

I don't want to appear - but if I may – I would like to share a few thoughts....

What we know:

- Industry Self-Regulation has not worked and should be abandoned.
- The provinces will not agree to national regulation.
- IMET failed at every level, and is now withering on the vine. It has publicly admitted it cannot cope.
- Foreign investors and governments have joined the chorus of internal voices demanding Canada stop talking, and act.
- The SEC notion - contracting out, closer collaboration under SPP, etc - would likely be even less acceptable to the provinces.
- A "principles based approach" to regulation in an industry which has displayed a striking lack of principle will prove even less effective than self-regulation.
- White collar crime should be criminalized commensurate with the actual damage it causes - suicides, divorce, bankruptcy, mental breakdowns, addiction, stress-related illness and pre-mature death, etc.

Everyone knows what the problems are, and they know of some worst-case examples. Media presents the information daily - they are:

- A long run of embarrassing frauds from Bre-X to Hollinger;
- The mutual fund implosion circa 2003, plus the highest fund fees in the world...with poor performance;
- Royalty Trusts – a 30% "crash and burn" rate, and, with those that do not revert back to corporate form, poised to do the same (i.e. crash) before their expiry date in law;
- Pseudo non-bank ABCP (non-bank ---- only because of a quirky section of the Bank Act allowing Banks to declare whether there were a crisis or non-crisis, and to walk away in the latter case. That precluded other rating agencies from a willingness to rate ABCP, and is the reason ABCP was not rated by anyone but DBRS --- as Triple A --- a problem left for the courts to resolve – and one for which they have proven themselves out of their depth.
- The Finance Minister's new amendments sadly show his true colours - the Emperor has no clothes. Improving transparency of PPNs through regulation and not a modification to the Bank Act requiring parliamentary approval? These new "instruments" (non-asset backed corporate paper) are ABCP by another name - with even more risk, now that issuers know they will be bailed out if they get themselves in trouble, even to the point of allegedly breaking the law or providing grounds for civil action.

Who audits and enforces compliance with these new regulations - and recovers losses for duped investors in cases of malfeasance?

The OBSI has stated it protects banks (the system), not investors (at least directly).

There is no specific protection against elder abuse - they can be sweet-talked into buying this paper ill-advisedly (no matter the transparency). I have seen judges and politicians - educated

professionals - be unable to grasp straight-forward disclosure on corporate paper and other complex financial instruments - it can be as complicated to someone from another profession than finance as to the elderly or less well-educated small investor.

No mention is made of a rating system - is every client or potential client now expected to do their own due diligence on these "instruments" because there is greater transparency? Transparency will actually serve as a defence for those who abuse the principle in a verbal sales pitch, and otherwise comply with the new regulations?

Finally - as always - where is the responsibility to audit, investigate, discipline appropriately and make whole? If they can do it in the U.S., why can we not match them here? Answer – loopholes in law that frustrate police and Crown Counsel.

These recent machinations are classic Ottawa. They give the appearance of protection, that the government is being proactive, when it is not. It is the oldest trick in the book, but media and the public eat it up every time. And, yes, I realize there is not much the Committee can do about human nature – other than ensure total disclosure – no small print.

In practical terms, recent actions will prove meaningless and provide little added protection – allowing the Bank of Canada to accept paper and increase the money supply gives the appearance of managing a crisis. In fact, they enable malfeasance and simply delay the inevitable outcome.

Even if meaningful, would these knee-jerk responses offer anything with regard to every possible present and future variant of this product - however named and structured - an alphabet soup on the same theme as ABCP (or sub-prime in the U.S.) – still on sale in Canada as we speak?

I'm not being cynical – I am trying to be informative. I know the Committee (and most industry clients) do not "want to hear this". But this is politics as usual....I speak from experience, and I know whereof I speak.

If you had the time to go through many of our laws, you would see this as a consistent pattern. Even when a law is solid, under English Common Law, precedent can change it 180 degrees within a year of leaving the Senate and GG....to the chagrin of well-intentioned law makers.

The only thing that has saved us so far is that Canada is such a small percentage of the U.S. market and an even smaller percentage of the EU and other markets. I can assure you, we do not attract much "clean" money from outside the country - with certain exceptions - like the oil and other resource-based industries. But you all know that.

I am also aware that criminalizing much of what is now mismanaged by our SCs and SROs is problematic. Apart from Mr. Flaherty plugging the loophole in the Bank Act that allowed ABCP and, then allowing it to continue in future by a regulatory change – i.e. abuses of PPN/CDO and similar instruments - our Minister of Justice must amend the similarly quirky sections of the Criminal Code that dictate, for example, that in Canada, you do not simply not have to prove fraud, but "intent to defraud", and that witnesses cannot be compelled to co-operate in investigations or to testify. I'm sure there are similar improvements that the people who work with these laws would be more qualified to address in specific detail, but I hope I have pointed the way.

We cannot have Crown Attorneys declining to prosecute because the bar is too high, no matter how solid a case the police may have built. Even if you find an energized Crown, the Attorneys General can and do step in and "stay" cases or Judges adjourn them sine die – apparently without oversight and by tradition – well it's time to change tradition and create a new one.

