scrutiny. This truly is a situation of piling regulation on top of regulation, resulting in costs to the advisor that is passed along to the consumer. The cost associated with this type of duplicative regulation does not enhance investor protection nor help the capital market.

Between the extremes in market capitalization, from large cap to small cap issuers, there is the reality that through this wide spectrum that makes up the Canadian capital markets a one size fits all approach to regulation is counter productive. The Ontario capital market is dominated by some of the largest issuers in Canada. British Columbia by contrast is dominated by a large number of very small issuers. The Alberta capital market has a mixture of both. In terms of aggregate market capitalization of public issuers headquartered in these three provinces Ontario has approximately 45%, Alberta about 18% and British Columbia 5%. The order almost reverses itself if we examine the distribution of publicly listed issuers, with British Columbia having approximately 35%, Ontario 28% and Alberta 20%. And while the TSX is recognized as the senior or top tier market, it should be noted that almost 50% of Ontario-based public issuers are listed on the TSX Venture Exchange in British Columbia. We can derive from these facts that the discussion about proportionate regulation is not simply a regional issue as much as it is a Canadian issue.

When discussing issuers there is a difference that must be acknowledged and factored into the regulatory process. From an international perspective, Canada represents a small fraction of the global markets (about 2%). For larger issuers who have joint listing on the TSX and other major global markets, adhering to detailed prescriptive rules that are harmonized to international standards makes business sense. In this case, the larger issuers are competing for investment dollars on a global basis. For ease of comparability and market integrity, more onerous regulatory requirements may be justified. However, most Canadian companies are targeting domestic investors. Despite Canada's relatively small size in relation to the contribution to global markets, and the relatively small size of our large issuers compared to large issuers in the United States or Europe, we must recognize the role and importance of both large and small cap issuers to the economic health of Canada.

The life cycle of large issuers in Canada includes moving beyond domestic investment, rather, as they mature they seek larger pools of capital that are found through listings in foreign capital markets. Accordingly, some have exchange listings in the US and registration with the SEC. Again, this justifies the more onerous and harmonized global standards expected and reflected in both our securities laws and those of other major economies. Yet as these large issuers mature and seek foreign listings, they are replaced by smaller issuers who likewise are maturing. Smaller Canadian issuers tend to not have foreign public investors, nor do they seek to raise capital abroad. What is unique about Canada is that we have a vibrant segment of the public capital market focused on new or small junior issuers. To apply the same regulatory requirements to this very important segment of the economy is to take management's attention away from growing their business and focus instead on meeting the burden of regulation. Applying the same regulatory requirements to all issuers may be harmful. While large issuers have the in-house experts and advisers to deal with regulatory requirements, for smaller issuers, it means that managers will spend far too much time ensuring they meet their regulatory burden at the expense of focusing on the business.

Being aware of the diversity of the Canadian capital markets and the importance for regional and national economic growth, should be our starting point in crafting regulation. When developing regulation we must be alert to the impact on all participants, the issues, the distributors and the advisors. Within these groups we must also recognize that differences exist and regulation must take these differences into account and determine what the regulatory impact could be.

Proportionate regulation in Canada means; with any new initiative regulators must ask themselves, how are we to meet our objectives while striking the right regulatory balance? This entails thinking about how a rule or regulation affects each sector of the capital markets. They must ask themselves what is appropriate for top-tier, global sector, for junior issuers and for those who fall between the two. They must ask themselves, what's the impact to advisors, and what cross pillar regulation exists if they are to minimize overlapping regulation for maximum efficiency. In approaching regulation in this manner, subsequent rules and regulation should provide the flexibility necessary for all participants in the capital market to enjoy the full benefits associated with good regulation. Principles must be examined as an approach at every possible opportunity. A more flexible regulatory system tailored to promote the objectives, and outcomes of securities regulation, yet fits the needs and constraints of different market sectors must be developed and implemented.

Consultation Item 4: Enforcement

What would be the opportunities and risks to enforcement under a more principles-based approach in Canada? Should enforcement action be taken solely on the basis of a

breach of principle? Would the current system be sufficiently well-positioned to enforce a more principles-based approach?

Principles-based regulation moves away from regulation based on detailed, prescriptive rules and toward a more flexible result based system, leaving capital market participants to determine the details of the application of the general principles. This is a significant departure from the current practice and will require a period of adjustment. Business units within larger organizations will be allowed greater freedom to structure business proposals without feeling handcuffed by prescriptive rules that simply cannot foresee how business would develop going forward. Within larger organizations it is likely that compliance departments and other in-house experts will be relied upon more heavily to interpret the intent of the regulation while ensuring that the business interests are advanced within acceptable risk tolerances.

