

July 17, 2008

Mr. David Murchison
Executive Director
Expert Panel on Securities Regulation
Ottawa, Ontario K1A 0G5

via email: submissions@expertpanel.ca

Re: Submission to the Expert Panel on Securities Regulation

Dear Mr. Murchison:

I am writing as the Chief Executive Officer and Chief Investment Officer of British Columbia Investment Management Corporation (bcIMC). The purpose of this letter is to give bcIMC's views on the consultation items presented by the *Expert Panel on Securities Regulation* ("the Expert Panel"), particularly on the items relating to enforcement of Canadian securities law and regulation. We submit that capital protection and capital market crime enforcement in Canada are not meeting the needs of investors, and must be top priorities for the Expert Panel's recommendations on how to improve securities regulation.

By way of background, British Columbia Investment Management Corporation is among Canada's largest investors. Our global investment portfolio is currently valued at approximately CAD\$ 85 billion, and while the majority of the assets are now located in Canada, we are increasingly seizing opportunities in markets around the world that value and protect our capital. bcIMC manages the portfolio on behalf of public pension plans and trust funds in the province of British Columbia. Hundreds of thousands of citizens of our province are the beneficiaries of these pension and trust funds. It is our fiduciary duty to our beneficiaries to protect and enhance their financial security, so bcIMC appreciates the opportunity to comment to the Expert Panel about what we believe is critical for effective securities regulation in Canada.

Our comments flow from three essential beliefs:

- First, we recognize that "white collar crime" is often dismissed as if it were a victimless crime, but securities offences have serious impacts on investors, the integrity of our financial markets, and on the stability and growth of the pension and trust funds we manage.
- Second, we believe that Canada must compete in the global economy, where finance and investment capital quickly flows without borders to the best opportunities on a risk adjusted basis. Strategically, Canada needs to have, and be recognized as having, a fair and transparent securities market where investors, both domestic and foreign, feel their capital will be well-treated (i.e., nourished and protected).
- Third, progress is being made on the Passport System and rule harmonization. We would like to see this structure develop and mature while working on the real issue: better criminal enforcement.

Better Criminal Enforcement is the Key Issue

It is widely perceived that there is a weak deterrent effect for serious capital markets crimes in Canada. Criminal enforcement processes from investigation to prosecution to adjudication are inadequate (for example, the criminal fraud trial of former Livent officers began this May — more than five years after the initial charges were filed in Ontario, 10 years after Livent declared bankruptcy and almost 15 years after some of the alleged fraud took place).

Securities regulators have the function of ensuring the efficient administration of the capital markets, not the enforcement of capital markets crimes, which is the role of the criminal justice system.

We recognize that the federal government has demonstrated a willingness to confront the weaknesses that are perceived in the enforcement of securities laws, for example, by establishing, within the RCMP, Integrated Market Enforcement Teams (IMETs) to investigate high profile capital markets offences. However, the ineffectiveness of Canada's criminal justice system remains a critical problem.

In our view, the federal government has a leadership role and must use its constitutional and financial powers to make the criminal law policing and prosecution functions more effective, and to collaborating with the provincial securities regulators and Attorney Generals by taking responsibility for the investigation and prosecution of criminal offences relating to capital markets.

Specifically, we echo many of the 2006 recommendations of the *Task Force to Modernize Securities Regulation in Canada* ("the Allen Task Force"):

- Either the mandate of IMETs to investigate capital markets offences should be expanded so that it can conduct all the necessary criminal investigations relating to capital markets, or the capacity of other police forces must be enhanced to enable them to do so. The alternative would be the establishment of a new organization, separate from the RCMP, that is focused solely on enforcing capital markets crime.
- It is important that IMETs complete its current investigations expeditiously.
- Processes must be established to provide for co-operation and co-ordination among agencies investigating capital markets offences, including protocols for sharing information.
- Priority in investigation should be given to early intervention when it is necessary to protect investors.
- Policies for police staffing must ensure the development and retention of individuals who are highly skilled in the investigation of capital markets offences.
- Remove legal barriers and obstacles that stand in the way of gathering evidence about criminal offences relating to capital markets.
- There should be a nationally co-ordinated program for the prosecution of capital markets cases to ensure the development of a public prosecution service that has the requisite experience, capability and commitment.

- Additional judicial appointments must be made to provincial and superior courts and additional facilities must be established as required to ensure the capacity to prosecute and try capital markets offences.
- Programs must be established, possibly through the National Judicial Institute, to prepare judges to manage the adjudication of complex offences relating to capital markets and to understand the contexts in which they arise.

