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VIA COURIER June 26, 2000

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Attention: Purdy Crawford, QC

Dear Mr. Crawford

Re: Five Year Review

Thank you for your letter of April 28, 2000. These are my personal comments on the subject, and not those of the firm.

Overall Comments

Fundamentally, we must recognize that globalization has taken hold, and also that the U.S. capital markets have generally become the pre-eminent capital markets for successful corporations.

Canada's capital markets will therefore primarily serve as a stepping-stone to the U.S. capital markets for large issuers, and a home only for small to medium-sized issuers. Accordingly, there is a need to make this transition as simple and "seamless" as possible. One route is via reciprocal recognition, such as under MJDS. While parts of MJDS may be preserved, this seems unlikely to be a foundation for further progress. This means that harmonization with U.S. requirements from time to time should be the key. While our system of provincial and territorial regulation is unhelpful, and while I would suggest that the Committee strongly encourage the development of a true single national (or federal) securities regulator (or two, if as may be the case Quebec were to insist on going it alone), even Ontario alone could play a significant role in this harmonization.

Secondly, securities regulation should be as simple as possible. Ontario securities laws are now far more technical and complex than is warranted, as well as being subject to almost continual change and ever-increasing complexity.

Specific Questions

I. *Principles Underlying Securities Regulation*

1. In general, yes. However, as noted above, we need both to move towards harmonization with the U.S. system and avoid unneeded complexity.

2. Absolutely, and this is in fact the U.S. model. Ontario should harmonize to the U.S. position, as well as seeking to avoid any unneeded additional complexity.

3. Advice is regarded as ancillary to dealing in the Act, which is clearly not the reality of the marketplace today (if it ever was). Trading services are becoming commiditized and are likely to continue to do so. Advice, where provided (i.e. not in the discount brokerage area) is the key area that should be regulated.

4. The closed system, very simply, is frequently illogical, does not work and is excessively technical and complex. A company registration system would avoid placing artificial distinctions on primary and secondary trades of the same security, which is what the closed system does.

5. No comment.

6. The Act, regulations, rules and OSC practices (e.g. special warrants) and orders have encouraged this approach, which is inherent in the closed system.

7. It should also be kept in mind that securities are increasingly becoming certificateless.

8. We should only move to this so-called "functional regulation" model if it would be accompanied by a shift to a national (or federal) regulator as noted above, to avoid further hampering our banks' competitiveness.

9. The IDA has an arbitration mechanism in place already. Query, however, whether there should be mandatory arbitration if a client requests it irrespective of the size of the claim.

10. Integration of legislation or a separate legislative scheme with the same regulator are alternatives. In my view, there is no evidence that any additional regulation of derivatives is required.

11. I do not believe there is any real gap, given the broad definition of trading and the requirement to register as an advisor. The OSC's approach to advisors, however, as reflected in OSC Policy 4.8 and its proposed successor rule, diverges problematically from that of other regulators, including the SEC, and unnecessarily restricts privately placed funds.

12. Optional access to stock exchanges and other markets is desirable. Mandatory dealer involvement increases costs. While a fiduciary obligation might be an appropriate dividing line for suitability/"know your client" issues, it seems uncertain. The giving of advice or recommendations seems a better dividing line, albeit it too is not perfect.

13. Universal registration has provided complex regulation (and associated costs) with no apparent related benefits.

14. The TSE has such statutory authority already. It is not clear that a multiplicity of enforcers is a good idea, as opposed to a single agency responsible for enforcement.

15. There is no evidence of which I am aware that requiring quasi-SROs such as IFIC and clearing agencies such as CDS to be recognized or registered is necessary to avoid abuses or would provide benefits that outweigh the costs.

16. The OSC already has tremendous powers over recognized SROs under the Act.

17. There is no evidence of which I am aware that regulating custodial services is necessary to avoid abuses or would provide benefits that outweigh the costs.

18. Harmonization with the U.S. position seems appropriate as a general matter.

19. Statutory civil liability is in my view generally appropriate. However, the OSC has a broad variety of regulatory powers that it generally appears loathe to use against issuers and their directing minds. It is not clear that additional regulatory powers are necessary, and the proposed Integrated Disclosure System raises a number of difficulties.

20. The current standards seem appropriate. I am not aware of cases where the absence of a "change" was a key issue.

21. In my view, the OSC should expressly permit U.S. GAAP (as well as international GAAP as soon as it is sufficiently established) in lieu of Canadian GAAP.

22. I am not convinced that this is a material issue. In any event, it would appear to be best addressed with insider trading tools. Any requirement to disclose all otherwise disclosed information would likely need to be extensively qualified, and the U.S. proposal has been widely criticized.

