

**PROVINCIAL/TERRITORIAL COUNCIL OF
MINISTERS OF SECURITIES REGULATION
(Council)**

**PROGRESS REPORT
January 2008 to December 2008**

BACKGROUND

All provinces and territories, except Ontario, signed the 2004 *Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation* (MOU). The ministers responsible for securities regulation in MOU jurisdictions are members of the Council.

The MOU committed signatory jurisdictions to

- move ahead with a passport system for an improved securities regulatory framework,
- develop highly harmonized and streamlined securities laws,
- explore further options to consolidate and/or strengthen co-ordination and consistency of securities laws among provinces and territories, and
- explore, on an ongoing basis, new opportunities to strengthen the Canadian securities regulatory framework.

The MOU recognizes that securities regulation in Canada is a matter of provincial jurisdiction, and that the securities regulatory system requires constant innovation and reform to keep pace with the evolution of capital markets.

The Council established a Taskforce of provincial/territorial representatives to work with members of the Canadian Securities Administrators (CSA) to implement the passport system according to work plans approved by the Council. The Taskforce also coordinates ongoing policy and regulatory reforms among MOU jurisdictions.

The Council is committed to maintaining and enhancing the status of Canada's securities regulatory system, which is already ranked by the Organisation for Economic Co-operation and Development and the World Bank Group as one of the best in the world.

2008 RESULTS

2008 saw continued cooperation and coordination among MOU jurisdictions and the CSA to harmonize, modernize and reform the securities regulatory system.

A key securities regulatory milestone was achieved in 2008 with the implementation of Passport Phase Two being in effect for all but registrants beginning March 17, 2008. Passport Phase Two will be extended to registrants with the implementation of National Instrument 31-103 *Registration Requirements* (NI 31-103) in 2009.

The passport system is built on highly harmonized legislation passed by the MOU jurisdictions and complementary national rules developed by the CSA. MOU jurisdictions that have not yet introduced or implemented targeted Act amendments to support the new CSA national registration rule have committed to doing so by spring 2009.

Passport Phase Two significantly expands the single window of access to Canada's capital markets for domestic and by international issuers. It enables participants to clear a prospectus or obtain a discretionary exemption and, ultimately, to register as a dealer or adviser, by obtaining a decision from the securities regulator in their home province or territory and have that decision automatically apply in all other passport jurisdictions. Passport Phase Two also ensures that public companies are subject to only one set of harmonized continuous disclosure requirements in passport jurisdictions.

The move to a fully operational passport system in 2009 is the result of unprecedented level of co-ordination and consensus among provincial and territorial governments and the CSA to streamline and improve securities regulation, as evidenced by the volume of complementary legislative and regulatory reforms undertaken, in particular the new, highly harmonized *Securities Acts* passed by Prince Edward Island, Northwest Territories, Nunavut and Yukon.

Meetings, Consultations and Communications

The Council met with the Taskforce and CSA representatives in September 2008. At the invitation of the Council, the Ontario Minister of Finance attended the September Council meeting to discuss securities regulation and the full implementation of the passport system. At that meeting, the Council encouraged the Ontario Minister to harmonize their securities legislation and join the passport system to maximize benefits for all Canadian market participants.

The Council conducted two conference calls in May and December with the Taskforce.

In addition to regular conference calls and committee work, the Taskforce met in March and December. The Taskforce also met with Ontario officials and CSA representatives in August 2008.

Council ministers, senior officials and CSA representatives continued to publicly address inaccurate criticism of the passport system. A number of speeches have been posted on the Provincial/Territorial Securities Initiative website (www.securitiescanada.org) during 2007 and 2008. The 2008 additions were:

- Honourable Greg Selinger (Council Chair), "[Canada's 'passport' securities system represents a regulatory milestone, but one province is missing. Where's Ontario?](#)", Financial Post Opinion-Editorial article published on March 26, 2008; and,
- Bill Rice, Chair, Alberta Securities Commission, "[Canadian Securities Regulation: An Alberta Perspective in the National Regulator Debate](#)" - speech to the Knights of the

Round Table in Calgary on January 15, 2008. Mr. Rice's speech provided an Alberta perspective on the national single regulator debate.

CSA Activity

- The Council, the Taskforce and the CSA continue to work together to coordinate the harmonization, modernization and streamlining of regulatory requirements through complementary legislation and rules. CSA activities during 2008 are described in the attached appendix.

Securities Fraud Working Group

- In our 2007 Progress Report, we reported on the establishment of a Securities Fraud Enforcement Working Group (Working Group) to make various recommendations on how to improve securities fraud enforcement.
- In September 2008, the Council received an update on the status of six recommendations made by the Working Group that are being implemented.
- The Council will request regular status updates from the Working Group.

