

# A Conversation with Walied Soliman EN

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## SUMMARY KEYWORDS

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## SPEAKERS

Walied, host



00:00

Good afternoon,



host 00:02

everyone, and welcome and good morning to our colleagues in Western Canada. I have the very great pleasure today of inviting our colleague and friend, Walied Solomon, chair of the Ontario capital markets modernization Task Force, to a discussion with all of you about the work that he and his colleagues have been doing over the course of the last year. will lead thank you and welcome.



Walied 00:28

It's our pleasure. My pleasure to be here. Thank you for having me.



00:31

So a couple of words of introduction, and then a little bit of the plan for the afternoon, and then we'll get going. First of all, we have over 1000 attendees on this call today from one end of Canada to the other. No colleague, Rebecca. Dr. could just be prayer IV, the

present day, CIT diskusi, of ecopoetics, CMC rotini. Please do present your questions in the language of your choice. Now we'll answer them in English with, of course, the translation simultaneously. There's very good representation here today from Iraq firms. And the restaurants across the country, from other industry members, including mutual fund dealers, exempt market dealers, portfolio managers, and so on. As well as all of our colleagues from securities commissions across the country, their governments and many, many other stakeholders. And I think that's an indication of what an interesting and important topic this is, and the importance of the work and recommendations that will lead it as colleagues in the task force have now delivered to the Government of Ontario. But a little bit about Waleed. First of all, I think you all know he is the chair for Canada of Norton rose Fulbright, and he co chairs their special situations team, which encompasses Canada's leading, sell m&a practice, shareholder activism, and complex reorganizations. He was honored in 2019, as a global citizen laureate by the United Nations Association in Canada. He's also on the board of Toronto Sick Kids Hospital Foundation, Ryerson University and the black North initiative. You're also a long distance runner, and someone who I have had the pleasure of chasing up and down a number of ravines and waterfront parks in in the city. And as soon as the weather gets better, again, I look forward to continuing that



02:34

conversation.



02:36

Absolutely. So let's get to it. Well, he, you started this process with your colleagues in the task force about a year ago. And you moved very, very quickly by the standards of policy reports in this country, and engaged as part of that process with a huge number of stakeholders from one end of the system to the other. When you came into the process, what was your perception as to why this taskforce was created? And why it was important that this review be done?



Waleed 03:11

Yeah. Well, first off, thank you very much, Andrew, and to your entire team, and all the Iraq members from across across the country, for joining us here today. I really want to start off by saying, you know, Andrew, you and the entire Iraq team have been outstanding partners throughout this, and I should tell your Iraq members, not just on matters that that are important to Iraq members directly. But really, you guys were a

great resource to us outside of that as well. And for that, I really, thank you. Look the past year. It has been an incredible journey. Andrew, look, I'm a corporate m&a securities lawyer, I do proxy battles, hostile m&a, that sort of thing. This was really my first time sinking my teeth in public policy. And I'll tell your all your members this. It's very humbling. It was a lot of fun. It was very interesting. And you really get to realize and learn how little you know about this incredibly expansive area of the law and area of regulation and how incredibly important it is to the economy. Look, I think, Andrew in answer to your question, over 1000 people are listening to us today. Over 600 were listening on the OSC event. Last week. There is a ground swell thirst for for reform and update and review of our capital markets. There's a desire to be among the very best in the world. And you know, I've said This time and again, one of my big learnings has been that we are incredibly blessed with great regulators across this country, from our securities regulators to Iraq to the mfda. We are really blessed with incredibly great folks. But you guys actually need the support of, of industry and guys like me, who are not normally involved in public policy to come in and say, you know, here's the goodwill that we're going to bring to the table, whether it's political, goodwill, business goodwill experiences we've had across Canada and around the world. And here's how we want to help support and empower you, as our colleagues to help ensure that the Canadian capital markets are the best in the world. And they can be that, but we need to meet the determination to get there.



05:51

Well, thank you for that. I mean, it's clear that the capital markets provide the fuel for economic growth in this country and more than ever, given the experiences of the last year, and those that are still ahead of us, as we kind of come through this pandemic, having an efficient and effective capital markets, to provide that growth, to provide the the the ability of this economy to rebound from all the hits that it has taken. And to continue to provide a place for Canadians to invest to save for their financial futures is really, really important. One of the things that you and your colleagues did, as part of the task force work, was engaged with an enormous number of stakeholders, you mentioned that we'd work closely with you over the course of the last year. And it was our pleasure to do so on a whole variety of topics. But obviously, you talk to a whole bunch of other people as well. And I wondered if you could give us a sense for kinds of stakeholders, the kinds of groups and individuals that you that you met with, and and the sentiments that you picked up over the course of that period?



07:00

Yeah, we met with well over 130 stakeholders, we stopped counting I like, well, well over

that it made maybe 150, maybe 140. But but but but many, and we met them from all across the country. And we were very careful to have an appropriate mix of issuers, intermediaries, regulators as sorrows, and investor protection organizations. And we tried our best to be very careful to make sure that we had a well rounded view on on on each of the issues. I'm looking at, I think, for me the most alarming thing that that that came through, you know, I've been practicing securities law, this is my 20th year I can't believe how fast it's gone by Andrew and there is a fear that we are losing ground significantly in the primary market in Ontario and Canada. And that's a really that's a prevalent fear that you hear from issuers, investors, investor protection people, intermediaries, and, and and regulators. You know, the charts don't lie outside of a few blips relating to cannabis and a couple of other things. There has been a downward trend in the number of new issuers that are creating jobs in this country, the number of artios, the number of IPOs that are happening in this country. And that is something that policymakers and as a matter of public policy and as market participants, we all need to be very concerned about one of the things that I learned through this past year and that I repeated over and over again to our task force and others who would come in is regulation is not an end in itself. It is not it this project is about and the entire idea of having a capital markets is about wealth creation and job creation. In fact, I do them in the opposite order job creation, and wealth creation. I always like to tell folks, we are not we are not going to be growing the primary capital markets in Ontario by having coke or Disney move their head office to Montreal or Toronto or Nova Scotia and, and and have their listing on the Toronto Stock Exchange. We are going to grow the capital markets in this province by helping ensure that the nascent version of Shopify that a couple of young women are thinking about in a garage somewhere in new market is able to be competitively finding And, and and able to grow right here in this country. That's probably the single biggest learning that I've had. And I know we're going to probably talk about in a few of the other areas today, Andrew, it's my certainly my biggest fear. You know, we haven't had this kind of review in Ontario since 2003. Since the Crawford report, we definitely need to be doing it more often. But when you have that much time that has elapsed, you can actually tangibly see where you are falling behind. And you can you can call it more than a blip, or something that was an economic cycle between 2003. And now we've seen lots of blips and lots of economic cycles, and the trend is down. And that scares the hell out of me. And it's, it's it's my biggest learning and the certainly the biggest thing that we heard across the country.



