

14 December 2007

Minister of Finance  
The Honourable James M. Flaherty  
Department of Finance Canada  
140 O'Connor Street  
Ottawa, Ontario K1A 0G5

Dear Minister,

On October 12th, 2007 I participated in a 'Peer-to-Peer Roundtable' on a 'National Securities Regulator' in Toronto at which you were the guest panellist. Please find appended to this letter the question which I posed to you at that forum.

Your response to me, I believe, indicated a misunderstanding as to the substance of that question. I would like to take this opportunity to clarify that question by way of an introduction to the system which all consumer/retail investors across Canada are subjected to. In doing so, I am hopeful that you will be able to more adequately address my concerns and question.

In my question I used the term 'consumer/retail investor' which was to represent all individual investors, Canadian or otherwise, who participate in Canada's capital markets. In order to invest, except in the very few circumstances where the purchase is direct from the issuer/fund, retail investors are forced to utilize the services of a securities/mutual fund dealer. These dealers, across Canada, are required to be registered under prevailing provincial securities laws/regulations with the appropriate provincial securities commission/administrator.

Currently provincial policy dictates the delivery model for regulation within the Canadian securities industry. How it is applied, when it is applied, and the degree to which it is applied is of concern not only to industry participants but also to the retail investing sector.

The responsibility for the administration/enforcement of securities law should reside with government and its legislatively delegated agencies. It is at this point that our current system has failed to protect Canadians.

I am sure you would agree that when the provincial legislatures created the respective provincial securities acts that there was no intention to create a parallel and inferior system of regulation for the investing public which we are now subjected to.

Currently, aggrieved retail investors who present a legitimate claim of a contravention of a provincial securities act are directed by the securities commissions to contact a self-regulatory organization ("SRO"). The SRO, not being a creature of statute, regulates its members and those registrants employed by the member by contract. The terms of that contract are the by-laws and constitution of the SRO. The securities commissions have "recognized" the SROs for the purpose of regulating its members subject to those terms. The contract however does not extend to the public as they are not a party to that contract. Please find below an extract from a

'recognition order' of the Investment Dealers Association of Canada ("IDA"), an SRO, dated 14 December 1994;

WHEREAS the necessity for interaction between the IDA and the Commission results from:

- b. the fact that the IDA regulates, by its by-laws and regulations, the conduct of its members and matters related to their trading in securities, areas which ultimately are the responsibility of the Commission.

In the Matter of the Investment Dealers Association of Canada (1994), 17 O.S.C.B. 5961, at p. 5961 (Ont. Sec. Comm.)

The requisite authority to either administer or enforce the Securities Act(s) and to provide a remedy for investors as contemplated under the Act(s) is not available to retail investors across Canada. As you have noted on a number of occasions, and again at the 'Round Table', securities regulation enforcement in Canada needs much improvement. This is one of the fundamental reasons why it needs improvement.

At the forum you stated;

*"...if we don't confer remedies, a right without a remedy is rather useless, that includes rights of investors, investors individually and collectively, certainly in my view. And going over to the enforcement side, we have to do a much better job."* (italics added)

I concur. The consumer/retail investor, with a valid claim, has the right to have their claim investigated and, if warranted, adjudicated by direct application of the relevant Securities Act and not by terms of a contract to which the consumer is not a party. To exacerbate the problem further is that there are no statutory remedies within the current regulatory structure available to the retail investing public even though it was contemplated and incorporated into the Securities Acts. As an example, the following can be found within the Ontario *Securities Act*.

**128. (1)** The Commission may apply to the Superior Court of Justice for a declaration that a person or company has not complied with or is not complying with Ontario securities law.

(3) If the court makes a declaration under subsection (1), the court may, despite the imposition of any penalty under section 122 and despite any order made by the Commission under section 127, make any order that the court considers appropriate against the person or company, including, without limiting the generality of the foregoing, one or more of the following orders:

13. An order requiring the person or company to compensate or make restitution to an aggrieved person or company.

*Securities Act*, c. 11, s. 375; 2006, c. 19, Sched. C, s. 1 (1).

