

July 2, 2008

Dear Expert Panel on Securities Regulation:

I AM A CANADIAN (INVESTOR)

- I am perplexed by our investment regulatory system** – Coureurs de bois yearly made it across the country in the harshest of conditions centuries ago but after decades we can't get agreement on one-stop investment shopping and regulation? Never have so many reports been written by so many with so little result.
- I am from Scottish stock – what we pay for securities regulation should be worth it.** Benefits should exceed costs and fees of 15 regulators shouldn't all take a bite out of the returns Canadians earn unless regulators show them a report card showing real value.
 - Don't ask millions of investors to pay for the greed, dishonesty or sheer stupidity of a few (surely, most retail ABCP investors should have known since grade school not to put all their eggs in one basket? even if they didn't understand that the few basis points difference in return, for a short term, would be taxed so as to make it hardly worthwhile?)
 - Don't expect me to buy into the need for more regulation and costs when even adding a complaint for every retail ABCP investor to complaints numbered on the OSC and IDA websites leaves investor complaints low in comparison to the number of investors and transactions, and to the amount of regulatory information and encouragement on how to carry forward complaints that exceeds anything seen in any other economic sector.
- I believe in transparency and user-pay – for the regulated *and* for regulators.** Regulators want more transparency for fees, returns and relationships – good; regulators should be transparent about their profits (income regularly exceeds expenses) and on how fees charged to issuers and intermediaries relate to the costs incurred by these groups. Securities commissions are NOT the instruments for fostering economic growth or raising government revenues.
- I am confused – what is a financial advisor and who regulates them?** Why aren't people providing investment advice (mutual fund dealers, investment dealers/brokers, lawyers, accountants, etc.) subject to a single set of rules? The CSA's own survey shows Canadians like me don't understand who regulates financial advisors¹ or how... so we wouldn't notice if you got rid of ten or more regulators – surely two or three would give enough “tension” to ensure neither becomes either overly bureaucratic or complacent?
- I am a believer in being able to get the same investment services and the same investment protections wherever I live in this country.** I don't want to change investment advisers if I change provinces.² I want to participate in initial public offerings (IPO) wherever issued in this country and not be prevented because an issuer doesn't want to pay 13 fees across the country.
- I am green – I want to keep trees growing in the ground, not ground into paper:** no 100-page short-form prospectuses and annual reports that I don't have the time or energy to read. I want my investment advisor to act on my instructions after we discuss options – I never used to get paper before concluding a transaction and don't expect or want any more phone calls, e-mail or mail to initiate a transaction than before – my money, my decision.
- I am busy – I expect my advisor to advise, credit rating agencies to rate credit, enforcement departments to enforce and, if you want me to pay more attention to my investments, keep it short and simple:** I work, I have kids, I have aging parents and I want some time for myself so no more that one page please, in plain non-legal English – what I'll be paid, when, fees and the major risks. I'd rather read a one-pager than miss out on an IPO opportunity due to the time needed for a longer audited translation.

¹ The CSA didn't define the term and the two investment frauds I know about personally were committed by a lawyer and an accountant.

² Does it make sense for our soldiers and their wives from, say, Manitoba to be forced to change advisors when they move to be stationed in, say, Newfoundland?

