File No. 33718

**IN THE SUPREME COURT OF CANADA**

**IN THE MATTER OF Section 53 of the *Supreme Court Act*, R.S.C. 1985, c. S-26;**

**AND IN THE MATTER OF a Reference by the Governor in Council concerning the proposed Canadian *Securities Act*, as set out in Order in Council P.C. 2010, dated May 26, 2010**

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# REFERENCE RECORD
## *(ATTORNEY GENERAL OF ONTARIO MATERIALS)*
## VOLUME XXIV (Page 1 to 123)

*(Pursuant to Rule 46(12) of the Supreme Court of Canada Rule)*

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Court File No. 33718

IN THE SUPREME COURT OF CANADA

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AND IN THE MATTER OF a Reference by Governor in Council concerning the Proposed Canadian *Securities Act*, as set out in Order in Council P.C. 2010-667, dated May 6, 2010

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# AFFIDAVIT OF ROBERT CHRISTIE

(sworn October 28, 2010)

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**I, ROBERT CHRISTIE,** of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

## 1. My background

1. I am former Superintendent of Financial Services and Chief Executive Officer of the Financial Services Commission of Ontario (2005-2009), former Deputy Minister, Ontario Ministry of Finance (2000-2004) and former Deputy Minister, Ontario Ministry of Intergovernmental Affairs (1998-1999). Between 1975 and 1997, I held a number of positions with the Ontario Ministry of Finance, including Director of Finance Policy, Assistant Deputy Minister (Office of Economic Policy), Assistant Deputy Minister and Controller (Treasury Board), and Assistant Deputy Minister (Taxation and Intergovernmental Finance Policy). In 1997-1998, I was Assistant Deputy Minister (Policy Coordination) in Cabinet Office. I hold a Ph.D. in economics from Queen's University in Kingston, Ontario. My biographical statement is attached as Exhibit "A".

2. From 2006-2009, I was Chair of the Joint Forum of Financial Market Regulators. The Joint Forum is made up of the Canadian Council of Insurance Regulators, the Canadian Securities Administrators, the Canadian Association of Pension Supervisory Authorities, and the Canadian Insurance Services Regulatory Organizations. The Joint Forum is a mechanism through which pension, securities, and insurance regulators attempt to coordinate, harmonize and streamline the regulation of financial services and products in Canada.

3. My knowledge of the matters set out herein derives from my experience in the positions described above. More particularly, my knowledge derives from my experience as Deputy Minister of Finance during the period in which Ontario considered whether to sign the Provincial/Territorial Memorandum of Understanding ["MOU"] to implement a passport approach to securities regulatory reform, my work as Chair of the Joint Forum, my involvement in Ontario's financial services sector as Superintendent of Financial Services and Chief Executive Officer of the Financial Services Commission of Ontario and my continuing discussions with officials at the Ontario Ministry of Finance.

## 2. Summary

4. The capital markets are critical to the Canadian economy and of great importance to Ontario. Ontario is home to a very significant number of Canadian capital markets participants, including issuers, investors and intermediaries. The effectiveness of capital markets regulation is therefore of central importance to Ontario.

5. Ontario has consistently and strongly advocated for a single national securities regulator. Ontario chose not to join the passport system initiative because it was of the view that:

- the passport system perpetuates a high degree of variation among jurisdictions;
- the passport system does not eliminate multiple fees;
- implementation of policy initiatives is too slow;
- the passport system does not provide Canada with a strong international voice; and
- the passport system does not address many enforcement-related concerns.

6. All of these shortcomings with the passport system persist to this day. Accordingly, Ontario remains strongly of the view that the passport system is an inadequate response to the increasingly complex and difficult challenges posed by capital markets regulation, and that a single regulator is needed.

## 3. The capital markets in context

7. Capital markets have been and continue to be critical to the Canadian economy, global in nature, nationally integrated, and an important growth engine for the Ontario economy.

### *A. The capital markets are critical to the Canadian economy*

8. Capital markets are recognized as critical elements in contributing to a strong, dynamic and competitive Canadian economy. These markets enable firms across all sectors of the economy to raise capital for new investment and provide Canadians in all provinces and territories with opportunities to invest. Capital markets are the bridge that connects people and institutions that have funds to invest with businesses wanting to put

those funds to productive uses. Historically, Canada's capital markets have supplied funds that have financed the development and growth of all sectors of our economy. The efficiency and effectiveness of capital markets ultimately determine how well they play this role.

**9.** Individual investors are the nexus for most capital markets activities, whether through their direct investment in stocks and bonds, their investments in mutual funds, their purchase of insurance products, or their participation in pension funds. Simply put, there is no market without investors. While the market capitalization of a public company (e.g. the company's outstanding shares times the price of those shares) provides a snapshot of the outcome of capital markets activities, it does not provide a complete picture of those activities and where they occur or of the dynamics of Canada's capital markets. The market price of a security is set through the interactions of issuers, intermediaries and investors. A consideration of Canada's capital markets requires consideration of the role of these and other capital markets participants and the market infrastructure (e.g. exchanges, other marketplaces and clearing systems) within which they occur.

## *B. Today's capital markets are global in nature*

10. Canadian capital markets activity can no longer be characterized as provincial or even national. Investors located in Ontario invest in companies with headquarters across the country and indeed the world, across all sectors of the economy. Today's capital markets are global in nature and are becoming increasingly interconnected. Foreign

investors and issuers are playing a larger role in Canada's capital markets and Canadians are becoming more active in other nations' capital markets:

- Foreign holdings of Canadian stocks and bonds increased 26% between 2005 and 2009 (to $608.5 billion).[1]
- The amount of outstanding Canadian dollar-denominated bonds issued in Canada by foreign issuers increased 108.7 times (10,800%) between 2000 and 2009 (from $550 million to $59.8 billion).[2]
- Investments by Canadians in foreign bonds and stocks increased 36% between 2005 and 2009 (from $279.1 billion to $379.5 billion).[3]
- As of December 2009, the notional amount outstanding of Canadian over-the-counter ["OTC"] derivatives[4] was estimated at US$12.4 trillion (largest six Canadian banks accounted for US$12 trillion), and 80% of the trades had at least one side of the transaction booked outside of Canada.[5]

11. Canadian stock exchanges have experienced an increase in listings and capital raisings by foreign issuers:

- Between 2005 and 2010 the number of international listings on Canadian exchanges increased from 150 (in October 2005) to 285 (in March 2010).[6] Foreign issuers represent approximately 8% of the 3,600 listed issuers in Canada.[7]
- Between 2005 and 2009, Toronto Stock Exchange ["TSX"] listed mining companies raised $64.1 billion in equity financing. That amount was 32% of the $200.3 billion raised globally by public mining companies. During the same period, TSX-listed mining companies accounted for 8,316 (82%) of the

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[1] Statistics Canada, Quarterly Economic Accounts, International Investment Position
[2] Bank of Canada, Banking and Financial Statistics, Table K8, March 2010
[3] Statistics Canada, Quarterly Economic Accounts, International Investment Position.
[4] A 'derivative' is a financial instrument whose value is linked to (or 'derived' from) the price of something else (an 'underlying interest'). There are many kinds of derivatives, with the most typical linked to interest or exchange rates, equity indexes, or other financial assets (e.g. shares or bonds). Common types of derivatives include swaps, options and futures. OTC derivatives are non exchange-traded derivatives that are entered into bi-laterally among participants in the OTC market which typically include large financial market participants and end-users that buy and sell OTC derivatives to manage risk or take a position on changes in the underlying interest.
[5] "Reform of OTC Derivatives Markets in Canada: Discussion Paper from the Canadian OTC Derivatives Working Group", prepared by the OTC Derivatives Working Group, 6 October 2010
[6] TSX and TSX Venture Mining Sector Overview, TMX Group, April 2010, http://www.tmx.com/en/pdf/Mining_Presentation.pdf
[7] Ibid.

10,172 equity financing deals completed by mining companies globally.[8]

- 35% of the world's public oil and gas companies are listed on the TSX, as of March 2010.[9]

12. As a result of this growing global integration, capital markets disruptions in one country are transmitted almost instantaneously to the capital markets of others. The widespread packaging of U.S. based sub-prime mortgages as asset-backed securities (securitization) and their placement with institutions around the world is a recent example of the interconnected nature of global markets. The rapid and substantial decline in market liquidity and the prices of these asset-backed securities and other classes of financial assets in 2007 and 2008 precipitated a severe and pervasive global economic recession. This international financial crisis highlighted both the degree of inter-connectedness of global markets and the sensitivity of the world's economies to capital markets developments. Global capital markets have demonstrated an increased tendency to act both as a source of shocks to the global economy and a transmission mechanism for those shocks.

13. The global capital markets have been undergoing dynamic innovation for at least the last forty years, with a proliferation of new products including derivatives and synthetic securities. This innovation has promoted global market integration and interdependency and as a result, by extension, has also increased the risk of systemic failure.

[8] Ibid.
[9] Ibid.

## C. Canada's capital markets are highly integrated

14. Capital markets and the instruments traded in those markets are highly integrated with other financial services. For example, derivatives are traded actively in the over-the-counter market by banks. Banks are both significant traders as well as significant end-users of derivatives and, as noted above, have a dominant share of Canadian trading in OTC derivatives. Banks also offer their customers, directly or through investment dealer subsidiaries, a variety of investment products and services. Canadian banks own many of the larger investment dealers and mutual fund managers in the country. Most major insurance companies offer insurance products such as segregated funds that are very similar to investment products such as mutual funds and also rely on capital markets investments to generate returns.

15. Traditionally, the Canadian financial services industry consisted of four "pillars": banks, trust companies, insurance companies, and securities dealers. Each of these groups provided a specific set of financial products and services and was subject to very distinct and separate regulations. While the operational distinctions among these four groups have virtually disappeared in today's Canadian financial markets, the regulatory structure governing these four "pillars" has largely remained intact and separate. Notwithstanding the blurring of distinctions that has occurred, banking is regulated at the federal level, securities are regulated at the provincial level while the trust and insurance sectors are subject to both federal and provincial jurisdiction. As financial institutions increasingly cross both geographic and business boundaries, Canada's traditional financial regulatory approach has become less relevant. A key benefit of a federal

securities regulator would be the resulting ability of the federal government to use both banking and securities regulation to better address regulatory challenges, including systemic risks.

## *D. The capital markets are of great importance to Ontario*

16. Ontario residents hold approximately 42% of the financial assets held by individual Canadians.[10] Ontario-based pension funds hold 52% of total assets held by Canadian employee pension funds.[11] Listed issuers based in Ontario represent 42% of Canada's total equity market capitalization.[12]

17. 64% of Investment Industry Regulatory Organization of Canada ["IIROC"] dealer members have their headquarters in Ontario.[13]

18. 81% of total Canadian investment fund assets are held by companies based in Ontario.[14]

19. The TSX is Canada's senior equity market, providing domestic and international investors with access to the Canadian marketplace. The TSX is the eighth-largest equity market in the world, by market capitalization.[15] Issuers list a variety of securities on the TSX, including conventional securities and equity-related products such as exchange-traded funds, income trusts and investment funds. A number of other Canadian

[10] 2009 Household Balance Sheet, Investor Economics (as of 2008)
[11] Benefits Canada, Top 100 Pension Funds 2010 (assets as of December 2009)
[12] TMX Group, (as of March 2010)
[13] Investment Industry Regulatory Organisation of Canada membership list, (as of Nov 2009)
[14] Investment Funds Institute of Canada, (as of May 2010)
[15] World Federation of Exchanges, May 2010 domestic market capitalization

exchanges and alternative trading systems ["ATSs"] operate in Ontario, including the TSX Venture Exchange Inc. ["TSXV"], the Bourse de Montreal, the Natural Gas Exchange Inc., and a number of other specialized markets. A complete list can be found in the 2010 Annual Report of the Ontario Securities Commission ["OSC"].[16]

20. The financial services sector, of which the securities sector is a key component, is a strong contributor to the economy of Ontario. It generates substantial employment in Ontario, both directly in terms of persons employed by financial services firms such as banks and brokerages, and through its demand for legal, accounting, information technology, and consulting services (such as pension risk-management and compliance). All of these sectors, in turn, generate additional economic activity in their consumption of other goods and services (e.g. commercial real estate). The tax revenue that is generated by all these activities helps support the delivery of public services. As a result, Ontario has a strong economic and financial interest in ensuring that the financial services and the securities industries remain as competitive and innovative as possible while providing efficient and effective regulation to protect investors and other market participants.

21. About 58% of the output of the Canadian securities industry and 51% of the industry's employment are in Ontario (as of 2009). The financial services sector employs 365,000 people in Ontario, with 64,700 employed in the securities industry (as of 2009). The financial services sector is Ontario's second-largest industry by output, after manufacturing, contributing 9.1% of Ontario's real GDP (in 2009). Between 2005 and

[16] See http://www.osc.gov.on.ca/static/_/AnnualReports/2010/cap_mark.html

2009, real GDP growth in finance was 16%, versus a decline of 25.3% in manufacturing GDP.[17]

22. The importance of the financial services sector to Toronto is even more pronounced. Toronto is the third largest North American financial services centre, after New York and Chicago. Toronto is home to five of Canada's largest domestic banks, 55 foreign bank subsidiaries and branches, and 119 securities firms. Toronto is headquarters for six of Canada's top insurers that manage more than 90% of the industry's assets, 61 mutual funds companies, 58 pension fund managers, and five of Canada's largest pension plans with combined assets in excess of $300 billion. According to the Toronto Financial Services Alliance, the financial services sector leads all other service-producing sectors by contributing 12% to Toronto's Gross Municipal Product.[18]

23. The Ontario Securities Commission ["OSC"] is Canada's largest securities regulator with approximately 479 employees (full-time equivalent). The OSC regulates the broadest array and largest number of intermediaries, marketplaces and TSX-listed issuers in Canada, as well as a significant concentration of junior issuers.[19]

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[17] Statistics Canada, Provincial Economic Accounts, Labour Force Survey
[18] See Toronto Financial Services Alliance fact sheet: http://www.tfsa.ca/news/fact_sheets.php
[19] The activities of the OSC and Ontario's capital markets are described in more detail in the OSC's annual report and on its web site: http://www.osc.gov.on.ca/en/home.htm
http://www.osc.gov.on.ca/static/_/AnnualReports/2010/downloads/ar10v03.pdf

# 4. Ontario's concerns with the passport initiative

## *A. The development of the passport model, and Ontario's decision not to join*

24. The passport model of securities regulation developed as a result of the recognition by a number of provinces of problems with the then-existing provincial systems of securities regulation. Market participants called for more efficient, streamlined and simplified regulation that would reduce the compliance burden on them and would promote more responsive regulation and better enforcement.

25. A June 2003 provincial-territorial discussion paper, "Securities Regulation in Canada: An Inter-Provincial Securities Framework", identified some of these issues and solicited the views of stakeholders on a proposed passport system.[20] The passport system proposed was modelled on the system for coordination of securities regulation among the member countries of the European Union. The passport system was intended to provide more streamlined regulatory processes to capital markets participants, through the use of a "principal regulator" device.

26. In the paper, Ontario expressed its concerns about the passport approach:

> Ontario supports consulting on a passport system based on the view that, if implemented, it would represent an incremental improvement to the current securities regulatory framework. However, Ontario believes that this model does not go far enough in addressing the concerns of national and international issuers and registrants.[21]

[20] Attached as Exhibit "B"
[21] Ibid. at 9, fn. 1

27. Also in 2003, an advisory committee appointed under the Ontario *Securities Act* to conduct a comprehensive review of Ontario's securities laws recommended replacement of the provincial system of securities regulation by a single securities regulator.[22] In June 2004, a standing committee of the Ontario Legislative Assembly unanimously endorsed that recommendation and agreed that a single regulator was needed to address effectively the regulatory challenges faced in securities regulation.[23]

28. In June 2004, Ontario released its proposal for a single provincial-territorial regulator, administering a single set of securities laws, with a single fee schedule. This paper was intended to provide a basis for discussions with the other provinces and territories and industry stakeholders to build consensus on a model for a modern new securities framework in Canada.

29. On September 30, 2004, a number of provinces signed the Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation. Ontario was not a signatory and issued a news release and backgrounder explaining its decision not to sign.[24] Ontario was of the view that the passport system would not materially improve securities regulation. Ontario supported "replacing the current patchwork system of 13 regulators – one for each province and territory – with a common securities regulator." Ontario identified a number of specific concerns with the proposed passport system:

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[22] *Five Year Review Committee Final Report ~ Reviewing the Securities Act (Ontario)* at 29-41, attached as Exhibit "C".
[23] Ontario. Legislative Assembly. Standing Committee on Finance and Economic Affairs *Report on the Five Year Review of the Securities Act* at 4-7, attached as Exhibit "D".
[24] The news release and backgrounder is attached as Exhibit "E".

> "This proposed MOU will not significantly improve investor protection or enforcement measures, nor will it reduce confusion resulting from 13 different sets of rules. Many stakeholders believe the passport model does not represent a meaningful step forward, and that it may in fact delay the move to a common regulator by diverting resources and slowing momentum.
>
> Apart from the absence of a roadmap to get to a common securities regulator within a set timeframe, there are other drawbacks to the proposed passport MOU that Ontario feels will need to be addressed:
>
> - It perpetuates a fragmented Canadian regulatory system
> - Stakeholders do not view the passport as a meaningful step forward – it does not address the major issues with the current framework and it may even become a step back
> - There is no improvement in the ability to respond to emerging market issues
> - There is no significant improvement to investor protection (e.g. no improvement in enforcement)
> - The high cost of maintaining 13 separate regulators continues
> - 13 regulators would continue charging 13 fees even though a 'primary' regulator does most of the work under the passport
> - It is less seamless than a common regulator – market participants still need to worry about different laws in different jurisdictions."

30. The OSC subsequently issued notices explaining why it was not participating in measures to implement the passport system.[25] The OSC noted many of the same concerns that had been identified earlier by the Ontario government, including:

- The passport system did not fully eliminate the fees, costs and duplication that result from multiple regulators;
- The passport system may not fully promote consistency in regulatory decision-making; and
- The passport system does not provide for more effective enforcement.

31. Ontario has continued to advocate for a single securities regulator in the intervening years. Ontario appointed an expert panel (the Crawford Panel) whose June

[25] See OSC Notice 11-904 "Request for Comment regarding the Proposed Passport System" dated March 27, 2008 and OSC Notice and Request for Comment Proposed Multilateral Instrument 11-101 Principal Regulator System dated May 27, 2005, attached as Exhibit "F".

2006 Final Report recommended that federal, provincial and territorial governments participate in the establishment of a new Canadian Securities Commission. Ontario recommended this Report as "a meaningful opportunity for governments to work together to build a real competitive advantage, to attract investment and to lay the foundation for strong economic growth."[26]

32. Ontario remains of the view that a single securities regulator is in the best interest of market participants, Ontario, and Canada as a whole. Ontario is participating in the federal initiative that is the subject of these proceedings.

## *B. The passport system and Ontario's relationship with it*

33. The passport system sought to allow public companies, dealers and other regulated entities to deal with the regulators in all passport provinces and territories through a single contact, a "principal regulator", in relation to specified regulatory filings and applications. It was implemented in two phases, the first in 2005 (Multilateral Instrument 11-101) and the second in 2007 (Multilateral Instrument 11-102) following legislative amendments across the passport jurisdictions. Legislative amendments were necessary to support rules that give regulatory actions in one passport jurisdiction legal effect in another. Under the passport system, the approval of a specified filing or application by the principal regulator is given effect by operation of law in the non-principal jurisdictions. See Appendix 1 "Description of the Passport System", prepared by staff at the Ontario Ministry of Finance.

[26] See press release at http://www.mgs.gov.on.ca/en/News/STEL02_046976.html

34. It was recognized by the participating provinces that a passport system would need to be supported by "highly harmonized, streamlined and simplified securities laws" in order to work effectively.[27] The passport system sought to achieve this harmonization by relocating substantive regulatory requirements from provincial securities statutes to rules. This process involved the adoption by participating jurisdictions of framework-style legislative provisions, together with broad delegations of rule-making authority to regulators. In this way, the passport provinces and territories attempted to mitigate the need for frequent legislative amendments in developing highly harmonized regulatory requirements.

35. Although Ontario did not join the passport system, it has actively supported harmonization of provincial securities laws and has devoted significant resources to this effort. The OSC has played a leading role within the Canadian Securities Administrators ["CSA"] in developing the "national instruments" that are the basis of securities regulators' attempts to achieve highly harmonized securities laws.

36. A series of "interface" policies has been developed between Ontario and the passport jurisdictions such that Ontario is recognized by the other jurisdictions as the "principal regulator" for market participants based in Ontario. As a result, a decision made by the OSC as "principal regulator" to issue a prospectus receipt or grant an exemption (and, more recently, to grant registration) to an Ontario-based market

[27] See September 30, 2004, press release at http://www.securitiescanada.org/2004_0930_newsrelease_english.pdf

participant applies automatically in the other jurisdictions where the same decision is sought. This is referred to as "one-way passport", since Ontario retains its ability to review the decisions made by any passport jurisdiction when the passport jurisdiction is acting as principal regulator, but the converse is not true.

## C. *Limitations of the passport system*

37. The passport system is limited in its regulatory scope. The system applies to:

- Filing prospectuses in multiple jurisdictions;
- Filing certain applications for exemptive relief in multiple jurisdictions; and
- Becoming a registrant in multiple jurisdictions.

In practice, there are limitations on the passport system's effectiveness even in the three regulatory areas where the system applies. In other areas not specifically covered by the passport system, provincial and territorial regulators attempt to coordinate, for example, in relation to takeover bids, compliance reviews, and reviews of financial disclosure, insider reports, and other filings and applications.

38. Ontario continues to be concerned about the following limitations of the passport system:

- The passport system perpetuates a high degree of variation among jurisdictions;
- The passport system does not eliminate multiple fees;
- Implementation of policy initiatives is too slow;
- The passport system does not provide Canada with a strong international voice; and
- The passport system does not address many regulatory enforcement-related concerns.

## I. The passport system perpetuates a high degree of variation

39. It is not surprising that substantial differences persist in provincial securities law even under the passport system. Ultimately, these differences arise because securities legislation, regulations and rules (even "national" rules) remain provincial laws which are subject to variations and differing interpretation across jurisdictions. Differences may also arise when securities laws are amended or repealed. Differences may be introduced at any time in any province or territory, according to the decisions of the local legislature or the local securities regulator. These differences exist even across passport jurisdictions where different views about, for instance, the appropriate balance between investor protection and facilitating capital raising by business can lead to different regulatory responses. See Appendix 2 "Key Differences in Provincial and Territorial Securities Laws", prepared by staff at the Ontario Ministry of Finance.

40. One significant area of difference concerns the "national rule" on prospectus and registration exemptions. Such exemptions provide flexibility for businesses seeking to raise capital in circumstances where the protections associated with full prospectus disclosure and dealing with a registered firm or adviser are not considered necessary or appropriate. One such example is the different regimes that apply across the country that permit businesses to distribute securities based on limited disclosure (i.e. an offering memorandum) rather than full disclosure (i.e. a prospectus). The persistence of these different regimes demonstrates that the provinces and territories have not fully harmonized their approach to such exemptions. As a result, investors across Canada are

not offered the same access to investment opportunities and do not have the benefit of a consistent set of protections.

**41.** There are numerous other examples of significant differences in securities laws across Canada. They are embedded in a variety of legislative instruments including: provincial and territorial securities legislation and regulations; so-called "national" rules; multi-lateral rules that apply in some but not all provinces (e.g. rules protecting minority investors that apply only in Ontario and Quebec); local rules that apply only in a particular province or territory; blanket orders of securities regulators that exempt whole classes of market participants from the application of specified securities laws (including specified provisions of "national" rules); and other types of regulatory instruments.

## II. The passport system does not eliminate multiple fees

42. A market participant operating in multiple jurisdictions must pay most fees not only to its principal regulator but also to regulators in all of those jurisdictions in which it is active. This requirement to pay multiple fees may cause issuers to choose to raise capital, and securities firms to choose to do business, in some but not all provinces. As a result, investment opportunities may be limited, access to capital may be restricted, and the effective functioning of financial markets may be impaired.

## III. Implementation of policy initiatives is too slow

43. The capacity for a regulatory structure to assess and react swiftly to unexpected developments in capital markets is a necessary feature of a modern securities regulatory

system. Ontario's preference for a single regulator was based in part on its belief that improvement is needed in the ability to deliver a timely response to emerging issues, and that passport would not deliver that improvement. The experience to date with the attempts of the CSA to coordinate the rulemaking of its members reinforces this view.

44. The CSA is a group made up of the 13 provincial and territorial securities regulators that work together in an attempt to design policies and regulations that are consistent across the country. A timeline on a CSA project can be quite lengthy, given the need to forge consensus on the appropriate regulatory approach, follow different rule-making (and, if needed, legislative) processes and timelines, and to obtain necessary approvals in the different CSA jurisdictions. These process issues are compounded by the different approaches taken across the different jurisdictions. The absence of a mechanism at the CSA to resolve differences of opinion, other than consensus, contributes to a slower regulatory response (or no response) to market developments, investor protection issues, and market participants' concerns regarding rule efficiencies. This need to achieve consensus results in rule-making and policy initiatives that are frequently delayed (or even frustrated). While regulatory decisions should not necessarily be rushed, the inability to move swiftly on the same basis without consensus is a weakness of the current system.

45. Civil liability for secondary market disclosure was in place in the U.S. decades before a Canadian regime was initially recommended by CSA members in 2000 and ultimately enacted by all provinces and territories in 2008. Ontario enacted this

legislation in 2002 and proclaimed it in 2005. Other provinces and territories enacted this legislation between 2006 and 2008.

46. In October 2008, in the wake of the 2007-2008 financial crisis, the CSA began consultations on restricting the sale of asset-backed commercial paper to individual investors.[28] To date, no rule changes have been made or published for public comment.

47. The CSA received reports on strengthening the governance and oversight of investment funds in 1995 (from Glorianne Stromberg) and 2000 (from Stephen Erlichman). A concept paper was published in March 2002. A new rule to strengthen the governance and oversight of investment funds (National Instrument 81-107 Independent Review Committee for Investment Funds) did not take effect until late 2007, following a one-year transition. Even then, as a result of a blanket exemption issued by the BCSC this 'national' rule does not apply to investment funds that are reporting issuers in British Columbia only.