The following is the Ontario Securities Commission's ("OSC") answer to a question posed by an investor with respect restitution. It is an extract from the transcript of the 2005 OSC Town Hall Forum Questions and Answers;

"The OSC does not, in fact, have the power to order a court to grant restitution. What it does have is the discretion under section 128 of the *Securities Act* to apply to the court for a declaration that a person has not complied with or is not complying with Ontario securities law. The court may then order a wide range of remedies, including an order for compensation or restitution.

The OSC has only used this redress mechanism once..."

[http://www.osc.gov.on.ca/Investor/Forum/TownHall/th\\_20050614\\_q-and-a.pdf](http://www.osc.gov.on.ca/Investor/Forum/TownHall/th_20050614_q-and-a.pdf), Question 4, pg.1

As per the above, the Ontario Securities Commission ("OSC") has refused to make application to the court under this section other than on one occasion. However for the retail investor this point is moot since the retail investor is relegated to an SRO which can not make application under this section nor should they as a private contractual body. This is not only unacceptable to Canadians; it is in our view, unjust.

I also submit that the intent of the legislature was to confer a right upon the investor to seek remedy as contemplated under the Securities Act(s). However the current regulatory regime prevents such an occurrence – rendering the "right", in your words, "useless".

We need a remedy. It has been suggested to Canadians by the industry and their strong lobby groups that a remedy lies within their grasp by way of the IDA's arbitration program or via the Ombudsman for Banking Services and Investments. These are not remedies contemplated by the legislature. These two 'remedies' are industry sponsored, industry run and derive their existence from the industry. The only reason they exist is because the system does not work.

If the federal government implements the recommendation to create an independent tribunal, as espoused within the *Blueprint for a Canadian Securities Commission*; it should extend to all retail/investor consumers. For if it does not, the retail investor will continue to be denied the right to access the same judicial process as provided to corporate players within the securities regulatory regime. In turn this would indicate that the current government is in agreement with the status quo which is simply not acceptable to the retail investing public.

I hope that this letter has better explained my concerns and question. I look forward to your response in order that I may share it with the many consumer groups and retail investors who support this position and wish to share in your efforts for a viable common securities regulator. Should you require examples or specific details on how the current system has affected consumer/retail investors, I would be happy to provide them to you – there is a very wide selection to choose from.

Best wishes and good luck.

A handwritten signature in black ink, appearing to read 'R. Kyle', is centered within a light gray rectangular box.

Robert Kyle  
Executive Director  
InvestorVoice.ca  
60 Pleasant Blvd. Suite #2501  
Toronto, Ontario  
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416-925-6230

- c. Mr. André Marin, President, Forum of Canadian Ombudsman and Ombudsman of Ontario

Transcript of Question dated 12 October 2007

"Good afternoon, my name is Robert Kyle and I am the Executive Director of InvestorVoice.ca.

Mr. Flaherty, earlier this year you spoke of the need to protect investors against breaches of securities laws and white collar crime stating that, I quote,

"stealing the investments or harming the investments of a retired senior is a serious crime and a crime with victims who are often vulnerable".

The Blueprint for A Canadian Securities Commission echoed those concerns but did not describe what mechanisms would be utilized to deliver those protections that are desperately wanting in Canada for those consumer/retail investors.

The Blueprint recommends that the Canadian Securities Act provide for the establishment of a Canadian Securities Tribunal as a separate agency from the CSC following the Osborne Report published in 2004.

Will the federal government ensure with the creation of this separate Tribunal that

- a) those consumer/retail investors will be able to file their complaints directly with the Canadian Securities Commission;
- b) that if the complaint warrants regulatory action that it will be adjudicated by the Canadian Securities Tribunal, and

lastly, will they have the power to order restitution and damages?

My concern, Sir, is that otherwise it would appear to be a two-tiered system - one system for corporate players and another for retail investors. Currently consumer/retail investor grievances are relegated to the existing SROs which have proven ineffective as they can only enforce their contracts with their members to which the investors are not a party to."

