

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

**PROGRESS REPORT
January 2009 to December 2009**

BACKGROUND

2009 marks the fifth anniversary of the establishment of the Council by twelve jurisdictions and its strong commitment to ongoing reform of the Canadian securities regulatory system. In partnership with provincial and territorial securities regulators (collectively referred to as the Canadian Securities Administrators or the CSA), the Council has accomplished effective and meaningful regulatory reform over the past five years through complementary legislative and regulatory initiatives.

All provinces and territories, except Ontario, signed the 2004 *Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation* (MOU) and are represented on the Council by their ministers responsible for securities regulation.

Under the MOU, signatory jurisdictions committed to improving the securities regulatory system by implementing an operational passport system based on highly harmonized and streamlined securities laws. They also agreed to explore further options for consolidating and strengthening co-ordination and consistency of securities laws across Canada and, 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 the 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.

2009 RESULTS

Fully Operational Passport System Milestone

2009 marked a historic milestone in the Council's commitment to ongoing reform of the Canadian securities regulatory system with the implementation in September of a new Canada-wide registration regime and a streamlined process for dealer and adviser registration in multiple jurisdictions. Registration was the last significant area of securities regulation to be modernized, harmonized and streamlined.

The new registration regime and streamlined registration process completes the Council's key commitment to implement a fully-operational passport system in all Canadian jurisdictions on a timely basis. The Council has ensured that the benefits of the single window of access under the passport system are available to all Canadian market participants by implementing a one-way interface mechanism for Ontario-based market participants.

The passport system, together with the Ontario interface, allows market participants to clear a prospectus, obtain a discretionary exemption and register as a dealer or adviser, by obtaining a decision from the regulator in their home jurisdiction and having that decision apply across Canada.

The move to a fully-operational passport system is the result of unprecedented levels of co-ordination and consensus among provincial and territorial governments and the CSA to streamline and improve securities regulation across Canada. With the co-operation of the CSA, the Council has created a national system of securities regulation for Canada to achieve its key commitment under the MOU in a timely manner.

Meetings, Consultations and Communications

2009 was a challenging year for governments and their regulators worldwide dealing with the aftermath of the global financial crisis and calls for significant regulatory reforms. Fall 2009 also brought a change in the Council Chair. The Alberta Minister of Finance and Enterprise agreed to be interim Council Chair in September when the Manitoba Finance Minister stepped down to successfully seek the leadership of the New Democratic Party in Manitoba and the Premiership.

Although the Council was unable to meet face-to-face in 2009 due to scheduling complications (resulting in the December 2009 Council meeting being deferred to early 2010), the Council conducted two conference calls in January and May.

On the May 2009 Council conference call, Council Ministers discussed the need to focus on-going reform of the Canadian securities regulatory system and asked the CSA to provide recommendations for further reforms and projected implementation timelines.

In November 2009, the CSA provided the Council with a multi-year action plan that includes suggested courses of action for dealing with systemic risk, regulation of credit rating organizations, full harmonization of investor protection across Canada and new legislative tools providing emergency powers to respond to future economic and credit crises. The Council will consider the CSA work plan at its February 5, 2010 Council meeting in Edmonton.

In addition to regular conference calls and committee work, the Taskforce met in February in Montreal.

On the communications front, three provinces and two provincial regulators responded to the January 12, 2009 federal Expert Panel final report that recommended the establishment of a single securities regulator. Those news releases have been posted on the Provincial/Territorial Securities Initiative website (www.securitiescanada.org).

Federal Transition to a Single Securities Regulator

The call by the federal Minister of Finance for the establishment of a national securities regulator was first rejected by the Council in Meech Lake in June 2007, however the federal Minister has continued to call for the creation of a single securities regulator.

The final report of the federal Expert Panel on Securities Regulation released January 12, 2009 recommended the establishment of a single securities regulator. The federal government has endorsed the recommendations of the Expert Panel and has taken steps toward the establishment of a single securities regulator.

These steps include:

- On June 22, 2009, the federal Finance Minister announced the launch of the Transition Office effective July 13, 2009.
- In September 2009, the federal government asked provinces and territories to participate in the transition process through the Transition Office Advisory Committee. Alberta, Manitoba and Québec declined to participate.
- On October 15, 2009, the federal Finance Minister announced the appointment of members to the Transition Office Advisory Committee.

Resource Constraints

A number of jurisdictions participating in the transition process have agreed to dedicate considerable time and staff resources. This has, and will continue, to put constraints on the CSA's ability to implement its ongoing work plan and complete projects undertaken at the request of the Council in a timely fashion. The Council is concerned about the potential impact that the focus and dedication of resources to the federal transition process may diminish the unprecedented levels of co-ordination and consensus among provincial and territorial governments and the CSA demonstrated over the past five years to ongoing reform.