48. The process of updating Ontario's securities laws to ensure that they are harmonized with the passport jurisdictions is both time-consuming and highly dependent on legislative opportunities. Generally speaking, policy initiatives are initiated at the regulatory level through a CSA process and generally take at least one or two years before they are ready to implement as rules. Typically new or complex policy initiatives take much longer. When the CSA process is nearing completion, OSC staff and Ontario

[28] See:http://www.osc.gov.on.ca/documents/en/Securities-Category1/csa_20081006_11-405_abcp-con-paper.pdf

Ministry of Finance staff begin to discuss the changes that will be required to implement the rule in Ontario. Implementation may involve amendments to many provisions in the Securities Act which are inconsistent with the proposed rule as well as amendments to provide the OSC with the rule-making authority to cover all aspects of the new rule. This cumbersome process of legislative reform has resulted in nine sets of substantive amendments to the Ontario *Securities Act* since September 2004.

## IV. The need for a strong international voice

49. Canada's current structure of 13 provincial securities regulators poses challenges to the management of systemic risk across banking and capital markets on the national and international level. Dealing in international matters of broad economic and financial stabilization is normally a role most appropriately played by national governments.

50. Because of the increasingly global nature of capital markets, the ability to respond to unexpected market developments is often related to the ability to function effectively on the international scene. See Appendix 3 "International Representation", prepared by staff at the Ontario Ministry of Finance.

51. Canadian provincial securities regulators, notably those from Quebec and Ontario, have been active contributors to international forums, particularly via the International Organization of Securities Commissions ["IOSCO"]. The securities commissions of Ontario and Quebec are both voting members of IOSCO, and co-chair an IOSCO Working Group on Systemic Risk.

52. In spite of the active international role played by the larger provincial securities regulators, concerns continue to be expressed about the effectiveness of Canada's representation particularly in light of the new emphasis on the role of capital markets in contributing to systemic risk in the financial sector.[29]

53. IOSCO's interim guidance takes a broad view of possible sources of systemic risk, and suggests that regulators have or contribute to processes that may be cross-sectoral in order to appropriately address that risk. Canada's multi-jurisdictional approach to securities regulation makes the response to systemic risk more difficult. There is no single securities regulator responsible for addressing sources of systemic risk that are national or international in character, as by their nature systemic risks are likely to be. To manage cross-sectoral risks is also challenging, since those arising from banking or foreign exchange are federal matters while securities regulation remains a matter for 13 provincial jurisdictions.

54. The OSC is working with the other Heads of Agencies (consisting of the Governor of the Bank of Canada, the federal Superintendent of Financial Institutions, the federal Department of Finance and the heads of the British Columbia, Alberta, Ontario and Quebec securities regulators) to provide a degree of cross-sectoral coordination on some of these matters. The Heads of Agencies meet quarterly to discuss issues of common concern. However, this forum, while valuable, does not have clear lines of

[29] See comments by The Expert Panel on Securities Regulation (at 40).

accountability for taking action based on its analysis. Each Head is accountable to its own jurisdiction, and not all jurisdictions in Canada are represented.

55. International efforts in financial sector coordination and in addressing financial sector issues have increasingly occurred through the G8, G20 and related bodies, such as the Financial Stability Board (established as a successor to the Financial Stability Forum in April 2009 with a broadened mandate to promote financial stability). These international fora involve only national entities, not provincial ones.

## V. Problems relating to regulatory enforcement

56. Ontario's opposition to the passport initiative and preference for a single regulator cited the need for improvement to the regime of regulatory enforcement and investor protection.[30]

57. A number of problems in regulatory enforcement[31] have been noted, including limited authority to take action with respect to market activity that takes place across provincial borders, different investor protection requirements across jurisdictions, and uneven and inconsistent interpretation of laws where they are similar.[32]

58. If a provincial or territorial regulator, at the conclusion of an enforcement proceeding, makes a public interest order (such as a cease trade order or an order

[30] See "A Common Securities Regulator For Canada - Ontario's View", Exhibit "E".
[31] The term "regulatory enforcement" does not herein refer to criminal law enforcement.
[32] See the Ontario Legislative Assembly's Standing Committee on Finance and Economic Affairs *Report on the 5-year Review of the Securities Act* [Exhibit "D"] at page 5; "Securities Regulation in Canada: An Inter-Provincial Securities Framework" [Exhibit "B"] at page 7 ("2.2.4 Enforcement-Related Problems"); *Five Year Review Committee Final Report* [Exhibit "C"] at 30 and 34.

prohibiting a person or company from acting as an officer or director of an issuer), that order will generally have application only within the province. In order for the public interest order to have national application across Canada, it will generally be necessary for the other provincial and territorial regulators to make similar orders. This may require up to 13 separate hearings under 13 separate statutory procedures, results in significant additional cost and delays in the issuance of reciprocal orders, and can also lead to inconsistent outcomes.

59. Some steps have been taken to make investor protection more uniform across Canada, including for example efforts to extend Ontario's civil liability regime for secondary market disclosure (proclaimed in 2005), which has subsequently been enacted in all other provinces. Similarly, other provinces have enacted a number of investor protection and administrative enforcement-related provisions modelled on those that were enacted by Ontario in 2002, such as increasing the maximum administrative monetary penalties for individuals and corporations.

60. There continue to be a number of variations among the provinces in relation to investor protection. For example, securities regulators can order compensation in four provinces (Quebec, Manitoba, New Brunswick, Saskatchewan); in the other six provinces, investors must apply to the courts. In the four provinces in which compensation orders can be made by securities regulators, the maximum amount of compensation varies from $100,000 to $250,000. Differences in rules among the provinces also result in differing levels of investor protection. For example, the market

conduct requirements that otherwise would apply to exempt market dealers ["EMDs"] under NI 31-103 do not apply to certain EMDs operating within the western provinces and the territories, by virtue of blanket orders issued by the securities regulators in those jurisdictions.

61. The lack of a single cohesive international voice for Canada in international matters can result in uneven access among Canadian jurisdictions to the benefits of international cooperation. Some international regulators are precluded from sharing regulatory enforcement-related information with regulators in Canada that have not executed the IOSCO Multilateral Memorandum of Understanding ["MMOU"] on information sharing. The regulators in Quebec, Alberta, Ontario and British Columbia are the only securities regulators in Canada to have executed the MMOU.

62. A single regulator would improve investor protection and regulatory enforcement through consistency of priority-setting, governance and decision-making.

63. Regulatory enforcement and investor protection remain central issues in improving the effectiveness of securities regulation in Canada. Ontario's criticism in 2004 about the insufficiency of the passport model focused, in part, on passport's inability to improve regulatory compliance and enforcement. Even after several years of passport operation together with other harmonization efforts, a single regulator remains a preferable model in matters relating to regulatory enforcement.

## 5. Conclusion

64. The efficient and effective operation of the capital markets is of critical concern to Ontario. Ontario did not participate in the passport initiative in 2004 because Ontario regarded passport as an insufficient regulatory response to the challenges of fragmented securities regulation in an increasingly complex and globally integrated market. Ontario believed in 2004 that a single regulator was needed. Despite the modest improvements attributable to the passport system and other harmonization efforts since 2004, Ontario remains strongly of the view that a single regulator is needed to address the increasingly complex and difficult challenges posed by capital markets regulation in the twenty-first century. I share this view.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario This 28 day of October, 2010.

A Commissioner, etc.
ZACHARY GREEN

Robert Christie

# Appendix 1 - Description of the Passport System

## Principal regulator:

The passport system allocates the responsibility of regulating capital market participants among multiple regulators by designating a "principal regulator" for each application or filing. For issuers and securities firms, this is typically the regulator in the province or territory where the head office of the market participant is based. For individuals seeking registration, the designation is based on the location of the office in which they work.

The designation of a principal regulator based primarily on geography can be problematic, given the variation in resources and expertise among the provincial securities regulators. For example, if a major large capitalization company establishes its head office in a smaller jurisdiction, staff in that jurisdiction may not have the resources or the experience necessary to provide full regulatory services. In addition, since staff in all provincial securities regulators does not have the same level of industry specific expertise, the designation of principal regulator based on geography can also create oversight challenges.

Under the current system, each regulator is responsible for regulating market participants in its province or territory in accordance with its respective laws. No regulator is responsible or accountable for ensuring appropriate capital markets regulation across the country; for providing investor protection across the country; or even for considering the interests of investors across the country.

## Passport in Practice:

### a) Novel applications

I am informed by the OSC Corporate Finance Branch that staff of the principal regulator are expected to consult with the staff of other CSA members where a prospectus or application:

- involves a novel substantive issue;
- raises a novel public policy issue; or
- requires a reconsideration of a policy position.

In practice, staff of non-principal regulators expects consultation in these situations, and will express concerns if no consultations take place. The threshold for determining whether a prospectus or application is "novel" is relatively low and requires referral of the matter to the relevant committee of staff of CSA members for further review. There have been a number of instances where staff of the various CSA members could not agree on a common position on such matters.

Accordingly, where the market participant deals with a principal regulator that regulator may simply be a 'spokesperson' for other non-principal regulators that are still required to review and approve the application or filing, for example in cases where the application or filing is considered 'novel'.

**b) Multiple principal regulators**

In some instances, a market participant may have more than one principal regulator, e.g.:

- It may have one principal regulator for filing a disclosure document and others for filing an application for an exemption where the exemption is not available in the principal jurisdiction or where the applicant is seeking different exemptions in different provinces and territories.

- A securities firm that operates in multiple jurisdictions may have a different principal regulator than its individual representatives and the representatives in one province or territory will have a different principal regulator than the representatives in others.

**c) Coordinated reviews**

Given the limitations in the scope of passport, a number of applications require the coordination of the reviews and decisions of multiple provincial and territorial regulators. During the period April 1, 2009 to June 30, 2010, the OSC Corporate Finance Branch completed approximately 439 applications. Of those, a significant number of routine applications (at least 53% (234)) could not be filed under passport. Specifically:

- 41% (179) of the applications requested orders not to be a reporting issuer;
- 10% (42) of the applications requested full or partial cease trade order revocations, and
- 3% (13) of the applications requested orders to be a reporting issuer.

In addition, rights offering circulars are not filed under passport. Instead, they are filed in each province and territory in which the issuer proposes to issue rights. During the period April 1, 2009 to March 31, 2010, the OSC completed 26 reviews of rights offering circulars.

**Areas not covered by passport:**

The passport system does not apply in a number of areas of securities regulation, including:

- Certain types of applications for exemptive relief, either because the type of relief is not listed in Multilateral Instrument 11-102 Passport System or because the exemption being sought is an exemption from non-harmonized law, e.g.;

  - Applications to deem an issuer to be, or not to be, a reporting issuer;
  - Applications for the issuance, variation or revocation of a cease trade order (including a management cease trade order);
  - Applications for registration or exemptive relief that involve derivatives (since the regulatory treatment of derivatives is not harmonized across Canada);
  - Applications for fee relief (since provincial fee regimes are not harmonized across Canada) ;
- Rights offering circulars;
- Prospectuses that offer certain types of derivatives (since the regulatory treatment of derivatives is not harmonized across Canada); and
- Draft prospectus supplements that offer novel specified derivatives;
- Enforcement generally, including administrative decisions having an investor protection aspect (such as a cease trade order);
- Market regulation, including the oversight of self-regulatory organizations;
- Rule and policy making ; and
- Decisions relating to CSA operations and infrastructure strategy, including in relation to systems such as the System for Electronic Data Analysis and Retrieval (SEDAR), System for Electronic Disclosure by Insiders (SEDI) and the National Registration Database (NRD) .

## Appendix 2 - Key Differences in Provincial and Territorial Securities Laws

**Examples of key interpretative differences:**

- Definition of "security", particularly in the area of exchange-traded options and futures and over-the-counter (OTC) derivatives

- The interpretation of "trade" and "distribution" as illustrated, for example, by the failure to develop a national approach to regulating some cross-border financings (Attempts to develop National Instrument 72-101 Distributions Outside of the Local Jurisdiction were abandoned in March 2002.)

- The definition of "reporting issuer", for example:

  - An issuer listed on the Toronto Stock Exchange (TSX) or the Canadian National Stock Exchange (CNSX) becomes a reporting issuer in Ontario but not other jurisdictions such as BC or Alberta;
  - An issuer listed on the TSX Venture Exchange (TSX-V) becomes a reporting issuer in BC and Alberta but not Ontario; and
  - Certain issuers that trade on the U.S. OTC Bulletin Board are reporting issuers in BC but not elsewhere

- The concept of promoter (not defined in some jurisdictions)

- Definitions in 'national' instruments that require a reader to refer to corresponding definitions in each jurisdiction's provincial securities legislation, for example, "derivative", "economic exposure", "economic interest", "exchange contract" and "related financial instrument" in National Instrument 55-104 Insider Reporting Requirements and Exemptions

- Different concepts of when a person or company may be considered to "control" another person or company or when they may be considered to be a "subsidiary" or other "affiliate" of a person or company.

**Examples of key differences in regulatory requirements:**

- Certain prospectus certificate requirements in National Instrument 41-101 General Prospectus Requirements e.g., sections 5.8 (reverse takeovers), 5.13 (selling security holders) and 5.15 (Discretion of the regulator to request certificates).

- Regulatory treatment of derivatives across Canada (including exchange-traded options and futures and over-the-counter (OTC) derivatives), for example:

  - In some jurisdictions (e.g., BC and Alberta), securities exchange contracts and OTC derivatives are governed by securities legislation;

- In other jurisdictions (e.g., Manitoba and Ontario) exchange contracts (i.e. commodity futures options and commodity futures contracts) are governed by separate commodity futures legislation; and
- In Quebec derivatives are covered by separate derivatives legislation.

- Regulatory treatment of exempt market dealers across the CSA: by virtue of blanket orders issued in the western provinces and the territories, key elements of the National Instrument 31-103 Registration Requirements and Exemptions do not apply to certain exempt market dealers (i.e. dealers that distribute securities in the prospectus-exempt market) in those jurisdictions ["North West Exemption"]. As a result, subject to some conditions, the registration and registration-related requirements (e.g. proficiency, financial viability and related market conduct requirements such as suitability and conflicts of interest requirements) would not apply.

- Regulatory requirements relating to fees e.g., issuer participation fees, activity fees, fees associated with prospectus filings; issuer late filing fees, insider late filing fees, etc. The amount and basis on which fees are charged varies across the country.

- The regulatory treatment of take-over bids, related party transactions, etc., e.g.:

  - Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions applies only in Ontario and Quebec
  - The current divergent approaches on the treatment of poison pills as illustrated by the recent decisions in Re Pulse Data Inc. (2007), 39 B.L.R. (4th) 138, Re Neo Material Technologies (2009), 32 O.S.C.B. 6941 and Re Icahn Partners LP et al. and Lions Gate Entertainment Corp. 2010 BCSECCOM 432

- Insider trading and tipping provisions e.g.:

  - In some jurisdictions, the insider trading prohibition is limited to a person or company in a special relationship with a reporting issuer (a special relationship person) "purchasing" or "selling" a "security" of a "reporting issuer" while in possession of material undisclosed information about the issuer;
  - In other jurisdictions the prohibition also covers derivatives of securities and/or securities of issuers that are not a reporting issuer in the jurisdiction but whose securities are "publicly traded";
  - Some jurisdictions also prohibit special relationship persons from recommending or procuring a trade while in possession of material undisclosed information.

**Examples of key differences within 'national' registration and exemption rules:**

- National Instrument 31-103 Registration Requirements and Exemptions:

  **A. Interpretation:**

- Definition of "securities" includes exchange contracts in Alberta, British Columbia, Saskatchewan and New Brunswick

Registration Requirements (Individuals):

- Requirement that dealing representatives of a mutual fund dealer be an "approved person" under rules of Mutual Fund Dealers Association ["MFDA"] does not apply in Quebec.

Suspension and Revocation of Registration (Individuals):

- In Quebec, revocation or suspension of an individual's approval to act as a representative of a mutual fund dealer by the MFDA does not give rise to revocation or suspension of registration.

Registration Categories:

- North West Exemption applies.

Mutual fund dealers:

- In Quebec, mutual fund dealer registration does not provide authorization to sell labour sponsored venture funds;
- In BC, mutual fund registration also provides authority to sell scholarship plans and educational plans

**B. Exemptions from Registration Requirement:**

In Quebec, registration requirements are different since the definition of "trade" is different while in BC and New Brunswick, persons or companies are exempt from the registration requirement if they do not hold themselves out as engaging in the business of trading.

Membership in a self-regulatory association:

- Requirement for a mutual fund dealer to be a member of MFDA does not apply in Quebec

Exemptions from certain requirements of NI31-103 for SRO members:

- MFDA members are not exempt from certain of these requirements in Quebec

In Ontario, some elements of NI 31-103 are contained in legislation.

- National Instrument 45-106 – Prospectus and Registration Exemptions:

**A. Interpretation:**

- In Ontario, the definition of "accredited investor", as it relates to a person acting on behalf of a "fully managed account", is narrower than the corresponding definition of "accredited investor" in the other jurisdictions.
- Separate definition of "trade" in Quebec for purposes of instrument in s. 1.7.
- Definition of "distribution" in Manitoba means a primary distribution to the public.
- In Manitoba and Saskatchewan the definition of "eligibility advisor" also includes a lawyer or public accountant.
- Definition of "spouse" in Alberta includes an adult interdependent partner within the meaning of the Adult Interdependent Relationships Act (Alberta).

**B. Exemptions:**

Family friends and business associates exemption:

- Does not apply in Ontario.
- Additional requirement in Saskatchewan for person making the distribution to obtain a signed risk acknowledgment from the purchaser.

Offering memorandum exemption:

- Offering memorandum exemption in NI 45-106 not available in Ontario.
- In Quebec, purchaser must be an "eligible investor" if acquisition cost of securities exceeds $10K (section 2.9(2)) and if issuer is an investment fund, it must be a non-redeemable investment fund, or a mutual fund that is a reporting issuer (s. 2.9(2)(d)).
- In Alberta, Manitoba, Northwest Territories, Nunavut, Saskatchewan and Yukon purchaser must be an "eligible investor" if acquisition cost of securities exceeds $10K (section 2.9(2)) and if issuer is an investment fund, it must be a non-redeemable investment fund, or a mutual fund that is a reporting issuer (s. 2.9(2)(d)).
- British Columbia, New Brunswick, Nova Scotia and Newfoundland and Labrador not subject to section 2.9(2) requirements.
- In Saskatchewan and the three territories, exemption not available if a commission or finder's fee is paid to any person other than a registered dealer in connection with the distribution (s. 2.9(4)).
- In PEI, purchaser must be an "eligible investor" if acquisition cost of securities exceeds $10K (section 2.9(2)) and if issuer is an investment fund, it must be a non-redeemable investment fund, or a mutual fund that is a reporting issuer (s. 2.9(2)(d)).

Mortgages exemption:

- In Quebec, Alberta, British Columbia, Manitoba and Saskatchewan, the exemption does not apply to a distribution of a syndicated mortgage.

Exemption for offerings by TSX Venture Exchange offering document:
- This Part does not apply in Ontario.

Application of exemptions to exempt market dealers (EMDs):

- For certain EMDs, North West Exemption applies when trading in reliance on: the accredited investor exemption; the family friends and business associates exemption; the offering memorandum exemption; and, the minimum investment amount exemption

In Ontario, some elements of NI 45-106 are contained in legislation.

35

# Appendix 3 - International Representation

**International Organization of Securities Commissions (IOSCO)**
IOSCO's mandate is to advance the regulation of the world's securities markets based on sound principles and standards, and the effective enforcement of securities law through cooperation and information exchange among regulators.

**Participation on IOSCO**

- *Membership* – The OSC and the Autorité des marchés financiers ["AMF"] are ordinary members (i.e. voting members). The Alberta Securities Commission ["ASC"] and British Columbia Securities Commission ["BCSC"] are associate members (i.e. non-voting members) that generally do not participate in the policy work and working committees of IOSCO.

- *Technical Committee* – The OSC and AMF are both members of the Technical Committee, which is IOSCO's key policy-making body that is comprised of securities regulators from the world's larger, more sophisticated capital markets. The OSC and AMF are active members of the various standing committees, task forces and working groups that undertake work on behalf of the Technical Committee.

- *Executive Committee* – The AMF, as an elected representative of COSRA (see below) is a member of the Executive Committee, IOSCO's executive decision-making body.

- *Coordination* – The OSC and the AMF are independent members that represent their own respective Commissions at IOSCO, and do not generally represent the broader CSA or Canadian perspective. However, the OSC and AMF often coordinate their work on IOSCO initiatives. For example, the OSC and AMF are co-chairing the Technical Committee's Working Group on Systemic Risk (the ASC was invited by the OSC and AMF to participate on the Working Group). The OSC and AMF also work together to provide joint responses to IOSCO surveys and consultations, such as the recent consultation on the new committee structure and funding options as part of the review of the IOSCO Strategic Direction for 2010-2015.

**Memoranda of Understanding (MOUs)**

- *Enforcement MOU with US Securities and Exchange Commission* ["US SEC"] – In January 1988, the OSC, AMF and BCSC signed an MOU for mutual cooperation, the exchange of information and investigative assistance (the Enforcement MOU) with the US SEC. The Enforcement MOU is intended to facilitate the ability of the signatories to assist one another in investigations and prosecutions of cross-border securities fraud.

  *IOSCO Multilateral Memorandum of Understanding (IOSCO MMOU)* – The OSC, AMF, ASC and BCSC are signatories to the IOSCO MMOU, which was the first global multilateral information-sharing arrangement among securities regulators. The IOSCO MMOU recognizes the increasing international activity in the securities markets and the corresponding need for mutual cooperation and consultation among IOSCO members to ensure compliance with, and enforcement of, their securities laws and regulations. It represents a common understanding among its signatories about how they will consult, cooperate, and exchange information for securities regulatory enforcement purposes, with a view to facilitating the performance of the respective regulatory roles.

- *Supervisory MOU with US SEC* – In June 2010, the OSC and AMF signed an MOU concerning regulatory cooperation related to the supervision of regulated entities (the Supervisory MOU) with the US SEC. The Supervisory MOU sets out a framework for consultation, cooperation and information sharing related to the day-to-day supervision and oversight of regulated entities. It is intended to enhance the OSC, AMF and SEC's ability to supervise regulated entities that operate on a cross-border basis in the US and Canada.

**North American Securities Administrators and Associations (NASAA)**
NASAA is committed to protecting investors from fraud and abuse, educating investors, supporting capital formation, and helping ensure the integrity and efficiency of financial markets.

- All Canadian provincial and territorial securities regulators participate in NASAA.

**The Council of Securities Regulators of the Americas (COSRA)**
COSRA brings together securities regulators from the Americas and the Caribbean with the primary goal of cooperating to develop and foster the growth of securities markets in the region that are open and fair to all investors.

- Canadian members of COSRA include the OSC, AMF, ASC, BCSC and New Brunswick Securities Commission.

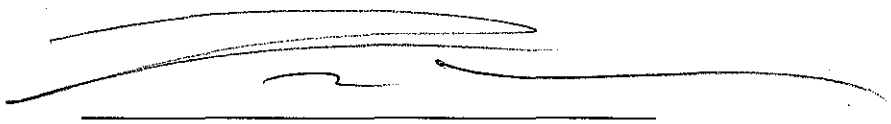
**The International Joint Forum (IJF)**
The International Joint Forum (IJF) was established in 1996 under the aegis of the Basel Committee on Banking Supervision (BCBS), IOSCO and the International Association of Insurance Supervisors (IAIS) to deal with issues common to the banking, securities and insurance sectors, including the regulation of financial conglomerates.

- Canada is represented on the IJF by the Office of the Superintendent of Financial Institutions ["OSFI"] on the banking and insurance side, and by the OSC and the AMF on the securities side.

