August 15th, 2002

Mr. Purdy Crawford, Chair
Five-Year Review Committee
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Dear Mr. Crawford:

I have had the opportunity to read the Five Year Review Committee Draft Report ("Committee Report") and to share some of my concerns with other committee members such as Ms. Carol Hansell and Mr. Bill Riedl. In these conversations I raised issues in which they both expressed interest. I have created a website which reflects these issues and which, at the request of both the above, I have tried to condense into a fourteen page format for the committee's review. There is much more in depth information on the website: http://regulators.itgo.com. I invite you to peruse it and perhaps discover new issues and concerns with respect to securities regulation in this province.

Overall I found your recommendations to be a step in the right direction, the separation of the regulatory and lobby functions of the IDA being most pressing. However, I do feel that the subjects of "Public Interest", "Oversight" and "Accountability" are issues closer to the heart of today's investing public. In my view, they were not awarded the necessary attention.

The issue of corporate governance is not discussed in this letter, although it certainly is an area of public concern. My understanding is that this area is to be resolved by the Joint Committee on Corporate Governance[1] established by the Toronto Stock Exchange ("TSE"), the Canadian Venture Exchange ("CDNX"), and the Canadian Institute of Chartered Accountants ("CICA"). This committee includes Mr. John A. Roth, Former President & CEO, Nortel Networks Corporation and Nortel Networks Limited. I am not confident that public concern will be comforted by his involvement.

I trust you will find the following informative.

OVERSIGHT & ACCOUNTABILITY

Political Accountability

The Investment Dealers Association of Canada ("IDA") is, according to the Ontario Securities Commission ("OSC"), the "frontline" regulator for the public. The transfer of the Member Regulation authority from the Toronto Stock Exchange ("TSE") to the IDA in February 1997 was done without approval of the Minister of Finance ("MOF") or the Lieutenant Governor in Council.

According to Ms. Helen Graham, Director of Finance and Industrial Policy at the MOF, the transfer of Member Regulation authority from the TSE, upon whom the legislative conferred authority pursuant to its enabling statute, to the IDA, a private organization with no enabling statute, **required** ministerial approval.[2] Nevertheless, the Executive Director of the OSC, Mr. Charlie Macfarlane, has advised that "ministerial approval was not required for the transfer of the Member Regulation authority…" [3] This transfer was effected by an agreement known as "The Member Regulation Agreement". [4]

This indirect transfer of the regulatory authority and functions of a government agency, the OSC, from the TSE, a statutory body, to a non-statutory private organization, the IDA, raises questions regarding political, legislative, administrative and fiscal accountability of the IDA. Such transfers are often characterized in terms of trade-offs between improved performance and efficiency, and reductions in political control and accountability.

> "One of the themes that I explore with my students is the very question that you raise – the extent to which public interest or public law principles must continue to have relevance in situations where governments have privatized and downloaded on the private sector roles traditionally performed by government or, in creating new regulatory regimes, have utilized the private sector as the vehicle of regulation. These are issues that have attracted very little attention in the case law (in Canada) to this point in rather sharp contrast to the situation in both the United Kingdom and New Zealand, just to cite two examples." [5]
>
> Mr. David Mullan, Professor of Law, Queen's University

Although the IDA states that it is accountable to the OSC for its performance, the degree to which the OSC can effectively oversee the IDA's activities, and if necessary control and direct them, is open to question.

The same can also be said about the degree to which the MOF can effectively oversee the OSC's activities. The MOF, by statute, can only appoint a minority of board members to the OSC. Perhaps more seriously, not withstanding the MOF's capacity to amend the IDA Recognition Order [6] unilaterally, the degree to which the ministry retains the capacity to effectively oversee the OSC's responsibility to oversee [7] the IDA's activities or retains the expertise to challenge it on technical and policy matters is uncertain.

