

2006

Well-Known Seasoned Issuers in Canada

Adam C. Pritchard

University of Michigan Law School, acplaw@umich.edu

Available at: <https://repository.law.umich.edu/other/115>

Follow this and additional works at: <https://repository.law.umich.edu/other>

 Part of the [Comparative and Foreign Law Commons](#), [Legislation Commons](#), and the [Securities Law Commons](#)

Recommended Citation

Pritchard, Adam C. "Well-Known Seasoned Issuers in Canada." In *Maintaining a Competitive Capital Market in Canada*, 1-32. Canada Steps Up, vol. 5. Toronto: Task Force to Modernize Securities Legislation in Canada, 2006.

This Report is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Other Publications by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

Research Study

**Well-Known Seasoned Issuers in
Canada**

Adam Pritchard

May 18, 2006

**Commissioned by the
Task Force to Modernize Securities Legislation in Canada**

Adam Pritchard

Adam C. Pritchard teaches corporate and securities law at the University of Michigan, Law School. He is the author of *Securities Regulation: Cases and Analysis* (with Stephen J. Choi). His current research focuses on the role of class action litigation in controlling securities fraud. His articles have appeared in the *Business Lawyer*, *Journal of Empirical Legal Studies*, *Journal of Finance*, and various law reviews.

Professor Pritchard holds B.A. and J.D. degrees from the University of Virginia, as well as an M.P.P. from the Harris School of Public Policy at the University of Chicago. While at Virginia, he was an Olin Fellow in Law and Economics and served as articles development editor on the *Virginia Law Review*. After graduation, he clerked for Judge J. Harvie Wilkinson III of the United States Court of Appeals for the Fourth Circuit and served as a Bristow Fellow in the Office of the Solicitor General at the U.S. Department of Justice. After working in private practice, Pritchard served as senior counsel in the Office of the General Counsel of the SEC, where he wrote appellate briefs and studied the effect of recent reforms in the areas of securities fraud litigation. He received the SEC's Law and Policy Award for his work in *United States v. O'Hagan*, in which the Supreme Court upheld the misappropriation theory of insider trading.

Pritchard has been a visiting professor at the Northwestern University School of Law, the Georgetown University Law Center, and the University of Iowa, School of Law. He has also been a visiting scholar at the Securities and Exchange Commission, and a visiting fellow in capital market studies at the Cato Institute.

Table of Contents

| | | |
|-----------|---|----|
| 1. | Executive Summary | 7 |
| 2. | Summary of Recommendations | 8 |
| 3. | Introduction | 9 |
| 4. | Who Qualifies as a Well-Known Seasoned Issuer? | 10 |
| | i. The United States..... | 10 |
| | ii. Canada..... | 11 |
| 5. | Evaluating Alternative Cutoffs for WKSI Status | 14 |
| 6. | Conclusion | 20 |
| | Appendix 1: Canadian WKSIs | |
| | Appendix 2: TSX 30% | |

1. Executive Summary¹

The United States Securities and Exchange Commission (SEC) recently adopted a series of rules relaxing the restrictions imposed on public offerings. The largest public companies - defined as “well-known seasoned issuers” (WKSI) - received the most extensive regulatory relief. Canada could adopt a version of WKSI status for the top tier of Toronto Stock Exchange (TSX) issuers as part of a streamlined POP system.

Careful consideration must be given, however, as to the appropriate standards for WKSI status in Canada. The standards adopted in the U.S. – US\$700 million in market capitalization or US\$1 billion in non-convertible debt issued over the prior three years – might not be appropriate for the Canadian market, where issuers tend to be smaller. While the U.S. WKSI standards bring 30% of listed issuers within the WKSI category, applying the same standards in the Canadian context would only bring regulatory relief to 17% of Canadian companies listed on the TSX, and only 7% of the total companies listed on the TSX and TSX Venture exchanges.

This study analyzes the effect of extending WKSI status to the top 30% of TSX issuers. Broadening the WKSI category in this fashion would reduce the market capitalization cutoff to approximately \$330 million and bring in an additional 185 companies. Moreover, it would mean that WKSI status would cover companies representing 93% of Canada’s total market capitalization.

Would a broader definition of WKSI status mean less investor protection? Here the critical question is the amount of scrutiny that smaller companies receive from the investment community. In the sample examined here, analyst coverage drops off by about half for companies below the US\$700 million/ \$800 million (Canadian) cutoff, and the incidence of companies with zero analyst coverage increases. The drop-off is not as precipitous, however, for companies making public offerings. Among the Canadian companies in the sample that made an offering, companies with between \$345-\$800 million in market capitalization had an average of 3.5 analysts per issuer. Only one of the companies in this range in the sample had no analyst coverage at all. This evidence suggests that Canada could adopt a lower market capitalization standard for WKSI status without creating an undue risk of including companies that received little or no market attention.

¹ Data on offerings were provided by the Investment Dealers’ Association. The Toronto Stock Exchange generously provided data on market capitalization and trading volume for TSX issuers. Analyst coverage was obtained from I/B/E/S.

2. Summary of Recommendations

Recommendation: Canada should adopt a well-known seasoned issuer standard that balances the need for information for investors with the economies available from stream-lined regulation. A standard of \$350 million in market capitalization strikes a reasonable balance between these two concerns. The standard should be periodically revisited to ensure that it remains consistent with the realities of the contemporary capital market.

3. Introduction

In 2005, the United States Securities and Exchange Commission (SEC) adopted a series of rules relaxing the restrictions imposed on public offerings.² The largest U.S. public companies, labelled by the SEC as “well-known seasoned issuers,” were the recipients of the greatest regulatory relief. Well-known seasoned issuers (more popularly known as WKSIs) came in for favoured treatment based on the SEC’s conclusion that those issuers were most closely followed by analysts and institutional investors.

What benefit do companies get from WKSI status? WKSI eligibility means that a company is eligible for “automatic shelf registration.”³ Automatic shelf registration affords well-known seasoned issuers immediate effectiveness for their registration statements, so there are no delays in going to market.⁴ More importantly, a WKSI can effectively register an unlimited amount of securities to be sold for an unlimited period of time (or more precisely, it can add securities to its registration statement as it goes).⁵ Finally, well-known seasoned issuers are generally excused from the “gun-jumping” restrictions that would otherwise limit public statements that might be construed as offers prior to the filing and effectiveness of a registration statement.⁶ Thus, WKSIs have much less reason for concern that their public statements, such as press releases and media appearances by corporate officials, could run afoul of the offering rules. The bottom line for WKSIs is essentially a system of “company registration,”⁷ with unrestricted disclosure. WKSIs’ affirmative offering disclosure obligations are largely satisfied by the periodic reports that they are required to file as public companies.

Adoption of the WKSI concept by Canadian securities regulators could be part of a streamlined POP system, allowing the largest Canadian issuers immediate access to the capital markets and lower offering costs. If Canada were to streamline offering regulation for certain public companies, which companies should receive the benefit of that reduced regulatory burden? Would the criteria adopted by the SEC for the U.S. market unduly limit the availability of offering reform in the Canadian markets, where market capitalizations are typically smaller? The purpose of this study is to assess the appropriate criteria to be used if such a regime were adopted in Canada.

² Securities Offering Reform, Securities Act Release No. 33-8591 (July 19, 2005) (hereinafter “Offering Reform Release”).

³ Securities Act Rule 405.

⁴ Securities Act Rule 462.

⁵ Securities Act Rules 413 & 430B.

⁶ Securities Act Rules 163, 164 & 433.

⁷ Such a system had previously been endorsed by the SEC’s Advisory Committee on the Capital Formation and Regulatory Processes. See Report of the Advisory Committee on the Capital Formation and Regulatory Processes, available at www.sec.gov/news/studies/camform.htm (July 24, 1996).