10:54

Thank you for that. So that was your biggest learning, what was your biggest surprise? What are the trends? We're going to talk about some of the recommendations, what was your biggest surprise? What didn't?



11:07

I it's, it's actually the most humbling thing. And I'll say this to, you know, secure securities lawyers in the world of law, are sort of think they're Masters of the Universe. And, and it's a myth, that was, was always a myth. But the level of humility that I gained over the last year in learning how much I how little I actually knew about this secure about this practice area is remarkable, I realized that I know how to do public m&a transactions, I know how to do proxy battles. And, you know, a little bit of corporate governance and compliance. But this, this beautiful area of practice area, and regulatory area, and area that we sort of all practice in, is so much more expansive, and there are so many more issues. And while it's not a vote getter, you know, I only have to joke that, you know, you know, really premier Ford, Rod Phillips, and now Peter Bessel, and follow the, you know, had the vision to push on this. But, you know, halfway through the year, I had a call with premier Ford on an issue. And I started briefing him on how the task force was going, and he said, What Task Force and you know, he had COVID, and seven other things. And I said, you know, sir, the thing I've been working my tail off on for the last year, so look at this is not a sexy vote getter. This is not a, this is, you know, not making the A section of the newspaper, or going viral on Facebook. And so this gets very little political attention. But don't ever forget the critical public policy function, any very important social good, that we undertake in this practice area and keeping the integrity of the capital markets. This is a critical, Cornerstone, critical cornerstone of the economic prosperity of our country. And, and recognizing with humility, that it is a lot more expansive than each of us know, and recognizing with humility, that there's lots of stakeholders out there with different perspectives, and recognizing how important it is has been has been probably the the most surprising thing for



13:42

me. That's good. You know, one last sort of high level question, and then we'll dive into some of the areas that you and your colleagues focused on. And, and that is this, you know, what you and I talked, I think, probably while we were running along Lake Ontario, at some point, about the fact that Canada is a country where jurisdiction for securities is given to the provinces under our Constitution. Your mandate, the mandate of your team, and your colleagues was to look at what could be done in Ontario to modernize the capital markets. But Ontario Works with and in partnership with all of the other provinces of Canada and of course, our friends in the federal government. What kind of interactions Did you have with other jurisdictions as you did this work, recognizing that that Ontario isn't an island? It's it's a huge piece of the capital market in this country, but it is not alone.



14:41

Yeah, great question. Great question. You know, the The first time I got to experience the oddities of our Federation, was when I got elected chairman of my firm, we have six offices across Canada from Quebec City to Vancouver and People would be foolish not to understand that even within a single economic partnership, there are cultural differences and important cultural differences and important different needs. And if you're not mindful of that you can't actually have six law offices, let alone a federation, as expansive and as important as this nation. The CSA plays a critical role. And it's a critical coordinating role. We had a couple of sessions with each of the CSC chairs, I spent some individual time with some of the other chairs, I know that the previous Minister of Finance spent time on the phone with some of his counterparts in in the in the other provinces. Here's the harsh reality that I also learned in a federation, waiting for consensus is not not the way forward for purposes in this in this exceptionally competitive global landscape that we find ourselves in with a primary market that is being significantly threatened. And that's a harsh thing, because I'll tell you, I don't know a single person on Bay Street, myself included, included, who isn't a fan of the idea of a national regulator, national regulator, there is no question about it, you you there, there isn't anybody who doesn't, at least on in Toronto, where I where I practice, where that wouldn't say it makes total sense to have a national regulator, I've sadly concluded that that that dream needs certain political stars to align, which are simply not aligned in the Federation right now. Accordingly, to CSA in my view, is the best that we have, along with, of course, national organizations like Iraq, that plays a very critical bridging role across this country. And I'd also like to say, there are some elements and things that the CCE that ccmr have done that that we need to jump on. One of them, for example, is the CMA the capital markets act, there's been 10s of millions of dollars of taxpayer money spent on putting together a state of the art, state of the art capital markets act. And one of our very first recommendation is actually the adoption of that, obviously, without the national stuff, but to really send the message across Canada that look at there may come a time when the political stars align, if they do align, we've set the example. And we're ready, and we're ready, we're ready to go. But what I would urge policymakers is we need to each move with the best ideas we have, where we have them, and move on them quickly and decisively. So that we are not falling behind, globally. And we of course, should be urging our CSA body to work the best they can together to harmonize as quickly as possible. But we should not let there be a situation where we are spending six or seven years on developing takeover bid rules. Again, there's no time for that. There's just no time for that anymore. And that's why I'm urging my colleagues in Ontario to adopt these recommendations, or as many of them as they see, as they see fit. I'm very hopeful that our friends at the CSA will work with the Ontario Securities Commission to you know, build on the frameworks that that we've worked on. By the way, Andrew, a lot of these ideas are CSA ideas. Like, let's give credit

where credit's due my call our friends at the CSA across the country, you know, many, many of these ideas, are there ideas. And by the way, we have a task force zero pride of authorship, I say just get it done. Just get it done. And, and and what I would urge my colleagues at the Ontario Securities Commission is drive forward if you can't get it done, obviously, try your best to work within the Federation because the stronger Federation we have, the better but don't get bogged down. We do not have time for that in this global environment.



19:41

Thank you for that. I mean, one of the things that you and I've talked about before is that Iraq plays an important and I think unique role in the system. Now in Ontario, we work for Ontario, Quebec, Utah, my own political back, etc. So we can support jurisdictions whether they be British Columbia, or Newfoundland and Labrador, or any of the provinces and territories in between, to achieve their public policy goals and their jurisdictions, and hopefully work with all of them together to deliver those things that are harmonized, and there will be hopefully more. So maybe we can jump into some of the some of the themes. One of them, that we've already touched on a little bit is, you know, the idea of regulation and an efficient and effective regulatory system as being a competitive advantage, because it protects people, the way they need to be protected. But it doesn't burden the system unduly with cost or effort or time where it's not necessary. You have a number of recommendations in the report that talked about streamlining the regulatory system and improving its efficacy. And maybe you could spend a couple minutes talking about a few of those.