## Robert Kyle

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**From:** Robert Kyle [robertkyle@rogers.com]  
**Sent:** February 21, 2008 7:01 PM  
**To:** David Murchison (david.murchison@fin.gc.ca)  
**Subject:** The fix is in.  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

### **Re: Government of Canada Appoints Expert Panel to Review Securities Regulation**

"The expert panel will be chaired by the Honourable Tom Hockin, P.C., former Minister of State (Finance) and former president of the Investment Funds Institute of Canada."

#### **Tom Hockin**

"Mr. Hockin led the IFIC and the Canadian Institute of Financial Planning from 1994 to 2006. He is a former director of the Institute of Corporate Directors, **the Mutual Fund Dealers Association, the Canadian Capital Markets Association** and other voluntary boards."

– Government of Canada (Biographical Notes)

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#### ***Tom Hockin sets date for retirement***

.... "IFIC has grown to be a strong leader in the mutual fund industry and I sincerely hope that it has made a difference in helping to enhance the integrity and value of the industry in the eyes of our member firms and investors," Hockin said in a statement. **"I have... been most impressed with how the industry has moved together — despite being made up of fierce competitors — to deepen the fiduciary trust and value of our industry."**

<http://www.canadianhedgewatch.com/content/news/general/?id=483>

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#### ***SRO for Mutual Funds Distributors to be Established***

"This is a balanced and appropriate structure for effective regulation of the industry," said Tom Hockin, IFIC President and CEO. **Joe Oliver** (*ex-president of IDA*) added,

**"We are eager to move ahead with the establishment of a self-regulatory organization which will enhance investor protection and maintain public confidence in the capital markets."**

<http://www.mfda.ca/news/releases04/PR-112497.pdf.pdf>

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#### **Terry Salman**

Chairman, President and CEO, Salman Partners Inc. Salman Partners Inc. is a full-service, institutional-based investment firm with offices in Vancouver, Calgary and Toronto.

"Mr. Salman is a member of the Advisory Committee for the Investment Industry Association of Canada, former Chair of the Investment Dealers Association of Canada and former Governor of the Vancouver Stock Exchange."

- Government of Canada (Biographical Notes)

#### **Terrance Salman currently sits on the Chairs' Consultative Committee of the**

## Investment Dealers Association.

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### **"Self-Regulation Works Best By Putting the Public Interest First"**

(speech by Terry Salman)

[http://www.ida.ca/IDAWebsite/Files/Media/RecSpeech/2003SelfRegulationWorksSalman\\_en.pdf](http://www.ida.ca/IDAWebsite/Files/Media/RecSpeech/2003SelfRegulationWorksSalman_en.pdf)

"As a representative body of the securities industry **we know the markets intimately**. We are aware of its challenges, its strengths and its weaknesses. We also have a deep understanding of the unique regional and national issues faced by our Members and the provincial regulators. As an SRO we oversee the business conduct of 200 investment dealers and over 23,000 licensed brokers, representing 97% of the securities industry in Canada.

The public has to be assured that on any issue where there may be a conflict between our Members' interests and the public interest, the public interest will always prevail. This is the reason that we came into existence in the first place. When the IDA was formed in 1916 as a section of the Toronto Board of Trade, they believed that by associating on a formal basis they could improve the savings and investment process and provide protection for the investor.

*(Actually that was not the mandate at all.) Perhaps Mr. Salman should do his homework.)*

As a Member of the IDA and its out-going Chairman, I can see where some would say of my remarks, "Well, what else would you expect him to say." **If I am accused of being a believer in self-regulation then I'm guilty as charged because I don't just believe it works, I have seen it work. And I'm not alone."**

I would be remiss if I did not acknowledge the depth of talent and tireless support of the IDA senior staff. Without the energy and intellectual capital of Joe Oliver, **Ian Russell –(chair of IIAC)**, Paul Bourque, and Keith Rose...and all the dedicated support staff, it would be impossible for this organization to **achieve its regulatory and advocacy responsibilities**.

