

July 10, 2008

Mr. Tom Hockin, P.C., Chair
Expert Panel on Securities Regulation
Ottawa, Ontario K1A 0G5

Subject: Comments on Public Consultation Paper

Mr. Hockin:

The Canadian Advocacy Council of CFA Institute Canadian Societies (CAC)¹ is pleased to respond to the Public Consultation Paper dated April 21, 2008 in which the Expert Panel invited interested parties to submit comments relating to the questions posed in this document.

General Comments

We would first like to commend the Minister of Finance for his willingness to continue the debate on this contentious issue and the members of the Expert Panel for their service. In numerous submissions to the Canadian Securities Administrators (CSA) we have stated that we are serious about our efforts to repair Canada's badly fractured securities regulatory system. Therefore this letter shall not be construed nor represented as support for a single regulator or a "passport" system of securities regulation.

The CAC's guiding principles stem from the CFA Institute's Code of Ethics and Standards of Practice with which each member of the CFA Institute must abide. We have enclosed a copy of the Code and Standards for your review.

We are more concerned about the substance of securities regulation over its style; therefore, we do not purport to be in favour of one method of securities regulation over another. Our sole focus is on the outcomes that regulation should provide - protection of the investor, preservation of trust in Canada's capital markets to the international community, maintenance of competitiveness, liquidity of the capital markets, transparency and comparability to other jurisdictions and access to investment capital for Canada's companies.

If Canada's financial regulatory environment does not meet these needs then Canadian and international investors will choose other jurisdictions for their investment returns and Canada's corporate development in all fields will suffer greatly.

¹ The CAC represents the 12 Canadian member societies of the CFA Institute constituting over 11,000 members who are active in Canada's capital markets. Members of the CAC consist of portfolio managers, investment analysts, corporate finance professionals, and other capital markets participants. The CAC's has been charged by Canada's CFA Institute member societies to review Canadian regulatory, legislative and standard setting activities.

We will focus the balance of our comments on the specific areas as outlined in the Public Consultation Paper.

Item 1: Objectives, Outcomes and Performance Measures

Should Canada have a common set of objectives? What should be the objectives of securities regulation in Canada? Given the current context in global financial markets, should the reduction of systemic risk be an explicit objective of securities regulation? If so, how broadly should it be defined? Are there objectives for Canada that go beyond those defined by IOSCO? For example, should an objective be to enhance the competitiveness of Canada's capital markets?

As stated above, we are of the view that the objectives for Canadian securities regulation should be the same throughout the country. However, we are indifferent as to how these objectives are attained.

We are aware that a number of our core objectives are in conflict; we believe that it is the role of the regulator to act in the public good and manage this conflict. We believe that it is the regulator's role to ensure that investors and the Canadian capital market's integrity are protected while at the same time providing a liquid and competitive capital market for Canadian issuing companies. Further, we believe that regulation must not be the primary barrier to entry for investors or issuers.

Item 2: Principles-Based Securities Regulation

Could a more principles-based approach improve securities regulation in Canada? Are there areas of securities law or regulation that are overly prescriptive and could benefit from a more principles-based approach? What core regulatory principles should constitute the foundation of securities law? What are the risks and challenges of a more principles-based approach to regulation?

We are in favour of neither an exclusively principles-based nor a rules-based approach to securities regulation. We believe that even the most principles-based system requires prescriptive rules to provide contextual clarification for users of the system and that rules-based systems have to provide some broad principles for users to understand the contextual basis for the rules. Therefore, we believe that one of the most important components of a securities regulation system is the breadth of the disclosure regime that is prescribed to issuers and registrants and the enforcement of this disclosure regime.

We believe that while an excess of prescriptive rules has not been a common complaint amongst issuers and registrants we understand that the interpretation of prescriptive rules by securities regulators is a key component to determining barriers to entry into the Canadian capital market. Thus we are of the view that rules, when applied, should be applied in the same fashion across all jurisdictions.

Moreover, we believe that under the rules-based approach to regulation a number of market participants will always execute strategies that will be technically compliant with these rules, but will contravene the general principles relating to them. Thus a balance between the two is most effective.

Item 3 – Proportionate Securities Regulation

To what extent is there need for proportionate regulation in Canada? What areas of securities regulation impose undue burden and could benefit from proportionate regulation? Should the economic characteristics of a company determine how it is regulated? If so, what should be the economic characteristics? What role could risk analysis play in the regulation of businesses?

