

# PROVINCIAL/TERRITORIAL COUNCIL OF MINISTERS OF SECURITIES REGULATION ANNUAL PROGRESS REPORT

January 2014 to December 2014

## BACKGROUND

Under the 2004 *Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation* (2004 MOU), the Provincial-Territorial Council of Ministers of Securities Regulation (Council) and their securities regulators committed to harmonize, modernize and reform the Canadian securities regulatory system. This commitment resulted in the implementation of a fully operational passport system in 2009. The passport system has demonstrated an unprecedented level of cooperation, coordination and consensus among governments to streamline securities regulation in Canada.

All provinces and territories, except Ontario, signed the 2004 MOU.

## 2014 DEVELOPMENTS

### Cooperative Capital Markets Regulatory System

On September 8, 2014, the Governments of Canada, Ontario, British Columbia Saskatchewan and New Brunswick released a signed *Memorandum Of Agreement Regarding The Cooperative Capital Markets Regulatory System* (2014 Memorandum Of Agreement) and draft federal and provincial legislation to create a Cooperative Capital Markets Regulatory System (CCMR) among those jurisdictions. Prince Edward Island joined the CCMR initiative on September 30, 2014.

Alberta, Québec and Manitoba jointly oppose the CCMR initiative, preferring a provincially-led approach instead. The other jurisdictions continue to evaluate their options.

### The Council and Next Steps

The Council consists of ministers responsible for securities regulation in Alberta, Manitoba, Québec, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut. While British Columbia, Saskatchewan, New Brunswick and Prince Edward Island have not formally withdrawn from the 2004 MOU, they are subject to the terms and conditions under the 2014 Memorandum of Agreement, including a provision that all prior and current agreements and understandings related to the creation of a capital markets regulatory authority are superseded by the 2014 Memorandum of Agreement.

The Council recognizes that continued improvements are needed to ensure a well-functioning, effective and efficient securities regulatory system that meets the needs of all provinces and territories as well as the expectations of investors.

The members of the Council have worked together in developing an alternative provincial-territorial cooperative framework to the CCMR initiative. The *Partnership*

*Agreement For Securities Regulation* (Partnership Agreement) builds on the strengths of the passport system and commits participating jurisdictions to work closely together in partnership to further improve securities regulation.

Key elements of the Partnership Agreement include:

- a coordinated legislative process to maintain and enhance harmonized securities legislation and regulation, while preserving the flexibility to accommodate regional differences and innovation;
- improving the effectiveness of the Council;
- strengthening collaboration and information-sharing among all provincial and federal entities with a financial stability mandate to enhance the identification and reduction of systemic risks;
- improving administrative adjudication;
- improving the enforcement of criminal and quasi-criminal laws relating to securities market misconduct; and,
- strengthening provincial-territorial participation in international forums as part of Canadian delegations.

Alberta, Québec and Manitoba have agreed to sign the Partnership Agreement and supporting Action Plan. Once the Partnership Agreement has been signed, the Partnership Agreement and related Action Plan will be posted on the Council website. The remaining provinces and territories will be invited to participate in the Partnership Agreement.

The Council is prepared to work with the federal government to improve the level of collaboration among existing regulatory bodies to improve the regulation of the Canadian financial sector and has already extended such an invitation to the federal Minister of Finance. The Council is also willing to identify opportunities for cooperation and coordination to further improve the already highly-regarded Canadian securities regulatory system while respecting each other's jurisdiction.

## **2014 Accomplishments**

2014 saw the continued coordination and cooperation among Council members and their regulators to improve the Canadian securities regulatory system and to assist Canada in meeting its international commitments.

The members of the Canadian Securities Administrators (CSA) continue to make progress on initiatives outlined in the CSA 2013-16 Business Plan. Additional information on the initiatives outlined in the CSA Business Plan can be obtained at [www.securities-administrators.ca](http://www.securities-administrators.ca). In addition, members of the CSA also continued to work collaboratively on harmonized policies, rules and requirements, which are highlighted in the Appendix.

## Progress of G-20 Commitments

### *Regulation of Designated Rating Organizations*

- In April 2012, provincial and territorial securities regulators adopted National Instrument 25-101 *Designated Rating Organizations*, which sets out a regulatory framework for the oversight of credit rating organizations in Canada. The national instrument is consistent with international regimes for credit rating organizations.
- Most Canadian jurisdictions now have legislation in place to support a regulatory regime for the oversight of credit rating organizations in Canada.
- Newfoundland and Labrador and Nunavut are committed to bring credit rating organizations-related legislative amendments forward by 2015 at the earliest.

### *Derivatives Regulation*

Work continues on the harmonization of derivatives regulation across the country.

- A number of Canadian jurisdictions, including Alberta, New Brunswick and Nova Scotia in 2014, have passed legislative amendments similar to amendments already passed by Manitoba, Saskatchewan, Quebec, and Ontario to implement a regulatory framework for over-the-counter derivatives, including the mandatory clearing of standardized OTC derivatives through a central counterparty.
- Jurisdictions are committed to bring forward necessary derivatives-related legislative amendments to implement a harmonized framework for derivatives regulation across Canada.

