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BY E-MAIL AND CANADA POST

Mr. David Murchison
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Dear Mr. Murchison:

Manulife Financial is pleased to submit comments in response to the public consultation paper issued by the Expert Panel on Securities Regulation. We commend the Minister for his initiative in establishing the Expert Panel and for his efforts in pursuing a national securities regulator.

Manulife and its affiliated companies include issuers of securities, registered securities dealers and advisors, and companies that invest for their own account and for their clients, within Canada and internationally. Manulife's affiliates and our clients have billions of dollars invested in Canadian securities.

In making this submission, Manulife brings the perspective of a Canadian-based global leader. About 25 per cent of the company's business is in Canada, 50 per cent is in the United States and the remaining 25 per cent in Asia, where Manulife has a significant presence in 10 countries and territories. Manulife has a long and successful history of operating in international markets. Our common shares trade on the Toronto Stock Exchange, the New York Stock Exchange, The Stock Exchange of Hong Kong and the Philippine Stock Exchange. It is from this perspective that we offer our comments and recommendations with a view to making Canada more attractive for investing and doing business.

Improving Canadian securities regulation is vitally important in meeting this objective. It is essential that investors have confidence that Canadian securities markets are efficient and fair with appropriate regulation and strong enforcement. Among our recommendations, the creation of a single national securities regulator and single securities act is key.

We are convinced that without the creation of a single regulator and a single securities act, other recommendations and reforms will be much more difficult to achieve and even if implemented, would be much less effective. As such, we address the Panel's Consultation Item 5 (Securities Regulatory Structure) as the first item in our submission.

We strongly urge the federal, provincial and territorial governments to work together to create a single securities regulator. For many years now, Canadians have exhaustively researched and

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debated the need for a single securities regulator as well as other reforms to our securities regulatory system. It is our view that the time has come to implement reforms.

Summary of Manulife's recommendations

Securities Regulatory Structure

Manulife recommends the creation of a single securities regulator for Canada. A single regulator, enforcing a single securities act, would enhance the integrity and efficiency of Canada's securities regulatory structure. It would permit full harmonization of securities laws across Canada, enable more effective enforcement and allow Canada to speak with one strong voice on the international scene.

Objectives, Outcomes, and Performance Measures

Manulife recommends that Canada have a common set of clearly defined securities regulation objectives. The two overarching objectives of securities regulation should be: (1) to help retail consumers achieve a fair deal; and (2) to promote efficient, orderly and fair markets. Governments should manage systemic risk which will require the coordinated efforts of governments and regulators, including the Bank of Canada, the Office of the Superintendent of Financial Institutions, federal and provincial ministries of finance, and securities regulators.

Principles-Based Securities Regulation

Manulife recommends a principles-based approach to securities regulation. Canadian insurance and banking regulators have increasingly adopted principles-based prudential and market conduct regulation and we believe that there are significant advantages to such an approach in the area of securities regulation as well.

Proportionate Securities Regulation

Manulife recommends a risk-based approach to securities regulation under which regulators and issuers and registrants concentrate resources on matters of highest risk. Regulation should be proportionate to the risks associated with the entity rather than based on criteria such as market capitalization or the stock exchange on which the entity is listed. Risk-based regulation would result in more efficient regulatory oversight.

Enforcement

Manulife recommends the establishment of an independent national tribunal to adjudicate on sanctions for violations of securities laws and regulations. We believe that a principles-risk-based regulatory system will provide opportunities for improvements in the enforcement of securities regulation, including pro-active identification and prevention of material issues. Steps must be taken to improve the current enforcement system, which operates too slowly, lacks coordination and is perceived domestically and internationally to be ineffective in detecting and punishing white collar crime.

Key Elements of a Common Securities Act

We recommend reforms to securities law and policy so that Canadian companies are not at a disadvantage and have the same opportunities to respond to unsolicited takeover bids as companies in other countries. Also, in designing securities legislation and policy, governments and regulators should adopt an outward-looking, global perspective rather than strive for 'made in Canada' solutions.

Consultation Item 5: Securities Regulatory Structure

Manulife recommends the creation of a single securities regulator and a single securities act for Canada.

The deficiencies associated with Canada's existing fragmented structure of securities regulation have been extensively considered in various reports and studies, which we do not therefore propose to revisit here. At this stage we do not wish to endorse one particular model for a single regulator among the various proposed structures. However, we believe that the adoption of a single regulator is of paramount importance for Canadian capital markets and that such a reform would better facilitate the other reforms we recommend.