We are opposed to proportionate regulation because it does not serve the needs of Canada's capital markets. Registrants and Issuers of various "sizes" utilize Canada's capital markets in a variety of ways and while we would expect that securities regulation would reflect some of these avenues, we would not expect that users of the market would be subjected to differing enforcement and qualification standards than others in similar lines of enterprise.

The issue of proportionate regulation or "risk analysis" raises a substantial number of issues that address the fairness and integrity of Canada's capital markets but are beyond the scope of this letter. We welcome the opportunity to discuss this matter further with the Expert Panel.

Item 4 - Enforcement

What would be the opportunities and risks to enforcement under a more principles based approach in Canada? Should enforcement action be taken solely on the basis of a breach of principle? Would the current system be sufficiently well-positioned to enforce a more principles-based approach?

Should the adjudicative function be made independent of the securities regulatory agency? Should a pan-Canadian adjudicative tribunal be established? What governance model should be considered in the creation of this tribunal? Would a separate adjudicative tribunal help with the enforcement of principles-based regulation?

In what ways could the enforcement of securities law and regulation be strengthened in Canada?

We believe that enforcement is the keystone of Canada's securities regulations. Without effective enforcement of the rules and principles, any system will be of little value. Therefore any regulatory environment must have an enforcement regime that focuses on providing effective outcomes. Enforcement must ensure that non-compliant behaviours are expunged while still being adaptive to the changing nature of the capital markets and timely

enough so as to ensure that participants in Canada's capital markets view that enforcement actions have substance. Lastly, we believe that the current enforcement approach is deficient and that an enforcement branch of a securities regulatory regime should be distinct from the rule/principle setters and adjudication bodies.

The enforcement branch will require a substantial number of highly-trained and skilled personnel who are specialized with specific skills sets as they relate to Registrants, Issuers and securities markets. As many market participants receive excellent compensation, the enforcement branch should be provided with the resources it requires in order to attract competent personnel and complete its work effectively.

We believe that adjudication tribunals should have the full power of criminal courts without many of the evidentiary requirements or burdens. Further, these tribunals should be separated from the rule/principle setters and enforcement branches of the regulatory regime and, like their enforcement counterparts, should be provided with the resources required to be an effective component of the regulatory regime.

Item 5 – Securities Regulatory Structure

Which structural model (passport or single securities regulator) would be best for Canada? Which model would best support the adoption of new regulatory approaches, including proportionate regulation and a more principles-based approach? Which would fulfill the need for the effective governance of Canada's capital markets?

What are the opportunities and risks of moving to a single securities regulator? How could a single securities regulator be implemented without being unduly disruptive to the marketplace? In particular, what can be done to effect a smooth transition?

What is the best way forward for the federal and provincial governments? In the absence of an agreement, what do you suggest as an alternative model?

As stated in our general comments, we are primarily concerned with the substantive execution of securities regulation across all of Canada's capital markets and thus do not advocate for any one method of regulation.

We believe that the CSA's National Instruments are well intentioned, but we question why each jurisdiction must choose to continue to receive special "treatment" under a variety of circumstances. While there may be legitimate reasons for these exemptions, we believe that the public good is better served by a common set of principles, applied equally in all jurisdictions rather than the current patchwork of regulations with treatment for "special" circumstances.

As an analogy, we observe that the Criminal Code is a Federal Statute, enforced largely by local law enforcement and prosecuted at the provincial

level. Thus the mere existence of a single set of rules across the country does not necessarily lead to a total concentration of authority.

We believe that a single or unified regulatory regime would require the consent of each jurisdiction *at the same time*. Further, after the enabling legislation is enacted in each jurisdiction, the continued maintenance of this legislation would have to be deferred to a single body comprised of all stakeholders including registrants, issuers and investors.

Concluding Question

Overall, what should be the key elements of a model common securities act to improve securities regulation in Canada? How should the transition be managed and executed to minimize the disruption in Canada's capital markets?

Canada's next securities regulatory regime should be built with the perspective of starting anew and answering the question: If there were no rules, what would we want the rules to contain?