- by Terrance K. Salman, Chairman of the IDA, June 23, 2003

### **Morgis v. Thomson Kernaghan**

"The lawyer argued that the IDA defendants (the IDA and senior executives **Terry Salman**, Kym Anthony and Joe Oliver) **do not owe a private duty of care to individual members of the investing public for alleged negligence in failing to properly oversee the conduct of IDA members** for two reasons. First, he argued there is no relationship of "sufficient proximity" between Mr. Morgis and the IDA defendants to create a prima facie duty of care in tort law. Second, he argued that even if a prima facie duty were established, this duty is negated by overriding policy consideration.

<http://www.rgm.com/articles/idawins.html>

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### **Ian D. Bruce**

Chief Executive Officer, Peters & Co Limited

Mr. Bruce spent six years with a major Canadian chartered accountancy firm before starting in the investment business in 1983. He joined Peters & Co Limited in 1998, following senior roles with RBC Dominion Securities and Scotia Capital Markets. **Mr. Bruce is a director and member of the Executive Committee of the Investment Industry Association of Canada...**

- Government of Canada (Biographical Notes)

**Mr. Bruce is also a past member of the IDA's member regulation oversight committee.**

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## **Investor group seeks to curb IDA power**

### **Complaint concerns**

National Post, 09 April 2001

<http://www.investorvoice.ca/PI/019.html>

"A subsequent review of the IDA's practice, conducted by an independent consultant, said the enforcement division was plagued by "a lack of trained and experienced investigators," and warned that a backlog of open cases was approaching a crisis.

A spokesman for the OSC declined to comment yesterday on whether the provincial regulator aims to take a more active role in policing the industry.

But **Ian Bruce, a member of the IDA's member regulation oversight committee**, said the association is capable of doing its own enforcement.

"The issue of whether or not you think somebody else can do it better, whether it's a securities commission or a totally independent party, is a question that's a self-regulatory question. **Is the self-regulatory organization being effective or not is the real question, and my view is yes," he said, noting the enforcement function has been beefed up in light of the recent reports on the IDA.**"

### **Denis Desautels**

[Financial Review Committee](#) (Alberta Securities Commission)

### **Denis Desautels, OC, FCA**

Mr. Desautels is Chairman of the Board of the Laurentian Bank of Canada

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**While it is encouraging to see Mr. Green and Mr. Davies, both hailing from the FSA, advise this panel of "experts".....there is no guarantee that they will be considered seriously.**

**For purposes of instruction on Constitutional Law your choice of Mr. Peter W. Hogg could not be better.**

**But WHO IS REPRESENTING the Canadian CONSUMER/INVESTOR (the investing public) ON THIS COMMITTEE????**

**What happened to Al Rosen, or Glorianne Stromberg, or Hon. Peter Corey or Senator Madeleine Plamondon, or how about the Consumers Council of Canada or another like-minded organizations/individuals? How about law enforcement agencies? Were any of them approached? How about any of the members of the OSC Investor Advisory Committee?**

**(Which, I might add, the OSC has dissolved without ever publishing a report – even though one was created.)**



The industry appears very well represented. Who vetted this panel? Does Mr. Flaherty believe that this panel represents regulatory/enforcement expertise?

Why are we, again, left out of the picture? Will a common securities commission mean anything more to the investing public than just another layer of bureaucracy?

Will we remain relegated to a private contractual body (the SROs) – which have neither the will nor the ability in law to protect investors?

How can you fix enforcement when 3/7 of the “experts” of the panel come from SROs and their lobbyist organizations and believe, strongly, that there is nothing wrong with SRO enforcement????

..otherwise referred to as “Third world enforcement” – and this is your responsible expert panel????

Experts on what??? They created the current system, is this what you wish to legitimize?

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CONFIDENTIAL

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\*\*\*Perhaps you could create an additional seat on the panel advisory?\*\*\*  
(OFFICIALLY)

I would appreciate your informal response, before we publicly seek out the current day government’s official one, if need be.

P.S. Tom Hockin’s media clip made no reference to speaking with the public, only with the Commissions.

