

October 17, 2005

Task Force to Modernize Securities Legislation in Canada
Suite 1600
121 King Street West
Toronto, Ontario
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Dear Sir or Madam:

On October 12th through the newspaper the committee asked for public comments, I decided to add my comments and I thank the committee for listening. No doubt there will be some presenters to ask for less or massive change to the regulations to open the capital markets up. There maybe a definite need for these changes; however, I ask the committee to consider a few elements before they recommend changes, if needed. There are many who know more that I will ever know about the fine tuning of the regulations and which ones need to be changed, I will offer something else equally as important.

For those companies that try to be honest, less regulation or easier access to the capital markets is a good thing, however these companies do not make up all of the Canadian capital market structure. Thankfully, they make up the vast majority, however not 100%, those in the regulation business would be able to put the real number. We all do know the myth is not reality, although we all wish the myth was reality.

I ask the committee to consider most people are good hard working people who have savings and are not trying to rip off the system, but they buy into the method the system operates. The believing in the system does not minimize the buyer beware principle, but the believing generally means the average person expects when regulators have given their approval, the first major hurdle is passed. A reputable company passes the second major hurdle. If a reputable company behaves similar to a "fly by night" company, the expectation is the punishment is greater to the company and those who run it, if they sell "moose pasture".

Regulators should have a higher penalty against more senior reputable companies when they act and behave similar to moose pasture companies.

If something goes wrong, and people lose money, and we have seen examples from coast to coast, so no existing regulation is perfect, but when something goes wrong, the public will eventually come back to the regulators and government. The public and those investors, who have lost money, will at times wish or believe the regulators were capable; the regulators were properly funded and the regulators had the resources necessary to do their jobs. However if those capabilities, the funding and the expectations to move to provide solutions are diminished or not functioning, not there in reality, it is no wonder that those who abuse the system will get away with it.

Therefore it is essential the necessary resources to do the job be given to the regulators.

I think the committee should start with the premise that there is and will be rogues in the capital market and the question is how should the regulators prevent abuse as much as possible. Many years ago, the Toronto Stock Exchange was filled with rogues and after one too many scandals the rogues were told to go west to the Vancouver Stock Exchange. Many changes have happened, however one constant remains raising money is still very important.

It is better for good (and you can define what that means) companies to raise money quickly with the appropriate levels of control.

I will use the example of Portus Alternative Asset Management of Toronto, however there are examples in every province and in the newspaper on a regular basis, the latest is Refco in the United States. In the case of Portus, it sold some of its product through Manulife Securities a subsidiary of Manulife Financial, which regularly shows up in the best-run company list and is apparently a good place to work. When you think of the average investor, are they responsible for Portus' downfall. To a degree – yes, however the regulators accepted Portus, a reputable company was selling its product. This reputable companies does billions of dollars of business and one expects they have many people with the skills to evaluate Portus and know what they were doing or not doing. But even with all the talent working for Manulife, Portus managed to go into default status. Should the average investor without the capabilities of Manulife be at fault? In this case, Manulife ensured all investors who bought Portus' products were covered, but was there proper oversight or regulation?

Should there have been more regulation to nip the losses in the bud?

We in Canada have always prided ourselves on the stability of our capital markets and perhaps because of the existing regulations, our capital markets have generally been stable. It would be a shame to loosen the stability just to have more bankruptcies and 'Chapter 11.' I note the US airline industry was deregulated and bankruptcies seem to be a normal operating business method.


Do we wish to see business strategies which included 'Chapter 11' be the normal, in our capital markets?

Some of the presenters will no doubt suggest our capital markets need an overhaul because of the firms can not do something (trillion dollar deals). The question is does the committee want to change the capital markets just so some deals can be done once or twice a year, but at the same time makes the markets less stable?

Perhaps the ability not to do something makes the capital market better for Canada.

In conclusion, the general principles behind the legislation is to make capital raising easier for the good companies, if rogues happen stricter penalties against the leadership which takes away their money; and trying to keep rogues out or make it harder for them to raise capital. That is easier to say than do, however if you start with these basic principles then it means some get quick access, some do not.

Sincerely

A handwritten signature in blue ink, appearing to read "D. Lowry", with a long horizontal flourish extending to the right.

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