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British Columbia Securities Commission
c/o Brenda Benham
Head, Deregulation Project
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver BC V7Y 1L2

Dear Sirs:

Re: New Proposals for Securities Regulation – BC Notice 2002/20

Thank you for the invitation to comment on the proposals for securities regulation that are referred to in BC Notice 2002/20.

By way of background, I am the author of various reports on regulatory strategies relating to the provision of financial services. I am also a securities lawyer, a former Commissioner of the Ontario Securities Commission and a frequent commentator and speaker on matters relating to the financial services industry.

I applaud the tremendous work that you have done in producing your proposals. They bring a credible and practical perspective to securities regulation. The extensive, transparent consultation process you have followed will assist you in refining the proposals and will contribute greatly to the complementary work of the Canadian Securities Administrators (CSA) in this area.

The Continuous Market Access System

I strongly support the proposal to replace the “closed system” of securities regulation with the continuous market access (CMA) system. This is the single most important thing that could be done to simplify Canadian securities regulation without sacrificing investor protection. This statement assumes, of course, that the companion proposal relating to civil liability for misrepresentations is also adopted.

I hope the CSA will give serious thought to adopting the CMA proposals in lieu of the current ones they are considering. The CSA proposals, if implemented, would result in a quasi-closed system with the burdensome complexity that such a system would entail.

Schedule A contains some comments on the CMA system and suggestions for enhancing it.

Principles-Based Regulation

I am in favour of articulating clear principles of regulation. I believe that principles of regulation can and should co-exist with prescriptive requirements.

The articulation of clear principles of regulation should go a long way to overcoming the mentality that approaches regulation from the perspective of “where does it say that I can’t do that?”

What I find troubling about your proposals is that they imply that principles cannot exist along with prescriptive requirements. I do not agree with this. It is not an “either/or” situation.

It has become a fashionable mantra to advocate getting rid of prescriptive requirements. I think this is short-sighted. It is also part of the bull market mentality that believes the market obviates the need for regulation.

It is simplistic in the extreme to blame the corporate scandals (wherever they have occurred) on the fact that there was a “rules-based” system of regulation rather than a “principles-based” one. The corporate scandals have occurred because people’s behaviour was wanting. Their behaviour – as Arthur Levitt, the former Chair of the United States Securities and Exchange Commission, so articulately said – reflected a deterioration of values that has led people to recognize that many people have no standards or values, which is something we should all be concerned about.

The corporate scandals have exposed fundamental problems with what things are done as well as the way things are done. They have shown that all of the gatekeeping mechanisms that were designed to protect investors and to ensure a fair and efficient marketplace have either failed or demonstrated serious shortcomings. It is clearly essential to examine what went wrong and to fix it. But the solution will not, in my opinion, be found simply by throwing out the rules and replacing them with principles.

It is important not to mix up the objective of simplifying securities regulation with the issue of what tools are used to regulate – principles, rules or a combination.

The fact that the current rules are incomprehensible does not mean that there should not be any rules. It means that we need to think through the system of securities regulation, simplify it where needed, and write clear and plain rules to implement it. Examples of simplification are your proposals for the CMA system and for a registration passport. The proposals to substitute codes of conduct for other registration requirements is not an example of simplification. Indeed, it is the very opposite.

One other observation that I would like to make about principles-based regulation is that principles to be effective must be based on shared common values. It is by no means clear whether there are common values and whether they are shared by market participants. Indeed, there is ample evidence to the contrary.

It is obvious that there are a lot of anomalies at work in the marketplace today. On the one hand there is increased demand for corporate accountability and on the other, there is demand for deregulation. There is complacency about regulation and compliance and at the same time there is a recognition that there is a need to sharpen up on practices and controls. In your quest for simplification it is important to keep these disparities in mind and to seek an effective balance.

Registration

Registration Passport I strongly support the proposals for a registration passport, uniform categories and conditions of registration and application requirements throughout Canada, accompanied by simplified registration exemptions to reflect the CMA environment, changes in the financial services industry and enforcement experience.

Code of Conduct for Registrants I am not in favour of your proposals that a code of conduct replace the present requirements relating to registrants' qualifications, ongoing proficiency, "know your client and suitability", fair dealing, conflict of interest, compliance systems and client complaints.

The prescriptive requirements you propose to eliminate have been painstakingly developed by the industry and regulators. They reflect the experience of many years. To scrap these provisions and require that each firm (new or old, large or small, with varying degrees of industry awareness and experience) start all over again seems inefficient. This would entail high risk to registrants as well as to members of the public who lack the awareness and experience to know what conduct is acceptable and appropriate. The "knowledge gap" is too great to overcome. The informational asymmetry will operate to the disadvantage of the public and the regulators and will not allow the operation of a fair and efficient market.

If you do proceed with your proposal, it is important that the registrants' codes of conduct that are developed to implement either principles of regulation or prescriptive requirements be readily and publicly available.

Permanent Registration System The adoption of a permanent registration system should not be allowed to replace the responsibility of regulators to ensure on an ongoing basis the suitability for registration of firms and their representatives. Some process to verify ongoing suitability needs to be developed along with some process to verify compliance with principles of regulation, codes of conduct and prescriptive requirements.