4. Who Qualifies as a Well-Known Seasoned Issuer?

i. The United States

Who qualifies as a well-known seasoned issuer under the SEC's new rules? In addition to having filed periodic reports with the SEC for at least a year (and having been current in those filings for the past year), companies must satisfy one of two additional criteria:

- 1) The company has outstanding a minimum US\$700 million in market value of common equity held by non-affiliates; or
- 2) The company has issued US\$1 billion aggregate in non-convertible securities over the past three years.⁸

Companies qualifying as well-known seasoned issuers under the second category are only qualified as WKSIs for the purpose of issuing non-convertible debt or preferred stock. If the issuer has a public float of US\$75 million in common equity, however, it can also issue common equity under the relaxed rules applicable to WKSIs.

Certain companies are disqualified from WKSI status, most importantly, asset-backed issuers (i.e., companies selling securities backed by pools of assets with relatively stable income streams); investment companies (i.e., mutual funds); and business development companies.⁹ These issuers are subject to alternative offering regimes. The SEC has also disqualified "blank cheque" and shell companies, as well as companies that have violated the anti-fraud provisions of the securities laws within the last three years.

According to the SEC, 30% of U.S. listed issuers would qualify as WKSIs.¹⁰ Although this percentage is relatively small, it understates considerably the economic importance of these WKSI issuers. The SEC reports that WKSIs made up 95% of U.S. equity market capitalization as of 2004.¹¹ Of greater relevance to the offering market, these issuers accounted for 96% of the debt and 70% of the equity sold in public offerings by listed issuers.¹² Clearly, WKSIs pull a lot of weight in the U.S. capital markets.

⁸ Securities Act Rule 405.

⁹ Id.

¹⁰ Offering Reform Release, at 25.

¹¹ Id.

¹² Id. at 28.

Indeed, these numbers may *understate* the importance of WKSIs in the debt market because they do not include private placements. The SEC's omission of private placements from the eligibility criteria for WKSI status has a policy justification: part of the SEC's motivation for streamlining regulation was to recapture a larger share of the offering market for registered public offerings (closely controlled by the SEC) at the expense of the private placement market (much less heavily regulated).

It is not, however, the economic clout of these issuers that justifies relaxed regulation. According to the SEC,

As a result of the active participation of these issuers in the markets and, among other things, the wide following of these issuers by market participants, the media, and institutional investors, we believe that it is appropriate to provide communications and registration flexibilities to these well-known seasoned issuers beyond that provided to other issuers, including other seasoned issuers.¹³

To be sure, disclosure requirements force smaller seasoned issuers to disclose similar amounts of information about their businesses to the market as do WKSIs. The difference between WKSIs and their smaller counterparts is that fewer informed market participants are paying attention to the disclosures of the latter. The bottom line: WKSIs receive less regulatory scrutiny because they are presumed by the SEC to receive greater market scrutiny.

ii. Canada

How would the WKSI standards translate to the Canadian market? To assess this question, I looked at all firms listed on the Toronto Stock Exchange. The US\$700 million market capitalization cut-off adopted by the SEC, if converted into Canadian currency, produces a cut-off of approximately \$800 million Canadian.¹⁴ As of December 2005, 267 Canadian companies would meet that standard. Of this number, three are investment companies and therefore ineligible. That leaves 264 out of a total of 1535 TSX-listed companies. (The total is 3553 if one adds TSX Venture companies; none of the Venture companies are WKSI eligible.)

¹³ Id. at 25.

¹⁴ In order to make data collection tractable, I have not adjusted market capitalization numbers downward to reflect equity held by affiliates. If this adjustment were made, it likely would reduce the number of eligible companies, given the prevalence of controlling shareholders in Canada.

The SEC's second category, of issuers selling more than US\$1 billion in debt over the past three years (approximately \$1.15 billion Canadian), would appear to be of little importance in the Canadian context. Only one additional TSX-listed issuer sold more than \$1.15 billion in public debt offerings between 2002 and 2004, and that issuer's offerings appear to be primarily asset-backed sales, which are ineligible for the streamlined regulation applicable to WKSIs. One non-listed issuer (a mutually owned bank) sold that much in public debt offerings, but again those offerings appear to be primarily asset-backed. The debt category apparently has some relevance to the U.S. offering markets, accounting for 65% of total debt and equity sold by issuers in the U.S. who have not listed public equity,¹⁵ but it appears to have little relevance for the Canadian markets. Accordingly, the subsequent analysis focuses exclusively on the market capitalization criterion. (Appendix 1 lists the TSX issuers that would be eligible based on the \$800 million in market capitalization standard.)

What would the economic impact be from conferring WKSI status on the largest TSX-listed issuers? Table 1, Panel A compares the Canadian WKSIs and other TSX issuers. Panel B compares offerings by WKSIs with other TSX issuers. All figures are in millions of Canadian dollars.

¹⁵ Id. at 30.

Table 1: Canadian WKSIs: <\$700 million*Panel A: Issuers*

| | WKSI | TSX Non-WKSI | TSX | WKSI % of TSX |
|-----------------------------------|-------------|---------------------|------------|----------------------|
| Number | 264 | 1271 | 1535 | 17.2% |
| Mean Market Capitalization 2005 | \$6,101 | \$167 | \$1,197 | 88% |
| Median Market Capitalization 2005 | \$1,986 | \$100 | \$144 | |

Panel B: Offerings

| | WKSI | TSX Non-WKSI | Total | WKSI % of Total |
|----------------------------------|----------------------|---------------------|-----------------------|------------------------|
| Total Equity Offerings 1997-2004 | \$107,166 (n=682) | \$48,029 (n=967) | \$180,489 (n=4334) | 59.4% |
| Total Debt Offerings 1997-2004 | \$67,215 (n=396) | \$13,483 (n=144) | \$99,866 (n=876) | 67.3% |

Using the U.S. cutoffs would produce a smaller percentage of WKSIs in Canada than it does in the U.S. given the generally smaller size of Canadian companies. According to the SEC, WKSIs make up 30% of all U.S. listed companies. In Canada, WKSIs make up only 17.2% of TSX issuers and 7.4% of the combined total of TSX and TSX Venture Issuers. The Canadian WKSIs' share of market capitalization, however, is comparable to that of U.S. WKSIs. Canadian WKSIs account for 88% of TSX market capitalization (87% of the TSX and TSX Venture combined), slightly less than the 95% of market capitalization enjoyed by U.S. WKSIs.

Looking at the WKSIs' role in public offerings, Canadian WKSIs have a substantially smaller share than their U.S. counterparts, accounting for 67.3% of public debt offerings (excluding asset-backed issues), in contrast to the U.S. WKSIs' 96% share. The two countries are more similar when it comes to equity offerings, with the Canadian WKSIs coming in at 59.4%, compared to the U.S. WKSIs' 70% share.

5. Evaluating Alternative Cutoffs for WKSI Status

Given the generally smaller size of Canadian public issuers, would a lower cutoff for WKSI status make sense in the Canadian context? Would extending WKSI status to the top 30% of TSX issuers substantially increase the WKSI share of Canadian public offerings? Would such a move be consistent with the needs of investor protection?

Based on market capitalization at the end of 2005, extending WKSI status to the top 30% of Canadian issuers would produce a numerical cutoff of approximately \$330 million. Table 2 summarizes the marginal effect of adding these additional firms to the WKSI category. The TSX 30% designates those companies in the top 30% of TSX issuers that would not meet the \$800 million market capitalization cutoff. (Appendix 2 lists the TSX 30% issuers that would be eligible based on the \$330 million in market capitalization standard.)

