SUBMISSIONS TO THE TASK FORCE TO MODERNIZE SECURITIES LEGISLATION

The Canadian Listed Company Association

The Canadian Listed Company Association (CLCA) is pleased to provide comments to the Investment Dealers Association ("IDA") and comment on the issues raised by the Task Force to Modernize Securities Legislation in Canada (the "Task Force"). The CLCA is a non-profit association primarily representing companies listed on the TSX Venture Exchange, with over 400 registered corporate members on average the past 4 years. The CLCA serves its members by coordinating advocacy and educational programs for members. The Board of the CLCA is made up of senior officers and directors of public listed companies reflecting a variety of business sectors mainly representing the approximately 2,500 junior companies from across Canada.

The CLCA believes the CEO's and entrepreneurs that are at the heart of wealth creation and public company operation need to have an understanding and a voice in the rapidly changing securities regulatory regime in which they operate. We appreciate the challenge of your task and look forward to participating in the development of a successful outcome of your task force.

For ease of reference we have repeated questions posed in your request for comments and provide our responses below them.

Protecting Individual Investors

Effective disclosure: content of prospectuses and other disclosure documents - is the current prospectus useful or obsolete?
We are very pleased at the movement toward harmonizing prospectus and registration exemptions. These exemptions are extremely important for the health of Canada's capital raising system as evidenced by the fact well over 80% of funds raised by venture issuers are through these exemptions. We are disappointed there remain differences in rules and refusal by Ontario to adopt some key exemptions that are widely used and proven beneficial in the western provinces. The costs and inefficiencies of conducting a national private placement will be reduced by the proposed NI 45-106 but those jurisdictional differences remain.

Our view is that the prospectus exemptions are perhaps the main reason formation of capital for small ventures in Canada provides an economic advantage to the country to encourage innovation, entrepreneurship, job creation and extraordinary returns. Our recommendation is to move towards a continuous market access system for raising capital such that a full prospectus isn't needed to raise funds by a reporting issuer. In many cases prospectus level disclosure is readily available by investors through the SEDAR system currently in place.

Sophisticated purchase rules - who needs protection? Is wealth a proxy for sophistication? If not, is there a better definition?
We feel the financial criteria are too high for an individual, under the Accredited Investor criteria. This is offset in most jurisdictions with the familiarity exemptions using Business Associates and Friends and Family, which are key tools for raising seed capital. An Offering Memorandum exemption that carries civil liability is perhaps the fairest exemption and it's non-adoption by the Ontario securities commission is a major concern.
Definitely there are professional people familiar with an industry or company or engaged in the investment business that don't fit the wealth or minimum prescribed investment criteria who should be considered sophisticated exempt purchasers. Add to the PDAC recommendation of Qualified Persons such groups as Chartered Financial Analysts, and seasoned public company directors as two possibilities.
Consultation with a registrant who has a fiduciary duty to advise properly can deem a purchaser to be sophisticated.

Balancing Cost and Effectiveness of Modern Governance

Cost Benefit analysis of governance in Canadian context - can there be a Canadian context? To what extent are we in North American market and concepts for a Canadian capital market are inappropriate?
The Canadian Capital market is unique in the world as it is the world leader in operating an efficient, well regulated, venture capital market in which the public can participate. Over half of Canada's public companies are on the TSX Venture Exchange TSX-VEN, which has been the source of many of Canada's top technology and mining companies, who in turn are world leaders in their industries. We don't have current research but in the past graduates from the junior markets have accounted for over 25% of the companies populating the Toronto Stock Exchange technology indexes, and a much higher percentage of mining companies. A statistic that should be updated is that 60% of mineral production in Canada is the direct result of the companies listed on the junior market.
This unique market has been in operation continuously since the inception of the Vancouver and Alberta Stock Exchanges, from which the current TSX –VEN was formed. Given the relatively small size of Canada's equity capital market in relation to the United States and Great Britain, it is a great accomplishment that there is such broad participation in the market and that there is a source of entrepreneurial capital to foster innovation, growth and wealth creation.

The US Securities and Exchange Commission defines a company as small if it has than US $25 million in market capitalization. If we applied that definition to the Canadian exchanges, approximately 71% of all publicly listed companies in Canada would fit the definition, and 29% of those listed on our senior exchange would fit into that Category. It is also interesting to note that Ontario does not consist of only the largest TSX issuers, but that 43% of issuers domiciled in Ontario are listed on the TSX Venture exchange.

The CLCA is well on record recommending a tiered system with appropriate regulation for small issuers. There is objection to the term "Tiered" mainly by those who aren't familiar with the unique structure in the world of Canada's public company market.

As I have just highlighted, Canada has a disproportionately large number of small companies trading publicly. One of the key economic advantages to doing business in Canada is the access to a speculative pool of capital at relatively low cost by small cap issuers. This access is made possible by our unique venture class regulations in an appropriately regulated market place.

Re-examination of governance requirements, in part in the light of rethinking of Sarbanes-Oxley in the U.S.

The CLCA fully expects the task force currently underway in the US to examine the cost of *Sarbanes-Oxley or* SOX legislation to recommend some exemption levels that should provide relief to Canadian Issuers that are generally small cap issuers by US standards. The principles inherent in SOX are certainly worth achieving, however there is a consensus that the procedures are over prescribed and excessively detailed.