**THIS IS EXHIBIT "A" TO THE**

**AFFIDAVIT OF ROBERT CHRISTIE,**

**SWORN BEFORE ME THIS 28TH DAY OF OCTOBER, 2010.**



**A Commissioner, etc.**

# Robert Christie

Deputy Minister Profile OPS executives

**Internal Work History:**

| | |
|---|---|
| Sep 2005 - Aug 2009 | Ceo and Superintendent, FINANCIAL SERVICES COMMISSION OF ONTARIO |
| Feb 2004 - Sep 2005 | Deputy Minister, Ministry of Training, Colleges and Universities |
| Aug 2000 - Feb 2004 | Deputy Minister, Ministry of Finance |
| Jun 1999 - Aug 2000 | Deputy Minister, Ministry of Training, Colleges and Universities |
| May 1998 - May 1999 | Deputy Minister, Ministry of Intergovernmental Affairs |
| Jul 1997 - May 1998 | Assistant Deputy Minister, Policy Co-ordination, Cabinet Office |
| Jul 1996 - Jul 1997 | Assistant Deputy Minister, Office of the Budget & Taxation, Ministry of Finance |
| Mar 1994 - Jul 1996 | Assistant Deputy Minister, Treasury Board (ADM & Controller), Ministry of Finance |
| Jul 1993 - Mar 1994 | Assistant Deputy Minister, Federal-Provincial Relations, Ministry of Intergovernmental Affairs |
| May 1991 - Jun 1993 | Assistant Deputy Minister, Taxation & Intergovernmental Finance Policy, Ministry of Finance |
| Feb 1989 - May 1991 | Assistant Deputy Minister, Office of Economic Policy, Ministry of Treasury and Economics |
| Jan 1987 - Feb 1989 | Director, Finance Policy, Ministry of Treasury and Economics |
| Feb 1984 - Dec 1986 | Assistant Director, Finance Management, Ministry of Treasury and Economics |
| Apr 1982 - Feb 1984 | Acting Assistant Director, Finance Management, Ministry of Treasury and Economics |
| Jun 1979 - Mar 1982 | Senior Economist, Finance Management, Ministry of Treasury and Economics |
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**Education:**

1978 Ph.D., Economics
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1972 M.A., Economics
Queen's University, Kingston, Ontario

1970 B.A., Economics
University of Toronto, Toronto, Ontario

**THIS IS EXHIBIT "B" TO THE**

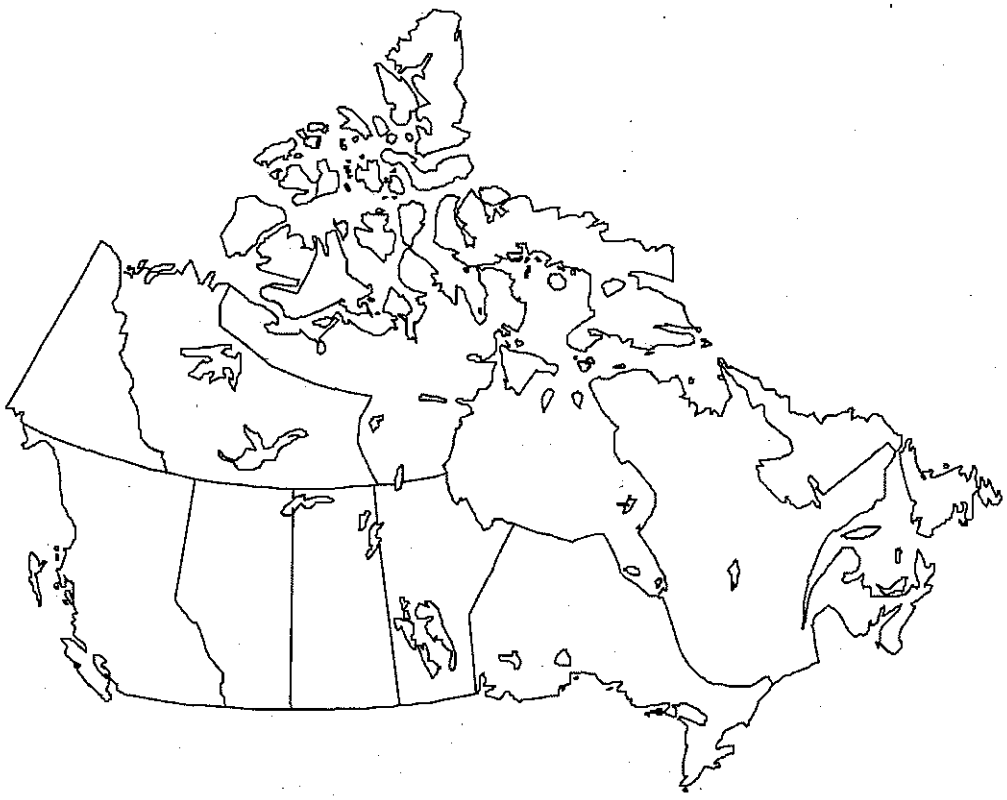
**AFFIDAVIT OF ROBERT CHRISTIE,**

**SWORN BEFORE ME THIS 28TH DAY OF OCTOBER, 2010.**

**A Commissioner, etc.**

# Securities Regulation in Canada:

## An Inter-Provincial Securities Framework



***Discussion Paper***

**June 2003**

## Steering Committee of Ministers

Greg Melchin (Chair), Minister of Revenue, Alberta

Janet Ecker, Minister of Finance, Ontario

Yves Séguin, Minister of Finance, Quebec

Kevin Falcon, Minister of State for Deregulation, British Columbia

Greg Selinger, Minister of Finance, Manitoba

Eric Cline, Minister of Justice, Saskatchewan

### Ministers from all other provinces and territories

Ronald S. Russell, Minister of Environment and Labour, Nova Scotia

Bradley Green, Minister of Justice and Attorney General, New Brunswick

Jeffery Lantz, Attorney General, Prince Edward Island

George Sweeney, Minister of Government Services and Lands, Newfoundland and Labrador

Roger T. Allen, Minister of Justice, Northwest Territories

Glenn Hart, Minister of Community Services, Yukon

Paul Okalik, Minister of Justice, Nunavut

**ISBN 0-7785-2993-2**

# Securities Regulation in Canada:

## An Inter-Provincial Securities Framework

***Discussion Paper***

Effective securities regulation is key to investor protection and efficient, vibrant and competitive national and local capital markets.

Many stakeholders have expressed concerns about the ability of the current securities regulatory framework in Canada to keep up with the pace of change. At the same time, investor confidence has been shaken by substantial downturns in world equity markets and corporate scandals in the United States.

In recent years, all of Canada's provinces and territories and their securities regulatory authorities have made significant progress towards a more harmonized securities regulatory framework. Provincial and Territorial Ministers recognize that even more needs to be done to make the framework efficient and effective and they understand the importance of addressing the issues raised by stakeholders.

Ministers have agreed to work together to identify improvements to the existing framework that will inspire investor confidence and create a more efficient, streamlined and effective securities regulatory framework. The initiative is being led by a Steering Committee of Ministers, chaired by Alberta's Minister of Revenue, and includes the provincial Ministers responsible for securities regulation in British Columbia, Saskatchewan, Manitoba, Ontario and Québec.

This paper sets out the goal and principles that will guide Ministers in this reform initiative and the issues identified by stakeholders. It then proposes a system to be considered by all provinces and territories that would be an important step forward in addressing many issues in the short term, while leaving the door open for future improvements.

Ministers are seeking the views of stakeholders on how to build on the strengths of the current framework to better meet the needs of Canadian investors and market participants. After sections two and three of this paper are questions that may be useful in structuring your comments.

Please send your written comments in hard copy or, preferably, in electronic format to:

Ms. Mary Ellen Rainey
Securities Policy Advisor
Financial Sector Policy
402 Terrace Building
9515 - 107 Street
Edmonton, AB T5K 2C3
securities.submissions@gov.ab.ca

**The deadline for all submissions is July 15, 2003.**

Please direct any questions regarding the content of the discussion paper with your contact information to securities.submissions@gov.ab.ca.

All comments and opinions received in response to this discussion paper will be shared with provinces and territories and become the property of the provincial and territorial governments of Canada. While personal or confidential business information will be protected where possible, the provinces and territories reserve the right to publicly disclose the submissions in accordance with freedom of information and protection of privacy legislation. A summary of the submissions will be made public and will be posted on the Alberta Revenue website.

# Table of Contents

# 1.0 Introduction

## 1.1 Background - Need for an Inter-Provincial Securities Initiative

Capital markets are evolving at an unprecedented rate. The convergence of financial service providers, international competition for investment opportunities and capital for economic growth, and advances in information technology are reshaping the world of finance.

The forces of change will continue to affect markets in coming years. Regulators, industry representatives and legal practitioners have suggested that the securities framework can be further improved, particularly by reducing the barriers faced by issuers and registrants that wish to access markets in more than one jurisdiction in Canada.

In response, Canadian securities regulators have initiated a number of substantial reforms to harmonize and streamline the rules and administrative practices in the securities field. The Mutual Reliance Review System (MRRS) and the System for Electronic Document Analysis and Retrieval (SEDAR) were developed and adopted in the late 1990s. More recent initiatives include the National Registration Database (NRD) and the System for Electronic Disclosure by Insiders (SEDI), which are now being implemented. In addition, the Uniform Securities Legislation (USL) project, a major initiative of the Canadian Securities Administrators (CSA), will propose amendments to securities laws and rules to eliminate a significant majority of the remaining differences in laws.

These advances in harmonizing securities regulation should not be underestimated. Nevertheless, many participants in Canada's capital markets have advocated a more comprehensive approach to reforming the securities regulatory framework across Canada. The active support and involvement of provincial and territorial governments is vital for any successful reform to the securities regulatory framework.

In mid-February 2003, the ministers responsible for securities in Alberta, British Columbia, Ontario and Québec met to discuss the potential for a securities reform initiative driven by provinces and territories. In subsequent discussions, all provincial and territorial ministers personally committed to making significant reforms to the existing framework that will build upon the work of their regulators. Ministers have set an ambitious timeframe: a concrete action plan for the establishment of an improved provincial/territorial approach to securities reform is targeted for development by September 30, 2003.

In addition to this provincial-territorial initiative, the federal government has established a seven-person committee to study ways to improve the securities regulatory framework in Canada. This committee will report to the federal Finance Minister by November 30, 2003. The Wise Persons' Committee came into being on the suggestion of Harold MacKay in a report to the federal Finance Minister John Manley in November 2002. While the federal Wise Persons Committee may be a source of input to the inter-provincial securities initiative, securities regulation is an area of provincial jurisdiction and leadership for reform must come from the provinces and territories.

Additional sources of input could include the Final Report of the Five-Year Review Committee on Ontario's Securities Laws which was released recently and the British Columbia Securities Commission's legislative proposal called *"Securities regulation that works - the BC Model"* which has been published for comment.

## 1.2 Goal of Inter-Provincial Securities Initiative

Ministers identified the goal of the reform initiative. It is:

*To develop a provincial/territorial framework that inspires investor confidence and supports competitiveness, innovation and growth through efficient, streamlined and cost-effective securities regulation that is simple to use for investors and other market participants.*

## 1.3 Principles of the Inter-Provincial Securities Initiative

Ministers also identified the following principles that will be used to assess the appropriateness and effectiveness of the changes being considered:

- **Highest standards of investor protection that are effectively and consistently applied**
- **Efficient and cost-effective, streamlined and simplified, regulation**
- **Able to adapt to future marketplace changes**
- **Transparency, accessibility and accountability for stakeholders, within a clearly defined framework for accountability to governments**
- **"Harmonized" securities laws and rules, with well-defined parameters for exceptions to accommodate local and regional differences.**

A new regulatory structure must significantly improve the current framework, addressing most, if not all, of the issues raised by stakeholders.

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# 2.0 Existing Structural Regulatory Issues

Some of the key concerns expressed by market participants about the current regulatory structure include calls for: greater efficiency in regulating issuers, registrants and others; more streamlined and simplified regulation that reduces the compliance burden on market participants; more responsive regulation; and better enforcement. This section includes some overview comments, followed by an outline of the structural issues. The tables embedded in the text describe the CSA's many initiatives that respond to the issues.

## 2.1 General Issues

**Dealing with Different Laws**

Over the years, reporting issuers and firms in the securities industry operating in more than one jurisdiction have noted significant direct and indirect costs incurred in identifying and complying with inter-jurisdictional variations in laws, rules and administrative procedures.

As part of their efforts to address this concern, the CSA has harmonized many regulatory requirements. More recently, the CSA has set up a committee of Securities Chairs and Vice Chairs to formulate and propose uniform securities laws that would apply throughout Canada. The committee reviewed existing securities legislation in Alberta, British Columbia, Manitoba, Ontario and Québec to identify best in class among existing provisions. On January 30, 2003, the CSA released a discussion paper outlining the securities regulators' proposals for a uniform law (see

Table 2.1 Uniform Securities Legislation (USL) Project). Going forward, it is recognized under the USL proposal that, if the USL proposal becomes law, it will be important to establish a workable mechanism to identify and adopt common legislative amendments on a timely basis to maintain uniformity.

**Complexity of Laws and Rules**

Some commentators characterize existing securities laws and rules as complex, prescriptive and voluminous. Although some degree of complexity in securities regulation is unavoidable given the complex nature of capital markets and many of the instruments and activities involved, regulation should be clear and avoid being duplicative or excessive relative to its benefits. While much of Canadian securities regulation has, in fact, already been made uniform through the cooperative efforts of Canadian regulators, complaints about the regulatory burden (in dollars and time) continue. Legislative harmonization, at least in key areas, may be a necessary but not sufficient solution to the problems raised by stakeholders.

An efficient, effective, streamlined and simplified regulatory framework remains an important, as yet unrealized objective.

As well, some commentators have argued that the current regulatory structure has hindered the ability of Canadian capital markets to compete internationally. Given the size and make-up of Canadian national and local capital markets, it is important that the securities regulatory framework be structured so that it is as efficient, effective, streamlined and simplified as possible to enhance Canada's ability to attract investors and issuers.

**Table 2.1 Uniform Securities Legislation (USL) Project**

- In recognition that each of Canada's provinces and territories have different securities legislation, in the fall of 2001, the CSA embarked on a project to develop, within two years, uniform securities legislation for the consideration of governments across Canada. This project, known as the USL Project, is the CSA's top priority and is part of a broader proposed regulatory reform strategy to reduce the burden of regulation on market participants and make regulation more effective in protecting investors and preserving market integrity.

- Although the primary focus of the USL Project is to harmonize securities legislation, the CSA has taken the opportunity to simplify and streamline the regulatory framework in areas where this complementary goal can be achieved within the project timeframe. Once the common platform is in place, further initiatives aimed at rationalizing and streamlining the legislation can proceed.

- The Concept Proposal outlines proposals for the harmonization of securities legislation developed during the study period. In some areas, substantive changes to current laws are contemplated. For the most part, proposed changes are either well-advanced CSA initiatives for which the USL Project presents an ideal opportunity to make necessary legislative amendments, or proposed changes that would further the project's complementary goal of streamlining and harmonizing the framework of securities regulation in Canada. The most significant proposed policy changes are:
  - A streamlined and uniform securities act with details contained in regulations to allow future changes to be made in a timely and harmonized manner through the rule-making process.
  - The ability for a securities regulator to delegate decision-making across all regulatory functions to another securities regulator.
  - A streamlined system for inter-jurisdictional registration of investment firms and individuals.
  - A civil liability regime for secondary market participants.

See http://www.albertasecurities.com/documents/58/Proposal_235.pdf for further detail on the USL.

## 2.2 Detailed Structural Issues

In elaborating on these general issues, a number of specific issues concerning the existing regulatory structure in Canada have been identified. The following sections highlight specific problems and issues raised by stakeholders with respect to the current securities regulatory framework.

### 2.2.1 Problems for Issuers and Registrants

Under the current system, investment dealers, advisers and their representatives (registrants) and companies that raise financing in our capital markets (issuers) have said that they face a number of burdens due to differences in securities laws across Canada and the need to deal with a number of securities regulators.

Registrants must register in each jurisdiction in which they have clients and registration requirements are not identical across jurisdictions. This is thought to be more of a concern for registered firms that operate in more than one province than for individual representatives who tend to operate in only one province (see first two bullets in Table 2.2.1 for a description of CSA initiatives to address this concern).

Issuers typically must file a variety of documents with more than one securities regulator. For example, issuers must file a prospectus when they raise capital and afterwards must comply with continuous disclosure requirements such as the need to file material change reports. Prospectus, continuous disclosure and other filing requirements vary among jurisdictions. This can create additional costs and delays, as companies must often hire lawyers in each jurisdiction to make sure they are in compliance. Some issuers claim that the current system of prospectus and continuous disclosure requirements is costly, apart from any differences among jurisdictions, and hinders financing opportunities (see third, sixth and seventh bullets in Table 2.2.1 for a description of CSA initiatives to address this concern).

Insider trading reports for most issuers must be filed in multiple jurisdictions, making compliance costly and causing delays in reporting to investors (see fourth bullet in Table 2.2.1 for a description of CSA initiatives to address this concern).

Documents and applications for exemptions from securities laws must be submitted to regulators in each jurisdiction where the filing or exemption is required. Multiple filings and applications add time and expense for participants in Canada's capital markets and compliance is more difficult in cases where regulators' decisions are not consistent.

Some stakeholders argue that, while the Mutual Reliance Review System (MRRS) has enhanced harmonization and co-ordination, it is limited in what it can achieve since securities law is not uniform across jurisdictions and separate decisions are needed in each jurisdiction. These stakeholders also maintain that MRRS is not well-suited to increasingly common complex or novel transactions.

### 2.2.2 Problems for Marketplaces and Self-Regulatory Organizations (SROs)

Securities marketplaces and self-regulatory organizations operate nationally and each is recognized in several jurisdictions. They are subject to the rules of operation of each jurisdiction in which they operate; however, oversight primarily is undertaken by their principal regulator(s). Being subject to oversight of more than one regulator can result

**Table 2.2.1 CSA Initiatives to Address Problems for Issuers and Registrants**

- The National Registration Database (NRD), launched on March 31, 2003, is a web-based system that permits firms and individuals to file registration forms electronically. It has been designed, in consultation with industry representatives, to harmonize and improve the registration process across most of the jurisdictions of Canada. Separate arrangements apply in Québec.

- The CSA's Registration Streamlining System (RSS) allows salespersons registered in one jurisdiction to use copies of their registration form to apply for registration in other jurisdictions. This system changed administrative practices, not regulatory requirements. All existing local requirements remain in effect, and each participating CSA member continues to apply them. Each individual's suitability for registration continues to be assessed in each jurisdiction in which they work. Separate arrangements apply to salespeople registered in Québec or those who wish to apply to register in Québec.

- Under the CSA's Mutual Reliance Review System (MRRS), one regulator relies on the analysis and examination of a regulator in another province. Under MRRS, an issuer reporting to more than one regulator files documents with each of them, but generally deals with only one regulator.
  - MRRS is used now for the review of prospectuses and applications for exemptions that are filed in more than one jurisdiction. Work is underway to extend MRRS to the review of continuous disclosure filings.
  - MRRS is a mechanism to coordinate decision-making among securities regulators and to provide a single window for filers to deal with one regulator even when many jurisdictions are involved. While filers receive a single MRRS decision document evidencing the decisions of all jurisdictions, each jurisdiction still makes a local decision.

- The CSA has developed the System for Electronic Disclosure by Insiders (SEDI), which was brought into service in May 2003. Potential benefits include the ability for insiders to file a single report electronically, that is accepted in all jurisdictions, faster public access to insider reports for investors and more effective regulatory monitoring of compliance.

- In June 2002, CSA members published for comment a proposed rule that would allow public companies to abide by a single set of securities requirements in filing their financial statements and other continuous disclosure documents. They propose to introduce the rule later in 2003.

- In January 2000, the CSA published for comment a proposal for an integrated disclosure system that would allow faster and more flexible access to public markets for companies meeting more comprehensive and more timely continuous disclosure requirements.

- The System for Electronic Document Analysis and Retrieval (SEDAR), launched on January 1, 1997, allows reporting issuers and others to file electronically in one place, prospectuses, financial statements, annual reports and news releases, to satisfy the requirements of all provinces.

in added compliance costs and an inefficient administrative structure for vitally important components of our capital markets, such as the TSX Venture Exchange. Higher costs for stock exchanges lead to higher fees levied on companies seeking to raise capital, which restricts access to capital for companies and limits the investment choices available to investors. While steps have been taken to streamline oversight and approval processes, (see Table 2.2.2) there are still situations where duplication of oversight activities occurs across jurisdictions.

**Table 2.2.2 Current Efforts to Address Problems for Marketplaces and SROs**

- The CSA has created standardized trading rules and rules regulating the operation of marketplaces and allowed for the operation of alternative trading systems. This led to the creation of Market Regulation Services Inc. (RS Inc.), a self-regulatory organization charged with regulating the market conduct of persons trading through stock exchanges and other marketplaces.
- To reduce the administrative burden on stock exchanges and other marketplaces, securities authorities have signed a memorandum of understanding (MOU), assigning oversight of certain exchanges to a lead regulator(s). Some securities authorities have also signed MOUs to provide more streamlined supervision of other SROs such as RS Inc. and the Investment Dealers' Association.

### 2.2.3 The Need for a Responsive, Resilient Framework with a Strong International Voice

The securities regulatory framework must be able to assess and respond to changes in the marketplace and securities industry in a timely and co-ordinated manner to ensure that regulations remains current. A responsive framework enables innovation in capital markets while ensuring investor protection.

A number of provincial securities commissions now have the power to make rules that have the force of law. These powers are subject to requirements that proposed rules must be published for comment and, in most provinces, they also must be delivered to the responsible Minister for consideration. While rulemaking powers permit flexible and responsive securities regulation, concerns have been expressed that the time it takes to implement rules does not match the speed at which markets change. There may be ways to co-ordinate the development of rules across jurisdictions to improve current methods.

Some jurisdictions regularly update their securities legislation and regulation. However, there is no formal mechanism in place to co-ordinate legislative changes across jurisdictions (see first bullet in Table 2.2.3).

The securities regulatory framework also must be resilient enough to withstand stress in capital markets. The tools must be available to ensure urgent issues are managed smoothly in the immediate term and that any needed longer-term responses are appropriately crafted and implemented in a timely way. In response to corporate accounting scandals in the United States, and resulting changes in US securities regulation, some Canadian jurisdictions, including the federal government, have either introduced or announced measures intended to bolster investor confidence. However, these measures were taken without formal coordination. Some commentators have noted the importance of ensuring that any such moves are appropriate for the Canadian context (see third bullet in Table 2.2.3 for a description of CSA initiatives to address this concern).

Under the current framework, each provincial and territorial securities regulator participates in international organizations of securities regulators. The securities commissions of Ontario and Québec are each members of the International Organization of Securities Commissions (IOSCO) and actively participate in IOSCO committees. The Alberta and British Columbia commissions are associate members. All four of these commissions are members of the Council of Securities Regulators of the Americas (COSRA). All provincial and territorial securities regulatory authorities are members of the North American Securities Administrators Association (NASAA).

Some commentators are of the view that Canada's regulators do not speak with a single voice internationally. In an era of increasingly global capital markets and investment opportunities, some commentators have stressed the importance for Canada's securities regulators to speak with a single and authoritative voice. This concern reflects the need for strong representation of Canadian views in international forums that address global capital market issues and in discussions with key foreign agencies like the Securities and Exchange Commission (SEC), the federal securities regulator for the United States. Despite these concerns, however, Canadian regulators have played a significant role in international regulatory discussions and activities.

### 2.2.4 Enforcement-Related Problems

Concerns have been raised that the current regulatory framework may not include all the measures needed to allow regulators to work together effectively in enforcement matters.

For example, there is no statutory authority for regulators taking enforcement actions on behalf of others. However, some jurisdictions have a practice of imposing reciprocal enforcement orders, based on the orders in another jurisdiction, on registrants who engage in securities business in those other jurisdictions. Similarly, mechanisms are needed to ensure that regulators take a similar and coordinated approach to surveillance, investigation and enforcement to facilitate consistent regulation across jurisdictions (see first two bullets in Table 2.2.4 for a description of CSA initiatives to address this concern).

Concerns also have been raised by some that the objective of consistent regulation across jurisdictions may be frustrated by varying local procedural requirements that apply in court and securities commission hearings and differing judicial interpretations of similar securities laws. More common procedural requirements and practices could ensure common standards of due process and better facilitate joint hearings before more than one regulator.

In addition, the existence of differing local interpretations of the meaning and effect of harmonized securities laws is inconsistent with the objectives of harmonization.

Some in the regulatory community feel that harmonizing the areas of hearings and sanctions is less important than harmonizing the rules of access to and operation in the capital markets (see third and fourth bullets in Table 2.2.4 for a description of CSA initiatives to address this concern).

**Table 2.2.3 Current Efforts to Make Regulation More Responsive and Resilient, with a Strong International Voice**

- Through co-ordination by the CSA, many uniform national instruments have been implemented across Canada.
- The CSA consults with market participants and collaborates with other public bodies to ensure that regulatory responses are appropriate. This process has resulted in timely responses to urgent developments.
  - The CSA collaborated with the Office of the Superintendent of Financial Institutions and the Canadian Institute of Chartered Accountants in creating the Canadian Public Accountability Board in 2002.
  - The CSA responded to concerns about Y2K and the 2001 terrorist attacks in the United States, by developing contingency plans with industry and others to ensure that Canadian capital markets would continue to function normally in the aftermath of catastrophic events.
  - CSA members have cooperated in providing coordinated responses to IOSCO questionnaires and the IMF review of Canadian financial regulation.

**Table 2.2.4 Addressing Enforcement Issues**

- Statutory powers and administrative arrangements are in place in most provinces that permit sharing of information among CSA members. These arrangements also permit sharing information with other regulatory bodies and, subject to specific limits, with police or other persons responsible for the administration of criminal laws. These powers extend to sharing information with regulators and police in other countries.
- A series of bi-lateral and multi-lateral agreements (e.g. an MOU with the International Organization of Securities Commissions, IOSCO) facilitates the sharing of information and co-operation in enforcement matters between Canadian regulators and regulators and police authorities in other countries. The CSA concept proposal on the development of uniform securities laws includes provisions that would permit greater coordination among regulators on enforcement matters.
- Some stakeholders have raised the question of whether a greater separation of the tribunal function from other functions of securities regulators is required to deal with real or perceived conflicts of interest in provincial Commissions that perform multiple roles (e.g. policy setting, enforcement and adjudication). Canadian courts have held that the administrative tribunals, as they are currently structured, meet the requirements of their constituting legislation. In Québec, Bill 107 has created the Bureau de décision et de révision en valeurs mobilières, which is distinct from its securities regulatory agency, to act as an administrative tribunal in securities matters.
- In recent years, some enforcement proceedings national in scope have been resolved through joint hearings by regulatory authorities. If this approach were to be expanded, it could benefit from the development of rules and processes for joint hearings, as recommended in the USL paper.

### 2.2.5 Questions Regarding Existing Structural Regulatory Issues

**The following questions, as well as those listed on page 14, may serve as a guide in preparing your response.**

**Q1** Do you share the concerns respecting the issues described in this paper, and if so, do you feel they demand structural change? Are there additional, existing structural regulatory issues that have not been identified in this paper that would need to be addressed by a new securities regulatory framework?

**Q2** Which of the structural regulatory issues identified in this paper should be treated as highest priorities during this review of the securities regulatory framework?

**Q3** How well do current regulatory initiatives being undertaken by securities regulators through the Canadian Securities Administrators address the existing structural regulatory issues identified in this paper? What remains to be addressed in the Ministers' review?

**Q4** How important is it to the success of a new securities regulatory framework that we streamline and simplify regulatory requirements in addition to reducing duplication?

# 3.0 A New Securities Regulatory Framework

Ministers are strongly committed to building on, and fundamentally improving, the Canadian securities regulatory framework.

This paper presents for discussion a passport system, which Ministers have agreed should be consulted on as a practical and timely response to issues that have been identified in the marketplace.[1] Ministers believe that it is vital to consult with stakeholders in developing an approach that would be an important step forward in meeting their common goal for the Canadian securities regulatory system.

The passport system would result in each market participant dealing with only one regulator with respect to market access rules. The degree to which securities laws are harmonized across participating jurisdictions is a key factor in determining the extent to which the passport system would be adopted by jurisdictions. If securities laws were not substantially harmonized, there would be greater potential for jurisdictions to decline to join or to withdraw from the passport framework because of dissatisfaction with the application of different laws.

Harmonization could be characterized as meaning that laws and rules in each jurisdiction would be uniform to the greatest extent possible, and would be similar in intent when uniformity is not possible. Alternatively, some would argue that harmonization could rely on a common set of principles designed, for example, to provide equivalent investor protection and to avoid imposing conflicting requirements on market participants. Provinces would like to hear stakeholders' views regarding their views on the degree of harmonization that would be necessary to achieve the goal identified by Ministers, that is:

> *to inspire investor confidence and support competitiveness, innovation and growth through efficient, streamlined and cost-effective securities regulation that is simple to use for investors and other market participants.*

During their initial deliberations, Ministers also examined several other possible models that could serve as the basis for a new securities regulatory structure. Two of the options, a single, federal regulator and a dual, federal-provincial regulatory framework (similar to the framework in the United States) did not respect provincial responsibility for the area of securities and were rejected. The following section describes more fully a passport system, followed by a discussion of how the system is consistent with the principles of this initiative (see Section 1.3) and how it would address issues raised by stakeholders (see Sections 2.0 to 2.2).

