

Appendix A

Mandate and Terms of Reference

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Mandate

Assuring Integrity and Competitiveness Through Modern Securities Regulation

Issues to Review:

1. Protecting Individual Investors:

- a. Effective disclosure
 - (i) content of prospectuses and other disclosure documents – is the current prospectus useful or obsolete?
 - (ii) distinction between theoretical versus effective disclosure – how do investors really get their investment information in the 21st century?
 - (iii) is there a more practical approach to communicating with retail investors?
 - (iv) what is the true role of the RR in an effective disclosure system?
- b. Sophisticated purchaser rules – who needs protection? Is wealth a proxy for sophistication? If not, is there a better definition?
- c. Issues relating to hedge funds, as described in the recent IDA Regulatory Analysis of Hedge Funds report:
 - (i) application of exempt purchaser rules?
 - (ii) would registration be useful?
- d. Should the role of technology be increasingly recognized in terms of communication, consent, privacy?
- e. Could a more user-friendly new account document be designed – who is responsible for deciding the risk appetite of the investor? Where does protection end and self-responsibility begin?

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- f. Should there be more robust disclosure of fees. In an era of low yields do fees represent a disproportionate % of available return to the investor? Is this simply a disclosure matter to be left to market pricing?
 - g. Should there be a periodic disclosure of investor's performance in account information?

2. Balancing Cost and Effectiveness of Modern Governance:

- a. Cost benefit analysis of governance in Canadian context – can there be a Canadian context? To what extent are we in a North American market and concepts of a Canadian capital market are inappropriate?
- b. Potential need for differentiated regulation, i.e., for small issuers, both in terms of an appropriate cut-off and nature of differences.
- c. Re-examination of governance requirements, in part in the light of rethinking of Sarbanes/Oxley in the US.

3. Access to Capital – Prospectus Filing Requirements, Including Exemption from those Requirements:

- a. If investors gravitate to a market where liquidity is assured, what factors could be introduced or emphasized in Canada's markets to encourage investors to choose to execute trades here rather than elsewhere (given a choice in an inter-listed stock)?
- b. If issuers gravitate to a market where their currency is efficiently valued, what factors could be introduced or emphasized in Canada's markets to encourage issuers either to list, or maintain their listings, in Canada?

4. Regulatory Burden:

- a. Potentially greater role for a principle-based approach versus prescriptive rules-based regulation – in a litigious society is principle-based behaviour a pipe dream, with those asked to behave on principle increasingly seeking the safe harbour of rules? If so, and if principle-based behaviour is in fact desirable to avoid the arbitrariness of rules, what might be done to encourage principle-based behaviour?
- b. Meaningful attempt to reduce the overall paper-load for market participants, including dealers.
- c. Regulatory burden generally, and the opportunity to adopt a more risk-based approach, especially in regard to direct regulation of market participants, the responsibility of SROs.

5. Enforcement Issues:

Are expectations unrealistic? How could a more effective job be done? There is a direct correlation between the effectiveness of enforcement and the reputation of capital markets.

Terms of Reference

Given

- that a dynamic and efficient capital market in Canada contributes to economic growth through the effective mobilization of savings and cost-effective access to capital for new and existing businesses and for governments;
- that high standards of investor protection and market integrity are critical to preserving investor confidence; and
- that modern, balanced and responsive securities regulation is essential to ensuring a dynamic, fair, efficient and competitive capital market.

Goal

Consistent with and focusing on the Task Force Mandate: recommend revisions to Canadian securities legislation and regulation to achieve a dynamic, fair, efficient and competitive capital market.

Objectives

1. Address central principles relating to key areas of securities legislation and regulation.
2. Define principles and outline rules clearly to provide direction to policy makers, but do not draft legislation or regulations.
3. Achieve an appropriate balance between investor protection and economic growth and between principles and rules.
4. Consider how to provide direction to interpretation, implementation and administration of regulations by regulatory staff to ensure continuity of policy objectives.

Methodology

1. Accept the securities commissions' mandate as to "protect investors, preserve market integrity and enhance efficiency and competitiveness."
2. Draw on but do not be confined by existing legislation in Canada, US and Europe, as well as USL project.
3. Draw on latest regulatory thinking in Canada and abroad.
4. Consider domestic and global capital markets' developments and trends, new financial instruments and techniques and investors' needs and expectations.

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5. Balance benefits of international harmonization with sensitivity to market access, especially for small- and medium-size enterprises.
 6. Maintain neutrality as between provincial and federal jurisdiction.
 7. Challenge established assumptions, e.g., regarding effectiveness of disclosure, need for identical or similar requirements for all issuers, what constitutes conflicts of interest and what does not.
 8. Move from focus on theoretical to effective disclosure, especially in relation to retail investors.
 9. Exploit IT potential to eliminate excessive paper load, increase reliability and speed and reduce cost.
 10. Consider importance of plain language in investor disclosure.
 11. Consider entrenching a cost/benefit obligation as in the UK for the FSA.

Process

1. Conduct a broad consultation across the country with a wide variety of constituencies.
2. Develop and follow a communications plan to explain objectives, encourage consultation, disseminate report.
3. Develop and follow a detailed budget, not to exceed \$7 million, including fees, travel, consultants, professional staff, and externally generated studies, publication and communication plan.
4. Adhere to one-year timeframe for publication.
5. Post-publication, follow up on communication, consultation and advocacy.