Smaller organizations and independents will face the same challenges as larger organizations, but without the same resources. It is likely that trade and professional associations will become increasingly important in providing direction and comfort to this market by way of best practices, compliance information and guidance, and continuing education. This may offset, to some degree, the need to engage external legal advice and other market experts. Following the adjustment period expenses related to compliance should decrease.

Advocis has highlighted in the past the direction taken by provincial insurance regulators. The insurance regulators requested input to define the parameters around appropriately implementing consumer protection principles relating to managing conflicts of interest. Key industry stakeholders developed a six-point disclosure guideline that provided meaningful information to consumers and assisted them in making financial decisions. Not only did regulators received input from all market participants before it was disseminated to companies, brokers and agents across Canada, they also received industry support that will more than likely translate into widespread compliance. This is a good example of how principles-based regulation can and should work. Advocis supports meaningful disclosure to consumers that is easily understood and will help them make more informed decisions with respect to the risks associated with financial products.

It is also important to note that principles-based regulation will allow regulators to address questionable conduct on the part of market participants which, under the current prescriptive approach, is found to not be technically offside. A serious disadvantage of the prescriptive approach to regulation is that rules are tailored to prevent bad conduct on the part of the minority from doing harm to the capital market investors. Accordingly, the vast majority of market participants who conduct themselves in a professional manner are disadvantaged by the restrictive provisions implemented by regulators. In a principles-based model of regulation, the majority are no longer disadvantaged by the conduct of the minority. Investigative actions can be brought more easily against market participants who engage in unacceptable conduct. In tandem with our vision of the structure and role of the adjudicative process (please refer to “Independent adjudication”), along with a principles-based approach to regulation, we believe that all capital markets and capital market participants will benefit.

A more principles-based approach in no way threatens consumer protection and, in fact, enforcement and adjudicative actions can be based on a violation of the “spirit “of a rule or regulation. This would have the affect of broadening the scope of enforcement actions. These actions would also have the tacit support of market participants, as through industry practice, they would be forming the details. Under the current model, enforcement is based primarily on identifying the violation of a prescriptive element in regulation. Therefore, enforcement

proceedings succeed or fail based on proving an action or inaction violating a more clearly defined and enumerated provision.

While a principles-based approach allows greater opportunity for creativity and new entrants into the marketplace, it also makes it more difficult for participants to judge their actions. In the short term, enforcement branches and defense counsel will have to adjust their approach to prosecuting and defending. There will be an increased reliance on the decision makers - the administrative tribunals and courts, as the interpretation and case law develops that will provide greater direction and comfort to participants. It is likely that tribunal and courts will play an increasingly important role in providing meaning to the principles and the actions that market participants take based on their interpretation of the principles. It would seem only reasonable that this change will require a modification of our current regulatory model. We may also need to consider a redistribution of regulatory resources.

Despite the adjustment that would take place, market participants will more actively shape the details required under the principles, which should result in a more fluid regulatory environment, capable of adapting to change and shifting business interests.

2) Independent adjudication

Should the adjudicative function be made independent of the securities regulatory agency? Should a pan-Canadian adjudicative tribunal be established? What governance model should be considered in the creation of this tribunal? Would a separate adjudicative tribunal help with the enforcement of principles-based regulations?

Serious consideration should be given to having the adjudicative function made independent of the securities regulator. Under a principles-based regime, there will be an increased role for the tribunal in dealing with disputes, providing clarity and establish precedence. Given the increased role of the tribunal, it is important to ensure the independence of the tribunal from the investigation, enforcement and policy branches of the regulator. Doing so will ensure a fair system absent any real or perceived bias.

It would be helpful to establish a pan-Canadian tribunal. Composition of a pan-Canadian tribunal must be representative of all regions within Canada. Appointment to the tribunal must be based solely on the merits of the candidate. It is critical that the tribunal be staffed with persons possessing an expert level understanding of administrative, corporate and securities law. Given the complexity and scope of capital markets, we would propose that specialized branches be established within the tribunal. One branch would deal at the issuer level, the second branch would operate at the distributor level, and the last at the advisor level. This format would allow adjudicators to continue to develop their expertise, and a high level of consistency in judgments would be established. As access to tribunals, and the speed and quality of decisions are critical in a business environment, structuring the tribunal as noted would increase the level of efficiency in decision making and contribute to investor confidence in the Canadian capital markets.