20:59

You know, I'll tell you, the very first one I'd like to talk about is, is our proposal on changing the mandate, and it is sort of maybe just a step above what you're specifically referring to. And, you know, we have proposed change, supplementing the investor protection mandate of the Ontario Securities Act with a competition and growth mandate. And, you know, for me, it was very easy when we were coming up with this. And I can tell you, we work hand in glove with the OSC on this and there's lots of precedent and Australia and the United Kingdom and Singapore places we are actually competing with to have this. For me, the the the reason behind this was quite simple. I wanted to see our regulators and our policymakers look at every piece of enforcement, every piece of every new rule, every call that they get on a question through the lens of what is this doing to grow the capital markets to help improve the amount of job creation and wealth creation in this in this in this province? You know, we got we got mostly very positive views on it, we got a

few views that just didn't compute in my mind. And those views were folks said, but it's already there in the mandate relating to efficiency of the capital markets. And my view is, well, let's amplify it, let's absolutely make sure that there is no confusion, we see our securities regulatory framework through the lens of protecting investors, but helping grow this market so that nobody ever tells me again, that it's better in Singapore, or they could raise more better money for a mining transaction in Australia, or the aim in the United Kingdom or some Junior exchange on the LSE is more efficient for them, then, then then the TSX Venture the CSC is my hope. And I you know often talked about this with our task force members, is that five or 10 years from now, there is actually a case in front of some court where there is some decision that's made. And the judge says Hold on a second, you didn't look at this through the lens of capital formation, growth of the capital markets, competition in the capital markets, and had you done that you may have had you given that appropriate an appropriate level of importance, you may have come to a different conclusion. So you know, when I when I think about Andrew, you know how it is that we want to actually make things better. The starting point for me is this is the mindset. And the mindset is in the mandate, and that mandate needs to in our view, included growth and competition. And



24:12

so that's really interesting. You also made a number of other recommendations about the structure of the Ontario Securities Commission. How did that how do those things tie together or do they?



24:25

So they do and Andrew you know, I I've been practicing securities law since 2000. And and one I did a short secondment at the Ontario Securities Commission in their enforcement branch actually, and, and, you know, I knew from since that time I remember as an articling student, reading about the importance of separating the adjudicators and prosecutorial functions of the Ontario Securities Commission. I actually went back and took a look when we started this task. I found stuff in the 1960s about the importance of dividing the prosecutorial and adjudicated function. There were few areas of the report that got near unanimous support. And that was that was that was that was one of them. And I'm very excited about it. And I think it sends the unexciting and the right message to the market. The prosecutorial and adjudicated function of the OSC gets get get separated. There's a CEO, the CEO sits on the board, the CEO is answerable to the board. There's a separate adjudicated body, a chief adjudicator that chief adjudicator does not sit on the board, that chief adjudicator can come from time to time and explain things



that are happening in the board, but has a direct line into the Minister of Finance. Now, you know, some folks have asked, Are you making these suggestions? Because there's something wrong with the OSC? No, there is not and I want to be very clear about that. I know that our regulators are not always the most popular folks there. They are incredible folks, and they're doing an incredible job. And I actually do not think that there is an inherent conflict. But I do you think that you need to get the mandate, right? You need to get the governance, right. And then you start talking about how you're going to improve the capital markets after you've got that with the regulator's perfectly. And that was our goal here. And fortunately, we've gotten almost unanimous support on on the governance, the governance proposals for the OSC.



26:34

It's interesting. So just to rephrase the structural changes, in your mind, do connect with the mandate changes so that the organization is lined up? Or that piece of it anyway, on delivering on the mandate. Is that Is that a fair salutely



26:54

we have a vision, if I could sort of encapsulate the entire governance vision, we're going to get into this part. And I, you know, I think a little bit later. But we are very much looking at this as let's start off with what's the public policy purpose of having our Securities Act and our securities regulator, what is that we have it, we have an investor protection mandate, we have a growth mandate competition mandate, we are armed in the in the in section one of our of our statute with what it is we are setting out to do, then we have our governance model, which has a CEO that has a oversight board, and that has separate adjudicative body to implement this. There's also going to be some stuff with the sorrows that we're going to talk about as well, that I think fits in neatly with that including stronger arrows in the framework, that that we're that we're finding ourselves, and I think some people were quite surprised with some of the things that we've thrown in there. But I'll tell you, we had we had great support, you know, from from from the OSC, you know, on these initiatives, and, and I think I think if we get that governance framework, right, the rest of its going to come and fit in perfectly.



28:13

Good. Thank you for that. Okay, so it's it's 128, we're halfway through. I can't resist asking at this point. I think I've waited long enough about the commentary that you and your colleagues put into the report the recommendations that you made on the SRO structure,

how does that fit in? Because clearly, it doesn't stand in isolation, it fits into the system that you've been describing. And I think people would like especially the folks on this call today would like to hear how you came to those recommendations and why.



28:44

Yeah, so two parts to it. And maybe I can start with this overall theme. You know, between yourself, Andrew and your board, you've got a pretty representative group that gets along great with three ministers ago, and the two ministers ago and the last minister and this minister. There's a good working relationship with the OSC and my understanding is a very good working relationship with other regulators across the country. The first thing we wanted to do was we wanted to make sure that there was a solid dotted line from from a public policy perspective between the sorrows, the new governance, newly governed Ontario Securities Commission, and the Department of Finance. And, you know, as you know, we worked closely with you on some of our thoughts there and, and, you know, I was very happy with where we were, we were we ended up we started, I think a little bit a little bit further in our earlier consultation. paper and I think you and your team did a great job of of explaining to us the importance of the independence that your members attribute to, to the, to the, to the strength of your organization. And, and I think we got the right mix right now in the report of, of hat making sure that everybody from the public policymakers, to the regulators to you guys are all sort of rowing in the same in the same direction. I don't know what the number is. Andrew, but, you know, your organization in Ontario regulates what half of the capital markets maybe more without the same sort of formal lines, at least into the minister. And that's why we thought that was important. And, again, we're grateful to the cooperation that we got from from you, and from the mfda and others. The second is, it's not even really an elephant in the room anymore, because it's just it's just, it's, my view is it's going to happen. It's a question of time. And that's the consolidation of you guys. And, and the nfda. I don't think there's much argument in the market, on on consolidation. And I think I would say to you that there is, you know, wide regulatory support. I know, the CSA is going through a process. Right now, my hope, is that it's not a process that is going to be sort of bogged down. For a long time, you know, I would call on them to move very quickly. You know, and I, you know, I think that, you know, we didn't hear a single person, not one, not one, not even folks associated with the FDA or other like, there wasn't one person who said, this is a bad idea. So I think getting it, getting it right, and getting it moving is important, the encouragement that we tried to offer in the report. And I'll tell you, we, we really were We were not opposed, certainly by our friends at the Ontario Securities Commission, is to make it something really exciting. So not just sort of mfda products and sort of Iraq, but like thinking beyond that to eventually even even having registration going in there. And I don't know what some of our CSA colleagues are going to think about that across the country. But it makes sense,

