

Provincial/Territorial Council of Ministers of Securities Regulation

Progress Report: Achieving Commitments in the *Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation*

November 16, 2005

RESULTS ACHIEVED IN 2005

Background

Governments from twelve provinces and territories have entered into *A Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation* (MOU). Québec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut are signatories to this MOU and ministers responsible for securities regulation in these jurisdictions are members of the Provincial-Territorial Council of Ministers of Securities Regulation.

The MOU represents a formal and unprecedented commitment to move ahead with a passport system for an improved securities regulatory framework, to develop highly harmonized securities laws, simplified where appropriate, and to explore further options to consolidate and/or strengthen co-ordination and consistency of securities laws among provinces and territories, including a commitment to explore, on an ongoing basis, new opportunities to strengthen the Canadian securities regulatory framework.

The MOU, and accompanying Action Plan, contained one key commitment for 2005: implement the “passport” system of securities regulation. Proposed timing for completion was August 1, 2005.

Other key commitments in the MOU include:

- develop and implement highly harmonized securities laws, simplified where appropriate, by the end of 2006
- complete a fee review to ensure that the fee structure is consistent with the concept of a passport system by the end of 2006
- by the end of 2007, explore options for further reform to consolidate and/or strengthen co-ordination and consistency of securities law among provinces that would respect individual provincial/territorial responsibilities for securities regulation.

A Taskforce, chaired by Alberta and made up of representatives from provincial/territorial governments and their regulators, has been working to implement an initial passport system and is beginning work on development of highly harmonized, streamlined and simplified securities laws.

2005 Implementation of Passport System

The passport system was implemented by regulators through a rule (Multilateral Instrument 11-101: *Principal Regulator System*) and related rule and policy changes effective September 19, 2005. The passport system gives market participants access to capital markets in multiple jurisdictions by dealing with the regulator and the law of its principal jurisdiction. A market participant's principal regulator is typically the jurisdiction where its head office is located.

This initial passport system is limited to those areas where there is sufficient harmonization for provinces to accept market participants from another jurisdiction on the basis that they are subject to the laws of that jurisdiction. These areas include:

Prospectuses: For most types of prospectuses, issuers must comply with form and content requirements in the principal jurisdiction, but are exempt from form and content requirements in the non-principal jurisdictions if they file prospectuses, which in most cases is done electronically through SEDAR, and deliver prospectuses to investors as required in all jurisdictions.

Prospectus discretionary relief: Issuers need only obtain relief from the prospectus form and content requirements of their principal jurisdiction.

Continuous disclosure requirements: Issuers are exempt from the continuous disclosure requirements in the non-principal jurisdictions if they provide in those jurisdictions the same continuous disclosure as they provide in their principal jurisdiction. In addition, issuers need only obtain discretionary relief from continuous disclosure requirements in their principal jurisdiction.

Registration: The Canadian Securities Administrators (CSA) implemented a National Registration System (NRS) in April 2005. Because this system was new, widely consulted on, and very similar to the concept of a passport system, Ministers supported this system as a first step to establishing a passport system for registration. The NRS exempts registrants and prospective registrants from the fitness requirements of each non-principal jurisdiction if they meet the fitness requirements of their principal jurisdiction, making it easier for firms and their sales representatives to become registered in multiple jurisdictions.

Jurisdictions participating in the passport system provide registrants with the benefit of an additional exemption: A registrant may be exempted from registering in a new jurisdiction when an existing client moves to that jurisdiction and when the registrant has few eligible clients and a small amount of assets under management there. This mobility exemption removes an irritant for registrants and their clients.

Because the Ontario Securities Commission (OSC) did not adopt MI 11-101, the rule used to implement the passport system, Ontario-based issuers and registrants are not able to take advantage of the passport system exemptions. An issuer that has a principal regulator other than the OSC must comply with Ontario securities laws to the extent that it participates in Ontario's capital markets. The OSC participated with regulators in other jurisdictions to introduce complementary amendments to mutual reliance review policies and practices to ensure that the most seamless system possible is in place.

Legislation to Facilitate the Passport System

While the reforms implemented in September 2005 will provide noticeable benefits to issuers and registrants and are an important first step, Ministers understand the need to go further. Jurisdictions need the legislative authority to be able to move to a passport system that is fully consistent with the concept in the MOU. Once jurisdictions have such legislation in place, the passport system can be strengthened to provide an even more streamlined and seamless system. It is also anticipated that, as more areas become highly harmonized, the scope of the passport system can be expanded. Some provinces (Québec, Nova Scotia and Alberta) have already adopted legislation to facilitate implementation of a stronger passport system, and other key provinces are expected to introduce such legislation no later than Spring 2006.

The MOU contemplates that the passport system will be implemented through a variety of tools, including mutual recognition, legal delegation or a combination of both, as one approach may work best in certain areas of regulation but less optimally in other areas.

Under mutual recognition, participating jurisdictions would recognize that a market participant that complies with, files document under and/or receives approvals respecting market access requirements with one jurisdiction is in compliance with, or exempt from, similar requirements in other jurisdictions. Through legal delegation, participating jurisdictions would delegate powers to make decisions to one principal jurisdiction for a market participant. New passport tools being provided through legislative amendments include the ability to:

- exempt a person, company, security or trade from the provisions of a jurisdiction's securities laws based on compliance with requirements of another province or territory,
- adopt decisions of a securities regulator in another province or territory without providing a hearing, and
- delegate duties, powers or functions to or accept delegation from another province or territory.

