



## **DISCUSSION PAPER : A NATIONAL REGULATOR FOR CANADA**

### **THE PERSPECTIVE OF THE SMALL INVESTOR**

***"For stock market scams to get found out, investigated, charged, and convicted, the chances are pretty slim in Canada,"*** - Wes Voorheis, an attorney and shareholders' advocate who was appointed CEO of Conrad Black's old media company, Hollinger Inc.

***"..This is a very common refrain we hear when we visit markets in New York or in Boston or in London or in Europe, a perception that, somehow, this is kind of a little bit more of a Wild West up here in terms of the degree in which rules and regulations are enforced -- and that perception doesn't really help us when we go to try to raise money on foreign markets."*** - former Bank of Canada Governor David Dodge in a 2004 speech to a joint session of Toronto's Empire and Canadian clubs in Toronto:

***"As far as I am concerned, the system is broken"*** - Calgary lawyer Clint Docken, who once represented Bre-X shareholders in a class action lawsuit. Source: B. Livesey, *The Buck Stops Where?*, Canadian Lawyer, January, 2008

September , 2010



According to the [Government of Canada](#) (PDF link), the proposed Securities Act would have the effect of “expanding the core purposes of securities regulation to include enhancing the integrity and stability of the financial system, as well as the existing investor protection and market efficiency mandates.”

In late May, the federal government referred new draft federal securities legislation to the Supreme Court of Canada to determine whether Parliament has the legislative authority to pass the draft legislation. The Supreme Court of Canada has agreed to hear the federal reference on April 13-14, 2011 .

Every province, with the exception of Newfoundland and Labrador, has filed an application with the Supreme Court of Canada , seeking to participate in the two-day hearing. Intervenor application will allow the provinces and others to participate in the hearing, where the federal government will attempt to secure a ruling that it has the constitutional authority to create a single regulator. Alberta, Manitoba and Quebec each plan to voice their strong objections to a national agency, to be known as the Canadian Securities Regulatory Authority. This Paper is intended to ensure that the voice of small investors is appreciated at these hearings

We cannot comment directly on the constitutionality of a national regulator. We are neither lawyers nor constitutional experts. But, we can provide observations and arguments that should assist the Supreme Court of Canada in its deliberations. We hope this Discussion Paper will help ensure that the views of ordinary citizens are considered.

## Overview

Other than Bosnia Herzogovenia, Canada is the only developed country without a national securities regulator Instead; each province has its own securities commission, and thus separate, sometimes conflicting, rules for the issuance of public offerings and trading of securities.

For decades, proponents of a single regulator have complained that this patchwork constitutes no more than a massive make-work project for lawyers and financial professionals, while creating a persistent headache for issuers. A company wishing to raise capital across the country may have to conform to multiple standards, increasing the cost of its operations. Critics of the current system bemoan its inability to respond rapidly to capital market events, its poor protection of small investors and its inherent inefficiency in operating 13 bureaucracies across the country. It can also take years for different commissions to reciprocate each others' enforcement orders.

As we have learned time and time again, investor abuse is not constrained by provincial boundaries. Quebec's infamous Earl Jones case aptly demonstrated this- multiple jurisdictions resulted in investigative delays. Purdy Crawford and the Bank of Canada put together an ABCP rescue package among the banks, brokers and



pension plans then wrapped it in a ribbon by getting bankruptcy protection. Individual investors were denied a seat at the table or opportunity to organize or sue. The non-bank ABCP fiasco was not addressed by any provincial regulator -it was left to individual investors and investor advocates to seek and obtain justice.

A study conducted by John Coffee, a law school professor at Columbia University, estimated that Canada loses \$10 billion a year in economic output and 65,000 jobs because of the different requirements for companies by each provincial securities regulator. This is significant but it is not the biggest disadvantage of the current system. From a retail investor perspective, the real threat is the impairment of their life savings and RRSP's. Structured products, hedge funds, complex mutual funds, and other products sold, by and large, by embedded commission "advisors" unduly cost Canadian citizens billions each year. Additionally multi-provincial Ponzi schemes and other scams, have added to the losses and emotional distress.

With deficient complaint systems and oppressive provincial Limitations Acts, attempts at restitution are costly, time consuming and stressful. The Expert Panel on Securities Regulation recommended the establishment of a dedicated service to address the lack of information, guidance, and support for investors in the domain of complaint-handling and redress. It envisioned that this service would disseminate comprehensive information about complaint-handling and redress in Canada. The service does not exist under the current structure.