and which is why we recommended it now. You know, we've set out the journey of how to get there. And we've made it very clear that you know, there's certain things from an Ontario perspective that are important milestones to be there before sort of that those those responsibilities are passed on. And I'm sure my friends in Quebec and Alberta and British Columbia and you know, Nova Scotia, and everywhere else may have certain certain criterias they may piggyback on ours may have additional ones. But let's move on with it. I would hope that we could get to the third phase that we have set out in our in our in our recommendations there as quickly as possible.



33:19

Thank you for that. It will be an interesting journey. I I want to highlight for those on the on the call who haven't gone through the report in detail that those recommendations to visa v. The consolidation of ourselves and our FDA partners into a single new SRO is a recommendation you made to our CSA colleagues. There, they have carriage of that process. It's underway, they've said publicly that it's an important and high priority. And we look forward to next steps from them as that process continues. So that's a that's terrific. Let's, let's see what else we have here. One of the things that you talk about in the report, and it ties into the need to have a more vibrant and wealth generating idea generating business generating capital markets is the notion of a level playing field. And that there, there should not be businesses or organizations that structure themselves around regulatory arbitrage, but rather, should be focusing their efforts on, you know, generating new ideas, new businesses and new jobs in this in this province and indeed, across the country. So can you talk a little bit about some of the level playing field slots that you had in the report and what are the things are that that matter? I mean, we have a big divergence of of financial institutions, investment dealers are the kinds of dealers in the system. It is a complex ecosystem. And how do you get there from here in terms of level playing field?



35:04

Look, it's not lost on me is that the the area of the report that where we are getting the most commentary is in this area on leveling the playing field? Let me tell you, let me start off with the public policy conclusions that we that we came to. And I sort of amplified it at the beginning of this discussion. But I'll, you know, sort of maybe repeat a little bit of it. There is no question that we are seeing fewer issuers being incubated in this province. And when I talked to my friends in Quebec and Alberta and elsewhere in other parts in other parts of the country, there is no question in my view, that we are only going to grow the capital markets, create those, those high quality jobs in Ontario, and give wealth creation

opportunities at the, you know, early stages of these companies, by creating the next Shopify, or the next agnico gold, and not by having coke or Disney move their head offices here. Those are all things I know, I'm going to tell you where there's debate. I've had very, very, very, very smart people who have gotten on to zoom calls with us. And they've said, the decline in the issuer market has nothing to do with the number of intermediaries, or what the banks are doing untied selling, has nothing to do with any of that. It has all to do with the rise of private capital. And you know, what, there's a great academic debate, there's a great academic debate, if the rise in private capital is a function of private capital being better at this time and incubating the same or more issuers, or if the rise of private capital, is because it's a poor alternative to the public capital, that that was available through many intermediaries, and is actually a representation of the decline of our primary market. honest people having this debate, Andrew, honest, people having this debate would say, there's good evidence on both sides. And I don't know the answer precisely. But what I do know, what I do know for a fact is that there are fewer active intermediaries serving the junior markets than there were when I started practicing 20 years ago, it is a fact that there are fewer issuers, these are facts. And so we started exploring, why is it that that's happening. And one of the areas that we heard consistently about from issuers, and from intermediaries, including failed intermediaries, or intermediaries that had been purchased by larger intermediaries, and with with with wonderful names that are well known throughout throughout our business, and one of the things that kept coming up was this concept of look as a junior intermediary, or as a junior, or as a broker who has been involved in in intermediating, Junior issuers. You know, it's a high risk game. And my clients understand that. And, you know, we get we have a number of things that fail. And every once in a while we have a win.



38:52

And the challenge we have is as soon as we have that when we lose, because that win ends up going to one of our larger financial institutions. And the larger financial institution requires that both the debt and capital markets work goes to them. Is that 100% accurate? Is it true? Look at again, I'm going to tell you, there was good evidence that was presented to us that that is an issue, my friends at the bank will say to you, it is really you got to stop saying it. There is no tied selling that happens in the banks. And they and these are honest, decent, hard working people who say, you know, this is not this is not happening. So look, what we did was we've we came up with a menu of measures that we thought could address this concern that was expressed to us by some of the intermediaries, that was expressed to us by some of the issuers with a very simple public policy objective. And that is the establishment and creation of more junior insurance. Rimini Aires that are going to intermediate higher risk capital with venture opportunities.

And I want to just get something part of the nomenclature that starts going out there as these are, will lead, you're promoting the crappy part of the capital markets. That is wrong. That is absolutely wrong. We are a junior capital market and junior issuers become great senior issuers, and we must promote them. And they need intermediaries in order to grow. It's very simple. So you know, what we've presented, the Minister Andrew is what we think is a very balanced menu of options. And we've include enhanced tied selling restrictions and 33 103. an attestation from a senior officer when there is debt lending and capital markets work that there wasn't any tight selling that happened, an independent underwriter requirement under 33 105. Not not to a junior dealer, but just to ensure that the syndicates that are involved in deals are a little bit more diverse, and a ban on what on what we call restrictive covenants, restrictive clauses in underwriting and engagement agreements, that give, you know, roofers and other exclusivities, for for a long time in favor of our larger or larger intermediaries. What's the objective here,