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[1] Ontario supports consulting on a passport system based on the view that, if implemented, it would represent an incremental improvement to the current securities regulatory framework. However, Ontario believes that this model does not go far enough in addressing the concerns of national and international issuers and registrants. As well, Ontario feels that an alternative approach of a single provincial-territorial regulator with law that is uniform or very closely harmonized in almost all respects and which includes a well-defined mechanism for amendment or use of local rules would make capital markets more attractive to both domestic and foreign participants as well as providing for consistent high standards of investor protection across Canada. Consequently, Ontario feels that the consultation would benefit from the discussion of this alternative approach.

## 3.1 Passport System

**Description:**

The passport system would, through legislation, authorize jurisdictions to enter into agreements that would enable a host jurisdiction's regulator to rely on a primary jurisdiction's regulator to perform its supervisory duties regarding market access rules. (A host jurisdiction is the province or territory in which the market participant is operating or offering securities. A primary regulator is the regulator responsible for overseeing the market participant. Market participants include issuers and registrants.) This system would be relatively simple to implement and could be adopted in a timely manner as it builds on the existing regulatory structure and mutual reliance review system.

Registrations and filings for national or multi-jurisdictional market access would be done solely with the primary regulator for all participating jurisdictions on the basis of the primary jurisdiction's rules.

The filing requirements of the primary jurisdiction would be deemed to be the requirements of a host jurisdiction for the purpose of the application of the host jurisdiction's legislation. Filing with the primary jurisdiction would be deemed to be filing with a host jurisdiction. The approval of the primary jurisdiction's regulator would be deemed to be an approval from the host jurisdiction's regulator, subject to the payment of fees, which would be done through a single electronic transaction.

Provinces and territories participating in the passport framework would need to build on the existing base of harmonized law to ensure that investors and other market participants benefit from consistent rules in each participating jurisdiction. Processes and mechanisms for ensuring the upkeep of harmonized law would be developed, to ensure that harmony is preserved and enhanced over time. Ministers are committed to working with the regulators to ensure the timely consideration of proposed legislative changes.

**Determining the Primary Regulator:**

The primary regulator would be determined using agreed-to indicators, such as head office location, incorporation or economic activity of the regulated market participant.
The primary regulator for federally incorporated entities would be determined using one of the indicators other than incorporation. The primary regulator for non-resident entities could be chosen based on common indicators as well, such as location of major economic activity or the location of their principal Canadian office.
Not all provinces/territories would be required to participate as a primary jurisdiction. If a jurisdiction chooses not to participate as a primary jurisdiction, the jurisdiction (through an MOU) could choose to delegate or assign responsibility for regulating entities to a primary jurisdiction, or to assign responsibility to another jurisdiction on a case-by-case basis. In either case, the prospective primary jurisdiction would reserve the right to refuse to regulate an entity.

**Scope of Matters for the Primary Regulator:**

The passport process would allow a market participant to meet every jurisdiction's requirements for market access by meeting only the primary jurisdiction's requirements.

The responsibilities of the primary regulator regarding issuers would include the issuing of prospectus receipts or exemptions, the review and analysis of continuous disclosure information, and monitoring insider trading. Issuers would thus have to comply solely with the rules of the primary regulator, including any rules governing proxy solicitations, related party transactions and corporate governance requirements.

The responsibilities of the primary regulator regarding registrants (dealers, advisors, fund companies, representatives and marketplaces) would include registration and monitoring for compliance with requirements, such as solvency and fitness qualifications, to maintain registration.

With respect to market access rules, every jurisdiction would rely primarily on the primary regulator for enforcement (as agreed in a MOU). This would involve referring a complaint to the primary jurisdiction for investigation and enforcement action.

**Scope of Matters for the Host Regulator:**

Local regulators are in the best position to assess investor complaints. Thus, relations between investors and market participants would continue to be governed by the regulatory authority and the courts of the investor's jurisdiction, which would apply the local laws of that jurisdiction. Accordingly, an investor who is wronged by a market participant who obtained access to the market via the passport would deal with the regulatory authority of the investor's jurisdiction to lodge a complaint or seek an investigation.

With respect to market access rules, the host regulator would only take enforcement action if dissatisfied with the actions of the primary regulator. Any recourse by an investor against a market participant would be pursued in the courts of the investor's jurisdiction.

As is the case today, any entity attempting to participate in the marketplace without registering or filing required documentation would be subject to securities law and enforcement.

**Accommodating Local or Regional Needs:**

Provinces and territories note the advantages of preserving their ability to implement measures to meet local and regional capital market needs in innovative ways. Examples introduced in a province that subsequently gained broader acceptance include Junior Capital Pools and Labour Sponsored Venture Capital Corporations. In a rapidly evolving and complex environment, regulatory innovation can be an important tool in ensuring effective regulation.

Principles for acceptable departures from harmonized standards could be agreed to in advance. Such principles would preserve the integrity of the passport system.

For example, a province or territory wishing to introduce an innovative measure would consider:

- Whether the initiative was necessary to meet a policy objective
- How the impact on other jurisdictions would be minimized
- How the impact on the efficiency of the inter-provincial/territorial passport framework would be minimized
- Whether the measure would be restricted to a limited portion of the Canadian marketplace
- Making the measure subject to regular sunset reviews.

Proposals for local rules would be discussed by the CSA to determine if they could be adopted nationally. Ministers would be informed of all such initiatives.

**Governance and Accountability:**

Ministers would remain accountable to their constituents for the quality of securities regulation.

Existing regulatory structures would remain in place but would be complemented and enhanced by mechanisms to further the achievement of the principles identified in this paper (see Section 1.3).

Provincial and territorial ministers responsible for securities regulation would meet regularly to:

- Review their objectives for the securities regulatory framework
- Preserve and enhance the harmonization of securities laws
- Oversee regular annual or bi-annual reviews of securities legislation
- Monitor the condition and operation of the passport framework
- Develop responses to key international issues.

Senior officials would meet at least twice a year to:

- Review the status and functioning of the new regulatory framework
- Develop recommendations to enhance the achievement of the goals and principles approved by Ministers
- Develop responses to key international issues.

The CSA would develop uniform rules and undertake other initiatives consistent with the goals and principles approved by Ministers.

**Evaluation of Passport System vis-à-vis Principles:**

***1. Highest standards of investor protection***

Regulators with competent, well-trained staff and a thorough knowledge of the local markets would facilitate high standards of investor protection in their respective jurisdictions. Matters that are clearly multi-jurisdictional or national in scope would require the co-operation of enforcement staff from affected jurisdictions and, possibly, joint hearings.

Harmonized laws and rules applied by qualified regulatory staff would ensure that all Canadian investors are protected by equivalent standards. Since local regulators are in the best position to assess investor complaints, relations between market participants and investors would continue to be governed by the regulatory authority and the courts of the investor's jurisdiction.

***2. Efficient and cost-effective, streamlined and simplified, regulation***

Market participants would need to learn and comply with only one set of market access rules and, with respect to enforcement of those rules, would deal with only one regulator in most cases, as the host regulator would only take enforcement action if it was not satisfied with the actions (see above) taken by the primary regulator. Dealing with one set of rules and a single regulator would eliminate the current requirement for market participants to deal with multiple regulators for market access. Investors would continue to deal with only the rules and regulator in their jurisdiction. At the same time, the passport system would retain the advantage of providing access to local regulatory expertise within each jurisdiction.

As well, the passport system would enable streamlined and simplified regulation because it would be relatively simple to implement, as it builds upon the existing regulatory structure and the mutual reliance review system.

***3. Able to adapt to future marketplace changes***

Adapting to future marketplace changes would be facilitated through a well-developed process for amending legislation and rules. The CSA would continue to play an important role in this regard, perhaps with an expanded mandate to review the development of new products and processes and reach consensus on recommended improvements.

### 4. *Transparency, accessibility and accountability for stakeholders, with a clearly defined framework for accountability to governments*

Harmonized securities laws would promote transparency in the regulatory framework for market access by eliminating jurisdictional differences that tend to complicate compliance and enforcement. Efficiencies gained from greater harmonization contribute to lowering costs and improving accessibility to capital markets for issuers. Further, participants and investors would continue to benefit from local regulatory expertise. Strong accountability would be maintained by highlighting clear lines of responsibility from regulators to elected governments under the passport system.

Investors would continue to deal with their own jurisdiction's regulator, which makes the framework simple for them to use. Any recourse by an investor against a market participant would be pursued in the courts of the investor's jurisdiction.

### 5. *Harmonized securities laws and rules with well-defined parameters for exceptions to accommodate local and regional differences*

Harmonizing securities laws to the greatest extent possible throughout the country would facilitate the adoption of an effective passport framework, facilitating working mutual reliance and acceptance.

The use of harmonized securities laws reduces overall complexity and duplication in the regulatory framework and helps reduce information asymmetry for the benefit of investors. Harmonization by itself does not necessarily reduce the actual complexity of the regulatory requirements.

## Evaluation of Passport System vis-à-vis Existing Structural Regulatory Issues:

The passport system responds positively to key concerns raised over the years by market participants that it is costly and inefficient to deal with multiple provincial/territorial regulators and legislation to gain access to the securities market. The passport system, in conjunction with harmonized laws and the application of electronic systems such as NRD and SEDAR, would allow true "one stop shopping", that is, the ability to deal with a single regulator when registering or filing in more than one jurisdiction. While filing fees to host jurisdictions would still apply, the process would be significantly streamlined.

Reporting issuers (and their insiders) would only have to file documents with one regulator; they would have to comply with one set of prospectus and disclosure requirements; and documents and exemptions from securities laws would have to be submitted to one regulator for review and approval. Other jurisdictions would rely on decisions of the primary regulator. This would address concerns raised by reporting issuers that the current system of filing prospectus and continuous disclosure documents in multiple jurisdictions creates costs and/or delays.

Adopting the passport system would encourage harmonized regulatory development. Since the system is based on the recognition by one jurisdiction of the decisions made by another, on the basis of the rules applicable in the latter, jurisdictions will be more favourably disposed to accept the decisions of others when the rules are harmonized. Accordingly, an established structure to co-ordinate future changes to harmonized base law would ensure that participants and investors continue to benefit from harmonization and a responsive regulatory framework that is resilient to stress.

In the area of enforcement, the primary jurisdiction would remain responsible with respect to its market participants, to the degree that market access rules are involved. The host jurisdictions would leave enforcement to the primary jurisdiction for any such issue. Currently, there is no statutory authority in place for one regulator to take enforcement actions on behalf of others. Harmonization would facilitate the application of a consistent set of market access rules. Jurisdictions would continue to co-operate with other regulators regarding cross-border offenders. This would provide investors with the assurance that they would only need to deal with local authorities and courts.

### 3.1.1 Questions Regarding Passport System

**The following questions may serve as a guide in preparing your submission.**

**Q5** Would the passport system substantially address all of the structural regulatory issues that have been identified in this paper? If not, what issues remain outstanding?

**Q6** Are there additional elements that could be added to the passport system to address these issues?

The willingness of jurisdictions to enter into the passport system and rely on other jurisdictions' laws and decisions with respect to market access will depend on a sufficient degree of harmonization of laws and rules.

**Q7** What elements of securities regulation are most important to harmonize across jurisdictions?

**Q8** What degree of "harmonization" is necessary for a passport system to succeed?

**Q9** What should the principles be to determine acceptable departure from harmonized standards?

**Q10** Are there elements that could be added to enhance the suggested governance structure?

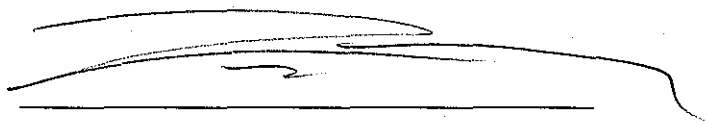
# 4.0 Conclusion

The Provincial and Territorial Ministers recognize that an effective, streamlined and efficient securities regulatory framework is essential to the vitality of the Canadian economy, by inspiring investor confidence and facilitating capital formation. Input and comments from stakeholders on issues with the current framework and the passport system proposed to address these issues will constitute an important step forward in achieving the common objective of an improved securities regulatory framework for the benefit of all Canadians.

**THIS IS EXHIBIT "C" TO THE**

**AFFIDAVIT OF ROBERT CHRISTIE,**

**SWORN BEFORE ME THIS 28TH DAY OF OCTOBER, 2010.**



**A Commissioner, etc.**

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# CHAPTER 1
# THE NEED FOR A SINGLE REGULATOR

We add our voice to countless others raised in support of the urgent need for a single Canadian securities regulator. This is the most pressing securities regulation issue in Ontario and across Canada. We urge the Minister to assume a leadership role in working with her colleagues across the country to resolve any remaining barriers to the establishment of a single regulator responsible for Canada's capital markets activity. To this end, we view the recent establishment of the Wise Persons' Committee recommended by Harold MacKay to the Federal Finance Minister as an excellent forum to move this important initiative forward.[19]

## 1.1 Capital Market Formation Transcends Borders

### A) ONTARIO'S PLACE IN THE CANADIAN CAPITAL MARKETS

Transactions between an issuer and investor who are both resident in Ontario are subject to Ontario securities regulation. However, issuers often do not confine their search for prospective investors to those resident within the issuer's own province or territory and must therefore comply with securities regulatory regimes in more than one jurisdiction. This necessarily increases costs. An issuer must retain the services of registrants and counsel, and pay fees in each jurisdiction in which it proposes to issue securities. It must then hire employees or outside advisers to ensure that it complies with its continuous disclosure obligations in each jurisdiction. From a regulatory perspective, each jurisdiction must maintain the resources necessary to administer and enforce its securities law.[20]

Issuers and investors alike are affected when the costs of compliance in Canada are higher than they are elsewhere. Increased compliance costs affect our competitive position as a source of capital. This, in turn, affects investment opportunities available to Canadians. Issuers who are in a position to do so may look outside of Canada for lower cost of capital. Those who are not in a position to look elsewhere must accept a higher cost of capital and the implications this has for their performance and ability to compete. In order for Ontario capital markets to remain competitive, they must operate as an integral part of the broader Canadian capital markets.

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19 Letter to The Honourable John Manley, P.C., M.P. from Harold MacKay, dated November 15, 2002 (www.fin.gc.ca). On March 4, 2003, the Wise Persons' Committee was appointed and will be chaired by Michael Phelps.

20 The FSA estimates that the total cost of Canadian regulation, including prudential regulation and market regulation of securities, insurance, listing and clearing to be about 218 million pounds ($493 million, at current exchange rates) versus the FSA's own regulatory cost of about 220 million pounds ($497 million) and in Australia at 104 million pounds ($235 million). Approximately 3,780 people are employed in Canada to regulate the financial services sector versus 2,765 in the U.K. and 2,113 in Australia. See FSA Annual Report 2000/01 Appendix 5: Comparison of Costs of Regulation in Different Jurisdictions (http:www.fsa.gov.uk/pubs/annual).

Canada's stock exchanges have already reacted to the inefficiencies inherent in regionalization. In order to remain competitive, they have consolidated and restructured,[21] with the result that each of the three remaining exchanges – the TSX, TSX Venture Exchange and the Bourse de Montréal – now deals exclusively with one segment of the market. Senior issuers list on the TSX, junior issuers list on TSX Venture Exchange and derivatives trade on the Bourse de Montréal.[22]

### B) CANADA'S PLACE IN GLOBAL CAPITAL MARKETS

Canada represents only two per cent of the world's capital markets.[23] There is literally a whole world of opportunity for both issuers and investors outside our borders. In Chapter 2, we discuss the merits of harmonizing Canadian securities laws with those of other major markets (primarily the U.S.) so that Canadian issuers are not faced with the costs of complying with radically different regimes at home and abroad. Here we note that the challenges of harmonizing our securities laws with those of major world markets are multiplied many times over by our current regime. Canada is the only G-7 industrial country that does not regulate its capital markets through a single regulator. Ensuring that Canadian capital markets remain globally competitive is among the most compelling reasons for consolidating Canadian securities regulation under a single regulator.

## 1.2 Thirteen Regulators for One Small Market

### A) OUR STRUCTURE TODAY

Because securities regulation in Canada is a matter of provincial jurisdiction, there are 13 different sets of securities laws administered by 13 provincial and territorial regulatory authorities. Many of the statutes are similar to one another. Some have provisions that are entirely distinctive. None of them is identical. Even where the statutory provisions are identical, they may be interpreted and applied differently from one jurisdiction to the next.

There is also great variance in the status and function of securities regulators across the country. Some are self-funding agencies. Others are Crown corporations. Still others are agencies of their provincial governments. Some formulate policy, make rules, sit as administrative tribunals and hear appeals from decisions of their executive director or staff. Some perform only certain of these functions. Even where securities regulators perform like functions (such as rulemaking),

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21 Prior to this restructuring, the Vancouver Stock Exchange, Alberta Stock Exchange, Winnipeg Stock Exchange, TSX, Montreal Exchange and CDN operated independently of one another and, to a large extent, competed with one another for listings.

22 In August 2001, the TSX acquired the TSX Venture Exchange.

23 This figure is often used and, while it may have various meanings, in this context we refer to the weight given to Canadian equities in the MSCI World Index. The MSCI World Index is based on the market value of 86 selected equities based on MSCI criteria.

they typically operate within statutory frameworks that are sufficiently distinctive to make co-ordination of efforts across jurisdictions a major challenge.[24]

The advantage of the current multiplicity of regimes is that it allows each legislature and securities regulator to develop and administer securities laws in a manner that best serves its local market. Economic activity differs from region to region across the country and securities laws controlled at the provincial level are best able to respond to specific regional needs. However, the price for this local flexibility is a balkanized approach to securities regulation that makes it more time-consuming and expensive for issuers to raise capital across the country. Investors, market participants and their advisers are consistent in their criticism of this approach. In its submission to the Committee, TSX Venture Exchange articulated the frustration expressed by many others with the existence of 13 securities regulatory regimes:

> The complexity in the current regulatory regime is considerably exacerbated by the differences in regulation between provinces. Slight variations in the regulation between provinces may at first seem to be relatively insignificant but these slight differences act as a trap for issuers, their insiders and advisers. In order for an issuer or its insiders to avoid these pitfalls, they must incur additional legal and advisory costs.
>
> We strongly encourage the Government of Ontario, and each of the other provincial governments to provide a strong incentive to their respective provincial securities commissions to work together to create a standardized set of securities rules which can be adopted in each province. Although there may occasionally be the need for certain local initiatives, we submit that such differences should be the exception. ...We note that local differences have often been justified on the basis of accommodating small business; however, we believe that challenges in this area are not regional and a more consistent approach nationally will improve the access to capital.[25]

## B) FAILED ATTEMPTS TO CONSOLIDATE

Over the last four decades, there have been several unsuccessful attempts to create a single securities regulatory authority in Canada. In 1964, the Royal Commission on Banking and Finance (known as the Porter Committee) recommended that the federal government establish a single federal agency which would take over the major responsibility for securities regulation from the provinces. The Porter Committee's recommendations were met with mixed reactions. Many felt that, while greater uniformity was desirable, interprovincial co-operation (an alternative considered by the Porter Commission in less detail) was preferable to the establishment of a federal regulatory body.

In 1979, the federal government published *Proposals for a Securities Market Law for Canada*, which also proposed a single securities commission for Canada to regulate international and interprovincial issues of and trading in securities.

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24 See discussion on Rulemaking in Chapter 7.

25 See comment letter on the Issues List of TSX Venture Exchange.

In 1994, the federal government released a draft memorandum of understanding[26] proposing an autonomous Canadian Securities Commission to which both the federal and provincial governments would delegate regulatory power. While this effort came closer than previous initiatives to achieving its goal, jurisdictional and political obstacles resulted in the effort being abandoned.[27]

## C) FEDERAL AND PROVINCIAL INITIATIVE

In October 2002, Harold MacKay was commissioned by the Federal Minister of Finance to recommend an approach to reform Canada's securities regulatory framework. Mr. MacKay delivered his report to the Honourable John Manley in November. The report identified several concerns with the current regulatory structure similar to concerns raised in previous reports, including ours. The report states that the "[c]urrent system, as presently operated, is inadequate to meet the challenges of today and tomorrow. While not broken, it must be improved significantly, and in a prompt manner."[28] To this end, Mr. MacKay recommended that a Wise Persons' Committee be established by the federal government and interested provinces to review the current regulatory system with a mandate to recommend an appropriate model for securities regulation in Canada. The federal government recently endorsed this recommendation and appointed a committee. The Wise Persons' Committee will:

- review and assess the strengths and weaknesses of the existing system of securities regulation in Canada;
- recommend a regulatory structure for Canada that is achievable and that will best meet Canada's needs;
- recommend a governance model and describe an accountability framework; and
- submit its report by November 30, 2003.[29]

## D) INTERPROVINCIAL HARMONIZATION THROUGH THE CSA

The CSA is an informal body comprised of the 13 provincial and territorial securities regulators. It functions through regular meetings of the chairs, vice-chairs and staff of each of the commissions, through ad-hoc interactions between executive directors and staff of each of the commissions, and through staff committees established to deal with joint regulatory initiatives and issues of shared concern. Funding and support resources are drawn from the operating budgets of each of the commissions on a voluntary basis.

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26 *Memorandum of Understanding Regarding the Regulation of Securities in Canada* (1994), 17 OSCB 4394.

27 See also the discussion of the history of prior attempts to reform securities regulation in Canada found in A. Douglas Harris, *A Symposium on Canadian Securities Regulation: Harmonization or Nationalization?* "White Paper" (University of Toronto Capital Markets Institute, October 2002) pp. 5-69.

28 *Supra* note 19.

29 These are applications for relief that are evidenced by the issue of a receipt for a prospectus.

The CSA has made significant contributions to the harmonization of securities laws and the administration of those laws across Canada. Its accomplishments include the establishment or proposed launch of:

- "MRRS" – mutual reliance review systems (discussed below) which cover, for example, applications for discretionary relief and the review of prospectuses, annual information forms and rights offering documents;
- "SEDAR" – the System for Electronic Document Analysis and Retrieval, which makes documents filed by reporting issuers available to anyone with access to the Internet.
- "SEDI" – the System for Electronic Disclosure by Insiders, a central electronic system for insider reporting; and
- "NRD" – the National Registration Database, a web-based system that will permit dealers and advisers to file registration forms electronically.

Through the CSA, Canada's 13 regulators have also achieved legislative uniformity in many areas by adopting national and multilateral instruments. There are now 25 "National Instruments" – rules and regulations developed through the co-operative efforts of the CSA and subsequently adopted in each of the provinces and territories. National Instruments have harmonized the regulation of prospectus disclosure,[30] mutual fund regulation,[31] matters relating to early warning requirements and take-over bids,[32] registration issues[33] and marketplace operation and trading rules.[34]

Notwithstanding the achievements of Canadian regulators, the limitations of the CSA as a vehicle to co-ordinate Canadian securities regulations are apparent. We note five in particular:

1. Although the CSA seeks to balance national harmonization with regional flexibility, regulators in each jurisdiction are free to insist on their own approach rather than working with their counterparts in other jurisdictions to craft a common solution. This was evidenced by the revisions made to the exempt distribution rules in Ontario in 2001 and in British Columbia and Alberta shortly thereafter.[35] As a result of this process, Ontario,

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30 E.g., National Instrument 41-101 *Prospectus Disclosure Requirements* (2000), 23 OSCB (Supp.) 619.

31 E.g., National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (2000), 23 OSCB (Supp.) 3, National Instrument 81-102 *Mutual Funds* (2000), 23 OSCB (Supp.) 59 and National Instrument 81-105 *Mutual Fund Sales Practices* (1998), 21 OSCB 2713.

32 E.g., National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (2000), 23 OSCB 1372, and National Instrument 62-202 *Take-Over Bids – Defensive Tactics* (1997), 20 OSCB 3525.

33 E.g., National Instrument 35-101 *Conditional Exemption from Registration for United States Broker-Dealers and Agents* (2000), 23 OSCB 8511.

34 E.g., National Instrument 21-101 *Marketplace Operation* (2001), 24 OSCB 6591 and National Instrument 23-101 *Trading Rules* (2001), 24 OSCB 6635.

35 See for Ontario, Rule 45-501 *Exempt Distributions* (2001), 24 OSCB 7011 and for Alberta and B.C., Multilateral Instrument 45-103 *Capital Raising Exemptions* (BCN 2002/16).

on the one hand, and British Columbia and Alberta, on the other, will continue to have different exempt distribution rules, similar in some respects, different in others. In our view, this represents not only a missed opportunity for harmonization, but also a regrettable step backwards for a more rational securities regime in Canada.

2. National policies and rules cannot be developed and implemented quickly because 13 different regulatory authorities must agree first on policy directions and then on specific requirements. The initiative must then go through the approval process applicable in each jurisdiction (in Ontario, for example, the comment period and Ministerial approval process for rules, discussed more fully in Chapter 7).

3. The CSA has no powers of enforcement, and accordingly, a co-ordinated approach to enforcement currently must be undertaken on an ad-hoc basis.[36] The consolidation of Canada's capital markets and the integration of our markets with other global markets are accentuating national and international enforcement issues. We believe this is critical to the credibility of the Canadian capital markets.

4. The CSA is accountable to no one. Whether it succeeds or fails will depend on the commitment of each jurisdiction.

5. We are seeing more divergent and competing visions from different CSA members on the objectives and structure of securities regulation.[37] As one observer noted, we "are not only getting different interpretations of rules, we are getting different philosophies."[38] With no co-ordinated focus to all these initiatives, the risk is that rather than pursuing an ideal system, the country's system of securities regulation grows ever more fragmented and cumbersome.

## E) MRRS – A STEP IN THE RIGHT DIRECTION

The CSA implemented MRRS in 1999.[39] MRRS is based on a decision-maker in one jurisdiction being prepared to rely primarily on the analysis and review of staff in another jurisdiction. For example, if an issuer wishes to issue securities in more than one jurisdiction in Canada, MRRS allows the issuer to deal with one principal regulator (usually the regulator in the jurisdiction where the company's head office is located) rather than the regulators in each of the relevant

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36 The discussion of MRRS below makes reference to the CSA's expressed intention to engage in some degree of voluntary co-operation in this area.

