



Winnipeg Commodity Exchange Inc.

October 12, 2005

By fax to (416) 364-0753 then mailed

The Task Force to Modernize Securities Legislation in Canada
Investment Dealers Association of Canada
Suite 1600
121 King Street West
Toronto, Ontario
M5H 3T9

Attention: Thomas I. A. Allen, Chairman

Dear Sirs:

Winnipeg Commodity Exchange Inc. has reviewed the Invitation to Comment received from your task force on September 21, 2005. As you will be aware, the recent initiative of the federal government, the Wise Persons Committee tendered its final report in December 2003. That report, which had reviewed opinions and reports from a wide group of industry, regulatory, academic and other related groups, made detailed recommendations on the very issue your task force is reviewing. The Wise Persons committee website attached copies of all submissions received, including a submission from the WCE dated July 7, 2003, a copy of which is attached.

Winnipeg Commodity Exchange Inc. is unable to add anything further to the discussion at this time.

Yours truly,

M. J. Gagné
President and CEO

Enclosure

*Submitted electronically at Wpc-Cpa@farris.com

July 7, 2003

WPC Committee to Review the Structure
Of Securities Regulation in Canada
P.O. Box 10026
700 West Georgia Street
Vancouver, B.C.
V7Y 1B3

Attention: Mr. Michael Phelps, Chairman

Dear Sirs:

Re: Consultation Paper

Winnipeg Commodity Exchange Inc. ("WCE" or the "Exchange") thanks you for the invitation to respond to the consultation paper and appreciates the opportunity for input on an issue of such significance to the capital markets of Canada.

Background

Winnipeg Commodity Exchange Inc. is Canada's only commodity futures and options exchange. It has operated continuously since 1887 with a mission to provide a public marketplace for responsive price discovery and risk transfer of commodities with efficiency and integrity. The value of the contracts traded on the Exchange exceeded \$14 billion for the crop year 2002/2003. WCE is the world's leading provider of price discovery and risk management for canola, its most actively traded contract, and is the only futures market for flaxseed.

Contracts traded on WCE include futures contracts on canola, canola meal, flaxseed, domestic feed wheat and domestic feed barley. Options on canola, flaxseed, feed wheat and feed barley are also traded. WCE also operates its own clearinghouse, WCE Clearing Corporation.

WCE's participants and shareholders are located internationally and include international grain companies, maltsters, feed lot operators, farmers, importers, shippers and exporters, oilseed crushers, primary elevator companies, producer-owned cooperatives, grain and feed merchants, futures commission merchants, floor brokers, and individual locals.

In February 2000 regulatory oversight of the Exchange was assumed by The Manitoba Securities Commission pursuant to the provisions of *The Commodity Futures Act*

(Manitoba) (the Act). (Prior to that time regulation of certain aspects of WCE operations were supervised by the Canadian Grain Commission).

The Exchange applied for, and was granted, recognition under the Act as a commodity futures exchange (s.15(1)) a Self-Regulatory Organization (s.14(1)) and its clearinghouse, WCE Clearing Corporation, was granted recognition as a clearinghouse (s.16(1)).

In May 2001, the Exchange was granted a Part 30.10 order by the Commodity Futures Trading Commission, (the 'CFTC'). The CFTC is the United States federal regulatory authority for all derivative markets. The Part 30.10 order recognizes that the Exchange and its clearing operations meet internationally accepted standards and that its regulatory system is in substantial compliance with US requirements. This recognition is a critical component of WCE's marketing efforts to both current and prospective new participants, including U.S. managed funds which constitute an increasingly important source of speculative volume and liquidity. As a foreign (i.e. non-US) exchange, being able to demonstrate that our quality of self-regulation meets or exceeds US standards is a very significant competitive advantage.

Submission

This submission is confined to the position of the Exchange and its clearinghouse, rather than any of its constituent groups (for example, Futures Commission Merchants, who will independently respond, or respond through the Investment Dealers Association of Canada).

WCE recognizes that Canada is a minor player in the global capital markets, declining over the past decade from constituting 3% of the global capital markets to less than 2% currently.¹ Numerous reasons have been proffered for this unfortunate situation, Canada's current regulatory environment being one of them. As was succinctly stated by Professor Jeffrey G. MacIntosh :

Selling our capital markets to the world necessarily means selling our regulatory apparatus. Back in the days when the first provincial securities statutes were written, capital was sufficiently immobile that each regulator had a local monopoly. Now that the tide of capital can bypass inhospitable regulatory regimes, the days of regulatory monopolies are gone. We must recognize that the future of our capital markets depends on our legislators, securities regulators and exchanges taking stock of the fundamental reality that we – and they – are competing for capital on an international stage.²

The problems with securities regulation in Canada have been stated frequently and by many market participants. They include duplication, inefficiency, redundancy, excessive cost, inflexibility and ineffective enforcement. Talk of harmonization has been going on for decades with little practical significant progress made.