We understand that it will take time to train and develop the expertise of police, prosecutors and judges to handle securities fraud cases more effectively, but we feel that federal government leadership and action on building these skills and resources is the best way to improve investor confidence, Canada’s reputation in the global marketplace and the value of Canadian securities.

Passport System or Single Securities Regulator

The harmonization initiatives of the Canadian Securities Administrators (CSA), including the introduction of the Passport System, are important and positive improvements in Canada’s current securities regulatory system. In bclMC’s view, the provinces should continue the harmonization effort. Once all the provinces are working together on a more consistent, unified basis, the shift to a single securities act and regulator will be more easily accomplished, should it even be warranted. We believe that thinking and working as one body of regulatory equals will, over time, naturally lead to a merger of all provincial agencies.

We support the proportionate decision-making model for the governance of securities regulation that was suggested in 2003 by the *Wise Persons’ Committee* but, as re-stated from the 2006 Crawford Panel’s final report: “it is essential that a single securities regulator not be susceptible to domination by any one jurisdiction or agenda.” In our opinion, a clear understanding of how activities and resources will be decentralized is needed if a national model is to move forward. For example, the “centres of excellence” concept is right and we would like to see more certainty and planning around it.

Principles-Based Securities Regulation

bclMC supports the creation of consistent securities regulation (and enforcement) across Canada, with a focus on principles-based regulation. We advocate an outcomes-based approach, supported by guidelines and detailed rules where necessary to minimize issuer and investor uncertainties about interpretation. Striking the right balance between principles-based regulation and prescriptive rulemaking has a number of benefits:

- Speeding up the implementation of new policies - If there’s a genuine need for regulation (i.e., once a regulatory gap has been identified), any delay is not in the investors’ best interests.
- Leaving flexibility for firms to customize compliance regimes – If dealers are given the opportunity to define how they will allocate resources to meet rule objectives, this implementation could be more efficient and effective.

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I would like to conclude by saying that we appreciate the work the Expert Panel is doing to improve the content, structure and enforcement of securities regulation in Canada. And while the Panel's focus is on improving our national market, in fact, we are part of a global market. Investors like bcIMC are increasingly operating without borders as we seek the best investment opportunities around the world, so we feel strongly that any new regulatory standards adopted by Canada must have meaning, acceptance and recognition in the context of a global economy. International regulatory coordination to protect investors and encourage fair and efficient capital markets is front of mind for us.

Should the Panel have any questions about bcIMC's views on how to improve Canada's securities regulation, I can be reached at (250) 387-7161.

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "D Pearce". The signature is fluid and cursive, with a large initial "D" and "P".

Doug Pearce

Chief Executive Officer
Chief Investment Officer

BC Investment Management Corporation

APPENDIX

Next Steps in Securities Regulation Reform

There is currently no consensus about a common securities regulator for Canada's capital markets among federal and provincial ministers responsible for securities regulation. But rather than wait for this political impasse to clear, we suggest focusing on **what is achievable**.

First, the provincial Passport System, with all provinces and territories participating, can serve as a starting point in the transition to a national regulatory model.

Next step: All jurisdictions should be encouraged to support the Passport System.

Next, there is agreement by virtually all market participants and observers, domestic and foreign, that securities law and regulation enforcement in Canada is a critical concern. An elite, specialized, well-funded securities law enforcement unit should be established while a national regulator is being assembled. (The current RCMP IMET has the potential to be such a unit but its stability is questionable as the various agencies staffing the team transfer members in and out to meet other needs).

The enforcement unit would:

- only focus on investigation and enforcement of securities laws and regulations and criminal laws relating to the capital markets, leaving day-to-day administration of securities regulations at the provincial level. Also the power to make securities laws and regulations would remain with the provincial governments and their commissions. There would be no loss of sovereignty or jurisdiction at the provincial level.
- be made up of the best and brightest staff (e.g., lawyers, accountants), internally and through secondment from the private sector.
- have the expertise and specialized knowledge to support/educate Crown prosecutors about complex technical business and accounting matters so the prosecutors can, in turn, clearly explain these matters to judges.

Next step: Establish a well-resourced enforcement unit, separate from the RCMP, which can investigate and enforce capital markets crimes, and be an effective deterrent for those inclined to abuse Canada's capital markets.

Next, it is important to remove legal barriers and obstacles that stand in the way of quickly and efficiently compelling/gathering evidence about criminal offences relating to capital markets. When financial fraud cases move from the administrative to the criminal enforcement channel, case facts and details uncovered by securities commissions can not be relied on the criminal justice system.

Next step: Remove barriers to the efficient prosecution of criminal offences relating to capital markets. For example, ease the ability to compel/access evidence.