37 For example, the Commission generally supports the idea of a national regulator, the Alberta Securities Commission is leading the CSA's Uniform Securities Law project, and the BCSC is advocating streamlining and simplification before more harmonization (see the BCSC's "New Proposals for Securities Regulation," June 2002). More recently, CSA members appear to be at odds over the appropriate Canadian response to the U.S. *Sarbanes-Oxley Act of 2002.*

38 Tom Hockin, "It's time to get practical about a national securities commission," *National Post* (October 3, 2002).

39 *Memorandum of Understanding - Mutual Reliance Review System* (1999), 22 OSCB 6813.

jurisdictions. Staff of the principal jurisdiction provide comments to the issuer on behalf of all of the Commissions and make recommendations. The issuer then receives a single decision document from the regulator in the principal jurisdiction.

MRRS is a formalized approach to voluntary co-operation among securities regulatory authorities. None of the regulators surrenders any jurisdiction or discretion. Each jurisdiction retains its statutory discretion with respect to all matters being considered under mutual reliance and can "opt out" at any time and deal with the market participant directly. No changes have been made to securities laws as a result of MRRS. In fact, harmonization is not an objective of MRRS. The CSA has stated only that harmonization is "an indirect benefit that may be achieved over time" as a result of MRRS.

MRRS deals with, or is expected in the future to be extended to, the following areas:

- exemptive relief applications;
- prospectuses (including long form, short form and mutual fund prospectuses and amendments, and rights offering circulars);
- waiver applications;[40]
- pre-filing discussions;
- initial and renewal annual information forms;
- applications for registration, reinstatement of registration and renewal of registration;
- continuous disclosure documents;
- investigations and hearings; and
- rulemaking and policy-making initiatives.

MRRS is a significant step forward in achieving interprovincial co-ordination. It has streamlined the regulatory process when more than one jurisdiction is involved. However, we share the reservations expressed in a number of submissions about the limitations of MRRS. For example, the Canadian Association of Insurance and Financial Advisers wrote:

> While we have come to appreciate the ability of a lead regulator to co-ordinate a series of interprovincial applications, we believe that the potential for mutual reliance remains to be realized. For example, there can be little justification for the continuing need to file individual paper applications to each regulator and to pay fees for amounts that vary from $0 to $750 to each regulator when the lead or co-ordinating regulator charges $450 and does most of the work.

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[40] These are applications for relief that are evidenced by the issue of a receipt for a prospectus.

We note the following limitations of MRRS:

- MRRS does not ensure uniformity in the administration of securities laws across Canada. Each jurisdiction retains the right to interpret and apply national instruments in its own way and to apply its own local requirements to whatever issues come before it. In addition, a regulator can "opt out" of MRRS when it disagrees with the decision reached by the principal regulator. The possibility that one or more regulators could opt out means that MRRS has created neither a predictable nor a uniform approach to securities regulation.
- MRRS has not reduced costs to the industry. Staff in the non-principal jurisdictions may undertake an independent review on multi-jurisdictional filings. Market participants must still pay the same fees in each jurisdiction as were payable prior to the adoption of mutual reliance.
- Securities laws are not uniform across all jurisdictions. Differences exist, for example, with respect to prospectus offerings, exemptions from the prospectus and registration requirements, take-over bids, continuous disclosure and enforcement powers. MRRS does not alleviate the need for market participants to be familiar with, seek advice on, and comply with the different requirements that exist across the country. There is considerable cost associated with this exercise.

## 1.3 The Final Push for a National Securities Regulator

### A) WHAT IS THE APPROPRIATE MODEL?

In order for Canadians to have world-class opportunities both to raise capital and to invest their savings, a dramatic change in the structure of our regulatory regime is required. The ongoing consolidation and internationalization of markets around the world demands that we be less focused on provincial and territorial concerns and more focused on national and international harmonization. We believe that the solution is the establishment of a single securities regulator with responsibility for the capital markets across Canada, but with regional offices so that territorial concerns are taken into consideration. There is an urgent need to assign the highest priority to this issue on the policy agenda of our respective governments and regulators.

Most of the submissions made to the Committee support the creation of a single Canadian securities regulator.[41] For example, the Ontario Teachers' Pension Plan, one of Canada's largest

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[41] See comment letters of Simon Romano, BMO Nesbitt Burns, Canadian Bankers Association, Gowling Lafleur Henderson LLP, Securities Subcommittee of the Ontario Bar Association, the TSX, Certified General Accountants of Ontario, Association for Investment Management and Research, Canadian Association of Insurance & Financial Advisors, Ontario Teachers' Pension Plan, Canadian Investor Relations Institute, PricewaterhouseCoopers LLP, Investment Counsel Association of Canada, Certified General Accountants Association of Canada, Royal Bank of Canada, and the IDA.

institutional investors, endorses a single regulator as a means of establishing and enforcing appropriate regulatory standards across the country:

> We come at the problem of regulatory harmonization in the securities area from a deliberately naïve perspective, and prefer to put political and constitutional issues aside in articulating our position. We recognize that, in fact, coming to the "sensible" conclusion for Canada is not straightforward. A national system of securities regulation is the desirable end result. No matter how good Ontario gets, if the system is based on harmonization and co-operation, and other jurisdictions have less good standards and enforcement capabilities, there will be a "race to the bottom."
>
> Issuers will earn the right to raise money in the capital markets in less rigorous regulatory environments, get listings in the premium markets, and tarnish the reputation of the entire country. The provinces need to recognize that Canada is suffering as a destination for business and capital because they refuse to give up jurisdiction to a first class regulatory regime that is administered and enforced by a first class regulator. Canada needs to get on one page in securities administration if it hopes to compete globally.[42]

Another commenter also supports a single regulator:

> With respect to the efficiency of our regulatory model, we believe that much work needs to be done to reduce the duplicative and costly system of provincial regulation that exists in Canada. While much effort has been expended in making our current system operate more effectively, it is simply not credible to argue that the involvement of multiple regulators that exists within the CSA can achieve the efficiency of a national securities regulator.[43]

We also believe that international co-operation and collaboration would be made much easier for Ontario (and Canada) through a single securities regime. Under our current regulatory regime, it is not entirely clear who, if anyone, speaks for Canada.

The Committee makes no recommendation about how a single Canadian securities regulator should be constituted. Previous proposals for a federal regulator could be revived, with efforts renewed to remove the remaining roadblocks.[44] Alternatively, a supra-provincial body to which the provinces and territories delegate their authority could be established. Other models may also be proposed as this project moves forward.

## B) A LESSON FROM AUSTRALIA

During the Committee's deliberations, we examined with interest the recent experience in Australia, where securities regulation was rationalized along national lines. From a starting point prior to 1970 when corporate and securities laws were matters of state and territorial jurisdiction,

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42 See comment letter on the Issues List of the Ontario Teachers' Pension Plan.

43 See comment letter on the Issues List of Torys LLP.

44 To date, the provinces have asserted jurisdiction over securities regulation under their power over property and civil rights in the province. However, over the past few decades securities activity has gradually acquired more of an inter-provincial or national character. The Federal Government therefore may have overlapping jurisdiction in securities regulatory matters under its "trade and commerce power" or under its general power to create legislation for the "Peace, Order, and Good Government of Canada."

through a number of failed initiatives designed to harmonize their approach to securities regulation, the states and territories of Australia ultimately agreed to the enactment of federal legislation dealing with corporate and securities law which draws on state and territorial powers as well as federal powers. The result was the creation of the Australian Securities Commission (now the Australian Securities and Investment Commission) as the national regulator, with full responsibility for the regulation of companies. The Australian experience is described in Appendix G.

We found the Australian experience instructive because of the range of alternatives that were explored before a solution was achieved. The constitutional issues in Australia are similar to those we face in Canada, as are issues of interjurisdictional co-operation. The Canadian solution may well be different from the Australian solution. However, we encourage all levels of government in Canada and securities regulators in every jurisdiction to follow the Australian lead.[45] We believe that creativity and compromise will result in a system that allows Canadian issuers and investors to function more effectively in the global marketplace.

## C) MOVING FORWARD IN THE MEANTIME

As we move to establish a single Canadian securities regulatory regime, we must also continue to move forward with our harmonization efforts. This will allow Canadian capital markets to benefit from the economies of harmonization on an incremental basis and will smooth the path to a single regulator.

### i) Harmonization of Securities Laws

If Canada's 13 provinces and territories could harmonize their securities laws, this would go a long way to simplifying capital markets regulation in Canada. It is clearly an enormous endeavour requiring significant resources, time and political will in order to harmonize legislation in the first instance and then to make amendments to each jurisdiction's legislation in a co-ordinated and harmonized way on an ongoing basis. The CSA has embarked on a uniform securities law project, with "a target of developing a uniform securities act and rules by each jurisdiction of Canada on a fast-tracked basis."[46] We applaud these efforts and encourage the CSA to move this important initiative forward on a priority basis. In addition, we encourage the CSA to use the opportunity which the uniform securities law project presents to also consider

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[45] Several judicial decisions had cast doubt on the constitutionality of Australia's framework for corporate regulation. See Ian Ramsay, *The Unravelling of Australia's Federal Corporate Law*, (http://cclsr.law.unimelb.edu.au/Bulletins/Bulletin0031.htm) for a full discussion of the relevant cases. In response to these judicial decisions, legislation was recently introduced in which Australian states referred their constitutional powers with respect to corporate regulation and the regulation of the securities and futures industries to the Australian Commonwealth. See the *Australian Securities and Investment Commission Act, 2001* (No. 51, 2001), section 11.

[46] See CSA's Uniform Securities Legislation Project – *Blueprint for Uniform Securities Law for Canada* (2003), 26 OSCB.

updating and simplifying the current regulatory system in Canada.[47] We stress, however, that we do not view the development of uniform securities law in Canada as a substitute for the ultimate goal of creating a single securities regulator. In this regard, we believe that even if the CSA is able to achieve uniformity, it will be difficult, in practice, to maintain. In particular, our current regulatory structure leaves too many opportunities for individual CSA members to apply and interpret uniform law differently and undertake new local initiatives subsequent to the adoption of the uniform law.

We also encourage the Commission to take the lead in promoting harmonization and co-operation within the CSA. We note that one commenter stressed that the Commission should be particularly sensitive to the issue of harmonization when exercising its rulemaking authority:

> We believe the goals of increased harmonization and co-operation should be given greater weight in the development of rules and policies by the Commission. We recognize that the Commission must retain the ability to act in the public interest even if the result is to further fragment the Canadian securities regulatory regime, but we would suggest that this should be the exceptional case.…In the absence of a [single securities] regulator, the Commission should recognize the need for coherent, harmonized Canadian regulation when exercising its rulemaking authority.
>
> We would propose that when exercising its rulemaking authority the Commission should:
>
> (i) adopt rules that have the effect of increasing the degree of harmonization and co-operation;
>
> (ii) make every effort to have the same rule adopted by the other Canadian securities regulatory authorities (to the extent necessary); and
>
> (iii) not adopt any rule that has the effect of lessening the degree of harmonization or co-operation, unless such rule is required in the public interest notwithstanding such effect.[48]

We agree with the commenter that the foregoing principles are important and should be addressed by the Commission in the rulemaking process (see also the discussion in Chapter 7 on rulemaking and cost-benefit analyses). We note, however, that some commenters expressed concern about placing too much emphasis on harmonization. In particular, some believe that harmonization may result in a "race to the bottom" in policy development and a "regulatory time lag" that is not acceptable to address changes in capital markets and to provide useful remedies for the benefit of investors.[49] In this regard, one commenter stated:

> We recommend that the focus of the Final Report not distract from the needs to protect the important and extensive capital markets that operate in Ontario because of an undue emphasis to attempt to "harmonize" Ontario's regulatory regime on a Pan-Canadian provincial basis. Ontario's own securities regulatory initiatives historically have attempted to achieve world class

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47 For example, the CSA should consider some of the initiatives of the BCSC's Deregulation Project.

48 See comment letter of Ogilvy Renault.

49 See comment letters of Fasken Martineau DuMoulin LLP and the Canadian Bankers Association.

> status based on a principle-based investor protection requirements that create confidence in the integrity of the capital markets that operate in Ontario.
>
> First and foremost, Ontario's objectives should continue to be to provide regulatory leadership for the benefit of the securities industry and capital markets in Ontario and for the protection to investors who trade in Ontario. History has shown that Ontario's leadership in setting capital market standards has also had a positive effect in Canada and on other provincial regulatory regimes.[50]

We are very cognizant of the limitations of harmonization as a means for setting policy agendas. As noted previously, however, we view harmonization as a means to an end: the creation of a single securities regulator in Canada.

**ii) Delegation and Mutual Recognition**

Even if securities laws across the country were harmonized, this would not eliminate the administrative duplication inherent in having 13 regulators administering and enforcing those laws. In our view, the most efficient interim solution to deal with this issue is for each of the jurisdictions to move expeditiously to amend their legislation in two ways. First, securities regulators should be empowered to delegate authority to a securities regulator in another Canadian jurisdiction – moving from our current system of voluntary mutual reliance to a system of true reliance. This would eliminate the need for staff in each jurisdiction to undertake an independent review of a multi-jurisdictional filing and would eliminate the entitlement of individual jurisdictions to opt out. Some have called for a "passport system" to be adopted in Canada whereby regulatory approval by one CSA member would be recognized by all CSA members. The statutory power to delegate is vital if a passport system is to function effectively. It must be recognized, however, that the effectiveness of a delegation model will ultimately depend on the willingness of all CSA jurisdictions to enact similar provisions ceding jurisdiction. On a practical level, it will also be imperative that each CSA jurisdiction exercise regulatory restraint and truly rely upon the body to which it has delegated authority.

Second, securities laws across the country should be amended to provide for "mutual recognition." Mutual recognition is based on the principle that the rules of the jurisdiction having the closest connection to a transaction or market participant (the "home jurisdiction") will govern that transaction or market participant, and other affected jurisdictions (the "host jurisdictions") will recognize and allow those rules to be applied in place of their own. Mutual recognition could be particularly helpful in a delegation environment where the laws of each jurisdiction are not completely uniform. In particular, it would obviate the need for a commission that is exercising authority that has been delegated by another commission from having to apply several different laws to a registration application, a prospectus, or an application for exemptive relief. The concept of mutual recognition forms the basis of the Canadian–U.S. multi-jurisdictional disclosure system (MJDS). It also implicitly underlies other rules which provide exemptive

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[50] See comment letter of Fasken Martineau DuMoulin LLP.

relief from the need to comply with Canadian law provided the laws of certain foreign jurisdictions are complied with instead.[51] If compliance with foreign law is viewed as a satisfactory proxy for compliance with Canadian securities regulatory requirements, we believe that Canadian regulators should be able to put aside historical differences and regional preferences to conclude that where requirements in different provinces are similar (albeit not identical), compliance with the laws of another province will suffice.[52]

We recognize that there may be constitutional and other legal issues that will need to be addressed in implementing this proposal. For example, consequential amendments to the Act's immunity provisions may be necessary to extend immunity from liability to other provincial securities regulators and their employees who act as delegatees.[53] We encourage the CSA to work on implementing an effective delegation and mutual recognition model and to provide for delegation and mutual recognition as part of its uniform securities law project.[54] We also urge the provincial governments across Canada to support these important initiatives.

**Recommendations:**

1. We recommend that the provinces, territories and federal government work towards the creation of a single securities regulator with responsibility for the capital markets across Canada. To this end, we strongly encourage the Government of Ontario to actively support the Wise Persons' Committee recently established by the Federal Finance Minister.

2. In the meantime, we recommend that certain steps be undertaken by securities regulators to simplify the current regulatory regime in Canada: (i) We recommend that securities regualtors continue to harmonize securities regulation across Canada; (ii) We recommend that securities regulators be given the authority to delegate any power, duty, function or responsibility conferred on them to another securities regulatory authority within Canada, and that they actively engage in delegation among themselves. We therefore recommend the Act be amended to give the Commission this delegation authority, and that the necessary consequential amendments to the immunity provisions in the Act be made; (iii) We recommend that securities legislation across the country be amended to provide for "mutual recognition" so that the rules of the jurisdiction having the closest connection to a transaction or market participant will govern that transaction or market participant, and other affected jurisdictions will recognize and allow those rules to be applied in place of their own.

---

51 See proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

52 See for example, Alberta Securities Commission Rule 41-501 *Use of Prospectus Complying with Ontario Securities Commission Requirements*, which permits issuers to satisfy certain of the prospectus requirements under Alberta securities law by complying with OSC Rule 41-501 *General Prospectus Requirements*.

53 The Act, subsection 141(1).

54 We note that the CSA's Uniform Securities Legislation Project – *Blueprint for Uniform Securities Laws for Canada* includes a proposal that securities regulatory authorities should be allowed to delegate all regulatory functions among themselves, subject to certain restrictions.

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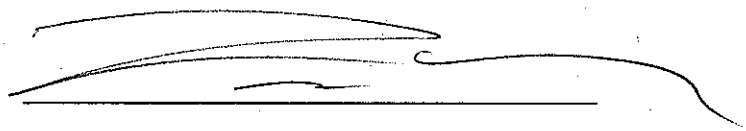

**A Commissioner, etc.**

## A SINGLE SECURITIES REGULATOR

### The Crawford Report Recommendation

Recommendation 1 in the Crawford report reads:

> 1. We recommend that the provinces, territories and federal government work towards the creation of a single securities regulator with responsibility for the capital markets across Canada. To this end, we strongly encourage the Government of Ontario to actively support the Wise Persons' Committee recently established by the Federal Finance Minister.

### Discussion

*The Issue*

In his presentation to the Standing Committee, Purdy Crawford stated that the members of the Five-Year Review Committee still regard the creation of a single securities regulator as "the most pressing securities regulation issue in Ontario and across Canada." In their view, a single regulator "would be the most efficient and effective regulatory structure for the Canadian securities market."

This view was shared by the Chair of Management Board of Cabinet, the Chair of the Ontario Securities Commission, and by many organizations and individuals who made submissions to the Standing Committee.

The main arguments in favour of a single regulator can be summarized as follows:

- Under the current regulatory structure, public companies that wish to issue securities or gain access to markets across Canada must understand, monitor and comply with 13 sets of securities laws and deal with 13 different regulators. This increases the costs of doing business in Canada.
- Enforcement and investor protection is inconsistent under the existing multi-regulatory system.
- Canada is the only G-7 country without a single securities regulator. In a global market place, where capital flows across borders with few restrictions, foreign investors may choose to invest in countries with lower regulatory costs.
- In the absence of a single regulator, Canada lacks a body that can address securities regulation and policy from a national perspective, and a body that can represent Canada's interests on the international stage.

In stating its case for a single regulator, the Crawford Report acknowledged that there are certain advantages to a multi-regulatory system. Most importantly, it can be argued that in a country where economic activity varies from region to

region, provincial control over securities laws allows each jurisdiction to more effectively address regional needs.

### *Moving to a Single Securities Regulator*

While those who addressed the issue before the Standing Committee were unanimous in their support for a single securities regulator, there was less agreement on how this could be achieved.

The submissions we received identified three major reform proposals that are currently being discussed, two of which involve the creation of a single regulator:

- *The Passport Model:*[3] Under this inter-provincial initiative, individuals and firms could do securities business in all provinces by registering with a primary regulator and complying with its laws. In addition, companies could obtain approval to issue shares in all jurisdictions by complying with the primary regulator's disclosure laws.
- *The Federal Wise Persons' Committee (WPC):*[4] The WPC recommended that in the absence of provincial cooperation, the federal government should exercise its constitutional authority to enact a new *Canada Securities Act*, based on the Uniform Securities Law Project.[5] The Act would be administered by a single Canadian Securities Commission, consisting of regional representatives.
- *The Ontario Proposal:*[6] The Ontario proposal calls for a new provincial-territorial securities regulator. The main features of the proposal are a single regulator, a common body of laws, and a single fee structure.

Both Mr. Crawford and Minister Phillips expressed the view that the passport model is not a sufficient response to the need for a single securities regulator. Specifically, the passport model would continue a system in which 13 regulators issue interpretations of 13 securities statutes; would not result in consistent securities law enforcement across the country; would not establish an identifiable body that could represent Canada in international discussions; and would not allow for effective and timely formulation of policy. Moreover, the pursuit of a passport model could divert attention from what many believe to be the real solution - moving to a single regulator.

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[3] Provincial-Territorial Ministers Responsible for Securities, *Securities Regulation in Canada: An Inter-Provincial Securities Framework* (Discussion Paper), June 2003.

[4] The Committee to Review the Structure of Securities Regulation in Canada (the Wise Persons' Committee), *It's Time*, 17 December 2003. The report may be viewed at http://www.wise-averties.ca/reports/WPC%20Final.pdf.

[5] See the Canadian Securities Administrators' Uniform Securities Legislation Project, *Blueprint for Uniform Securities law for Canada* (2003). The consultation draft may be viewed at http://www.osc.gov.on.ca/Regulation/USL/usl_20031216_harmonization.pdf.

[6] Ontario, Management Board Secretariat, *Modernizing Securities Regulation in Canada* (Discussion Draft), 7 June 2004. The paper may be viewed at http://www.gov.on.ca/MBS/english/mbs/releases/general/june2404-report.html.

Minister Phillips also commented on the Canadian Securities Administrators' Uniform Securities Law Project (USL), which has the objective of developing more uniform securities laws across Canada. He suggested that while the USL is an important step toward improving the existing system, it does not go far enough. The project would not result in uniform securities legislation; rather, it would only result in 13 sets of more uniform laws, but with important differences.

Minister Phillips argued that the Ontario proposal addresses "head on" the fundamental problem of multiple regulators and multiple sets of securities laws. In his view, the advantages of the Ontario proposal are:

- stronger, easier to understand protection for investors;
- one set of clear, consistent requirements that would be easier for companies and investors to understand;
- lower compliance costs for companies;
- easier for companies to raise capital across the country and for securities firms to operate in other provinces;
- faster response to regulatory policy issues;
- better enforcement of securities laws, resulting in greater confidence in our markets; and
- a consistent voice for Canada internationally.

In pursuing this proposal, Minister Phillips indicated that Ontario is willing to consider a flexible structure that would accommodate those provinces with concerns about retaining a strong local and regional presence.

Other witnesses expressed a clear preference for the federal government to take control of this issue. The Ontario Teachers' Pension Plan, for example, argued that securities regulation should be exclusively a federal matter. In this way, Parliament could enact a consistent, and more stringent, set of securities laws, enforceable by one level of government. The Toronto Stock Exchange (TSX) supports a national securities commission, as proposed by the Wise Persons' Committee. The TSX believes this would send the clearest message to international markets that Canada is committed to establishing a modern regulatory system.

Some witnesses, while supportive of a single regulator, cautioned that the concept faces significant opposition. It was noted, for example, that British Columbia has a distinct philosophical approach to securities regulation, and that Quebec has its civil law tradition. Other provinces have concerns about small business financing, and some depend on the revenues from regulatory fees. In the words of one witness, there is also the "palpable scepticism about Ontario's dominating role."

06. 77 In light of these practical difficulties, it was suggested that a possible compromise for Ontario might be to agree to the passport model, provided the other provinces commit to a single regulator within a short time.

### The Standing Committee's Recommendation

The Standing Committee heard overwhelming support for the principle of a single securities regulator, and strongly supports the concept. At the same time, we recognize there are obstacles to achieving this goal. Most significantly, other provinces do not want to lose the ability to address regional needs. However, we believe that these obstacles can, and should, be overcome.

**Recommendation 2**

*The Standing Committee recognizes the critical need for a single securities regulator, and strongly recommends that the Ontario government continue to work with all stakeholders, including Ministers in other provinces, toward the development of a single securities regulator. The key elements of the new regulatory system should be one new regulator, one common body of securities law and one set of fees.*

## UNIFORM SECURITIES TRANSFER LEGISLATION

### The Crawford Report Recommendation

Recommendation 5 of the Crawford Report states:

> 5. We strongly encourage the Commission and the CSA [Canadian Securities Administrators] to continue developing securities transfer legislation modelled on revised Article 8 of the Uniform Commercial Code in the U.S. and we urge governments across Canada to ensure that such legislation is adopted on a uniform basis as soon as possible.

### Discussion

Several witnesses appearing before the Standing Committee, including Purdy Crawford and the Canadian Depository for Securities, emphasized the need for a nationally harmonized law to oversee the holding, transferring and pledging of securities and interests in securities. Although technically speaking a matter of commercial law, the Crawford Report identified it as an issue of "fundamental importance [to] efficient and safe capital markets."

The Standing Committee heard that technological change has led to an increasing reliance on intermediaries to hold and deal with securities. Yet, the laws in Ontario governing the holding and transfer of securities still reflect the paper-based system of certificate holdings.

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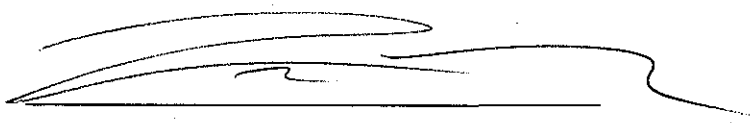

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## News Releases

September 30, 2004

### Ontario reiterates call for a common securities regulator for Canada

*Seeks To Work With Other Provinces To End Patchwork System Of 13 Separate Regulators*

**CALGARY –** While Ontario remains committed to working together with other provinces and territories on securities regulatory reform, the government announced today that it will not sign the proposed inter-provincial Memorandum of Understanding (MOU) to implement a "passport" approach. "We are committed to continue working with all provinces and territories to deliver the real, positive change that will foster a stronger investment climate all across Canada," said Chair of the Management Board of Cabinet Gerry Phillips.

The proposed MOU provides for a passport model for securities regulatory reform to co-ordinate the work and decision-making of 13 regulators. Companies could register to sell securities in one province or territory and all other provinces and territories would recognize their credentials. But each province and territory would still have its own regulator, enact its own laws and levy its own fees.

"The proposed MOU will not significantly improve investor protection or enforcement measures, nor will it reduce the confusion resulting from 13 different sets of rules," he said.

Ontario supports replacing the current patchwork system of 13 regulators – one for each province and territory – with a common securities regulator. Ontario's decision not to sign reflects the belief that this MOU does not include a roadmap to a common regulator.

In June of 2004, Ontario released "Modernizing Securities Regulation in Canada", a proposal which would allow a "passport" to be put in place as part of a clear transition to a common regulator within a set timeframe. Ontario proposes a common regulatory regime, with:

- A common regulatory body for all provinces and territories
- A common body of securities law
- One fee structure.