Constitutional Challenge

- On July 6, 2009, Québec filed a constitutional reference with the Québec Court of Appeal challenging the federal plan to regulate securities.
- On October 16, 2009, the federal government announced its intention to bring a reference before the Supreme Court of Canada in spring 2010 to confirm that it has the power to adopt legislation on securities.
- On December 3, 2009, the federal government filed a motion with the Québec Court of Appeal to suspend the Quebec reference. The motion will be heard on March 26, 2010.
- On December 18, 2009, Alberta announced its intention to intervene in the Québec reference and to initiate its own reference to the Alberta Court of Appeal.

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. They also continue to pursue initiatives to strengthen investor protection. CSA activities during 2009 are highlighted in the attached appendix.

Investor Protection

- In spring 2009, the Manitoba government increased its financial compensation provision for investors from \$100,000 to \$250,000.

Securities Fraud Working Group

- The 2007 Progress Report highlighted the establishment of a Securities Fraud Enforcement Working Group (Working Group) to make various recommendations on how to improve securities fraud enforcement.
- The 2008 Progress report focused on the status of six recommendations made by the Working Group that are being implemented. These recommendations were primarily directed at better cooperation and communications across Canadian jurisdictions and criminal enforcement agencies, and better use and allocation of highly skilled and specialized resources.
- The Council has requested regular status updates from the Working Group. The next update will be provided at the February 5, 2010 Council meeting.

Free Trade and Mutual Recognition

- International discussions on free trade in securities focus on the concept of mutual recognition, the basis for the passport system.
- In 2008, the United States Securities Exchange Commission (SEC) announced plans to pursue formal mutual arrangements with Canada and other foreign regulators (the European Commission and Australia).
- This initiative appears to have stalled as a result of the global financial crisis.
- The CSA will continue to provide the Council with regular progress updates, the next of which is scheduled for the upcoming Council meeting in February 2010.

Harmonized Securities Transfer Legislation

- British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Northwest Territories and Newfoundland and Labrador have enacted 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.
- The remaining jurisdictions plan to introduce STAs in 2010.

Harmonized Regulation of Derivatives

- The 2008 Progress Report focused on Québec's new comprehensive derivatives legislation and Council's request for 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.
- The CSA's multi-year work plan identifies initiatives designed to improve the regulation of derivatives in Canada, which will be reviewed by the Council at its next meeting in February 2010.

Canadian Public Accountability Board (CPAB)

- The 2007 and 2008 Progress Reports addressed CPAB's request for a statutory framework to support its independent audit inspection program.
- 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 2004 CPAB approached provincial and territorial governments seeking certain powers and protections.
- In 2006, Québec and Ontario passed separate and differing CPAB legislation, with the Ontario stand-alone CPAB legislation coming into effect June 30, 2009.
- The Council asked the Taskforce to develop a harmonized legislative model to support CPAB's auditor oversight role for adoption across the rest of Canada.
- After extensive stakeholder consultation, the Taskforce presented a proposed model to the Council at the September 2008 Council meeting, which was harmonized in all but one major aspect. The Council asked the Taskforce to continue to work towards reaching a harmonized approach on this aspect as well.
- In fall 2009, BC passed amendments providing for recognition and oversight of CPAB as a self-regulatory organization. Québec also passed amendments providing for oversight of CPAB as a self-regulatory organization.
- The remaining jurisdictions continue to work with CPAB to resolve outstanding issues.

Fee Review Update

- Signatories to the 2004 MOU committed to examine the fee structure in the context of a passport system.
- The CSA presented its passport fee proposal in 2008 which included development of an issuer-fee calculator.
- On July 2, 2009, the CSA launched its web-based fee calculator tool designed to simplify the calculation of fees for multijurisdictional transactions.

Credit Rating Organizations Regulation

- Credit rating organizations and their ratings have been under the spotlight because of the inherent conflict of interest at the heart of most rating processes, where ratings are solicited and paid for by the issuers seeking that rating.
- Regulatory oversight of credit rating organizations was one of the key recommendations of the 2008 CSA consultation paper issued as part of the collective response of securities regulators in Canada and around the world.
- The CSA has identified credit rating reform as a priority in its multi-year work plan and has recommended the adoption of a regulatory framework that would require credit rating organizations to apply for designation and require compliance with a newly revised international code of conduct.
- The CSA plan to develop and publish a new rule dealing with oversight of credit rating organizations in 2010.

