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Introduction

"To achieve an effective regulatory framework, we need to take international developments into account. Countries can gain a comparative advantage by developing a superior regulatory framework. For our financial markets and institutions to be internationally competitive, our regulatory framework needs to be – and needs to be seen to be – as good as, if not better, than that of other countries."

– Remarks by David Dodge, Governor of the Bank of Canada, to the Toronto CFA Society, September 22, 2005.

Scope of Mandate

The Task Force to Modernize Securities Legislation in Canada (the "Task Force") was commissioned in June 2005 by the Investment Dealers Association of Canada ("IDA"). The mandate of the Task Force was to make recommendations to modernize securities legislation in Canada that would maintain or enhance the competitiveness[1] of Canada's capital markets while continuing to protect individual investors. We are appreciative of the opportunity provided to us, by the IDA, to pursue the various issues examined in this Report. Our mandate and terms of reference were developed in close collaboration with the IDA. However, in fairness to the IDA, we wish to emphasize that our recommendations, the points of view which we express, as well as the recommendations of researchers commissioned by us, should in no way be attributed to the IDA.

"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…. Numerous reasons have been proffered for this unfortunate situation, Canada's current regulatory environment being one of them."

– Winnipeg Commodity Exchange (written submission to the Task Force in Volume VII)

Specific details of the Task Force's mandate and related terms of reference are to be found at Appendix A of this Report. Two things will be readily apparent when considering our mandate. With regard to its first branch, any student of securities regulation will sense immediately that the task of addressing all that might be improved with Canadian securities regulation is immense. This is not to say, necessarily, that there are an immense number of problems with the securities regulation currently. Rather, as with any body of regulation, there are areas that are in need of modernization to keep pace with the ever changing environment in which the regulated operate.

[1]We note that in the United States, the Committee on Capital Markets Regulation announced on September 12, 2006 that it would complete a study on the effects of Capital Markets Regulation on U.S. competitiveness.

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Second, it will be equally apparent that the competitiveness of Canada's capital markets can be addressed from a variety of starting points – corporate law insofar as domestically incorporated companies are concerned, tax incentives to domestic investors, tax incentives to attract foreign investors, and, of course, the securities regulatory environment in which capital markets operate. The linkage between the two primary aspects of the Task Force's mandate is, of course, the last of these and, with minor exceptions, we have restricted our review and our recommendations accordingly.

With regard to the scope of our review, it is important to relate several important decisions made by the Task Force at the outset of its deliberations. We were conscious of not duplicating the extensive review of the securities regulation which has already been done by others, such as the recent Five Year Review Committee established by the Ontario Securities Commission and the review of the British Columbia's securities legislation by the British Columbia Securities Commission and, as much as possible, not to duplicate other work and recommendations being addressed throughout the securities regulatory community (we provide a brief overview of this work in Chapter 2). Accordingly, when inviting comments from stakeholders we made the point that we were not attempting to make recommendations as to what is "*broken*" and needs "*fixing*". While the mandate of the Task Force did have a corrective aspect, the focus has been on bringing the Canadian securities regulatory regime into sync with the world in which securities markets currently operate and may be expected to operate in the future. In a word, as the name of the Task Force suggests, the goal was to make recommendations to "modernize" securities legislation.

"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."

– Professor G. MacIntosh as cited by the Winnipeg Commodity Exchange (written submission to the Task Force in Volume VII)

Except in addressing issues of enforcement, where their role is integral, we also determined specifically not to enquire into the role of self-regulatory organizations ("SROs") in the securities regulatory system. Although we were invited by some to consider the role of SROs it seemed to us difficult to approach this subject with any credibility, given our sponsorship.

We have also not enquired into the many issues surrounding the regulation of the mutual fund industry, except to the extent that they are fundamental to the issues pertaining to hedge funds, and are therefore inescapable in any consideration of issues surrounding the participation of retail investors in hedge funds. The regulation of mutual funds has been the subject of much thoughtful writing in recent years and will possibly receive more attention when the International Organization of Securities Commissions' work with regard to hedge funds is available for examination by Canadian regulators.

Finally, as a central issue of concern among participants in the Canadian capital markets for many years has been the issue of regulatory fragmentation, readers may find it curious that we do not address this issue directly. The answer lies in our mandate which expressly excludes that issue from our review. The exclusion resulted from a recognition that much was being done, and had in recent years been done, on the issue, be it by way of the forceful calls for a single Canadian securities regulator or the introduction of a "passport" regulatory system.

Nonetheless, regulatory fragmentation continues to be paramount on the list of issues which concern Canadian capital markets stakeholders and the public generally and we found ourselves having to point out frequently to those who wished to discuss this issue that it was, despite its obvious resonance with us, not "our issue". There is no doubt of the importance of resolving this issue quickly and in a way which minimizes, if not eliminates, the quite legitimate concerns. While we have not directly tackled the issue of regulatory fragmentation in our Report, we do add our voice to the chorus demanding that immediate steps be taken to ameliorate the inefficient, out-dated and duplicative securities regulatory structure that currently exists in Canada.

Notwithstanding the constraints of our mandate, readers will note that we found it impossible to address the extremely important issue of enforcement of securities laws without including in that discussion how enforcement virility is sapped by regulatory fragmentation.

In a number of cases we have recommended national co-ordination of various initiatives in the interests of effectiveness and efficiency. This applies, *inter alia*, to recommendations we have made regarding investor education, "e-literacy" as a national priority and to enforcement. It was not part of the mandate of the Task Force to determine whether this national co-ordination is accomplished by federal intervention or by effective collaboration among members of the Canadian Securities Administrators. We would certainly encourage all governmental and regulatory bodies to contribute, wherever and whenever appropriate, to ensure each objective is successfully achieved.