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AND LASTLY

*Globe and Mail*

*Tuesday, June 22, 2004*

## **MUTUAL FUNDS: SPECIAL INVESTIGATION: INDUSTRY VOICE**

*Speaks for all investors, mutual fund group says*

Critics argue that IFIC has forgotten the interests of those average Canadians. They claim IFIC is simply a lobby group out to further the interests of the fund industry, a who's who of 200 financial services giants. It's an industry under a cloud, both due to vagaries in the market and a crackdown in the United States. And it's been working very hard to ensure that legislation and regulations further the association's goals.

Glorianne Stromberg, a former OSC commissioner and author of a report calling for sweeping reform of the industry, believes marketing interests are guiding the institute's mandate.

"There isn't really anybody out there speaking for the investor . . . I don't think IFIC can in any way lay claim to that role," she said.

Mr. David Murchison  
Executive Director  
Expert Panel on Securities Regulation  
Finance Canada  
Ottawa, Canada K1A 0G5

31 March 2008

via e-mail: david.murchison@fin.gc.ca

**Re: Expert Panel on Securities Regulation**

Dear Mr. Murchison,

On February 21<sup>st</sup>, 2008 I asked you if there would be a Canadian consumer/investor representative position on either the expert panel or the advisory board and forwarded to you correspondence regarding same. As previously discussed, consumer/retail investors are the largest stakeholder in this proposal and therefore, as such, if government truly wishes to address their needs, proper representation is a requirement.

You informed me that it would be necessary for you to speak with Mr. Tom Hockin and pose that question to him.

Please advise me of his response.

Thank you.



Robert Kyle  
[Investorvoice.ca](http://Investorvoice.ca)  
Toronto, Ontario  
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P.S. The attached article, entitled "[Ottawa tries it again](#)" published in Investment Executive in March 2008, also recognizes the need for a consumer/investor representative at the table. In fact Ms. Glorianne Stromberg, who I recommended to you one month prior to the expert panel announcement, would be an excellent choice to represent consumer/investors and was quoted in this article.

- |    |                          |                          |
|----|--------------------------|--------------------------|
| c. | Right Hon. Steven Harper | Prime Minister of Canada |
| c. | Hon. James Flaherty      | Minister of Finance      |
| c. | Mr. Howard Davies        | Expert Panel Advisory    |
| c. | Mr. Peter W. Hogg        | Expert Panel Advisory    |
| c. | Mr. David Green          | Expert Panel Advisory    |

March 2008

## Ottawa tries it again

**Yet another federal group will work on a national securities regulator**

By Paul Brent

Federal Finance Minister Jim Flaherty's Feb. 21 announcement on the creation of an expert panel "to develop a model common securities act" is drawing both compliments and critique.

"It shows that the government is serious about facilitating a system for more effective securities regulation," says Glorianne Stromberg, former commissioner of the **Ontario Securities Commission**, before adding: "I can't help but observe that although the panel has top-notch advisors, the panel members themselves are heavily weighted toward the financial services industry and institutional investors. That's troubling when you take into account that the terms of reference omit any reference to investor protection and maintaining confidence in the capital market."

Headed by Tom Hockin, former Mulroney-era cabinet minister and more recently chairman of the **Investment Funds Institute of Canada**, the panel includes the CEOs of two brokerage houses, the CEO of a big energy company, a law professor who participated in the last group studying the topic, a Bay Street securities lawyer and a former auditor general of Canada. Ottawa has long championed a national securities regulator, and several federal study groups have supported it. But it remains stuck in a political quagmire.

Stromberg describes the absence of a panellist who represents investors' interests as "a glaring omission, particularly in the current climate in which it is not an exaggeration to say that we have a crisis of confidence resulting from the subprime meltdown and resulting evaporation of investors' capital."

Hockin, however, contends that there already is a perfectly good representative for investors on the panel — himself.

"That's where I'm coming from," he says, "having been the president for 12 years of IFIC and also having to put together the structure for the regulation of financial services back in the 1980s."

Hockin argues that the "going-in" assumption for his group is that one national securities regulator would be a positive for the average investor simply as a less expensive alternative to the current provincial regulatory hodgepodge.

The new panel is in something of a hurry. It has been asked by Flaherty to deliver its report by December and, as Hockin notes, panellists are toiling on a pro bono basis. So they are motivated to complete their job in a timely fashion.

