INVESTMENT DEALERS ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

JOSEPH J. OLIVER
PRESIDENT AND CHIEF EXECUTIVE OFFICER

January 26, 2006

Task Force to Modernize Securities Regulation in Canada
Suite 1600, 121 King Street West
Toronto, Ontario
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Attn: Mr. Thomas Allen, Q.C.

Dear Sirs/Mesdames:

Re: Submission to the Task Force to Modernize Securities Legislation in Canada

I am pleased to provide, on behalf of the Investment Dealers Association of Canada (IDA), the attached submission to the Task Force to Modernize Securities Legislation in Canada (the Task Force). We believe that regulatory reform is critical to the future of Canadian capital markets and the country's future prosperity. That is why we are proud to fund the Task Force's independent contribution to modernizing securities legislation.

Yours truly,

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IDA SUBMISSION TO THE TASK FORCE TO MODERNIZE SECURITIES LEGISLATION IN CANADA

1. Adopt one Provincial Securities Act

Background

Canada has one of the most decentralized securities regulatory systems in the developed world. One cause of Canada's fragmented framework is its multiple rules, decision-makers and costs. Since fragmentation undermines the efficiency and competitiveness of our market place, we need to streamline and simplify the approach to securities regulation.

The Canadian Securities Administrators (CSA) has taken a number of important steps to harmonize rules and rule interpretations, including issuing a number of national instruments that apply across the country. However, the Canadian securities regulatory system is nevertheless far from fully harmonized. One important initiative that seeks to enhance inter-provincial harmonization is the CSA Uniform Securities Legislation (USL) Project. USL builds on the 25 national instruments and 24 national policies covering key areas. The objective of the USL Project is to achieve uniformity or at least harmonization, but not substantive reform.

While USL is a step in the right direction, the provincial legislation will not be uniform, since British Columbia continues to discuss introducing its new securities act and Québec's statute will continue to be somewhat different to reflect its civil law environment. Furthermore, each province will ultimately pass its own Securities Administrative Act that will deal with local administration and so will vary across the country.

An alternative to USL

An alternative approach to USL would have all provinces adopt the securities act of one of the larger provinces. We believe this position is both obvious and practically achievable in a short time frame. Discussions could commence immediately and new ideas concerning regulatory reform would not have to wait years for the drafting, review and implementation of USL in all provinces and territories.

Having selected an individual securities act, the regulatory focus could then shift from concentrating on harmonization to the more productive exercise of amending a single act. This shift in focus will help enhance investor protection and market integrity which must remain the central goal of regulation.

2. Creating a more efficient and effective System of Securities Enforcement

Background

The Canadian securities regulatory system has often been criticized for having a slow and ineffective enforcement process. Enforcement activities have been described as "poor or very poor", and "lengthy, drawn-out matters with little apparent progress in terms of reaching resolution."[1] The cases of Bre-X Minerals Ltd. and YBM Magnex International are often cited as examples of such deficiencies.

Whether this criticism is unfair and exaggerated, an enforcement regime that is and is perceived to be effective enhances market reputation. This lead to the question of what can we do to have a more efficient and effective system of securities enforcement.

The IDA proposes a number of suggestions for improvement:

(a) Establish a single, national securities tribunal to convene hearings to consider all allegations of offences committed under single, national securities legislation;

(b) Delegate the responsibility for prosecuting capital market offences to provincial securities commissions; and

(c) Increase the enforcement powers of SROs.

We believe that these proposed changes would enhance significantly the effectiveness and efficiency of Canada's enforcement regime.

(a) Create a National Securities Tribunal

Canada's system of securities regulation operates through 13 separate provincial and territorial authorities. Each securities commission enforces its own securities laws. Each spends considerable time and resources in investigation and litigation matters. While regulators have recently made efforts to coordinate and cooperate with each other and pursue joint investigations, joint hearings or the appointment of lead regulators[2], multiple regulators continue to impede the effectiveness of enforcement. For example, since a sanction imposed on a person in one province only has effect in that province, securities regulators of other provinces must hold their own hearings to impose their own orders on that person. This creates a multiplication of work and increases costs and delays.