With Canada's demographics, the adverse social impact could be enormous if the status quo of investor protection is maintained. Seniors, pensioners and retirees simply do not have the time to recover from excessive fees, abuse, scams and frauds.

A November, 2009 report by PricewaterhouseCoopers suggests Canadian companies make great targets for fraud. In their latest global economic crime survey, Canada was the fourth most fraudulent nation in the world -- behind Russia, South Africa and Kenya. The most common type of fraud encountered in Canada is asset misappropriation, although accounting fraud and money laundering are also prevalent. "We're not as bad as many [developing] countries, but if you look around the OECD, the really developed economies with strong democratic governments, I think we are pretty high on the list for having a high incidence of commercial fraud," says Mr. James Grout, partner at the Toronto-based Thornton Grout Finnigan. He says the reason for that is the lack of deterrents. "We don't put anyone in jail".

<http://www.financialpost.com/Canada+fraud+nation/2261893/story.html>

More than one million Canadians have lost money to some kind of investment fraud but most victims didn't report it, a 2007 survey done on behalf of the country's market regulators suggests. The survey - conducted for the Canadian Securities Administrators (CSA) - found that almost 5 % of adult Canadians have fallen victim to an investment scam and almost 20 % know a family friend or a family member who has been taken for a financial ride. These kinds of numbers suggest that all is not well.



The fraud that occurs in the financial service industry is often more subtle than other forms of fraud. It usually arises from an abuse by an individual who is in a position of trust, such as a financial advisor or stock broker. While the advisor benefits, the investor's financial well being is affected. The adviser makes a recommendation that is not in the best interest of the client or is not explained to the investor. It is recommended simply in order for the adviser to make commissions. There is evidence to suggest that at the top levels of some brokerages and banks, pressure is applied to individual advisers to maximize their commissions rather than to take care of other more critical concerns such as the growth and security of their client's investment portfolio.

Investors who do experience large losses expect regulators will assist in recouping their losses, but what the victims find is that the process is complicated and very slow and inevitably the investor has little recourse. Those who have the money to pursue litigation, get the service they need but the majority who do not must leave their concerns with the police, who are already overburdened and understaffed. Even when a crime has been committed, the Crown often demands substantial evidence in order to pursue the case

Complexities, delays and missed opportunities are inevitable when multiple regulators attempt to regulate a market. The Passport system does not remove them, as is evident from the facts. A key shortcoming of the Passport system is that it allows each and every province to join in on regulatory exemptions, some detrimental to the public interest, without having to do any homework whatsoever on them. They simply "copy" the homework of the other securities commissions, or agree to accept the due diligence of each other. This often means the public is endangered by a securities commission that has simply acted as a bureaucratic "rubber stamp". A well resourced national regulator should, if effectively led, reduce these complexities and accelerate sound decision making by reducing the number of governing statutes and decision makers.

### **The arguments against a national regulator**

There are three main arguments put forth against a national regulator. These are:

1. Everything is working well, there is no need for a national regulator. The Passport system works.
2. A national regulator will destroy important jobs in provinces like Québec and Alberta
3. The provinces have sole jurisdiction over securities regulation

### **Everything is working well?**



A group representing the victims of convicted fraudster Earl Jones has given its "qualified" support to a national securities regulator. Here's the May 27th a statement released by the Earl Jones Victims Organizing Committee:

*"While our group has no interest being dragged into an ongoing political debate, the Earl Jones Organizing Committee agrees with the call for a Canadian securities regulator, and as such, we give qualified support to the federal government's recent proposal. A Canadian securities regulator holds the best potential to make a difference in preventing and deterring white collar crime. Criminals should not be able to exploit jurisdictional boundaries or inadequate resourcing and the government's latest efforts, if properly implemented, are an important step in cracking down on their activities. Without the proper mandate, operating practices, and strong national and provincial resources in place, however, a single regulatory body for Canada will be no more effective than the status quo; so for the sake of Canadian investors let's get this right."*

There can be no argument that the current system is dysfunctional and adversely affecting the savings of Canadians. Some examples:

- It's been a decade for the CSA to put in place a new POS disclosure system for retail mutual funds and it's still not accomplished.
- The OSC's proposed Fair Dealing Model was, in 2004, a leading edge concept to protect individual investors from abusive advisor tactics but it died after other provinces refused to participate. Today, the US, Australia, the UK have adopted just such a system leaving Canada in their tracks.
- Canada ranks among the highest mutual fund fees in the world. These excessive fees impair retirement savings. One estimate put the annual effect at \$25 billion.
- Conrad Black had to be dealt with by US enforcement system although Hollinger was a Canadian Company.
- No one was held accountable in the Bre-X scam , the largest mining fraud in history; the LIVENT case dragged on for so long it became a national embarrassment .In September ,the Ontario Securities Commission ended the oldest outstanding case in its files, dropping a civil lawsuit filed in 1986 on behalf of minority shareholders of real estate company Mascan Corp., which alleged that founder Bruce McLaughlin siphoned off \$35-million from the company for his own use.
- The mutual fund market timing scandal was addressed only after US regulators took action



- Except for the OSC, not a single regulator has an Investor Advisory Panel. In the OSC case, an earlier Investor Advisory Committee had been abandoned after 2 years but after media, advocates and a Parliamentary Committee re-viewing the OSC demanded it be reinstated, it was reconstituted in August.
- Alberta, Manitoba and Quebec regulators are perceived as being too chummy with local firms. Both the ASC and MSC have had to face outside reviews to deal with allegations. For example, in Manitoba the coziness was so obvious that MLA Kevin Lamoureux was moved to say "As a direct result of the government ignoring red flags in 2001, over 33,000 Crocus investors lost over \$60 million dollars" An Oct. 2005 report by the Alberta Auditor General had this to say about the Alberta Securities Commission: "We observed one instance where the Director of Enforcement did not comply with the Commission's conflict of interest policies and this non-compliance was not detected by the Commission's Executive Director. We also found that Commission Members' investment disclosures were not being monitored by the Commission's Chair, and the Commission Chair's investment disclosures were not being monitored by the Chair of the HR Committee. The lack of a control to monitor staff and Member investment disclosures is serious and increases the risk that staff and Members could be in a conflict of interest"

While IIROC links its long awaited AdvisorReport system to the so-called National Registration List, compiled by the Canadian Securities Administrators, the CSA search is not "investor friendly." It is difficult to use and excludes two huge provinces; Ontario and Quebec - separate searches must be conducted for disciplinary matters. There is also no integration of CSA, MFDA and IIROC registrant databases. A truly national "regulatory system would have all registrants on a single site making it easier for vulnerable investors to check on firms and "advisors" across Canada .Such critical issues are not addressed by the Passport system. And we add parenthetically, the Passport system does not apply to enforcement.

Utpal Bhattacharya, an associate professor of finance at the Kelley School of Business at Indiana University, crunched some numbers for the Task Force to Modernize Securities Legislation in Canada in 2006, and came back with some startling results. Comparing the OSC and the SEC's records between 1997 and 2005, he found that when scaled for size of the stock market, the SEC prosecutes 10 times more cases per firm for all securities laws violations and 20 times more insider trading violations than the OSC. Moreover, the SEC resolves cases faster than the OSC, levying fines that are 17 times more per insider trading case than those of the OSC.

For years RRSP investors across Canada were exposed to brokerages that automatically converted foreign currency into Canadian dollars and charging a fee as they did each conversion. After inaction and silence from regulators, a



determined investor helped initiate a class action lawsuit seeking compensation for conversions that were neither desired nor necessary. The claim [<http://www.paliareroland.com/rrsp.asp>] stated:

*" .. The claim alleges that the defendants have systematically converted foreign currency in these accounts to Canadian currency without instructions from the customers, and without there being any need to do so, based upon revisions to the Income Tax Act which came into effect on June 14, 2001. Also, in effecting all currency conversions, the defendants levy an undisclosed conversion fee in addition to the amount that they actually pay to buy or sell currency. The claim alleges that the defendants failed to change their operational practices after the June 14, 2001 change to the Income Tax Act which allows RRSPs, RRIFs and RESPs to hold foreign currency as an investment, and further alleges that the reason for the defendants' failure to effect a change was so that they could continue to earn profits from the foreign exchange fees, at the expense of the class members.."*

This prompted a few brokers to establish US dollar RRSP's. It appears that when 13 regulators are responsible for protecting investors, none are. Again, investor protection was dependent on a determined individual to make things right.

