Intelligence MEMOS

From: Harvey Naglie

To: Canadian Stock Market Regulators

Date: September 20, 2017

Re: **The New Capital Markets Securities Regulator Is Not Investor Friendly**

The federal government together with five provinces (Ontario, British Columbia, Saskatchewan, New Brunswick and Prince Edward Island) and one territory (Yukon) are planning to introduce a new capital markets regulator before the end of next year. If introduced, the it would replace the existing securities commission in each of them. The impending introduction of this proposed Capital Markets Regulatory Authority (CMRA) raises many questions and concerns but none more worrisome than those of Canadian retail investors that face the prospect of a new regulator that will be less able and less inclined to protect them.

Drafting new laws and regulations for the CMRA afforded the participating jurisdictions a unique opportunity to introduce and reinforce investor protection provisions that have regularly been identified as absent or inadequate in existing rules. But based on the draft legislation and regulations available, this appears to be an opportunity lost. The participating jurisdictions retained the low bar of suitability for the provision of investment advice to Canadian retail investors; they failed to include explicit retail investor representation in the new regulator's policy making and governance framework; and they did not address longstanding shortcomings around complaint handling and restitution. Put simply, the new regulator once operative would not have any new or better tools available to it to protect investors. In fact, for investors in Ontario, the launch of the new regulator would be a step backwards. In recent years, the OSC established an Office of the Investor and an Investor Advisory Panel to promote investor input and empowerment; as of now, neither of these constructs have been carried forward to the CMRA.

The participating jurisdictions have downplayed the omission of investor protection provisions by suggesting that the new regulator may adopt them subsequent to its launch. It is not obvious that the decision-making/governance structure of the CMRA is configured to prioritize investor protection. Currently, provincial securities commissions are directly accountable to an elected government minister for all acts of commission and omission. The new regulator will instead be directly accountable to an appointed board of directors. The members of the initial CMRA board of directors were appointed by the participating governments in July 2016. While there is no doubt that they constitute an illustrious and accomplished group, the appointees have very limited regulatory experience and not one of them is specifically identifiable as an investor representative. These considerations provide little comfort that the CMRA will aggressively support investor protection initiatives post-launch.

Another major investor protection concern associated with the CMRA is its proposed timing. Two extremely significant investor-friendly regulatory initiatives, the best interest standard and embedded fees consultations, are now being pursued by Canadian regulators. The problem, however, is that based on current timelines it is unlikely that either initiative will be in place prior to next June 30, when all CMRA establishment legislation and initial regulations are intended to be finalized. Missing this cut-off date will at best result in a delay and at worst derail both these initiatives.

Harvey Naglie has spent his entire 35-year career in financial services, working in both the public and private sector. Most recently, he served as a senior policy advisor with the Ontario Ministry of Finance.

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