

FEI CANADA SUBMISSION TO EXPERT PANEL ON SECURITIES REGULATION IN CANADA

JULY 15, 2008



July 15, 2008

Honorable Thomas A. Hockin, P.C.
Chair, Expert Panel on Securities Regulation
Ottawa, Canada
K1A 0G5

Dear Mr. Hockin,

Financial Executives International Canada (FEI Canada) is pleased to submit the following recommendations regarding the improvement of securities regulation in Canada to the Expert Panel on Securities Regulation (Expert Panel). As an organization representing more than 2,100 senior Canadian financial executives, FEI Canada is well acquainted with the role of Canada's capital markets in securing efficient financing, stimulating economic growth, and providing a competitive advantage to Canadian business globally.

This response has been formulated by FEI Canada's Capital Markets Committee with input derived from a member survey. Survey results are included for your reference in Appendix A.

FEI Canada's submission sets out to examine:

- Identification of the objectives we recommend be used to evaluate the performance of capital markets in Canada.
- Whether principles-based regulation is preferable to a more formalized rules-based framework.
- How enforcement could be better coordinated.
- Advantages and disadvantages of a passport system of regulation (where market participants will adhere to a principal regulator that would oversee compliance throughout Canada) and a single securities regulator.
- Formulation of a common roadmap for legislators to adopt the Expert Panel's proposed changes.

Objectives

FEI Canada strongly recommends four objectives be used to assess the performance of Canadian capital markets:

Efficient and Effective Regulation: Canada's competitive position in world capital markets would be greatly enhanced by a more efficient regulatory regime, in particular one characterized by transparency of regulation and best-in-class processes.

Simplicity: FEI Canada favours the creation of an independent national securities regulator to facilitate the adoption of effective and streamlined regulation. FEI Canada supports the implementation of a common securities legislation for the whole of Canada.

Principles-Based Regulation: A framework of principles-based regulation is preferable to a rules-based system. FEI Canada believes the former would allow the regulator to define desired outcomes and reporting issuers to design internal processes to meet those outcomes. In concert, this would increase the effectiveness of regulation and reduce the need for regulatory intervention.

Best Practices: FEI Canada advocates continuous improvement of the regulatory system through ongoing, and timely, performance measurement and the development of best practices as detailed below.

Principles-Based Framework

FEI Canada is concerned that increased rules-based regulation has become ineffective in securing the objectives of securities regulation. Recent high-profile prosecutions of individuals and issuers who complied with the rules, but offended the principles of securities and market regulation, underscore this concern. FEI Canada therefore recommends a principles-based approach to securities regulation in Canada. By providing high-level principles for business to guide a desirable regulatory outcome, a national regulatory system is better able to respond to the ongoing changes in Canada's financial marketplace in an efficient and agile manner.

The definition of high-level regulatory principles requires clarity and simplicity in definition.

In a principles-based approach, it is important to note that rules will support the principles and provide reporting issuers with necessary guidance and certainty. It is therefore recommended that regulators apply a hierarchy in determining regulatory compliance as follows:

1. Overriding principles
2. Stated rules
3. Court precedents
4. Industry best practices

We recommend an efficient and reasonable timetable be established and guidance provided to minimize the cost to reporting issuers converting from a rules-based to principles-based regulation. To minimize compliance risks to reporting issuers, we further recommend that these principles be clearly articulated and defined.

Proportionate Securities Regulation

FEI Canada believes that all reporting issuers should be held to the same standard of securities regulation. Regulations are not as effective if they consist of detailed rules aimed at the lowest common denominator of governance practice. Enforcement should be set to address reporting issuers whose practices fall below the expected norms. The over-reaching principle is that all Canadian businesses need to have efficient and cost-effective access to capital markets.

We favour the adoption of broad regulatory principles applied to all reporting issuers, and recommend that some latitude be given to small-and-medium-sized-enterprises. This latitude could take the form of streamlined filing, reporting and compliance for smaller enterprises, as long as the risks inherent with these limited disclosures are clearly identified.

Enforcement

Consistency and predictability are important to effective enforcement, as is an appropriate level of resourcing to ensure compliance by all types of market participants from the small regional dealer to the sophisticated multi-national issuer.

FEI Canada believes principles-based regulation provides an efficient framework to judge whether a reporting issuer's disclosures present a true and fair view of their financial condition.



While there is some concern that principles-based regulation may expose reporting issuers to greater enforcement risk, we believe this risk can be mitigated by:

- Clear articulation of principles by the regulator,
- Application of the principles/rules/precedents hierarchy, and
- Appointment of an independent adjudicator with the powers to apply regulation consistently across Canada. Independent adjudication will allow principles to develop autonomously of policy makers and thereby be more objective.