¹ CMI/TSE symposium March 2002

² from Professor MacIntosh's introductory remarks at the symposium on Canadian Securities Regulation held October 2002, Toronto, Ontario.

Criteria for change

The Exchange agrees with the criteria³ outlined by A. Douglas Harris⁴, for the optimal regulatory structure to meet the current needs of Canada's capital markets. That criteria is:

1. **Constitutional Validity** – the regulatory structure proposed should be constitutionally valid without the need for a constitutional amendment or concessions or waivers from the affected provinces.
2. **Stability** – the regulatory structure proposed should have structural permanence, and should not permit strategic behaviours by participating provinces who might credibly threaten to withdraw if their demands on administrative or policy issues are not met.
3. **Local and regional flexibility** – the regulatory structure proposed should provide some ability for local and regional variation in securities legislation and/or administration, at least to the extent consistent with satisfying the other criteria.
4. **Universality** – the regulatory structure proposed should be designed to apply as widely as possible across the country.
5. **Accountability** – the regulatory structure proposed should ensure that elected representatives are accountable to their constituents for the quality of regulation of Canada's capital markets.
6. **Determinacy** – a reform proposal should propose a scheme for securities regulation that does not rely on significant further negotiations for the determination of its scope or implementation, and that defines clearly areas of exclusive regulatory authority.
7. **Responsiveness** – the regulatory structure proposed should ensure that the regulator with jurisdiction will have the authority and appropriate incentives to respond efficiently and effectively to changing economic circumstances that affect Canadian capital markets.
8. **Cost effectiveness** - the regulatory structure proposed should provide a clear opportunity to reduce the costs of regulatory compliance for issuers and intermediaries, relative to the status quo.

WCE would support any model of securities regulation which:

- 1) Uses as its model for self-regulatory organizations the requirement of transparency rather than prescriptive rule making.⁵ This transparency requires exchanges to disclose all rules, and provides for external reviews to assess how effective the regulatory division of the exchange is in ensuring that the rules have been followed. This approach, which has been adopted by the current provincial regulator for WCE, fosters quality self-regulation and has the intended result of improving market participant confidence. It has allowed WCE to innovate as necessary to ensure that its products and rules adapt to changing circumstances while ensuring that high regulatory standards are maintained.⁶
- 2) Reduces duplication. The derivatives industry in Canada is not as mature and developed as in other countries, including the United States, Japan, England and

³ Criteria set out in the White Paper, A Symposium on Canadian Securities Regulation: Harmonization or Nationalization? October 2002 (pages 49, 50)

⁴ Director, Capital Markets Institute, Assistant Professor, University of Toronto, Faculty of Law

⁵ This discussion based in part on the work of Neil Mohindra, in Securities Market Regulation in Canada (Fraser Institute Critical Issues Bulletin (2002),

⁶ It should also be noted that, unlike certain other exchanges, additional securities regulatory authorities have not expressed an interest in maintaining regulatory jurisdiction over WCE.

others. Given its developing state, certain Futures Commission Merchants resident in other jurisdictions have discussed with WCE the possibility of setting up branch offices in Canada. This would have a positive impact on the liquidity of WCE's markets. WCE is aware of recent situations where FCM companies seriously reviewed the potential for commencing business in Canada and determined not to proceed due, in large measure, to the time and costs of having to file and pay fees in multiple jurisdictions.

- 3) Reduces fees and costs. Note the example in 2. above. The current system is problematic in that a significant component of the "fees" charged is indirect taxation. Reduced, streamlined regulation should result in reduced fees as market participants should be charged the actual costs of regulation only.
- 4) Harmonizes rules and laws. Efforts should be focused on completing harmonization as expeditiously as possible by agreeing to a firm implementation date.
- 5) Strives to ensure that regulatory staff obtain the necessary training in industry to become expert in the areas they have primary responsibility. Sufficient funding must be left with the commission(s) to ensure that adequate resources are available to attract and maintain knowledgeable staff.

In conclusion, WCE is more concerned about the end product than the assertion of jurisdiction. We urge the WPC to seek the solution that best meets the criteria set out above and to recommend strict timelines on its implementation. Thank you.

Yours truly,

M. J. Gagné
President and CEO