Table 2: Largest 30% of TSX Issuers

Panel A: Issuers

| | WKSI | TSX Top 30% | TSX | WKSI + TSX 30% % of TSX |
|-----------------------------------|---------|-------------|---------|----------------------------|
| Number | 264 | 185 | 1535 | 29.3% ¹⁶ |
| Mean Market Capitalization 2005 | \$6,101 | \$518 | \$1,197 | 93.1% |
| Median Market Capitalization 2005 | \$1,986 | \$624 | \$144 | |

Panel B: Offerings

| | WKSI | TSX Top 30% | Total | WKSI + TSX 30% % of Total |
|----------------------------------|----------------------|---------------------|-----------------------|------------------------------|
| Total Equity Offerings 1997-2004 | \$107,166 (n=682) | \$17,411 (n=211) | \$180,489 (n=4334) | 69.0% |
| Total Debt Offerings 1997-2004 | \$67,215 (n=396) | \$7,643 (n=55) | \$99,866 (n=876) | 75.0% |

Extending WKSI status to the top 30% of TSX issuers would bring in another 185 companies, a 70.1% increase. In addition, the market capitalization of eligible issuers would rise to 93.1% of the TSX's total market capitalization. The effect on offering totals is non-trivial: the WKSI percentage of equity offering

¹⁶ This percentage is less than 30% because investment companies have been excluded from the WKSI and TSX 30% categories, but the not overall TSX number.

would go from 59.4% to 69.0%, and the debt percentage goes from 67.3% to 75.0%. This would make the equity offering percentage essentially indistinguishable from the U.S. WKSI percentage (69.0% versus 70%), although the debt percentage would still trail the U.S. level (75.0% versus 96%).

Although extending the WKSI category in this way would make reform more popular with a broader circle of issuers, does it make sense from the perspective of investor protection? Unfortunately, this question raises in part the issue of the value added to investors from scrutiny by securities regulators of public offerings. If this scrutiny adds little value, WKSI status should be extended quite broadly. The question of the overall investor protection added by offering regulation, however, is very difficult to measure.

Perhaps more manageable is the question of the marginal need for regulation. Has the SEC set an appropriate line in determining which companies should enjoy the benefit of reduced regulatory burden for their offerings? Or do the SEC's criteria needlessly discriminate against smaller issuers without adequate justification?

In determining the market capitalization threshold, the SEC relied on analyst coverage, trading volume, and institutional ownership.¹⁷ The SEC reports that firms in excess of US\$700 million conducting public offerings from 1997-2004 had an average of twelve analysts following them.¹⁸ The SEC contrasted this high level of coverage with coverage for issuers with a market capitalization between US\$75 million and US\$200 million, which, in most cases had between 0 and 5 analysts following them. The SEC pointed to further evidence of wide market following for companies above US\$700 million: institutional investors owned 52% of these companies' equity securities and these issuers had an average daily trading volume of nearly US\$52 million.

What is missing from the SEC's analysis is the question of *marginal* differences. The SEC points to the lack of analyst coverage for companies between the US\$75 million and US\$200 million. The relevant comparison, however, is the analyst coverage for companies between US\$600 million and US\$700 million relative to the coverage for companies between US\$700 million and US\$800 million. The SEC offers no statistics on the institutional ownership and trading volume for the companies below \$700 million, so we are basically left to guess at the basis for the \$700 million figure.

¹⁷ Offering Reform Release, at 35.

¹⁸ *Id.* at 28.

To shed some light on the question of marginal analyst coverage, Steve Choi and I collected coverage data for a sample of companies from the U.S. and Canada.¹⁹ We picked ten companies at random from ten ranges of market capitalization, producing samples of 100 companies for each country.²⁰ Table 3 compares the analyst coverage for the two countries at each level of market capitalization.

Table 3: Analyst Coverage in the U.S. and Canada

| Market Capitalization (in millions) | Mean # Analysts US | Mean # Analysts Canada | Max/Min Analysts US | Max/Min Analysts Canada | Firms w/0 Analysts US | Firms w/0 Analysts Canada |
|-------------------------------------|--------------------|------------------------|---------------------|-------------------------|-----------------------|---------------------------|
| \$1,000-\$2,000 (\$1,150-\$2,300) | 10.7 | 8.3 | 24/5 | 16/3 | 0 | 0 |
| \$900-\$1,000 (\$1,000-\$1,150) | 8.2 | 7.1 | 17/3 | 10/2 | 0 | 0 |
| \$800-\$900 (\$920-\$1,000) | 5.4 | 7 | 13/0 | 12/2 | 1 | 0 |
| \$700-\$800 (\$800-\$920) | 8.6 | 7.7 | 27/1 | 13/1 | 0 | 0 |
| \$600-\$700 (\$690-\$800) | 4.6 | 3.6 | 13/0 | 9/1 | 1 | 0 |
| \$500-\$600 (\$575-\$690) | 4.9 | 3.9 | 9/2 | 10/0 | 0 | 1 |
| \$400-\$500 (\$460-\$575) | 4 | 3.7 | 10/0 | 9/0 | 1 | 3 |
| \$300-\$400 (\$345-\$460) | 5.6 | 5.8 | 16/0 | 11/1 | 1 | 0 |
| \$200-\$300 (\$230-\$345) | 3.7 | 2.5 | 7/0 | 5/0 | 1 | 2 |
| \$75-\$200 (\$85-\$230) | 1.8 | 3.2 | 4/0 | 6/0 | 1 | 2 |
| Overall | 5.8 | 5.3 | 24/0 | 16/0 | 6 | 8 |

The data provided in Table 3 perhaps sheds some light on the SEC's choice of the US\$700 million cutoff. For this sample (admittedly much smaller than the one relied upon by the SEC's Office of Economic Analysis), companies at US\$700 million and above in market capitalization generally have

¹⁹ The available evidence suggests that firm size correlates highly with analyst coverage, institutional ownership and turnover. Analysts are likely to cluster where the trading commissions are to be found, so we focused on analyst coverage for our purposes here. Ravi Bhushan, Firm Characteristics and Analyst Following, 11 Journal of Accounting and Economics 255-274 (1989); Harrison Hong, Terence Lim, and Jeremy C. Stein, Bad News Travels Slowly: Size, Analyst Coverage, and the Profitability of Momentum Strategies, 55 Journal of Finance 265-295 (2000).

²⁰ Our sample selection differs from the SEC's approach because we look at both companies making offerings and

more than the 5.8 analysts per company for the overall U.S. sample. The Canadian data are consistent, with the ranges above \$800 million Canadian in market capitalization all being above the overall average of 5.3. Most notably, however, there does seem to be a relatively sharp break from the US\$700-\$800 million/\$800-\$900 million Canadian level to the US\$600-\$700 million/\$690-\$800 million Canadian level. At the higher level, we see averages of 8.6 (U.S.) and 7.7 (Canada), but at the lower level, the averages are only 4.6 (U.S.) and 3.6 (Canada).

Of greater concern, however, might be the incidence of companies with no coverage whatsoever, which suggests a company that is not attracting much in the way of investor interest. Zero analyst coverage spikes upward for the Canadian sample below the \$575 million level.

Not surprisingly, the data in Table 3 show that analyst coverage generally increases with company size. (The overall correlation is 0.46). This correlation appears to be stronger than the correlation between analyst coverage and trading volume. For the Canadian sample, the correlation between analyst coverage and trading volume is 0.27²¹. Thus, firm size seems to be a more reliable proxy for the depth of coverage for a company than does liquidity²². This observation tends to support the SEC's decision to rely on market capitalization rather than trading volume for its WKSI definition.

Analyst coverage may also correlate with whether or not a company is seeking access to the capital markets. Companies interested in selling securities may invest more time and effort in attracting the attention of analysts. Table 4, Panel A compares the companies from the Canadian sample used in Table 3 with those that did not make an offering.