As it stands, there are 13 provincial and territorial securities commissions, a system that Ottawa contends curbs investor interest and sets Canada apart from other western countries. As a solution, all the provinces and territories except Ontario — which wants a national regulator — have developed a passport system that recognizes, for example, a prospectus filed in one jurisdiction in all the other jurisdictions.

Hockin says his group will evaluate the passport system and construct common securities

regulations that all the provinces can adopt, recommend how it can be adopted and establish a time frame to implement the proposed national system.

"If everyone likes the passport system," he says, "I guess that is where we stay. But I doubt that will happen."

As for all the effort expended by the previous panel on a national regulator, led by **Osler Hoskin & Harcourt LLP** counsel Purdy Crawford, which produced the 2006 report Blueprint for a Canadian Securities Commission, Hockin says it will form the basis of his panel's work: "Our job is to pick up Purdy's work; there is a great deal of help already building the structure from his report. We are going to go across the country, though, and talk to experts and get feedback. Plus, we are going to have a Web site so we can get voluntary feedback."

Crawford, who was contacted by Hockin shortly after the new panel was announced, is supportive of its efforts, but has no insider insights. "Exactly what they are going to do I'm not sure," he says. "The bigger job is not drafting something. It's working at the lobbying or public policy level to influence the result, which is what we were continuing to do even though we no longer exist as a panel."

Hockin acknowledges the political battle he will face getting widespread acceptance for a national regulator scheme, but exudes the optimism of a fresh panel.

"When they see the draft statute and see the structure, they might think differently," he says of provincial regulators. "To some extent, they could be demonizing something they haven't seen.

"Also, global markets are becoming very, very demanding," Hockin adds. "We have to get our act together."

Along with Hockin, the committee consists of Ian Bruce, CEO of Calgary-based investment dealer **Peters & Co. Ltd.**; Terry Salman, chairman and CEO of investment dealer Salman Partners Inc.; Denis Desautels, Canada's former auditor general; Hal Kvisle, president and CEO of TransCanada Corp.; Dawn Russell, former dean of law at Dalhousie University (and Crawford panel veteran); and Heather Zordel, a partner at law firm **Cassels Brock & Blackwell LLP. IE**

Minister of Finance



Ministre des Finances

Ottawa, Canada K1A 0G5

2008FIN239046

AVR 16 2008  
APR 16 2008

Mr. Robert Kyle  
Executive Director  
InvestorVoice.ca  
2501-60 Pleasant Boulevard  
Toronto, ON M4T 1K1

Dear Mr. Kyle:

Thank you for your correspondence of December 14, 2007 regarding securities regulations and enforcement against capital markets fraud in Canada. Please excuse the delay in replying.

I appreciate your support for the Government of Canada's efforts to establish a common securities regulatory structure for Canada. I also noted your concerns expressed at the October 12, 2007 Peer-to-Peer Roundtable on a National Securities Regulator, with respect to the protection of retail investors.

The Government of Canada is committed to securing a competitive advantage in global capital markets. In March 2007, the Government of Canada published *Creating a Canadian Advantage in Global Capital Markets*, which established a Capital Markets Plan for Canada based on four building blocks:

- Enhancing regulatory efficiency;
- Strengthening market integrity;
- Creating greater opportunity for businesses and investors; and,
- Improving investor information.

Canada

As stated in Budget 2008, the Government of Canada has made progress in a number of areas and will continue to advance its Capital Markets Plan in focused areas. On the issue of securities regulation, the Government of Canada is committed to working with the provinces and territories to move forward toward a common securities regulator that will deliver proportionate, more principles-based regulation with stronger enforcement.

The Government of Canada recently announced the establishment of the Expert Panel on Securities Regulation to advise on ways to enhance the effectiveness, content and structure of securities regulation. The panel will deliver a final report and a model common securities act to me and to provincial and territorial ministers responsible for securities regulation by the end of the year. The Government of Canada will ensure that it is in a position to act promptly on the report's recommendations and to engage with market participants and provincial and territorial partners on next steps.