Our opinion is that disclosure of what a company does to achieve good corporate governance and disclosure of procedures it has in place are more informative and appropriate than it's ability to meet a prescribed list of requirements. We don't see any need for an increase or change in corporate governance rules at present as a number of new National Instruments have been recently introduced. We recommend a disclosure-based system over a system of prescribed rules for governance, as all issuers can disclose but not many can compensate a slate of independent Directors.

Disclosure requirements must however be reasonable as the dollar costs and cost of management time applied to disclosure must be weighed and balanced against the equally important benefits to shareholders of allowing management to spend the majority of its time building the Company. This is especially true for junior companies, where regulatory costs are disproportionately high as compared to larger companies.

U.S style corporate governance is simply not appropriate for small Canadian public companies.

Potential need for differentiated regulation, i.e., for small issuers, in terms of the nature of differences

Canada has the benefit of concentrated pockets of expertise such that it is reputed there are more geologists per capita in Vancouver than any other North American City; Calgary is the centre of oil and gas, and Toronto has a diversified industrial base and is the centre for institutional investors. Naturally the investor following and type of businesses seeking public funds reflects these regional characteristics.

Our view is that small mineral explorers in Manitoba or Ontario have the same requirements and issues as the ones in BC no matter where the industry is concentrated. Therefore we see sectoral expertise in the division between venture class issuers and senior issuers, regardless of industry. The main centres for offices are those with the current big four provincial securities commissions; however each office should have the experience and capability needed to cover the range of venture class issuers and the senior issuers as a separate sector. The expertise allocation would reflect the venture – senior or with a tiered division in regulations.

Potential need for differentiated regulation, in terms of an appropriate cut-off

The CLCA is supportive of a financial measurement test would be high enough to avoid frequent changes to issuers filing status as changes occurred to accounting data. Therefore we think the standard set in another national Instrument, of $30 million in revenue in the recent 12 months, would be an appropriate demarcation line. Of course we would endorse an agency that actually graded companies on their Corporate Governance so that juniors may be motivated to comply with senior standards for the positive rating effect.

Regulatory Burden

The CLCA sees a greater role for principle based regulation and much less need to prescribe detailed procedures, as these will arise from standard responses to the new civil liability legislation being introduced in Canada. The incentive to comply is in enabling freer access to capital by Issuers. For example, before the introduction of NI 51-102 the BCSC advised that over 800 TSX Venture issuers were filing AIF forms. The reason was in order to take advantage of the Qualified Issuer category, which shortened hold periods to four months from 12 months and enabled use of the Short Form Exchange Offering. This is an actual example of how issuers may voluntarily comply with more rigorous continuous disclosure standards if there is an offsetting benefit. Subsequently all hold periods were reduced to four months but the principle is made: if Issuers can raise funds in a simple system such as the CMA procedure proposed by the BCSC, then they have the motivation and financing to pay the costs of more robust continuous disclosure.

Enforcement

There is a perception that when there is a breach, the carriage of justice is slow and penalties are light. The Canadian regime can be characterized as one requiring excessive regulatory review to proceed with activity, which has a deterrent effect on perpetrating frauds, however it also deters legitimate operators. In contrast the US system is more amenable to acceptance of filings without the degree of merit review we see from our commissions but malfeasance is met with swift and serious enforcement action. Even though Canadian market problems pale in comparison to the size and damage imposed by US market problems, ours seem disproportionately large because media coverage drags on for years because of the lack of a resolution. The timeline on Bre-X and YBM should be compared and contrasted with the US action on the same files and other actions to highlight the difference in treatment between the two countries.

Enforcement is typically delayed by some common problems:

- Many cases begin with an accusation the commissions are biased as investigator, prosecutor, and judge.
- Piling on by multiple jurisdictions creates jurisdictional delays.
- Different jurisdictions emphasize different aspects, BC and Ontario has very active continuous disclosure review teams, Alberta doesn't. Consistency is needed.

It would appear that a system with local investigation and a separate prosecution entity that works across jurisdictions would alleviate much of the procedural awkwardness in place.

Methodology

Before a significant new proposal is finalized cost benefit surveys and analysis of actual cost data should be undertaken. At present, national policies are introduced with a boilerplate

paragraph to the effect that: …"the benefits clearly outweigh the costs of this proposal…" when there is no measurement made of either costs or benefits. In some of our specific comment letters on CSA proposals the very nature of our concern is that the assumed benefit isn't readily apparent. Benefit appears to be defined by regulators as reduction of compliance risk. As we stated above there is already a demonstration that even when reporting burden is increased, there is greater compliance if there really is an economic benefit.

The current system is bogged down in disagreement between securities commission chairs but we feel the debate is producing changes for the better. Overall innovation is occurring from the western commissions simply because the active small issuer market is fully developed and the rest of the country has little experience with this type of market.

Our Issuer surveys indicate the number one concern of public companies, particularly small companies, is efficient access to capital. We believe the Continuous market Access System (CMA) in the BC Model proposal, addresses this need while maintaining the integrity of information in the marketplace.

The continuous market access system would appear to be an essential form of relief from the recent trend to increase regulatory burden in the face of enhanced continuous disclosure, and increased civil liability being introduced.

Thank you for the opportunity to comment.

For follow up questions please call myself at 604-331-2254 or Don Gordon Executive Director 604-408-2222

Sincerely,

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