

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

**ANNUAL PROGRESS REPORT
January 2007 to December 2007**

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 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.

The Council established a Taskforce of provincial/territorial representatives, chaired by Alberta, 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 first phase of the passport system was implemented in September 2005. Its scope was limited by a lack of harmonized legislation which is being addressed under the next phase (Passport Phase Two). Passport Phase Two is expected to be implemented during 2008 as the necessary legislative amendments are enacted and national instruments are implemented in all participating jurisdictions.

Passport Phase Two will significantly expand the single window of access to Canada's capital markets. It will enable market participants to clear a prospectus, register as a dealer or adviser, or obtain a discretionary exemption from their principal regulator and have that clearance, registration or exemption apply in all other participating jurisdictions. It will also ensure that reporting issuers are subject to only one set of harmonized continuous disclosure requirements.

2007 RESULTS

2007 saw continued cooperation and coordination among MOU jurisdictions and the CSA to harmonize, modernize and reform the securities regulatory system. This cooperation and coordination is evident in the agreement of all MOU jurisdictions and the CSA on the substance

and policy of Passport Phase Two and the volume of complementary legislative and regulatory reforms undertaken.

Meetings, Consultations and Communications

The Council met with the Taskforce and CSA officials in June 2007. At the invitation of the Council the Ontario Minister of Government Services attended the June Council meeting. Council members also met in June with the federal Minister of Finance to discuss securities regulation. The Council conducted two conference calls in July and November with the Taskforce.

In addition to regular conference calls and committee work, the Taskforce met with CSA representatives and with Ontario officials in April and August.

Ministers, senior officials and CSA representatives delivered speeches to address inaccurate criticism of the passport system. A number of these speeches have been posted on the Provincial/Territorial Securities Initiative website (www.securitiescanada.org) including:

- Doug Hyndman, Chair, B.C. Securities Commission - "Separating Fact from Fiction: Canadian Securities Regulation in the 21st Century" - speech to the Economic Club of Toronto - September 19, 2007.
- Monique Jérôme-Forget, Minister of Finance, Québec - "The Passport Securities System" - speeches to the International Finance Club of Montreal on September 17, 2007, the Investment Funds Institute of Canada (Toronto) on October 3, 2007 and the Rendez-vous de l'Autorité (Montreal) on October 15, 2007.

The Chair of the Council published an article in the Financial Post on October 26, 2007, which is also posted on the website.

Highly Harmonized Securities Laws

- Passport Phase Two will rely upon harmonized legislation in two crucial areas:
 - 1) “passport tools”— to enable a decision by the principal regulator to automatically be effective in all participating jurisdictions; and
 - 2) “targeted Act amendments”—to harmonize and modernize significant portions of existing *Securities Acts* to support the expanded use of national instruments and the passport system.
- Four jurisdictions have developed modern, highly harmonized *Securities Acts* to replace their existing legislation. These new Acts (which include passport tools and targeted Act amendments) were enacted in Prince Edward Island and Yukon during 2007 and are awaiting introduction in Northwest Territories and Nunavut in spring 2008.
- All other participating jurisdictions have now implemented “passport tools” amendments.
- Most targeted Act amendments have now been passed in all other participating jurisdictions. Registration-related amendments to support the new national registration system are planned for spring 2008 in Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut.

Passport System Rules

- In March 2007, the CSA, except the Ontario Securities Commission (OSC), published proposed National Instrument 11-102 *Passport System* (NI 11-102) as the mechanism for implementing Passport Phase Two across Canada.
- On the same date that the CSA published proposed NI 11-102, the OSC issued OSC Notice 11-904 stating that the OSC would not adopt the proposed rule and that the Ontario government had no plans to introduce statutory amendments to give the OSC rule-making powers to implement the passport system.
- In June 2007, the Council agreed to a “one-way passport” interface that will allow Ontario market participants to access capital markets across Canada by dealing only with the OSC. The Council recognizes that the one-way passport treats Ontario-based market participants more favourably than those based in passport jurisdictions (who must still deal separately with the OSC) but the Council’s objective is simply to maximize the benefits of the passport system across Canada.
- In August 2007, the CSA published the proposed interface mechanisms together with two uniform policies dealing with passport processes for prospectuses and exemptive relief applications. A third uniform policy dealing with registration applications is expected to be published for comment in early 2008.
- Passport Phase Two will be implemented in stages during 2008, commencing with the implementation of MI 11-102 *Passport System*, NI 41-101 *General Prospectus Requirements* and MI 62-104 *Take-Over Bids and Issuer Bids*.

CSA Activity

The Council, the Taskforce and the CSA continue to work together to coordinate the harmonization and streamlining of regulatory requirements through complementary legislation and rules. During 2007, the CSA published an extensive number of uniform rules, forms and policies, which are detailed in the attached appendix.

