

BY E-MAIL

July 6, 2016

Cooperative Capital Markets Regulatory System
comment@ccmr-ocmr.ca

Dear Sirs/Mesdames:

Re: Revised Consultation Draft *Capital Markets Stability Act* (“CMSA”)

We submit the following comments in response to the notice and request for comments published by the Cooperative Capital Markets Regulatory System (the “CCMRS”) on May 5, 2016 related to the CMSA.

We have organized our comments below with reference to the relevant sections of the CMSA to which our comments relate. All references to parts and sections are to the relevant parts or sections of the applicable rule, regulation, policy or form.

Thank you for the opportunity to comment on the CMSA. This letter represents our personal comments and is submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

1. *General Comments re: Duplication of Offences*

We query why certain provisions of the CMSA replicate offences already provided for under provincial securities legislation and the proposed Provincial Capital Markets Act (the “PCMA”), for example, the insider trading and tipping provisions (see section 57 of the CMSA and section 66 of the PCMA). To the extent possible, we suggest avoidance of the duplication of provisions in the various securities regulatory instruments unless there is a compelling reason for so doing. While we understand that the proposed approach is consistent with the current status quo as between provincial securities legislation and the *Criminal Code of Canada*, we believe that the implementation of a cooperative regulatory system could provide regulators with the opportunity for a more streamlined and efficient system.

2. *Section 10 – Request of Chief Regulator*

We believe that section 10 of the CMSA is drafted too broadly, requiring that any person provide the Chief Regulator with records and information. This section should restrict the disclosure requirement to a limited subset of persons by, for example, using a “market participant” concept.

3. *Section 24(6) – Opportunity to be heard*

While the “Backgrounder” to the CMSA indicates that, as a result of the last round of comments, amendments have been made to the CMSA to provide that any person

directly affected by an urgent order have an opportunity to be heard as soon as feasible after the order is made if no such opportunity was afforded before making the order, we respectfully submit that section 24(6) of the CMSA does not grant this opportunity to all persons directly affected by an order but merely grants it to all persons that "...the Authority considers would be directly affected..." We submit that this section should be broadened to apply to any person who is directly affected.

4. Section 28(7) – Powers – entry

We submit that additional language be included in this subsection so as to ensure that privileged materials (records, electronic devices and systems, data, etc.) are protected in the event that an order for the exercise of powers is granted.

5. Section 44(3) – Terms

We request that this subsection be revised to state that the "order shall contain terms..." (as opposed to "may contain") so as to protect privileged communications.

6. Section 72(1) – No destruction, etc.

This section prohibits a person from destroying, withholding or concealing information, property, etc. if such person "ought reasonably to know" that a review, inquiry, investigation or proceeding "is likely to be" conducted. We query how a person could "reasonably know" that something is "likely to happen" with enough confidence to act within the bounds of the CMSA. We suggest that this section of the CMSA is too vague and too broad. A known current investigation should be the standard applied.

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We once again thank you for the opportunity to comment on the CMSA. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Yours truly,

Laura Levine
Simon Romano