Downloading regulatory responsibility I am not in favour of the apparent proposal to download to investors the responsibility of regulators to ensure that registrants are suitable for registration and are in compliance with the requirements for registration. It is impractical, as previously noted, to expect individual investors to conduct this type of due diligence.

Firm Registration If you proceed with the proposal to require that only firms need to register, I think it is important that there be information readily available to the public about the representatives, the firm they represent, their disciplinary history with this firm and the previous firms with which they have been associated, as well as the disciplinary history of these previous firms during the time they were associated with them.

Investor Remedies

The civil liability regime you propose is an integral part of the CMA system. I support your proposals. In response to your query, I believe that there should be a right of action against influential persons when they influence the issuer.

Comment 5 With respect to the proposal regarding clients being able to sue various parties for failure to comply with the applicable code of conduct (see Chapter 2, Part 1), I query how a client is ever going to prove that the code of conduct was contravened. The provisions are so general and vague that it will be a daunting, if not impossible, task.

Again, I have concerns about regulators downloading the responsibility on individual clients to seek redress from a failure to comply with a code of conduct. I do not see this concern being met by the proposed enhanced class action rights.

Comment 6 With respect to your query about whether caps for junior issuers and small professional firms should be revised, I suggest that no distinction be made based on the size of the defendant. I would leave it to the courts to decide what the appropriate penalty should be.

Wrongdoing is wrongdoing regardless of whether it is perpetrated by a large or a small enterprise. And the plaintiff's loss is the same regardless of the size of the firm perpetrating the wrongful act.

Comment 7 It would appear from your comments that enhanced provisions are required for class actions to be an effective remedy.

Prohibition of Unfair Practices

Comment 10 I believe that the prohibition against unfair practices should be more broadly worded to catch a failure to deal properly with conflicts of interest or to manage the business and affairs of an issuer. I also believe it should include a prohibition against putting unreasonable pressure on a purchaser to borrow money – i.e. excess leverage.

* * *

I would be pleased to discuss any aspect of my comments with you. I think you have done a terrific job and, subject to the concerns I have expressed, I think you have lived up to your mandate.

Yours very truly,

Glorianne Stromberg

SCHEDULE A

CMA System

I am supportive of the CMA proposals. I would, however, like to see the CMA system extended to encompass the disparate requirements for Management's Discussion and Analysis (MD&A), proxy solicitation and disclosure of financial statements. Modern technology makes it possible to prepare, use and deliver this information in targeted segments as appropriate and on a cost efficient basis.

The disclosure framework proposals contained in the Review Draft on Management's Discussion and Analysis: Guidance on Preparation and Disclosure published by the Canadian Performance Reporting Initiative Board in December 2001 (Review Draft) offers the opportunity to develop a synthesizing vehicle that would make the CMA system work efficiently.

The Review Draft disclosure framework also provides a framework for a disclosure standard that enables one to move away from the constraints of, and the questions raised by, the current disclosure standard which is focused on providing "full true and plain disclosure of all material facts". Concepts of "materiality", "material facts", and "material changes" have been the subject of many questions, concerns and debates over the years. The concept of "material information" contemplated by your proposals does not put these questions and concerns to rest although it may help.

I suggest that the problems with the current disclosure standards would be alleviated by adopting the disclosure standard contemplated by the Review Draft – namely that of providing convincing, coherent answers to the following questions in a single, succinct disclosure document. This document would replace the annual information form and would, together with the financial statements, constitute the "annual report". The questions are:

- How does this issuer make money and create value?
- What makes this issuer valuable – today and tomorrow?
- Why does this issuer deserve investors' money?
- Is there anything else that an investor, acting reasonably, would want to know in making a decision to invest or continue to invest in the company?

A key component to making this proposal work would be to take a fresh look at the detailed, complex requirements for MD&A disclosure and recast them from the perspective of the disclosure being the sole disclosure document that would be used on an ongoing basis. (The financial statements would form part of this document.)

The thrust of these proposals is to reduce the amount of "clutter" that the current disclosure system creates and to increase its quality and usefulness. Sometimes

less is more. It also goes without saying that the use of “plain language” principles should be mandatory.

The following deals with some of your specific queries:

1. In the current environment, I think disclosure of executive compensation on an individual basis should be retained.
2. I think material contracts should be available for inspection.
3. I think shareholdings of principal shareholders should be required to be disclosed on an individual basis.
4. I think it is important to retain certificates and require them to be signed by the chief executive officer, the chief financial officer and by two directors on behalf of the board of directors.
5. New material information should be contained in a “new material information statement” rather than a “press release”. A press release is one means of disseminating the information, Other means of broad dissemination are now available – such as posting it on the issuer’s web site or on SEDAR or e-mailing it to shareholders and others who have requested that they be placed on a list to receive such information.
6. I do not think it should be mandatory that a registrant be involved in new issues as long as some due diligence process is used and described or it is clearly stated that there has been no third party review.