“Canada Steps Up”

Thomas I.A. Allen, Q.C.
Chairman
Task Force to Modernize Securities Legislation in Canada

The Economic Club of Toronto
Toronto, Ontario
October 10, 2006

Check against delivery.

Mr Chairman, head table guests, ladies and gentlemen.

You have seen the Task Force Report as you entered the hall this afternoon. The Report itself is the first volume. It is supported by 5 volumes of research papers from academics in 4 countries, and informed by about 70 submissions, most of which are in volume 7. The last 6 volumes make interesting reading. You can judge whether the first volume does so, as well.

The Report contains some 65 recommendations. Clearly it would be impossible to discuss them all, or even a majority, in the time available to-day. There are many which I won't address – recommendations relating to hedge funds, the need for regulations to be rationed on a "need to regulate" basis, encouraging principles over rules to be the foundation for our system, the need for careful Cost-Benefit Analyses before the fact and by way of review sometime after the fact, the need for two business days warning of an intended sale by an insider, the end of obsolete "hold periods".

These are all important, but I put them to one side to-day, not because they are unimportant, but simply because one has to draw the line somewhere.

What I will discuss are a couple of recommendations which matter to investors and issuers and make a few observations with regard to enforcement.

To begin with, I would like to set the stage for my comments by some discussion of why this subject matters and with regard to the stage on which the Canadian capital market play is performed:

1. No one in this room can be in any doubt that capital markets affect every Canadian – whether one works in the industry, works for an issuer whose ability to raise capital affects their ability to employ and pay well, whether one is a prospective pensioner hoping against hope that the pension will someday mean something, or someone who has been told that -through a defined contribution plan –their financial future is up to them.

2. Capital markets in Canada suffer from what we have called a "made in Canada discount". There is no doubt that this exists. Research which we have referred to in the Report indicates that the discount is 25 basis points from the price attracted by comparable equities in the US. Whether this is accurate is not the issue. It offers an order of magnitude. Multiply this by the equities financed in Canada annually and one can see that there is a critical need for improvement.

3. Why does this exist? There may be many contributing factors, but one factor certainly is that the perception of less rigorous enforcement leads people to invest more reluctantly, reducing liquidity and thereby inducing a compensating haircut in pricing.

4. What does such a discount imply? According to the Bank of Canada, every 50 basis point decline in the corporate risk premium charged to Canadian issuers translates into an approximate increase in GDP of from 0.8% to 1%. This is an issue worth addressing!!!

What can we do?

The answer is: a lot.

I will come to that, but first, a few minutes for what is happening outside Canada.

Canada is the ham in the regulatory sandwich.

To the south we have, to simplify matters a bit, a regulator maxed out on regulatory intervention and which has been accustomed to being able to compensate by unequalled liquidity. That liquidity trump card is becoming increasing less valuable as issuers stay away, issuers migrate to London, and huge IPOs get successfully launched in Hong Kong and Shanghai.

To the east, we have a system where, through outsourcing regulation to NOMADS, regulators have invited issuers to what they see as a more benign regulatory environment –with some marked success.

But both pieces of bread in the sandwich are rethinking their position. In London, on October 2 new LSE proposals were published setting out in more detail the responsibilities of NOMADS and their corporate clients. Clearly regulatory outsourcing only works if the delegates meet their responsibilities.

In Washington, we are all aware of the active efforts to reduce the issuer repellent aspects of SOX.

Nothing is static in this regulatory sandwich.

Now, back to what can we do?

Logically one starts with investors. Without them there is no liquidity and without liquidity equities are not fairly priced.

Investors need 2 things: they need to have the ability to be informed, and they need to have confidence that the market is fair.

Dealing with the first we have several recommendations:

1. Financial literacy must be treated as a national priority. And investor education must be co-ordinated at the national level. Much is being done by many well-intentioned and capable educators but we suffer from too many cooks at the educational broth. More must be done.

2. We have spent the last decade on disclosure. Much has been accomplished. But the disclosure we have is frequently impenetrable, intimidating and built in the model of the last century. In the vernacular –it is `so yesterday`.

3. We recommend that except for IPOs, all disclosure be in e-form. We recommend a full ``access equals delivery" system. But if all that happens is that the customary mound of

paper gets scanned and filed electronically, all that does is save a waste of paper, so we have gone further than that.

4. We have commissioned the preparation of a prototype software system to show what 21st century disclosure could look like. It is multi-media; it is inter-active; it permits an investor readily and intuitively (for to-day's generation) to access what they want; it permits the use of XBRL for access to tagged information to enable company-to-company comparisons. The system is called MERIT (a Model for Effective Regulatory Information Transfer). The system has been prepared by Navantis, working with Dean Peloso and Gord McLeod will provide a 5 minute demonstration right after we adjourn, for those who have time to stay. For those of you who want to play with the DEMO yourselves, you will find a CD stuck to the inside of the back cover of the Report. Take it home. Try it out and see how useful it could be.

Early in October, Chairman Cox of the SEC announced a $50 million program to develop an interactive data system which would enable people to access XBRL. We have already begun and are excited that Canada can offer, not a solution, but a concrete start along that road.

What about issuers?

Well clearly, it is critical to issuers to be able to tell their story effectively, so their equity is fairly priced. Anything –such as what we have just discussed - which enables this should be a boon. I would expect that the end of the cost of paper which is largely discarded would also be constructive to the overall cost of being public.

Further, we believe that the prompt access system adopted at the start of the year in the US should be imported into Canada. Most of you will know that well known seasoned issuers in the US (those with a market cap of $700 million) can come to market without regulatory intervention. We recommend that the same flexibility be accorded to Canadian issuers with a market cap of at least $350 million. Research shows that on average they have enough research following to justify this step. The acronym works out rather well in Canada. In the U.S. such well known seasoned issuers are called WKSIs. Put a C for Canada in front of that and you have C-WKSIs –appropriate for fast access to market.

Finally, I need to spend a few moments on enforcement. Research commissioned by the Task Force shows that the benefit which investors grant to a market with sound securities laws quickly dissipates if those laws are not seen to be effectively enforced. So, what IS the story in Canada?

Let's dispel one obvious answer. Canadian enforcement is not under funded compared to the US. However, those employed in enforcement are underpaid –so says the research. How can those two live together? A lack of co-ordination, unnecessary duplication: those could certainly contribute to the problem.

The recommendations which we have offered with regard to enforcement cover the whole gamut –from investigation, through prosecution to enforcement. They contain ideas for the IMETS, ideas for a senior independent review officer to have oversight of all enforcement activities in a given location, ideas for national co-ordination of prosecution and, if possible a National Capital Markets Court.

With the exception of the last recommendation, all these recommendations come directly from and are supported by the research paper prepared by Mr Justice Cory and Professor Pilkington. It is a paper with the utmost credibility and should provide very valuable guidance for policy makers in Canada.

I mentioned the exception of the National Capital Market Court recommendation. The authors question the achievability of that recommendation and recommend, in preference, beefing up the existing system with a well trained capital market judiciary.

Whichever way it is done, the underlying theme from us, on enforcement, is to improve co-ordination among the various people working hard to improve enforcement in Canada.

So, I am asked –how long will this take? Another 10 years?

My answer is NO. Regulators to whom I have talked are engaged in all these issues. They know that these issues MUST be tackled without delay. They know that markets with which we compete are moving swiftly. Those markets are not concerned about what happens in Canada. It's time we changed that.

In the words of the title to our report

It is time for regulators to STEP UP to the challenge

Il faut que le Canada s'engage. Thank you for your attention.