Some have also suggested that our multi-jurisdictional enforcement system also suffers from an inherent conflict of interest. The recent Osborne Report recommended that the Ontario Securities Commission (OSC) separate its adjudicative role from its policy making and regulatory functions.[3] The Report suggested that there is a "perception of bias" when one regulator is the "architect of laws, the enforcer and the judge".[4]

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1 Committee to Review the Structure of Regulation in Canada. "It's Time." December 2003 at 25.

2 *Ibid.* at 28-29.

3 The Honourable Coulter A. Osborne, Q.C., Professor David Mullan, and Bryan Finlay, Q.C. "Report of the Fairness Committee to the Ontario Securities Commission." March 2004.

4 *Ibid.*

For these reasons, a single national securities tribunal that is separate and apart from the policy-making and regulatory functions of a Canadian Securities Commission[5] would enhance the efficiency and effectiveness of Canada's enforcement regime, and also deal with the perception of bias.

The Crawford Panel on a Single Canadian Securities Regulator recently suggested the establishment of a "Canadian Securities Tribunal" to act as a separate agency from the "Canadian Securities Commission".[6] The Panel recommended a model for a common securities regulator for Canada (the "Canadian Securities Commission") featuring a common body of securities law (i.e., the "Canadian Securities Act") and a single fee structure.[7] The model provides a description of a separate and independent Canadian Securities Tribunal that would be comprised of adjudicators sitting in panels of three and convening hearings to consider allegations of violations of the Canadian Securities Act and Rules.[8] One senior officer would be in charge of all enforcement matters across the country, and enforcement staff in the regional and local offices would keep the senior officer informed of the investigations and proceedings.[9]

There would numerous advantages to having a national securities tribunal. A single securities tribunal would alleviate the duplication of work and procedural delays caused by having multiple regulators. For instance, enforcement orders would be effective all across the country; therefore provinces will no longer need to go through the costly and lengthy process of holding multiple hearings and issuing multiple orders against offenders.

A national tribunal could also increase the effectiveness and efficiency of enforcement. Enforcement staff would be able to build on the experience gained in other jurisdictions, since they would be adhering to the same securities law. This would create a more consistent approach to investigations and proceedings.[10] Moreover, enforcement staff would be able to develop greater areas of specialty by working on similar cases and pursuing cases involving their area of specialty nationally.

We believe that a single national securities tribunal to hear regulatory proceedings from all 13 provinces and territories should be further explored and considered.

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5 *Infra,* note 7.

6 Crawford Panel on A Single Canadian Securities Regulator. "A Blueprint for A New Model." December 2005.

7 *Ibid.* at 18-19.

8 *Ibid.* at 19.

9 *Ibid.*

10 *Ibid.* at 18.

(b) Delegate the responsibility for prosecuting capital market offences to Provincial Securities Commissions

The responsibility for prosecuting capital market offences under the *Criminal Code* should be delegated from the provincial and federal Attorneys General, to the provincial securities commissions.

Currently, the Attorney General of Canada has concurrent jurisdiction with the provincial Attorneys General to prosecute capital market crimes under the *Criminal Code*. Capital market offences include public market fraud, illegal insider trading and market manipulation. However, there has been an almost complete absence of capital market offence prosecutions by either the provincial or federal Attorneys General. This is due in part to the fact that provincial and federal prosecutors and municipal police do not have sufficient experience or expertise for investigating and prosecuting such complex offences. Enforcement of capital market crimes requires highly qualified personnel possessing specialized knowledge of financial markets and securities. Moreover, violent crime has historically been the number one provincial priority. As such, white collar, non-violent crime is a lower priority for provincial Attorneys General or municipal police departments.