Given your concerns about securities regulation and investor protection, I have forwarded a copy of your correspondence to the Chair of the Expert Panel, the Honourable Tom Hockin, for his consideration.

The fight against capital market fraud is a priority for the Government of Canada. Continued challenges with securities fraud enforcement in Canada underscore that further effort is needed to secure the integrity of our capital markets.

In 2003, the Government of Canada adopted a coordinated national approach to strengthen the investigation and prosecution of capital market fraud by creating the Integrated Market Enforcement Teams (IMET), led by the Royal Canadian Mounted Police (RCMP). The IMET approach brings together police, legal advisors, forensic accountants and market experts in integrated investigative teams.

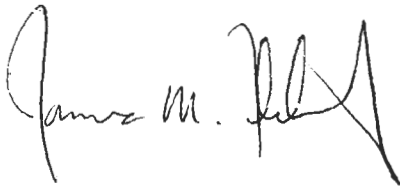
The Government of Canada has committed to further enhance this program by implementing the recommendations of a senior expert advisor to the RCMP appointed to help develop and guide an implementation plan to improve the effectiveness of the IMET program. The report, by former Superintendent of Financial Institutions, Mr. Nick Le Pan, was submitted to the RCMP Commissioner in October 2007 and made public in December 2007. As the recommended improvements are made, we are prepared to substantially supplement the resources of the IMET to achieve more effective and timely investigations.

In addition, the Government of Canada is working with provincial and territorial authorities to strengthen enforcement through an approach that encompasses all aspects of this issue, both regulatory and criminal. As announced in Budget 2008, federal and

provincial-territorial experts will be examining a number of measures to enhance enforcement, including the power to compel third-party witnesses to testify in respect of capital markets criminal offences. Recommendations will be presented to federal and provincial-territorial ministers responsible for Justice for consideration later this year.

Thank you for communicating your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Flaherty". The signature is written in a cursive style with a large initial "J" and a stylized "M".

James M. Flaherty

c. The Honourable Tom Hockin, P.C.



Ottawa, Canada, K1A 0G5

18 April, 2008

Mr. Robert Kyle  
Executive Director  
Investor Voice  
60 Pleasant Blvd.  
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Hon. • L'hon. Tom Hockin  
Chair • Président  
Ian D. Bruce  
Denis Desautels  
Hal Kvisle  
Dawn Russell  
Terry Salman  
Heather Zordel

Dear Mr. Kyle:

I am writing to inform you that the Expert Panel on Securities Regulation in Canada has initiated its work effort. The Expert Panel was announced by the federal Minister of Finance on February 21, 2008 to provide advice on the best way forward to improve securities regulation in Canada.

Recent contributions to the discussion of securities regulation in Canada have made it clear that Canada's securities regulatory system needs to be improved. Strong, well-regulated capital markets are essential to the vitality of the Canadian economy as we strive to compete in an increasingly global marketplace. Quite simply, we need to ensure that Canada's system of securities regulation is best in class.

The Expert Panel will build on Canada's strengths and on the positive steps taken in recent years by the full range of partners, including the provinces, territories, and regulators. It will take into account the recommendations put forward by other expert groups, and it will draw on the best regulatory practices of our international counterparts.

As a key stakeholder in Canada's capital markets, I invite you to participate in our consultation process by making a formal representation to the Expert Panel no later than July 15, 2008. Your representation should be submitted electronically at [www.expertpanel.ca](http://www.expertpanel.ca) (select "Submissions").

We would be particularly interested in understanding how your views have evolved since the Crawford Panel on a Single Canadian Securities Regulator and the Task Force to Modernize Securities Regulation in Canada.



Our Panel intends to hold a limited number of face-to-face meetings across Canada in the months ahead.

You will find attached the terms of reference of the Expert Panel. The news release announcing the Expert Panel can be found on the aforementioned website.

I look forward to your engagement on this important effort.

Yours sincerely,



Honourable Thomas A. Hockin, P.C.

Enclosure

The whole focus of this exercise is to simplify, streamline, cut costs & confusion for investors so I hope you will appear before the Panel or join me for lunch.