According to Richard Mulgan, Research Director, Asia Pacific School of Economics and Management, "those calling for an account are asserting rights of superior authority over those who are accountable including the rights to demand answers and to impose sanctions."[8]

Diminished capacity necessarily weakens such authority. Along with these weakened links between the MOF, the OSC, and the IDA, comes the diminished capacity of the legislature and the public to obtain answers from the minister presumed to be accountable.

A second, and perhaps more immediate concern is that the IDA, as a private organization, appears to be able to escape the normal application of the statutes that provide the foundation of the legislature and public's ability to oversee the activities of the delegates of the provincial government and use of the powers granted to them including those powers which have been sub-delegated to the private corporation such as the IDA. These include the *Audit Act*, *Ombudsman Act*, *Freedom of Information and Protection of Privacy Act*, and the *Lobbyist Registration Act*. Each of these statutes has an appointed associated legislative officer, such as the Provincial Auditor, Ombudsman, Information and Privacy Commissioner, and the Integrity Commissioner, who are provided with security of tenure and statutory guarantees of independence to enable him or her to provide an objective assessment and advice without fear of political interference.

These laws are intended to shape the behaviour of provincial government and its agencies, to ensure fairness, competence and consistency in the administration of public services. However these statutes do not appear to apply to private bodies to whom the provincial government or its agencies have delegated legislative authority.

Other jurisdictions, which have transferred regulatory responsibility to private bodies, have retained stronger formal accountability structures. "Executive Agencies" in the United Kingdom and Crown entities in New Zealand remain explicitly subject to direct parliamentary oversight. "Restructured Agencies" in New Zealand also remained under the jurisdiction of the Auditor General, the Ombudsman, and are subject to Freedom of Information and Protection of Privacy legislation. The federal government has applied similar requirements to the Canadian Food Inspection Agency. In the case of Alberta, delegated administrative organizations remain subject to freedom of information legislation and oversight by the Provincial Auditor.

Instead the IDA appears only to be accountable to the OSC as a result of the express oversight authority vested in the OSC by the relevant legislation and its contractual obligations set out in its Recognition Order [5] These inwardly focused features are in contrast to the emphasis on independent external assessment, review and public reporting on agency behaviour and performance through legislative officers, the legislature itself and the work of non-governmental organizations, the media and the public, which have been central to the accountability framework for conventional government agencies.

Recommendations

1. *The Ontario Securities Act ("OSA") and Commodity Futures Act ("CFA") should be amended to name the Provincial Auditor as the corporate auditor for the delegated administrative authorities created under it, including the IDA. In the Interim, the Minister of Finance should request that the Provincial Auditor undertake an audit of the IDA as a "special assignment" under section 17 of the Audit Act.*

2. *The OSA and CFA should be amended to bring the delegated administrative authorities created through it under the jurisdiction of the Ombudsman Act.*

3. *The Lieutenant Governor in Council should adopt a regulation under the Freedom of Information and Protection of Privacy Act designating the IDA and other delegated administrative authorities as "institutions" for the purposes of the Act and strike section 153 of the OSA that provides for an exemption for disclosure to self-regulatory bodies or organizations.*

4. *The OSA and CFA should be amended to require that any persons lobbying the IDA, the IDA and other delegated administrative authorities register their activities on the lobbyist register under the Lobbyist Registration Act.*

5. *Any future delegations of functions of provincial agencies currently subject to the OSA should be accompanied by a delegation of the agency's functions to the delegated agency under the OSA.*

6. *The Lieutenant Governor-in-Council should adopt a regulation under the OSA and CFA requiring the review by independent legislative officers of the undertakings of the IDA and other delegated administrative authorities.*

Legal Accountability

In addition to the differences in the political and administrative accountability framework for the IDA relative to traditional provincial agencies, the establishment of the IDA gives rise to an important set of questions around the legal accountability of non-governmental organizations to which government functions are delegated. Over time, a body of judicially enforceable constitutional, statutory and common law has emerged, designed to ensure fairness and justice in the administration of laws, policies and programs by governments. These rules provide important limitations on the exercise of power by the state in a democratic society. However, the status of these principles may not be immediately clear when government functions are transferred to private organizations, to which they are not normally understood to apply.

