



CANADIAN SECURITIES TRANSITION OFFICE
LE BUREAU DE TRANSITION CANADIEN
EN VALEURS MOBILIÈRES

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**Report on Investor
Panel Roundtable**

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I INTRODUCTION

The Canadian Securities Transition Office (CSTO) has a mandate to assist in establishing a Canadian securities regulation regime and a Canadian regulatory authority. Consultations with stakeholders are a key component in carrying out this mandate.

The work of the CSTO follows on the recommendations of the Expert Panel on Securities Regulation (the Expert Panel). One of the recommendations in the Expert Panel's final report is that a national securities regulator establish an independent investor panel to provide a stronger investor voice in the development of regulatory policy. The CSTO supports this recommendation and intends to develop a more specific proposal as part of its implementation planning. For that proposal, we need to make decisions on how to structure the panel's mandate, composition and funding. We began our review of those issues by consulting a group of investor stakeholders in a roundtable discussion held in Toronto on January 22, 2010.

This report summarizes the views that were provided to the CSTO during the roundtable. The views that are summarized in this report are organized thematically without attribution. A list of those who participated is provided in Appendix A.

II BACKGROUND

The CSTO was established by the Government of Canada in July 2009 under the *Canadian Securities Regulation Regime Transition Office Act*.

During its first year of operation, the CSTO will focus on the following two key deliverables:

- Recommendation of a draft Canadian Securities Act (the Act) to the Minister of Finance.
- Development of a transition plan with respect to administrative and organizational matters, which will be the roadmap for establishing a Canadian securities regulator, for delivery to the Minister of Finance.

In carrying out its mandate, the CSTO has consulted with stakeholders on key issues related to the Act. These consultations are a key component to fulfilling the CSTO's mandate.

The Expert Panel consulted with a wide range of stakeholders across the country on issues relating to the establishment of a national securities regime. The results of the Expert Panel's consultations have informed the CSTO in developing the Act and the transition plan.

III ISSUES FOR DISCUSSION

Participants were provided with background materials prior to the roundtable and asked to bring their views on the following issues:

1. *Mandate of the Panel*

What should be the mandate of the panel? Options include:

- to respond to and comment upon specific initiatives of the regulator;
- to formulate its own initiatives;
- to evaluate the performance of the regulator; or
- some combination of the above.

2. *Composition and Appointment of Panel Members*

- What perspectives should be represented on the panel?
- How many members are needed?
- How should members of the panel be appointed or selected?

3. *Funding*

How should the panel be funded?

IV SUMMARY OF DISCUSSION

A. Common Themes

During the roundtable discussion, participants shared a wide range of views on the issues. However, some common themes emerged that appear to have informed participants' more specific views.

1. *Diversity of Investors*

While participants generally expressed support for the establishment of an investor panel, many of them said the CSTO must be mindful that investors are a diverse group with varied interests.

2. *Clarity*

Many participants emphasized the importance of ensuring clarity in defining the panel's mandate because it will inform many of the decisions that must be made relating to

specific organizational details. Most participants agreed that the panel should function within a broad but clear mandate.

3. *Transparency*

A number of participants said that it was essential to ensure that both the process of establishing an investor panel and its operation should be transparent. This was stressed by a number of participants as being essential to the panel's success in effectively addressing investor issues. Participants expressed frustration when discussing their experience with regulators in the past, citing a perceived lack of transparency and public accountability in prior initiatives for consulting investors.

One participant was concerned about the procedure we are following to establish the panel, noting that, in the normal course, the process of policy development generally begins with a white paper or similar type of document setting out the relevant issues.

4. *Other Models*

The background materials provided to participants included links to the websites of investor panels that have been established in other jurisdictions. Most participants expressed general support for a model similar to that of the Financial Services Consumer Panel (the FSCP) established by the Financial Services Authority in the United Kingdom. Several participants commented in particular that the CSTO should look to the FSCP for guidance when developing the selection process and funding model for any panel established by a national regulator. However, it was also noted that since the FSCP operates within a different regulatory framework, a wholesale adoption of that approach would not be feasible.