TH



## EXPERT PANEL ON SECURITIES REGULATION

Creating an Advantage in Global Capital Markets

### Terms of Reference of Third-Party Expert Panel on Securities Regulation

With Budget 2007, the Government of Canada set out a plan for Canada's capital markets entitled *Creating a Canadian Advantage in Global Capital Markets*. This advantage requires a shared commitment to enhance the content, structure and enforcement of capital markets regulation.

At their meeting on June 19, the Minister of Finance of Canada and the provincial and territorial ministers responsible for securities regulation discussed various approaches to improve securities regulation. At the conclusion of the meeting, the Minister of Finance of Canada announced that, in parallel to existing efforts of provinces and territories to streamline and harmonize securities regulation, the Government of Canada would form a third-party expert panel to advise ministers on the best way forward.

The expert panel will draw on global best practices and build on the strengths of Canada's capital markets. It will also review efforts to date to harmonize and simplify Canada's regulatory system.

The panel's proposals will be respectful of the jurisdictional framework for securities regulation in Canada and will allow willing participation of provinces and territories.

The expert panel will review and advise on the following:

1. The objectives, outcomes and performance measures that will best anchor securities regulation and the pursuit of a Canadian advantage in global capital markets. For example,

- Efficient and competitive capital markets that contribute to economic growth and prosperity.
- Market integrity and the protection of investors.
- The reduction of systemic risk.

2. How Canada could best promote and advance proportionate, more principles-based regulation, starting from existing harmonized legislation and national and multilateral regulatory instruments, with a view to creating a Canadian advantage in global capital markets.

The regulatory framework will set out principles for regulation. For example, regulation will:

- be based on clear and sound principles;
- be applied only where there is a clear net benefit;
- be proportionate to reflect the unique make-up of Canadian capital markets and the needs and capacities of small and mid-sized businesses;
- foster integrity and investor confidence through markets that are fair and transparent;
- be supported by enforcement that is timely, proportionate, effective and consistent;
- foster open markets and competition that will drive innovation and choice for issuers and investors;
- meet or exceed global best practices and standards and minimize impediments to cross-border capital flows;
- draw on international regulatory cooperation; and
- be complemented by efforts to enhance the financial literacy of Canadians so that they may exercise choice and seek advice in an informed manner.

The regulatory framework may also set out principles for business, such as those established by the U.K. Financial Services Authority, e.g.:

- integrity – a firm must conduct its business with integrity;
- skill, care and diligence – a firm must conduct its business with due skill, care and diligence;
- management and control – a firm must take reasonable care to organize and control its affairs responsibly and effectively, with adequate risk management systems;
- financial prudence – a firm must maintain adequate financial resources;
- market conduct – a firm must observe proper standards of market conduct;
- customers' interests – a firm must pay due regard to the interests of its customers and treat them fairly;
- communications with clients – a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading;
- conflicts of interest – a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client;
- customers: relationships of trust – a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment;

- clients' assets – a firm must arrange adequate protection for clients' assets when it is responsible for them; and
- relations with regulators – a firm must deal with its regulators in an open and co-operative way and must disclose anything relating to the firm of which the regulator would reasonably expect notice.

3. How proportionate, more principles-based regulation could facilitate and be reinforced by better, more coordinated enforcement that could include a separate securities tribunal.

4. How this approach to regulation could be implemented under a passport or under a common securities regulator; and,

5. A model common securities act and a transition path, including key steps and timelines, that participating provinces and territories could adopt to effect proposed changes to the content, structure and enforcement of regulation, including:

- Implementation of legislation.
- Implementation of changes to the structure of the regulatory system, as required.
- Interaction with non-participating jurisdictions, and enabling non-participating jurisdictions to opt-in at a later date.

### **Process**

The third-party expert panel will be supported by a small secretariat and will draw as required on researchers and advisors.

The group will consult with governments and regulators. It will also engage self-regulatory organizations and market participants and encourage input through a web site and written submissions.

It will deliver to the Minister of Finance of Canada and provincial and territorial ministers responsible for securities regulation a final report by the end of 2008.

### **Funding**

The federal government will fund the third-party expert panel.