Table 4: Canadian Firms with Offerings and Analyst Coverage

| | Offering | No Offering |
|---|-----------------|--------------------|
| Number | 57 | 43 |
| Mean Market Capitalization (in millions) | \$781 | \$619 |
| Mean # of Analysts | 5.9 | 4.4 |

those that do not.

²¹ I find a similar correlation – 0.25 – between analyst coverage and turnover, defined as the number of shares traded annually divided by the number of shares outstanding.

²² To assess the possibility that smaller companies may be more actively traded, I also calculated mean turnover for each of the ten deciles. There is no discernible pattern in the turnover data for this sample.

Of the 100 Canadian firms chosen for this analysis, 57 made at least one public offering of debt or equity between 1997 to 2004. Those firms had a greater market capitalization and a larger number of analysts. This suggests that smaller firms interested in making an offering will put more effort into seeking analyst coverage, although the correlation may be largely driven by the correlation between firm size and analyst coverage. The overall correlation between making at least one offering and analyst coverage is 0.21.

To explore the possibility that analyst coverage may follow offerings, Table 5 compares the overall analyst coverage for the Canadian firms in the sample with those making offerings.

Table 5: Canadian Firms Making Offerings and Analysts by Market Capitalization

| Market Capitalization (in millions Canadian) | Mean # Analysts | # Firms w/0 Analysts | # Firms Offering | Mean # Analysts for Offerers | Offerers w/0 Analysts |
|---|----------------------------|-------------------------------------|-----------------------------|---|--------------------------------------|
| \$1,150-\$2,300 | 8.3 | 0 | 8 | 8.3 | 0 |
| \$1,000-\$1,150 | 7.1 | 0 | 7 | 7.1 | 0 |
| \$920-\$1,000 | 7 | 0 | 7 | 7.6 | 0 |
| \$800-\$920 | 7.7 | 0 | 5 | 8.4 | 0 |
| \$690-\$800 | 3.6 | 0 | 7 | 3.7 | 0 |
| \$575-\$690 | 3.9 | 1 | 4 | 2 | 1 |
| \$460-\$575 | 3.7 | 3 | 3 | 6.7 | 0 |
| \$345-\$460 | 5.8 | 0 | 8 | 6.1 | 0 |
| \$230-\$345 | 2.5 | 2 | 4 | 3.1 | 1 |
| \$85-\$230 | 3.2 | 2 | 4 | 4.0 | 1 |
| Overall | 5.3 | 8 | 57 | 5.9 | 3 |

The data in Table 5 support the notion that firms making offerings are likely to have greater analyst coverage, with offering firms having greater average coverage than the overall average in every category but one. Moreover, only three firms out of 57 firms making offerings (5.2%) had no analysts at all, and only one of these three was above \$345 million in market capitalization. Overall the correlation between making an offering and the average number of analysts is much stronger for the lower half of the sample (0.21 for the bottom half of market capitalization versus 0.09 for the top half). For the 22 companies with market capitalizations between \$345 and \$800 million, the average number of analysts was 3.5 analysts per offerer. This evidence offers some support for a more generous Canadian WKSI standard.

On the other hand, the higher level of analyst coverage for firms making offerings should be interpreted with some caution because firms may provide analyst coverage in an effort to attract underwriting

business. This conflict of interest calls into question the independence of the analyst coverage that is being provided.

Table 5 does raise one red flag. The \$575-\$690 million category has a relatively low number of analysts per offering firm (2). This appears to be a statistical outlier, however, given that the next two lower categories, \$460-\$575 million and \$345-\$460 million, both average more than six analysts per offering firm (6.7 and 6.1, respectively), with no offering firm having zero analysts. The relatively robust analyst coverage for these two categories tends to support the TSX 30% cutoff, which produced a market capitalization cutoff of \$330 million.

An alternative strategy would be to tie WKSI status directly to analyst coverage, specifying a minimum number of analysts issuing reports on a company. This approach has the virtue of tackling the question of the level of information available about an issuer more directly than does a market capitalization standard. The downside, however, would again be the potential for conflict of interest. Issuers anxious to secure the benefits of WKSI status might pay for analyst coverage, either directly through cash payments, or indirectly through the selective disclosure of information. The temptations for abuse presented by this scenario counsel in favour of the harder to manipulate market capitalization standard.

6. Conclusion

Recommendation: Canada should adopt a well-known seasoned issuer standard that balances the need for information for investors with the economies available from stream-lined regulation. A standard of \$350 million in market capitalization strikes a reasonable balance between these two concerns. The standard should be periodically revisited to ensure that it remains consistent with the realities of the contemporary capital market.

This report has offered evidence relevant to the question of WKSI status for the Canadian capital markets. The most important question is the appropriate market capitalization cutoff if the WKSI concept were to be adopted in Canada. The most easily defended standard would be the one adopted by the SEC: US\$700 million, which would translate to \$800 million in Canadian currency. That standard, however, may not accord with the realities of the Canadian market. Adopting the U.S. standard would lead to a substantially smaller percentage of Canadian companies being able to avail themselves of the streamlined regulatory regime than is the case in the U.S. This is not surprising, given the generally smaller market capitalization of Canadian companies. If streamlined regulation makes sense, it would be desirable to extend the cost savings and more rapid access to the capital markets as widely as possible.

The question is how low could Canada go in setting a market capitalization cutoff for WKSI without unduly risking a lack of market attention being paid to company disclosures? The evidence presented here suggests that analyst coverage remains relatively robust - for those companies making offerings - down to the level of \$345 million in market capitalization. Adopting a \$350 million cutoff (to pick a round number), would not extend Canadian WKSI status to a full 30% of TSX issuers, but it would come close. Only twelve of the TSX 30% issuers would be excluded if that standard were chosen.

The data presented by the SEC in its final offering release do not make a compelling case against adopting a number lower than the US\$700 million figure adopted in the U.S. The SEC's report is persuasive that WKSI status does not make sense for the smallest public issuers (i.e., those below US\$200 million in market capitalization), but it sheds little light on the desirability of excluding "middle cap" companies because it ignores the question of marginal analyst coverage. The SEC has promised to revisit the question of its market capitalization thresholds in a few years. This pledge reinforces the basic conservatism of the SEC's approach, focusing on incremental reform.

Reform does not come easily, however, in either the U.S. or Canada. (If anything, it may be harder to accomplish in Canada, given the federal structure of Canadian securities regulation.) The risk is that a standard, once chosen, will tend to ossify, making it harder in the future to extend regulatory relief to smaller companies. If Canada were to choose a more aggressive standard, the promise to revisit the standard in a few years would carry more weight. If problems developed among the lowest tier of companies receiving WKSI status, the impetus (and evidence) for reform will be there. If problems do not develop, the benefits of regulatory relief will have been extended as broadly as possible.

