

**National Centre for Business Law at UBC
Remarks by Kevan Cowan
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Thank you. I am particularly delighted to participate in your first annual meeting because of the relationship between our organizations. As a National Gold Affiliate Member of the National Centre for Business Law, TSX Group is providing tangible support to the Centre's capital markets research and policy initiatives. We believe your work will stimulate important discussions in the business and legal communities.

The creation of the National Centre for Business Law is timely, as there is a real need for dialogue in a world whose growth in complexity is exponential. It may be trite to say that we live in interesting times – but all one need do is look at the paradigm shift in business to see that this is true. Free trade agreements in North America and beyond, combined with technological advances, have transformed markets, expanded trade and created new opportunities around the world.

Unfortunately, the regulation of trading in securities has not kept pace with this changing world. As a result, securities markets are burdened with a significant legacy of impediments to trans-border trading.

At TSX Group, we have been speaking out about the merits of free trade in securities for some time. And we are greatly encouraged by growing indications that politicians and regulators are recognizing the importance of addressing this issue.

For example, many of you have probably seen the paper on capital markets accompanying Finance Minister Jim Flaherty's budget. That paper – and the budget itself – commit the government to pursuing free trade in securities based on mutual recognition of different regulatory systems.

The concept of mutual recognition has long been advocated by the Europeans, based on their experience with trying to create a single market for securities trading in the EU. Members of the EU recognized that regulatory harmonization between countries would be extremely difficult to accomplish, and that mutual recognition would be a much easier path.

In recent months, U.S. diplomats and key stakeholders, like the American Chamber of Commerce in Canada, have given us reason to feel encouraged that mutual recognition is achievable.

For example, earlier this year, SEC director Ethiopis Tafara put his name to an article in the Harvard International Law Review. The article proposed a new framework under which foreign stock exchanges and broker-dealers could apply for an exemption from SEC registration based on their compliance with substantively comparable foreign securities regulations and laws, as long as the foreign supervising securities regulator had oversight powers and a regulatory and enforcement philosophy substantively similar to the SEC's. This is the essence of the kind of "mutual recognition" that we are seeking and so the Harvard article was a significant step in the right direction.

Then, in February, the G-7 finance ministers and central bank governors agreed to a communiqué that explicitly committed the leading industrial countries to "explore within the G-7, free trade in securities based on mutual recognition of regulatory regimes".

The fact that this communiqué was signed by U.S. Treasury Secretary Henry Paulson and Federal Reserve Board Chair Ben Bernanke made it clear that momentum was building around the issue.

Since then, various SEC commissioners have echoed these ideas and raised their own ideas and questions about the process. These comments and discussions have given more prominence to the issue and have brought the hope of a resolution closer to reality.

I'd like to spend some time today describing more fully what this issue is all about, and how it affects the ability of Canadian and U.S. companies to have ready access to potential opportunities to raise capital efficiently and effectively.

Impediments to free trade in securities are costly for investors and issuers on both sides of the border. They raise the costs of capital formation in both countries and work against the efficiencies that more competition in the North American securities industry could offer. Despite the fact that new technologies enable virtually instantaneous transfer of financial information, the speed, efficiency, costs and volume of securities trading across borders is constrained by expensive trans-border requirements.

Canada and the U.S. each have their own unique set of barriers to securities trading by participants from the other country. For example, U.S. broker-dealers are required to be organized in Canada in order to trade on Canadian exchanges. This includes having a corporate entity in Canada and a local agent, having transactions cleared by a local firm, and having a local custodian to hold assets. As a result of these requirements, fewer brokers trade on Canadian exchanges than might have otherwise been the case.

On the other side, Canadian investors are free to trade U.S.-listed stocks, but U.S. retail investors, depending on their state of residence, can be denied the ability to trade in Canadian securities.

The compartmentalization of securities markets hurts investors because trading is more cumbersome and costlier than it needs to be. This impedes investment flows and economic growth. The Canadian and U.S. markets would both benefit if barriers to securities trading were reduced or eliminated. And this is well understood by organizations such as the Securities Industry Association, the International Capital Market Association and the International Banks and Securities Association of Australia – all of whom have spoken out in favour of free trade in securities.