In contrast, provincial securities commission staff have extensive knowledge and experience in the investigation and prosecution of capital market offences. Furthermore, the prosecution of such crimes is a priority for provincial securities commissions. By delegating these tasks to the provincial securities commissions, more cases can be prosecuted more effectively and expeditiously, and criminal prosecutions would be aligned with the commissions' current authority, jurisdiction, powers, skills and mandate.

There are several examples of a relatively smooth transition of these powers. Many of the staff of the Integrated Market Enforcement Teams (IMET) are already working closely with securities commission prosecutors in Montreal, Toronto, Calgary and Vancouver on securities cases involving insider trading, market manipulation, and fraudulent misrepresentations. Both provincial securities acts and the *Criminal Code* now include the offences of market manipulation and insider trading. The securities commissions in Alberta, Ontario and Québec have had delegated responsibility for the prosecution of quasi-criminal offences under provincial securities acts in provincial court for many years. Moreover, delegation of criminal prosecution authority for capital market crimes would not require transfer of jurisdiction from the federal government to the provincial government, since the provinces already have the authority to prosecute such offences in the *Criminal Code*.

A decision by the provincial Attorney Generals to authorize securities commissions to pursue criminal prosecutions for securities fraud would demonstrate the high priority that Canadian governments place on white-collar crime. In addition, the increase in high profile prosecutions and greater penalties would counter the public perception that crimes such as illegal insider trading go unpunished, and therefore bolster investor confidence in the fairness and integrity of Canada's capital markets.

(c) Enhanced enforcement powers for SROs

Lastly, we believe that provincial securities legislation should be amended to allow SROs greater statutory powers. Provincial commissions rely on SROs to pursue enforcement actions in respect to their members. While SROs are quite properly held to account for their enforcement performance by the CSA, they have not been granted all the powers they need to fully discharge their responsibilities.

With the exception of Alberta, which currently grants SROs certain additional powers (including items 1 and 2 below), SROs do not currently have the following powers, which are needed to support their mandates and regulatory activities:

1. The ability to file decisions of disciplinary panels as decisions of the court;

2. The ability to compel witnesses to attend and to produce documents at disciplinary hearings;

3. The ability to compel witnesses to attend and to produce documents for the purposes of an investigation;

4. Statutory immunity for SROs and their staff from civil liability arising from acts done in good faith in the conduct of their regulatory responsibilities; and

5. The power to seek a court ordered monitor for firms that are in chronic and systemic non-compliance, close to insolvency or for other appropriate public interest criteria.

We recommend that these powers be granted equally by all provinces to SROs to ensure that the SROs can provide consistent regulatory prosecution across Canada. The IDA's use of these powers in Alberta has already proven to be successful. Not only do these powers allow for a more meaningful hearing (i.e. many perpetrators can go unpunished because without third party witnesses, a case can be significantly diminished), they also encourage respondents to enter into settlements with SROs (i.e. a respondent is more likely to defend his or her case and/or to enter into a settlement agreement where they know that the SRO has the power to enforce the order in a provincial court, and therefore collect on the order). These powers would provide substantial additional protection to the investing public and build investor confidence in regulatory enforcement.

3. Investor restitution

A major complaint of investors of the regulatory system is its apparent inability to restore to them the monies they allege were lost by virtue of the misconduct of their broker. To obtain redress investors must resort to the courts for claims in excess of the monetary limits applicable to the ombudsman ($350,000) and IDA arbitration remedies ($100,000). This court claims process can be long, complex and expensive.

That a wrongdoer should not profit from his misconduct is an important public policy principle. In the context of the law of restitution, it means that a person who has made a gain by the commission of an act that is a crime where the gain was made at the expense of the plaintiff will not be permitted to retain it.[11] An equally important policy objective would be if these unjustly obtained funds could be restored, so the victim would be in the same position as where the misconduct had not occurred.

The question is what role if any should a securities regulator play in assisting the investor in their claim for restitution. Should the regulator play a direct and active role and have the capacity to seek and enforce restitution orders or should the regulator focus on uncovering broker misconduct and allow the investor to pursue their restitution claim in the courts? Do the benefits of regulatory investor restitution powers outweigh the consequences?

