

FAIR

Canadian Foundation *for*
Advancement *of* Investor Rights

Is the TSX leading Canada in a "Race to the Bottom"?

Time to Address TSX Conflicts of Interest and Change Priorities

Canada falls below international best practice in maintaining shareholder rights particularly in the matters that are under the jurisdiction of the TSX.

The OSC leaves broad areas of shareholder rights to the TSX. But the TSX is both a regulator and a "for profit" company. The TSX (now part of the TMX Group Inc.) (symbol [X-TSX](#)) was allowed to continue to regulate listed companies even after it demutualized and became a listed company. There is an inherent conflict between (a) the "for profit" listed company status of the TSX where its responsibility is to maximize profits for its shareholders and (b) the TSX acting as a regulator of listed companies where the public interest should be paramount.

It is our position that the TSX/TSX-V listed company regulatory function should either operate as a separate entity within the TSX with its own board of directors or at the very least the regulatory function should operate independently of the business side of the TSX with appropriate Chinese Wall and other checks and balances. The world's leading stock exchanges like NYSE, HKEx and ASX separated the regulatory function from the business side when they went public. In the UK, the Financial Services Authority (FSA) simply took listed company regulation away from the London Stock Exchange and the listed company regulation is now a division of the FSA.

In this communiqué we highlight two rule changes that serve to demonstrate how the conflict of interest may impact Canadian investors. In the first case, the introduction of a highly dubious financial product by the TSX (which will generate revenue for the TSX) is accomplished quickly despite inadequate analysis and opposition from investor advocates. In the second case, the TSX has been slow to protect shareholder rights even though its standards are clearly below those of other major markets and despite a consensus among investors for improving shareholder rights.

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OSC Responds to Stakeholder Submissions

On April 7, 2009 the OSC appeared before the Standing Committee on Government Agencies where Chair David Wilson made a [presentation](#) responding to stakeholder submissions to the Standing Committee in its review of the OSC. The OSC also filed a written [Submission in Response to the Stakeholder Presentations made to the Standing Committee on February 23 2009](#).

Firstly, we are pleased that the OSC responded thoughtfully to the recommendations in the stakeholder submissions.

Secondly, we are pleased that the OSC (at least in principle) supported FAIR recommendations on retail investor issues.

The OSC stated that it is "actively engaged in a rigorous exercise to identify the most effective ways to obtain investor input and to address investor interests". We believe that the OSC is sincere in wanting more investor input and recognize the difficulty of getting investor input on securities regulation. (In fact, addressing the lack of a strong investor voice in securities regulation was the rationale behind the establishment of FAIR Canada.)

The OSC announced that it is establishing an Investor Secretariat as a coordinating body within the Commission to better identify and address issues of concern to investors. This is an important step forward and we look forward to hearing about other OSC initiatives to improve investor input in securities regulation. FAIR has informed the OSC that we are available to provide whatever assistance or input the OSC may require.

Our proposal for retail investor representation on the Commission (i.e. OSC board of directors) in the FAIR submission may not have been sufficiently clear as the OSC appears to have misunderstood our proposal. The OSC considered the proposal inconsistent with the Securities Act and the OSC governance charter.

In its advertisement to fill three vacancies, the OSC expressly allocated one position to a listed company representative. (The other two positions were allocated for an investment banker and a lawyer.) All FAIR is seeking is the appointment of someone with a retail investor perspective - this is no different from what the OSC expressly proposed for listed companies. The person would, of course, need to meet the same rigorous qualifications in terms of expertise, experience and reputation for integrity as other Commissioners. The person would also have the same duties under the statute and governance charter as any other Commissioner. FAIR will continue to press the OSC for the appointment of one Commissioner who would bring a more balanced retail investor perspective to the OSC board. Clearly, having the retail investor perspective can help the board better "address investor interests" and contribute in a positive way to OSC policy decisions.

Click here to view FAIR Canada's [Submission](#) to the Standing Committee on Government Agencies Review of the OSC.

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