B. Discussion of Issues

1. Mandate of the Panel

a) General Comments

Many participants stressed the need to ensure that the mandate include a requirement to listen to and take into consideration the voice of investors. One participant suggested that the mandate of the panel should be based on accountability to investors. Some participants suggested it would be appropriate for the mandate to focus generally on the protection of investors.

Several participants said that transparency should be a key element of the mandate. One participant cited a perceived lack of commitment by the Ontario Securities Commission and a lack of clarity with respect to mandate as factors which had deterred people from becoming involved with the former Investor Advisory Committee of the Ontario Securities Commission. (Since the roundtable, the Ontario Securities Commission has announced plans to establish a new investor advisory panel.)

b) Role of the Panel

Participants expressed the view that the mandate of the panel should be as broad and general as possible. Most commented that it should involve some combination of responding and commenting, formulating initiatives and evaluation. One participant indicated that the more widely its mandate is interpreted, the more opportunity there will be for the panel to be useful to investors. While most participants felt that the mandate should include some combination of these activities, others were of the view that a somewhat narrower approach should be taken and that an appropriate mandate would be one that is reactive in nature.

One participant suggested that the mandate of the panel should be focused on monitoring and evaluating regulatory activities, particularly with respect to how the regulator handles complaints. Another commented that a limited mandate focused on evaluating and reacting to the initiatives of the regulator might be more effective than a more proactive mandate. Another participant commented that for practical reasons, an appropriate role for the panel would be to respond to initiatives of the regulator because it would be very difficult for investors to come up with new initiatives due to a lack of resources and expertise. One participant expressed support for a panel that has an oversight role focused on evaluation. This participant stressed that the panel would need a fully resourced method for carrying out this type of work.

Many participants suggested that, in addition to responding to initiatives of the regulator, the mandate of the panel should be formulated in sufficiently broad terms to enable the panel to make its own proposals. In particular, there was concern expressed that the panel should not be limited to examining only the issues defined by the regulator. One participant listed investor protection, investor representation and investor input as being important elements of the mandate, commenting that the whole purpose of the panel should be to identify investor problems and ways in which they can be addressed. As a result, a more proactive role should be taken by the panel in addition to responding to the regulator's initiatives.

Some participants felt that the panel should take on a more proactive role in relation to the policies of the regulator. It was suggested that the panel have the ability to participate in the policy development process as early on as possible. It was stressed by one participant that the panel must be involved in setting the strategic direction of the regulator, while another suggested that the panel should participate in setting the regulator's priorities.

c) Evaluation of the Panel

A couple of participants reflected on how the panel might evaluate itself. One participant suggested that an ongoing self-evaluation process be built into the mandate. Another recommended that the panel specify particular initiatives at the beginning of each year

on which it would report at a later date. This would allow the panel to evaluate and monitor its own performance.

d) *Making Recommendations*

Several participants felt that the panel should make recommendations to the regulator. One participant suggested that this should take place through published reports. Another stressed the importance of the regulator having a duty to consult, which would include a requirement to take into account the reports of the panel and respond to them. It was noted that the approach taken in the United Kingdom permits the FSCP to publish its representations, and requires that the regulator respond to them. A discussion took place with respect to the nature of the reports provided by the FSCP. It was noted that the FSCP has at times been quite critical of the Financial Services Authority. Another participant commented that the dialogue between the Financial Services Authority and the FSCP flows both ways, such that in addition to responding to the specific reports of the FSCP, the Financial Services Authority initiates contact with the FSCP by reaching out for input on how to address particular issues.

e) *Panel Resources*

One participant felt it would be helpful for the panel to have access to the National Registration Database currently maintained by the Canadian Securities Administrators and the Complaints and Settlement Reporting System maintained by the Investment Industry Regulatory Organization of Canada. Another suggested that part of the panel's mandate should involve an advocacy role which would include speaking publicly on behalf of investors. In terms of its public visibility and reporting, it was suggested that the panel have its own website and publish an annual report.

