

June 6, 2000

Mr. Purdy Crawford
Chair
Securities Review Advisory Committee
Osler Hoskin & Harcourt
Box 50
1 First Canadian Place
Toronto ON M5X 1B8

Dear Mr. Crawford

RE: FIVE YEAR REVIEW OF SECURITIES LEGISLATION IN ONTARIO
-- REQUEST FOR COMMENTS

Thank you for providing this opportunity for the Financial Services Commission of Ontario (FSCO) to comment on the Issues List that is a part of the Securities Review Advisory Committee's current examination of the Securities Act.

As discussed in our recent telephone conversation, my comments at this stage will be somewhat general in nature given the unique circumstance of the pending merger of the Ontario Securities Commission (OSC) and FSCO. I should also note that some comments will reflect my perspective as Chair of the Joint Forum of Financial Market Regulators which, as you will recall, was created approximately one year ago to harmonize and coordinate the regulatory efforts of securities, insurance and pension regulators across Canada.

I PRINCIPLES UNDERLYING SECURITIES REGULATION

- # The suggested model, whereby securities regulation would be based on a statute that sets out broad principles and standards of market behaviour, accompanied by rules, would appear to make sense in light of the fast pace of change affecting the market.

However, such a system must have checks and balances. It must be transparent and must accommodate input from the public generally and from those affected more specifically.

...2

- # With the financial services marketplace evolving swiftly from transaction to relationship-driven sales, insurance and securities regulators across Canada are wrestling with how best to regulate “advice giving”. In this context, you will no doubt be aware of the project that has been undertaken by the Joint Forum of Financial Market Regulators to establish harmonized proficiency requirements for intermediaries who hold themselves out to the public by any one of a number of titles that convey the concept of financial planning. This project is but one component of a response to the complex issues involving advice giving and intermediaries who are multi-licensed by different regulators in different jurisdictions.

As you and your colleagues pursue further consideration of the regulation of advice giving, I would urge you to take into account the need to ensure harmonization across sectors and jurisdictions, the need for a level playing field for intermediaries (however they are licensed), and the need for uniformity in the protection provided to customers.

II FOCUS AND SCOPE OF LEGISLATION

General

- # As a principle, financial services legislation and regulation should reflect the structure of the marketplace. At the same time, any changes being contemplated by policy makers should look to the future and try to accommodate, to the extent possible, developments that are emerging.
- # With regard to paragraph 9, it is my view that since market conduct is a provincial responsibility, financial services regulators in the provinces and territories should be accountable for handling consumer complaints through ombudsman or arbitration schemes. Moreover, at this juncture it is important that provincial and territorial regulators demonstrate leadership by working across sectors and across jurisdictions to ensure harmonized and integrated services for Canadian consumers.

This challenge is pressing and complicated. To illustrate:

- 9** The federal government is currently discussing the establishment of a federal Financial Services Ombudsman. How could/should this mesh with the market conduct responsibilities of provincial regulators?

...3

- 9** Increasingly, financial products are sold through financial services conglomerates.

In such instances, which regulator and which corporate entity should ultimately be accountable for the resolution of consumer complaints? Would the purchaser of mutual funds from a bank-owned securities dealer turn to the proposed federal Ombudsman, or to the Investment Dealers Association (IDA)? Would the purchaser of life insurance from a bank-owned insurer turn to the federal Ombudsman, to the Canadian Banking Ombudsman, or to the Canadian Life and Health Insurance Association OmbudService?

Whatever model emerges for complaint handling/arbitration, it should be characterized by real and perceived independence in its governance structure and full funding by the financial services industries.

In addition, FSCO has been examining approaches to: (i) setting standards for protocols, best practices, codes of conduct, and approved provider certification; (ii) providing primary service liaison (i.e., by making referrals to other, formal, public and private sector services); and (iii) providing direct service provider liaison (i.e., the service would be activated if nothing else is available in a particular jurisdiction).

But no matter how harmonized and efficient complaint handling/arbitration systems may be, they are of little use if consumers do not know they are available. Therefore, those responsible for such systems should be required to undertake programs to ensure a uniform level of consumer awareness.