Process

Input from Canadian Capital Market Stakeholders and Other Interested Parties

On September 16, 2005 the Task Force issued an invitation to comment to various capital market stakeholders across Canada. This was followed by a general invitation to comment to all interested parties which appeared in the national editions of *The Globe and Mail* and *The National Post* newspapers on October 11, 2005, as well as in *La Presse* on October 19, 2005. Appendix B contains a copy of the Task Force's invitation to comment as well as the newspaper advertisements.

In response to the invitations to comment, written submissions were received from a variety of capital market stakeholders and other interested parties. These submissions have (unless consent was withheld) been lodged on the Task Force's website and are now published in Volume VII of this Report.

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Many of those who made written submissions to the Task Force also asked for the opportunity to make oral submissions. To enable this to take place, and to hear from others who did not wish to make written submissions, the Task Force held meetings open to oral submissions in Vancouver, Montréal, Ottawa and Toronto. A meeting scheduled to take place in Calgary was cancelled as no requests to make oral submissions were received. We also had the benefit of hearing the views of regulators and capital markets stakeholders in the United States during visits to New York, New York and Washington, D.C. A list of the names of those who made oral submissions or presentations to the Task Force is contained in Appendix C.

The written and oral submissions and presentations were extremely valuable to us in defining the contours of our mandate and underlining the majority of the issues that have been the focus of our recommendations. While some of these submissions focused on the detail of securities regulation to a degree which we felt too "granular" for our mandate, many focused on broader issues central to any attempt to modernize Canada's securities laws, or central to issues the correction of which would enhance the efficiency of Canadian capital markets.

Included among those who had discussions with us were several of the members of the Canadian Securities Administrators. They have spoken with us and have also, to whatever extent they felt free to do so, made information – or their thoughts – available to researchers commissioned by us. Similarly, our sponsor, the IDA made valuable submissions and made its senior personnel available to researchers, and this help has been of great assistance. This access to the regulatory perspective, both at the regulatory organization and governmental levels, to facts available to them and to a flow of ideas has been immensely useful and greatly appreciated.

With regard to stakeholders other than regulators, we are very grateful to those who took the time and made the effort to bring their concerns to our attention.

To each of you, we apologize if you do not find your specific concerns addressed in our Report and recommendations. To address each concern was simply impossible. However, by publishing all submissions received by the Task Force on our website and by including all submissions (unless privacy was requested) in Volume V of our Report, we are – to the extent we can – ensuring that your concerns are readily available to Canadian regulators and policy makers.

Views from other Jurisdictions

The Task Force solicited the views of legal practitioners and regulators in the United States and the United Kingdom to determine what types of reform initiatives to modernize securities legislation have been undertaken in other jurisdictions. We feel that a number of our recommendations have benefited from being able to study which reform initiatives have been successful in other jurisdictions and whether they have any application in the Canadian context.

Research

The Task Force commissioned 30 research papers by leading Canadian and international academics and legal practitioners to both elicit the most current thinking in securities regulation and to test whether a number of potential recommendations were worth pursuing. These research papers have informed the recommendations contained in our Report and are included in Volumes II, III, IV, V and VI.

Meetings of the Task Force

The Task Force met between September 2005 and September 2006 to hear oral submissions, to study commissioned research and to formulate and debate the recommendations included in this Report.

The Structure of this Report

In Chapter 1 we discuss *why* vital capital markets with modern securities laws are important to all Canadians. Chapter 2 provides an overview of recent securities law reform initiatives in Canada (a similar overview of reform initiatives in the United States and the United Kingdom is contained in Appendix D).

The second part of this Report is devoted to recommending "how" securities laws in Canada can be modernized. Chapter 3 examines the regulatory "prism" through which the Canadian capital markets are regulated and how this might be modernized. Chapter 4 explores how investors make investment decisions and contains recommendations to make securities disclosure more effective, primarily through the use of modern electronic communication. Chapter 5 looks at how Canadian securities laws can be modernized to allow issuers faster access to capital markets. Chapter 6 recommends ways in which hedge funds, a form of financial product that has received little regulatory attention to date, can be regulated. Chapter 7 entails a review of current securities law enforcement regime in Canada. The Task Force is of the strong view that securities laws, no matter how modern, are of little use and do little to enhance the vitality of the Canadian capital markets unless they are fairly and vigorously enforced.

The third part of this Report contains "ideas for consideration". These are ideas that were discussed by the Task Force during the course of its deliberations but for which no formal recommendations are made due to lack of consensus. Nonetheless, we felt it important to include these ideas in our Report to memorialize the thinking in these areas and to also provide a starting point from which those interested can work. Accordingly, Chapter 8 contains a review of how private sector "gatekeepers" can be used within the securities regulatory regime. Finally, Chapter 9 puts forth an idea to provide insurance against "misinformation" in Canada's capital markets.

The fourth part of this Report contains a review of the underlying research that helped our understanding of many of the issues that formed the basis of our deliberations. Chapter 10 provides an analysis of this research and Chapter 11 provides a list of the recommendations put forward independently by the researchers we commissioned. The Task Force does not necessarily endorse the recommendations put forward by these researchers – the recommendations of the Task Force are specifically limited to those appearing in Chapters 3 through 7.

Finally, and importantly, readers should bear in mind that this Report is not meant to be a legal treatise. We have been afforded the luxury of being able to take a wide-ranging, "big picture" look at Canadian securities regulation and ideas to modernize it. While we are confident that all of our recommendations are viable, this Report does not prescribe the legislative changes necessary for the implementation of our recommendations as this is the rightful domain of securities regulators. Moreover, as noted above, readers interested in more detail regarding the background information that informed our recommendations are invited to read the research studies we commissioned which are contained in Volume II, III, IV, V and VI.