In what ways could the enforcement of securities law and regulation be strengthened in Canada?

Enforcement of securities law and regulation would be strengthened through increased attention to investigative and enforcement proceedings. The development of an independent adjudicative tribunal with the necessary expertise in administrative, corporate, commercial and securities law would not have to compete for scarce resources with the various branches within the regulator.

The combination of an adequately funded and appropriately staffed tribunal, together with a dedicated and focused enforcement department would likely result in clear and speedier decisions.

It's clear that the prescriptive approach to regulation of the securities markets has resulted in a myriad of Notices, Rules, Local Policies, Policies, National Policies, Instruments, and National Instruments, which is overly confusing and complex. Under the current system, enforcement is splintered with enormous resources being spread across Canada's many securities regulators. This, in part, may be contributing to Canada's poor international reputation as a jurisdiction that is not maximizing its opportunities with respect to enforcement. Canada should consider a new model to investigation, enforcement and adjudication. The new approach could combine the efforts of the federal government with the resources and expertise at the provincial level. Given the nature of securities, it is important that there be coordination across Canada in dealing with the investigation, enforcement and adjudication of securities matters. As with the tribunal, investigative and enforcement units require a specialized knowledge and understanding of the markets and market participants. Appropriate funding, staffing and the coordination of actions, is a necessary precondition for a robust and internationally respected capital market.

Consultation Item 5: Securities Regulatory Structure

Passport System of Securities Regulation

What are the strengths and weaknesses of the passport system as it is currently being implemented?

The speed of reform under the passport system is an enormous concern. Capital markets are global and fluid. Change within the capital markets comes quickly as does the associated opportunities and risks. The passport system is slow to adapt to the changing market forces. The slower the system adopted by Canada, the more difficult it becomes to deal with systemic risk. The result, Canada plays a less active role in developing solutions on a global basis, and is more reactionary to the lead of the United States and European Union. IOSCO is a very important international forum and often IOSCO principles are the basis upon which Canadian regulators craft policy direction and decisions. In the interest of all Canadian market participants, especially the smaller organizations, independent operators, and junior issuers, it is important that Canada have a strong voice at this and other international forums. It is fundamentally importance that our concerns are presented a unified and robust fashion, and is representative of all regions within Canada. As previously noted, the Ontario Securities Commission is the only Ordinary member of IOSCO from Canada, and our only representative on the IOSCO Executive Committee (please see comments under Consultation Item 1).

A clear benefit to the passport system is participants in the capital markets have the opportunity to be heard and influence policy. In the event that a market participant is unable to access the appropriate persons in any one jurisdiction to voice their views or concerns with existing or proposed policy directions, they have an opportunity to influence final decisions through finding a jurisdiction(s) that share the same view and will champion that view within the Canadian Securities Administrators (CSA). Great care must be taken in altering securities regulation to ensure that we do not marginalize the views of participants. While passport and the splintered regulatory process that defines Canadian securities regulation has substantial shortcomings, it does provide an avenue for voices and opinions to be heard even if a particular jurisdiction tries to impose their policy views at the expense of full and open consideration. Great care should be taken to ensure that this full and open consideration is not compromised. In fact, every effort

should be made to foster open and meaningful dialogue between capital market participants and the regulators (including fostering the same openness with SRO's – MFDA and IIROC).

Single Securities Regulator – Wise Persons' Committee Proposal – Crawford Panel Proposal

Which structural model (passport or single securities regulator) would be best for Canada? Which model would best support the adoption of new regulatory approaches, including proportionate regulation and a more principles-based approach? Which would fulfill the need for the effective governance of Canada's capital markets?

As an alternative to the existing regulatory framework, we believe regulators should explore more effective regulatory frameworks and approaches that would significantly contribute to more efficient financial markets in Canada and lower costs for all participants. One such approach would be to place the focus of a common regulator on capital raising functions and allow provincial governments to continue to focus on financial services intermediation through a principles-based and harmonized fashion. This could provide a foundation for harmonization across all pillars of financial service activities since today distribution generally is provided to consumers by agents and representatives who are licensed through multiple regulatory regimes. Under this approach, the greater public interest would benefit by the segregation of consumer advice with respect to investment products from the business objectives of raising capital.