" The proposed MOU alone is not enough," Phillips said. "We have to do better for the Ontario economy - for the Canadian economy. A common securities regulator will help us improve prosperity for people."

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**Archives of Ontario's inaugural exhibit**

On September 15, The Honourable Harinder S. Takhar, Minister of Government Services, launched the Archives of Ontario's inaugural exhibit in its facilities, which opened at York University this spring. The exhibit, Ontario – On the Map,

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Phillips has personally met with ministers and stakeholders from several provinces. Phillips said he looks forward to continuing to work cooperatively with all jurisdictions on securities regulatory reform.

- Backgrounder: Ontario reiterates call for a common securities regulator for Canada

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demonstrates how the purpose of early provincial maps changed from tools for settlement and exploitation of resources to tools for understanding the evolving cultural and physical landscape of Ontario.

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## A Common Securities Regulator For Canada - Ontario's View

Ontario has consistently been calling for a common securities regulator as an important move to improve the competitive position of Canada's capital markets and strengthen the foundation for economic growth in Ontario and across Canada.

In a speech to the Calgary Chamber of Commerce in February, Ontario Premier Dalton McGuinty called a common regulator "...a simple idea that I believe will improve the investment climate in both of our provinces and right across Canada, building on the considerable economic strength that we already possess." McGuinty added, "The time has come for the creation of a single securities regulator."

In Ontario's 2003 Fall Economic Statement, the Ontario government committed to actively pursue the creation of a common securities regulator "to enhance financial market efficiency, to cut costs for investors and companies, and to attract international investment."
Ontario's Five Year Review Committee, led by Purdy Crawford with a mandate to review the Ontario Securities Act, strongly endorses this approach. Its final report states that: "We add our voice to countless others raised in support of the urgent need for a single Canadian securities regulator. This is the most pressing securities regulation issue in Ontario and across Canada."

Provincial and territorial governments issued a June 2003 discussion paper, "*Securities Regulation in Canada: An Inter-provincial Securities Framework*", which explained that while Ontario supported consulting on a passport system, if implemented it would represent an incremental improvement only, and would not go far enough to address the concerns of national and international issuers and registrants. The paper went on to say that "...Ontario feels that an alternative approach of a single provincial-territorial regulator with law that is uniform or very closely harmonized in almost all respects and which includes a well-defined mechanism for amendment or use of local rules would make capital markets more attractive to both domestic and foreign participants as well as providing for consistent high standards of investor protection across Canada."

Many of the other provinces and territories are meeting in Calgary to sign a Memorandum of Understanding implementing the "passport" model.

Ontario has made it clear to the provinces and territories that it will not be in a position to consider adopting the proposed passport MOU before receiving the report of the Standing Committee on Finance and Economic Affairs (SCFEA) on its response to Ontario's Five-Year Review Committee, which includes a strong call for a common regulator. SCFEA's report is due by October 18. Ontario has also conveyed that it continues to have serious misgivings with a passport approach that does not

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include a roadmap to achieve a common securities regulator, a common body of securities laws and a single fee structure within a set timeframe.

Ontario proposes that the provinces and territories work together to create, within a set time frame, a common regulatory regime with:

- A common regulatory body for all provinces and territories
- A common body of securities law
- One fee structure.

Ontario has suggested previously that a common regulator could be set up to take into consideration the special needs of Quebec, which operates under the civil law as opposed to the common law of other provinces. Ontario recognizes the importance of ensuring a strong local regulatory presence and is prepared to be flexible in addressing this and all design details.

The Proposed Passport MOU:

The proposed MOU provides for a passport model for securities regulatory reform to co-ordinate the work and decision-making of regulators. Companies could register to sell securities in one province or territory and all other provinces and territories would recognize their credentials. But each province and territory would still have its own regulator, enact its own laws and levy its own fees.

This proposed MOU will not significantly improve investor protection or enforcement measures, nor will it reduce confusion resulting from 13 different sets of rules. Many stakeholders believe the passport model does not represent a meaningful step forward, and that it may in fact delay the move to a common regulator by diverting resources and slowing momentum.

Apart from the absence of a roadmap to get to a common securities regulator within a set timeframe, there are other drawbacks to the proposed passport MOU that Ontario feels will need to be addressed:

- It perpetuates a fragmented Canadian regulatory system
- Stakeholders do not view the passport as a meaningful step forward – it does not address the major issues with the current framework and it may even become a step back
- There is no improvement in the ability to respond to emerging market issues
- There is no significant improvement to investor protection (e.g. no improvement in enforcement)
- The high cost of maintaining 13 separate regulators continues.
- 13 regulators would continue charging 13 fees even though a 'primary' regulator does most of the work under the passport
- It is less seamless than a common regulator – market participants still need to worry about different laws in different jurisdictions

The Canadian Securities Administrators have made significant progress on all the harmonization initiatives that are included in the passport and the OSC has played a leadership role in many of them. These initiatives were in process before the passport and they can proceed whether or not the passport MOU is implemented. Ontario remains committed to this process.

The Ontario government remains committed to working with other provinces on initiatives that support a more common approach to securities regulation, and will continue to play a leadership role in cooperation with other governments, as will the OSC with other regulators.

Vibrant capital markets help lay the foundation for strong economic growth, which benefits all provinces and territories. A common regulator would make Canadian capital markets more competitive and more efficient. Canada is the only developed

demonstrates how the purpose of early provincial maps changed from tools for settlement and exploitation of resources to tools for understanding the evolving cultural and physical landscape of Ontario.

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nation that has no national regulatory regime supporting capital markets and protecting investors.



For further information call:

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416-327-0948

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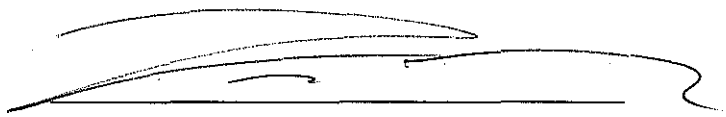

**A Commissioner, etc.**

**OSC Notice 11–904**
**Request for Comment regarding**
**the Proposed Passport System**

Members of the Canadian Securities Administrators (passport members), other than the Ontario Securities Commission (OSC or we), have published a proposal for implementing the next phase of the passport system for securities regulation.

The passport members are proposing National Instrument 11-102 *Passport System,* a rule that could be adopted by all securities regulators in Canada. Although the proposed rule is characterized as a national instrument, the OSC will not be adopting the rule.

The OSC believes that securities regulatory reform should

- strengthen Canada's capital markets and improve our competitive position by eliminating fees, costs and duplication arising from 13 provincial and territorial securities regulators,
- promote consistency in regulatory decision making to ensure fairness and a level playing field for all market participants, and
- lead to better and more effective enforcement across Canada resulting in greater investor protection.

The passport proposal does not sufficiently address these objectives. Although the proposal may add incremental administrative improvements and efficiencies to our current regulatory processes, it does not resolve the need to modernize Canada's securities regulatory structure.

Ontario is not a party to the Memorandum of Understanding to implement a passport system that has been entered into by other provinces and territories. The Ontario Government has indicated that it is not prepared to participate in the passport system without a roadmap, with reasonable timelines, to get to a common securities regulator. The passport proposal is based on rule-making powers that the passport members have or expect to receive through statutory amendments. These statutory amendments have not been enacted in Ontario and we understand that there are no plans to introduce them.

The OSC supports a common securities regulator that would interpret, apply and enforce securities laws consistently for all market participants in Canada. Under the passport proposal, rather than all market participants dealing with the same regulator, each market participant would deal with one of 13 securities regulators. For the most part, they would also continue to pay fees to all securities regulators. Each of the 13 regulators would apply the law and make regulatory decisions that have legal effect in other passport jurisdictions. In addition, the passport members would do so without the current safeguards that promote consistency in regulatory decision making within the CSA.

**OSC supports Harmonization and Consistent Application of Regulatory Requirements**

Current mutual reliance policies among CSA members provide a seamless regulatory process for public companies – enabling public companies to deal with their principal regulator in filings involving multiple jurisdictions. Under current mutual reliance policies, a non-principal regulator has the ability to "opt out" of a decision made by the principal regulator. This feature imposes a procedural discipline on CSA members and, in practice, promotes consistency in regulatory decision making across jurisdictions. Consistency in decision making promotes fairness and a level playing field for all market participants.

The passport proposal would remove this procedural discipline. The OSC is concerned that eliminating this safeguard may undermine consistency in decision making within the CSA. As reform proposals are considered, it is important to ensure that the current level of consistency in decision making among CSA members is not compromised. We are encouraged that the passport members have signaled their intent to develop and put in place administrative practices and procedures to enable regulators to interpret and apply harmonized securities requirements in a uniform way.

We are also pleased that the passport proposal is based on harmonized laws. The OSC will continue to work with other members of the CSA to streamline, simplify and harmonize regulatory requirements and to provide significant resources for initiatives such as registration reform, harmonization of prospectus requirements and modernization of take-over bid requirements.

**OSC supports Reform through the National Registration System**

In 2005, the CSA implemented the National Registration System (NRS) which allows an individual or firm to apply for registration in multiple jurisdictions and deal with only one regulator under principles of mutual reliance. NRS exempts an applicant from some of the registration requirements of each non-principal jurisdiction if it meets the corresponding requirements of its principal regulator. Currently, NRS can be used by registrants in some, but not all, of the registration categories. Implementation across Canada of the CSA's proposed registration reform and modernization initiative (proposed National Instrument 31-103 *Registration Requirements)*, currently out for public comment, would significantly increase the scope and usefulness of NRS. It would expand the operational efficiency of the registration process through application to more categories of registration and by harmonizing the substantive requirements.

The passport members are proposing to replace NRS with an alternative system under the passport proposal. As the passport members further consider the implementation of passport in the registration area, we encourage them to consider expanding and streamlining the current NRS process as the preferred mechanism for registration in multiple jurisdictions.

**OSC supports a Seamless Regulatory Regime for Market Participants**

The OSC anticipates that the passport proposal, if implemented, would be accompanied by effective "interfaces" between Ontario and the passport members. The viability and competitiveness of our Canadian capital markets require a seamless regulatory regime and level playing field for market participants. Reforms to Canada's securities regulatory system, including any implementation of the passport proposal, should be implemented in a way that continues to provide an orderly and as seamless as possible regulatory system for the benefit of all market participants.

The OSC has participated in discussions of the passport proposal. We will continue to participate in those discussions so that we will be able to develop, in cooperation with the passport members, effective interfaces between Ontario and the passport members to deliver regulatory efficiencies for all market participants. For the most part, we anticipate that these interfaces would involve administrative policies and procedures to facilitate cooperation among securities regulators to enable public companies and registrants to continue to deal with one regulator in accessing capital markets in multiple jurisdictions.

**REQUEST FOR COMMENT**

The OSC welcomes your comments on the passport proposal put forward by the passport members. See the Notice and Request for Comment published by the other members of the CSA for detailed information on the proposal.

The OSC also welcomes your suggestions for the structure of an appropriate interface mechanism between securities regulatory authorities in those jurisdictions that adopt National Instrument 11-102 and those that do not.

Please submit your comments in writing on or before May 28, 2007. If you are not sending your comments by email, a diskette or CD containing your submission (in Windows format, Word) should also be forwarded.

Addressing your submission to:

John Stevenson
Secretary to the Commission
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8
Fax: 416 593-2318
Email: jstevenson@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in Ontario requires that a summary of the written comments received during the comment period be published.

**QUESTIONS**
Please refer your questions to:

Michael Balter
Senior Legal Counsel
General Counsel's Office
Ontario Securities Commission
416 593-3739
mbalter@osc.gov.on.ca

Jean-Paul Bureaud
Senior Advisor
Office of Domestic and International Affairs
Ontario Securities Commission
416 593-8131
jbureaud@osc.gov.on.ca

The text for the National Instrument 11-102 *Passport System* and related materials can be found on the websites of the other CSA members.

March 28, 2007

# Chapter 6

# Request for Comments

## 6.1.1 Proposed Multilateral Instrument 11-101 *Principal Regulator System*

**OSC NOTICE AND REQUEST FOR COMMENT**

**PROPOSED MULTILATERAL INSTRUMENT 11-101 *PRINCIPAL REGULATOR SYSTEM*, FORM 11-101F1 *PRINCIPAL REGULATOR NOTICE UNDER NATIONAL INSTRUMENT 11-101*, AND COMPANION POLICY 11-101CP *PRINCIPAL REGULATOR SYSTEM***

**PROPOSED AMENDMENTS TO NATIONAL POLICY 43-201 *MUTUAL RELIANCE REVIEW SYSTEM FOR PROSPECTUSES AND ANNUAL INFORMATION FORMS*, PROPOSED NATIONAL POLICY 31-201 *NATIONAL REGISTRATION SYSTEM*, AND**

**PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 51-101 *STANDARDS OF DISCLOSURE FOR OIL AND GAS ACTIVITIES*, AND MULTILATERAL INSTRUMENT 81-104 *COMMODITY POOLS***

Certain members of Canadian Securities Administrators (CSA) are publishing for comment the following draft documents to implement a "single window of access" for market participants contemplated by the September 30, 2004 Memorandum of Understanding Regarding Securities Regulation (MOU) signed by the Ministers in certain provinces and territories that have responsibility for securities regulation:

- Multilateral Instrument 11-101 *Principal Regulator System*;
- Form 11-101F1 *Notice of Principal Regulator under Multilateral Instrument 11-101*; and
- Companion Policy 11-101CP *Principal Regulator System;*

(collectively, the Proposed Instrument).

The Ontario Securities Commission ("we" or the "Commission") is not publishing the Proposed Instrument for several reasons.

1. *Undermines Harmonization by Endorsing Different Regulatory Standards*

Although the Government of Ontario is not a signatory to the MOU, the Commission participated in the process to develop the Proposed Instrument with the understanding that it would apply in areas that are highly harmonized and would ensure consistency in regulatory standards for all market participants across Canada. We are concerned that the Proposed Instrument falls short of this objective. In particular, the Proposed Instrument permits issuers to follow different regulatory standards in our capital markets on the basis of where their head office is located. For example, the Proposed Instrument would permit a public company based in British Columbia that is a reporting issuer in another CSA jurisdiction to comply with different audit committee requirements. If this public company was listed on the TSX, the result would be that its audit committee members would be held to a different standard than directors of other TSX-listed companies simply because the issuer's head office is located in British Columbia. This raises investor protection concerns and will create confusion for investors in the market place. Furthermore, it is inconsistent with the goal of moving towards greater harmonization and convergence in regulatory standards in Canada. Differences in regulatory standards create inefficiency and competitive disadvantages for market participants.

2. *Raises Enforcement and Investor Protection Concerns*

The Proposed Instrument introduces a number of enforcement-related concerns that, in our view, outweigh the marginal benefits that may be derived from the proposed exemptions. These exemptions are based on the expectation that the issuer will comply with virtually identical requirements in the jurisdiction of its principal regulator, and will file, deliver or disseminate the same disclosure in both the principal regulator's and the non-principal regulator's jurisdiction. In a situation where a filing, for example, fails to comply with substantive disclosure requirements, it is unclear what authority the Commision as a non-principal regulator will have to intervene to protect Ontario investors and capital markets under the Proposed Instrument. Given that in some cases the substantial harm arising from a breach can occur outside the principal jurisdiction, in our view it is imperative that a non-principal regulator's ability to take appropriate action be clearly preserved under the Proposed Instrument.

3. *Insufficient Rule-Making Authority*

We also have concerns regarding the Commission's authority to adopt some of the exempting provisions in the Proposed Instrument. We have obtained independent legal advice indicating that, in Ontario, certain exemptions in the Proposed Instrument exceed our rule-making authority. As a result of differences in each jurisdiction's rule-making authority, however, other jurisdictions do not have similar issues with adopting the Proposed Instrument.

*4. Unable to Sub-Delegate Decision-Making Power to another Commission*

The Proposed Instrument uses exemptions to permit a market participant to access the capital markets in each jurisdiction by, in effect, complying with the laws of the jurisdiction of its principal regulator, as modified by any exemptive relief granted solely by the principal regulator. The exemption approach was adopted as a result of the lack of authority for most CSA jurisdictions to statutorily delegate powers and duties to one another. The independent legal advice we obtained indicates that, in Ontario, these exemptions may constitute an abdication of the Commission's responsibility to regulate continuous disclosure and prospectus requirements contained in the *Securities Act* (Ontario).

**Interaction between MRRS and NRS Policies and the Proposed Instrument**

The Proposed Instrument uses the same test as the existing mutual reliance review systems (MRRS) for determining the principal regulator. For an issuer (or an investment fund manager), the principal regulator is based on the location of its head office or a most significant connection test. For a firm registrant, the principal regulator is based on the location of its head office and for an individual registrant, based on the location of the individual's working office.

*1. How will the Proposed Instrument affect issuers and registrants with a head office in Ontario?*

The Proposed Instrument will have no impact on the status quo. The Commission will continue to act as the principal regulator for all Ontario-based issuers or registrants through the MRRS and the mutual reliance process under NRS. Any reporting issuer or registrant that has Ontario as its principal regulator will continue to file discretionary relief applications, prospectuses or registration materials, as the case may be, under the existing MRRS or NRS policies with the Commission, as well as with any other applicable non-principal regulator.

*2. How will the Proposed Instrument impact foreign issuers?*

Foreign issuers for which the Commission acts as the principal regulator under MRRS could choose to rely on the exemptions in the Proposed Instrument. If so, they would only have to file applications and pay application fees in Ontario and in one other jurisdiction (that is, the principal regulator under the Proposed Instrument) when requesting discretionary relief from continuous disclosure requirements and certain prospectus-related disclosure requirements. The other jurisdiction would be the "participating principal jurisdiction" (as defined in the Proposed Instrument) with which the issuer has the next most significant connection. As a result of the exemptions in Parts 3 and 4 of the Proposed Instrument, any relief granted by that regulator will automatically apply in all other non-principal regulator jurisdictions. The Commission would still act as the principal regulator under MRRS with respect to the application. The other regulator would be the only non-principal regulator for the MRRS filing.

*3. What about issuers and registrants based outside Ontario?*

Issuers and registrants that have a principal regulator other than the Commission will continue to have to comply with Ontario securities law to the extent they participate in Ontario's capital markets, and will continue, when necessary, to file any relief applications, prospectuses or registration materials, as the case may be, with the Commission as a non-principal regulator under existing MRRS or NRS policies.

*4. How will those issuers based in Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the "Jurisdictions") and for which Ontario acts as the principal regulator in connection with prospectus filings be affected?*

Issuers based in the Jurisdictions will continue to rely on the Commission as their principal regulator for MRRS purposes. In addition, the prospectus-related exemptions in the Proposed Instrument will also be available to these issuers. Any prospectus-related disclosure relief granted by the Commission and any one of these Jurisdictions will automatically apply in all other non-principal regulator jurisdictions as a result of the exemption in Part 4 of the Proposed Instrument.

Issuers for whom the Commission acts as a principal regulator are treated differently under the Proposed Instrument on the basis of whether or not they have a head office located in Ontario. Issuers that have a head office in Ontario will have to file applications for discretionary relief and pay application fees in each jurisdiction where relief is required. However, foreign based issuers or those issuers in one of the Jurisdictions (in the case of prospectus-related relief) will have to file applications and pay fees in only two jurisdictions – Ontario and the regulator in the participating principal jurisdiction with which it has the next most

significant connection. The CSA jurisdictions publishing the Proposed Instrument for comment believe this distinction is warranted for reasons of reciprocity. That is, to the extent that the Commission does not participate in the Proposed Instrument, Ontario-based issuers should not be entitled to rely on exemptions in the Proposed Instrument.

Do you agree that Ontario-based issuers should be treated differently than foreign-based issuers in this regard?

**CSA Initiatives to Streamline Existing Regulatory System**

Although we are not publishing the Proposed Instrument, we support the work of the CSA to introduce greater efficiencies in the Canadian regulatory system for market participants. We also support, in principle, the mobility registration exemption contemplated by the Proposed Instrument. This exemption will permit registrants to continue to work with their existing clients who relocate to another jurisdiction. Depending upon comments received, we may consider adopting a registration exemption in Ontario for situations where a client of a person or company that is registered in another CSA jurisdiction moves to Ontario. If we were to proceed with such an exemption, section 5.1 of the Proposed Instrument (which provides that the exemption does not apply to a registered firm with a head office located in Ontario or to registered individual with a working office in Ontario) would have to be repealed.

In addition, we continue to support initiatives that will further streamline our current administrative and review processes, as well as lead to greater harmonization in our regulatory requirements. Accordingly, we are proposing to amend, along with the rest of the CSA, the following policies and instruments:

- National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* (the Prospectus MRRS);
- National Policy 31-201 *National Registration System* (the NRS Policy);
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101); and
- Multilateral Instrument 81-104 *Commodity Pools* (MI 81-104).

**Proposed Amendments to the Prospectus MRRS**

To facilitate the review and clearance of prospectus filings, we propose to streamline the Prospectus MRRS by reducing the time it takes to review a prospectus by ensuring the non-principal regulators do their review at the same time (instead of after) the principal regulator does its review. We estimate this would shorten the prospectus review process for long form prospectuses by five business days and for short form prospectuses by one to two business days. This would reduce the review period from 15 to 10 business days for long form prospectuses and from five to three business days for short form prospectuses. The result should be quicker access to the capital markets for market participants.

In addition, the CSA are considering extending the list of jurisdictions that can act as principal regulator. New Brunswick does not currently act as principal regulator under the Prospectus MRRS but is included as a principal regulator in the proposed amendments to the Prospectus MRRS.

We also propose making other changes to virtually eliminate the need for issuers to deal with non-principal regulators on any comments. One of these changes would require the principal regulator to forward potential opt-out issues raised by a non-principal regulator to the filer and attempt to resolve those issues with the non-principal regulator and the filer (i.e., the filer would no longer be required to deal directly with a non-principal regulator). Another would require the principal regulator to attempt to resolve differences of opinion on proposed dispositions of novel and substantive pre-filings directly with the non-principal regulator that disagrees with the proposed disposition, rather than requiring the filer to resolve the issue directly with that non-principal regulator.

To implement these changes, we propose amendments to the Prospectus MRRS and changing our administrative practices. A blacklined version of the Prospectus MRRS is attached showing those amendments. We made the amendments to the version of Prospectus MRRS published for comment on January 7, 2005 in connection with the CSA proposal to repeal and replace National Instrument 44-101 *Short Form Prospectus Distributions*.

We would also make adjustments to current administrative practices to ensure that non-principal regulators have an opportunity to provide input on prospectuses for novel investment products or offerings without, to the extent possible, jeopardizing the compressed time periods.

**Proposed Amendments to the NRS Policy**

The CSA implemented National Instrument 31-101 *National Registration System* (the NRS Rule) and the NRS Policy on April 4, 2005. The NRS Rule exempts an applicant from the "fit and proper" registration requirements of each non-principal jurisdiction if it meets the fit and proper requirements of its principal regulator. The NRS Policy sets out the MRRS process for registration.

To facilitate the review and clearance of registration applications, we propose to change the NRS Policy by reducing the opt-in period in the NRS Policy from five business days to two business days. The CSA will monitor the new registration system to determine whether this amendment is feasible and, if so, will adopt the proposed amendment.

We note that currently, under the NRS Rule, a firm's principal regulator is determined by using a "most significant connection" test, with head office as an indicator. The CSA also plan to amend, at a later date, the definition of "principal regulator" in the NRS Rule such that a firm's principal regulator is determined by the location of its head office. In the meantime, the CSA will monitor the situation to ensure that the difference in the test does not result in a firm having a different principal regulator under the NRS Rule and the Proposed Instrument.

**Proposed Amendments to NI 51-101**

Together with the other CSA, we support the amendments to NI 51-101 to eliminate the carve-outs for British Columbia in section 2.1.3 (which provides that the requirement to file a report of management and directors does not apply in British Columbia) and section 3.6 (which provides that certain provisions dealing with responsibilities of boards of directors do not apply in British Columbia) of NI 51-101. These amendments would only be made if the British Columbia Securities Commission adopted the Proposed Instrument following the public comment process.

**Proposed Amendments to MI 81-104**

We support the amendment to MI 81-104 to eliminate the carve-out for British Columbia in section 8.6 (which provides that certain provisions respecting continuous disclosure and financial statements do not apply in British Columbia). This amendment would only be made if the British Columbia Securities Commission adopted the Proposed Instrument following the public comment process.

**REQUEST FOR COMMENT**

We request your comments on the proposed amendments to National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* and National Policy 31-201 *National Registration System*.

We also invite comments on the Commission's position not to participate in the Proposed Instrument on the basis that it permits differences in regulatory standards to be exported among CSA jurisdictions.

See the CSA Request for Comment on Proposed Multilateral Instrument 11-101 *Principal Regulator System* for more detailed information on the Proposed Instrument.

**HOW TO PROVIDE YOUR COMMENTS**

Please submit your comments in writing on or before July 27, 2005. If you are not sending your comments by e-mail, a diskette or CD containing your submission (in Windows format, Word) should also be forwarded.

Address your submission to:

John Stevenson
Secretary to the Commission
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8
Fax: (416) 593-2318
e-mail: jstevenson@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

**QUESTIONS**

Please refer your questions to:

Jean-Paul Bureaud
Senior Legal Counsel
General Counsel's Office
Ontario Securities Commission
(416) 593-8131
jbureaud@osc.gov.on.ca

The text for Proposed Multilateral Instrument 11-101 *Principal Regulator System* and related materials can be found on the following CSA member websites:

www.albertasecurities.com
www.bcsc.bc.ca
www.lautorite.qc.ca

The text of the Proposed Amendments to National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms;* National Policy 31-201 *National Registration System*; National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*; and Multilateral Instrument 81-104 *Commodity Pools* follow.

May 27, 2005

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## APPENDIX A

## AMENDMENT TO NATIONAL POLICY 31-201 *NATIONAL REGISTRATION SYSTEM*

### PART 1 AMENDMENT TO NATIONAL POLICY 31-201

**1.1** **Amendment** – National Policy 31-201 *National Registration System* is amended in subsection 6.3(1) by striking the phrase "five business days" and replacing it with "two business days".