Manulife recognizes and commends the provinces for implementing the passport system which is an improvement on the status quo. Significant progress has been made in harmonizing securities laws through the creation of National Instruments in key subject areas, including most recently the national prospectus rule. The status quo does not substantially interfere with Manulife's ability to carry on business in Canada, although we believe that it results in an additional administrative and compliance burden and extra costs for us and our clients. But despite these efforts at improvement, this regulatory structure remains second best - it is less than optimal. Canada can and must do better.

The passport system cannot deliver the regulatory efficiencies and improved enforcement that the combination of a common securities regulator and a common securities act would provide. Ontario is regrettably absent from the passport system but the same shortcoming would apply even if Ontario were a full participant. Issuers remain subject to different securities law requirements in different jurisdictions, despite harmonization of some key rules.

A single securities regulator would:

- bring Canada into line with all other advanced countries
- permit full securities law harmonization across Canada
- facilitate more consistent, effective and efficient enforcement of securities laws

- provide a more cost effective system for all market participants
- enhance Canadian participation in discussions about international cooperation and harmonization of securities laws and enforcement. Canada would have more influence if it spoke with one voice when participating in forums such as the International Organization of Securities Commissions (IOSCO)
- make it easier for Canada to negotiate mutual recognition agreements with other national regulators should it wish to do so.

We argue elsewhere in this submission in favour of principles and risk-based regulation and for an independent national securities law adjudicative tribunal. We believe a single securities regulator would provide the best structural model on which to build principles and risk-based regulation enforced by an independent adjudicative tribunal. Any one province may be understandably reluctant to adopt a principles-based system as long as other provinces retain rules-based systems. And a national adjudicative tribunal would be less able to achieve consistent enforcement if it has to interpret and enforce inconsistent provincial rules.

A single securities regulator may be better able to respond effectively to a financial market crisis such as the asset backed commercial paper situation. We also have concerns over the sufficiency of resources available to regulators under the current securities regulatory structure to enable adaptation to changes in the domestic and international financial systems such as the adoption of International Financial Reporting Standards by 2011. A single regulator could more efficiently deploy regulatory resources to respond to new developments.

In short, a single regulator, enforcing a single principles-based securities act, would be optimal for Canadian investors and capital markets. It would enhance the integrity and efficiency of Canada's securities regulatory structure, inspire confidence among investors and attract issuers and capital to Canada.

Canada is the only advanced country in the world and one of only two countries among the more than 100 in IOSCO that does not have a common securities regulator. Other nations are now considering optimal regulatory structures for responding to systemic risk, whereas Canada is still debating the merits of establishing a national securities regulator, a matter which is not in issue elsewhere.

While every effort should be made to achieve a national consensus before transitioning to a single regulator, we believe that a lack of unanimous support should not prevent interested governments from leading the way by establishing a common regulator for those provinces and territories that wish to participate. This would mean that, as now, many issuers would still be subject to regulation by more than one regulatory body. But we would hope that the benefits of a common regulator would lead additional jurisdictions to join over time.

Consultation Item 1: Objectives, Outcomes, and Performance Measures

Manulife recommends that Canada establish a set of objectives, outcomes and performance measures for securities regulation that would apply across Canada.

We submit that the appropriate overarching objectives for securities regulation should be: (1) to help retail consumers achieve a fair deal; and (2) to promote efficient, orderly and fair markets. All principles, rules, policies and enforcement actions should be consistent with these objectives.

The consultation paper asks whether the reduction of systemic risk should be an objective of securities regulation. We believe that effective securities regulation can contribute to the management and reduction of systemic risk and that this is a laudable objective, particularly given recent events in global financial markets.

Managing systemic risk has to be considered in the larger context of market stability across the entire financial system. This will require the coordinated efforts of the Bank of Canada, the Office of the Superintendent of Financial Institutions, federal and provincial ministries of finance, and securities regulators.

Consultation Item 2: Principles-Based Securities Regulation

Manulife recommends a principles-based approach to securities regulation.

We understand principles-based regulation to mean a regulatory system wherein the policymakers and regulators define desired regulatory outcomes (principles) and regulated entities design and implement measures to achieve these outcomes.

Canadian insurance and banking regulators have increasingly adopted principles-based prudential and market conduct regulation. In Manulife's experience, principles-based insurance regulation has:

- been adaptable to changes in markets and products
- focused regulatory resources away from writing, rewriting and updating technical rules and regulations towards more effective oversight through constructive engagement with market participants
- allowed for greater communication and collaboration between regulators and market participants, reducing the need for costly formal enforcement activity
- allowed companies to design and implement efficient solutions to achieve desired regulatory outcomes

- resulted in innovative products and services being available at lower costs
- facilitated inter-provincial, international and cross-sector harmonization.