We believe that the answer to this question is that any Canadian securities regulatory regime must protect investors from unscrupulous individuals and marketing practices, defend the integrity of the capital markets, and improve the ability of Canadian companies to raise funds in their home country. Lastly, this regime should not form an undue barrier to entry for investors, participants or companies.

We believe that there needs to be a clear delineation between the rule setter, the rule enforcer and the rule adjudicator. We believe that each of these functions needs to be properly staffed with individuals who understand the nature of the capital markets and Canada's role therein.

Lastly we believe that the transition to this new regime should be openly and transparently discussed with all market participants.

Summary

We thank you for the opportunity to provide the foregoing comments. We welcome any questions you may have and we appreciate the time you are taking to consider our point of view. Please feel welcome to contact us at chair@cfaadvocacy.ca.

Regards,

Blair Carey, CFA

Chair

Enclosure



Code of Ethics and Standards of Professional Conduct

PREAMBLE

The CFA Institute Code of Ethics and Standards of Professional Conduct (Code and Standards) are fundamental to the values of CFA Institute and essential to achieving its mission to lead the investment profession globally by setting high standards of education, integrity, and professional excellence. High ethical standards are critical to maintaining the public's trust in financial markets and in the investment profession. Since their creation in the 1960s, the Code and Standards have promoted the integrity of CFA Institute members and served as a model for measuring the ethics of investment professionals globally, regardless of job function, cultural differences, or local laws and regulations. All CFA Institute members (including holders of the Chartered Financial Analyst® (CFA®) designation) and CFA candidates must abide by the Code and Standards and are encouraged to notify their employer of this responsibility. Violations may result in disciplinary sanctions by CFA Institute. Sanctions can include revocation of membership, candidacy in the CFA Program, and the right to use the CFA designation.

THE CODE OF ETHICS

Members of CFA Institute (including Chartered Financial Analyst® [CFA®] charterholders) and candidates for the CFA designation ("Members and Candidates") must:

- Act with integrity, competence, diligence, respect, and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.
- Place the integrity of the investment profession and the interests of clients above their own personal interests.
- Use reasonable care and exercise independent professional judgment when conducting investment analysis, making investment recommendations, taking investment actions, and engaging in other professional activities.
- Practice and encourage others to practice in a professional and ethical manner that will reflect credit on ourselves and the profession.
- Promote the integrity of, and uphold the rules governing, capital markets.
- Maintain and improve their professional competence and strive to maintain and improve the competence of other investment professionals.

STANDARDS OF PROFESSIONAL CONDUCT

I. PROFESSIONALISM

A. Knowledge of the Law. Members and Candidates must understand and comply with all applicable laws, rules, and regulations (including the CFA Institute Code of Ethics and Standards of Professional Conduct) of any government, regulatory organization, licensing agency, or professional association governing their professional activities. In the event of conflict, Members and Candidates must comply with the more strict law, rule, or regulation. Members and Candidates must not knowingly participate or assist in and must dissociate from any violation of such laws, rules, or regulations.

B. Independence and Objectivity. Members and Candidates must use reasonable care and judgment to achieve and maintain independence and objectivity in their professional activities. Members and Candidates must not offer, solicit, or accept any gift, benefit, compensation, or consideration that reasonably could be expected to compromise their own or another's independence and objectivity.

C. Misrepresentation. Members and Candidates must not knowingly make any misrepresentations relating to investment analysis, recommendations, actions, or other professional activities.

D. Misconduct. Members and Candidates must not engage in any professional conduct involving dishonesty, fraud, or deceit or commit any act that reflects adversely on their professional reputation, integrity, or competence.

II. INTEGRITY OF CAPITAL MARKETS

A. Material Nonpublic Information. Members and Candidates who possess material nonpublic information that could affect the value of an investment must not act or cause others to act on the information.

B. Market Manipulation. Members and Candidates must not engage in practices that distort prices or artificially inflate trading volume with the intent to mislead market participants.

III. DUTIES TO CLIENTS

A. Loyalty, Prudence, and Care. Members and Candidates have a duty of loyalty to their clients and must act with reasonable care and exercise prudent judgment. Members and Candidates must act for the benefit of their clients and place their clients' interests before their employer's or their own interests. In relationships with clients, Members and Candidates must determine applicable fiduciary duty and must comply with such duty to persons and interests to whom it is owed.