Regulatory Structure

FEI Canada wishes to highlight several key deliverables that we feel must be embodied in any improved future securities regulatory system:

1. *Single Securities Act:* Consistency and predictability of regulation would be improved through the adoption of a single Securities Act.
2. *Improved Governance of Regulatory Body:* Oversight of an independent regulator would be provided through an independent Board of Directors. This Board would be appointed by the provinces/territories and the federal government on the basis of their business and securities regulation expertise. We consider the format of the Canada Pension Plan Investment Board's Board of Directors (whose members are appointed to staggered terms of fixed length) to be a good model.
3. *Local/Industry Knowledge:* The alignment of regulatory policy-making and the needs of the reporting issuers will best be served through regional offices operating as "Centres of Excellence" in specific industries, i.e. Alberta for Energy.
4. *Cost Effectiveness:* A more cost-effective regime would provide a lower net cost of capital to reporting issuers and ultimately higher returns to investors.
5. *Responsiveness:* The regulatory framework must be highly responsive to dynamic product developments within the Canadian capital markets and the desire of reporting issuers to quickly access the markets when financing opportunities arise.
6. *Particulars of Canadian Financing Market:* The regulatory framework must facilitate the unique needs of the Canadian market. In particular:
 - a. The preponderance of relatively smaller companies that require access to public financing.
 - b. Many larger Canadian issuers who would like to continue to have assured access to the U.S. markets using the Multi-Jurisdictional Disclosure System (MJDS). A common securities jurisdiction would support the maintenance of this financing method.
7. *Performance Evaluations:* FEI Canada recommends that two forms of evaluation be implemented:
 - a. *Annual Evaluations:* An annual performance review should be undertaken to evaluate the above deliverables, the results of which would be publicly disclosed to support the principle of transparency.
 - b. *Mandated Comprehensive Reviews:* A formal, comprehensive and regular mandated review of the securities regulation system to be implemented, similar to that of the current Bank Act review.

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FEI Canada believes that the degree of achievement of the key objectives of a regulatory system, as outlined above, increases as we review the following spectrum of securities regulation options:

1. Status Quo: Keeping the Canadian Securities Administrators (CSA), with its current passport system implementation plan.
2. Enhancement of the CSA's passport system through expedited implementation.
3. Further enhancement of the CSA, by increasing its powers and enforcement resources, and by strengthening its passport system through the participation of the Ontario Securities Commission.
4. Establishment of a common securities regulator, with representatives of provinces and territories on the Board. Board representation would be achieved either through Federal appointment or through appointment by provinces and territories.
5. Establishment of one federal securities regulator, eliminating all provincial commissions.

A single securities regulator provides clarity in applying a principles-based approach, creates uniformity in interpretation and facilitates foreign investment. The ideal vision, consistent with the system in many other countries throughout the world, is to have one federal securities regulator. However, the speed of implementation of an improved regulatory system is critically important to Canada's long-term economic well-being. Consequently, given the context of our political infrastructure, a common securities regulator would be most pragmatic, in the short term, as long as all participating jurisdictions are represented in an objective manner and this change is implemented quickly. We believe it is feasible for this new structure to be implemented by 2010.

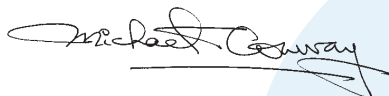
Conclusion

FEI Canada congratulates the Department of Finance for recognizing the urgent need for securities reform in Canada by initiating this study. We believe this review will lead to better securities regulation in Canada, improve the competitiveness of Canadian business, facilitate economic growth and elevate the stature of the Canadian financial market abroad.

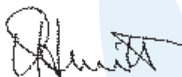
FEI Canada supports principles-based securities regulation in Canada in the context of a common federal securities regulator. We favour a single regulatory model over the passport system, which we consider adds unnecessary complexity, inefficiency and is not aligned with international markets. Hence, we encourage the government to work towards a national securities model that serves the interests of all business in Canada.

We thank the Expert Panel for the opportunity to present FEI Canada's recommendations on Canada's securities regulation. We look forward to having the opportunity to appear before the Expert Panel and to continuing to work together with the government to ensure that Canada maintains the highest levels of competitiveness and economic growth from which all Canadians will benefit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael Conway'.

Michael Conway, CA, ICD.D
Chief Executive and National President
Financial Executives International Canada

A handwritten signature in black ink, appearing to read 'William Hewitt'.

William Hewitt
Chair, Issues & Policy Advisory Committee
Financial Executives International Canada

A handwritten signature in black ink, appearing to read 'William Ross'.

William Ross
Chair, Capital Markets Sub-Committee
Financial Executives International Canada

About FEI Canada (www.feicanada.org)

Financial Executives International Canada (FEI Canada) is an all-industry professional association for senior financial executives. With eleven chapters across Canada and more than 2,100 members, FEI Canada provides professional development, thought leadership and advocacy services to its members.