- **I am proud to carry a Canadian passport – it gets me through customs fast.** The securities passport system hasn't moved and isn't moving fast enough:
 - CSA answers are delayed by the need to get 13 jurisdictions to buy in, hard when at any time any regulator can be experiencing turnover, have staff on vacation or be in pre-election, election or post-election mode (that said, the principles-based institutional trade matching rule (NI 24-101), albeit having some weaknesses, was a welcome improvement).
 - Organizations have to wait too long for approvals on operational matters that carry little risk, reduce confusion and improve efficiency.³
 - If we can't afford to wait for a common securities regulatory system, then at least have a uniform securities act and only *national* (not also multilateral) instruments, but move implementation faster – much faster – than for the *Uniform Securities Transfer Act*, still not implemented across the country or with consequential changes at the federal level.
 - Why do some regulators ignore checking passports at the border? I want to deal with a Canadian company, but when I ask my investment firm for rates I hear about from its foreign competitors, it complains it can't meet them as those companies aren't regulated.
 - Neither firms nor regulators have the flexibility (speed) to deal with emerging risk areas.
 - Canadian regulators travelling outside Canada don't show the Canadian or even CSA passport – a recent CSA/SEC announcement implies progress in this area, but arguably only after having been pushed into a corner by an SEC announcement with Australia. We need a common regulator with a pipeline to the federal Finance department and a Canadian – not regional, not provincial or territorial – perspective.
- **I believe in real-life experience.** The securities regulators need more staff with an operations background and fewer lawyers. This should lead to more practical solutions and fewer heavy-handed cross-the-board solutions for all firms that may have very different risk profiles.
- **I believe in fairness – regulatory changes should be based on as impartial cost-benefit analyses as possible.** Intermediaries, issuers, regulators and investors should work together to better understand the challenges the other faces, agree on the issues to be solved, identify alternative solutions and define the way to weight the alternatives so that what is finally published for comments hopefully is a solution satisfactory to all parties, steering clear of ineffective and suspect behind-the-scenes consultation and avoiding any party getting so firmly entrenched in a position that change to a better one is not possible.
- **I believe in measurement to manage effectively.** For your report to have value, please get provincial, territorial and federal Finance Minister buy-in for an approach to resolve the very evident problems and then set a hard and fast schedule for more and faster movement. Establish and publish target and actual response times for approvals, policy development, etc. as the Canada Revenue Agency does – this should help speed up response times, particularly when delays in answering have potentially material cost impacts on registered issuers or intermediaries and investors, or give administrative relief for/grandfather methods adopted due to no or too slow answers.
- **I am fed up.** While Canada is famous for successfully muddling through most things, it's time to act – suggested details attached. In the inimitable words of Nike – just do it.

Yours sincerely,

A Canadian (Investor)

³ An approval for an exemption from having to issue two confirmations instead of one under a provincial securities act provision, which would have cost more and confused recipients, has taken close to a year.

ANSWERS TO THE PANEL'S SPECIFIC QUESTIONS:

1. Criteria to evaluate securities regulation:

1. Conceptually, does the system effectively balance – in the short, medium and long term –
 - investor protection with reasonable investor responsibility (this does not mean investors having to read and decipher prospectuses, but does mean common sense about not putting 100% of assets into a risky investment and then complaining about not getting a high return)
 - capital market integrity and efficiency (implying ability to innovate)
 - global market, issuer, intermediary and regulatory competitiveness (implying markets and an industry that contribute to economic growth).
 Reduction in systemic risk should remain with the Bank of Canada, which already has regional representation.
2. What are the timelines for regulatory approvals and responses and are they met?
3. What do “neutrally worded” satisfaction surveys of issuers, investors and intermediaries say about regulation and regulators? How is the structure rated by knowledgeable independent third parties (e.g., IMF, Thomas Murray)?
4. What is the average growth of Canada's securities industry compared to growth of the industry in other countries?
5. What are total investor complaints over time compared to the number of investor accounts and transactions (adjusted for changes in market returns)? What are investor losses due to fraud as a percentage of holdings?

Separately, is the financial literacy of Canadians improving (although improving financial literacy should be a joint effort of the commissions with industry associations)?

2. Principles-based regulation:

Principles for intermediaries: The U.K. Financial Services Authority (FSA) principles can be adopted but should be simplified (to explain why, try to find the definition of “market conduct” (part of a principle) in the FSA handbook (<http://fsahandbook.info/FSA/html/handbook/MAR/1> – the closest I could find is things that are not “market abuse”) to something more along the lines of the following: a firm must:

1. deal honestly and fairly with its clients and counterparties, avoiding or managing and disclosing conflicts of interest
2. take reasonable care to ensure the suitability of its advice and discretionary decisions for customers relying on its judgement
3. manage prudently – with due skill, care and diligence, financial resources and effective risk management systems – its own business and when responsible for protecting client assets
4. follow accepted standards of market practice
5. meet clients and regulatory information needs in a clear, fair and unambiguous way, disclosing information the investor or regulator would reasonably want to know.