Appendix 1: Canadian WKSIs

| Company | root ticker | QMV (All Classes Dec. 3, 2005) |
|--|--------------------|---|
| Aber Diamond Corporation | ABZ | 2,491,877,481 |
| Abitibi-Consolidated Inc. | A | 2,050,876,457 |
| ACE Aviation Holdings Inc. | ACE | 4,175,722,947 |
| Advantage Energy Income Fund | AVN | 1,328,055,993 |
| AGF Management Limited | AGF | 1,991,004,768 |
| Agnico-Eagle Mines Ltd. | AEM | 2,230,829,752 |
| Agrium Inc. | AGU | 3,349,005,203 |
| Alcan Inc. | AL | 17,933,135,934 |
| Algoma Steel Inc. | AGA | 911,095,984 |
| Algonquin Power Income Fund | APF | 814,119,008 |
| Aliant Inc. | AIT | 4,108,727,528 |
| Alimentation Couche-Tard Inc. | ATD | 4,727,652,228 |
| Alliance Atlantis Communications Inc. | AAC | 1,491,624,985 |
| AltaGas Income Trust | ALA | 1,464,723,803 |
| Angiotech Pharmaceuticals Inc. | ANP | 1,291,924,936 |
| ARC Energy Trust | AET | 5,027,516,862 |
| Astral Media Inc. | ACM | 1,686,518,047 |
| Atco Ltd. | ACO | 2,621,266,329 |
| ATI Technologies Inc. | ATY | 4,979,171,439 |
| ATS Automation Tooling Systems Inc. | ATA | 850,667,357 |
| Aur Resources Inc. | AUR | 1,131,129,807 |
| Axcan Pharma Inc. | AXP | 805,028,621 |
| Bank of Montreal | BMO | 33,546,051,420 |
| Bank of Nova Scotia (The) | BNS | 46,331,148,288 |
| Barrick Gold Corporation | ABX | 17,412,396,922 |
| Baytex Energy Trust | BTE | 1,226,117,052 |
| BCE Inc. | BCE | 27,559,835,682 |
| Bell Canada | BC | 1,136,660,365 |
| Bema Gold Corporation | BGO | 1,523,980,679 |
| BFI Canada Income Fund | BFC | 1,486,315,721 |
| Biovail Corporation | BVF | 4,392,629,510 |
| BlackRock Ventures Inc. | BVI | 1,104,116,969 |
| Boardwalk Real Estate Investment Trust | BEI | 1,029,808,021 |
| Boliden AB | BLS | 2,653,680,340 |
| Bombardier Inc. | BBD | 5,172,742,600 |
| Bonavista Energy Trust | BNP | 3,172,810,932 |
| BP plc | BP | 109,893,514,630 |
| Brookfield Asset Management Inc. | BAM | 16,784,520,542 |
| Brookfield Properties Corporation | BPO | 9,100,541,541 |
| CAE Inc. | CAE | 2,132,100,163 |
| Calfrac Well Services Ltd. | CFW | 1,464,013,483 |
| Calloway Real Estate Investment Trust | CWT | 1,384,544,623 |
| Cambior Inc. | CBJ | 892,113,528 |

| | | |
|--|-----|----------------|
| Cameco Corporation | CCO | 12,927,321,687 |
| Canada Bread Company Limited | CBY | 1,499,550,608 |
| Canadian Apartment Properties Real Estate Investment Trust | CAR | 895,918,472 |
| Canadian Imperial Bank Of Commerce | CM | 28,524,503,178 |
| Canadian National Railway Company | CNR | 25,087,656,708 |
| Canadian Natural Resources Limited | CNQ | 30,911,036,698 |
| Canadian Oil Sands Trust | COS | 11,656,782,522 |
| Canadian Pacific Railway Limited | CP | 7,684,670,947 |
| Canadian Real Estate Investment Trust | REF | 1,282,995,768 |
| Canadian Tire Corporation Limited | CTR | 5,756,112,722 |
| Canadian Utilities Limited | CU | 6,031,820,715 |
| Canadian Western Bank | CWB | 1,096,274,234 |
| Canfor Corporation | CFP | 1,913,914,618 |
| Canico Resource Corp. | CNI | 864,249,973 |
| CanWest Global Communications Corp. | CGS | 969,930,693 |
| Cascades Inc. | CAS | 812,307,732 |
| CCL Industries Inc. | CCL | 911,243,322 |
| CCS Income Trust | CCR | 1,568,220,210 |
| Celestica Inc. | CLS | 2,424,910,842 |
| Centerra Gold Inc. | CG | 2,029,040,881 |
| Centurion Energy International Inc. | CUX | 1,000,034,161 |
| CGI Group Inc. | GIB | 3,690,090,503 |
| Chartwell Seniors Housing Real Estate Investment Trust | CSH | 809,599,168 |
| CHC Helicopter Corporation | FLY | 1,162,376,592 |
| CHUM Limited | CHM | 838,165,077 |
| CI Financial Inc. | CIX | 7,154,455,075 |
| Cinram International Inc. | CRW | 1,570,114,749 |
| CML Healthcare Income Fund | CLC | 1,146,320,093 |
| Coeur d'Alene Mines Corporation | CDM | 1,169,153,537 |
| Cognos Incorporated | CSN | 3,699,756,372 |
| Compton Petroleum Corporation | CMT | 2,176,282,390 |
| Corus Entertainment Inc. | CJR | 1,279,118,537 |
| Cott Corporation | BCB | 1,235,556,925 |
| Crescent Point Energy Trust | CPG | 1,066,746,941 |
| Davis + Henderson Income Fund | DHF | 879,383,166 |
| Dofasco Inc. | DFS | 5,030,843,287 |
| Domtar Inc. | DTC | 1,577,341,700 |
| Dorel Industries Inc. | DII | 907,311,046 |
| Dundee Wealth Management Inc. | DW | 986,016,110 |
| Duvernay Oil Corp. | DDV | 2,181,614,143 |
| E-L Financial Corporation Limited | ELF | 2,257,380,605 |
| Eldorado Gold Corporation | ELD | 1,719,909,916 |
| Emera Incorporated | EMA | 2,272,903,755 |
| Empire Company Limited | EMP | 1,116,812,548 |
| Enbridge Inc. | ENB | 13,016,984,010 |
| EnCana Corporation | ECA | 45,126,640,084 |
| Energy Savings Income Fund | SIF | 1,820,827,437 |
| Enerplus Resources Fund | ERF | 6,554,871,311 |
| Ensign Energy Services Inc. | ESI | 3,549,234,169 |
| EPCOR Power L.P. | EP | 1,671,624,866 |

| | | |
|---|-----|----------------|
| Esprit Energy Trust | EEE | 894,753,481 |
| Extencicare Inc. | EXE | 1,271,419,169 |
| Fairfax Financial Holdings Limited | FFH | 2,887,892,280 |
| Fairmont Hotels & Resorts Inc. | FHR | 3,546,256,392 |
| Falconbridge Limited | FAL | 14,205,091,630 |
| Finning International Inc. | FTT | 3,282,800,180 |
| First Calgary Petroleum Ltd. | FCP | 1,720,928,627 |
| First Capital Realty Inc. | FCR | 1,721,761,682 |
| First Quantum Minerals Ltd. | FM | 2,295,778,143 |
| FirstService Corporation | FSV | 861,901,365 |
| FNX Mining Company Inc. | FNX | 1,134,423,510 |
| Focus Energy Trust | FET | 942,984,706 |
| Fording Canadian Coal Trust | FDG | 5,911,907,072 |
| Fort Chicago Energy Partners L.P. | FCE | 1,631,158,758 |
| Fortis Inc. | FTS | 2,870,905,786 |
| Four Seasons Hotels Inc. | FSH | 1,902,301,380 |
| Freehold Royalty Trust | FRU | 921,613,387 |
| Gammon Lake Resources Inc. | GAM | 1,017,005,894 |
| Gaz Métro Limited Partnership | GZM | 2,298,622,042 |
| Geac Computer Corporation Limited | GAC | 1,108,975,062 |
| George Weston Limited | WN | 12,151,905,786 |
| Gerdau Ameristeel Corporation | GNA | 2,123,949,373 |
| Gildan Activewear Inc. | GIL | 2,997,761,650 |
| Glamis Gold Ltd. | GLG | 4,206,724,207 |
| Goldcorp Inc. | G | 8,793,388,927 |
| Great Canadian Gaming Corporation | GCD | 1,300,965,448 |
| Great-West Lifeco Inc. | GWO | 29,072,206,613 |
| H&R Real Estate Investment Trust | HR | 2,299,170,765 |
| Harvest Energy Trust | HTE | 1,971,800,570 |
| Highpine Oil & Gas Limited | HPX | 914,985,851 |
| Home Capital Group Inc. | HCG | 1,181,730,740 |
| Hub International Limited | HBG | 932,471,843 |
| Hudson's Bay Company | HBC | 1,031,847,147 |
| Husky Energy Inc. | HSE | 25,023,379,602 |
| IAMGOLD Corporation | IMG | 1,352,426,313 |
| IGM Financial Inc. | IGM | 12,615,663,240 |
| Imperial Oil Limited | IMO | 38,541,919,203 |
| Inco Limited | N | 9,623,160,467 |
| Industrial Alliance Insurance and Financial Services Inc. | IAG | 2,315,895,446 |
| ING Canada Inc. | IIC | 6,853,765,000 |
| Inmet Mining Corporation | IMN | 1,418,313,744 |
| Inter Pipeline Fund | IPL | 1,876,602,944 |
| InterOil Corporation | IOL | 910,620,916 |
| Intrawest Corporation | ITW | 1,611,123,072 |
| IPSCO Inc. | IPS | 4,645,592,314 |
| Ivanhoe Mines Ltd. | IVN | 2,623,648,223 |
| Jean Coutu Group (PJC) Inc. (The) | PJC | 1,992,116,840 |
| Keyera Facilities Income Fund | KEY | 1,362,715,553 |
| Kingsway Financial Services Inc. | KFS | 1,327,204,495 |
| Kinross Gold Corporation | K | 3,709,092,187 |