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we,



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I have a lot of confidence, I have the world of confidence in the compliance groups, and in the senior teams, at all of our large financial institutions, absolute world of confidence in them, as I know you do from your past history, Andrew. And I'm a big believer that if you actually set out the public policy objective, which we have done, and then you say to them, look at guys, you've said that you're not engaging in this activity, which is illegal, tight selling. And so let's get some rigor around that, we're going to enhance the definition, we're going to do some attestations. And where you choose to do both activities, you're going to need to have an independent underwriter under 33 105. Our hope is really simple. Our hope is that through these activities, we are going to enhance the position of some of the junior intermediaries that brought some of these guys along so that they could hopefully play along with with with with the larger financial institutions are not relegated to, you know, a couple of crumbs in a in a syndicate, with everybody else sort of getting exactly what the percentage was that they lent to to the issuer. And again, we were presented with example, after example, after example of that, guys, it's not gonna work. And I recognize there's a lot of lobbying on this. And there's a lot of folks that that don't like this, but we have to do something, we have to do something to stave off the decline of the junior intermediaries, and the financing of our junior issuers. And the larger financial institutions try as they as they as they must. And as they do, they're not finding they're not doing the \$3 million initial financing of a solar panel r&d idea that has

no path to revenues for five years, that some of these Junior intermediaries, we're doing a lot of 10 and 15 years ago, that's what we're trying to achieve. That's how we're trying to level the playing field. And, you know, I hope we hope we get traction on this. And we certainly divided it up in a way where the minister has a menu of options. And we're hoping that you'll go there. Also bit shelf products, but I'll leave you if you want to go there.



43:55

Well, I I would like to go there for a minute, because that's the other big sort of tranche of, of recommendations in that space. But before we do it again, and now, you know, with a with a desire to try and rephrase something in ways that I can understand it more more clearly, and perhaps others will follow along as well. You know, there is an expression in management and business schools that you learn pretty early, which is what gets measured gets managed. Is it fair to say that that, you know, this group of recommendations that you've put forward, it's basically intended to put more of a spotlight put a more of a ruler or a caliper on to measure and therefore cause it to be managed more tightly than it would have been otherwise?



44:40

I think you're bang on and I think one of the things that you know, maybe having the advantage of sitting in the seat I've been is I am a real believer in you know, those the 600 people who are on that OSC call who came from compliance groups and things like that in in a lot of these These organizations, and I know there's a number of them on this call as well. But I'm a real believer in these people. Their job is hard. But they, they, they mean to do the right thing. And I know, they read reports like this. And I know they go back and say, Hey, you know, in the task force report, it said that one of the public policy objectives was his ex, and look at the minister maybe didn't adopt every single one of the four items, the menu of options relating to 34 and 35. But, you know, he, he adopted one. And, and by the way, one of the things it says here is that in two years, we should be measuring, whether we're having an improvement, let me tell you what I think would be a failure, Andrew, and it is one of my fears, if I could be very, if I could be very blunt, I do fear waking up five or seven years from now, and feeling that important parts of these recommendations were not implemented, and that we've had a further degradation of our primary market. that that would be a very personal failing. And I think a very, very unfortunate thing for the for that for for for the prominent role that we play in the in the GA.



46:25

Thank you for that. So I'm mindful of the time, we've got about 15 minutes in the main conversation left, and then we'll be taking a five minute break, and then going into questions. In the 15 minutes we've got left, there's two things I'd like to cover. Perhaps we do on the capital markets, in a more technical sense, the securities markets, and then we'll circle back and talk about the retail space, both the recommendations about shelf access that you just mentioned, and the recommendations around the dispute resolution body. But let's talk about the markets. And I think it's it's very timely, given everything that's been going on for the last week. You know what, we're not going to debate, the GameStop, Robin Hood kind of thing today, because we need another couple of hours to do that. But there were some very specific recommendations that that you and your colleagues made. And with that we worked on with you around the structure of the markets around short selling, and some other measures. And I think it would be worth spending a couple of minutes talking about those.



47:31

So first off, you're right, and I want to thank you and your team for the help that you gave us. Some of this stuff's pretty complex. And, and you really helped us understand the intricacies of it, particularly with some of the competing narratives we were hearing. The other one was, of course, you know, relating to misrepresentations and shortened distort campaigns. And that's one that you know, I've had a lot of experience with in my in my practice, and a lot of frustration with so I was very happy to address both. So I'm gonna just, you know, we've recommendation 26 deals with short selling into prospectus offerings, and private placements. We repeatedly heard that in order to sell deals, some dealers are soliciting hedge funds to short the stock with the purpose of replacing it on the deal, sometimes going as far as to arrange the borrow for the fund and to let them be involved in the pricing of the deal. Okay, I remember when we've actually introduced this to our friends at the OSC there was a gentleman whose name I'm forgetting that who looked at me in horror and said, That's illegal. I said, it happens with regularity. And, and so the taskforce was, you know, really surprised how routine and accepted this practice was in certain, you know, market segments. And, you know, it's clear that it sort of comment was contravening manipulation insider trading rules. So the taskforce has proposed the adoption of a very simple rule that would provide clarity to participants and be less onerous. From a conduct and compliance perspective. Similar to rule 105 of reg M, which many of your folks would be familiar with. We proposed a prohibition on covering short positions on deals, this rule would remove the requirement for regulators to prove any intent as they're required to for insider trading or market manipulation, because you're just not allowed to do it period. Under under the rule any anyone covering a short



on an underwriting or private placement will be offside and subject to enforcement. The new rule is not going to repeat. It's not intended to impede all short selling just this particular form of abusive short selling and like rule 105 reg M. Our regulators need to decide the parameters for the period of time we're short selling would be prohibited prior to an underwriting you know or a private placement. Then, of course, there's the Topic of naked short selling. And we got we got a lot of stuff on this. Andrew and your team was very helpful. But, you know, short selling is critical for both, you know, liquidity and price discovery and and you know, when done when done properly, not Ella GameStop. You know, how many stakeholders feel that naked short selling where no borrows is made is there's, you know, there were a number that felt that it's unenforced in our marketplace. It leads to increased failed trades, Phantom shares, and the ability for short and distort campaigns to operate without putting up required capital. And we saw that, for example on, you know, tell us many years ago, you know, the unreasonable expectation of a borrower requirement and the lack of an automated buy in or flagged by some stakeholders as elements that make our markets attractive to naked short sellers. The perception that, you know, we're a haven for naked short sellers, hurts market confidence. And, you know, I know your team told us that, that that that was probably not a reality. But it is, it is certainly a perception that that we heard out there. So we've proposed to move sort of closer to the US rules by adopting, you know, both a positive locate model and mandatory buy in procedures in order to, you know, curb naked short selling. We think that enacting both these recommendations would align Canada with losco principles for effective regulation of selling of short selling. We've also included some very specific powers in the hands of the OSC to deal with manipulative, short sellers, one of the challenges that they have in enforcement is they've got to prove a tie in between the misrepresentation and the drop in the price of a stock look at like, I don't think that there's any reasonable actor in the market that expects that, we expect that if you're out there, screaming a bunch of silliness, and inaccuracies, about an issue where that somebody should be getting you in trouble. And that's what our recommendations have provided. And again, I really want to thank your team for its help on on this fairly complex area, by the way.