The Supreme Court of Canada has dealt with a number of cases involving the delegation of government functions to private organizations such as the IDA. In general, the courts have taken the view that governments cannot escape their responsibilities under the *Charter of Rights and Freedom ("Charter")* by delegating functions to private organizations. This has been most clearly expressed by the Supreme Court of Canada in its 1997 decision of *Eldridge v. British Columbia (Attorney General)("Eldridge").* [9]

In *Eldridge*, the matter at issue was whether deaf users of hospital services were discriminated against under section 15(1) of the *Charter*, because of a failure to provide them with paid interpreters for medical services. In its decision in *Eldridge*, the court held that governments cannot evade their *Charter* responsibilities by delegating the delivery of policies and programs to private entities. In particular, the court stated the following:

Just as governments are not permitted to escape *Charter* scrutiny by entering into commercial contracts or other "private arrangements", "governments should not be allowed to evade their constitutional responsibilities by delegating the implementation of their policies and programs to private entities."

This statement reflects the degree to which The Supreme Court of Canada has relied on a combination of tests regarding the exercise of statutory authority and the "governmental" character of the functions in question to determine the applicability of the *Charter* rather than determining whether the functions are carried out by entities that are in the public or private sectors. In other words, the nature of the activity being carried out, rather than the nature of the actor undertaking the activity, has become the central issue in determining whether the *Charter* applies.

Prior to the *Eldridge* decision, the courts had determined the degree of "governmentalness" by focusing on the level of control exercised by government over the entity in question. However, the *Eldridge* case marked a significant move away from this approach, as the service provider involved in the case could not be said to be under the direct control of the provincial government. This may be a consequence of the Court seeing the need to respond to the growing practice of the delegation of governmental functions and powers to private entities that are not subject to direct government control.

The nature of the IDA in Ontario is presently unclear. To the extent that the OSC has delegated its authority under its enabling statutes, then the procedural and evidentiary rules applicable to other bodies, to whom statutory authority has been conferred, ought to apply to proceedings before it.

At the time of writing this letter, there are at least four court proceedings in progress that have the aim of determining the jurisdiction and limits of authority of the IDA and CDNX. One of these is in British Columbia [10], two are in Ontario, [11], [12] and one in Québec. [13] The Québec case being of particular interest since the IDA is not a recognized SRO in that province.[14]

Recommendations

7. *The OSA and CFA should be amended to state that the Canadian Charter of Rights and Freedoms applies to the activities and decisions of the IDA and other delegated administrative authorities.*

8. *The OSA and CFA should be amended to state that the Ontario Evidence Act, the Statutory Powers Procedure Act and the Judicial Review Procedure Act apply to the proceedings before the IDA and other delegated administrative authorities under the delegated legislation.*

Prosecutions

The delegation of full responsibility for the conduct of prosecutions for alleged violations of securities laws to the IDA raises a range of important questions. While the IDA's Vice-Presidents decide whether to pursue prosecutions, his or her decisions are not within the purview of the Attorney General or to the Minister. For instance, the Directives of the Ministry of the Attorney General regarding how the OSC ought to conduct its prosecutions do not to apply to the IDA.

Recommendation

9. *The status of prosecutions conducted by the IDA and other delegated administrative authorities should be clarified. The IDA should conduct prosecutions only once their jurisdiction has been clearly established. This means that a formal arrangement for the delegation of the conduct of prosecutions to delegated administrative authorities, similar to the provisions of Part X of the Provincial Offences Act regarding the delegation of the conduct of prosecutions to municipalities, should be established. In the interim, the IDA should enter into a memorandum of understanding with the Ministry of the Attorney General with respect to the application of the Ministry's policies, contained in the Crown Policy Manual, regarding the conduct of prosecutions.*

The October 1995 Recognition Order (schedule B 3.) [5] required the establishment of a protocol to be followed in the investigation of incidents under the delegated acts by the OSC. The undertakings exact the standards and guidelines to be followed in the event of an investigation and ensure the avoidance of conflict of interest, or the appearance of conflict of interest, regarding the conduct of an investigation. The undertakings as part of the Order are there to protect the public from the improper exercise of authority.