Under a principles-based system of regulation some detailed rules and guidance from regulators will still be necessary. We agree with the recommendation of the Task Force to Modernize Securities Legislation in Canada (the “Allen Task Force”) that Canadian securities regulation be based on clearly enunciated regulatory principles which do not need a *detailed set of interventionist rules* for sound implementation. As the Allen Task Force observed, “Rules must be based on underlying principles. And principles must find their expression, in the interest of a basic modicum of clarity, in rules” (page 50 of the Final Report of the Allen Task Force).

Consultation Item 3: Proportionate Securities Regulation

Manulife recommends a risk-based approach to securities regulation.

Under a risk-based regulatory approach, regulators and market participants concentrate resources on matters of highest risk. Regulators assess systemic risks as well as risks to individual market participants and communicate their assessment of risks. This risk assessment also informs the development of regulatory principles, rules and enforcement policy. Risk-based regulation is therefore complementary to principles-based regulation.

Regulated entities would assess risk areas for their business and allocate resources and establish processes to manage risks. The regulator would monitor the entity’s risk management practices and use its powers when the entity does not meet regulatory expectations.

Regulation should be proportionate to the risks associated with the regulated entity rather than based on criteria such as market capitalization or the stock exchange on which the entity is listed. All market participants should be subject to the same regulatory principles, but risk-based regulation would allow for some flexibility in how each entity satisfies these principles.

In our experience, risk-based regulation maximizes the effectiveness of limited regulatory and corporate resources, which can be used to address those issues identified as presenting the greatest risk. Companies that have strong risk-management capabilities build regulatory trust and enjoy the benefits of increased control over development of risk management practices. Companies with weak risk-management capabilities would face increased regulatory supervision and less control over internal processes and resources.

Manulife believes that if properly implemented, risk-based regulation would result in more efficient regulatory oversight that would address cost concerns of certain issuers and registrants about the existing regulatory system.

To some extent securities regulators have already adopted a risk-based approach to regulation. The selective review of prospectus filings and the review procedures for continuous disclosure documents take into account the risk factors applicable to the issuer or registrant. We recognize that for policy reasons (such as to facilitate the growth of early stage issuers) regulatory concessions for smaller issuers may sometimes be appropriate. But we believe that the key criterion to be applied should be the risk profile of the regulated entity.

Consultation Item 4: Enforcement

Enforcement under a principles-based approach

Manulife believes that a principles-risk-based approach will provide an opportunity for improvements in the enforcement of securities regulation.

In our experience, principles-based and risk-based regulation allows for greater communication and collaboration between regulators and entities. Problems and issues can be identified and resolved in a timely manner, bringing about real improvement without costly formal enforcement activity.

We believe that the relationship between securities regulators and market participants is often overly adversarial because the parties are conditioned to focus on whether there has been technical compliance with securities rules rather than on substantive matters and achieving desired outcomes.

Independent adjudication

Manulife recommends the establishment of an independent national tribunal to adjudicate on sanctions for violations of securities laws and regulations.

We do not believe that there is any real conflict of interest or bias embedded in the current multi-functional securities commissions, which carry out policy-making, investigative and adjudicative roles. As long as commissioners who adjudicate on enforcement matters have not participated in investigative or prosecutorial decisions, these arrangements should produce unbiased results.

The Osborne Committee report to the Ontario Securities Commission, the Crawford Panel on a Single Securities Regulator and the Allen Task Force endorsed the separation of the adjudicative function from the securities regulatory function, in order to remove any perception of bias that may result when these functions are combined in a single body. However, some strong arguments have also been made against such a separation. Lawyer Philip Anisman, in an article in the *The Globe and Mail* dated August 27, 2004 ("Securities reform; First, do no harm to investors"), observed that in a multi-functional regulatory agency, commissioners can apply the understanding they gain from policymaking and administration when they decide

cases. While this position has considerable merit, on balance we are persuaded that it would be better to have a separate tribunal adjudicate on disciplinary proceedings.

Public perception of fairness is important to the administration of justice. Separating investigation and enforcement from the adjudicative function would remove any *perception* of bias or administrative unfairness. A specialized tribunal could also promote consistent interpretation and application of securities law across Canada.

Improving Enforcement

Manulife recognizes that the focus of the Panel's consultation on enforcement is the two issues referred to above. However, broader improvements must be made to our system of enforcement, which is of critical importance to the efficiency of Canada's capital markets. The Allen Task reported that "the issue most commonly mentioned by those who made submissions to the Task Force was the perceived lack of *vigour* with which securities laws in Canada are enforced" (page 107 of the Final Report of the Allen Task Force).