Investor Protection

- Harmonized secondary market civil liability regimes are now in effect in British Columbia, Alberta, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador.
- Secondary market civil liability provisions have been passed but not yet proclaimed in Saskatchewan, Prince Edward Island and Yukon while Northwest Territories and Nunavut anticipate implementing them in early 2008.
- Financial compensation provisions for investors are in effect in Manitoba and New Brunswick and have been passed but not yet proclaimed in Nova Scotia and Saskatchewan. Other jurisdictions continue to review the Manitoba compensation model and its impact.

Securities Fraud Enforcement Working Group Report

- In October 2006, in response to a request from the Council, the Federal/Provincial/Territorial Ministers responsible for Justice (Justice Ministers) established a Securities Fraud Enforcement Working Group (Working Group) to consider, among other materials, an internal discussion paper prepared by the CSA outlining concerns about Canada’s securities enforcement regime.
- The Working Group reported back to the Justice Ministers at their meeting in November 2007. The Working Group identified a number of securities fraud issues and made various

recommendations on how to improve securities fraud enforcement, some of which will require further study or time to implement.

- The Council strongly urged the Justice Ministers to support the Working Group's recommendations and to direct their timely implementation.
- In their November 16, 2007 press release, the Justice Ministers "recognized the serious harm caused to victims as a result of securities fraud and expressed their appreciation for the work done by the Securities Fraud Enforcement Working Group".
- The Justice Ministers referred the recommendations to Deputy Ministers of Justice to be considered at their next meeting in January 2008 to determine which items could be implemented immediately and which require further analysis.

Take-Over Bids and Issuer Bids

- In 2005, all jurisdictions agreed to harmonize take-over bid, issuer bid and related early-warning requirements through the development of a national rule.
- The CSA published proposed National Instrument 62-104 *Take-Over Bids and Issuer Bids* for comment in April 2006 but will now implement a multilateral instrument (MI 62-104) in February 2008.
- The OSC cannot implement the national rule because the Ontario government decided to retain detailed bid requirements and exemptions in its statute.
- The Ontario government seeks to achieve the same harmonization and modernization effect through proposed amendments to the take-over bid and issuer bid provisions of the Ontario Securities Act and by adoption of a local rule.
- Ontario's decision is inconsistent with the approach adopted by MOU jurisdictions, which is to use "platform legislation" to establish fundamental concepts of securities regulation that tend not to change while moving more detailed requirements into the rules. The MOU jurisdictions' approach provides stable, harmonized and streamlined legislation, while enabling uniform technical rules to be developed, implemented and revised in a more timely, coordinated fashion than is feasible through the legislative process.
- In this context, it will be more difficult to maintain harmonized bid requirements over time across Canada

Securities Transfer Acts

- Provinces and territories are adopting highly harmonized securities transfer legislation, 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.
- Alberta, British Columbia, Saskatchewan, Ontario, and Newfoundland and Labrador have now implemented practically uniform securities transfer legislation. Manitoba and Québec introduced securities transfer legislation late in 2007 and the remaining jurisdictions are expected to introduce similar legislation in 2008 or 2009.
- In June 2007, the federal government issued a consultation paper entitled *Modernizing the Legal Framework for Financial Transactions: Reforming Federal Securities Transfer Rules* seeking public comment, among other things, on whether it should (i) enact comprehensive stand-alone federal securities transfer legislation, (ii) repeal existing federal securities transfer provisions, or (iii) update existing federal securities transfer legislation.
- The Council, the CSA and the Canadian Bar Association (CBA) expressed their support for the repeal of existing federal securities transfer provisions in favor of provincial/territorial

securities transfer legislation, to provide legal certainty for an efficient and safe securities settlement system in Canada.

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 passed separate and differing legislation regarding CPAB.
- The Taskforce is currently developing a harmonized legislative model to support CPAB's auditor oversight role, and plans to present a model for consideration by the Council in 2008.
- The Taskforce actively consulted with stakeholders, including CPAB, the three national accounting organizations, provincial law societies, the CBA and other stakeholders throughout 2007.

GOING FORWARD – PLANS FOR 2008

Passport Phase Two

- Passport Phase Two will be implemented in phases starting in early 2008.
- Implementation of Multilateral Instrument 11-102 *Passport System* is targeted for March 2008.
- The passport interface mechanisms and new review processes for prospectuses and exemptive relief applications (National Policy 11-202 and National Policy 11-203) will come into effect by March 2008.
- NI 31-103 and new review processes for registration applications will come into effect by the end of 2008.
- Those jurisdictions that have not yet introduced or implemented the targeted Act amendments to support the new CSA national registration rule have committed to doing so in spring 2008.

Independent Securities Tribunal

- In June 2007, the Council asked the Taskforce to examine the potential benefits of establishing an independent securities tribunal (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.
- The IST working group intends to provide the Council with a preliminary report in spring 2008.

Fee Review

- Fees continue to be a topic of significance for the Council.
- Under the 2004 MOU, the Council committed to undertake a review of fees upon full implementation of the passport system, but has determined that reconsideration of fee issues in the context of passport should proceed now.
- The CSA plans to present a fee model proposal for consideration by the Taskforce and the Council in spring 2008.

