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BY FACSIMILE August 28, 2002

Mr. Purdy Crawford
Counsel, Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario M5X 1B8

Dear Mr. Crawford:

Re: Five Year Review Committee Draft Report

Congratulations on a substantial and well-reasoned report that I expect will be of substantial benefit to the development of securities regulation in Canada. I have a number of comments. They are my personal comments (and not those of the firm), and are in no particular order.

1. First, I applaud your call for a single national securities regulator. I would also applaud the development (if necessary) of two regulators, one in Quebec and one outside Quebec. As opposition to the concept appears to continue in certain spheres, may I suggest two approaches. First, the current drafters of the uniform securities law should be requested to expressly provide for regulation-making power to delegate powers to a different agency (including but not limited to other commissions) than the local commission, in whole or in part. That way, when (not if, I hope) the political and/or regulatory will arrives, it will not have to wait for legislative changes at that time. Secondly, I would encourage interested jurisdictions to develop an "opt-in" model, whereby initially non-participating jurisdictions could join later. I also support the development of full "mutual recognition", as you discuss, in the meantime.

   The pursuit of uniform rules, while worthwhile, seems to me to be no substitute for a national regulator.

2. Second, I wish to express my disagreement with the apparently prevailing regulatory view, in both Canada and the U.S., that the answer to most problems is more rules. The marketplace is being deluged with rules, and very few participants have been able to keep

up. The difficulty is compounded by the drafting approach of regulating (i.e. prohibiting) everything, and then requiring detailed exemptions to be applied for. I sincerely believe that the practical implementation of the CSA's rule-making powers has been very difficult, and that the continued focus on new rules needs to be replaced with a focus on simplicity, repealing unnecessary rules and the enforcement of existing requirements. Lest we forget, in the current environment, the 1990s involved a plethora of made-in-Canada securities frauds that have not been the subject of serious criminal charges. We will be very lucky if we do not have our own Enrons, Worldcoms and the like lurking in the shadows now, as our enforcement record is very poor in the serious fraud area. People are more important than rules, as always.

3. Your recommendations in chapter 4 call for the administration and enforcement of securities laws not to be carried out in an anti-competitive manner. I would go further, suggesting that rules themselves not be developed to unnecessarily impede competition. There are many examples (e.g. residency and Canadian incorporation requirements, international dealers, foreign ATSs) where the regulators appear to have drafted or are interpreting rules that are more designed to address competitive issues than sound securities policy.

4. In part for the reasons set forth in paragraph 2 above, I do not support broadening rule-making powers as suggested by your recommendation 6.2. In addition, I fear that this would assist in entirely removing the rule of law in the securities area. I am of the view that our courts are overly deferential and do not exercise an appropriate supervisory jurisdiction over our securities regulators.

5. I support extending, rather than shortening, the rule-making time periods, to a minimum of 180 or more days (subject to the existing emergency over-rides). As discussed above, there have been far too many rules for anyone to properly review and comment on them, and as a result there are a lot of badly drafted, and some poorly thought out, rules in my view (including the closely-held issuer exemption, which is largely unworkable, and the ATS rules, which impose mountains of often inappropriate red tape on ATSs). Greater time periods would enhance the value and discipline of the comment process.

6. I support your call for cost-benefit analyses wherever possible.

7. I support in concept the BCSC's concept proposal of registering firms, rather than individuals. The registration process has always been an intense exercise in paperwork, and anything that can reduce this is to be encouraged. A national passport system would also be highly desirable pending the implementation of a single national regulator.

8. I support the repeal of universal registration, which in its day-to-day application has served no legitimate regulatory purpose that I can fathom.

9. I find it hard to understand your strict reading of control block rules (on p. 81, you appear to recommend enforcement action) with regard to derivatives and equity monetizations, given your relatively more relaxed approach to insider reports in the same area (on p. 148, you recommend changes to the law). In my experience, the control block securities are usually subject to a pledge arrangement, rather than being sold, and thus the control block rules have less application (and in my view less need for application from a policy perspective) than the insider reporting rules. I would suggest that consideration be given to developing rules in both areas, or neither. In fact, a clear statement that in the CSA's view equity monetizations should be reported on insider reports may suffice, and be preferable to more rule-making.

10. With respect to material information disclosure, on p. 84, I would have thought that a material lawsuit would generally qualify as a material change, as it does appear to me to be likely to reflect a change in the issuer's business (broadly construed). I also suggest that TSE and CDNX rules be adjusted to expressly reflect the fact that it would almost always be premature and inappropriate to announce a potential merger, acquisition or disposition until a binding definitive agreement has been reached. The potential damages to employee and customer/supplier relations (and thus shareholders), the "damaged goods" perception of a failed deal, as well as the potential to make the transaction unachievable because of speculative price changes, are too great (witness Nestle's recent negative reaction to speculation that it was seeking to purchase Hershey).

    Until a binding definitive agreement has been reached, disclosure should not be required in any way, including via confidential reports. Issuers must be able to legitimately take the position that nothing material has occurred until that time.

    In addition, confidential material change report provisions are not present in the U.S. and are not helpful for issuers with dual U.S.

listings, since if one is taking the view that something is or might be material in Canada, one may have to publicly disclose in the U.S. to avoid liability.

11. I do not support broadening the Commission's ability to set penalties by including administrative penalties in the absence of a greater judicial role. A $1 million penalty, while de minimus for a major corporation, is not trivial for a smaller business, financially troubled business, or most individuals. In my view, broader punitive powers require more independent review. I would support broader powers if they were required to be imposed by a judge. In fact, I believe that some of the Commission's existing disciplinary powers (namely the power to impose costs in section 127.1) should be imposed by judges instead. The Commission's multi-headed role as law-maker (via rules), law interpreter (e.g. policies, speeches, notices, etc.), prosecutor, judge, jury and executioner is increasingly problematic, in my view, and is increasingly likely to undermine the right to a fair and independent hearing by a judicial or quasi-judicial body without pre-conceived views, biases and agendas. This is only exacerbated by the Commission's public relations role, and its activities directed toward helping preserve confidence in the marketplace. In addition, in my view, there needs to be more separation between staff and the imposers of disciplinary penalties. I recommend looking at the administrative judge model as used by the SEC, or statutorily providing for de novo judicial review with reduced deference. I also recommend that consideration be given to defining, or adding some legislative explanation, to the amorphous concept of the "public interest" in the context of section 127, given the foundation for penalties that it represents.

12. I have always considered section 16 something of an enigma (contrast the lack of a similar provision in a murder or criminal fraud investigation), and would recommend that consideration be given to requiring a judicial order prior to its operation. It has been suggested, for example, that it could be seen to operate to preclude an employee from advising his or her compliance officer or superiors that he or she is under investigation, which seems inappropriate in most cases.

13. Privacy rules (e.g. s. 3.2 of NI 33-102) should explicitly provide a carve-out to permit the sale and the financing of a registrant's business, as well as third party service provider arrangements.

Thank you for considering my comments.

Yours truly,

Simon Romano

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