### *International Financial Reporting Standards (IFRS)*

- Most Canadian jurisdictions have passed IFRS-related amendments to support Canada's changeover to IFRS in 2011.
- Newfoundland and Labrador and Nunavut have committed to bringing these legislative amendments forward in 2015 at the earliest.

## Other Securities-Related Initiatives

### *Incorporation of Individual Representatives of Registered Dealers and Advisers*

- In 2014, Alberta passed (but has not yet proclaimed) incorporation-related legislative amendments, joining Saskatchewan (passed but not yet proclaimed), in giving representatives of registered dealers or advisers the option of providing securities-related services through a professional corporation, without compromising investor protection.
- Jurisdictions have committed to move forward with harmonized amendments to support a consistent approach to the incorporation project. For its part, Quebec does not plan to adopt these amendments.

### *Canadian Public Accountability Board (CPAB)*

- CPAB provides independent oversight of auditors of Canadian public companies and derives its authority from National Instrument 52-108 *Auditor Oversight*.

- Most Canadian jurisdictions, including Alberta in 2014, have passed CPAB-related legislative amendments to provide CPAB with the powers and protections necessary to fulfil its mandate to ensure the integrity of financial reporting by public companies in Canada.
- Newfoundland and Labrador, Nova Scotia and Nunavut have committed to bring forward harmonized CPAB-related legislative amendments by 2015 at the earliest.

### *Gender Equality*

- In October 2014, securities regulators in Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Northwest Territories, and Nunavut adopted new disclosure requirements for non-venture issuers in those jurisdictions relating to gender diversity on boards and in executive officer positions and board renewal mechanisms.

### Investor Protection

The Council and the CSA continue to focus on enhancing investor protection. These enhancements range from prohibiting fraudulent, manipulative and misleading practices to a variety of mechanisms dealing with investor education, effective disclosure and market oversight. Examples include:

#### *CSA 2013-16 Business Plan- Investor Protection Initiatives*

- The CSA continue to make progress on investor protection initiatives identified in its 2013-16 Business Plan, which include improving the complaint resolution process for clients of registered dealers and registered advisers.

### *Secondary Market Civil Liability*

- In February 2014, a five member panel of the Ontario Court of Appeal released its decision in three securities class action cases concerning the effect of a plaintiff obtaining leave to commence an action for civil liability for secondary market disclosure under the Ontario *Securities Act*.
- The Ontario Court of Appeal determined that the parties and the court will not be subject to the limitation period while a plaintiff is seeking the required leave to launch a statutory action under the secondary market civil liability regime.
- In August 2014, the Supreme Court of Canada granted leave to appeal on the Ontario *Securities Act* limitations issue.
- On February 2, 2015, the Supreme Court of Canada heard the appeals of the three Ontario-based class action cases, but has not yet released its decision in these matters.
- Securities regulators will review the Supreme Court of Canada's decision once it is released to determine what, if any, legislative amendments will be required.

### *Point of Sale Disclosure Project*

The CSA is implementing the Point of Sale (POS) disclosure project in three stages.

#### Stage 1

- Stage 1 (implemented January 1, 2011) established a Canada-wide disclosure regime for mutual funds based on the use of the new Fund Facts disclosure document.

#### Stage 2

- Stage 2 (implemented June 13, 2014) requires delivery of a Fund Facts disclosure document within two days of buying a mutual fund and permits the delivery of the Fund Facts document to satisfy the current prospectus delivery requirements under securities legislation. The prospectus will continue to be available to investors upon request.
- Most Canadian jurisdictions have already amended their legislation to support Stage 2 of the POS disclosure project. Newfoundland and Labrador and Nunavut have committed to follow suit with Stage 2-related legislative amendments in 2015 at the earliest.

#### Stage 3

- Currently, a Fund Facts document is required to be delivered to investors within two days of buying a mutual fund. Scheduled to come into effect on May 30, 2016, Stage 3 of the project related to mutual funds will require the pre-sale delivery of the Fund Facts document to a purchaser before a dealer accepts instruction for the purchase of a mutual fund. Pre-sale delivery of the Funds Fact document will provide investors with the key information about the mutual fund prior to their investment decision, helping to bridge the information gap.
- As part of the third stage of the project, the CSA is developing a summary disclosure document specifically for exchange-traded mutual funds and its delivery. The summary disclosure document will be similar to the Fund Facts document currently in place for mutual funds and segregated funds.
- Alberta recently passed legislative amendments to support Stage-3 related amendments for exchange-traded mutual funds. Manitoba already has the necessary legislative authority in place. The remaining jurisdictions have committed to follow suit in 2015 at the earliest.

### **REVIEWING PROGRESS**

Ministers are committed to keeping stakeholders informed of the progress being achieved in fulfilling their governments' commitments to maintain and enhance the status of Canada's securities regulatory system, which is consistently ranked as one of the best in the world.