Like a government agency, the IDA may be sued for damages arising from regulatory negligence. Furthermore, in its capacity to be sued, it may not have the same protection as the provincial government, in terms of the availability of policy-based defences. It is also possible that, notwithstanding the provisions of the Recognition Order made under the OSA, the provincial government may be held liable for the delegation of functions (formally delegated or otherwise) that are performed negligently by the IDA or OSC.

Recommendation

10. The Recognition Agreement should be amended to require that the IDA carry insurance for regulatory negligence, including coverage for the Crown for liability for the IDA's actions, sufficient to deal with the known worst-case outcomes in the areas under the IDA's jurisdiction.

Effectiveness

There appears to be a significant change in the level of incidents, inspections or industry compliance with regulatory requirements since the creation of the IDA. The weak record of the OSC as a regulator must also be considered in any assessment of the IDA's performance.

Law Enforcement

Changes in direction were evident in the performance of the authority with respect to law enforcement following its creation. The levels of penalties being obtained initially remained constant, although this trend has subsequently sought higher ground.

Cost Effectiveness

In general, the IDA is at a very late stage of its existence. Substantive changes in direction have occurred following the substantive changes among the staff at the operational and management level. Of particularly importance is that, as veteran public service personnel are replaced with new staff, the new staff is without government experience in relation to the subject matter of the legislation. As noted earlier, the lack of oversight by legislative officers, such as the Provincial Auditor, and the apparent lack of monitoring, technical and policy capacity within the OSC are of particular concern in this regard.

Recommendation

11. *The Provincial Auditor should undertake an audit of the Ontario Securities Commission oversight and monitoring of the operations of the IDA and other delegated administrative authorities.*

Efficiency

The principle strength of the SRO model is that IDA is not constrained by jurisdictional fiscal policy. In other words the IDA is able to generate revenues to support its operations, regardless of the government's fiscal situation. However, this again raises the question of democratic control over the use of state power, in this case the ability to require the payment of taxes and fees. Individuals or firms engaged in activities regulated by the IDA are compelled, through legislative requirements for approvals from the IDA, to pay the fees established by it associated with these approvals.

A secure source of revenue to protect the public interest regulation activities of the IDA could have been established through the placing of existing licensing and inspection fees into a dedicated fund. The Government of Ontario in a number of other instances has done this in the past few years. The creation of the IDA was not necessary to achieve this outcome. The revenues realized by the authority through licensing charges and fees have risen significantly. This has not, however, translated into increases in front-line service delivery staff. Rather, the only changes in staffing levels in relation to the IDA have been the addition of managerial and professional staff to provide administrative and legal services previously supplied through the Ministry. These outcomes must raise questions about the efficiency of the IDA SRO model, which requires the reproduction of administrative functions previously carried out by the Ministry.

Given the lack of technical and policy capacity within the OSC in the areas delegated to the IDA, the content of these regulations will inevitably rely on input from IDA. This would effectively delegate policy and standard setting to IDA. Such an outcome would be contrary to separation of

administration and policy-making - rowing and steering - that was supposed to lie at the heart of the IDA's institutional design.

Conclusions

The IDA has been one of the most significant private organizations to which important governmental functions have been transferred, given the scope of IDA's mandate and its importance as a "front-line" securities regulator. The SRO model is clearly under consideration by the provincial government in terms of other regulatory functions related to the protection of public good, including the environment. However, the advisability of further expansion of the delegated administrative authority model must be questioned. The goal of separating administrative and policy-making functions - rowing and steering - within the model has not been achieved in the case of the IDA. Furthermore, the structure has resulted in a significant loss of accountability relative to a conventional government agency. At the same time, there are no clearly evident gains in efficiency or effectiveness.

