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July 15, 2008

Expert Panel on Securities Regulation
Ottawa, Ontario
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Dear Sirs:

Re: Consultation on the content, structure, and enforcement of securities regulation in Canada

Ontario Teachers' Pension Plan ("Ontario Teachers") is an independent corporation responsible for investing over \$100 billion in assets and administering the pensions of Ontario's 278,000 active and retired teachers. Ontario Teachers' is one of Canada's largest institutional investors, and is the largest single-profession pension plan in Canada.

We have reviewed the consultation paper issued by the Panel, and we have the following comments.

Securities regulatory structure

In our view, there should be one Canadian securities regulator, enforcing one body of securities legislation of national application. Securities regulation should be exclusively a matter of federal jurisdiction in Canada.

In relation to enforcement matters, it is apparent to us that securities markets in Canada are primarily (if not exclusively) national (or even international) in scope. Many enforcement matters must cross provincial and territorial boundaries. Having a unified national approach to enforcement matters should increase efficiencies, establish consistent standards and approaches, and ultimately improve the effectiveness of securities legislation.

A national body of securities legislation, developed and applied by a national regulator, should also permit a faster response to emerging regulatory and enforcement concerns (in comparison to the existing structure and other structures that leave in place multiple regulators or legislators in this field). Having one regulator responsible for one set of rules would allow it to develop rules, establish policies and respond to investor concerns in a more timely manner than the securities regulatory bodies that currently exist.

In response to the question posed in your consultation paper as to whether Canada should have a common set of objectives for securities regulations, a national structure would obviate concerns relating to whether provincial and territorial securities legislation is guided by common objectives, and whether provincial and territorial securities regulators have consistent mandates.

We acknowledge that the existing passport system has reduced to a degree complexity and compliance costs for some market participants. But as we indicated in our 2003 submission to the Wise Persons Committee, it does not lead to consistency, let alone uniformity, in the drafting, interpretation and application of securities legislation, even in circumstances where the policy and general legislative issues in question are identical. This creates unnecessary inefficiencies in the securities regulatory process, increasing compliance costs for market participants and decreasing the pool of resources otherwise available for surveillance and enforcement activities.

A recent example of the failure of the current framework to achieve substantive consistency across the country in terms of regulatory matters is the proposed CSA NI31-103 dealing with registration requirements. Despite a stated purpose of harmonizing, streamlining and modernizing the registration regime across Canada, and several years of policy development among the securities regulatory authorities, the proposed new regime will still result in significant differences between different jurisdictions.

New developments in capital and investment markets

The existing securities legislative framework in Canada is focused on the regulation of "securities" and the markets within which they are issued and traded. A threshold question in assessing the application of legislation to any particular scenario is whether or not the scenario involves a "security".

But the range of investment products being issued and traded in capital markets now goes well beyond what is captured by the concept of securities, and many spheres are now left unaddressed by legislation. For example, the derivatives market is to a large degree unaddressed by securities legislation in Canada. Trading prohibitions, significant investment reporting requirements, the duties of advisors and dealers, and many other matters considered elemental to the framework of securities regulation in Canada do not apply in many respects to derivative and other "synthetic" investment transactions, despite the fact that they raise many of the same policy and other concerns as securities transactions. Tribunals are increasingly faced with attempting to adjudicate market conduct in synthetic instruments by applying securities legislation that has not adequately contemplated the rapid development of investment products and techniques (for example, the OSC's consideration of the *Sears Canada* matter, and the United States District Court for the Southern District of New York's consideration of the *CSX Corporation* matter).

Accordingly, we recommend that the Panel consider a sphere of capital and investment markets regulation which goes beyond the traditional definition of "securities" and takes into account the rapid and ever-evolving development of new investment products that in many cases are arguably not "securities". The recent passage of the Derivatives Act in Quebec is a significant step towards consistency between the regulation of securities and derivatives transactions and markets. But a fully-integrated legislative approach, dealing with securities, derivatives and other investment products in a consistent manner (in terms of principles and, where appropriate, in terms of rules) would be preferable, in our view.

Financial services regulation

Further, we urge the Panel to consider the merits of unifying a broad range of financial services regulatory activities within the framework of a single regulator (and a single piece of legislation), as opposed to allowing securities regulation to remain an isolated endeavour.

Securities, derivatives, group savings, pensions, insurance, credit and other products often present overlapping policy development and enforcement issues. Unifying the regulation of diverse financial products and markets may lead to enhanced and more consistent policy development, more efficient enforcement, and better regulation of products which cross traditional regulatory boundaries.

A discussion paper released in September 2000 by Ontario's Ministry of Finance in relation to the proposed creation of a unified financial services regulator in Ontario stated the following:

The pace of change in the provision of financial services is extremely fast, and all indications point to that pace accelerating. New products, services and ways of delivering them to consumers, such as e-commerce and on-line trading, appear almost daily. A regulatory framework designed in the era when deposit-taking institutions, securities firms and insurers operated entirely different businesses cannot adapt fast enough to address new issues, even with the many positive changes that have been made by governments and regulators in recent years. Both consumer protection and industry efficiency may be at risk of being compromised. By acting now, the Government is taking timely action to respond to this risk by ensuring emerging issues can be dealt with quickly, effectively and with a single, strong voice.

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In moving towards a single financial services regulator, the government's goal is to create an integrated financial services regulatory agency that will lead Canada in consumer and investor protection. The objective is to establish a one-window approach that will be more efficient and effective - gaps and duplication in regulation across the financial sectors in the Province will be eliminated. Consumers will be

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given adequate information to make informed decisions. They will be treated fairly and have adequate avenues for redress across financial sectors. Similar financial products and services in Ontario will be given equivalent and fair regulatory treatment.¹

We believe these statements to be even more timely today than they were in 2000, and that they are just as relevant in the context of a national regulatory model as they are to a provincial regulatory model. Quebec's Autorité des marchés financiers and the U.K.'s Financial Services Authority are two examples of recently-established regulatory bodies that govern securities matters within a broader framework of financial services regulation. Making securities regulation part of an overarching and consistent national financial services regulatory framework could help to ensure that Canada's system of securities regulation is best in class.

Please contact me if you wish to discuss Ontario Teachers' comments, at 416 730 6178 or michael_padfield@otpp.com.

Yours truly,



Michael Padfield
Senior Legal Counsel, Investments

¹ Improving Ontario's Financial Services Regulation: Establishing a Single Financial Services Regulator – A Discussion Paper (September 2000), at pages 5 and 7.