f) *Panel's Relationship with the Regulator*

In discussing how to approach the mandate of the panel, many participants commented on the relationship between the regulator and the panel. A number of participants stressed that the panel should be "independent" from the regulator. However, through further discussion, it became clear that the meaning of independence varied among participants. A couple of participants used the phrase "autonomous within" to describe a relationship within which the panel is independent from the regulator, but still funded by the regulator. They noted that this was the nature of the relationship between the Financial Services Authority and the FSCP in the United Kingdom. It was also noted that one of the benefits of adopting this kind of model would be the ability of the panel to draw upon resources of the regulator. This could be particularly useful in researching recommendations that the panel might not otherwise have the resources to explore. One participant observed that if the panel was cast too far away from the regulator the potential could arise for an adversarial relationship to develop, rather than the panel and the regulator being "on the same side".

It was suggested that the relationship between the regulator and the panel be similar to that of a partnership. This would involve full participation of the panel within the governance structure of the regulator and direct and transparent access to the regulator. It would not prohibit the panel from examining any issues outside of the regulator's mandate. One participant commented that effective regulation requires a partnership of investors, industry and the regulator. To that end, it was suggested that the panel be situated within the structure of the regulator, and be staffed and resourced by the regulator. The model adopted by the U.S. Securities & Exchange Commission in the establishment of its Investor Advisory Committee was cited as an example of this kind of relationship.

However, not all participants agreed with the foregoing. Some participants suggested that in order to maintain its independence, the panel should not be embedded within the structure of the regulator. One participant challenged the notion that the panel and the regulator could truly engage in a partnering relationship. In particular, it was suggested that unless the panel is completely independent of the regulator, there was the potential for the regulator to disregard the recommendations of the panel.

One participant felt that additional independence should be built into the reporting structure and recommended that the panel report to an independent oversight body, rather than just the regulator.

It was also suggested that the CSTO think beyond the relationship between the regulator and the panel. One participant indicated that the relationship between the panel and self-regulatory organizations should also be considered because there is a significant amount of policy development that takes place at the level of self-regulatory organizations which has an impact on investors.

g) Other Comments

Some participants emphasized that there were other issues that would need to be addressed in establishing a panel that was truly responsive to the needs of investors. For instance, one participant commented that, in addition to formulating the mandate of the panel itself, we must also consider the mandate and culture of the regulator. Specifically, it was noted that if success is achieved by the regulator in fulfilling a mandate centred around investor protection, there will be success generally in ensuring fairness and efficiency in capital markets. As a result, the CSTO was reminded that clarity in the mandate of the regulator should not be ignored.

Other participants referred to the nature of regulators generally, noting that in order to provide a real voice to investors, larger scale changes in the regulatory structure were necessary. It was suggested that establishing an effective investor panel involves a shift in power that requires the regulator to be willing to give up some of the responsibility it has historically held.

2. Composition and Appointment of Panel Members

a) Perspectives

Participants emphasized that different investors have different views and priorities. A number of participants shared their thoughts on how to achieve an appropriate balance in determining what perspectives should be represented on the panel.

i. Investor Representation

It was noted that given the difficulty in capturing the views of all investors, caution should be exercised to ensure that panel members are empathetic and able to relate to all investors, rather than just those who are affluent and educated. One participant expressed concern with the potential for the panel to be comprised of a narrow group of professional investors and people who are knowledgeable about the industry, but who do not truly represent the interests of the “great mass” of investors. It was noted that if the true reason for the panel was to provide for a counterbalance to views the regulator hears from industry, the latter viewpoint must also be represented. Concern was also expressed with respect to ensuring that information derived from average retail investors could be provided in an unbiased manner and not filtered through someone who is knowledgeable but may not be able to accurately convey the views of such an investor. It was suggested that the panel could take on an advocacy role in this regard.

ii. Retail vs. Institutional

Participants expressed mixed views as to how the interests of retail and institutional investors should be represented on the panel. A number of participants were of the view that the panel should represent the interests of retail investors only, due to the imbalance in resources and organizational representation between the two groups. One participant noted that this imbalance contributed to a huge gap with respect to the representation of the individual retail investor because many institutional investors have a voice through well-funded organizations.