In October of 2004 the Ontario Standing Committee on Finance and Economic Affairs (SCFEA) recommended that the provincial government work with the OSC to establish a mechanism that would allow investors to pursue restitution in a timely and affordable manner. SCREA arrived at this recommendation after looking into the Final Report of the Five-Year Review Committee, which noted that restitution "is an evolving area and while we are of the view that it may not be necessary or appropriate for the Commission to have the power to order restitution at this time, particularly as it will have the power to order disgorgement, we realize this may change".[12]

The recent OSC market-timing restitution payments to investors have raised questions concerning the authority to order restitution and why the OSC cannot use this authority on a regular basis. Responding to these questions, former OSC Chair David Brown stated that these payments were made possible by way of a settlement agreement, one that made it possible for investors to be compensated and not a restitution order which the OSC would not have the power to enforce. Mr. Brown further stated that if the mutual fund companies had not agreed to make these payments, the OSC could not have ordered them to do so.[13]

Other Canadian securities regulators that have considered and adopted restitution are the British Columbia Securities Commission (BCSC) and the Manitoba Securities Commission (MSC). The BCSC in publishing its *New Concepts for Securities Regulation*[14], at Concept 5 titled "New Enforcement and Public Powers" considers and recommends giving the Commissions the power to order that persons who breach securities law must disgorge their profits or make restitution to those they have harmed. The MSC has had the authority to

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11 Fridman, G.H.L. Restitution. 2nd edition. Toronto: Carswell, 1992 at 26.

12 OSC Investor Town Hall, June 29, 2005.

13 OSC Investor Town Hall, June 29, 2005.

14 *New Concepts for Securities Regulation*, BCSC Notice 2002/12. Concept 5.

order restitution since February 2003 but has only exercised this power in one case as of date.

The IDA also made market-timing restitution payments ($7.2 million) to investors relating to the revenue earned by IDA Member firms from market timing activities that they permitted. At each firm the total revenues earned, the clients affected and the amounts to be distributed to each client were readily ascertainable. In addition, the nature of the misconduct alleged was directly related to the loss. Since IDA hearing panels may impose after a hearing "any other fit remedy or penalty"[15] all the necessary conditions for an effective restitution order were available.

U.S. regulators have responded to requests for restitution. The SEC has distributed about $60 million to investors in approximately seventy-five cases in which restitution was ordered.[16] The money goes to the Federal Account for Investor Restitution and is distributed from there. One of the difficulties faced by the fund is the identification of eligible investors. The U.S. Congress's Government Accountability Office Report found that the SEC has faced difficulties in identifying injured investors and returning money to them[17].

Legislative change is not required to enable IDA hearing panels to make restitution orders, however the pros and cons for such a policy initiative would be the same as for the securities commissions. The benefits of restitution are similar for all regulators - enhanced public confidence in the regulatory system and saving investors the time and money required to pursue their claims in the courts.

There is no legal or policy impediment to IDA hearing panels making orders that would transfer money from those unjustly enriched by misconduct to those who were directly financially prejudiced by the misconduct. The problems of restitution are almost entirely in the area of implementation, the relative few number of cases for which a restitution order would be appropriate and managing public expectations concerning the applicability of the remedy to any particular case.

A restitution order should only be made in the following circumstances:

- When there is a fund available to fulfill the order
- When it has been established that the cause of the investors loss is directly attributable to the misconduct alleged and proven
- When the individuals entitled to restitution can be easily identified

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15 IDA By-law 20.33(2)(b)(i)

16 Gordon, Marcy. "Few Investors get Restitution from SEC Fund." The Seattle Times, October 4, 2005.

17 United States Government Accountability Office. . "Report to Congressional Requesters: SEC and CFTC Enforcement." August 2005.