Business Income Trusts provide a case study of deficient investor protection. These products were sold with defective marketing materials, misleading "yields" and even worse accounting. Retail investors lost millions as one after another of these Trusts cut / eliminated distributions , merged at low prices relative to IPO prices or went belly up ( the FMF Income Trust lost more than 95 % of its value in less than 8 months of trading before going bankrupt). The CSA failed numerous times to step up to the issues despite vigorous pleas from media, investors , accounting experts and the Small Investor Protection Association ([www.sipa.ca](http://www.sipa.ca)). A detailed accounting of this horrific experience is recounted in forensic accountant Al Rosen's article *Investing in the dark: Poor disclosure clouds income trusts*, Canadian Business, Sept. 12-23, 2005 pg 23

One of the worst cases impacting small investors involved MFDA registered "advisor" Ian Thow. The case is "one of the most callous and audacious frauds this province has ever seen," said the BCSC when it imposed the \$6-million fine in 2007. An entire webpage is dedicated to his story of investor devastation. [http://www.investorvoice.ca/Scandals/Thow/Thow\\_Index.htm](http://www.investorvoice.ca/Scandals/Thow/Thow_Index.htm)

The John Reynolds book *The Naked Investor* sounded a wake-up call for Canadian investors. Through real-life stories, it exposed the dark side of the investment industry, revealing the tactics of greedy brokers and advisors, voracious banks and mutual fund operators, and outright embezzlers. Some of the horror stories of financial assault are hard to read. Anyone reading this exposé would be hard pressed to credibly argue that the current fragmented regulatory regime is protecting investor nest eggs.



Complaints about the financial services industry have reached record levels, according to figures released June 9th by the Ombudsman for Banking Services and Investments (OBSI [www.obsi.ca](http://www.obsi.ca)). OBSI looked into 990 banking and investment consumer complaints in 2009, representing a 48 % increase over 2008 and a more than tripling of the number of case files in just three years. OBSI also processed over 12,400 individual inquiries from consumers and small businesses in 2009. The figures do not include Royal Bank (banking) which does not participate in the OBSI network. Investment complaints continue to drive much of the overall increase in complaint volumes. Investment complaints were up a staggering 73% - the vast majority of cases were related to the suitability of investment advice. In 2009, financial consumers received some compensation in just 35% of investment complaints. OBSI is an industry sponsored and funded complaint handling entity. The service is no charge but it cannot conclusively resolve disputes due to the fact its Terms of Reference limits it to *recommending*, but not mandating, restitution (up to \$350,000). Investor advocates have in fact argued that the Ombudsman should be a Federal Agency, backed up by a Act of Parliament, as is the case in the UK and Australia.

Even Canada's largest, most deeply resourced regulator has come under fire. The Ontario Legislative Assembly's Standing Committee on Government Agencies ("SCOGA") released its [37-page report](#) (the "Report") on the Ontario Securities Commission, the result of its review of the OSC in late 2008 and early 2009. The Report was critical of the OSC's lack of leadership in the ABCP crisis and more generally, of its low visibility in protecting small investor rights. In its first recommendations, the Committee called on the OSC to "reassess the way in which it exercises its public interest jurisdiction, with a view to improving the Commission's effectiveness and accountability."

The second recommendation called on the Ontario Ministry of Finance to review the statutory scope of the OSC's public interest jurisdiction. In a section entitled "Investor Protection", SCOGA endorsed recommendations by SIPA, FAIR and other investor advocates to: (a) establish an Investor Advisory Panel along the lines of the U.K. Financial Services Authority Consumer Panel, (b) appoint an investor representative on the OSC's Board of Directors, (c) grant the OSC statutory power to make restitution, and (d) establish an industry-wide compensation fund.

We believe that the scope of enforcement activities in Canada is not sufficiently broad or sophisticated to credibly deter wrongdoing. When action is taken, it is often ineffective at prosecuting those who have imposed significant losses on Canadian investors. Law enforcement bodies in the United States appear to have far greater success in prosecuting Canadians that commit capital markets crime than Canadian authorities. No doubt part of the reason is generally lax enforcement by provincial securities commissions.