Another participant suggested that the panel be separated into two parts, each of which would be subject to a particular mandate. One mandate would be focused on complex market efficiency issues reviewed by institutional investors. A separate mandate would be focused on issues relating to brokers and retail products and would be more appropriately addressed by retail investors.

Several participants suggested that due to the differing needs and priorities of retail and institutional investors, it could be useful to put into place two separate panels, one to represent retail investors, and the other to represent institutional investors. However, it was noted that there would be a need for additional resources if two separate panels were created. Alternatively, it was suggested that a single panel be established, but that

built into its structure would be the ability for separate groups to be formed when views diverge.

Other participants felt that both retail and institutional perspectives should be represented on the panel. One participant suggested that if the panel is investment focused, it makes sense to involve both institutional and retail investors. Further, it was noted that allowing for a broader base of perspectives on the panel could enhance visibility and credibility. One participant pointed out that institutional investors do not all have the same level of access to regulators. As a result, it was important to establish a forum that represents the interests of institutional investors.

iii. Organizational Representation

We also heard differing views with respect to the representation of organizations on the panel. One participant was of the view that the selection process for members of the panel should not require that various organizations be represented. However, two participants disagreed with this comment. One recommended that consumer organizations be represented, while the other commented that the panel membership should reflect a balance between organizations and investors, noting that organizations have the advantage of representing the views of a large number of people.

iv. Background, Experience and Characteristics

Views were also expressed regarding the characteristics that participants would like to see among members of the panel. One participant commented that it would be necessary to find effective people who are not “jaded”. It was also suggested that the members of the panel should be professional people who will respect confidentiality.

Participants also shared their views on the different kinds of background and experience that they would like to see represented on the panel. In general, participants were concerned with ensuring that people on the panel were knowledgeable about the issues that the panel would be addressing. One participant advised that it would not be desirable to have regulators, ex-regulators or heads of self-regulatory organizations, banks or dealers on the panel. Rather, it was suggested that the panel be comprised of independent people who are intelligent and knowledgeable about relevant issues. This could include people with backgrounds in business, education and the media.

One participant observed that it would be important for a panel member to have an independent perspective. It was also suggested that the panel should be comprised of people whose primary passion is to be a consumer advocate, who dedicate their working lives to these issues and who have experience working in the industry. One participant recommended that if the purpose of the panel is the identification of investor issues, it should be comprised of people who deal with investor issues on a daily basis, such as

personal finance journalists, securities lawyers who act for plaintiffs and investor advocates.

b) Number of Panel Members

While some participants did not feel they were able to specify an appropriate size of the panel without further information regarding available resources, those who did respond were generally concerned that the size of the panel be small enough to remain manageable. For instance, one participant felt that the panel should be limited to no more than 12 members because this would allow it to function in a manner similar to that of a board of directors. Another participant expressed similar concerns and recommended that the panel be comprised of between 8 and 12 members at most. One participant commented that more than 15 members would be too many. Two participants recommended a group of between 10 and 12 people, with one adding that the FSCP currently has 13 members. One participant recommended a different approach and suggested that 10 to 12 members per province would be appropriate.

c) Appointment Process

Several participants suggested that a nominating committee be responsible for the selection of panel members. They commented that it would be helpful for such a committee to receive input from across the country, but cautioned that the process should be based on knowledge rather than regional representation. Another participant suggested that a nominating committee could be comprised of someone from the regulator in a position analogous to the Chair or Vice-Chair role in the current regulatory structure, as well as individuals who reflect the make-up of the panel itself. For instance, it was suggested that if the views of both retail and institutional investors were represented on the panel, there could also be representation from each such group on the nominating committee. Another participant agreed that any nominating committee should be representative of members. This participant cautioned against having members of the financial services industry on the committee because this could result in the “cherry picking” of people whose views may not be in line with those of investors. Another participant cautioned that while a centralized selection process could work, criteria would need to be put in place and care would need to be taken to ensure that the process does not become politicized. In particular, it was suggested that an approach not be taken which could result in political appointments to the panel.