It is also important to consider that the performance of similar agencies in other jurisdictions where, from the outset, much more extensive accountability frameworks have been put in place than those provided in Ontario.

Recommendation

12. *The government of Ontario should undertake a detailed, independent evaluation of the performance of the existing delegated administrative organizations, including the IDA, before further use is made of the model.*

The delegated administrative authority model also raises a number of deeper questions that must be considered before it is expanded. The transfer of governmental functions and authority to a private entity that is not under the effective control of government is of particular concern, as it removes the exercise of governmental power from democratic control. Under the IDA model, this control is exercised by the IDA's staff, and through the IDA's board of directors, by the regulated industries, rather than by a Minister who is accountable to the Legislature and electorate.

Potential for greater discretion in the exercise of governmental power, as well as the lack of openness and transparency in its use, is significant. The establishment of limits, controls and accountability requirements on the use of power by the executive has been a central feature of democratic systems of government over the past three centuries. The potential for the reversal of this direction accounts, in large measure, for the response of the courts in drawing private entities to which governmental powers and functions have been delegated, back under the rules regarding the use of that power that apply to the state. The lack of attention paid to these questions by governments, on the other hand, particularly in Ontario, has been troubling.

Furthermore, the grant of powers to the IDA by the OSC for the purpose of carrying out its mandate indicates that the IDA and similar agencies are, in effect, agents of the Crown, regardless of its protestation that it is merely a contractual body. The private sector management model tends to regard the public as "customers" or "clients" to be serviced, rather citizens with interests and rights to be protected. The transfer of public functions to the private sphere also diminishes

the important avenues for the public to express policy preferences to government. This has significant implications for the future health of our democracy, which need to be considered carefully before further steps are taken down this road.

Additional Practices which require a Remedy.

Selective Disclosure

The OSC engages in the policy of selective disclosure contrary to their advocacy of full disclosure demanded by the corporations to which it monitors.

Within the heading "News Releases" on the OSC website, you will find cases decided in the Superior Court of Justice (Divisional Court) in which the OSC has been successful. But you will not find any cases in which the OSC has been unsuccessful. Recent examples include the decisions against Lawrence Wilder[15], Marchment & Mackay.[16] However, the decision in favour of Derivative Services Inc. on April 4, 2002 is not cited.[17] The public deserves full disclosure. The information released to the public by the authorities should not be made on a selective basis.

Recommendation

13. *The OSA should be amended to state that all public hearings and or decisions involving the OSC or any administrative authority recognized by the OSC should be disclosed to the public by the OSC within a defined time frame.*

Misrepresentation to the Public Sector

The OSC and the IDA have both misrepresented information to the Information Privacy Commission ("IPC") when a request was made for the IDA's "The Guidelines for Investigations of Supervisory Practices" ("Guidelines"), which is a requirement of the IDA Recognition Order. In representations made to the IPC, the IDA advised, "public disclosure of this record (the Guidelines) would allow for evasive conduct on the part of regulated parties under investigation".[18] Further that "the Guidelines advise as to when and how the IDA will conduct investigations of member firm supervisory functions. This includes investigative techniques and procedures of the IDA".

However, when the Guidelines are requested in the course of an IDA hearing, the IDA claims that "the document is not current, nor has it been applied to our knowledge by staff of the Division (IDA Enforcement) in any investigation…" [19] The IDA, the frontline regulator, and the OSC, with express oversight authority, have both avoided accountability to the public under s. 153 of the *OSA*.[20]

Failure to Abide by IDA Recognition Order (October 27, 1995) [5]

The Committee Report (s.9.8, pp. 69-70) states:

> " The efficacy of the oversight function depends to a significant degree on the commitment of the Commission to actively monitor and oversee the activities of SROs. **Nothing has come to the Committee's attention to indicate that the oversight function of the Commission is not working properly**". (Emphasis added)

I would like to bring the following to your attention.