Enforcement

- The Council will continue to examine alternatives to improve enforcement, in consultation with stakeholders.
- The Council will also consider what improvements can be made to enforcement of securities regulation in areas of provincial jurisdiction, in consultation with the CSA.
- The Council will actively monitor the deliberations from the Deputy Ministers of Justice based on the Securities Fraud Enforcement Working Group recommendations.

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.

Annual progress reports, press releases and access to other relevant information can be obtained at <http://www.securitiescanada.org>.

Appendix – 2007 CSA Activity

January	<ul style="list-style-type: none"> • adopted National Policy 12-202 <i>Revocation of a Compliance-related Cease Trade Order</i>, providing harmonized criteria, practices and guidelines for revoking cease trade orders
February	<ul style="list-style-type: none"> • published a proposed uniform rule dealing with registration requirements, National Instrument 31-103 <i>Registration Requirements</i> (NI 31-103), which received extensive comment resulting in the planned republication of a revised form of registration rule in February 2008
March	<ul style="list-style-type: none"> • published proposed NI 11-102 to implement Passport Phase Two • published notice of the proposed repeal and replacement of Form 51-102F6 <i>Statement of Executive Compensation</i>, followed in August 2007 by CSA Staff Notice 58-304 announcing that the CSA was rethinking its proposals in light of critical comments and the SEC review of recent U.S. executive compensation amendments • published notice of the proposed repeal and replacement of Multilateral Instrument 52-109 <i>Certification of Disclosure in Issuers' Annual and Interim Filings</i> (MI 52-109) with a more streamlined approach to internal control reporting, and the abandonment of previously-published (February 2005) Multilateral Instrument 52-111 <i>Reporting on Internal Control over Financial Reporting</i>
June	<ul style="list-style-type: none"> • published (with the Joint Forum of Financial Market Regulators) a proposed point-of-sale disclosure network for mutual funds and segregated funds, including a key two-page document called 'Fund Facts' highlighting crucial information about performance, risk and cost
July	<ul style="list-style-type: none"> • published CSA Notice 46-304, which updated regulatory initiatives involving principal-protected notes (PPNs), including pending federal regulations for banks that issue PPNs (the proposed federal regulations were published for comment November 24, 2007)
August	<ul style="list-style-type: none"> • published proposed interfaces to allow all market participants to enjoy the benefits of the passport system and uniform policies for the review of prospectuses and exemptive relief applications (proposed National Policy 11-202 <i>Process for Prospectus Reviews in Multiple Jurisdictions</i> and National Policy 11-203 <i>Process for Exemptive Relief Applications in Multiple Jurisdictions</i>); the CSA anticipates publishing a third uniform policy dealing with the review of applications for registration in 2008
September	<ul style="list-style-type: none"> • published CSA Staff Notice 58-304 giving advance notice of the CSA's plans to undertake a broad review of National Instrument 58-101 <i>Disclosure of Corporate Governance Practices</i> and National Policy 58-201 <i>Corporate Governance Guidelines</i> to ensure that the guidelines and disclosure requirements continue to be appropriate
	<i>Continued on next page ...</i>

October	<ul style="list-style-type: none"> • published advance notice that amendments to the oil and gas disclosure rule (National Instrument 51-101 <i>Standards of Disclosure for Oil and Gas Activities</i>), published for comment in December 2006, come into effect on December 28, 2007 • published advance notice that amendments to incorporate forward-looking information requirements into the continuous disclosure rule (National Instrument 51-102 <i>Continuous Disclosure Obligations</i>) (NI 51-102), related consequential amendments and the repeal of National Policy 48 <i>Future-Oriented Financial Information</i>, come into effect on December 31, 2007 • published advance notice that other amendments to NI 51-102 disclosure requirements, and updates to related instruments, come into effect December 31, 2007 • published notice of proposed amendments to the proxy solicitation and information circular provisions of NI 51-102 to harmonize with recent corporate law reforms
November	<ul style="list-style-type: none"> • published advance notice that MI 62-104 <i>Take-Over Bids and Issuer Bids</i> (MI 62-104), related forms, consequential amendments and National Policy 62-203 <i>Take-Over Bids and Issuer Bids</i>, which contains explanations and discussions on MI 62-104, have been adopted and will come into effect on February 1, 2008 • published CSA Staff Notice 52-319 to further update market participants on the status of the initiative to repeal and replace MI 52-109 – the CSA decided to make significant revisions to certain aspects of this proposal and will publish an amended version of the proposal with a new effective date
December	<ul style="list-style-type: none"> • published notice of proposed amendments to National Instrument 55-102 <i>System for Electronic Disclosure by Insiders</i> (SEDI) designed to streamline the insider report filing process • published a concept paper on possible changes to National Instrument 52-107 <i>Acceptable Accounting Principles, Auditing Standards and Reporting Currency</i> and related instruments arising from the proposed adoption of International Financial Reporting Standards in Canada by 2011 • announced the establishment of a committee to focus regulators' responses to global credit and liquidity issues. The CSA is also participating in international taskforces set up to examine the role of credit rating agencies and transparency of underlying assets.