| | | |
|--|-----|----------------|
| Labrador Iron Ore Royalty Income Fund | LIF | 856,320,000 |
| Lafarge North America Inc. | LAF | 4,519,370,079 |
| Laurentian Bank of Canada | LB | 1,025,445,982 |
| Linamar Corporation | LNR | 841,278,899 |
| LionOre Mining International Ltd. | LIM | 1,074,545,480 |
| Lions Gate Entertainment Corp. | LGF | 925,218,732 |
| Loblaw Companies Limited | L | 15,448,469,865 |
| MacDonald Dettwiler and Associates Ltd. | MDA | 1,499,937,675 |
| Magna International Inc. | MG | 9,295,277,154 |
| Manitoba Telecom Services Inc. | MBT | 2,736,665,983 |
| Manulife Financial Corporation | MFC | 54,823,974,745 |
| Maple Leaf Foods Inc. | MFI | 1,604,952,846 |
| MDS Inc. | MDS | 2,863,032,164 |
| Mega Bloks Inc. | MB | 878,382,979 |
| Meridian Gold Inc. | MNG | 2,553,941,248 |
| Methanex Corporation | MX | 2,513,960,487 |
| Metro Inc. | MRU | 3,462,222,872 |
| MI Developments Inc. | MIM | 1,933,787,493 |
| Molson Coors Brewing Company | TAP | 3,892,561,998 |
| Molson Coors Canada Inc. | TPX | 2,683,396,021 |
| Mullen Group Income Fund | MTL | 1,234,381,167 |
| NAL Oil & Gas Trust | NAE | 1,331,215,864 |
| National Bank of Canada | NA | 10,444,422,179 |
| Newalta Income Fund | NAL | 846,732,488 |
| Newmont Mining Corporation of Canada Limited | NMC | 3,473,107,265 |
| Nexen Inc. | NXY | 14,934,716,503 |
| Niko Resources Ltd. | NKO | 2,115,564,895 |
| Norbord Inc. | NBD | 1,772,644,801 |
| Nortel Networks Corporation | NT | 15,389,481,907 |
| Northbridge Financial Corporation | NB | 1,779,795,710 |
| NOVA Chemicals Corporation | NCX | 3,196,484,201 |
| Novelis Inc. | NVL | 1,804,997,779 |
| ONEX Corporation | OCX | 2,627,040,695 |
| Open Text Corporation | OTC | 800,230,237 |
| OPTI Canada Inc. | OPC | 3,236,796,525 |
| Pan American Silver Corp. | PAA | 1,631,904,322 |
| Paramount Energy Trust | PMT | 1,836,241,252 |
| Paramount Resources Ltd. | POU | 2,044,822,178 |
| Pason Systems Inc. | PSI | 1,111,110,555 |
| Pembina Pipeline Income Fund | PIF | 2,028,935,298 |
| Pengrowth Energy Trust | PGF | 3,978,368,284 |
| Penn West Energy Trust | PWT | 6,202,465,805 |
| Petro-Canada | PCA | 24,070,899,865 |
| PetroFund Energy Trust | PTF | 2,397,560,349 |
| Peyto Energy Trust | PEY | 2,591,754,047 |
| Placer Dome Inc. | PDG | 1,624,281,685 |
| Potash Corporation of Saskatchewan Inc. | POT | 9,756,323,634 |
| Power Corporation of Canada | POW | 14,924,411,989 |
| Power Financial Corporation | PWF | 25,155,236,912 |
| Precision Drilling Trust | PD | 4,755,475,282 |

| | | |
|--|-----|----------------|
| Primaris Retail Real Estate Investment Trust | PMZ | 850,795,354 |
| Primewest Energy Trust | PWI | 2,881,659,942 |
| Progress Energy Trust | PGX | 1,219,325,499 |
| Provident Energy Trust | PVE | 2,404,864,621 |
| Quebecor Inc. | QBR | 1,646,868,316 |
| Quebecor World Inc. | IQW | 1,892,549,906 |
| R.R. Donnelley & Sons Company | RRD | 4,588,295,569 |
| RBC Capital Trust | RYT | 1,564,650,000 |
| Real Resources Inc. | RER | 925,190,675 |
| Reitmans (Canada) Limited | RET | 1,203,700,325 |
| Research In Motion Limited | RIM | 14,661,077,341 |
| Retirement Residences Real Estate Investment Trust | RRR | 843,480,581 |
| Rider Resources Ltd. | RRZ | 944,010,655 |
| Riocan Real Estate Investment Trust | REI | 4,465,496,530 |
| Ritchie Bros. Auctioneers Incorporated | RBA | 1,694,442,447 |
| Rogers Communications Inc. | RCI | 15,642,675,260 |
| RONA inc. | RON | 2,454,118,974 |
| Rothmans Inc. | ROC | 1,645,352,994 |
| Royal Bank of Canada | RY | 59,986,270,040 |
| Royal Gold Inc. | RGL | 838,776,705 |
| Royal Group Technologies Limited | RYG | 983,970,606 |
| Russel Metals Inc. | RUS | 1,106,687,402 |
| Saputo Inc. | SAP | 3,559,000,821 |
| Savanna Energy Services Corp. | SVY | 829,951,923 |
| Sears Canada Inc. | SCC | 1,931,063,291 |
| Shaw Communications Inc. | SJR | 5,409,697,784 |
| ShawCor Ltd. | SCL | 1,156,442,716 |
| Shell Canada Limited/Shell Canada Limitée | SHC | 34,695,564,835 |
| Sherritt International Corporation | S | 1,605,107,027 |
| Shiningbank Energy Income Fund | SHN | 1,986,142,450 |
| Shoppers Drug Mart Corporation | SC | 9,376,491,888 |
| Shore Gold Inc. | SGF | 1,308,274,668 |
| Silver Standard Resources Inc. | SSO | 922,128,479 |
| Silver Wheaton Corp. | SLW | 1,237,173,750 |
| SNC-Lavalin Group Inc. | SNC | 3,844,015,440 |
| Sobeys Inc. | SBY | 2,461,033,493 |
| Stantec Inc. | STN | 889,033,594 |
| Summit Real Estate Investment Trust | SMU | 1,765,205,327 |
| Sun Life Financial Inc. | SLF | 27,989,754,676 |
| Suncor Energy Inc. | SU | 33,538,927,218 |
| Superior Plus Income Fund | SPF | 2,336,340,968 |
| Synenco Energy Inc. | SYN | 817,572,861 |
| Talisman Energy Inc. | TLM | 22,561,549,164 |
| TD Capital Trust | TDD | 1,006,200,000 |
| Teck Cominco Limited | TEK | 12,671,131,658 |
| TELUS Corporation | T | 16,723,603,314 |
| Thomson Corporation (The) | TOC | 25,960,881,485 |
| TimberWest Forest Corp. | TWF | 1,193,308,593 |
| Toromont Industries Ltd. | TIH | 1,611,130,534 |
| Toronto-Dominion Bank (The) | TD | 44,652,486,966 |