52:15

It was a good day was a good exercise. And we certainly enjoyed working with you and our colleagues at the OSC the ministry on that file. So we're coming to the end. Let's let's talk a little bit about retail for a couple minutes. The first side of it is, is the access to shelves question that we touched on for a moment earlier, what what you hope to accomplish the why you thought that that is an implementable set of recommendations. Because obviously it has to be something that can be put into place. Otherwise, it doesn't make sense. And then maybe just our closing word on dispute resolution. That's something



that has been important for a lot of people for a long time. If we can sneak that in at the end, but first, the access to shelf question.



53:02

You know,



53:04

I think what alarmed me about this area is we heard from C eyes. The Invesco owes the nine points, you know, great name brand institutional, very highly, at least nationally respected, registrants creating great products that they were having trouble getting onto bank shelves. And I'll tell you the first thing that that got me thinking, the first thing that that got me thinking was if there is a young woman Managing Director at nine point today or RBC, who is, is really bright, and knows how to put together great products and wants to go out and set up a registrant a, it shouldn't cost her a fortune, which is something that we've addressed separately, to to set it up from a regulatory perspective. But be she needs to be able to have an executable business plan. And when I heard invest goes and nine points and ci saying that they were having trouble accessing those shelves, I just thought to myself, the reality is that young woman looking to set up the next ci or the next nine point or the next Invesco. She has no chance. And and you know maybe she comes from a very wealthy family and is able to go through a regulatory process and then be the long patience that it would take before her first product gets listed on a bank shelf. But that does not make a business model. We need to be able to excite the creativity and that young woman who has that will But maybe doesn't have a ton of money to be able to know that she could both do it at a reasonable price and execute a business plan with within reason. So look at in our July proposal, we came out and said, You've got to have an open shelf, and you've got to include anybody's products that are available. And if the prospectus is approved by the by, by, by, by the OSC, we got some very good feedback from the banks on why that was, that was impractical. And when we went back and had a discussion with the, with the providers of these products, and really reflected on the public policy, we said, we realized the public policy objective we were trying to achieve was to enhance choice for, for consumers in a system where 82% of their money and wealth management products are, you know, in the hands of four or five banks. And in achieving that we didn't need to open up the shelves completely. But we needed to ensure that there was a new level of accountability that was built into when a distributor decides not to include or to delay something, we needed to make sure that there was a clear avenue for that, for that product provider to have to make a complaint into the securities regulator. And we needed to make sure that the minutes of meetings where those types of decisions

are made, have a capability to be regularly reviewed by our securities regulator. Again, as I was saying earlier, I'm a real believer in the compliance and regulatory functions in our financial institution. I'm a big believer in them. And I truly believe that, you know, again, we've put it out as a menu of options of things for the minister, that the minister takes even a few of these recommendations, I'm quite confident that what we will see is some behavioral change. And I think that that will be a great thing for consumer choice, but also a wonderful thing for that young woman, Managing Director at nine point or RBC, who is thinking of going out and setting up her own shop, check talking about ob see quickly.



57:36

Quickly, yes. And then we'll take, we'll take a couple minutes



57:39

to go ahead. So I recognize how important this is to so many of your members. And Gosh, golly, did I hear about it? I honestly, I gotta tell you, in my practice, I didn't know much about opsi or, or binding dispute resolution. But I, I learned a lot about how emotional and issue it is, for a number of your members, Andrew. So we did a public policy objective very clear, there needs to be a binding resolution mechanism that's easy for smaller investors and doesn't require you to hire Norton rose to recover a small amount of money, that's no amount of money being less than \$500,000. The next point became, we needed to ensure that there was consistency, there was professionalism, there was transparency, and that the cards weren't always against the intermediary. And we've set out and I encourage folks to take a look at it a set of criteria for the Ontario Securities Commission to work with opsi and hopefully other CSA members and other members of the of the of the of the national group that's, that's looking at these issues. And I know you're a member, I think Andrew as well or your Iraq is to to take a close look at the JSA I believe it was called to JRC right, to take, you know, a close look at those criteria and make sure that that that opsi has those criteria before the binding approach comes into effect. And we said if we can't, and if we can't, that we should have made an Ontario solution with that protects investors but equally and I want to make this very clear to your members, because it was not lost on us equally is transparent and full of the appropriate expertise and professionalism. That that that you expect. I know my friends at the OSC are quite confident that they're going to be able to get there with ob C and the other CSA members. I have full confidence in them. You know, we've now had an opportunity to meet with with our friends, obviously very well intentioned, but they're trying to do the right thing. It's very difficult to try Do something like this at a national level in a federation, with

some entities governed by the federal government, others governed provincially. I know Andrew, you could write a PhD on this. So, you know, we are confident that we are very confident that, that they're either going to work on something great with them or develop something different. That'll be that'll enhance enhance investor protection.



1:00:29

Hello,



1:00:30

I think we are back. Hope you had a chance for a good break and a glass of water. And we're off for about 25 minutes of questions to close at 230. Eastern. So we've had a number of questions come in, I'm going to try and group a few of them together. And one of the ones that I think is really important to spend a moment addressing our or a group of them are around the diversity recommendations in the taskforce report. I know from our conversations together, and also from your, your bio, your involvement with black north and west. Could you talk about why you feel that's so important and how the recommendations will make a difference? And I think there's also a specific question as to why they were scaled back a little bit from from what was in the original version or the interim version of the report? Yeah.



