

Canada's 'passport' securities system represents a regulatory milestone, but one province is missing

Where's Ontario?

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The Council of Ministers of Securities Regulation (representing all provinces and territories, except Ontario) recently reached a historic milestone in the evolution of Canada's securities regulatory system. March 17, 2008, marked the implementation of what is known as "Passport Phase 2."

Passport Phase 2 is essentially a free-trade agreement, based upon the mutual recognition of regulatory systems among participating provinces and territories. It provides a single window of access to capital markets for public companies, and will soon do the same for registrants. A public company can now get a decision from the regulator in its home jurisdiction that will apply automatically across Canada, except in Ontario. These are real, practical improvements to Canada's securities regulatory system that remove impediments to internal trade and labour mobility within Canada. These impediments can raise business costs and reduce competition.

In addition, decisions made by one regulatory authority in respect of foreign issuers will be recognized across Canada, meaning that public companies from the United States and other countries will generally only have to comply with one law to gain access to all of Canada's capital markets. Ultimately, the mutual recognition mechanisms of the passport system are the most promising basis for international free trade in securities, which is currently being discussed with the United States and other G7 countries.

The passport system demonstrates an unprecedented level of co-ordination and consensus among governments and regulators in Canada to streamline and improve securities regulation. Although the concept is simple, it required a major overhaul of legislation and rules to harmonize the regulatory system across Canada including completely new, harmonized securities acts in some jurisdictions. Passport legislation has been designed to complement uniform rules developed by the Canadian Securities Administrators, including those governing general prospectus



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In securities regulation, the term "passport" refers to arrangements to recognize decisions by one regulator in other jurisdictions.

requirements and continuous disclosure requirements. It will also complement the new registration rule that is currently being developed.

While we have made very good progress, we could do better if Ontario joined our efforts. The Council of Ministers has been disappointed by Ontario's refusal to join the passport system. We believe the Ontario government's desire for a single se-

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curities regulator should not prevent all participants in Ontario's capital markets from enjoying the benefits of practical, meaningful reforms of the existing legal framework, like the passport system.

Passport jurisdictions have demonstrated their good faith by providing Ontario's public companies with a "one-way passport," so that decisions made by the Ontario Securities

Commission will be recognized by regulators in passport jurisdictions. If Ontario were to reciprocate, all market participants in Canada would share equally in the benefits of the passport system. While every market participant benefits from highly harmonized securities regulation across Canada, the council is concerned that those in the 12 passport jurisdictions are being denied the full benefits of the passport system and needlessly forced to deal with a second regulator because of Ontario's refusal to join the passport system.

Independent assessments have consistently ranked Canada's securities regulatory system as one of the best in the world. While the passport system is a major improvement, the Council of Ministers remains committed to a continuous process of regulatory reform and innovation. We are currently examining the fee structure and a variety of enforcement initiatives and are confident that additional improvements can and will be made.

Rather than striking yet another expert panel to examine the merits of a national regulator in an area of provincial jurisdiction, the Council of Ministers has urged the federal government to take action on improving criminal enforcement against securities fraud — an area falling primarily within federal responsibility. The recent Le Pan report described numerous problems with the Integrated Market Enforcement Teams established in 2003 under the direction of the RCMP, and we believe the federal government should focus its efforts on resolving those problems.

Meanwhile, the recent Norbourg case in Quebec illustrates the ability of regulators to act quickly to obtain effective sanctions for violations of provincial securities legislation.

It is clear that the passport system represents the future of securities regulation in Canada. We will continue to improve what is already an excellent system. We encourage Ontario to join us in this process to make Canada's securities regulatory system even stronger and more effective.

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