| | | |
|---------------------------------------|-----|-------------------|
| Torstar Corporation | TS | 1,511,430,738 |
| TransAlta Corporation | TA | 5,224,423,914 |
| TransCanada Corporation | TRP | 17,855,098,475 |
| Transcontinental Inc. | TCL | 1,696,478,694 |
| TransForce Income Fund | TIF | 1,101,963,455 |
| Trican Well Service Ltd. | TCW | 3,188,005,352 |
| Trilogy Energy Trust | TET | 1,525,533,590 |
| Trinidad Energy Services Income Trust | TDG | 1,188,928,671 |
| Trizec Canada Inc. | TZC | 1,321,530,446 |
| TSX Group Inc. | X | 3,188,796,033 |
| UTS Energy Corporation | UTS | 1,816,159,646 |
| Vermilion Energy Trust | VET | 1,856,444,644 |
| Viking Energy Royalty Trust | VKR | 1,718,601,422 |
| Vincor International Inc. | VN | 1,037,845,271 |
| West Fraser Timber Co. Ltd. | WFT | 1,561,034,417 |
| Western Oil Sands Inc. | WTO | 4,458,793,513 |
| WestJet Airlines Ltd. | WJA | 1,581,040,789 |
| Westshore Terminals Income Fund | WTE | 841,758,088 |
| Yamana Gold Inc. | YRI | 1,464,236,766 |
| Yellow Pages Income Fund | YLO | 7,697,596,369 |
| Mean WKSI Market Cap | | 6,100,521,672 |
| Median WKSI Market Cap | | 1,986,142,450 |
| Total WKSI Market Cap | | 1,604,437,199,629 |
| Total TSX Market Cap | | 1,825,863,659,529 |
| Total TSX + Venture Market Cap | | 1,857,957,943,249 |

Appendix 2: TSX 30%

| Company | root ticker | QMV (All Classes Dec. 31, 2005) |
|---|--------------------|--|
| Legg Mason Canada Holdings Ltd. | LMI | 332,459,509 |
| Rogers Sugar Income Fund | RSI | 334,194,282 |
| Zarlink Semiconductor Inc. | ZL | 334,331,323 |
| Van Houtte Inc. | VH | 337,161,951 |
| International Forest Products Limited | IFP | 343,448,035 |
| SunOpta Inc. | SOY | 344,133,081 |
| BMTC Group Inc. | GBT | 345,596,352 |
| Royster-Clark Ltd. | ROY | 346,125,000 |
| Algoma Central Corporation | ALC | 346,317,779 |
| Peak Energy Services Trust | PES | 347,050,250 |
| Alexis Nihon Real Estate Investment Trust | AN | 347,868,353 |
| TransGlobe Energy Corporation | TGL | 349,665,185 |
| Cogeco Inc. | CGO | 350,402,496 |
| Ainsworth Lumber Co. Ltd. | ANS | 350,846,903 |
| Railpower Technologies Corp. | P | 352,072,100 |
| OccuLogix Inc. | RHE | 353,521,165 |
| Crew Gold Corporation | CRU | 353,820,250 |
| Cathedral Energy Services Income Trust | CET | 355,756,462 |
| Celtic Exploration Ltd. | CLT | 358,641,840 |
| TD Mortgage Investment Corporation | TDB | 360,500,000 |
| Bow Valley Energy Ltd. | BVX | 362,047,697 |
| Melcor Developments Ltd. | MRD | 363,150,716 |
| TVA Group Inc. | TVA | 363,693,568 |
| Livingston International Income Fund | LIV | 369,297,000 |
| Dynatec Corporation | DY | 369,491,228 |
| Addenda Capital Inc. | ADV | 369,999,060 |
| HSBC Bank Canada | HSB | 370,160,000 |
| Aeroplan Income Fund | AER | 371,162,500 |
| Anderson Energy Ltd. | AXL | 371,531,962 |
| Weyerhaeuser Company Limited | WYL | 373,880,008 |
| GSW Inc. | GSW | 375,380,871 |
| Martinrea International Inc. | MRE | 375,637,282 |
| Samuel Manu-Tech Inc. | SMT | 375,726,088 |
| Atlas Cold Storage Income Trust | FZR | 376,499,353 |
| iShares COMEX Gold Trust | IGT | 379,260,000 |
| Vault Energy Trust | VNG | 379,320,808 |
| Garda World Security Corporation | GW | 382,816,567 |
| Emergis Inc. | EME | 382,975,576 |
| Duke Energy Canada Exchangeco Inc. | DX | 383,551,000 |
| Denison Mines Inc. | DEN | 384,753,922 |
| Indexplus Income Fund | IDX | 386,971,531 |
| Guinor Gold Corporation | GNR | 387,996,946 |
| Bonterra Energy Income Trust | BNE | 390,229,729 |
| COMPASS Income Fund | CMZ | 396,824,210 |

| | | |
|---|-----|-------------|
| Westaim Corporation (The) | WED | 397,614,778 |
| Stratos Global Corporation | SGB | 397,639,372 |
| World Financial Split Corp. | WFS | 399,787,147 |
| Major Drilling Group International Inc. | MDI | 400,858,862 |
| Chemtrade Logistics Income Fund | CHE | 403,477,008 |
| Brompton Equal Weight Income Fund | EWI | 404,357,389 |
| KCP Income Fund | KCP | 405,133,739 |
| International Minerals Corporation | IMZ | 406,091,100 |
| Magna Entertainment Corp. | MEC | 406,789,519 |
| The Brick Group Income Fund | BRK | 407,070,589 |
| Birchcliff Energy Ltd. | BIR | 410,719,004 |
| Golden Star Resources Ltd. | GSC | 410,736,019 |
| Calvalley Petroleum Inc. | CVI | 412,811,708 |
| West Energy Ltd. | WTL | 415,430,442 |
| Cineplex Galaxy Income Fund | CGX | 416,982,883 |
| Intertape Polymer Group Inc. | ITP | 418,683,586 |
| Gateway Casinos Income Fund | GCI | 421,626,285 |
| Saxon Energy Services Inc. | SES | 422,278,748 |
| Forzani Group Ltd. (The) | FGL | 425,302,463 |
| TransCanada Pipelines Limited | TCA | 431,000,000 |
| Taylor NGL Limited Partnership | TAY | 432,650,847 |
| Morguard Corporation | MRC | 439,908,003 |
| Hummingbird Ltd. | HUM | 441,586,556 |
| Brompton Equal Weight Oil & Gas Income Fund | OGF | 441,761,707 |
| Agricore United | AU | 441,820,958 |
| Groupe Laperrière & Verreault Inc. | GLV | 441,879,914 |
| Economic Investment Trust Limited | EVT | 445,078,015 |
| Akita Drilling Ltd. | AKT | 448,041,496 |
| Noranda Income Fund | NIF | 448,125,000 |
| Boralex Power Income Fund | BPT | 453,906,020 |
| Northgate Minerals Corporation | NGX | 455,629,812 |
| Gabriel Resources Ltd. | GBU | 460,133,494 |
| Tenke Mining Corp. | TNK | 462,090,820 |
| Bankers Petroleum Ltd. | BNK | 462,424,352 |
| Aberdeen Asia-Pacific Income Investment Company Limited | FAP | 465,020,506 |
| Atlantic Power Corporation | ATP | 465,121,355 |
| BPO Properties Ltd. | BPP | 469,641,686 |
| Prairie Schooner Petroleum Ltd. | PSL | 471,245,406 |
| Guardian Capital Group Limited | GCG | 473,055,394 |
| Kereco Energy Ltd. | KCO | 477,480,656 |
| Total Energy Services Trust | TOT | 479,406,810 |
| IPC US Real Estate Investment Trust | IUR | 492,723,651 |
| Thunder Energy Trust | THY | 493,580,232 |
| HudBay Minerals Inc. | HBM | 494,781,569 |
| Calpine Power Income Fund | CF | 495,790,573 |
| Pebercan Inc. | PBC | 496,476,595 |
| Canadian Hotel Income Properties Real Estate Investment Trust | HOT | 502,198,167 |
| CanWest MediaWorks Income Fund | CWM | 506,000,000 |
| Wajax Income Fund | WJX | 509,249,496 |
| Citadel Stable S-1 Income Fund | CSR | 509,910,391 |