The IDA's only authority to act in the public interest is derived from the its Order of Recognition ("Order") by the OSC. Failure to adhere to the principles and undertakings of this Order constitutes a breach of that Order. The Order clearly states the aforementioned "Guidelines" are to be followed and updated.

Further, the OSC has taken no immediate action to rectify this situation. **This is a breakdown in the oversight function that the OSC has been mandated to exercise over the IDA since October 27, 1995.** There appears to be no other alternative:

> Nor is there effective oversight from other quarters. Politicians know little about securities regulation and care less. The Ministry of Finance struggles valiantly, but has neither the personnel nor the expertise to function as an effective cop. And the courts have given the regulators near carte blanche to make decisions that are perceived to be within their area of expertise.[21]
>
> Jeff MacIntosh, Law Professor, Director of Capital Markets Institute, University of Toronto

Within the Committee Report (s. 9.2, p. 66) the following recommendation was made:

> "The Act should be amended to require that SROs, as defined by the *Act*, must be recognized to carry out this function in Ontario".

I fail to see the merit in recognizing an SRO or a clearing agency (s. 9.3 p.66), when the recognition orders are:

i) not enforced, and
ii) apparent connivance is displayed by the government agency responsible for the enforcement of the recognition order

Lack of Transparency

> One possible criticism of relying on transparency is that if SROs are responsible for commissioning external performance reviews of themselves, this would raise the same conflict issues associated with audits of public companies or solicited credit ratings. But under the current regulatory oversight regime, investors receive no information at all on how well self-regulatory functions are being performed. The securities commissions prefer to keep the results of their examinations confidential. Disclosure of an external performance review would unquestionably be superior to the status quo, which is keeping investors in the dark. [22]
>
> Neil Mohindra, Senior Economist, Financial Sector Regulation at the Fraser Institute

PUBLIC INTEREST

The content of the expression of "public interest" is nebulous:

> The expression "public interest" appears 33 times in the Ontario Securities Act, but is never defined. In most cases it appears in whimsical statements, such as, "If the Commission considers that it would be in the public interest" (s. 21)," as the Commission determines to be necessary or appropriate in the public interest" (s. 17), "if it is satisfied that to do so would be in the public interest" (s.21), "if in its opinion it is in the public interest" (s.127), and so forth. What is this "public interest" of which the OSC is the guardian? [23]
>
> Pierre Lemieux, Co-Director, Economics and Liberty Research Group,
> Université du Québec à Hull

As a result, some commentators have suggested that its meaning appears to "change with the winds" making it difficult for the regulated to comply with an apparently subjective standard:

> When staff asks the commission to exercise its public interest jurisdiction in relation to specific violations of securities laws, there is a reasonable degree of certainty and predictability in the proceedings. The same cannot be said of staff proceedings in cases where there are no specific violations of securities laws, on the basis that the staff has the view that conduct is contrary to the public interest. Subjects of investigations can end up in the invidious position of having engaged in a common practice or a previously accepted course of conduct, only to find that with the development of new or altered standards, staff now view such conduct as being contrary to the public interest.

> This is the heart of the problem: the unspecified or undefined aspect of the jurisdiction. Most cases will never get to a hearing, at least in part because the registrant cannot win. Even if the registrant can anticipate ultimate success at a hearing, the risk is too great, given the potential reputational damage caused by negative publicity associated with the proceedings. Thus staff, and not the commission, become the real arbiters of the public interest. [24]
>
> Jeffrey S. Leon, Senior Litigation Partner, Fasken Martineau DuMoulin

Recommendation

14. *The Minister of Finance should request that the Attorney General undertake to define the term "public interest" as pertains to the OSA judicially.*

Voluntary v. Non-Voluntary Membership in an SRO.

