

August 8, 2008

Honourable Thomas A. Hockin, P.C.
Expert Panel on Securities Regulation
Ottawa, Canada
K1A 0G5

Dear Mr. Hockin,

BMO Financial Group is very pleased to provide to the Expert Panel our views on the best way forward to improve securities regulation in Canada. This is an important national issue that has been the subject of extensive debate over a considerable period of time. As you know, BMO Financial Group has actively contributed to the debate, including through the participation of our President, Quebec and Chairman BMO Nesbitt Burns/BMO Capital Markets, L. Jacques Ménard, who served as a member of the Crawford Panel on a Single Canada Securities Regulator and the IDA Task Force to Modernize Securities Regulation in Canada.

We agree with the Expert Panel that strong, well-regulated capital markets are essential to the vitality of our economy. Our markets, which are relatively small on a North American and an international basis, must compete globally for capital. It is encouraging to see the Minister of Finance focused on the important objective of improving our securities regulatory system in order to ensure that Canada's capital markets are a source of competitive advantage.

As we explain in more detail below, we believe that the Canadian securities regime should be based on a single set of securities laws that is principles-based, proportionate and administered by a single regulator that is sensitive to and accommodates the regional differences in Canada's capital markets.

Single Legislation - Single Regulator

Canada's capital markets should be regulated in a manner that creates investor confidence and provides a platform for the efficient administration of a single set of market conduct rules. These rules should be applied and enforced on a uniform basis throughout Canada and allow issuers to raise capital with maximum efficiency, at a minimum cost and on a timely basis. Our markets must be efficient and able to respond to changes in the global capital markets in a timely way. Such a regulatory model must also be capable of dealing with the regional and local requirements of our capital markets in order to serve the needs of all participants nationwide.

The key question that must be settled is what is the best structure for achieving these objectives: a single securities regulator or the passport system, which maintains the current infrastructure of 13 separate provincial and territorial securities regulators?

In our view, Canada would be best served by a single regulator administering a single set of securities laws. It is both desirable and appropriate that the operation of such a national securities regulator should be under the management of a governing council, which would be constituted with representatives from participating provinces. As the securities regulatory expertise resides in the existing provincial regulatory system, the expertise from the participating provinces should be incorporated into the national securities regulator through the use of existing provincial personnel and regional offices.

We commend the provincial regulators and governments for their considerable efforts in improving the functioning of securities regulation in Canada through harmonizing securities laws and implementing the passport system. Once fully operational, the passport system should result in market participants being subject to the requirements of only one provincial securities regulator, which will alleviate the costs and inefficiencies of having to comply with disparate substantive rules and administrative practices of multiple regulators.

The passport system, however, does not address a number of weaknesses of our current structure. There is no national accountability under the passport system for Canada's capital markets, and no single regulator or government can represent Canada's interests internationally. In addition, to the extent that the passport system is premised on harmonized regulation, policy development will necessarily be impeded due to the need to obtain consensus among multiple regulators. Maintaining 13 separate regulators that, for all intents and purposes, have the same rules and regulations is not an efficient allocation of resources. Finally, the passport system does not address the inconsistent priorities, absence of central coordination and unequal funding among existing securities regulators that has adversely impacted enforcement.

Principles-Based Regulation

While not without challenges, an appropriate balance of principles-based rules with well articulated guidance in our view is the preferred solution for Canada's capital markets.

While a clearly defined set of prescriptive rules has the appeal of leaving little guess work as to the standard of conduct, there is a risk of over-regulation and reinforcement of a culture of strict technical compliance with the letter, as opposed to the spirit, of the law. Canada can distinguish itself globally by focusing its regulation, at every available opportunity, on clearly enunciated regulatory principles which do not need a detailed set of interventionist rules for sound implementation. We caution, however that while principles-based regulation has the marked advantage of significantly reducing the volume of prescriptive, detailed rules, it can be dangerous if used unfairly as an enforcement tool. In acknowledging the need for prescriptive rules, we feel the pendulum has currently swung too far in that direction and that many capital market participants are suffering from "rule fatigue".

We are encouraged that securities regulators have begun to recognize the benefits associated with principles-based regulation in the area of accounting standards. The CSA and the SEC have recently adopted regulations that will have International Financial Reporting Standards (IFRS), which is principles-based, replace GAAP, which is a more rule-based framework, as the standard for financial reporting for reporting issuers.

Proportionate Regulation

Canada's capital markets are characterized by a relatively large number of small-cap issuers. Regulators have recognized that a "one size fits all" approach is not appropriate and that regulation should be tailored to fit the particular circumstances of an issuer. The current approach by Canadian securities regulators is proportionate regulation based on the location of the issuer's stock exchange listing, with issuers listed on the TSX Venture Exchange being subject to less stringent regulation in certain instances.

We support proportionate regulation, but do not believe that the current approach is sufficiently nuanced. We recommend instead that the scope of regulation should be based on a number of factors in addition to stock exchange listing, including market capitalization, the complexity of the issuer's business and the extent of the issuer's analyst coverage.

Conclusion

Canada is the only industrialized country without a national securities regulator. In an age of increasingly global capital markets, we can ill-afford to be out of step with the rest of the world. There is a tremendous opportunity for both levels of government to come together and create a best in class securities regulatory regime.

BMO Financial Group recognizes the challenges the Expert Panel faces in developing recommendations for a new regulatory structure that both respects and reflects the divergent interests of all parties. We appreciate your efforts in focusing the debate on this most important matter for Canada and trust that this will act as a catalyst in arriving at a single securities regulator model that will best serve Canadian investor and business interests.

Sincerely,



cc: L. Jacques Ménard, Chairman, BMO Nesbitt Burns/BMO Capital Markets;
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Thomas V. Milroy, Chief Executive Officer BMO Capital Markets
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