1:01:23

You know, something, what a year, we've had, you know, working on this task force report, right in the middle, we had the George Floyd thing happened, black North was actually established this year, you know, it's remarkable 500 companies signing the black North pledge across this across this country. If I can be very blunt diversity is an issue that makes some folks feel uncomfortable. And and and we certainly saw that we certainly felt that we certainly heard that. What we tried coming up with was a made in Ontario solution that bounced a number of very important factors, balanced the critical importance of advancing diversity in our public companies, with the fact that it shouldn't only be public companies that are held to the standards, and that there is an inherent unfairness to apply some of the some of the important social goods that we as a community are trying to advance only on public companies, and not others. And that is a message that I know a number of my friends who in this arena don't like to hear, but it is a fact, it is a fact we need to be concerned that that we are or we need to be careful about advancing social public policy objectives only through the through our public companies, we also need to balance the fact that we are, you know, dealing with, you know, real

politics in the boardroom, at the regulatory level at the at the political level. And coming up with the right balance, I have to tell you probably of all the parts of the report, this was one of the hardest. If I'm being very candid with you, Andrew, I think where we landed was not a step back from where we started, it was different. And I think it was much better. And I'm going to tell you, I think it is a model that I think will be reviewed globally. It is a multi dimensional model. Number one, we are requiring companies to set targets on gender and bipoc. representation on boards and senior management, we are telling them they get to set their own target. And I'll tell you, one of the things that I heard very early on is you know what companies are very good at, especially public companies, they're very good at setting targets. And you know, what happens when they don't meet those targets, they get in trouble from their shareholders, and they do that at least once a quarter. So why not on something like this, in terms of what that target should be? We took time to study what we thought was appropriate from a gender perspective from a bipod perspective and timing. And I think we were very generous in the timing that we've put together in in that proposal. And we hope that we're going to see VC and companies in Ontario view what we put together as a baseline. That's number one. Number two, for the first time in Ontario's capital markets, we are now talking about hard board term limits hardboard term limits. One of the big things That we heard, particularly from women's organizations that have been advancing women on boards is that the turnover on the boards is actually one of the biggest impediments to, to board renewal. And so we've put in board term limits, I can tell you the idea actually came from our friends in Australia. And Andrew in Australia, we learned that directors who are on a public company for more than 10 years are no longer considered independent, which is probably right. Right, as a matter of governance. And what we said is, we just said, Look, we're gonna make it 12 years, and then you get to have the chair, man or woman gets to stay on for 15. And if you've got some superstar on the board that you can't dispense with, they can also stay on for 15. So we've created some carve outs, but the idea is to create to create turnover. I also want to be very clear, because I hear about this when we talk about diversity all the time. And it actually



1:06:02

is something that needs to be said by people like me, the objective here is not to have fewer white men on on boards, white men should be proud of who they are just as women or brown or black or indigenous men and women. And, and, you know, we don't want to create an environment where there's a feeling of, you know, because of who I am, I now don't have an opportunity. We're trying to level the playing field, we're trying to encourage companies to come up with their own targets. So they don't feel that there's someone that's punishing them and pushing them pushing them down. We're leaving them to be accountable to their their shareholders, we're making them explain how it is

that they undertake those recruitment processes, we go from there. Now. It's a sensitive issue. And, and you know, I'm very happy the Canadian Bankers Association, and so many others have come out and endorsed the approach that we've that we've utilized. And I'm grateful for that. I do recognize that there's people who say, you should have come out with hard targets immediately for every board, and you should have had truncated and tighter timelines. And I say to my friends, who who advanced that perspective, let's take things one taskforce at a time. Let's be respectful of the, the the political and real world dynamic that we live in. And this is an excellent step and a very supportable step and one that I am hoping that our regulators and our political leaders across the country can find easily digestible, and I promise you guys is a step that's going to advance the ball in a meaningful way. And if it doesn't, well, you know what, there's gonna be another task force, because we've recommended one in five years, they can write that we were a bunch of failures, and we're weak and cowards on this issue. And if the ball hasn't been advanced, you know, God bless them, they should they should go, they should go a lot harder. But this is what we felt was right for now.



1:08:18

Thank you for that.



1:08:20

You know, you I've said it to you privately. Let me say it in front of everyone, I think you are to be congratulated and thanked for your efforts in this. It's really important. It's part of who we are as a country. It's part of our fabric, and it's part of our success for the future.



1:08:34

So thank you. Thank you for that.



1:08:38

One of the things that you just mentioned was timing. Not only in respect of this series of recommendations, but in respect of the report as a whole, we've had a number of questions pop up on the screen. about where do we go from here? I recognize you've made your recommendations either to minister bethlem faulty or in the case of the SRO consolidation to the CSA. Do you have any sense? Do you have anything you can share with us about how you think this might unfold in the weeks and months to come?



1:09:14

You know, I gotta tell you,



1:09:16

I,



1:09:18

I feel very blessed and very happy with, with how this this this process has gone how this report has been received. Look at our premiere in Ontario here is it's not really it's not a capital markets guy. He's a he's a very successful entrepreneur and businessman. He's not a capital markets guy. But he he and this was, you know, initially his idea, let's be very clear, you know, at you know, at the urging of people in the capital markets, but he definitely saw it. He is very invested in, in in the success of this and and and i'm i'm very humbled by that. And I'm going to tell you, like all of us in the capital markets, whether you're a supporter of Doug Ford, or you're not a supporter of Doug Ford, and we probably in this group are along the same lines as any poll out there. Look, there hasn't there hasn't been a premier in over 20 years that has given any regard at all, to zero about capital markets. Zero. Right. So, like, that's cool. That's number one. Number two, we spent over a year with regular briefings with rod Phillips, and, and, and, and, you know, he had been the CEO of a reporting issuer, so had a good background, in in in this area, but we spent a lot of time, you know, bringing him up to speed on a lot of these issues. Enter Peter bethlen, Falvey on December 31. And I'm gonna, again, this is to commend the man, I'll tell all of you, I spoke with him on January 1. And we had our first briefing. You know, the first whatever the first business day was, after he was appointed first business day, after he was appointed, the man has given more time to the capital markets and to this report, than I guarantee you, any other Minister of Finance has in his first five weeks ever, in this province, because this is not a vote getter. This is not that exciting. And, and, you know, it's it's not it's not top of the anyone's agenda. So Minister bethlen favi, has taken this very seriously, he has invested, you know, I'm sure he's gotten, you know, more briefings on COVID, and things like that, but I will bet you, if you asked one of his staff, he's this this topic would be in his top five, to 10 issues that he's been briefed on in the first five weeks, which is an incredible amount of time for the minister. I know, he's had constructive meetings with, with Grant fingo. I know, he's had constructive meetings with you, Andrew, and, you know, the more voices in the community that are giving this man who's entered this role, the comfort that he needs to hear that this is actually important, and that it's, you know, with all the things going on, you know, he you know, it is a good thing for him to