- When the amount to be distributed to each individual can be readily ascertained

- When the funds can be easily and efficiently distributed to the eligible clients

Restitution would have resource implications. With the prospect of restitution, it is likely the number of complaints to the regulators would increase. Conversely complaints to OBSI may well decrease. However, the recent changes in the limitation of actions (to 2 years) in several provinces could make it risky for the claimant, given the uncertainty and generally time-consuming regulatory process. Furthermore, the time and resources needed to resolve individual cases would increase with the additional complexity of restitution proceedings.

4. Regulatory burden - controlling the costs of regulation through proper allocation of rulemaking responsibilities

Background

There is no doubt the regulatory burden on the securities industry has grown significantly in the past ten years. Securities commissions have assessed the rate of growth and identified it as an important issue for regulators.[18] Studies have confirmed that simply tracking ever increasing compliance requirements represents a substantial cost to market participants[19] and that the regulatory burden falls disproportionately on smaller firms.[20] On the other hand, no one could reasonably deny the need for rules, both in terms of high level statements of principle, as well as detailed prescriptions to ensure investors are protected and markets operate efficiently.[21]

The problem of regulatory burden, properly stated, is in part a problem of unnecessary regulation. One way to analyze the problem of unnecessary regulation is to ask the question, who is responsible for what?

A great many unnecessary rules are created because regulators have failed to properly allocate the responsibility for achieving compliance. In other words, one way to curb the growth of unnecessary regulation is to fix the responsibility for making rules on the organization that is directly accountable for the outcome the rule seeks to achieve. In this

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18 Regulatory Burden Task Force. . "Report to the Ontario Securities Commission." December 2003 at 10; and British Columbia Securities Commission. . "Strong and Efficient Investor Protection, Dealers and Advisers under the BC Model – A Regulatory Impact Analysis." November 2003 at 52.

19 Charles River Associates. "Estimating the Incremental Costs of Multiple Securities Regulators in Canada." June 2003.

20 Hampton, Philip. "Reducing Administrative Burdens: Effective Inspection and Enforcement." H. M. Treasury March 2005 at 25.

21 The issue of the cost of regulation is sometimes sidetracked by the debate concerning the relative merits of principle based and prescriptive rules. Both types of rules are necessary to assist market participants identify high level compliance outcomes and implement detailed policies and systems to achieve those outcomes. Detailed prescriptive rules provide the framework within which market participants can voluntarily manage a wide range of organizational risks including employee conduct risk, financial risk, credit risk, regulatory risk, civil liability and reputational risk.

way the organization that develops the rule is the organization that has to live with the result.

An approach to the proper allocation of rulemaking responsibilities

Government regulators (and the SROs that they rely on) should be primarily responsible for describing the objectives the rule seeks to achieve. Ideally, these objectives should be capable of measurement. Describing the objective of a rule with precision, enables the development of performance measures to determine if the rule has worked. This will be a complex and difficult exercise requiring the expertise beyond the legal profession. However, putting in the effort up front to match the objective with a performance measure will pay significant dividends down the road.[22]

Firms should be allocated the responsibility of implementing more detailed rules suited to their size and business. Market participants should be responsible for implementing detailed rules at the firm level because, at the end of the day it is the market participants' livelihood that is at stake if compliance failures occur.

When a market participant is told clearly <u>what</u> to achieve, it becomes easier to figure out <u>how</u> to achieve it. In addition, if policies can be developed and tested against precise performance measures, then the regulators and market participants will know what works and why.

How would this re-allocation of rule making responsibility work in practice? A key compliance objective for regulators and market participants is the employment of honest, proficient advisors who deal with the public. Clearly, the firm has primary responsibility for achieving this objective because the firm will reap the rewards of an industrious, capable, honest employee and will also suffer the pain of an indolent, incompetent or dishonest employee. The regulator plays a secondary role, certifying courses of study and providing access to confidential, personal background information. The regulator sets the minimum standards however the firm for competitive reasons wants employees who are trained beyond the minimum proficiency and have more reliability than may be indicated by the absence of a criminal record. In short, the firm has real incentives to ensure compliance beyond the minimum standard. The same accountability hierarchy would apply to account opening, giving advice, executing trades, reporting to the client and the dozens of other activities that make up the advisor client relationship.