Canada and the U.S. have free trade in oil, natural gas and electricity. The U.S. imposes no additional regulatory requirements on Canadian companies that produce these commodities or on the pipelines that deliver it to U.S. They consider our oil and gas to be essential to their national security and they trust us to deliver it. It only stands to follow that Canadians and Americans should not be impeded from investing freely in companies whose products trade freely across the border.

The essence of the challenge is in eliminating non-tariff barriers embedded in federal, province and state regulations in both countries. Most of the barriers pertain to trading activities, listings and data. I will spend a few minutes describing the challenges we face in each of these areas.

First, I will say a few words about trading.

In both Canada and the U.S., broker-dealers must be registered and they are subject to regulation in the jurisdictions in which they wish to trade. In addition, NYSE and the IDA each require their member firms to be organized in the U.S. and Canada respectively. The SEC and NASD do not have similar requirements. Based on evidence we have gathered in the course of our sales and marketing activities, we have concluded that many U.S.-registered broker-dealers find this requirement to be a significant financial barrier to entry. The problem is exacerbated by the need to be subject to another regulator.

Securities firms in Europe share this frustration. The European Commission issued a report in 2004 that notes that although it is legally possible, it is in fact not practicable for EU securities firms to establish a U.S. branch for the purpose of engaging in broker-dealer activities. According to the report, the reason for this is that registration as a broker-dealer means that the foreign firm establishing the U.S. branch has to register itself – not just its branch – and become subject to SEC regulation.

Here are some other problematic U.S. requirements:

- A U.S. broker wishing to trade securities that are inter-listed on Toronto Stock Exchange and on either NASD or NYSE must comply with overlapping reporting requirements of the U.S. exchange.

- U.S. investors wishing access to Toronto Stock Exchange or TSX Venture Exchange must involve both a U.S. broker-dealer and a Canadian Participating Organization.

- Canadian ETFs cannot generally be sold to U.S. investors because of the risk of subjecting the fund to registration on the Investment Company Act of 1940 and, as a result, to potentially unattractive U.S. tax treatment.

There are many other operational rules that may be overlapping or inconsistent between Canada and the U.S. and each one adds compliance costs. Examples can be found in areas such as trade confirmation and account statement requirements, books and records requirements, anti-money laundering requirements and regulatory examination requirements.

Now I will speak about constraints related to listings.

Decisions by companies to list across borders are not made lightly because cross-listings are subject to additional regulatory burdens and significant expense. Companies in both Canada and the U.S. are permitted to list on the exchanges of the other country, and many do so. However, the potential gains may be undermined by the difficulties of trading.

For example, a Canadian company that chooses to list in the U.S. may find that its IPO shares are unavailable to potential Canadian investors unless the company also becomes a reporting issuer in Canada. Conversely, a U.S. company listing in Canada would find that its shares are unavailable to potential U.S. retail investors. Having a company become a reporting issuer in both countries would add costs and legal complexities for the company and its underwriters.

Canadian retail investors are effectively cut out of high-visibility IPOs by U.S. companies as a result of registration requirements.

The net effect of all of these challenges is that the North American market is less efficient than it could be... less efficient than the competition of a free market would compel it to be... and less efficient than the changing patterns of global competition will ultimately require it to be.

The removal of the barriers to free trading in North American securities would ensure that decisions on where to list a company's securities are made based on the ability to access capital in the most effective manner.

Now, I will comment on barriers related to data.

U.S. securities laws prevent the disclosure to retail investors of broker information in disseminated market data. Selling market data to discount brokers in the U.S. may violate certain restrictions on solicitation of retail clients that exist under Blue Sky laws. These restrictions are seriously antiquated and conceived at a time when cross-border trading was not even a twinkle in anyone's eye.

Blue Sky laws are currently interpreted in such a way that broker information may be deemed to be solicitation by brokers identified in connection with quotes, subjecting them to broker-dealer registration. We disagree with this interpretation. It is our view that broker-dealer identification is not a matter of solicitation but of market transparency.

This interpretation would have the counter-productive effect of discriminating between institutional and professional investors on the one hand and retail investors on the other, because professionals are allowed to see broker IDs and retail investors are not.

In addition, there is a risk that providing broker information, in combination with direct market access, could trigger a U.S. exchange registration obligation, effectively requiring a Canadian exchange to submit to both American and Canadian regulatory regimes. The net effect of this is to restrict TSX Datalinx's distribution of market data to potential customers based in the U.S.