Principles for regulators: If there are principles for registered individuals and firms, there should also be principles for regulators:

1. One-stop-shopping/single-window efficiency from the perspective of the investor, the issuer and the intermediary
2. Cost-benefit-justified, cost-recovery-based user-pay regulation
3. Principles- rather than rules-based regulation that avoids the pages and pages of the FSA handbook to achieve the certainty and confidence markets need and that is proportionate so that better-run firms in lower-risk businesses are subject to fewer requirements, also providing an incentive to run businesses according to intermediary principle 3
4. Global competitiveness preserved or enhanced by ensuring regulated firms have the flexibility and regulatory support to operate effectively on a level playing field with regulated competitors and that steps are taken to block unregulated competitors from our markets.
5. Certainty – that is, in terms of what to expect and how fast to expect it.

3. **Enforcement**

There is a perception in some quarters of ineffective enforcement; there are also situations where enforcement seems excessive – designed to show strong enforcement. What is clear is that there is a lack of satisfaction with perceived enforcement, which should be addressed as the perception seems to be going international, contrary to maintaining our financial industry's reputation, which is a competitive and economic advantage for Canada. There are benefits to separating enforcement from regulation, but a need for a link between the two and apparently a need for greater co-ordination between commissions and law enforcement agencies.

4. **Structural model**

A provincial/territorial, passport system or even national structure is inconsistent with global financial markets. A national regulator is better than what we have as progress on passport has been very slow and appears to move only when there is a risk that the regulated are restless. Arguably the main groups disputing the conceptual benefits of a national regulator are regulators, who have a conflict of interest, and firms and issuers that believe they have a good working relationship with local commission staff. Also arguably, a number of intermediaries and issuers are concerned about retaliation if they speak up. There are good arguments against changing – change is hard and risky and there are no guarantees. A poorer argument is that only a provincial/territorial structure will allow regional interests to be protected. That said, while industry groups seem to have given up on a single common securities regulator that they think will never happen and to preserve relationships with the regulators, the passport system does not pass the economic efficiency test. A materially better middle ground would be reduction in the number of commissions to two or no more than three with the cost-efficiency of shared “back-office” services and with the head of each of the two or three rotating as chair of the rationalized (and “more transparently” named) Canadian Securities Regulators for international interactions. The phased approach proposed below, without getting to a single regulator, should materially reduce the risks and political problems, improve cost-effectiveness, provide for tension to bring efficiencies and allow regional interests to be satisfied.

5. **Timetable:**

<i>By year-end 2009:</i>	Structure for enforcement approved
	Uniform securities act approved and commitment obtained from provincial and territorial Finance ministers
	Service standards for responding to investor, issuer and intermediary enquiries developed and published; regulatory success measurements agreed on
	Inventory completed of duplicative and unnecessary regulatory instruments
	Agreement reached on job security, compensation for provinces and territories entering into securities commission agreements with other provinces/territories
	More formal link forged with federal finance for international relations
<i>By year-end 2010:</i>	Structure for enforcement implemented
	Uniform securities act approved and commitment from provincial and territorial Finance ministers confirmed
	National instruments rationalized; multilateral instruments eliminated or made national based on inventory of national and multilateral instruments
	Plans completed for shared services for HR, Accounting, IT and other non-securities regulation delivery services approved for securities commissions and self-regulatory organizations (SROs)
	Plans completed for merger of four Atlantic provinces and, separately, Manitoba, Saskatchewan and Territories
<i>By year-end 2011</i>	Shared service facility implemented
	Atlantic province commissions and Manitoba, Saskatchewan and Territories commissions merged
	Plan to merge B.C., Alberta and Central commissions and Quebec and Atlantic commissions completed
	Plan for integration of SROs with commissions completed
<i>By year-end 2012:</i>	B.C., Alberta and Central commissions merged; Quebec and Atlantic commissions merged; SROs integrated with commissions; five-year progress review