2005 Harmonization and Simplification of Securities Laws

Further harmonization was achieved to complement the passport system. In September 2005, the CSA implemented a national exemption rule that consolidated and harmonized the prospectus and registration exemptions in existing securities legislation and rules. The CSA also made changes to expedite the review process for discretionary applications. These harmonizing and streamlining initiatives are intended to make the exemption regimes across the various jurisdictions simpler and easier to understand.

In addition, while jurisdictions participating in the passport system recognized that absolute uniformity of securities laws was not a prerequisite for the passport system to be implemented, the consensus was that the passport system should be based on areas where securities laws are highly harmonized. Accordingly, some important aspects of securities rules were harmonized at the time the passport system was implemented under MI 11-101. For example, British Columbia adopted MI 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, while other participating jurisdictions accepted that British Columbia issuers would be subject only to that province's audit committee rule (provided that this is disclosed to investors). Also, the CSA are developing simpler business acquisition reporting requirements with the objective of making these requirements the same across Canada.

GOING FORWARD

Further Strengthening the Passport System

Once in place, the legislation to facilitate the passport system will allow provinces to build on the reforms implemented in 2005 to provide a stronger, more expansive passport system. The passport system will be strengthened to make use of the broader delegation and/or mutual recognition powers provided through the legislative amendments and expanded to include additional areas of securities laws as they become more highly harmonized.

The passport system, premised on mutual recognition and legal delegation powers and underpinned by highly harmonized and simplified securities laws, is expected to evolve over time and represents a unique way to provide participants with a single window of access to Canada's capital markets. The ability to deal with only one regulator and one set of laws for a host of regulatory approvals and decisions has the potential to enhance Canada's regulatory system to make it one of the most streamlined and efficient in the world, while maintaining very high standards of investor protection.

Highly Harmonized and Simplified Securities Laws

Ministers are committed to making significant progress on further harmonizing and streamlining securities laws (which includes legislation, regulations and rules) in 2006. The objective is to develop highly harmonized securities laws, simplified where

appropriate, that are necessary to maintain or enhance investor protection and promote the efficiency of capital markets.

The guiding principles for this project are:

- Ensuring the highest level of investor protection;
- Making sure markets are competitive;
- Ensuring the regulatory response is proportionate to the need and cost;
- Increasing the flexibility and cost effectiveness of securities regulation; and
- Providing sufficient oversight and accountability.

It is anticipated that, in 2006, key rules and areas of legislation that are currently not well harmonized and/or simplified will be targeted as priorities for harmonization and simplification. The CSA will play an important role in this regard, particularly with respect to harmonization and simplification of rules. The focus will be on changes that will provide the greatest benefit to issuers and registrants. It is expected that the most significant issues faced by stakeholders will be addressed on this priority basis. The CSA will consult with stakeholders through their normal processes on proposed changes, and Ministers or their taskforce may hold additional consultation on key items, to ensure that the public is aware of and providing feedback on this important project.

Fee Review

Ministers intend to move forward with a fee review as committed to under the MOU. It is anticipated that the structure of fees and the way fees are collected will be examined. As stated in the MOU, it is recognized that jurisdictions will retain the authority to set and collect fees. However, work will commence on addressing the principles of fee collection that would apply under a full passport system.

Investor Protection

The MOU states that, under the passport system, existing investor protections will be maintained or enhanced and investors will continue to be able to sue a market participant in the investor's own jurisdiction. Although in some instances non-principal jurisdictions may rely on the principal regulator to take necessary enforcement measures, the passport system was designed with the intent to retain a regulator's ability to effectively enforce securities laws in its own jurisdiction.

Going forward, investor protection is a guiding principle in the highly harmonized and simplified securities laws project. Regulatory requirements under consideration during the course of this project will be examined to ensure that they are designed to provide the highest reasonable level of investor protection. In addition, enhanced investor protection through expanded civil liability provisions and increased maximum penalties for contraventions of securities laws are being considered, in jurisdictions in which they are not already in place, for legislative reform in 2006.

Leadership for Reform

Governments participating in the MOU will continue to provide leadership through the Provincial-Territorial Council of Ministers of Securities Regulation to ensure that the commitments in the MOU are met in a timely way. Ministers last met on September 29, 2005 to review progress and approve the work planned for the passport system and highly harmonized and simplified securities laws for the coming year.

Ministers are committed to working together on an ongoing basis to ensure that the highest standards of investor protection are effectively and consistently applied. Honourable Shirley McClellan, Alberta's Deputy Premier and Minister of Finance, will continue to act as Chair of the Council, supported by other members of the executive including Honourable Michel Audet, Québec's Minister of Finance, Honourable Greg Selinger, Manitoba's Minister of Finance and Honourable Bradley Green, Q.C., New Brunswick's Minister of Justice and Attorney General.

Reviewing Progress

Ministers want to keep stakeholders informed of the progress that is being achieved. Press releases and access to other relevant information can be obtained at www.securitiescanada.org. The Council will ensure a review of the passport system is conducted to assess its effectiveness after three years of operation. An annual progress report will be conducted and posted on the website.