Market participants who are capable of implementing their own rules and compliance systems would be rewarded with less intensive and less frequent regulatory oversight. Instead of an annual examination, the firm may qualify for a biennial or even triennial examination. Financial incentives arising from a reduction of the regulatory burden would reinforce firms taking responsibility for their employee misconduct, rather than abdicating this responsibility to regulators.

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22 BC Progress Board. "Economic Growth Through Regulatory Reform." February 2005 at 21.

The primary job of regulators would shift from rule makers to risk management. Regulators would have to re-allocate resources from rule making to the development of leading risk indicators and risk mitigation techniques.

Proper allocation of rule making responsibility will control the growth of unnecessary rules in two ways; (1) it will reduce the number of organizations making rules and (2) it will serve to focus the mind of the organization making the rule on the intended and unintended consequences of the rule.

A further benefit of re-allocating responsibility is timely implementation of necessary rules. Top down detailed rule making by regulators frequently produces a predictable and sterile debate concerning cost. Regulators propose new rules justified on an analysis of why the rule is needed to protect investors. Market participants respond reflexively with arguments that the costs are excessive. Seemingly endless rounds of consultations ensue, multiple drafts and amendments are concocted and finally, sometimes years later, a rule is approved.

Not every market participant will have the ability or the desire to understand, identify and implement detailed policies to achieve the compliance outcomes specified by the regulators. Generally these will be the firms that place a lower value on reputation and will be less concerned with the reputational risk that a compliance failure presents. Their business model will focus on short term firm profits at the expense of the long term value for its clients. Proper allocation of rule making responsibility would enable the identification of the less compliance ready firms and provide more detailed prescriptive and coercive guidance, including the gradual wind down of business that show no prospect of achieving the necessary capacity.

The risk regulators run in top down prescriptive rule making is ending up with a rule that is divorced from the reality of the market participants business. Market participants that want to comply are driven to implement two levels of compliance procedures - one that they actually use and another to satisfy detailed regulatory requirements. In this way additional rules actually become impediments to compliance.

The challenge is to determine what rules regulators should be making and what rules market participants should be making. Ultimately, regulators could re-allocate their resources away from rule making best left to the market participants and into more effective enforcement, risk analysis and performance measurement.

5. Gatekeeper responsibilities

Within the securities regulatory landscape, the gatekeeper obligation is regarded as a key aspect of investor protection and efficient capital markets. Investors need to have confidence that their advisers are vigilant in detecting and reporting abusive activity carried on in the market place. In return for the privilege of direct access to the Canadian capital markets, registrants undertake to guard the market place against illegal, abusive and unfair practices. Thus, it is the investment firms and advisers who have the responsibility to filter out those (few) among them who carry out abusive activity.

As a result of recent enforcement proceedings and media coverage relating to matters in the securities industry, the discussion of the "gatekeeper role" has become more prominent.

On April 1, 2005 a number of amendments to the Uniform Market Integrity Rules came into force. Included in these amendments was the introduction of Rule 10.16 and Policy 10.16 – Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons.

Under Rule 10.16 and Policy 10.16, Market Regulation Services Inc. (RS) expects certain persons to act on "red flags" which "may be indicative of improper behaviour by a client, director, officer, partner or employee of the Participant, Access Person or related entity." These individuals are expected to report activity which may be a violation of fundamental integrity rules to their respective supervisor or compliance department. Reporting to the appropriate supervisor or compliance department would be required as well as to the Market Regulator, where appropriate.

We commend RS for explicitly stating the gatekeeper obligation in the form of a rule. However, we are of the view that such an important expectation being placed on security industry participants, whether related to market or member regulation, requires a principle-based articulation in securities legislation.

We believe that registrants have a duty to assist in maintaining the integrity of the capital markets. These registrants, particular those who are in the business of trading or advising others with respect to trading, must not only be aware of the securities legislation and self-regulatory organization (SRO) rules and policies with respect to their own conduct, but to remain vigilant and aware of the activities of others that may violate these rules.