A number of recent economic studies have shown empirically that the cost of equity is higher in countries where investors are afforded less protection against the risk of losses due to wrongdoing. It follows that investors want to be compensated for the additional risk and generally weaker. A research paper by Jonathan Witmer "The Cost of Equity in Canada: An International Comparison." Bank of Canada Working Paper (21-2008) concluded: "After controlling for the characteristics of firms that analysts choose to cover in each country, differences in the properties of analyst forecasts across countries, and differences in accounting standards across countries, Canada's cost of equity is statistically different from a handful of countries and is about 20 to 40 bps higher than that of the United States. Lowering Canadian firms' cost of equity by this amount would have large economic benefits given the size of Canada's capital markets."

***"There would be advantages in moving towards a single securities regulator. Significant improvements to the regulatory system have been made as a result of the creation of the Canadian Securities Administrators, including those that will be brought about by the implementation of the Passport system. Even so, moving further to a single regulator would allow policy development to be streamlined, reduce compliance costs, and improve enforcement."*** - - International Monetary Fund, Canada: Financial System Stability Assessment—Update, 2008

The regulatory situation is so bad that Canada's pension funds, including the \$96.4-billion Ontario Teachers' Pension Plan, are increasingly willing to take their battles public - and spend millions of dollars to make a point. These funds, reluctantly acting as watchdogs, are filling the huge regulatory void created by provincial securities commissions. The Magna dual class structure case is the most recent example. In that case, \$1 billion, some of it indirectly pensioners money, is the issue at stake. The OSC merely demanded further disclosure of the predatory deal's details from Magna.

Shareholder rights advocacy group FAIR Canada ([www.faircanada.ca](http://www.faircanada.ca)) says the Toronto Stock Exchange falls below international standards in managing conflicts-of-interest. Ref <http://faircanada.ca/top-news/fair-canada-releases-expert-report-managing-conflicts-of-interest-in-tsx-listed-company-regulation/> With gaps like this it's difficult to see how anyone can say that the Passport system is dealing with critical national issues. FAIR has in fact sought and received Intervenor status at the April 2011 Supreme Court of Canada case Hearings regarding the constitutionality of a National regulator.

We could go on, but we believe it's self-evident that Main Street is ill served by the Passport system and 13 disparate provincial regulators.

**A national regulator will destroy important jobs in provinces like Québec and Alberta?**



This may or may not be correct but we argue it is irrelevant. The goal of a securities commission is to protect investors and create fair, efficient capital markets, not to create a bureaucracy or act as a source of job creation for lawyers and accountants. A securities regulator is expected to ensure compliance with the applicable provincial securities Act. In our view, this boils down to protecting investors from fraud, providing robust regulation, enforcement and prosecution of lawbreakers at the lowest possible cost. During the last decade Canadians have been exposed to an unprecedented number of frauds, scams and corporate wrongdoing, advisor abuse and suffered billions of dollars of undue losses.

It has been postulated that a federal regulator headquartered in Toronto or Ottawa would inevitably result in the loss of talent, jobs and economic activity in the financial services industry from Alberta. Alberta believes that a federal regulator would, over time, undermine Alberta as the financial centre of Canada's resource industries, making it harder for Alberta's oil and gas producers and other businesses to raise funds for growth and development. A centralized federal securities regulator could also put future jobs for Alberta kids in the oil and gas and financial services sectors at risk. Regulators should regulate. They should protect investors. They should be accountable for their regulatory actions not engaged in economic development- there are other agencies for that. Further, multi-national firms and international investors will no doubt provide much of the capital needed as is the case now. In the current Potash Corp. case, the suitors are all foreign entities. In fact, after acquisition, Potash Corp. won't even be a Saskatchewan registrant/ issuer. No doubt this will happen in Alberta as well as the Oil Sands shakes its ugly environmental image.

Another argument holds that, if approved and implemented, a single regulator would make it more difficult for small Quebec and Alberta businesses to access capital and would set back the movement to build a financial services sector and diversify their economies by, if not decades, certainly by years. Again, these arguments only tend to increase stress among investor advocates. Would economic development priorities triumph investor protection? There is absolutely nothing in either province's securities Acts regarding industry diversification. There's also no evidence that a national regulator has had this effect anywhere in the world where national regulators exist. We argue that a contemporary regulator is like a Ministry of Transport, charged with regulating the national airspace and protecting air passengers from harm when they travel anywhere within Canada.