| | | |
|--|-----|-------------|
| Ketch Resources Trust | KER | 511,767,944 |
| North American Palladium Ltd. | PDL | 511,923,902 |
| Tahera Diamond Corporation | TAH | 514,006,252 |
| Alamos Gold Inc. | AGI | 514,750,651 |
| March Networks Corporation | MN | 515,099,180 |
| TLC Vision Corporation | TLC | 515,687,923 |
| Crystallex International Corporation | KRY | 516,349,813 |
| Zargon Energy Trust | ZAR | 517,830,276 |
| Premium Income Corporation | PIC | 519,778,463 |
| Patheon Inc. | PTI | 520,864,310 |
| sxr Uranium One Inc. | SXR | 525,307,092 |
| Nortel Networks Limited | NTL | 531,840,000 |
| Connacher Oil and Gas Limited | CLL | 536,111,800 |
| Virginia Gold Mines Inc. | VIA | 536,387,133 |
| ZENON Environmental Inc. | ZEN | 537,273,682 |
| Dundee Precious Metals Inc. | DPM | 539,909,527 |
| ProEx Energy Ltd. | PXE | 540,994,377 |
| Miramar Mining Corporation | MAE | 542,438,761 |
| Saskatchewan Wheat Pool Inc. | SWP | 545,015,352 |
| Corby Distilleries Limited | CDL | 547,137,531 |
| Richelieu Hardware Ltd. | RCH | 549,232,379 |
| Connors Bros. Income Fund | CBF | 552,784,492 |
| Ballard Power Systems Inc. | BLD | 554,673,568 |
| Northern Orion Resources Inc. | NNO | 562,725,867 |
| Sequoia Oil & Gas Trust | SQE | 580,450,565 |
| North West Company Fund | NWF | 580,536,000 |
| Bell Nordiq Income Fund | BNQ | 582,054,108 |
| Uni-Select Inc. | UNS | 586,967,198 |
| Cyries Energy Inc. | CYS | 589,263,285 |
| Morguard Real Estate Investment Trust | MRT | 593,319,536 |
| Cogeco Cable Inc. | CCA | 595,190,407 |
| International Uranium Corporation | IUC | 600,365,458 |
| Cardiome Pharma Corp. | COM | 603,222,903 |
| Tan Range Exploration Corporation | TNX | 603,987,274 |
| Sino-Forest Corporation | TRE | 606,349,903 |
| Enerflex Systems Ltd. | EFX | 606,752,287 |
| Dundee Real Estate Investment Trust | D | 607,942,194 |
| Great Lakes Hydro Income Fund | GLH | 609,413,039 |
| Aspreva Pharmaceuticals Corporation | ASV | 609,544,993 |
| Sunrise Senior Living Real Estate Investment Trust | SZR | 612,007,827 |
| Petrobank Energy And Resources Ltd. | PBG | 612,706,069 |
| Neurochem Inc. | NRM | 620,152,101 |
| Consumers' Waterheater Income Fund (The) | CWI | 620,816,689 |
| Producers Oilfield Services Inc. | POS | 621,271,255 |
| Southwestern Resources Corp. | SWG | 621,649,437 |
| Crew Energy Inc. | CR | 622,371,193 |
| Canadian General Investments Limited | CGI | 623,731,602 |
| Gennum Corporation | GND | 624,003,776 |
| Husky Injection Molding Systems Ltd. | HKY | 631,630,289 |
| BNN Investments Ltd. | BNB | 635,496,710 |

| | | |
|---|-----|-------------------|
| Western Silver Corporation | WTC | 635,973,311 |
| Centerplate Inc. | CVP | 637,635,931 |
| Leon's Furniture Limited | LNF | 638,397,577 |
| Cominar Real Estate Investment Trust | CUF | 639,241,878 |
| Aastra Technologies Limited | AAH | 642,180,929 |
| GMP Capital Trust | GMP | 643,606,799 |
| Flint Energy Services Ltd. | FES | 656,872,788 |
| Catalyst Paper Corporation | CTL | 658,834,648 |
| Oilexco Incorporated | OIL | 659,027,003 |
| Cangene Corporation | CNJ | 663,943,194 |
| Enterra Energy Trust | ENT | 671,303,977 |
| UE Waterheater Income Fund | UWH | 679,415,400 |
| United Corporations Limited | UNC | 681,381,570 |
| EuroZinc Mining Corporation | EZM | 683,251,963 |
| Lundin Mining Corporation | LUN | 685,522,552 |
| Canadian Hydro Developers Inc. | KHD | 689,216,030 |
| QLT Inc. | QLT | 690,682,856 |
| Canaccord Capital Inc. | CCI | 692,156,498 |
| Gastar Exploration Ltd. | YGA | 695,266,684 |
| Harris Steel Group Inc. | HSG | 702,724,752 |
| Dundee Corporation | DBC | 702,920,561 |
| St. Lawrence Cement Group Inc. | ST | 704,929,213 |
| Western Lakota Energy Services Inc. | WLE | 707,355,074 |
| Winpak Ltd. | WPK | 715,000,000 |
| Legacy Hotels Real Estate Investment Trust | LGY | 715,154,877 |
| Pan-Ocean Energy Corporation Limited | POC | 715,466,657 |
| TransAlta Power L.P. | TPW | 727,774,362 |
| NuVista Energy Ltd. | NVA | 737,272,520 |
| Acuity Focused Total Return Trust | AFU | 740,400,000 |
| Northland Power Income Fund | NPI | 740,923,469 |
| Central Fund of Canada Limited | CEF | 743,055,002 |
| InnVest Real Estate Investment Trust | INN | 744,318,603 |
| True Energy Trust | TUI | 752,662,040 |
| Daylight Energy Trust | DAY | 759,834,968 |
| Tesco Corporation | TEO | 761,688,739 |
| Transat A.T. Inc. | TRZ | 762,439,639 |
| UEX Corporation | UEX | 765,111,632 |
| Novagold Resources Inc. | NG | 767,186,541 |
| Paladin Resources Ltd. | PDN | 781,942,855 |
| Galleon Energy Inc. | GO | 786,511,587 |
| Veritas DGC Inc. | VTS | 798,700,128 |
| Mean Market Cap | | 517,922,980 |
| Median Market Cap | | 624,003,776 |
| TSX 30% Market Cap | | 95,815,751,232 |
| WKSI Market Cap | | 1,604,437,199,629 |
| WKSI + TSX 30% Market Cap | | 1,700,252,950,861 |
| Total TSX Market Cap | | 1,825,863,659,529 |
| WKSI + TSX 30% Market Cap Percentage | | 0.931 |

Adam C. Pritchard
Professor of Law, University of Michigan Law School
625 S. State St.
Ann Arbor, MI 48109-1215

acplaw@umich.edu