23. One cannot really prevent the spread of information with rules. If rules are applied to road shows, other means will develop.

24. I am not convinced that this is necessary, although anecdotally and philosophically it would appear appropriate to ensure that someone is overseeing the management of publicly offered funds. However, MERs are already higher in Canada than in the U.S., so any rules adopted should not be expensive to implement.

25. Portfolio managers need to be registered, and I am not sure why fund managers, who are generally responsible for operations but not the portfolio invested, should need to be registered. The costs would appear to outweigh any benefits, given that the fund itself and its portfolio manager are already regulated.

26. No comment.

27. In my view, this position paper approach circumvents the rule-making process. It is also not clear that the costs of a separate recognized SRO for mutual fund dealers do not outweigh any benefits that may result. We are acquiring a large number of SROs in a consolidating Canadian financial services industry.

28. Yes, the OSC should follow the U.S. model.

29. The benefits of 35 as opposed to 21(+10) days are not clear. A move to the U.S. standard of 20 business days would appear to be more appropriate. It would be inappropriate to extend take-over bid provisions to arrangement and other "voting" transactions.

30. It is not clear that additional enforcement authority is required. Greater enforcement of existing rules might be appropriate, however, in suitable cases. Also it should be made clear by the Commission that the

use of structured products should not avoid insider reporting requirements, in my view.

31. Subject to any applicable constitutional limitations (I believe that there may be case law suggesting that these offences are within the federal government's criminal law powers, and this would have to be reviewed), fraud and market manipulation should be added infractions, but not unless they will be accompanied by more strenuous enforcement of existing requirements such as misrepresentations, insider trading, etc. Rules, in the absence of strong enforcement, are mere window dressing.

32. The mutual reliance system works reasonably well for routine matters, and not very well for novel matters. It remains a patchwork (albeit a valued one at times) that does not really address the true efficiency costs of 13 separate regulatory regimes in a small capital market. What is required is a single national (or federal) regulator operating under one set of rules that are consistent across Canada and harmonized with the U.S. Explicit delegation powers may assist in this regard, if also enacted elsewhere in Canada.

33. Through harmonization with global (i.e. U.S., generally) standards, and a uniform national (or federal) approach, with proper enforcement, one can both ensure proper regulation and maintain international competitiveness, as well as the cost efficiency of regulation.

34. No comment.

35. No comment.

36. Direct purchase plans should be permitted in Canada as in the U.S.

37. As the information is generally available on SEDAR, except for voting purposes, delivery obligations seem unnecessary and costly. A reverse onus doesn't seem inappropriate in non-voting circumstances.

38. We should not seek to unduly limit Canadian companies' ability to raise capital in the U.S., or they will move to the U.S. entirely.

39. In my view, the rule-making process, while perhaps conceptually sound, has in practice begun swiftly to lead to over-regulation. While the comment process is a dramatic improvement over past means of regulation, it is now too easy to regulate, and practitioners are drowning in new (and highly technical) rules. The costs of keeping up are clearly outweighing any benefits in my view.

40. Again, it is not clear that additional powers, versus heightened enforcement generally, are necessary. I would not support extensive powers to levy monetary penalties, as I believe that these should be subject to an independent review. The Commission will often be too "close to the action" to be administrator, prosecutor, judge and jury. The Commission has also very rarely sought monetary penalties in court. In some areas (see below), the existing powers may be too broad.

41. The Commission's mandate seems appropriate and flexible. I am not sure what "securing Ontario's place" might be construed to mean, however. See para. 42 below.

42. The U.K. provisions seem appropriate, as would a "harmonization" provision.

Other Comments

(a) In my view, the Committee should review the scope, constitutionality and appropriateness of OSA s. 16, which purports to prevent a person from advising even the senior officers or directors of his employer of an investigation. Given that the existence of many investigations are being first brought to light publicly in the media, this appears to be inappropriate. In addition, these provisions appear overbroad and are not available in the context of much more serious matters such as criminal investigations. They may be inappropriate.

(b) The entirely open-ended withdrawal rights provided in section 71(2) of the Act represent, in a volatile and fast-moving world, a hindrance to quick financings and give purchasers in effect an option, which seems inappropriate. They are not to my knowledge present in other countries, including the United States.

(c) The Committee should, in my view, mandate the OSC to review its rules periodically by providing generally for "sunsets" in rules. The Committee should also encourage the OSC to employ grandfathering provisions in rules generally, as their sudden introduction sometimes causes severe problems in pending transactions. OSC Rule 61-501 is a good example of grandfathering provisions.

I hope that these comments are helpful.

Yours truly,

Simon Romano

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