

National Securities Regulator Debate

**Address by
Bill Rice, Chair
Alberta Securities Commission**

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A. Opening Comments

B. Introduction to Subject of Address:

- long unresolved debate
- revived by federal Finance over past 18 months
- Hockin Report in January
- federal budget proposals and financing in January
- issue over who controls
 - provinces have it
 - federal government wants it
 - Ontario also pushing
- potential for constitutional fight
- but what about the merits?

C. Responsibility of the ASC:

- before judging whether the ASC would best be replaced, need to understand what it does

1. Overall Responsibility:

- administration of Alberta securities laws
 - set forth in Alberta Securities Act, regulations under the Act, and Rules made by the ASC

- the securities acts of the provinces and territories are substantially the same
- the fundamental requirements of the securities laws are:
 - if you issue securities you must do so under a prospectus, and
 - if you trade in securities you must be registered

2. Rule Making Authority:

- securities commissions are recognized to be bodies having expert staffs working in a specialized area of particular industry and have been delegated by provincial and territorial governments the authority to make the specific rules regulating that industry within the spirit and context of the provincial and territorial securities acts

3. Oversight Responsibility:

- ASC oversees conduct of issuers and of intermediaries
- oversight of dealers and salespersons is delegated in part to the SRO's, IIROC and the MFDA
- ASC oversees the TSXV and NGX

4. Oversight of Compliance:

- full, true, plain and timely disclosure by issuers
- financial stability of registrants and “know your client” and “suitability obligations”
- fair rules on exchanges
- prevent improper insider trading
- Corporate Finance, Market Regulation, Chief Accountant

5. Enforcement:

- if participants do not play by the rules then the ASC is empowered to pursue enforcement proceedings
- we have investigative and prosecutorial staffs
- we can enter into settlements or proceed to a hearing to seek sanctions

6. Hearings:

- hearings are conducted by Members of the Commission
- the ASC is a provincial crown corporation with a board of directors, the individuals on which are called Members
- the Members have three significant duties:

- (1) they approve the Rules I referred to earlier;
- (2) they oversee the management of the ASC as would a corporate board; and
- (3) they sit as panel members to adjudicate enforcement proceedings and contested applications

7. Summary of Structure and Authority:

- we are a self-funding crown corporation with the Alberta provincial government, acting through the Minister of Finance and Enterprise, as our sole shareholder; we have a board of directors referred to as Members, appointed by the Minister and we have a management team, of which I, as Chair and Chief Executive Officer, am appointed by the Minister but report to the Members, and a management team appointed internally

- Our authority, within the confines of the securities industry are extensive:
 - we make the Rules, provided they are within the spirit and context of the legislation;
 - we oversee compliance with the Rules; and

- we enforce the Rules through both prosecution and adjudication

- We are given those authorities because we are best equipped to do the job and our overall mandate is to:
 - protect investors, and
 - protect the integrity of the capital markets in Alberta

D. Two Matters:

- before moving on:
 - (1) Rule making
 - (2) Accountability to Minister

1. Rule Making Process:

- ASC staff (lawyers, accountants, engineer, geologist) participate on national committees
 - primarily Quebec, Ontario, B.C., Alberta representation
 - new Rules or Rule amendments
 - debated at staff and senior management levels
 - recommend Rules to Members
 - legislative amendments to Ministry

- in almost every instance the Rules are applied in identical terms across the country
- but the final decision on the exact context of legislation rests with the Provincial Government
- and final decision on exact context of Rules rests with the Commission Members
- there are some differences between the Acts and between the Rules of different jurisdictions based on differing philosophies of regulation and differing market circumstances
- for example:
 - legislative provisions empowering SRO's
 - rule provisions permitting use of offering memorandum

2. Accountability to Minister:

- require excellent relationship for maximum effectiveness
 - trust
 - communication
 - reliant on Member appointments
 - timely response (mutual)

E. National Regulator Debate:

1. National Regulator Concept:

- single, centralized organization having jurisdiction across the country, reporting to the federal Minister of Finance
- policy decisions, budgets and priorities would be determined on a national basis
- provincial offices would report to the central office

2. Fundamental Points:

- I will make a few fundamental points to summarize my evaluation of the proposal and then go into a little detail
 - (1) the current system works well;
 - (2) there are no features of the current system that will be improved and no challenges to the current system that will be met by a national securities regulator;
 - (3) Alberta will be significantly less well served by a national regulator;
 - (4) reasons given by advocates for a national regulator do not hold up; and

(5) whatever the actual reasons for a national regulator might be, among them it is not the improvement of securities regulation in Alberta

3. Current System Works Well:

- old criticisms of 13 regulators and 13 sets of laws addressed
 - Passport system
 - only remaining impediment is that Ontario refuses to play
- good cooperation
- good coordination
- sharing of ideas
- chance for innovation
- allows for maximum harmonization with recognition of regional differences
- regional control over implementation
- local enforcement with all necessary resources

4. No Improvements Offered to Alberta:

- we need best people possible
 - national body may hinder
- we need to speed up enforcement

- another layer of bureaucracy will not help
- we need to learn more about derivatives and related trading markets
- national body not relevant
- need stronger criminal law enforcement and sentencing
- not a securities regulation issue

5. Negatives for Alberta:

- loss of hard fought for relationship with Provincial Government
 - no way to replicate at federal level
 - national regulator concept contemplates veto for federal Finance Minister
- loss of access by Alberta participants to decision makers
 - at both government and commission levels
- enforcement activities will become subject to national priorities, strategies and budgeting
 - we will not be able to address all that we do now
- we will lose many of our best people
 - remote control with different philosophy
- we will lose all leverage at the Rule making negotiation table

- will not be able to go own way
- the people we debate with will be the bosses

6. Reasons Do Not Hold Up:

- one voice internationally
 - real influence depends on economic power
 - Canada's securities regulatory system well respected
 - Canada well represented
 - Canada always judged at top of pack
 - if want a point of contact, use the Chair of the CSA
- enforcement
 - best done locally
 - problem is with criminal fraud
 - IMET (RCMP) is a federal body and has been most disappointing
 - U.S. has 50 state regulators to tackle enforcement
 - SEC does not obtain the high profile jail terms
 - state attorneys general
 - Conrad Black in Illinois
 - SEC has own challenges in proving national body most effective
 - Bernie Madoff

- systemic risk
 - responsibility of Bank of Canada
 - threats from:
 - (1) fiscal and monetary policies
 - (2) big banks
 - (3) integrity of markets
 - all currently covered
 - national securities commission will not predict the next asset bubble
 - we do communicate
 - we do coordinate
 - do not need to be one big single organization

7. Why is it Being Pushed?

- federal Department of Finance
- will lead to constitutional quarrels and perhaps court fight
- are there bigger issues to be addressed at present time

F. Responsibility of Chair of ASC:

- protect investors and the integrity of the capital markets in Alberta

- based on conclusions summarized earlier, position must be to oppose the national regulator proposal