Finally, we are concerned about restrictions on the contacts that a non-U.S. stock exchange can have with the U.S. and U.S. investors without becoming subject to registration as a national securities exchange. The absence of clarity on these issues has undermined our ability to undertake certain activities in the U.S., particularly in the areas of advertising and opening representative offices.

In contrast, Canadian regulators have tended to be more open to U.S. market operators, such as NASDAQ, allowing them to operate in Canadian jurisdictions under U.S. rules and self-regulatory requirements. We do not object to U.S. exchanges operating here under U.S. laws and regulatory supervision, but we believe Canadian exchanges should have a reciprocal right to do the same in the U.S.

Clearly, all of these restrictions are out of sync with the 'interesting times' in which we are conducting business. The fully electronic nature of Canadian securities exchanges and most U.S. exchanges make it possible to disseminate data instantaneously on the basis of free and equal access to retail and institutional investors on both sides of the border. The objective of government policy should be to make the fullest use of this capability by eliminating outdated and unnecessary duplication of regulation and reporting requirements.

A 'best practice' that can serve as a model for what needs to be achieved is the Multi-Jurisdiction Disclosure System – a long-standing arrangement that has existed between our two countries to facilitate the inter-listing of issuers. This form of mutual recognition has been in place for 15 years and has significantly reduced the paperwork costs associated with being a registered issuer on both Canadian and U.S. markets.

To be sure, TSX Group is well-positioned to benefit from a modernized securities trading environment. We are the third largest equity exchange in North America and we compete daily with NYSE, NASDAQ and other regional exchanges and alternative trading systems.

It is hard to believe that only five years ago, the TSX was just a stock exchange. Today, TSX Group is a multi-asset class exchange group offering senior equities, public venture capital, fixed income securities, energy trading and clearing.

Ten years ago, few would have predicted the changes.

And indeed, this is an age where the only certainty is change itself. TSX Group is not resting on its laurels. In 2009, we will be launching DEX – a Canadian derivatives exchange – in conjunction with the International Securities Exchange, to trade options, futures and options on futures on a range of Canadian securities. The launch of DEX will benefit the Canadian marketplace by bringing innovative derivative products and expanding the available trading alternatives.

In a separate initiative, we have joined forces with IntercontinentalExchange to launch a leading edge technology and clearing alliance for the North American natural gas and Canadian power markets. Intercontinental Exchange is the world's leading electronic energy marketplace and soft commodities exchange. The new alliance will connect this market leader with NGX – our Natural Gas Exchange, based in Calgary. NGX has the black belt in systems for clearing and settling physical gas and electricity contracts. NGX's unparalleled success in physical energy transactions has given Canada exceptional liquidity in its physical gas markets. NGX has enabled almost \$300 billion of physical gas transactions since its inception in 1994. In 2006, more than 8.1 trillion cubic feet of gas traded on NGX.

The alliance between NGX and IntercontinentalExchange is expected to transform and grow the physical energy markets in North America by combining the complementary, proven solutions of two established market leaders with enormous market penetration.

Last month, TSX Group purchased an option from Enbridge and Circuit Technology to acquire – after March 2009 – the shares of NetThruPut – the leading Canadian electronic platform for trading and clearing crude oil.

All of these initiatives are significant steps in TSX Group's strategy to grow beyond Canada. And as we pursue this strategy, we are travelling around the world, marketing Canada on behalf of the Canadian capital markets.

Canada is well-equipped to succeed in a freer trading environment. By any measure, this is one of the most stable and economically successful countries on earth. We are viewed on the international scene as a country that is politically and fiscally secure.

And I am proud to say that TSX Group is standing tall on the world scene. We are well-equipped to provide companies with many different options for raising funds. Although our combined exchanges are seventh in the world by market cap, we are punching well above our weight where it really matters – raising capital. The TSX Group ranks fifth in the world in public equity financing.

Simply put, the purpose of free trade is to lower costs through the efficiencies that are realized when markets grow in size and, through reduction and elimination of impediments to the flow of goods and services. We believe it is in the best interests of all players – most importantly, companies that are listed or considering listing, and investors of all types – to remove barriers to the ready flow of capital in North America. And we intend to work collaboratively with all interested parties – governments, investor groups, and indeed, even our competitors, to achieve these improvements to the investment climate on both sides of the border.

Thank you.