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December 8, 2014

The Cooperative Capital Markets Regulatory System
And Participating Jurisdictions:

Government of Canada, BC, Saskatchewan, Ontario, New Brunswick, Prince Edward Island

Submitted by e-mail to: commentonlegislation@ccmr-ocrmc.ca

Dear Sirs/Mesdames:

Subject: Cooperative Capital Markets Regulatory System and Draft legislation

Independent Financial Brokers of Canada (IFB) is providing comments on behalf of our approximately 4,000 financial advisor members on the proposed Cooperative Capital Markets Regulatory System and accompanying draft legislation: Provincial Capital Markets Act (PCMA) and Capital Markets Stability Act (CMSA).

Background

IFB is a national trade association whose members are actively engaged in the provision of financial advice and products to Canadians in communities across Canada every day. Our members are licensed professionals, most often as securities registrants holding mutual fund licenses and/or as life insurance brokers. Many hold complementary financial licenses, enabling them to provide services and advice related to the exempt market, mortgages, deposits, etc. Our members operate as independent business people - they are not employees of a securities firm, bank or insurance company.

IFB is committed to supporting and enhancing the protection of investors and the professionalism of our members in the marketplace. We offer ongoing continuing education events in various locations across Canada, an affordable and comprehensive professional liability insurance program, compliance tools and support, and regular updates on financial regulations and other matters of importance to the conduct of our members with investors and clients. In addition, we advocate with government and regulators on behalf of our members in

support of a fair and inclusive marketplace, that fosters competition from a variety of business models. We believe this is essential so that Canadians of all financial means can access financial advice. An important step in this process is a regulatory system which does not unfairly burden smaller participants, in favour of large, complex financial institutions that enjoy greater economies of scale.

Comments

Many of our members are currently licensed and regulated under two separate provincial/territorial authorities – securities regulators and insurance regulators. This is further complicated in that they are often licensed in multiple jurisdictions.

While IFB is following the developments related to the cooperative capital markets regulatory system, our interest lies more generally in supporting a regulatory regime which fosters reduced interprovincial barriers, costs and regulatory burden on participants. In this regard, we have some concerns with the draft legislation as it has been presented for comment.

Accompanying Regulations not published-

We note that the stated intent of the PCMA is to update and modernize current provincial securities legislation, implementing a platform approach to regulation by setting out fundamental provisions of the law, but leaving the details to be addressed in the accompanying regulations. These regulations are not scheduled to be released until later in December, after this comment period closes.

As many of the regulatory details referred to are not yet available, this reduces our ability to provide meaningful comment. Indeed, we view it as premature to ask stakeholders to comment separately on these pieces of legislation, which aim to substantively redefine how the capital markets are regulated, without benefit of the details contained in the accompanying regulations. As an example, while it is clear market participants must be registered under the PCMA, there is no information on the specifics, such as registration categories or conditions of registration, nor are we able to assess if there are changes to these specifics which may impact our members. Clearly, there is merit in reviewing the legislation and accompanying regulations in tandem.

As a further comment, we hope that if the regulations are released as scheduled, on December 19, 2014, that stakeholders will be given sufficient time to thoroughly review them. Many stakeholders were unable to meet the original 60 day deadline for comments on this draft legislation, and were still challenged to do so with the extension to 90 days. The release of the regulations in December is further exacerbated by the fact that many businesses will be closed or operating at reduced capacity during the holiday period, and that other CSA materials are scheduled to be released in the same timeframe.

Lack of information on regulatory interface between participating and non-participating jurisdictions -

At this time, stakeholders have not been provided with guidance on how participating jurisdictions (i.e. those covered by the CMRA) will interface with non-participating jurisdictions. This is critical for market participants, like our members, who will be registered and conduct business under both regimes. Understanding how this interface will be managed is critical in order for the cooperative capital markets regulatory system to achieve its overarching objective of streamlining regulation to reduce regulatory burden and costs. When these details become available, IFB will provide more substantive comment.

The CMSA will be responsible for data reporting and designated trade repositories to identify and mitigate systemic risk to Canada's capital markets. Again, it is unclear to us how non-participating jurisdictions will interface with the federal regulation and how supremacy will be established between participating/non-participating provinces and the CMSA.

Insurance products – systemic risk

We note that under the CMSA, Section 27 excludes insurance companies from being designated as posing a systemic risk to Canadian capital markets. We concur with this exclusion as insurance companies and their products are subject to a separate, robust regulatory regime, and OSFI already has responsibilities in this area.

Insurance products – PCMA definition of “security”

Further to the above point, however, we note that restrictive wording of a similar nature has not been carried into the definition of a “security” under the PCMA.

Currently, securities legislation in the participating provincial securities acts exempt contracts of insurance and deposits from the definition of a “security”. By way of example, in Ontario the *Securities Act* says:

- (e) a bond, debenture, note or other evidence of indebtedness or a share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than,
 - (i) a contract of insurance issued by an insurance company licensed under the *Insurance Act*, and
 - (ii) evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies, by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or by an association to which the *Cooperative Credit Associations Act* (Canada) applies,

The exclusion is reiterated in section (m) of the “security” definition:

- (m) any income or annuity contract not issued by an insurance company.

The exclusion of contracts of insurance under securities legislation recognizes that securities and insurance operate within different legal frameworks, and that a different contractual relationship exists between an insurer and its policyholders.

The draft PCMA definition of “security”, however, has been modified such that Individual Variable Insurance Contracts (IVICs or segregated funds) could be captured through regulation, per the wording denoted below in bold:

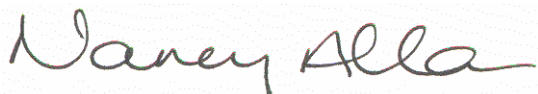
(f) any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of the proportionate interest in a specified portfolio of assets, other than, **unless otherwise provided by the regulations**, a contract issued by an insurance company governed by the laws of Canada or of a province which provides payment at maturity of an amount not less than three quarters of the premiums paid by the purchaser for a benefit payable at maturity

This provision represents a significant departure from current legislation and does not recognize the existing prudential oversight of the insurance industry. Furthermore, adding an additional regulator is contrary to one of the key objectives of the CCMRS, which is to streamline and reduce the regulatory burden for market participants. We recommend then, that the wording in bold be removed.

In conclusion, IFB appreciates the opportunity to provide our comments and looks forward to continuing to do so as additional information and drafts become available. In our view, this proposed regulatory framework must demonstrate that it will be more effective and efficient in reaching its objectives than the system currently in place.

Should you have any questions or wish to discuss our comments, please contact me or Susan Allemang, Director, Policy & Regulatory Affairs (email: sallemang@ifbc.ca).

Yours truly,



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