While passport has the potential to address harmonization concerns, it fails to address many others. Most troubling is the pace of response to internal and external issues as the need for consensus among CSA members will remain time consuming under current practices. The broader issue of timely response and the continued harmonization will always be a concern as there is no certainty that the various jurisdictions will be able to agree on policy matters going forward. The Canadian passport model, unlike the European Union model, lacks an equivalent to Directives. The Directives in the European Union model along with the Lamfalussy formula is what has allowed the various sovereign states in Europe to reconcile their sovereign rights with the greater good resulting from a single financial market and address the inherent delays associated with the passport system. The Canadian passport system seems somewhat weak and prone to the same problems that confronted the European Union early on their drive for harmonization.

We appreciate that many jurisdiction are concerned that a single securities regulator may mean an expanded role for the Ontario Securities Commission. We recognize Ontario's willingness to surrender its position as the dominant securities regulator (by virtue of the size of the Commission and the nature of capital markets structure in Canada, Ontario is unquestionably the dominant player) and its willingness to embrace discussion on innovative models for a common securities regulator with input from all provinces. We feel that securities regulators from across Canada should view the development of a new model as a possible opportunity for other regions to have a greater say, and impact, on securities regulation in Canada and internationally.

Drawing on comments that form the general theme of our responses, we believe the successful model for securities regulation in Canada will include the following guiding principles: a mechanism whereby regional issues and concerns are voiced and taken into consideration; openness and full consideration of all opinions; access to the policy process for all market participants; access to decision makers and clear paths of communication; a principles-based

approach to regulation adopted by the senior regulator and SRO's; minimization of redundancies and fully harmonized legislation and regulation; an efficient and effective investigative, enforcement and adjudicative process; and a cost efficient approach to capital market regulation.

Regardless of the model of securities regulation employed in Canada, a move to principles-based regulation is necessary. We recognize that there are times when prescriptive rules represent the best policy option, however, we are concerned that the overarching desire for principles-based regulation can be undermined if SRO's (MFDA, IIROC) fail to adopt the same philosophy and approach as the senior regulator. We feel any discussion of models or principles-based regulation must include a discussion of the role of SRO's. We believe reform of securities regulation must ensure that market intermediaries who are impacted by the actions of SRO's be consulted in the development process and not placed in the position of reacting as opposed to participating. We believe that reform of this scope can best be achieved through a common regulator.

What are the opportunities and risks of moving to a single securities regulator? How could a single securities regulator be implemented without being unduly disruptive to the marketplace? In particular, what can be done to effect a smooth transition?

A significant risk associated with a single regulator is the insular group thinking that can have the very serious effect of removing external voices in the policy process. This concern is especially true for smaller organizations and market participants who play a very important role in the proper functioning of the Canadian capital markets, and must work diligently, with scarce resources to be heard. A clear benefit, if a common regulatory model mitigates the above noted concern, is the harmonization of legislation and regulation. A common regulator could also benefit from a combined and focused investigative, and enforcement department.

Federal and provincial governments must work together in the best interest of the Canadian capital markets. A common regulatory model must meet the needs of all Canadians and market participants. The transition process will depend on the composition of the agreed to model. A transition to a common regulator could be accommodated through an opt-in process, thus allowing individual provinces the opportunity to make the necessary structural adjustment. It is difficult to envision a smooth transition to any new model in the absence of full consensus between the federal and provincial government. It is possible, however, that a federal or joint federal/provincial (with buy in from some but not all provinces) system be developed. For those provinces that adopt the joint federal/provincial system (limited common regulator) the transition could be, as above, on an-opt in basis, allowing the participating provincial jurisdiction the opportunity to make the necessary structural changes. If the new system is judged by the market and market participants to be superior to the existing process, then it is likely that there would be migration from the least beneficial system, to the most beneficial system. In such a situation, market forces would decide the winner and loser (in purely economic terms).

What is the best way forward for the federal and provincial governments? In the absence of an agreement, what do you suggest as an alternative model?

The status quo is not acceptable and the pace of reform toward an efficiently operating capital market is painfully slow. The federal and provincial governments must lead the bold reform that industry and all market participants have been calling for. Concerns over enforcement, the policy process, redundancies in the system resulting in increased costs and needless complication, harmonization of legislation and regulation, and the speed of response to global

forces must be addressed. It is the responsibility of the governments to act in a measured and if possible coordinated way to achieve the objects setout in our response.

Concluding Remarks

Overall, what should be the key elements of a model common securities act to improve securities regulation in Canada? How should the transition be managed and executed to minimize the disruption in Canada's capital markets?

We will support and work with regulators, federally and provincially, to achieve the overarching goals we have set out in our response and look forward to options being presented that will meet our needs, the needs of other market participants and the Canadian public.

Sincerely,

Steve Howard, CA
President and CEO
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