Contrary to the position advanced by both the IDA and the OSC, the IDA is not a voluntary organization. OSC Rule 31-507 1.1 states that membership is required as a condition of registration to practice under a government issued securities licence.[25]

> "The voluntary nature of an SRO is supported by the definition of the term in the Act (see s. 1(1)), which defines a self-regulatory organization as an organization that "represents registrants". Compulsory membership in a recognized SRO turns the concept of a voluntary SRO on its head." [26]
>
> Simon Romano, Securities Law, Partner, Stikeman, Elliot

Improper rule making procedure

The OSC has, in s. 21.1(4) of the *OSA*, very substantial powers with respect to the rules and related instruments of a recognized SRO. The Commission can "make any decision with respect to" any such rule or instrument. This power combined with the power to compel membership in a recognized SRO, has in effect allowed the OSC to increase regulatory requirements without being subject to the protections imposed by the rule-making process, including the involvement of the Minister of Finance or the Lieutenant Governor in Council. In essence this permits the OSC to create new regulatory requirements by merely approving or providing non-disapproval of new IDA by-laws. These by-laws may be well outside of the *OSA*.

Recommendation

15. *The OSA should be amended to have any new by-laws, rules, or policies created by the delegated administrative authorities require the approval by either the Minister of Finance or the Lieutenant Governor in Council.*

Defendant Costs

In *Kamani v. The College of Dental Surgeons of British Columbia* [27] Mr. Justice Low of the B.C. Supreme Court held that if any self-regulatory body…did not have some risk of paying the costs of a successful respondent, there would be a greater potential for harm to individual members of the profession. Understandably, a professional faced with a potential $25,000 fine would be reluctant to mount any kind of defence knowing that the bills for the cost alone at the end of a hearing might be five or ten times that amount, regardless of whether or not the charges were successfully defended.

The general common rule is that costs follow the event.

Recommendation

16. *The OSA to be amended to include the payment of defendant costs and punitive damages should the respondent be successful in its/her/his defence* against either the *IDA or any other delegated administrative authorities.*

In Conclusion

I agree with the comments of the Consumer Council of Canada regarding the regulation of financial services in Canada:

> The regulation of financial services in Canada, according to Dr Yudelman, "remains a consumer's nightmare, a tangled, confused structure divided by type of government, type of financial service, government regulation versus self-regulation, and by prudential and market regulation." [28]
>
> Consumer Council of Canada, The Scorpion and the Frog

I would like to close this response to the 5 Year Review by simply stating that if the volume of public response is substantial, then perhaps another recommendation is required:

Recommendation

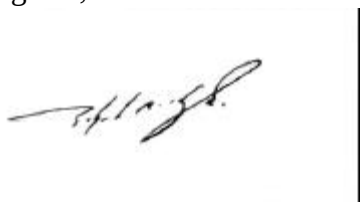
17. *The 5-year review should be changed to either an annual or bi-annual report.*

For further information as to what public opinion is with respect to securities regulation in Ontario and inextricably across this country, please feel free to visit the website: http://regulators.itgo.com

If it would be helpful to the Committee, I would be pleased to provide copies of any of the documents referred to in this letter, or on the web site, as well as any additional details with respect to the issues mentioned above.

I look forward to seeing the final report.

Regards,



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Recommendations

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References (by url)

R. Kyle web site address

1. Joint Committee on Corporate Governance
2. MOF Director
3. Executive Director OSC
4. Regulation Agreement
5. David Mullan
6. IDA Recognition Order
7. OSC Oversight
8. Richard Mulgan
9. Eldridge v. British Columbia (Attorney General)
10. BC Court of Appeal
11. Chris Morgis
12. Derivative Services Inc.
13. Resolution Capital Inc.
14. Letter from CVMQ
15. Lawrence Wilder
16. Marchment and Mackay Decision
17. Derivative Services Inc. Decision
18. OSC Representations to IPC
19. IDA letter of non-compliance
20. Order PO-1930
21. Jeff MacIntosh
22. Neil Mohindra
23. Pierre Lemieux
24. Jeffrey Leon
25. OSC Rule 31-507
26. Simon Romano
27. Kamani v. The College of Dental Surgeons
28. Consumer Council of Canada