### **The provinces have sole jurisdiction over securities regulation?**

First of all, a significant amount of securities regulation is already national. Provinces have over the years ceded control over many aspects of securities regulation. For example, the Investment Industry Regulatory Organization of Canada (IIROC), a self-regulating organization, regulates investment dealers and their dealer representatives. The TSX and IIROC regulate the TSX, TSX- V and



MSX .The Ombudsman for Banking Services and Investments is a national organization devoted to dispute resolution – it operates in every province and territory of Canada. The Office of the Superintendent of Financial Institutions, OSFI, regulates federally incorporated banks and insurance companies.

The Financial Consumer Agency of Canada (FCAC) is an independent body working to protect and inform consumers of financial services. It was established in 2001 by the federal government to strengthen oversight of consumer issues and expand consumer education in the financial sector. As a federal regulatory agency, FCAC is responsible for:

- ensuring that federally regulated financial institutions comply with federal consumer protection laws and regulations;
- monitoring financial institutions' compliance with voluntary codes of conduct, including complaint handling, and their own public commitments;
- informing consumers about their rights and responsibilities when dealing with financial institutions; and
- providing timely and objective information and tools to help consumers understand, and shop around for, a variety of financial products and services.

Even within the fragmented network of provincial regulators, it is found to be necessary to designate one regulator as lead regulator over a particular industry. In the case of banking, the OSC acts as the Principal regulator due to its specialized in-depth expertise. Thus, in a very real sense, other provinces have already relinquished certain of their statutory responsibilities to the Ontario Securities Commission.

A number of national information systems have been hobbled together by provincial regulators. This would include SEDAR and SEDI. When the investor advocacy community asked for changes and improvements, they were informed that this could only be done if all the regulators concurred and agreed to pay system development costs. So while the CSA has been able to put together basic national systems serving Canadians, any improvements are extremely difficult to effect because of the slow consensus regime at work. In the interim, investors suffer.

What exactly is a security anyways? In simpler times, securities were basically stocks and bonds. Today, we see a variety of complex products, some so complex that they almost defy analysis. The recent non-bank ABCP debacle is a prime example. Derivatives are another example. Some products are structured in such a way that they are not even defined as a security and are therefore immunized against regulation by traditional regulators. An example of this would be the Principal Protected Notes; after an avalanche of investor complaints, the relatively weak FCAC was ultimately chosen as the primary regulator for this structured product.



***"In view of the increasing speed of modern electronic markets, our securities regulators must address issues like dark pools, program trading, flash crashes and their implications for national and global securities markets, especially in view of the number of internationally interlisted Canadian issuers. The CSA's process, which relies primarily on Ontario's and Quebec's regulators, is not an optimum way of addressing such issues. This was made clear in September, 2008, when the U.S. Securities and Exchange Commission co-operated only with the U.K. regulator in prohibiting short sales in response to the market crisis, despite the potential for harmful regulatory arbitrage, leaving Canada to play catch-up a day later."*** -P. Anisman , *More than a Passport* , Financial Post, June , 24, 2010

It has been suggested that the Passport system is adequate because it harmonizes the processes that most often directly involve market participants. In fact it demonstrates that provincial regulators must abide by a ruling in another jurisdiction, effectively removing their constitutional rights. As Phil Anisman , author of *Proposals for a Securities Market Law for Canada* notes , modern day securities regulation is not limited to prospectus clearance, discretionary regulatory exemptions and dealer/advisor registration. More importantly, it also governs stock exchanges, alternative trading systems, self-regulatory organizations (SRO's), clearing agencies, market structures, financial consumer protection, regulatory enforcement and lately Credit rating agencies. It also involves protection against systemic breakdowns and external threats. Organized crime, global terrorists, cyber criminals and international fraudsters do not pay attention to provincial borders except perhaps to exploit weaknesses. The Passport System is wholly inadequate to address these threats. We therefore argue that provincial regulators are unable to effectively regulate contemporary markets and so should not be given the exclusive right to regulate and protect investors. Exclusivity is neither in the public interest nor the national interest.