Regulation of Registrants

- # Technological developments pose significant challenges for regulators. On the one hand there is the need to protect consumers; on the other, the need to encourage innovation that will lead to efficiency in the capital markets. In determining whether or not there are activities or transactions that should be exempt from the need to involve a regulated intermediary, it is perhaps instructive to consider one of the guiding principles of the Financial Services Authority in the United Kingdom: that restrictions imposed on firms and markets should be in proportion to the expected benefits for consumers and the industry.
- # With regard to simplifying and streamlining the current multiple categories of registration, I would again urge your Committee to consider the need for harmonization across sectors and jurisdictions.
- # Clearly, the current system is inconsistent with the way business is being done and creates administrative inefficiencies for those regulated. The solution could lie in working towards the issuance of a single, financial services distribution licence that would have separate endorsements for product or business lines.

...4

- # At the same time, the organization issuing such a licence would maintain a common

public data base of all persons holding the single licence or registration, including endorsements and any terms or conditions imposed, and any regulatory proceedings taken against them.

- # Before leaving the topic of intermediary regulation, I should note that the Joint Forum recently launched a major project that has as its goal a harmonized approach to intermediary proficiency and licensing. One phase of this project will focus specifically on approaches to the licensing of individuals who provide more than one category of service.

Mutual Funds

- # Regulatory harmonization is at the heart of the Joint Forum's initiative involving individual variable insurance contracts (sold by life insurance companies and regulated by provincial and territorial insurance regulators) and mutual funds. As part of this initiative, the Joint Forum has developed 15 recommendations involving product, disclosure, manufacturer and distribution regulation. Many of these recommendations touch on areas being examined by your Committee and I am therefore attaching for your reference the Joint Forum report "Recommendations for Changes in the Regulation of Mutual Funds and Individual Variable Insurance Contracts" dated December 15, 1999.
- # Work towards the establishment of a self-regulatory organization for distributors of mutual funds (the Mutual Fund Dealers Association) has served to illustrate the complicated issues that can arise in today's marketplace of multi-licensed intermediaries and self-regulatory organizations with different responsibilities and mandates. In this specific case, there remain some unresolved issues involving individuals who are licensed to sell both life insurance and mutual funds.

III IMPACT OF REGULATORY HARMONIZATION AND GLOBALIZATION TRENDS

- # In this area, I would simply note that as is the case for securities regulators, there has been an increasing trend towards inter-provincial cooperation and harmonization on the part of insurance regulators, through the Canadian Council of Insurance Regulators (CCIR), and by pension regulators, through the Canadian Association of Pension Supervisory Authorities (CAPSA).
- # At the intra-provincial level, coordination between the OSC and FSCO has been achieved through the Ontario Council of Financial Regulators.
- # All of these efforts are further enhanced through the Joint Forum of Financial Market Regulators, which provides a mechanism for achieving harmonization and cooperation across the insurance, securities and pension sectors.

...5

IV IMPACT OF TECHNOLOGY

- # The Internet and E-commerce are raising significant questions for financial services regulators at home and abroad. Given the structure of the financial services industry, I urge your Committee to consider the need for a coordinated regulatory response.
- # To this I would add the view that central to any regulatory response must be mechanisms to address the real and growing concerns Canadians have regarding privacy, and the protection of their personal information.

V MANDATE AND ROLE OF THE COMMISSION

- # I note with interest the guiding principles for the Financial Services Authority (FSA) in the United Kingdom and the Australian Securities and Investments Commission (ASIC), since both have a broad scope that is more akin to that contemplated for the merged FSCO/OSC. In particular, the notions of ‘facilitating innovation and minimizing the adverse effects of competition’ (FSA), and ‘promoting the confident and informed participation of investors and consumers in the financial system’ (ASIC), reflect a more proactive, forward-looking approach than has perhaps been typical in Canada in the past.
- # Given all that we know of globalization and competition, it would seem appropriate for the Commission’s mandate to recognize the importance of securing Ontario’s place within global and competitive securities markets (paragraph 41).

In closing, I would like to simply reinforce the theme that is central to my comments: the need for cross-sectoral and cross-jurisdictional harmonization.

Thank you, again, for this opportunity to comment.

Yours truly,

Dina Palozzi
Chief Executive Officer and
Superintendent of Financial Services

Enclosure