It is embarrassing to have the U.S. - which is not without its own problems – investigate, charge and convict some of our worst malefactors and do what we cannot - Ritter, Black and others at least have seen the inside of a jail cell.

The real problem is that the financial services industry is about a quarter of Canada's GDP now - up from an historical 5-10% range. Companies that are national or international in scope are by definition outside the jurisdiction of any of our 13 SCs and SROs. International companies would pose a similar challenge to even national agencies - foreign jurisdiction not under multilateral agreement/s in this area. But there are available solutions!

The closest thing to a national police force that we have is the RCMP, and they have corruption problems of their own – Adscam and Pensions, among others.

And a Trash for Treasure with the head of B o C to allow (noted above), but now permanent, allow banks to borrow from the bankers' bank using ABCP and other less-highly-rated collateral than in the past is not appropriate. It implies changing the requirement for high-quality collateral demanded in the past to junk-bond status instruments.

This is an idea borrowed from the U.S. to grease the gears of the nation's seized-up credit markets. There, the New York Fed created new lending entities. They allow banks and financial firms to swap billions in securities they cannot sell for Cash or Treasuries, as long as the market for orphaned "investments" are closed --- loans to keep the industry in business. This allows institutions to exchange their trash for cash so they can turn around and lend. In Canada, we are in too much debt already.

The taxpayer may have to cover losses (directly or indirectly), under this sort of scheme, including the Canadian variation, if a firm or bank defaults. The banks and other institutions go back to the kind of activity that landed us in difficulty in the first place....feeling even less risk averse....until a point is reached at which there will be no safety net.

Banks have other assets, are a better bet, and presumably the B o C will still be able (theoretically) to recover monies from them. The question is, who else will be offered this deal - near banks, insurance companies, co-ops, institutions holding ABCP, etc. --- and how will their defaults be accommodated without causing inflation - if, in fact we go that far in Canada.

Details are in scanty at the moment - I doubt that is an accident.

Our other Achilles heel is our rating agency/ies - we know they can't be trusted. Who is to say they won't rate junk "Triple A" if Mr. Flaherty's current efforts fail to pass muster over time. We rely on these agencies to gauge risk - there has been far too much reliance on credit ratings all round - as we have just seen (ABCP). But, for many, there is no alternative.

In a recent speech, Ben Bernanke, U.U. Fed, Chairman, said: "Investors must take responsibility for developing independent views of risk and not rely solely on credit ratings." Our politicians have voiced similar sentiments.

That is fine for institutions, but under Mr. Flaherty's new PPN policy - for the general public - it is unrealistic. Worse, it let's those guilty of malfeasance off the hook - they can plead that they disclosed - if there were ever a need for them to defend themselves, but with our lack of enforcement in Canada, that is almost a mute point in any event.

Please don't tell me that our playing similar games in Canada will end our problems - those loud popping sounds you will hear soon will be the housing bubble and Mr. Flaherty's trash for cash arrangement at the B of C - collapsing. Bottom line, without our taking steps that neither the government, industry, justice system or the public (investors) will take, Canada will continue to stretch the rubber band until it breaks.

Sadly, that will ultimately mean that this is no longer a money problem, it becomes a geo-political problem – and our sovereignty might be at stake.

We are already seeing the inflation caused by the infusion of new dollars (M-!) into the market by B of C and when we see the impacts of an approval of the ABCP Proposal under existing terms, we will begin to see unexpected effects. Remember people talk about \$32 million, but who knows how much of that has been leveraged at a minimum of 10 to 1; who knows how much has traded in the underground market; and who knows which Pension Plans are hit; who knows that we might not see runs on banks or wholesale dumping of their shares (CIBC & BMO especially) - the possibilities are endless, none of them good.

What was planned as a skim got away from its creators, who are now rightly scared of where the tentacles may lead. When you add all the variants of this cancer to the original product and realize that it somehow made it's way offshore, we are close to the edge. Instead of calling a halt, we are continuing to run the same game, justified by our desire to support the financial system - a system that is now so corrupt or inept it is unworthy of extreme moves to protect it.

We cannot protect it - what we are doing may delay the consequences, but after every party like this one, no matter how long it lasts, comes an awful hangover.

The very notion of allowing contractual protection of people who may be guilty of fraud and other malfeasance means we must stand the law on its head (is the financial services sector worth our doing that?). That there is no criminal investigation has the rest of the world mum with disbelief. And when they see that we plan to continue to steer a similar course, don't be surprised if people from other countries move away from the dollar and towards to Euro.

The US, UK and Canadian Currencies can be passed off as doing well - one against the other - but there is a conspiracy of silence around the Euro, Sharia Banking and Chinese money that has flooded in - bargain hunting - all of that translates into financial vulnerability and has serious geopolitical implications for the near-to medium term.

I realize that writing this submission may be a gesture in futility. We have been down this road before historically. Quite frankly, I now feel we may be past the point of no return unless we do a 180 under powerful leadership. I don't see that happening, so I watch the posturing and await the big bang.

There are strategies that could work, but the government and the industry will never consider them until it is too late – and the public remains largely oblivious. If we are not there, we are close. I wish the Panel the very best of Luck in gaining due attention to its efforts to meet its mandate.

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