As Anisman notes in , *More than a Passport*

[<http://opinion.financialpost.com/2010/06/24/more-than-a-passport/#more-2402> ]

, "Securities regulation must also play an increasingly important role in regulating systemic risk, as capital requirements and trading in new instruments such as asset-backed securities (ABCP) and derivatives may contribute to disruption of Canadian ( and global ) financial markets. This was acknowledged in early June by the International Organization of Securities Commissions (IOSCO) when it adopted new principles concerning systemic risk. Although a few provincial regulators have intermittently been consulted by federal financial regulators and although Ontario's and Quebec's regulators co-chair IOSCO's new working group on systemic risk, the CSA is not an adequate means to ensure the ongoing co-ordination among securities regulators, financial institution regulators and central banks concerning national and international policies that is necessary to address systemic risk in Canadian financial markets." We argue that since provincial regulators cannot



protect ordinary Canadians against systemic risk, that they should not be the only regulators of securities markets.

There is no convincing evidence that 21<sup>st</sup> century securities regulation is capable of being effectively handled at the provincial level. While Regulation of securities has formally been a matter of provincial jurisdiction flowing from the Section 92 list of exclusive provincial powers under the Constitution, the reality is that the sheer complexity of contemporary markets have forced provincial regulators to outsource key elements of regulation to national third parties. Thus, in reality, these regulators have weakened their claim, logic and right to having sole jurisdiction.

## Summary

It is interesting that Canada's 13 disjointed provincial regulators must face off against well financed nationally registered lobbyists like the CBA and IIAC , powerful national Trade Associations and influential well organized special interest groups like the Canadian Bar and CICA . It should come as no surprise that regulatory reforms are often watered down, delayed or killed under the current system.

A national regulator has the potential to be more effective in identifying and prosecuting securities fraud through examining Canada-wide patterns and coordinating enforcement action across the provinces.

The Norbourg meltdown, the Norshield fiasco ,the ABCP disaster, the YBM scam , Nortel and so many others have taken a huge toll on Canada`s middle class. Small investors have suffered terribly as a result of deficient regulations, lax enforcement, wrist slap penalties and unfriendly/complex complaint systems for restitution. While the financial impact of deficient investor protection is enormous, the collateral damage is often more devastating. Besides losing their life`s savings, victims of financial assault are affected in many ways:

- Adversely impacts their health and accelerates their ageing
- Eliminates their capacity to trust other people
- Destroys their sense of self- respect and their dignity
- Creates a sense of hopelessness -an abyss of shame and self-doubt
- Paves the road for many of them to near destitution.
- Causes terrible stress within families
- Causes them to have to get part-time jobs to help make up for the losses, despite their ill-health

In other cases we`re also cognizant of marital breakdown, nervous breakdowns, heart attacks, drug over-dose and even suicide. No civilized nation should allow this carnage to continue on its citizens.



As things stand today existing regulators are accountable only to the governments of their respective jurisdictions - the jurisdictions in which the investors they are entrusted to protect reside. Of course this is meaningless since numerous investors in Quebec and Alberta companies and funds are dispersed throughout Canada and beyond. The CSA, as a purported national regulator, has no national accountability. It is not accountable as an organization to anyone, even if each of its members may be accountable within its own province. The proposed federal legislation contains mechanisms to ensure that a national regulator would be accountable to both a council of ministers from participating provinces and to Parliament.

The federal government's transition process provides an opportunity to develop a comprehensive system that can address both national and local needs without the delays and dislocations inherent in the current system. By participating in this process, provinces have an opportunity to ensure that mechanisms to accommodate appropriate local programs and policies are considered while investor protection is preserved.

Although securities regulation has historically been recognized as a provincial head of power, the globalization of capital markets has altered the way securities regulation is viewed. A national regulator, with local offices "applying local knowledge," and making orders with national effect, without the delays necessitated by "reciprocal orders," has the potential to better protect investors in Canada. A national regulator with deep resources will give investors in smaller provinces the same level of protection as those in BC or Ontario.

Provincial securities Acts also contain quasi-criminal offences for fraud and other statutory breaches, but apart from Quebec and sometimes Ontario, these have generally not been used effectively. A national regulator will have the potential to enhance criminal investigations and prosecutions through assisting federal prosecutorial authorities, as contemplated by the proposed federal legislation, which would benefit local investors in all provinces. Investor protection is too important to be left solely dependent on "provincial" thinking.

A fair amount of securities regulation is already national either by design, necessity or default. Additionally, since the current system does not and cannot provide the full spectrum of investor protections required in the 21<sup>st</sup> century, there is no rationale for provinces to have exclusivity over investor protection.

Small Investor Protection Association

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Chair, Advisory Committee