April 23, 2004

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Ontario Securities Commission
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Proposed NI 81-107

Over the years securities regulators have tolerated and encouraged massive concentration within the Canadian Securities industry, with approximately eighty percent of the securities business now controlled by the five major banks. It is apparent these entities are trying to serve too many masters. Conflicts are the natural by-product of this situation. We continue to make more rules, which drive up compliance costs for independent organizations and thus reinforce the consolidation trend. The mutual fund industry is a clear case in point.

We have also forgotten or disregarded history in the creation of the current industry structure. In the U.S., the Glass-Steagall Act, which separated commercial and investment banking functions, was put in place to deal with the abuse of banks using their equity placement (or investment management) capabilities to underpin problem loans with equity issues.

Clearly, we cannot expect memories to extend back to the Act's enactment in 1933 but we should be able to depend upon regulators' having recall extending to 5 or 10 years.

For example, the T. Eaton Company issued its only IPO in 150 years only to be declared insolvent one year later. Whatever losses its bankers suffered were reduced by the size of the $175 million underwriting. It is ironic to note that financial projections used by the bank-controlled underwriter at the time of the financing were declared to be incorrect within three months of the deal's closing. Part of the bankruptcy agreement included the provision that the underwriter could not be sued.

Laidlaw Inc., one of Canada's most widely held companies, was declared insolvent when a bank initiated and advised acquisition (Safety-Kleen) declared its bookkeeping to be fictitious. Many of the shares held were owned through bank-controlled mutual funds. The banks aggressively sought recoupment of their loans to Laidlaw and not one spoke

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up on behalf of the direct or indirect common shareholders, many of whom held shares through their mutual funds. Clearly, in a crunch, the banks' priorities were on the side of getting their loans back at all costs.

Canadian bankruptcy laws, unlike those in the U.S., clearly favor creditors in restructuring rather than also allowing equity holders some means of partial recoupment. This fact, when coupled with removing conflict of interest provisions, reinforces this form of common shareholder abuse. The intent and results in these two relatively recent issues appear to be lost in the Canadian Securities Administrator's submission. That is no surprise.

For 40 years in the Canadian Securities industry, I have watched our major banks always get what they sought from the securities regulators. This, despite conflicts, trading abuses, the destruction of agency stock trading, aggressive tied selling (yes, it still exists) and the negative economic impact for small to mid-sized firms trying to raise capital.

One provision that should be specifically allowed in, however, is the ability of an investment manager to trade on a principal basis with an affiliate in the fixed income sector. All bond trading is conducted on a principal basis. It would be chaotic to reinvent this when one understands that all world-wide trades are conducted in this manner.

In regards to equity trading, principal transactions are becoming the norm on an institutional basis. In this instance real costs are often hidden from investors and capital is used to buy business and further consolidate our industry.

Approximately 20 years ago, as banks took over investment firms, I asked the Ontario Securities Commission: "How powerful do you want the banks to be?"

The question still stands.

Yours truly,

Thomas S. Caldwell, C.M.
Chairman

Cc: The Right Honourable Prime Minister Paul Martin
Premier Dalton McGuinty
Honourable Greg Sorbara, Minister of Finance