

Responses to Free-Form Text Segments of Online Treasury Board Red Tape Questionnaire September 23, 2011

Theme 1: Improve Regulatory Design to Increase Efficiency and Effectiveness and Minimize Compliance Burden

We agree that regulatory focus should be on high-risk areas.

In the case of the financial industry, regulation is part of the core of strengthening the efficiency, soundness and fairness of our capital markets. The financial industry has committed substantial resources to implementing rules from federal and provincial governments and agencies, and on ongoing compliance and oversight. We believe that a better job can be done at the concept stage of regulation development and by reviewing progress against specific goals. At a time that most governments have committed to red tape reduction, we recommend that government and stakeholder staff work collaboratively on a four-part review process at the start of and after, rather than (as happens often) only towards the end of, policy-making:

1. Consultation on a plain language two-page summary of the perceived problem (issue statement) and whether it requires regulatory intervention. Regulation should be pursued only when it can improve on market solutions.
2. Second, if regulatory intervention is required – if there is a real and high risk – there should be agreement among the government and stakeholders on possible reasonable solutions. For example, transparency can be very effective without accruing some of the costs of other regulatory options.
3. A conceptual cost-benefit analysis of the two or three options that appear most promising should be done by the government jointly with those to be regulated to the extent possible. Consistent with a provision in the Quebec Derivatives Act, regulators should be required to consider the costs to those it regulates and other stakeholders, as well as unintended consequences that may result from their rules' application. Except in the cases where there is a high and imminent risk, this should be done before draft rules are made public to avoid public relations challenges encountered when a draft regulation must be pulled back.
4. Regulators should be accountable for reporting to the legislature against specific measurable goals balancing increased consumer protection, more efficient markets and cost-effective regulation.

Note: To elaborate on the responses under theme 1 -

1. In terms of the rankings of the five approaches, considering non-regulatory options (e.g., transparency) and an understanding of what will be required for business to comply are our top two as the other three are implicit and we would rank them essentially equally. We feel that there is usually good consultation, but we may not get replies or reasons when changes are not made.

2. We have replied we are uncertain about willingness to spend more money or time. The net result of regulation-making along the lines of theme 1 should save companies and government time and money, although there may be an upfront cost. These upfront financial and time commitments would be acceptable if there is a track record of net benefits exceeding the costs.

Theme 2: Review and Measure Compliance Burden of Existing Regulatory Activities

What gets measured, gets done. We agree with the value of a regulatory plan, annual report and regular evaluations.

The Canadian government issued a report “Advantage Canada” in November 2006, promising to “Reduce the administrative burden on business by cutting paperwork by 20 per cent, and consider a principle-based legislative framework to guide regulatory departments and agencies... Improve the framework for competition through effective rules and regulations and modern competition policies ... [and] Build on our leading-edge financial system to ensure that investment is directed to its most productive use.”

We understand that the target was met, but our members – one-quarter large and three-quarters small – did not report experiencing a benefit from this of which they were aware.

For red tape reduction to work in the financial services industry, the firms being regulated and the government regulating them (or some independent third party) should agree where regulation can be reduced or streamlined, or made more cost-effective, or be introduced more slowly with a view to achieving better, not just more, regulation, while at the same time avoiding reduced consumer/investor protection or obstacles to competitiveness of the firms in Canada.

Theme 3: Improve the Transparency, Predictability and Accountability of the Regulatory System

Transparency is an important tool, however the number of regulatory changes are less important than their materiality: do the changes increase costs or time required, are the reasons for them justifiable, and do those being regulated see an improvement?

Where industry associations exist, they can be useful conduits from business to government and from government to business. They provide a way to both feed into changes and assess whether the changes are effective once made. Government should be very clear why recommended changes proposed cannot be made.

A further suggestion is to mandate, just as corporate audit committees peopled with a majority of independent directors are required, to set up a formal, independent, regulatory oversight committee that could review those cases where an industry does not believe that regulation has been reduced where there is not a consumer protection, taxpayer or equivalent concern.

Theme 4: Improve Service and Professionalism in Implementing Regulations

We believe that the government officials with whom our members deal are for the most part dedicated and professional.

Where there is considerable interaction of a stakeholder group with a government department, in an area that has a considerable taxpayer impact, that group should be allotted a dedicated senior level contact as advocate and to help identify requirements that can be eliminated or delivered more effectively. As an example, financial institutions provide a significant service to the government by expending large amounts of money to collect and report on dividends, interest and capital gains. However, they cannot get easy, quick responses on some matters and regularly get information late making implementation for tax reporting season difficult, more costly than necessary and frustrating for taxpayers.

Frequently the CRA has an equally challenging time as the secrecy surrounding Budget initiatives precludes even information-sharing within government. We believe that it would be cost-effective to government, industry and Canadian issuers and investors if the CRA could assign additional resources to accelerate responses affecting multiple financial institutions serving millions of customers related to implementations.

The CRA should make its interpretations available on its website and not just rely on tax service providers – many firms will use these for-a-fee services, however, firms that cannot afford them should still have access to interpretations on the CRA website. Some focus groups on improving the self-serve nature of the CRA website might be helpful.

A clear organizational chart should be available, at least to the chief level, for all parts of government: the government phone directory is helpful, but not sufficient.

The CRA should poll business constituents on meeting its standards and go beyond call-centre-type statistics – some calls are not being placed because of an expectation of delays, meaning that frequently the best of CRA employees may get an above-average number of calls once they have been identified as better sources than the call centre.

There should be an emphasis on using electronic means and getting rid of paper in all areas.

Where electronic is used, it should be tested for usability and practicality.

Theme 5: Improve Interdepartmental Co-operation and Mitigate Cumulative Regulatory Burden, especially for small business

Our major challenge with interdepartmental co-operation and cumulative burden is less within the federal government and more between the CRA and Ministère de revenu de Québec (MRQ) and among provinces and the federal government on administrative requirements related to pensions (in fact, recently we have been impressed by the ability to work jointly with Finance and the CRA on new tax requirements). We have written to the MRQ in the past and

encourage both the federal and Quebec tax authorities to meet annually with constituents to develop a longer-term direction and to benefit from economies of scale while still respecting the jurisdiction of each.

While there is no or minimal overlap within the federal government, there should be a greater co-ordination and a greater willingness to provide formal, before-the-fact administrative relief when requirements are provided so late that changes cannot reasonably be made effectively (a number of examples were provided in our formal submission).

What is success?

Success is seeing the foregoing recommendations implemented to the extent possible, in particular, progress with the CRA, without diminishing the integrity of the tax system.

The real test is whether our member firms believe they are being listened to by having the major problems addressed on a timely basis.

We hope that federal, provincial and territorial counterparts will work to ensure high-level cost-benefit analyses are done when trying to achieve that fine balance between protecting consumers, fostering financing for businesses that provide jobs and enabling the financial industry – important to Canada’s economic success – to compete effectively and grow. A key element of growth is confidence that the government in power consistently acts as “open for business”.