Free Trade and Mutual Recognition

- In March 2008, the United States Securities Exchange Commission (SEC) announced plans to enter into formal mutual recognition discussions with Canada and other foreign regulators (the European Commission and Australia).
- Informal discussions have been under way between the SEC and Canadian securities regulators for some time.
- On May 29, 2008, the CSA and SEC announced a schedule for the completion of a process agreement that would open the way for discussions of a potential U.S.-Canada mutual recognition arrangement and provides for the process agreement to be concluded by mid-June 2008. The CSA has approved the process agreement and is awaiting SEC approval.
- In August 2008 the SEC and Australia entered into a formal mutual recognition arrangement.
- The SEC is also pursuing mutual recognition arrangements with the European Union.
- Any eventual mutual recognition arrangement would be based upon a comparability assessment by the SEC and by the foreign authority of each other's securities regulatory regime.
- The CSA will provide the Council with regular progress updates.

Asset-Backed Commercial Paper (ABCP) and the Global Credit Crisis

- In August 2007, the market for approximately \$32 billion of third party ABCP in Canada was frozen (ABCP crisis).
- The ABCP crisis in Canada has been generally acknowledged to be a complex systemic failure with implications for the entire financial system, including central banks and regulators responsible for banking, insurance, pensions and securities.
- In October 2008, the CSA published a consultation paper, Consultation Paper 11-405 *Securities Regulatory Proposals Stemming from the 2007-08 Credit Market*

Turmoil and its Effect on the ABCP Market in Canada and is seeking public comment. The CSA deadline for public comment is February 16, 2009.

- The Council supports the work of the CSA and its response to events in the financial markets.
- The global credit crisis has demonstrated that the Canadian regulatory system works well and that there is not necessarily any correlation between the structure and performance of regulatory systems.
- The Council will monitor the comments received on the CSA proposals for dealing with the ABCP crisis contained in the CSA Concept Paper.

Harmonized Securities Transfer Legislation

- Provinces and territories are adopting highly harmonized securities transfer legislation (STAs), which markedly reduces cost and risk in the securities settlement system and improves the global competitiveness of Canadian capital markets. This legislation is recognized as being in the forefront internationally.
- STAs are in effect in British Columbia, Alberta, Saskatchewan, Manitoba, Newfoundland and Labrador and Ontario and Québec and New Brunswick have recently passed STAs.
- The remaining jurisdictions plan to introduce STAs in 2009.

International Financial Reporting Standards (IFRS)

- The mandatory date for changeover to IFRS for Canadian public issuers is January 1, 2011.
- On February 13, 2008, the CSA published Concept Paper 52-402 *Possible changes to securities rules relating to International Financial Reporting Standards* which contains guidance on the changeover to IFRS and received 42 comment letters during the public consultation period.
- On June 27, 2008, based on input received, the CSA updated their views on the early use of IFRS, the use of US GAAP, and reference to IFRS instead of Canadian GAPP.

FUTURE REFORMS

Going forward, other harmonized legislative changes will be brought forward as needed to ensure that MOU jurisdictions' legislative platforms remain responsive to the capital markets developments.

National Registration Reform

- The CSA plans to implement the national registration rule in 2009. The CSA has twice published the proposed national registration rule for public comment and has committed to finalizing the registration rule by the end of April 2009.
- All MOU jurisdictions will have in place the registration-related amendments to support the new national registration rule.
- The only thing standing in the way of the CSA implementing the national registration rule by mid-2009 is Ontario's lack of commitment to passing the draft registration proposals published for comment in February 2008 on a timely basis.

- Ontario's non-harmonized approach to legislation was strongly criticized by most commenters, variously describing the Ontario approach as regressive, out of touch and resulting in substantial uncertainty, a lack of transparency and increased cost and regulatory burden.

Harmonization Initiatives

- In 2008, Québec passed their *Derivatives Act* which is new comprehensive derivatives legislation.
- The Council asked the CSA to review existing derivatives legislation, including Québec new *Derivatives Act* and to provide recommendations to the Council to create harmonized legislation and rules across the country.

Independent Securities Tribunal (IST)

- In June 2007, the Council asked the Taskforce to examine the potential benefits of establishing an IST system to provide consistent decision-making in administrative enforcement of securities regulation across Canada.
- An IST working group of government officials has been struck and work is ongoing.

Fee Review

- Signatories to the 2004 MOU committed to examine the fee structure in the context of a passport system.
- At the September 2008 Council meeting, the CSA presented a passport fee proposal, which includes a proposed CSA issuer-fee calculator to improve the calculation of multijurisdictional transactions.
- The CSA fee proposal reflects feedback from a late 2007 CSA survey of SEDAR filing agents, issuers and users.
- The Council asked the CSA to continue developing the passport fee model and to report back to the Council in 2009.