Several participants recommended drawing on the experience of the FSCP in determining how best to construct an appropriate appointment process. One participant suggested that it would be helpful to consult directly with someone from the FSCP.

3. Funding

Roundtable participants were asked for their views on how the panel should be funded.

Overall, participants expressed greater concern over ensuring the adequacy of funding, rather than its source. For instance, one participant commented that the panel should be funded in a way that would allow it to serve as a counterpart to the regulator, which itself would be a well-funded entity.

Concern was expressed by several participants that the funding structure not compromise the independence of the panel. However, we heard differing views as to whether the panel could maintain a sufficient degree of independence from the regulator without a separate funding mechanism. One participant was of the view that the panel should receive government funding that is adequate and independent, regardless of where it comes from. Another commented that in order to have an efficient panel, it must be properly funded, whether through fines, government, or otherwise, and must be independent from the regulator. One participant expressed the view that if the panel was truly a part of the regulator's mandate, it should clearly be funded in the same manner as all other activities of the regulator and, even if the panel was intended to be autonomous, funding could appropriately be derived through the regulator. Another participant commented that based on a review of the budget of the FSCP, there did not appear to be any reason for concern with the independence of that panel which is funded by the FSA.

Other participants had more specific views on potential sources of funding. They discussed whether fines or fees would be an appropriate source of funding. One participant suggested that the panel should be funded by industry or by fees paid to the regulator. Another commented that if there were restricted funds available (possibly due to fines), these could be used to fund the panel. Another participant was of the view that while funding could come from anywhere, it would preferably be provided by an organization that levies fines.

One participant suggested that a budget should be put in place for the panel to ensure accountability and demonstrate the seriousness accorded to it. Another participant suggested that a certain amount of irrevocable funding be reserved for a specified period of time (for instance, five years). Following the termination of this initial period, the panel would be permitted to determine whether to continue its mandate with sufficient funding. This participant emphasized that keeping the right to renew with the panel rather than the regulator was an essential part of this model.

Several participants recommended that remuneration should be provided to panel members. One participant commented that it would be necessary to provide remuneration in order to recruit the kind of people that should be on the panel. It was also suggested that there could be separate and higher remuneration for the Chair.

C. Closing Comments

Some participants expressed concern and frustration over the proposed timeline for establishing the panel. Upon learning that the panel would not be put in place until the new regulator is established, one participant commented that this reflected a lack of commitment and questioned why the panel was not being set up sooner. It was suggested that elements of the panel be put in place as soon as possible, particularly with respect to examining the process and considering strategies for implementation of the panel.

V. NEXT STEPS

This report summarizes the input that was received from the CSTO's initial consultation with investor stakeholders regarding the establishment of an investor panel. We will continue to engage in consultation on this important issue. The views that have been received will shape and support the recommendations that we ultimately provide to the Minister of Finance.

Appendix A: Roundtable Participants

1. Stan Buell, Small Investor Protection Association & Common Front for Retirement Security
2. John De Goey, Burgeonvest Bick
3. John Di Novo
4. Julia Dublin, Aylesworth LLP
5. Mel Fruitman, Consumers Association of Canada
6. Robert Goldin, Macgold Direct Inc.
7. Stephen Griggs, Canadian Coalition for Good Governance
8. Alison Knight, Consumers Council of Canada
9. Warren MacKenzie, Weigh House Investor Services
10. Pamela Reeve
11. Ilana Singer, FAIR Canada
12. Glorianne Stromberg
13. Andrew Teasdale, Tamris Consultancy
14. David Yudelman

Moderator: Ermanno Pascutto, FAIR Canada

CSTO Representatives: Douglas Hyndman, Chair & Chief Executive Officer
Lawrence Ritchie, Executive Vice President & Senior Policy Advisor