B. Fair Dealing. Members and Candidates must deal fairly and objectively with all clients when providing investment analysis, making investment recommendations, taking investment action, or engaging in other professional activities.

C. Suitability.

1. When Members and Candidates are in an advisory relationship with a client, they must:
 - a. Make a reasonable inquiry into a client's or prospective clients' investment experience, risk and return objectives, and financial constraints prior to making any investment recommendation or taking investment action and must reassess and update this information regularly.
 - b. Determine that an investment is suitable to the client's financial situation and consistent with the client's written objectives, mandates, and constraints before making an investment recommendation or taking investment action.
 - c. Judge the suitability of investments in the context of the client's total portfolio.
2. When Members and Candidates are responsible for managing a portfolio to a specific mandate, strategy, or style, they must only make investment recommendations or take investment actions that are consistent with the stated objectives and constraints of the portfolio.

D. Performance Presentation. When communicating investment performance information, Members or Candidates must make reasonable efforts to ensure that it is fair, accurate, and complete.

E. Preservation of Confidentiality. Members and Candidates must keep information about current, former, and prospective clients confidential unless:

1. The information concerns illegal activities on the part of the client or prospective client.
2. Disclosure is required by law.
3. The client or prospective client permits disclosure of the information.

IV. DUTIES TO EMPLOYERS

A. Loyalty. In matters related to their employment, Members and Candidates must act for the benefit of their employer and not deprive their employer of the advantage of their skills and abilities, divulge confidential information, or otherwise cause harm to their employer.

B. Additional Compensation Arrangements. Members and Candidates must not accept gifts, benefits, compensation, or consideration that competes with, or might reasonably be expected to create a conflict of interest with, their employer's interest unless they obtain written consent from all parties involved.

C. Responsibilities of Supervisors. Members and Candidates must make reasonable efforts to detect and prevent violations of applicable laws, rules, regulations, and the Code and Standards by anyone subject to their supervision or authority.

V. INVESTMENT ANALYSIS, RECOMMENDATIONS, AND ACTION

A. Diligence and Reasonable Basis. Members and Candidates must:

1. Exercise diligence, independence, and thoroughness in analyzing investments, making investment recommendations, and taking investment actions.
2. Have a reasonable and adequate basis, supported by appropriate research and investigation, for any investment analysis, recommendation, or action.

B. Communication with Clients and Prospective Clients.

Members and Candidates must:

1. Disclose to clients and prospective clients the basic format and general principles of the investment processes used to analyze investments, select securities, and construct portfolios and must promptly disclose any changes that might materially affect those processes.
2. Use reasonable judgment in identifying which factors are important to their investment analyses, recommendations, or actions and include those factors in communications with clients and prospective clients.
3. Distinguish between fact and opinion in the presentation of investment analysis and recommendations.

C. Record Retention. Members and Candidates must develop and maintain appropriate records to support their investment analysis, recommendations, actions, and other investment-related communications with clients and prospective clients.

VI. CONFLICTS OF INTEREST

A. Disclosure of Conflicts. Members and Candidates must make full and fair disclosure of all matters that could reasonably be expected to impair their independence and objectivity or interfere with respective duties to their clients, prospective clients, and employer. Members and Candidates must ensure that such disclosures are prominent, are delivered in plain language, and communicate the relevant information effectively.

B. Priority of Transactions. Investment transactions for clients and employers must have priority over investment transactions in which a Member or Candidate is the beneficial owner.

C. Referral Fees. Members and Candidates must disclose to their employer, clients, and prospective clients, as appropriate, any compensation, consideration, or benefit received from, or paid to, others for the recommendation of products or services.

VII. RESPONSIBILITIES AS A CFA INSTITUTE MEMBER OR CFA CANDIDATE

A. Conduct as Members and Candidates in the CFA Program.

Members and Candidates must not engage in any conduct that compromises the reputation or integrity of CFA Institute or the CFA designation or the integrity, validity, or security of the CFA examinations.

B. Reference to CFA Institute, the CFA designation, and the CFA Program. When referring to CFA Institute, CFA Institute membership, the CFA designation, or candidacy in the CFA Program, Members and Candidates must not misrepresent or exaggerate the meaning or implications of membership in CFA Institute, holding the CFA designation, or candidacy in the CFA Program.