keep on on the agenda is a very positive thing. So what's the timing? I have a lot of confidence that Peter, he's obviously a very quick study, he's a capital markets guy himself, I feel very confident that we're going to see, you know, a number of these proposals moving along very quickly. And if we're lucky, you know, you know, even even even more as early as this budget and you know, you know, as as late as through the through this legislative session, I think it's important. And I think that I'm, I'm very positively hopeful for where things are going from an implementation that this is not going to be one of those reports that will gather dust, but I can use everybody's help and support in in amplifying that view. Because this is not that important to our political leaders. Let's be honest, like I said to Doug Ford forgot that I was even working on it, and he appointed me.



1:13:32

So maybe that's a nice way to close. What do you need from us? is a question that's come up. It's been phrased a few times by a few people over the over the course of the last hour. What can the people on this call who are in the industry who are engaged in these issues, some of whom agree with the recommendations you've made? And some of whom don't? How do they advance the debate? However, they advance action on this? How can they play a role in the community that we are a part of, I think we do all share a common public policy goal, but to make the system better, but what can we do as firms as individuals, as a community, to to move this along and to help the system get better?



1:14:18

You know, I'll tell you the first one that I think is actually quite important is that everybody on this call should be very proud of the very important role that we play in the economic success of this country. That's not to be discounted, and it's not to it's not to be disregarded. And so I think the first thing I'd say is be very proud. You should be telling for what do you do, you're not just a trader, you're not just doing compliance at some place. You're not just you know, you know, a regulator in some esoteric area. That, you know, nobody really understands around a zoom family meeting or something, no, each of us is actually playing a critical, critical role in the success of this country. We really are. And, you know, I'm sure I'm getting some smirks and stuff out there. And, you know, we are playing a critical Cornerstone role in the success of this of this country. And we should be very proud all of us every one of us of what it is that we that we do and how we are contributing to this to this nation. Secondly, I think to the extent that you have access to public policy makers need to appreciate this, none of this, none of this world matters. Okay. Our world does not matter, even though it's very important. And it's important to



take the time to explain to public policymakers I know Andrew, you know, I know you've spent time and built friendships with you know, a quarter of the Ontario cabinet and and other cabinets and premiers across this country. I'm going to tell you guys, when Andrew kriegler is going into Alberta, and there are folks saying, Yeah, we'll have you meet with the the chief of staff to the Minister of Finance, you should have people say, No, this is important, he should be meeting with the premier and the Minister of Finance, because he represents the national organization, that is a cornerstone of how your oil and gas companies are being financed, how your oil and gas companies are being traded. And their very existence relies on the this the the work that's done by this regulator every single day. So on the ground, you guys should be saying, hey, you should be spending time with the head of our securities regulator, and you should be spending time with Andrew kriegler. The third thing I say is, be bold, please be bold. You know, the two most annoying things for me, in terms of stakeholder feedback that I got, during this process, were people that were not bold. And the worst one was people who were just talking about their book, that was a shame, I really thought that ladder were like, like, it was just like, you know, like, guys, we are, we're doing something much grander. This isn't about the immediate interest of the bonus check that you're getting next month, you know, you're going to be fine, your bonus check is going to be fine. This is about something grander. This is about something exciting, this is about building the cornerstone of one of the best capital markets in the world. And, and and we have every building block to do it, and we should do it. So please, when you are speaking with with, you know, whether it's CSA members, regulators, you know, our political leaders, you know, whoever it is, you know, when they say to you that, you know, something is going to take three years to know, CDR plus is going to take forever to, like, I've been using the same damn car since I started practicing in 2001. You know, tell people that there is an urgency because we are going to fall behind Australia and Singapore and the United Kingdom and the United States and so many others. And and, you know, do not trade your did not talk up your book, please, please think about the public policy. Always think about the public policy. I I only have joked that, you know, I, you know, proxy battles are a big part of my business. And when we came out, in our report with a reduction in the early warning system from 10 to five, I got a bunch of calls from folks who were like, How could you do this to us? We've been paying you and I said, because it's the right thing. It's the right thing. Yeah, I've been involved with too many companies that you know, have the sneak from behind attacks into them. And again, on that one, if you read it, I think we came up with it with a very good sort of compromise. But



1:19:15

don't trade up your buck, this system is too important and too, and we are at a stage that is too important for us to be for us to be doing that. So really hope we have your support. I really hope that that you can all speak to your, you know, leaders in your respective



communities and help advance it. Maybe the last thing, Andrew, for those outside of Ontario.



1:19:43

You know,



1:19:45

there's no pride of authorship here. I hope that there is a taskforce like this in British Columbia and Alberta and Quebec and I hope that there are better recommendations that Ontario adopts from Quebec and Alberta and Manitoba and Alberta. Colombia, no pride of authorship, let's actually extract out the best ideas we can find across this country. And let's get them into the dialogue. And then let's push them. And then let's, let's trade on the ideas and get the best ones going. That's it for me.



1:20:20

That's a, that's a wonderful way to close. And maybe I will just add my own exhortation to everybody, you know, Iraq works for and with every province, in every province and for everyone together. And so we can and should, and must play a part in advancing that national and provincial by provincial agenda to make the system better. So with that, let me close by thanking you, by reminding everyone that will Leeds report is out there, if you haven't read it. If you only read a summary, read the report, you can get it on our website. And we'll we'll send out a link to that to everyone who was on the call today. And get involved. This is an important time for our capital markets. And what's important for our capital markets isn't important for every Canadian, both as an investor and as a person who participates in the well being of our community. So thank you for taking the time today. Thank you, and all of your colleagues for your work over the last year. And we look forward to seeing what the minister's reaction is what the CSIS reaction is. Iraq's got a couple of rule recommendations that you've made that we have to respond to and we will, so it's time to get to work. With that. Thank you, Andrew, and all the best. Thank you.



1:21:49

Thank you. Bye for now.