

MEDIA RELEASE

Capital Markets Institute *Policy Comment* recommends permitting securities lawyers to disclose serious fraudulent conduct by clients

Toronto – March 13 – Securities lawyers should be permitted to disclose serious, ongoing fraudulent schemes intended to mislead investors, where disclosure to a regulatory authority is necessary to prevent a substantial risk of serious financial harm to investors, according to a Policy Comment written by noted Toronto securities lawyer Philip Anisman and released today by the Capital Markets Institute at the University of Toronto.

Regulation of Lawyers by Securities Commissions: Sarbanes-Oxley in Canada analyzes the lawyer conduct standards proposed by the Securities and Exchange Commission (“SEC”) under the *Sarbanes-Oxley Act of 2002* to make recommendations to regulators on the optimal Canadian approach to lawyer conduct standards and the appropriate Canadian authority to develop and enforce those standards. The Policy Comment introduces a new and important distinction between the roles performed by lawyers representing issuers in an advisory capacity and by lawyers acting for issuers in an adversarial context, recommending that only those lawyers who are acting in an advisory capacity should be permitted to disclose serious fraudulent conduct by their clients. Finally, the Policy Comment concludes that securities commissions could treat withdrawal by an issuer’s lawyer based on professional considerations as information that must be publicly disclosed by the issuer, where that development is material.

“Regulation of lawyers’ professional conduct should generally remain the responsibility of law societies,” said Philip Anisman, author of the Policy Comment. “Securities commissions should not discipline lawyers for conduct relating only to a lawyer’s professional activities as an adviser under their market-protective ‘public interest’ jurisdiction. A securities commission should be able to prohibit a lawyer from representing issuers and other market participants, as a solicitor, on applications to and filings with the commission, but not from acting as a barrister on commission hearings or investigations.”

Dr. Anisman has submitted the Policy Comment to the SEC for its consideration in connection with the proposed rules requiring “noisy withdrawal” by securities lawyers under the *Sarbanes-Oxley Act*.

This CMI Policy Comment is the second of a three part series analyzing proposed regulatory changes in Canada in response to the *Sarbanes-Oxley Act*. Released papers in the series are available at www.utcmi.ca.

The Capital Markets Institute undertakes and sponsors policy research focused on the objective of developing a comprehensive capital markets strategy for Canada. The CMI leads the effort in determining how capital markets mechanisms and institutions should be designed in order to create a superior environment for issuers and investors in a small, open market like Canada.

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