As Dean Holley, then Superintendent of Brokers at the BCSC stated in 1995:

> "Even if a registrant is not directly involved in an unfair or inequitable activity, the registrant is expected to be inquisitive and pro-active in dealing with improper, unfair or inequitable activities carried on by others and of which the registrant is or should be aware. Registrants should refuse to accept instructions from clients, who, in the registrant's judgment, are engaged in illegal, unfair or abusive trading activities. All such instructions or orders should be reported immediately to the registrant's senior management. Senior management is expected to bring matters concerning serious misconduct in the markets to the attention of the stock exchange of the Compliance and Enforcement Division of the Commission."[23]

There has been a shift in terms of a greater onus on registrants with respect to supervisory responsibility. In a sense, the regulators are delegating regulation to these other gatekeepers.

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[23] British Columbia Securities Commission Notice and Interpretation Note 1995/05.

The IDA monitors gatekeeper responsibility performance by registrants under its jurisdiction and identified failures to perform are considered to be conduct "which is unbecoming or detrimental to the public interest."[24] We have considered adopting a specific gatekeeper rule similar to that of RS, but believe that the principles-based codification in securities legislation of the broad scope of registrant gatekeeper responsibilities would be more effective.

However, this codification of registrant gatekeeper responsibilities needs to have meaning. The gatekeeper's responsibilities must be reasonable and practical. The legislative principles could provide a foundation for SRO rules tailored for the activities of their participants and members. The SRO rules would be clear about the limits of the responsibility. The responsibilities must be clear, real and consistently applied. Further, the failure to satisfy the obligation should result in appropriate consequences.

6. A prospectus Disclosure Summary should be introduced

An issuer's prospectus includes material facts about the issuer that are important to potential investors. However, due to the voluminous nature of prospectuses, individual investors often regard them as long, tedious and frequently impenetrable documents and ignore a great deal of the required disclosure in prospectuses. Indeed, the prospectus disclosures certainly serve to limit the liability of issuers and intermediaries. But they are not effective in providing potential investors the relevant information they need in deciding whether or not to invest in the issuer. A gap therefore exists between theoretical and practical disclosure, between the volume of information that potential investors receive and the relevant information that is needed and used to make an investment decision.

One way of bridging this gap is to amend disclosure requirements in securities legislation. However, such a major overhaul in the short term is unlikely.

Rather, the IDA proposes that, in addition to the prospectus, issuers be required to provide a summary document containing issuer information relevant to the potential investor. Unlike the current "Summary of Prospectus" disclosure mandated in securities legislation, the summary document we are recommending:

(a) Would convey in plain language the essence of the offering, without all the technical details currently contained in the prospectus;

(b) Would not attract liability to issuers (i.e. issuers would put forth a good faith attempt); and

(c) Would be no more than 2 pages in length.

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[24] IDA By-law No. 29.1.

The document should summarize the material offering risks in the order of importance, rather than list every possible risk inherent with the issuer. We believe that such a summary document would allow individual investors to make a more informed decision about their investments, and would therefore allow for a more competitive market place. Delivery of the summary document would take the place of the requirement to deliver the full prospectus, although the prospectus would be available to those that want it. The prospectus would continue to be available to investors as a basis for action based on a material misrepresentation.

7. Changes to Canada's Registration System

The current registration system in Canada is in need of reform. The IDA and the Commissions are currently involved in the registration process for individuals and firms. The current process is fragmented with over 110 staff in 17 offices across Canada, which employ 14 different management structures and 14 different sets of regulatory requirements. It is fair to state with confidence that this is not the optimal structure and as such is the right time for government and SROs to re-assess the role each plays in the registration process.

We have several recommendations to more efficiently and effectively manage the registration of the numerous registrants in Canada.

