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December 8, 2014

Via email: 'commentonlegislation@ccmr-ocrmc.ca'

Re: the Capital Markets Stability Act and Provincial Capital Markets Act.

Thank you for the opportunity to comment on the draft federal Capital Markets Stability Act (CMSA) and the draft provincial Capital Markets Act (PCMA).

Both Acts appear to be drafted consistent with the stated goals and with the intention of keeping each piece of legislation in compliance with the constitutional division of powers. Overall we believe the proposals have the potential to serve Canadians well. We do however wish to express some reservations and concerns with both the consultation process and the legislation.

## THE CONSULTATION PROCESS

### Requirements for a meaningful consultation process

The consultation process can be meaningful only if

- the public is given a reasonable opportunity to be aware of it,
- the scope of items on which consultation is sought is appropriate,
- the information/data on which the proposals are based is appropriately disclosed,
- the time period for consultation is reasonable, and
- the feedback received has the opportunity to be appropriately considered.

We will discuss each of these.

## The public has not been given a reasonable opportunity to be aware of the consultation process

Many stakeholders with whom we spoke were not aware of the existence of the consultation process. Even we only happened to come across the notice of consultation and then followed up to find the key materials.

More is needed to be done to make the public aware of the existence of the consultation process. We are concerned the feedback you will receive will not be representative of the positions of the variety of stakeholders; many have not been made of the opportunity to provide feedback.

We suggest considerably more effort be made to make the public aware of all further opportunities to provide consultation.

## The scope of items on which consultation is sought is appropriate

It appears the scope of the items on which consultation is and will be sought is appropriate. Consultation is presently being sought regarding the CMSA and the PCMA; consultation concerning the regulations is promised.

Our position on this point presumes consultation will be sought on all future steps, including:

- amendments of the CMSA
- amendments of the PCMA
- the Act(s) creating the regulatory body and any amendments to such Acts
- the Act(s) implementing the Memorandum of Understanding and amendments to such Act
- the proposed regulations and amendments to the same
- policies, bulletins and directives from those responsible for implementing the Acts and regulations

## Information on which the proposals are based is appropriately disclosed

Presumably the decisions to pursue the present course are made in a reasoned manner based on empirical facts. We have been unable to locate disclosure of such facts. Because stakeholders are being asked to provide feedback in the absence of having access to any such facts, any feedback is necessarily deficient.

The basis on which any further decisions are based should also be disclosed. For example if consideration is to be given to in any way limit investment concentrations or caps, the logical and empirical basis for those decisions needs to be fully disclosed. Failure to base decisions on such logic and empirical evidence and to disclose the logic and evidence can cause needless harm to individuals and market places, cause cynicism and make the decisions look arbitrary.

### The time period for consultation is not reasonable

The time period allowed for consultation is far too short, even with the consultation period regarding the CMSA and the PCMA being extended from sixty to ninety days. We understand the consultation period regarding the regulations will also be limited to ninety days. We have not yet heard how much time will be permitted for future steps in the process.

To make any feedback meaningful, the public should be provided sufficient time to fully review the material, consider their positions, and provide you with detailed feedback. The ninety day period is far too short for this to occur.

### The feedback received cannot be appropriately considered

The consultation process does not allow for feedback received regarding one step to be considered before the taking of subsequent steps. For example, the draft regulations are due to be released for consultation only eleven days after the period for consultation on the CMSA and the PCMA closes. Clearly the draft regulations cannot be prepared in that time period by acting on or even considering the feedback concerning the enabling Acts. The reasonable conclusion is that the draft regulations have been readied prior to the receiving of the feedback on the Acts. This can cause the public to conclude that the consultation process is but a formality and the substance of the feedback is not being considered by those drafting the Acts, regulations, and related documentation.

## THE LEGISLATION

### Broad legislation leads to broad feedback

Both Acts are, as has become the custom for legislators, couched in very broad language. Given the broad language in the Memorandum of Understanding (MOU) and the two Acts, any responding feedback is logically limited to being broad. Anyone providing feedback is left to imagine what details might be in later regulations and policies.

We appreciate you will be seeking further feedback once proposed regulations are distributed. Presumably the proposed regulations will contain sufficient details to allow the feedback to be correspondingly detailed. If the regulations themselves are broad and in fact serve only to empower the regulator to put the details into place, you will again only receive broad feedback.

We suggest that for consultation to be meaningful, it must be solicited at the stage where the regulatory scheme is appropriately detailed. If the details are not to be available until the implementation stage, then it is imperative that feedback be sought at that stage and with the details disclosed.

## Balancing national consistency with regional diversity

We are a large country comprised of varying markets having distinct needs. It is unlikely that a single piece of legislation can be an appropriate fit for each of the provinces. Each province needs to be allowed to address its specific issues and concerns within its borders. While the MOU provides (in principle) for this to happen, it remains to be seen how this will (in fact) take place.

We are somewhat comforted that there are built-in incentives for all parties to find the correct balance as to consistency of regulation across our nation while allowing for provinces to address their particular circumstances. While the voting structure is helpful as is the fact each level of government is taken to be delegating to the regulatory body only those powers in its jurisdiction, the primary incentives must surely be that any province or territory can join the cooperative at any time and can leave after providing notice of six months.

## Limit terms of those in power

The end result of the process appears to be principles based regulation. This approach leaves those who will implement the Acts and regulations with tremendous discretion and power. This concentrates too much power in too few non-elected hands. This power needs to be limited by checks and balances as well as by limiting the tenure of those having such power. This is particularly important where appeals are not available and the courts can review decision under the much more limited judicial review power.

Further, any broad clauses giving persons enforcement authority should be accompanied by governing principles rather than blanket empowerments. For example, if enforcement is to be permitted without anything more than a single authority concluding that enforcement is appropriate in the public interest, then the authority should have to meet specified thresholds of evidence and procedure to exercise the power. The authority should be required to provide detailed reasoning. The greater the impact of the use of power, the more carefully the power should be used and the more clearly the appropriateness of it having being used should be demonstrated.

## The need for reporting out

The federal government and each of the provinces should be required to provide an annual reporting out. This will allow the public to assess the effectiveness of the process and for all to address any needed changes.

If you wish to discuss any of the above noted issues or require further commentary, please feel free to contact me.

Yours truly,  
**THE MORTGAGE BROKERS ASSOC. OF BC**

A handwritten signature in black ink, appearing to read 'S. Gale', enclosed within a thin black rectangular border.

Samantha Gale, CEO