Canadian Public Accountability Board (CPAB)

- CPAB was created in October 2003 to provide independent oversight of auditors of public companies in Canada and derives its authority from National Instrument 52-108 Auditor Oversight.
- In 2006, Québec and Ontario have passed separate and differing CPAB legislation.
- The Taskforce is currently developing a harmonized legislative model to support CPAB's auditor oversight role, which has been the subject of extensive stakeholder consultations.
- The proposed model was presented to the Council at the September 2008 Council meeting. The Council asked the Taskforce to continue to work towards reaching a harmonized approach.

REVIEWING PROGRESS

Ministers want to keep stakeholders informed of the progress that is being achieved in fulfilling their governments' commitments to maintain and enhance the status of

Canada's securities regulatory system, which is already ranked as one of the best in the world.

Previous years' annual progress reports, press releases and access to other relevant information can be obtained at www.securitiescanada.org.

Appendix - 2008 CSA Activity

Passport Interfaces

On January 25, 2008, the CSA published a notice introducing a new rule and review policies that outline how the next phase of the passport system will work in participating passport jurisdictions and how market participants will interface with Ontario.

Take-Over and Issuer Bids

On February 1, 2008, passport jurisdictions adopted a rule harmonizing and consolidating take-over and issuer bid regimes in all provinces and territories, other than Ontario.

Passport Phase Two Goes Operational

On March 17, 2008, Passport Phase Two came into effect in passport jurisdictions for prospectuses, exemptive relief, continuous disclosure, take-over and issuer bids.

Second Publication of Registration Rule

On February 29, 2008, the CSA published a revised version of the national registration rule for a second comment period, which expired May 29, 2008. The CSA received over 300 comment letters. On February 28, 2008, the CSA published CSA Staff Notice 31-103 to update stakeholders on the status of the proposed national registration rule. In the staff notice, the CSA indicated that they needed more time to develop the final proposal and anticipates finalizing the national registration rule by the end of April 2009, at which time the CSA expects to be in a position to provide a timetable for implementation, likely by the end of 2009. This delay will also have an impact on proposed consequential amendments to the national exemptions rule (NI 45-106).

Publication of draft Ontario registration proposals

Ontario published draft registration-related legislative proposals for comment concurrently with the republication of the proposed national registration rule – the comment period also expired on May 29, 2008. As Ontario intends to retain detailed registration requirements in its statute, this will result in a number of Ontario-only carve-outs in the national registration rule.

CSA Publishes Registration Policy and Passport System Amendments

On July 18, 2008, the CSA published proposed amendments to MI 11-102 that would establish a passport system for registration of dealers and advisors and a National Policy outlining the process for registration in multiple jurisdictions and how market participants would gain access to the Ontario market. The CSA anticipates implementing these initiatives at the same time as the national registration rule.

Recognition of New SRO

On June 1, 2008, the CSA recognized a new self-regulatory organization (SRO), the Investment Industry Regulatory Organization of Canada (IIROC), which results from the merger of the Investment Dealers Association of Canada (the IDA) and Market Regulation Services Inc. (RS).

New Certification Requirements

In August 2008, the CSA gave advance notice of implementation of a restated Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, related Forms and Companion Policy 52-109CP effective December 15, 2008. On November 28, 2008, the CSA announced all necessary Ministerial approvals had been received in time for implementation on December 15, 2008.

New Executive Compensation Disclosure Form

In September 2008, the CSA published a new Form 51-102F6 Statement of Executive Compensation, which will come into effect on December 31, 2008 and will apply to financial years ending on or after December 31, 2008.

Point of Sale Disclosure Framework for Mutual Funds and Segregated Funds

On October 24, 2008, the Joint Forum of Financial Market Regulators published for public comment a proposed framework for a more meaningful and effective disclosure regime for mutual funds and segregated funds. The public comment period for proposed National Instrument 81-406 *Point of Sale Disclosure for Mutual Funds and Segregated Funds* expires on December 23, 2008.

New Corporate Disclosure Rule

On December 19, 2008, the CSA published for an extended 120 day comment period a new national policy on corporate governance practices and a new national rule on disclosure of corporate governance practices to replace the existing rule and policy. The public comment period for the restated National Instrument 58-101 *Disclosure of Corporate Governance Practices* expires on April 20, 2009.

New Insider Trading Rule

On December 19, 2008, the CSA published new insider reporting requirements and exemptions for insiders of reporting issuers. The public comment period for the proposed National Instrument National Instrument 55-104 *Insider Reporting Requirements and Exemptions* expires on March 19, 2009.