Previous Council annual progress reports, Council communiqués, and other relevant securities-related information can be obtained at [www.securitiescanada.org](http://www.securitiescanada.org).

## Appendix: 2014 Canadian Securities Administrators (CSA) Activity

2014	CANADIAN SECURITIES ADMINISTRATORS INITIATIVES
January	<ul style="list-style-type: none"> <li>– <b>Short-term Debt and Securitized Products Changes:</b> On January 23, 2014, the CSA published for comment amendments relating to short-term debt prospectus exemption in National Instrument 45-106 <i>Prospectus and Registration Exemptions</i>. The proposals include a new prospectus exemption for short-term securitized products (primarily asset-backed commercial paper or ABCP) and amendments to the short-term prospectus exemption to address the prospectus-exempt distribution of short-term debt (typically corporate commercial paper). The amendments reflect a tailored approach to differing investor protection and systemic risk concerns for Canadian commercial paper and ABCP. The comment period ended April 23, 2014.</li> </ul>
February	<ul style="list-style-type: none"> <li>– <b>Changes to the Accredited Investor and Minimum Amount Investment Prospectus Exemptions:</b> On February 27, 2014, the CSA published for comment amendments to the accredited investor prospectus exemption and the minimum amount investment prospectus exemption in National Instrument 45-106 <i>Prospectus and Registration Exemptions</i>. The proposed amendments include a new risk acknowledgement form for individual accredited investors and restricting the minimum amount investment prospectus exemption to distributions to non-individual investors. The CSA proposes no changes to the income or asset thresholds used in the definition of accredited investor at this time. The proposed amendments stem from a comprehensive review by the CSA that involved stakeholder consultations across Canada. The comment period ended May 28, 2014.</li> </ul>
March	<ul style="list-style-type: none"> <li>– <b>Crowdfunding Exemptions Proposed:</b> On March 20, 2014, certain CSA jurisdictions (Québec, Saskatchewan, Manitoba, Nova Scotia and New Brunswick) published for comment crowdfunding exemptions to facilitate capital raising for all issuers. These jurisdictions propose an integrated crowdfunding prospectus exemption (with crowdfunding portal requirements) and a start-up crowdfunding prospectus and registration exemption. Also local notices for comment were issued by the Ontario Securities Commission related to the integrated crowdfunding prospectus exemption and by British Columbia Securities Commission for the start-up crowdfunding prospectus and registration exemption. While the ASC is not participating in the proposal, it will be considering the public comments. The comment period ended June 18, 2014.</li> </ul>
May	<ul style="list-style-type: none"> <li>– <b>Streamlined Disclosure for Venture Issuers:</b> On May 22, 2014, the CSA published for comment proposed amendments to disclosure and corporate governance requirements for venture issuers. The CSA proposes to amend existing rules and policies, which include National Instrument 51-102 <i>Continuous Disclosure Obligations</i> and National Instrument 41-101 <i>General Prospectus Requirements</i>, rather than implementing a new disclosure regime for venture issuers as initially proposed. The proposed amendments are intended to make disclosure requirements for venture issuers more suitable and manageable for issuers at their stage of development, and to reflect the needs and expectations of investors. The comment period ended August 20, 2014.</li> </ul>

2014	<b>CANADIAN SECURITIES ADMINISTRATORS INITIATIVES</b>	
June		<ul style="list-style-type: none"> <li>- <b>Investment Fund Rules Modernized:</b> On June 19, 2014, the CSA published final amendments to National Instrument 81-102 <i>Mutual Funds</i> and related consequential amendments as part of the CSA's Modernization of Investment Fund Product Regulation Project. The objective of this phase of the project is to address market efficiency, investor protection and fairness issues stemming from regulatory regimes that apply to publicly offered mutual funds and non-redeemable investment funds (including exchange-traded investment funds). The amendments came into force on September 22, 2014, and are subject to certain transition periods.</li> </ul>
October		<ul style="list-style-type: none"> <li>- <b>New Disclosure Requirements for Gender Diversity:</b> On October 15, 2014, securities regulators in Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Northwest Territories, and Nunavut adopted new disclosure requirements for non-venture issuers in those participating jurisdictions relating to gender diversity on boards and in executive officer positions and board renewal mechanisms. Amendments to National Instrument 58-101 <i>Disclosure of Corporate Governance Practices</i> and related form came into force on December 31, 2014. The disclosure regime changes are not based on a mandated adoption of formal diversity policies or targets. The new requirements will not apply to non-venture issuers in Alberta, British Columbia, Prince Edward Island and the Yukon.</li> </ul>
December		<ul style="list-style-type: none"> <li>- <b>Improved Mutual Funds Disclosure:</b> On December 11, 2014, the CSA published final amendments to National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i> to require all dealers that sell mutual funds to deliver a Fund Facts document prior to the purchase of a mutual fund by investors. Pre-sale delivery of a Fund Facts document is scheduled to come into effect on May 30, 2016 to allow industry stakeholders to update their systems and develop compliance policies and procedures. This change will bring Canada in line with global regulatory standards.</li> </ul>