



Caldwell Securities Ltd.

Independent Investment Advisors

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Cooperative Capital Markets Regulatory System “CMR” Comment on Legislation

Submitted by email: commentonlegislation@ccmr-ocrmc.ca

First, let me state that our organization, Caldwell Securities Ltd., does not engage in corporate finance, proprietary trading or offer margin accounts. We are an agency firm that handles one category of client – “The Investor”.

Despite our focus, I feel compelled to speak out on behalf of other investment firms in the currently destructive regulatory environment.

Objections to a National Securities Regulator are based, in great measure, on fears of an Ontario centric regulator hampering economic development and entrepreneurial activity.

To begin, and as a reminder, the principles and purposes of the Ontario Securities Act are as follows:

Purposes of Act

1.1 The purposes of this Act are,

- (a) to provide protection to investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in capital markets. 1994, c. 33, s. 2.

Principles to consider

2.1 In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:

6. Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized. 1994, c. 33, s. 2.



There is a significant body of opinion within the investment community that regulations and regulators have moved far beyond the above fundamental purposes and principles.

This regulatory over-reach is having a highly destructive influence on independent investment firms (32 closed in two years – the very companies who finance new enterprises), capital formation (the cost of doing an IPO and subsequent obligations) job creation and our overall economy. It is also depriving Canadian investors of product, product provider and advice choices.

Sadly, most independent investment industry participants do not see a future beyond ten years.

Private equity activities and the non-replacement of Canadian head offices are, in part, a result of our current regulatory regime.

The cost of regulation and compliance now represents approximately 30% to 50% of administration overhead for independent investment firms. In some instances, the costs of policing a trade can exceed those of execution and settlement.

The problem is that compliance burdens now have little to do with investor protection, but rather with procedural and the documentation of procedural matters. Further, the Client Relationship Model has been developed by staff who have neither real client relationship experience nor direct investment industry experience. Too much information now masks important information as clients are buried in legal niceties and rarely read the material they now receive.

Much of this results from regulators trying to use a “one size fits all” approach, despite their comments to the contrary.

In addition, regulations are not accurately evaluated on a cost/benefit basis as per the above “principles”.

A key point to keep in mind is fiscal and monetary measures lose their economic influence if regulations are at or close to “lock down”. That is where we are now and the results for our country will be jobless economic recoveries in a branch plant economy.



A few positive suggestions, which may help in overcoming the concerns being voiced across Canada are:

1. Keep the new combined regulator's activities in line with the above purposes and principles of the Ontario Securities Act. There should also be oversight in this regard.
2. Regulatory staff should be assigned to continually simplify and examine the relevance and substantiveness of current regulations.
3. When a new National Securities Regulator is adopted, a moratorium on new regulations should be put in place for at least one year, to enable securities lawyers to catch up with the flurry of recent regulations, to evaluate the new regime and examine any unintended consequences.
4. Most importantly, an investment industry Ombudsman should be put in place to enable actual industry participants to address specific and macro issues. This "steam valve" may ameliorate Western concerns.

This Ombudsman should have some power to influence regulators, who at present have no real accountability. Also, it should be staffed by people who have had direct investment industry experience, preferably at the client contact level.

The overall goal should be securities regulation with greater relevance and, as a consequence, better capital markets for all Canadians.

Please feel free to contact me, should you wish to discuss this further.

Best wishes,

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Chairman