The Issues and Policy Advisory Committee (IPAC) is one of two national advocacy committees of FEI Canada. IPAC comprises more than 40 senior financial executives representing a broad cross-section of the Canadian economy who have volunteered their time, experience and knowledge to consider and recommend action on a range of topics of interest to Canadian business and governmental agencies. The composition of IPAC is formulated to address the following areas: corporate governance, capital markets, pensions, internal controls, public sector accountability, tax policy and competitiveness. In addition to advocacy, IPAC is devoted to improving the awareness and educational implications of the issues it addresses, and is focused on continually improving these areas.

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The remarks contained in this submission are those of the members of FEI Canada's Capital Markets Committee, and do not necessarily reflect the views of their employers.

FEI Canada Securities Regulation Survey

June 2008

Background:

On April 18, 2008 FEI Canada received a letter from the Honourable Thomas Hockin of the Expert Panel on Securities Regulation, seeking advice on the best way forward to improve securities regulation in Canada. The Capital Markets Committee of FEI Canada was consulted, and the decision was made to survey FEI Canada members and other senior financial executives, in order to provide the best possible recommendations to the Expert Panel from the Canadian financial management community. The survey contained 22 questions designed to both measure the satisfaction with current securities regulation practices in Canada, as well as gauge the need for change in securities regulation. The survey was sent to FEI Canada's 2100 members and 7000 other senior financial executives across Canada.

- 293 survey responses were received between the dates of Wednesday, June 4th and Thursday June 12th, 2008, 204 of whom were FEI Canada members.

Respondents:

When the survey results were compiled, it was noted that the responses of those with knowledge of the pros and cons of creating a new national model of securities regulation should be primarily considered. We were able to filter out respondents that reported having little or no knowledge of the pros and cons of creating a new national model of securities regulation, and went forward from there. This left us with a group of 103 respondents, each who indicated that they were either very familiar or familiar with the issues surrounding securities regulation in Canada.

Several of our survey questions were designed to determine the perceived effectiveness of the current CSA system, the potential for improving that system, and the potential impact of creating a new national system.

Changing the Current System:

- 61% of respondents reported that they believe there are existing inefficiencies in the securities regulatory system/structure that currently, or have in the past, impeded their ability to raise capital on Canadian capital markets. Only 18% of those surveyed felt that the current passport system will work to eliminate these inefficiencies.
- More than 77% of respondents reported that the current model of securities regulation has created cost or efficiency burdens to their organization.
- When asked about amending the current CSA model, 48% felt that efficiencies would increase, while 35% felt they would not. Similarly, 36% felt that enforcement would be improved, while 34% felt that it would not improve.
- 56% of respondents reported that amending the current CSA model would address the need for commonality, while 32% felt that it would not address this need.

A New National Model:

When asked if creating a new national model of securities regulation was preferable, 78% of respondents indicated that they favoured a new national model, while 19% were looking for improvements in the current CSA model. Only 3% sought no changes in the current CSA model.

- More than 90% of respondents felt that one national securities regulator would address the need for commonality in regulation, and 63% thought that this would also improve enforcement.
- 80% of respondents thought that one national securities regulator will increase efficient, competitive & freely flowing capital markets.
- 72% thought that one national securities regulator will increase market integrity and the protection of investors where necessary and 70% of respondents thought that this would result in improved identification and reduction of systemic risk, in support of growth.

Proportionate Regulation and Principles:

When asked about their views on proportionate regulation in Canada to reduce burden on smaller reporting issuers, 55% of respondents felt the economic characteristics of a reporting issuer should determine how it is regulated, whereas 41% did not feel these economic characteristics were relevant.

- More than 76% of respondents reported that they would favour a principles-based regime over a rules-based system of securities law and regulations, while 16% said that they would not prefer a principles-based regime.

One Securities Act and Adjudication:

Most respondents (87%) want the various provincial securities regulators to develop a consistent Canada-wide Securities Act.

- 67% of survey respondents want Canada's securities laws to be enforced more stringently, while 33% are pleased with the current level of enforcement. Adjudication of securities laws should be made independent of the securities regulatory agency, according to 58% of respondents, while 25% did not agree with this statement.

Resources, Uniformity and Efficient Capital Markets

Over half of respondents (54%) felt that more resources needed to be made available to the securities regulation function, however configured.

- 82% of respondents favoured greater efforts to prompt uniformity with international securities laws and regulations.

The results of this survey have been used by FEI Canada's Capital Markets Committee as background for their submission to the Expert Panel on Securities Regulation. FEI Canada thanks all who took the time to complete the survey.