### PART 2 EFFECTIVE DATE

**2.1** **Effective Date** - This amendment is effective •.

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# NATIONAL POLICY 43- 201
## *MUTUAL RELIANCE REVIEW SYSTEM FOR PROSPECTUSES*

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# NATIONAL POLICY 43- 201
## *MUTUAL RELIANCE REVIEW SYSTEM FOR PROSPECTUSES*[1]

## PART 1 OVERVIEW AND APPLICATION

**1.1** **Scope** - This Policy describes the practical application of mutual reliance concepts set out in the MRRS MOU relating to the filing and review of prospectuses, including ~~mutual~~investment fund and shelf prospectuses, amendments to prospectuses and related materials.

**1.2** **Objective** - Under the MRRS, a designated securities regulatory authority or regulator, as applicable, acts as the principal regulator for all materials relating to a filer. This will enable participating principal regulators to develop greater familiarity with their respective filers, which will enhance the efficiency and quality of their review of materials filed under the MRRS.

**1.3** **Application of Local Requirements** - Although the filer will generally deal only with its principal regulator in connection with materials filed under the MRRS, the local securities legislation and local securities directions in each jurisdiction in which the materials are filed are applicable to the materials~~.~~, except to the extent that MI 11-101 provides relief from those local requirements.

## PART 2 DEFINITIONS AND INTERPRETATION

**2.1** **Definitions** - In this Policy,

"amendment" means an amendment to a preliminary prospectus or prospectus;

"application" means a request for discretionary relief from or approval under securities legislation or securities directions, but does not include a waiver application or pre-filing;

"applications policy" means National Policy 12-201, *Mutual Reliance Review System for Exemptive Relief Applications*;

"CSA committee" means the Mutual Reliance Review System Committee of the Canadian Securities Administrators;

"local securities directions" means, for the local jurisdiction, the instruments listed in Appendix A of National Instrument 14-101, *Definitions* opposite the name of the local jurisdiction;

"local securities legislation" means, for the local jurisdiction, the statute and other instruments listed in Appendix B of National Instrument 14-101, *Definitions* opposite the name of the local jurisdiction;

"local securities regulatory authority" means, for the local jurisdiction, the securities commission or similar regulatory authority listed in Appendix C of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction;

"long form prospectus" includes a simplified prospectus and annual information form for a mutual fund;

"materials" means the documents and fees referred to in Appendix "A" to this Policy, as amended from time to time, for each category of filing;

"MRRS MOU" means the Memorandum of Understanding relating to the Mutual Reliance Review System signed as of October 14, 1999;

"MI 11-101" means Multilateral Instrument 11-101, *Principal Regulator System*;

"NI 44-101" means National Instrument 44-101, *Short Form Prospectus Distributions*;

"NI 81-101" means National Instrument 81-101, *Mutual Fund Prospectus Disclosure*;

"OSC 41-501" means Ontario Securities Commission Rule 41-501, *General Prospectus Requirements*;

[1] This document has been blacklined to show changes from the version of NP 43-201 published for comment January 7, 2005 in connection with proposed changes to National Instrument 44-101 *Short Form Prospectus Distributions*.

"pre-filing" means a consultation with one or more of the securities regulatory authorities regarding the interpretation or application of securities legislation or securities directions to a particular transaction or proposed transaction that is the subject of, or is referred to in, materials, if the consultation is initiated before the filing of those materials;
"preliminary prospectus amendment" means an amendment to a preliminary prospectus;

"preliminary prospectus amendment MRRS decision document" means a MRRS decision document issued for a preliminary prospectus amendment;

"prospectus amendment" means an amendment to a prospectus;

"prospectus amendment MRRS decision document" means a MRRS decision document issued for a prospectus amendment;

"Q-28" means Policy Statement No. Q-28, *General Prospectus Requirements* of the Autorité des marchés financiers;

"renewal shelf prospectus" means a short form prospectus that is prepared and filed in accordance with the shelf prospectus system to replace a short form prospectus previously filed by the issuer under the shelf prospectus system for which a final receipt or final MRRS decision document was issued;

"requested regulator" means a participating principal regulator, other than the principal regulator determined in accordance with section 3.2, which a filer requests under subsection 3.4 to act as its principal regulator;

"seasoned prospectus" means a pro forma or preliminary prospectus of an issuer, if it is filed within two years of the date that a final MRRS decision document, or receipt, was issued to the issuer for a prospectus;

"securities directions" means the instruments listed in Appendix A of National Instrument 14-101, *Definitions*;

"securities legislation" means the statutes and other instruments listed in Appendix B of National Instrument 14-101, *Definitions*;

"securities regulatory authorities" means the securities commissions and similar regulatory authorities listed in Appendix C of National Instrument 14-101, *Definitions*;

"SEDAR" has the meaning ascribed to that term in National Instrument 13-101 System for Electronic Document Analysis and Retrieval;

"shelf prospectus system" means the system for the distribution of securities using a shelf prospectus as contemplated in National Instrument 44-102, *Shelf Distributions*;

"short form prospectus system" means the system for the distribution of securities as contemplated in NI 44-101; and

"waiver application" means a request for discretionary relief from securities legislation or securities directions, if the relief, if granted, would be evidenced by the issuance of a MRRS decision document under this Policy.

**2.2 Interpretation** - Unless otherwise defined herein, terms used in this Policy that are defined or interpreted in the MRRS MOU should be read in accordance with the MRRS MOU.

**PART 3 PRINCIPAL REGULATOR**

**3.1 Participating Principal Regulators** - As of the date of this Policy, the securities regulatory authorities of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia have agreed to act as principal regulator for materials filed under this Policy.

**3.2 Determination of Principal Regulator**

(1) It is the responsibility of the filer to determine its principal regulator. Unless changed or redesignated under section 3.3, 3.4 or 3.5, the principal regulator for a filer is determined in accordance with the following criteria:

(a) For filers, other than ~~mutual~~investment funds, whose head office is in a jurisdiction in which a participating principal regulator is located, the principal regulator is the local securities regulatory authority or regulator in the jurisdiction in which the head office is located.

(b) For filers, other than ~~mutual~~investment funds, whose head office is not in a jurisdiction in which a participating principal regulator is located, the filer ~~can~~should select ~~a~~the participating principal regulator ~~as its principal regulator, if~~with which the filer has ~~a reasonable~~the next most significant connection ~~with the jurisdiction in which the selected~~to act as the principal regulator ~~is located~~. The

next most significant connection should be determined by reference to the factors listed in subsection 3.4(1).

(c) For filers that are ~~mutual~~investment funds whose manager's head office is in a jurisdiction in which a participating principal regulator is located, the principal regulator is the local securities regulatory authority or regulator in the jurisdiction in which the manager's head office is located.

(d) For filers that are ~~mutual~~investment funds whose manager's head office is not in a jurisdiction in which a participating principal regulator is located, the filer ~~can~~should select ~~a~~the participating principal regulator ~~as its principal regulator, if~~with which the filer has ~~a reasonable~~the next most significant connection ~~with the jurisdiction in which the selected~~to act as the principal regulator ~~is located~~. The next most significant connection should be determined by reference to the factors listed in subsection 3.4(1).

(2) For a particular filing of materials, if the filer has incorrectly identified a non-principal regulator as the principal regulator, that non-principal regulator will decline to act as principal regulator and will notify the filer.

(3) The principal regulator determined in accordance with section 3.2 is the principal regulator for all materials filed under this Policy unless the principal regulator has been changed under section 3.3, 3.4 or 3.5.

**3.3 Automatic Change of Principal Regulator** - If the location of the head office of the filer or in the case of ~~a mutual~~an investment fund, the manager, is changed after the determination of the principal regulator in accordance with section 3.2, the principal regulator will change automatically to the local securities regulatory authority or regulator in the jurisdiction to which the head office has been moved if the new head office is in a jurisdiction in which a participating principal regulator is located. In all other circumstances the principal regulator can only be changed in accordance with section 3.4 or 3.5.

**3.4 Discretionary Change of Principal Regulator Applied for by Filer**

(1) A filer may apply for a change of principal regulator if it believes that its principal regulator is not the appropriate principal regulator. However, a change of a filer's principal regulator based on factors other than the head office criteria set out in section 3.2 will generally not be permitted unless exceptional circumstances justify the change. The factors that may be considered in assessing an application for a change of a filer's principal regulator include:

(a) location of management;

(b) location of assets and operations; and

(c) location of filer's trading market or quotation system in Canada, or, if the filer's securities are not traded or quoted on a trading market or quotation system in Canada, location of filer's securityholders.

(2) If a filer applies for a change of its principal regulator, the application should be submitted in paper form to the principal regulator and the requested regulator at least thirty days in advance of any filing of materials under this Policy to permit adequate time for staff of the relevant securities regulatory authorities to consider and resolve the application. If the application is not resolved before the date of any filing of materials, the principal regulator will continue to act as principal regulator for that filing, and the change requested, if granted, will relate to materials filed after the issuance of the final MRRS decision document.

(3) The application should address the basis for the designation of the filer's principal regulator in accordance with section 3.2, and should set forth the reasons for the requested regulator to act as principal regulator with regard to the factors specified in subsection (1) and any other relevant factors. The filer will be given an opportunity to respond to concerns or comments raised by the relevant securities regulatory authorities.

(4) If an application is denied, the principal regulator will provide written reasons for the denial to the filer.

**3.5 Discretionary Change of Principal Regulator Proposed by the Participating Principal Regulators**

(1) The participating principal regulators may determine that it would be preferable for a participating principal regulator other than the securities regulatory authority acting as principal regulator to act as a filer's principal regulator. This determination will generally only be made if changing the principal regulator of a filer would result in greater administrative and regulatory efficiencies with regard to the factors specified in subsection 3.4(1) and other relevant factors. The participating principal regulators will not redesignate a filer's principal

regulator after materials have been filed and before a final MRRS decision document has been issued for the materials.

(2) If the participating principal regulators propose to change a filer's principal regulator, the principal regulator will notify the filer in writing of the proposed change, and will identify the reasons for the proposed change. The redesignated principal regulator will become the filer's principal regulator thirty days after the date of the notice unless the filer objects in writing to the proposed change. The filer, the principal regulator and the proposed principal regulator will attempt to resolve any objections raised by the filer to the proposed change.

**3.6 Notification to CSA Committee of Discretionary Change of Principal Regulator** - The participating principal regulators involved in an application or proposal to change a filer's principal regulator will advise the CSA committee of all decisions rendered under sections 3.4 or 3.5 and the reasons for the decisions.

**3.7 Effect of Change of Principal Regulator**

(1) A change of principal regulator under section 3.3, 3.4 or 3.5 applies for all materials filed under this Policy after the change.

(2) If the circumstances relevant to the determination of the principal regulator change after the date of any filing of materials and before a final MRRS decision document is issued relating to those materials, the principal regulator will act as principal regulator for that filing, and the change of principal regulator will relate to materials filed after the issuance of the final MRRS decision document.

**3.8 Identification of New Principal Regulator** - At the time of the first filing following a change of principal regulator, the filer should identify the new principal regulator in the cover page information for the SEDAR filing and indicate that this is a change from the previous filing. The filer should also update its SEDAR filer profile to identify the new principal regulator and include the basis for the change of principal regulator.

## PART 4 FILING MATERIALS UNDER THE MRRS

**4.1 Election of MRRS and Identifying Principal Regulator** - The filer should indicate in the cover page information for the SEDAR filing its principal regulator and that it is electing to file materials under the MRRS. The filer should also identify its principal regulator and the basis for the determination in its SEDAR filer profile. If a filer's principal regulator is determined in accordance with paragraph 3.2(1)(b) or 3.2(1)(d), the filer should provide a description of the factors connecting the filer to the jurisdiction of the principal regulator it has selected. If applicable, the filer should provide the date of the change in circumstances resulting in an automatic change of principal regulator under section 3.3 or of a decision under section 3.4 or 3.5 changing the principal regulator.

**4.2 Filing** - If a filer proposes to distribute its securities by prospectus only to purchasers in jurisdictions other than the jurisdiction in which its principal regulator is located, the materials, including the required fees, should also be filed with the principal regulator, and will be reviewed by the principal regulator. This will enable participating principal regulators to maintain familiarity with their respective filers.

**4.3 Black-lined Document** - Except in the case of short form prospectuses, it is strongly recommended that a filer file through SEDAR a draft prospectus (the French language version, in Québec), black lined to show changes, as far as possible in advance of filing final materials. This black lined version is in addition to the black lined version of the final prospectus to be filed with the final materials.

**4.4 Seasoned Prospectuses**

(1) If appropriate, a filer may identify a prospectus being filed as a seasoned prospectus. When a seasoned prospectus is filed it should be accompanied by a copy of the seasoned prospectus black lined against the preceding prospectus of the filer to show all changes made. The prospectus should be accompanied by a certificate of the filer. The certificate should certify that the black lined prospectus indicates all differences between the content of the seasoned prospectus and that of the previous prospectus of the filer.

(2) If a filing is made under this section, the principal regulator will advise the non-principal regulators when the comment letter is issued that the prospectus is being reviewed as a seasoned prospectus. The non-principal regulators will then assume that the principal regulator has conducted only a limited review of the prospectus unless the contrary is specifically stated.

(3) The procedures set out in this section do not apply to filings made under NI 81-101.

## PART 5 REVIEW OF MATERIALS

**5.1 Review by Principal Regulator** - The principal regulator is responsible for reviewing all materials in accordance with the local securities legislation and local securities directions of the jurisdiction in which the principal regulator is located,

and in accordance with its review procedures, analysis and precedents. The principal regulator will be responsible for issuing and resolving comments on materials and issuing the MRRS decision document once the relevant conditions have been satisfied. While the non-principal regulators may review the materials and will advise the principal regulator of any material concerns relating to the materials that, if left unresolved, would cause the non-principal regulators to opt out of the MRRS, the filer will generally deal solely with the principal regulator.

**5.2 Review Period for Long Form Prospectuses and Renewal Shelf Prospectuses**

~~(1) A principal regulator that has implemented a system of selective review will, within three working days of the date of the preliminary MRRS decision document or receipt of the pro forma materials, notify the non-principal regulators if the designated level of review to be given to the materials is a basic review.~~

~~(2) If a principal regulator that has implemented a system of selective review selects materials for either full review or issue-oriented review, or a principal regulator does not have a system of selective review, the~~ The principal regulator will use its best efforts to review the materials and issue a comment letter within 10 working days of the date of the preliminary MRRS decision document or receipt of the pro forma materials.

~~(3)~~ Each non-principal regulator will, within five working days of the date of the preliminary MRRS decision document or receipt of the ~~comment letter of the principal regulator~~pro forma materials, use its best efforts to:

(a) advise the principal regulator of any material concerns with the materials that, if left unresolved, would cause the non-principal regulator to opt out of the MRRS; or

(b) indicate in the SEDAR "Filing Status" screen that it is clear to receive final materials, if there are no outstanding applications or waiver applications that have been filed with the non-principal regulators.

~~(4) For materials that have been selected for basic review, the non-principal regulators will, within 6 working days of being notified that the materials have been selected for basic review, use their best efforts to comply with paragraphs (3)(a) or (3)(b), as appropriate.~~

**5.3 Review Period for Short Form Prospectuses**

(1) The principal regulator will use its best efforts to review materials relating to a preliminary short form prospectus and issue a comment letter within three working days of the date of the preliminary MRRS decision document. Each non-principal regulator will, ~~by 12:00 noon, Eastern time, on the working day following the date of issuance of the comment letter of the principal regulator~~within three working days of the preliminary MRRS decision document, use its best efforts to:

(a) advise the principal regulator of any material concerns with the materials that, if left unresolved, would cause the non-principal regulator to opt out of the MRRS; or

(b) indicate in the SEDAR "Filing Status" screen that it is clear to receive final materials, if there are no outstanding applications that have been filed with the non-principal regulators.

(2) Despite the foregoing, if, in the opinion of the principal regulator, a proposed distribution by way of short form prospectus is too complex to be reviewed adequately within the prescribed time periods, the principal regulator may determine that the time periods applicable to long form prospectuses should apply, and the principal regulator will, within one working day of the filing of the preliminary short form prospectus, so notify the filer and the non-principal regulators. The filer is encouraged to submit a pre-filing to resolve any issues that may cause a delay in the prescribed time periods.

**5.4 Novel Structure or Issue** - If a prospectus is filed for an offering that involves a novel structure or novel issue and the issues were not resolved in a pre-filing with the relevant regulators, the principal regulator may establish a cooperative review process actively involving the non-principal regulators in formulating and resolving the comments. The principles of mutual reliance, in all other respects, will continue to apply. The complexity of the structure or the issue may affect the prescribed review periods.

**5.5 Form of Response** - The filer should provide to the principal regulator written responses to the comment letter issued by the principal regulator.

**PART 6 OPTING OUT**

**6.1 Opting Out** - A non-principal regulator can opt out of the MRRS for a filing at any time before the principal regulator issues a final MRRS decision document for the materials. The non-principal regulator will provide notice of its decision to opt out to the filer, the principal regulator and the other non-principal regulators by indicating "MRRS - Opt Out" in the

SEDAR "Filing Status" screen. The non-principal regulator will at that time provide written reasons for its decision to opt out of the MRRS to the ~~filer via SEDAR. The non-principal regulator that has opted out will also advise the~~ principal regulator and the other non-principal regulators ~~of its reasons for opting out. The filer will~~. The principal regulator will forward the reasons for opting out to the filer and will use its best efforts to resolve opt out issues with the filer on behalf of the non-principal regulator that has opted out. If the principal regulator is able to resolve these issues with the non-principal regulator that has opted out, the non-principal regulator that has opted out may opt back in. Reasons for opting out will be forwarded to the CSA committee. In the event that the principal regulator is unable to resolve the opt out issues with the non-principal regulator, the principal regulator will issue a final MRRS decision document on behalf of the non-principal regulators that have not opted out. The filer will then deal directly with the non-principal regulator that has opted out to resolve any outstanding issues. ~~Reasons for opting out will be forwarded to the CSA committee.~~

~~6.2 **Opting Back In** - If the filer and the non-principal regulator are able to resolve their outstanding issues before the principal regulator issues the final MRRS decision document, the non-principal regulator may opt back in to the MRRS by notifying the principal regulator, all other non-principal regulators and the filer by indicating "MRRS – Opt Back In – Clear for Final" in the SEDAR "Filing Status" screen.~~ outside the MRRS.

## PART 7 MRRS DECISION DOCUMENT

**7.1 Effect of MRRS Decision Document** - The MRRS decision document evidences that a determination on materials has been made by the principal regulator and the non-principal regulators that have not opted out of the MRRS for the materials.

**7.2 Conditions to Issuance of Preliminary MRRS Decision Document** - The principal regulator will issue a preliminary MRRS decision document if:

1. the principal regulator has determined that acceptable materials have been filed; and

2. the filer has confirmed to the principal regulator in a letter accompanying the materials that, to the best of its knowledge and belief:

   (a) materials, including all required translations, have been filed with all non-principal regulators that have not opted out of the MRRS for the materials;

   (b) in respect of each jurisdiction in which the materials are filed, the filer has filed or delivered all documents required to be filed or delivered under the local securities legislation and is not subject to a cease trade order issued by a local securities regulatory authority;

   (c) in each jurisdiction in which the securities will be offered to purchasers, at least one underwriter that has signed the certificate is registered, or has filed an application for registration or an application for exemptive relief from the requirement to be registered. If none of the underwriters that has signed the certificate are registered in a jurisdiction in which the distribution is being made but one of the underwriters has filed an application for registration or an application for exemptive relief from the requirement to be registered, that underwriter will file an undertaking with the principal regulator not to solicit in that jurisdiction until the registration or exemption has been obtained; and

   (d) in the case of distributions to be effected by the filer, the filer is registered in each jurisdiction in which the securities will be offered to purchasers, or has filed an application for registration. If the filer has filed an application for registration in a jurisdiction, the filer will file an undertaking with the principal regulator not to solicit in that jurisdiction until the registration is obtained.

**7.3 Form of Preliminary MRRS Decision Document** - The preliminary MRRS decision document for a preliminary prospectus will contain the following legend:

*This preliminary mutual reliance review system decision document evidences that preliminary receipts of the regulators in each of (name of each jurisdiction in which materials have been filed and where the regulator has not opted out of the MRRS for the materials) have been issued.*

**7.4 Conditions to Issuance of Final MRRS Decision Document for Long Form Prospectus and Renewal Shelf Prospectus** - The principal regulator will issue a final MRRS decision document for a long-form prospectus or a renewal shelf prospectus if:

1. the statutory waiting period between the issuance of a MRRS decision document for preliminary materials and final materials, if applicable, has expired;

2. all non-principal regulators, other than the regulators in ~~New Brunswick,~~ Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut, have indicated in the SEDAR "Filing Status" screen that they

are "Clear for Final" or have opted out of the MRRS for the filing by indicating "MRRS - Opt Out" in the SEDAR "Filing Status" screen;

3. the principal regulator has determined that acceptable materials have been filed; and

4. the filer has confirmed to the principal regulator in a letter accompanying the materials that, to the best of its knowledge and belief:

   (a) materials, including all required translations, have been filed with all non-principal regulators that have not opted out of the MRRS for the materials;

   (b) in respect of each jurisdiction in which the materials are filed, the filer has filed or delivered all documents required to be filed or delivered under the local securities legislation and is not subject to a cease trade order issued by a local securities regulatory authority;

   (c) in each jurisdiction in which the securities will be offered to purchasers, at least one underwriter that has signed the certificate is registered or has been exempted from the requirement to be registered;

   (d) in the case of distributions to be effected by the filer, the filer is registered in each jurisdiction in which the securities will be offered to purchasers; and

   (e) all necessary relief from applicable securities legislation or securities directions has been applied for and granted by the principal regulator and non-principal regulators.

**7.5** **Conditions to Issuance of Final MRRS Decision Document for Short Form Prospectus** - The principal regulator will issue a final MRRS decision document for a short form prospectus if the conditions specified in section 7.4, other than subsection 7.4(1), have been met and at least two working days have elapsed from the date of the preliminary MRRS decision document.

**7.6** **Form of Final MRRS Decision Document** - The final MRRS decision document for a prospectus will contain the following legend:
*This final mutual reliance review system decision document evidences that final receipts of the regulators in each of (name of each jurisdiction in which materials have been filed and where the regulator has not opted out of the MRRS for the materials) have been issued.*

**7.7** **Local Decision Document** - Despite the issuance of the MRRS decision document, certain non-principal regulators will issue concurrently their own decision documents for materials. In the case of materials filed for a proposed distribution of securities, it is not necessary for a filer to obtain a copy of the local decision document before commencing the distribution of its securities.

**7.8** **Holidays** - The principal regulator will issue a MRRS decision document evidencing the receipt of non-principal regulators that are open on the date of the MRRS decision document. The principal regulator will issue a MRRS decision document evidencing the receipt of the remaining non-principal regulators on the next day that the non-principal regulators are open.

~~**7.9 Material Issues Raised Late**~~

~~(1) "Material issue" means a potential receipt refusal issue raised by the principal regulator as a result of its review of the materials or raised by the filer as a result of changes made by the filer after a non-principal regulator is clear for final.~~

~~(2) If a material issue is raised after a non-principal regulator has indicated that it is clear for final, the principal regulator may determine that it is not prepared to issue a final MRRS decision document unless such non-principal regulator provides reconfirmation that it is clear for final materials. The principal regulator will submit through SEDAR under "Memo to Regulators - Reconfirmation Requested" a letter identifying the new material issue. The filer should encourage the non-principal regulators to respond to the correspondence of the principal regulator. A non-principal regulator, other than the regulators in New Brunswick, Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut, that does not provide reconfirmation within five days is considered to have opted out of MRRS.~~

**7.9** ~~**7.10**~~ **Refusal by Principal Regulator to Issue a Receipt**

(1) If the principal regulator refuses to issue a receipt for materials and therefore refuses to issue a MRRS decision document, it will notify the filer and the non-principal regulators by sending a refusal letter through SEDAR, and the MRRS will no longer apply to the filing. In these circumstances, the filer will deal separately with the local securities regulatory authority in each jurisdiction in which the materials were filed, including the principal regulator, to determine if the local securities regulatory authority or regulator in those jurisdictions will issue a local decision document. Filers are cautioned that, once the MRRS is no longer applicable to the materials, each non-principal regulator may conduct its own comprehensive review of the materials.

(2) To the extent the issues that gave rise to the refusal to issue a MRRS decision document are resolved to the satisfaction of all parties, the filer may request that the MRRS apply once again to the materials.

7.10 ~~7.11~~ **Right to be Heard Following a Refusal** - If a filer requests a hearing for a refusal by the principal regulator to issue a receipt, the principal regulator will promptly advise the non-principal regulators of the request. The principal regulator will generally hold the hearing, either solely or together with other interested non-principal regulators. The non-principal regulators may make whatever arrangements they consider appropriate, including conducting hearings.

## PART 8 APPLICATIONS

**8.1 Applications** - In many instances, certain exemptive relief is required by a filer to enable a filing of materials or to facilitate a distribution of securities under materials filed. The following guidelines may assist a filer in ensuring that the review of materials is not unduly delayed if there is a concurrent application that is not subject to Part 9:

1. The principles of mutual reliance are available to govern the review and disposition of applications that are made in multiple jurisdictions. If the application is to be filed under the MRRS, it should be filed under the applications policy.

2. If the relief requested in the application is a condition to the issuance of a MRRS decision document and if the application is not filed in a timely manner, the issuance of the MRRS decision document may be delayed. In this regard, if an application is filed under the MRRS, filers are referred to the time periods for processing applications as contained in the applications policy.

3. If an application is filed, the filer should indicate in the SEDAR cover page information for the related filing of materials under the field "Application for Exemption Order in", those jurisdictions in which the application is being made. The filer should also indicate in a cover letter accompanying the application that there is a related filing of materials that has either been filed or will be filed.

## PART 9 PRE-FILINGS AND WAIVER APPLICATIONS

**9.1 General**

(1) The principles of mutual reliance are available to govern the review of pre-filings and waiver applications that are made in more than one jurisdiction. There may be pre-filings and waiver applications where a formal order is required in some jurisdictions while the issuance of a receipt will evidence the required relief in other jurisdictions. This difference among the jurisdictions may create ambiguity about whether a particular pre-filing or waiver application should be made under this policy or the applications policy. In order to free the process of ambiguity, Appendix B contains examples of applications that are dealt with under this Policy.

(2) If the filer does not require exemptive relief in the jurisdiction of its principal regulator, the filer should select the participating principal regulator in the jurisdiction with which the filer has the next most significant connection to act as the principal regulator for the purposes of the pre-filing or waiver application.

(3) In a letter accompanying materials filed, the filer should describe the subject matter of any pre-filings or waiver applications made to the non-principal regulators and the disposition thereof by the non-principal regulators.