(a) Delegate registration to the IDA

First, we recommend that the provincial registration of all investment dealers and their employees be delegated to the IDA. Substantial delegation of registration matters already takes place in Canada. The British Columbia Securities Commission and the Alberta Securities Commission have delegated their registration powers for IDA firms, salespersons, and partners, directors and officers under provincial securities laws to the IDA. The Ontario Securities Commission and the Québec Securities Commission have also delegated this power to the IDA for individuals. This delegation represents 26,524 of the total 28,484 individuals employed at IDA member firms in Canada or 93% of all individuals and a substantial number of firms.

However, Manitoba, Nova Scotia and Saskatchewan have not delegated registration of investment dealers to the IDA, even though their respective Securities Acts permit delegation of registration to recognized SROs. As such, registration applications must be made to both the respective province's Commission *and* the IDA. This creates delay and added costs to the registration system. Given the proven effectiveness of delegating registration of investment dealers and their employees to the IDA in other provinces such as Alberta, British Columbia, Ontario and Quebec, it would be a logical and appropriate extension to continue the trend and to have all provinces delegate the registration of investment dealers and their employees to the IDA in order to provide a more efficient system for investment dealer registration in Canada.

(b) Delegate all other registration to the Principal Jurisdiction

Second, for all registered and accepted persons governed by the provincial securities commissions (i.e. international dealers, scholarship plan dealers, limited market dealers), we recommend that registration decisions should be delegated to the province to which the applicant has the most significant connection (the "Principal Jurisdiction").[25] Currently, national firms spend significant time and resources filing applications for registration in multiple jurisdictions. Moreover, while the National Registration System ("NRS") has recently been implemented in an attempt to create a national registration system, many firms are finding the system is causing more costs and delays. Under the current system, regulators are not able to delegate to each other, requiring that a review be done in each province/territory, and requiring that each regulator formally advise whether it will agree to opt in or out of the decision to register the applicant. In addition, NRS only applies to investment dealers, advisers and mutual fund dealers and their sponsored individuals. Therefore, all other salespersons, such as international dealers or scholarship plan dealers, must still go through the long process of registering in each of the provinces in which they want to do business.

In order to improve the system, we recommend that, for all salespersons governed by the provincial securities commissions, the salesperson's Principal Jurisdiction should be delegated the responsibility of making the registration decision. The non-principal jurisdiction would <u>not</u> review the Principal Jurisdiction's decision nor would it be able to opt out of the system in connection with that decision. However, in order to test the effectiveness of the system, we propose that the Minister responsible for each province's commission would review the decisions of other commissions on a regular basis, only to determine whether to renew the delegation of the registration decision making system (i.e., whether the province wants to continue to opt in to the system overall).

(c) Adopt a uniform registration system

A further efficiency improvement recommendation would be to adopt a uniform registration system, with uniform registration rules and rule application by staff. This recommendation would be a more complete step in reducing duplication. It could be achieved simply by adopting one jurisdiction's registration rules, to be applied uniformly. Our recommendation would be to pick one set of rules from the provincial registration rule sets that currently exist. Any set will do. The differences between provincial registration rules do not have a basis in regulatory philosophy, regional interests or investor protection. Therefore, there can be no opposition in principle. The resistance can only relate to a desire to maintain turf, jobs and a distinctiveness that appears to achieve nothing substantive, hardly justification for maintaining inefficiency in a system everyone claims to want to harmonize.

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[25] This can be determined based on a number of factors, including but not limited to, the applicant's place of residence, office location, and head office location.

We envisage that provincial registration revenue streams will be also be reduced by the adoption of uniform registration rules, particularly if this is coupled with delegating registration to the IDA. We believe this would be an appropriate result, as any cost savings resulting from the adoption of uniform registration rules and a streamlined administration process should be passed along to the registrants through reduced user fees.

In our view, preference for local registrations differences without a policy rationale, maintaining artificial staffing levels and sustaining avoidable fees should not stand in the way of developing a more efficient and competitive regulatory system.

We believe that adoption of these proposals would prove to decrease the costs and delays in the current registration system and would represent a significant improvement to the efficiency of Canada's registration system.