The widespread perception that Canada has not done a good job in enforcing securities laws for the most part reflects the reality. Whether or not administrative or criminal enforcement actions result in sanctions, they generally take too long to complete. This harms the affected investors, the subjects of the enforcement action and the integrity of our capital markets. When actions do result in sanctions, the sanctions are often perceived by the public to be insufficient in proportion to the damage suffered. There has been too much talk and not enough action on the enforcement front in Canada.

The collaboration between securities commissions and law enforcement agencies through the RCMP's Integrated Market Enforcement Teams (IMETS) does not appear to have worked effectively so far in combating capital markets crime. We commend the federal government for appointing Mr. Nick Le Pan to help develop and guide the implementation of a plan to improve the effectiveness of the IMETs. Taking into account the recommendations contained in Mr. Le Pan's report, governments, regulators and law enforcement agencies should work together quickly to make necessary changes. As Mr. Le Pan states in his October 2007 report *Enhancing Integrated Market Enforcement Teams, Achieving Results in Fighting Capital Markets Crime*, "Fraud is not a victimless crime. Confidence in the integrity of capital markets translates into real benefits for our economy and for individual Canadians".

Key Elements of a Common Securities Act

We recommend reforms to securities law and policy so that Canadian companies are not at a disadvantage and have the same opportunities to respond to unsolicited takeover bids as companies in other countries. We also recommend that in designing securities legislation and policy, governments and regulators should adopt an outward-looking, global perspective rather than strive for 'made in Canada' solutions.

Securities markets are an important part of the financial system. In considering what is in the best interests of Canada's capital markets and our long term economic prosperity, securities law should also be considered in a larger context that includes corporate law, competition law, foreign investment regulation, financial institutions policy, and fiscal and monetary policy. Our laws and policies in all of these areas should be consistently structured to promote Canada's national interests.

Manulife believes that having globally successful Canadian companies is vitally important to our well being as a country. Specifically we recommend that:

- Securities legislation and policies be revised to allow the boards of Canadian companies to respond to unsolicited bids by allowing them much more time to develop alternatives to maximize shareholder value. This would provide a much needed "chilling effect" on hedge funds and others with a very short-term perspective, who acquire securities of the target on the announcement of an unsolicited bid, and would allow boards to pursue other alternatives such as recapitalizations.
- Governments study the impact of hedge funds and other unregulated entities on financial markets and corporate governance to ensure that outcomes for all stakeholders are fair.

The Competition Policy Review Panel's recently published report, *Compete To Win* addresses the issue of strengthening the role of directors in mergers and acquisitions. The Review Panel concluded that the key difference between Canada and the United States in regulation on the leeway available to directors arises from the greater role played by Canadian securities regulators with respect to takeover defences.

In particular, Canadian securities regulators' policy requires that in most cases, poison pills be terminated within a relatively short period from the commencement of a bid. We support the Review Panel's recommendation that securities commissions repeal National Policy 62-202 *Take-Over Bids - Defensive Tactics*. However, we believe that additional reforms are required to enable Canadian boards to develop alternatives in takeover situations. Adopting the recommendations we set out above would help to achieve this objective.

Finally, in designing securities legislation and policy, governments and regulators should adopt an outward-looking, global perspective rather than strive for 'made in Canada' solutions. As our capital market becomes increasingly integrated with that of the United States as well as other countries, Canada can derive real benefits from having principles, rules and practices that are consistent with those other jurisdictions whenever possible. Achieving mutual recognition of securities law regimes between Canada and the United States and other countries will be easier if our regime is at least broadly compatible.

This is not to suggest that for the sake of harmonization, Canada should ever adopt securities regulation that is contrary to the best interests of Canadians. Canada has not, for example, chosen to follow the United States with respect to certain *Sarbanes-Oxley Act* reforms.

However, we should look to other nations for best practices and to ensure that Canada's system does not become "out of sync" with the global markets.

Conclusion

Canada cannot take for granted its ability to attract foreign capital. Our capital market accounts for a relatively small share of the global market. To succeed we must make every effort to eliminate all unnecessary impediments to our full participation in the competition for capital. To meet this objective, Canada must have a securities regulatory system and a capital markets strategy that gives us every possible advantage.

Manulife recognizes and appreciates the ongoing harmonization efforts of securities regulators in all Canadian provinces and territories. But we believe that in this time of rapidly evolving and increasingly competitive global capital markets, Canadian governments must act quickly to make fundamental reforms to our securities regulation regime. The lynchpin in this process of reform is the creation of a single securities regulator.

Please contact me if you would like to discuss any of our recommendations. We would be pleased to offer any additional assistance you might find helpful as you prepare your report.

Yours truly,

A handwritten signature in black ink, appearing to read "J.-D. Bisnaire". The signature is written in a cursive, flowing style.

J.-D. Bisnaire
Senior Executive Vice President
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