(4) If the resolution of a pre-filing or waiver application is a condition precedent to the issuance of either a preliminary or final MRRS decision document, filers are reminded to file the pre-filing or waiver application sufficiently in advance of the filing of the related materials to avoid any delay in the issuance of the MRRS decision document.

(5) Different review procedures apply to those pre-filings and waiver applications filed under the MRRS that are routine and those that raise novel and substantive issues.

(6) If a pre-filing or waiver application has been filed, the filer should indicate in the SEDAR cover page information for the related filing of materials under the field "Pre-filing or Waiver Application", those jurisdictions in which the pre-filing or waiver application has been made. The filer should also indicate in a

cover letter accompanying the pre-filing or waiver application that there is a related filing of materials that has either been filed or will be filed.

**9.2 Procedure for Routine Pre-Filings and Waiver Applications** - Except as provided in section 9.3, a pre-filing or waiver application made under the MRRS should be submitted to the principal regulator in the form required by the principal regulator, and the filer will deal directly with the principal regulator to resolve the pre-filing or waiver application.

**9.3 Procedure for Novel and Substantive Pre-Filings and Waiver Applications**

(1) If the principal regulator determines that a pre-filing or waiver application filed, or to be filed, under the MRRS involves a novel and substantive issue or raises a novel public policy concern:

(a) the principal regulator will direct the filer to submit the pre-filing or waiver application in written form to the principal regulator and the non-principal regulators;

(b) each non-principal regulator will be given five working days from the date of its receipt of the pre-filing or waiver application to forward to the principal regulator and the other non-principal regulators substantive issues that may, if left unresolved, cause the non-principal regulator to opt out of the disposition of the pre-filing or waiver application; and

(c) the principal regulator will notify all non-principal regulators of its proposed disposition of the pre-filing or waiver application and will give each non-principal regulator a reasonable period of time to advise the principal regulator of its disagreement with the proposed disposition of the pre-filing or waiver application before notifying the filer of the disposition. The principal regulator will advise the filer that the disposition of the pre-filing or waiver application represents the disposition by all non-principal regulators other than those that advised the principal regulator of their disagreement with the disposition within the specified period of time. If a non-principal regulator disagrees with the disposition, the ~~filer should deal directly with that~~principal regulator will use its best efforts to resolve the outstanding issues with the non-principal regulator ~~to resolve~~that disagrees with the proposed disposition of the pre-filing or waiver application.

(2) In circumstances where it is apparent to the filer that a proposed pre-filing or waiver application contains a novel public policy issue, the filer is encouraged, for the purpose of accelerating the resolution of the pre-filing or waiver application, to send the pre-filing or waiver application in written form to the non-principal regulators contemporaneously with submitting it to the principal regulator.

**9.4 Filing of Related Materials** - For any materials filed under the MRRS to which a pre-filing or waiver application relates, the filer should include in the cover letter accompanying the materials a description of the subject matter of the pre-filing or waiver application, including the relevant provisions of the securities legislation and securities directions of the principal regulator and ~~each non-principal regulator and~~ the proposed disposition of the pre-filing or waiver application by the principal regulator and, if applicable, any non-principal regulator that disagreed with the disposition by the principal regulator and had an alternative disposition of the pre-filing or waiver application. In the case of a waiver application, the filer should identify the other non-principal regulators from which the requested relief is also needed.

**9.5 Effect of Related MRRS Decision Document** - In the case of a waiver application, the filer should include in the cover letter referred to in section 9.4 a request that the non-principal regulators grant the discretionary relief requested from the principal regulator. The final MRRS decision document will evidence that the principal regulator and the non-principal regulators that have not opted out have granted the discretionary relief requested in the waiver application. The securities regulatory authorities of certain jurisdictions will also issue their own local decision documents.

## PART 10 AMENDMENTS

**10.1 Filing of Amendments**

(1) Amendment materials should be filed with the principal regulator and the non-principal regulators in accordance with Part 4 of this Policy.

(2) The Securities Act (Québec) provides that the Autorité des marchés financiers must decide to issue or to refuse to issue a receipt for a prospectus amendment, other than a prospectus relating to a continuous distribution, within two working days of filing of the prospectus amendment. If a filer wishes to apply the MRRS to a prospectus amendment, other than a prospectus amendment relating to a continuous distribution that is also filed in the province of Québec, it should include in the cover letter accompanying the prospectus amendment materials statements that:

(a) it acknowledges that the Autorité des marchés financiers may be unable to issue a receipt within two working days of the date of receipt of the prospectus amendment and specifically waives any rights it may have to have a receipt issued by the Autorité des marchés financiers within that time frame; and

(b) it undertakes to the Autorité des marchés financiers that it will cease the distribution of its securities in Québec until the prospectus amendment MRRS decision document is issued.

(3) If the filer does not include the statements referred to in subsection (2) in the cover letter accompanying the prospectus amendment materials, the MRRS will not apply to that filing.

(4) Filers are reminded that local securities legislation in other jurisdictions contain restrictions on distributing securities until the prospectus amendment MRRS decision document is issued, as discussed in section 10.9.

**10.2 Conditions to Issuance of MRRS Decision Document for Preliminary Prospectus Amendments** - The principal regulator will issue a preliminary prospectus amendment MRRS decision document if:

1. the principal regulator has determined that acceptable materials have been filed; and

2. the filer has confirmed to the principal regulator in a letter accompanying the materials that, to the best of its knowledge and belief:

(a) materials, including all required translations, have been filed with all relevant non-principal regulators that have not opted out of the MRRS for the materials;

(b) in respect of each jurisdiction in which the materials are filed, the filer has filed or delivered all documents required to be filed or delivered under the local securities legislation and is not subject to a cease trade order issued by a local securities regulatory authority; and

(c) if the amendment reflects the removal of an underwriter, the filer has confirmed to the principal regulator that in each jurisdiction in which the securities will be offered to purchasers, at least one underwriter that has signed the certificate is registered, or has filed an application for registration or an application for exemptive relief from the requirement to be registered. If none of the underwriters that has signed the certificate are registered in a jurisdiction in which the distribution is being made but one of the underwriters has filed an application for registration or an application for exemptive relief from the requirement to be registered, that underwriter will file an undertaking with the principal regulator not to solicit in that jurisdiction until the registration or exemption has been obtained.

**10.3 Form of MRRS Decision Document for Preliminary Prospectus Amendments**

(1) The securities legislation and securities directions in force in certain jurisdictions require that a receipt be issued for a preliminary prospectus amendment. The securities legislation and securities directions in force in other jurisdictions do not require that a receipt be issued, and it has been the administrative practice to issue a notice of acceptance of filing for the preliminary prospectus amendment. For the purposes of this Policy, a preliminary prospectus amendment MRRS decision document will evidence that, if applicable, the required receipts or notices of acceptance of filing have been issued by the principal regulator and the non-principal regulators.

(2) The preliminary prospectus amendment MRRS decision document will contain the following legend:

*This mutual reliance review system decision document evidences that receipts or notices of acceptance of filing of the regulators in each of (name of each jurisdiction in which materials have been filed and where the regulator has not opted out of the MRRS for the materials) have been issued.*

**10.4 Review Period for Preliminary Prospectus Amendments**

(1) If a preliminary prospectus amendment is filed before the principal regulator issues its comment letter relating to the preliminary prospectus materials, the principal regulator may be unable to complete its review of the preliminary materials and issue its comment letter within the time periods indicated in sections 5.2 and 5.3, as applicable. In this case, the principal regulator will use its best efforts to issue its comment letter on the later of the date that is five working days after the filing of the amendment and the original due date for the comment letter. Similarly, if a preliminary prospectus amendment is filed before the non-principal regulator completes its review described in section 5.2(2) and 5.3(1), the non-principal regulator may be unable to complete its review within the relevant time periods. In this case, the non-principal regulator will use its best

efforts to complete its review on the later of the date that is three working days after the filing of the amendment and the original due date for completing the review.

(2) If a preliminary prospectus amendment for a preliminary long form prospectus is filed after the principal regulator has issued its comment letter:

(a) the principal regulator will use its best efforts to review the materials and issue a comment letter within three working days of the date of the preliminary prospectus amendment MRRS decision document; and

(b) the non-principal regulators will use their best efforts to advise the principal regulator of any material concerns with the materials that, if left unresolved, would cause the non-principal regulator to opt out of the MRRS within ~~the later of:~~three working days of the date of the preliminary prospectus amendment MRRS decision document

~~(i) two working days of the date of receipt of the comment letter of the principal regulator relating to the amendment; and~~

~~(ii) the expiry of the time period indicated in section 5.2 for review by the non-principal regulator of the preliminary materials.~~

(3) If a preliminary prospectus amendment for a preliminary short form prospectus is filed after the principal regulator has issued its comment letter:

(a) the principal regulator will use its best efforts to review the materials and issue a comment letter within two working days of the date of the preliminary prospectus amendment MRRS decision document; and

(b) the non-principal regulators will use their best efforts to advise the principal regulator of any material concerns with the materials that, if left unresolved, would cause the non-principal regulator to opt out of the MRRS ~~by the later of:~~ within two working days of the date of the preliminary prospectus amendment MRRS decision document:

~~(i) 12:00 noon, Eastern time, on the working day following the date of issuance of the comment letter of the principal regulator relating to the prospectus amendment; and~~

~~(ii) the expiry of the time period indicated in section 5.3 for review by the non-principal regulator of the preliminary materials.~~

(4) The time periods in subsections (2) and (3) may not apply in certain circumstances if it would be more appropriate for the principal regulator and the non-principal regulators to review the amendment materials at a different stage of the review process. For example, the principal regulator and the non-principal regulators may wish to defer review of the amendment materials until after receiving and reviewing the filer's responses to comments already issued in respect of the preliminary materials.

**10.5 Review Period for Prospectus Amendments**

(1) If a prospectus amendment to a long form prospectus, including a prospectus for ~~a mutual~~an investment fund, is filed, the principal regulator will use its best efforts to review the materials and to issue a comment letter within three working days of the date of the receipt of the prospectus amendment, and the non-principal regulators will use their best efforts to advise the principal regulator of any material concerns with the materials that, if left unresolved, would cause the non-principal regulator to opt out of the MRRS within ~~two~~three working days of the date of the ~~issuance~~receipt of the ~~comment letter of the principal regulator~~prospectus amendment.

(2) If a prospectus amendment to a short form prospectus is filed, the principal regulator will use its best efforts to review the materials and to issue a comment letter within two working days of the date of the receipt of the prospectus amendment, and the non-principal regulators will use their best efforts to advise the principal regulator of any material concerns with the materials that, if left unresolved, would cause the non-principal regulator to opt out of the MRRS ~~by 12:00 noon, Eastern time, on the~~within two working ~~day following~~days of the date of ~~issuance of the comment letter of the principal regulator~~the receipt of the prospectus amendment.

**10.6 Conditions to Issuance of Prospectus Amendment MRRS Decision Document** - The principal regulator will issue a prospectus amendment MRRS decision document if:

1. all comments raised have been resolved to the satisfaction of the principal regulator and, if applicable, any non-principal regulator that has not opted out of the MRRS for the materials;

2. the principal regulator has determined that acceptable materials have been filed;

3. all non-principal regulators, other than the regulators in ~~New Brunswick,~~ Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut, have indicated in the SEDAR "Filing Status" screen that they are "Clear for First Amendment to Final" (or "Clear for Second Amendment to Final" or "Clear for Third Amendment to Final" as applicable) or have opted out of the MRRS for the filing by indicating "MRRS - Opt Out" in the SEDAR "Filing Status" screen; and

4. the filer has confirmed to the principal regulator in a letter accompanying the materials that, to the best of its knowledge and belief:

   (a) materials, including all required translations, have been filed with all non-principal regulators that have not opted out of the MRRS for the materials;

   (b) in respect of each jurisdiction in which the materials are filed, the filer has filed or delivered all documents required to be filed or delivered under the local securities legislation and is not subject to a cease trade order issued by a local securities regulatory authority;

   (c) if the amendment reflects the removal of an underwriter, the filer has confirmed to the principal regulator that in each jurisdiction in which the securities will be offered to purchasers, at least one underwriter that has signed the certificate is registered or has been exempted from the requirement to be registered; and

   (d) all necessary relief from applicable securities legislation or securities directions has been applied for and granted by the principal regulator and non-principal regulators.

**10.7 Form of Prospectus Amendment MRRS Decision Document**

(1) The securities legislation and securities directions in force in different jurisdictions impose different requirements on receipting or accepting amendments. The securities legislation and securities directions in force in certain jurisdictions require that a receipt be issued for any prospectus amendment, whereas the securities legislation and securities directions in force in other jurisdictions do not require that a receipt be issued, and it has been the administrative practice to issue a notice of acceptance of filing for the prospectus amendment. The securities legislation and securities directions in other jurisdictions require that a receipt be issued for a prospectus amendment only where the prospectus amendment is filed for the purpose of distributing securities in addition to the securities previously disclosed in the related prospectus. For the purposes of this Policy, a prospectus amendment MRRS decision document will constitute confirmation that, if applicable, the required receipts or notices of acceptance of filing have been issued by the principal regulator and the non-principal regulators.

(2) The prospectus amendment MRRS decision document will contain the following legend:

*This mutual reliance review system decision document evidences that receipts or notices of acceptance of filing of the regulators in each of (name of each jurisdiction in which materials have been filed and where the regulator has not opted out of the MRRS for the materials) have been issued.*

**10.8 Local Decision Document** - Despite the issuance of the MRRS decision document, certain non-principal regulators will issue concurrently their own decision documents for amendments. In the case of prospectus amendments, it is not necessary for a filer to obtain a copy of the local decision document before recommencing the distribution of its securities.

**10.9 Other Requirements**

(1) Filers are reminded that the securities legislation and securities directions in force in certain jurisdictions require that where an amendment has been filed for the purposes of distributing securities in addition to the securities previously disclosed in the prospectus, the additional distribution will not be proceeded with for a specified period of time.

(2) Filers are also reminded that the securities legislation and securities directions of certain jurisdictions provide that, except in certain circumstances with the written permission of a designated person, a distribution or additional distribution must not proceed until a receipt for a prospectus amendment is issued.

## APPENDIX A

## MATERIALS REQUIRED TO BE FILED UNDER NATIONAL POLICY 43-201

The attached lists of documents, as varied in accordance with the following guidance, are those required to be filed or delivered under each category of filing to which the Policy applies.

The following guidance applies to all filings of materials under the MRRS:

1. Where a filing is to be made in the province of Québec, a French language version of the following documents must also be filed:

   (a) the preliminary prospectus and the prospectus; and

   (b) any amendment to a preliminary prospectus and any amendment to a prospectus.

   The French language versions of all documents incorporated by reference, if not previously filed, must be filed at the time of filing of a preliminary short form prospectus.

2. The attached lists do not refer to the applicable filing and distribution fees required by the securities regulatory authorities. The filer should consult the fee schedules of the relevant securities legislation for the applicable fees.

   For filers that are permitted to file materials in paper form under National Instrument 13-101, *System for Electronic Document Analysis and Retrieval (SEDAR)*, the payment of fees should be made by cheque payable as follows:

   British Columbia - British Columbia Securities Commission
   Alberta - Alberta Securities Commission
   Saskatchewan - Minister of Finance
   Manitoba - Minister of Finance
   Ontario - Ontario Securities Commission
   Québec - Autorité des marchés financiers
   New Brunswick - ~~Minister of Finance~~New Brunswick Securities Commission
   Nova Scotia - Minister of Finance
   Prince Edward Island - Provincial Secretary
   Newfoundland and Labrador - Newfoundland and Labrador Exchequer Account
   Northwest Territories - Government of the Northwest Territories
   Yukon Territory - Government of Yukon
   Nunavut - Nunavut Securities Registry

   In all other cases, payment of filing fees should be transmitted electronically through SEDAR.

3. Additional filing requirements apply to certain types of offerings such as offerings using the shelf offering procedures (National Instrument 44-102), the post-receipt pricing procedures (National Instrument 44-103) or the multijurisdictional disclosure system (National Instrument 71-101). Reference should be made to the applicable provisions of national or local rules or policies for any additional filing requirements or procedures.

~~4. [Further filing requirements for British Columbia are contained in BC Policy 41-601.]~~

~~5. Further filing requirements for Alberta, for filings not filed in compliance with OSC 41-501 or NI 44-101, are contained in ASC Policy 4.7.~~

~~6. Further filing requirements for Québec are contained in local securities legislation and local securities directions.~~7. Where the attached requirements refer to personal information regarding directors, executive officers and promoters of the filer, the filer should provide, for each director and executive officer of the filer and for each promoter of the filer (or in the case where the promoter is not an individual, for each director and executive officer of the promoter) the following information for security check purposes:

   (i) full name (including any previous name(s) if any);

   (ii) position with or relationship to the issuer;

   (iii) employer's name and address, if other than the issuer;

(iv) full residential address;

(v) date and place of birth; and

(vi) citizenship.

For any of the above noted individuals with a residential address outside of Canada, the filer should provide the following additional information:

(i) previous address(es) (5 year history);

(ii) dates residing in foreign country;

(iii) height and weight;

(iv) eye colour;

(v) hair colour; and

(vi) passport nationality and number.

Where the offering is made under the provisions of NI 44-101, a completed authorization form as per Appendix A of NI 44-101, "Authorization of Indirect Collection of Personal Information" must be filed. Where the offering is made under the provisions of OSC 41-501 a completed Form 41-501F2 "Authorization of Indirect Collection of Personal Information" must be filed. Where the offering is made ~~in Québec~~ under the provisions of Q-28, a completed form as per Appendix A of Q-28, *Authorization of Indirect Collection of Personal Information,* must be filed.

~~Where Saskatchewan, Manitoba or Nova Scotia is principal regulator, a RCMP GRC Securities Fraud Information Centre Request Form #2674 (89-07) must be filed. In connection with the filing of an initial public offering prospectus: (i) where Québec is principal regulator, a Form 4 under the Regulation concerning securities made under the Securities Act (Québec) must be filed; and (ii) where British Columbia is principal regulator, the filer must file the personal information form required by BC Policy 41-601.~~

**PRELIMINARY OR PRO FORMA LONG FORM PROSPECTUS**

An issuer that files a preliminary prospectus or a *pro forma* prospectus pursuant to OSC 41-501 or~~, in Québec~~ pursuant to Q-28, shall file and/or deliver the documents required to be filed and/or delivered as set out in Section 13.2 of OSC 41-501 or~~, in Québec~~ as set out in Section 13.2 of Q-28, along with:

1. Filing fees; and

2. A letter to the principal regulator prepared in accordance with section 7.2.2 of the Policy.

Issuers filing prospectuses and pro forma prospectuses outside Québec in accordance with OSC 41-501 will satisfy requirements in other jurisdictions governing the form and content of a long form prospectus and the accompanying filings and deliveries to the Commissions. Issuers should consult local rules or orders for details.

~~Issuers not filing in accordance with OSC 41-501 or, in Québec pursuant to Q-28, should look to local requirements to determine documents to be filed and/or delivered but in all cases should include the items set out in #1 and #2 above.~~

## FINAL LONG FORM PROSPECTUS

An Issuer that files a final prospectus pursuant to OSC 41-501 or~~, in Québec~~ pursuant to Q-28, shall file and/or deliver the documents required to be filed and/or delivered as set out in Section 13.3 of OSC 41-501 or~~, in Québec~~ as set out in Section 13.3 of Q-28, along with:

1. Filing fees and other applicable fees including participation fees; and

2. A letter to the principal regulator prepared in accordance with section 7.4.4 of the Policy.

Issuers filing prospectuses and pro forma prospectuses outside Québec in accordance with OSC 41-501 will satisfy requirements in other jurisdictions governing the form and content of a long form prospectus and the accompanying filings and deliveries to the Commissions. Issuers should consult local rules or orders for details.

~~Issuers not filing in accordance with OSC 41-501 or, in Québec pursuant to Q-28, should look to local requirements to determine documents to be filed and/or delivered but in all cases should include the items set out in #1 and #2 above.~~

## PRELIMINARY SHORT FORM PROSPECTUS

An issuer that files a preliminary short form prospectus pursuant to NI 44-101 shall file and/or deliver the documents required to be filed and/or delivered as set out in Section 4.2 of that instrument along with:

1. Filing fees; and

2. A letter to the principal regulator prepared in accordance with section 7.2.2 of the Policy.

## FINAL SHORT FORM PROSPECTUS

An issuer that files a final short form prospectus pursuant to NI 44-101 shall file and/or deliver the documents required to be filed and/or delivered as set out in Section 4.3 of that Instrument along with:

1. Filing fees and other applicable fees including participation fees; and

2. A letter to the principal regulator prepared in accordance with section 7.4.4 of the Policy.

**AMENDMENTS TO PRELIMINARY PROSPECTUS AND PROSPECTUS (SHORT FORM AND LONG FORM)**

An issuer that files an amendment pursuant to OSC 41-501 or~~, in Québec~~ pursuant to Q-28, or pursuant to NI 44-101, shall file and/or deliver the documents required to be filed and/or delivered as set out in section 13.7 of OSC 41-501, section 13.6 of Q-28 or section 5.3 of NI 44-101, respectively, along with:

1. Filing fees;

2. A letter prepared in accordance with section 10.1(2) of the Policy, if applicable; and

3. A letter to the principal regulator:

   (a) for a preliminary prospectus amendment, prepared in accordance with section 10.2.2 of the Policy; or

   (b) for a prospectus amendment, prepared in accordance with section 10.6.4 of the Policy.

~~Issuers not filing in accordance with OSC 41-501 or, in Québec pursuant to Q-28, or NI 44-101 should look to local requirements to determine documents to be filed and/or delivered but in all cases should include the items set out in #1, #2 and #3 above.~~

**PRELIMINARY SIMPLIFIED PROSPECTUS AND ANNUAL INFORMATION FORM FILED UNDER NI 81-101**

1. Preliminary simplified prospectus

2. Preliminary simplified prospectus - blacklined

(where a new fund is being qualified by a separate prospectus but is to be part of an existing group of funds sold by prospectus, a blacklined version of the simplified prospectus should indicate any changes from the existing simplified prospectus for the group of funds)

3. Preliminary annual information form

4. Preliminary annual information form - blacklined
(where a new fund is being qualified by a separate prospectus but is to be part of an existing group of funds sold by prospectus, a blacklined version of the annual information form should indicate any changes from the existing annual information form for the group of funds)

5. Copy or draft of all material contracts for the new mutual funds

6. For a new mutual fund in a new mutual fund group, personal information regarding individuals acting as trustees and promoters, and directors and senior officers of the fund, trustee, manager and promoter. If the mutual fund is a member of a mutual fund family for which this type of information was previously provided, the information would be required only for those persons for whom the information was not previously provided by other members of the mutual fund family

7. Financial statements, if applicable

8. Filing fees

9. A letter to the principal regulator prepared in accordance with section 7.2.2 of the Policy

**PRO FORMA SIMPLIFIED PROSPECTUS AND ANNUAL INFORMATION FORM FILED UNDER NI 81-101**

1. Pro forma simplified prospectus
2. Pro forma simplified prospectus - blacklined to indicate all changes from previous simplified prospectus
3. Pro forma annual information form
4. Pro forma annual information form - blacklined to indicate all changes from previous annual information form
5. Copy or draft of all material contracts not previously filed
6. Personal information regarding individuals acting as trustees and promoters, and directors and senior officers of the fund, trustee, manager and promoter where this information has not previously been provided for these persons in connection with a previous filing of the mutual fund family
7. Compliance report required under Part 12 of National Instrument 81-102, *Mutual Funds*
8. Filing fees

## FINAL SIMPLIFIED PROSPECTUS AND ANNUAL INFORMATION FORM FILED UNDER NI 81-101

1. Final simplified prospectus
2. Final simplified prospectus - blacklined to show changes from preliminary or pro forma simplified prospectus, as the case may be
3. Final annual information form
4. Final annual information form - blacklined to show changes from preliminary or pro forma annual information form, as the case may be
5. Copy of all material contracts not previously filed
6. For new funds, audited financial statements if not previously filed
7. Auditors' consent letter re audited financial statements
8. Auditors' comfort letter re unaudited financial statements, if applicable
9. Consent of legal counsel or other experts
10. Certificate re proceeds of distribution in the jurisdiction (applicable to filings in B.C., Alberta, Ontario and Québec)
11. Filing fees
12. A letter to the principal regulator prepared in accordance with section 7.4.4 of the Policy

## AMENDMENT TO A SIMPLIFIED PROSPECTUS AND ANNUAL INFORMATION FORM FILED UNDER NI 81-101

1. Amendment to simplified prospectus
2. Amendment to simplified prospectus - blacklined (where amendment is an amended and restated simplified prospectus)
3. Amendment to annual information form
4. Amendment to annual information form - blacklined (where amendment is an amended and restated annual information form)
5. Copy of all material contracts not previously filed
6. Auditors' consent letter, if applicable
7. Auditors' comfort letter, if applicable
8. Consent of legal counsel and other experts, if applicable
9. Filing fees
10. A letter to the principal regulator prepared in accordance with section 10.6.4 of the Policy

## APPENDIX B

## EXAMPLES OF APPLICATIONS DEALT WITH UNDER NATIONAL POLICY 43-201

1. relief from financial statement and other requirements in a prospectus
2. relief from escrow requirements
3. applications relating to representations as to listing - however, because of the differences in local requirements, it may be easier to deal with these applications outside of the MRRS
4. requests for confidentiality of material contracts
5. NI 81-101 waiver applications
6. requests for confidential pre-filing of a prospectus for review purposes

## AMENDMENTS TO
## NATIONAL INSTRUMENT 51-101 *STANDARDS OF DISCLOSURE FOR OIL AND GAS ACTIVITIES*

### PART 1 AMENDMENTS TO NATIONAL INSTRUMENT 51-101

**1.1 Amendment** - National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* is amended by:

(a) in section 2.1.3, striking the phrase "except in British Columbia": and

(b) repealing section 3.6.

### PART 2 EFFECTIVE DATE

**2.1 Effective Date** - This amendment is effective •.

## AMENDMENTS TO MULTILATERAL INSTRUMENT 81-104 *COMMODITY POOLS*

### PART 1 AMENDMENTS TO MULTILATERAL INSTRUMENT 81-104

**1.1 Amendment** - Multilateral Instrument 81-104 *Commodity Pools* is amended by repealing section 8.6.

### PART 2 EFFECTIVE DATE

**2.1 Effective Date** - This amendment is effective •.