International Financial Reporting Standards (IFRS)

- The mandatory date for changeover from Canadian generally accepted accounting standards (Canadian GAAP) to IFRS for Canadian public issuers is January 1, 2011.
- The conversion to IFRS will require the updating of securities legislation and national instruments to replace existing references to Canadian GAAP with IFRS terms where necessary by 2011.
- Several provinces are taking legislative amendments forward during 2010 to facilitate the conversion to IFRS by replacing Canadian GAAP terms with IFRS terms where necessary.
- The CSA has also published proposed amendments to a number of national instruments to facilitate the conversion by replacing references to Canadian GAPP terms with IFRS terms.

FUTURE REFORMS

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

Harmonization Initiatives

- *Derivatives*: At the request of the Council, the CSA will finalize its review of current regulation of derivatives across Canada and make recommendations for a harmonized approach toward derivatives regulation. This will involve developing a harmonized regulatory framework for derivatives that will consider international recommendations and developments.
- *OTC Derivatives*: The CSA will also conduct a review of requirements relating to the trading of standardized over-the-counter derivatives on exchanges and electronic platforms which will consider international recommendations and developments.
- *Investor Protection*: The Council, in partnership with the CSA, will continue to focus on means of enhancing investor protection from fraudulent, manipulative or misleading practices through a variety of mechanisms, including education, effective disclosure and market oversight mechanisms. Examples of ongoing initiatives include:
 - *Point of Sale Project* - implementing simpler and clearer disclosure requirements at the point of sale for mutual funds and segregated funds.
 - *Hedge Fund Regulation*- developing a proposal for hedge fund regulation taking into consideration international developments and recommendations.
 - *Executive Compensation* - active consideration of international developments on proposed "say on pay" legislation and to explore the possibility of adopting similar requirements regarding the vote on executive compensation packages in Canada.

REVIEWING PROGRESS

Ministers are committed to keeping 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 progress reports, press releases and access to other relevant information can be obtained at www.securitiescanada.org.

Appendix – 2009 CSA Activity

CSA INITIATIVES	
January	<ul style="list-style-type: none"> – Financial Statement Preparation Guidance: On January 8, 2009, the CSA published CSA Staff Notice 51-328 to assist reporting issuers in preparing their financial statements and Management's Discussion and Analysis (MD&A). The notice highlighted some specific areas where disclosure will assist investors in understanding the risks and circumstances facing issuers during the current "unusual" economic conditions.
March	<ul style="list-style-type: none"> – New Investor Fraud Prevention Resource: The CSA added a new on-line resource, <i>Avoiding Fraud</i>, to its website to help investors identify fraud.
June	<ul style="list-style-type: none"> – Mutual Fund Disclosure Regime Improvements: The CSA published for comment amendments to National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i> (NI 81-101), its forms and companion policy that are aimed at providing investors with improved disclosure to support the Joint Forum of Financial Regulators project. The comment period expired October 17, 2009.
July	<ul style="list-style-type: none"> – New National Registration Regime Implementation Date: On July 17, 2009, the CSA gave advance notice that the new national registration system created by National instrument 31-103 <i>Registration Requirements and Exemptions</i> and its related forms) will come into effect across Canada on September 28, 2009. The CSA concurrently published the final version of a new streamlined process for dealer and adviser registration in multiple jurisdictions, making the passport system available to registrants also to come into effect September 28, 2009. – New On-Line Fee Guide: On July 2, 2009, the CSA launched a new web-based tool for market participants to simplify the identification of SEDAR regulatory filing fees for market participants across Canada, which is available in English and French.
August	<ul style="list-style-type: none"> – New Exempt Market Dealers Requirements: On August 7, 2009, the CSA published a notice (CSA Staff Notice 31-312) summarizing the key proficiency, financial and operational requirements and transition process for the new EMD registration category under the new registration regime. It also summarized the conditions for local exemptive relief that will be available in Alberta, British Columbia, Saskatchewan, Manitoba, Yukon, Northwest Territories and Nunavut in March 2010.

CSA INITIATIVES	
September	<ul style="list-style-type: none"> – Canada-Wide Registration System Implemented: On September 28, 2009, a new national registration regime was implemented across Canada. The new registration regime and streamlined process for dealer and adviser registration in multiple jurisdictions completes the implementation of the passport system in all Canadian jurisdictions but Ontario. The one-way interface implemented by the Council allows Ontario market participants to enjoy the benefits of the passport system as well. – Move to International Financial Reporting Standards (IFRS): The CSA published for public comment IFRS-related amendments to a number of national instruments to support the smooth transition to IFRS in Canada on January 1, 2011. These included: National Instrument 52-107 <i>Acceptable Accounting Principles and Auditing Standards</i>; National Instrument 52-109 <i>Certification of Disclosure in Issuers' Annual and Interim Filings</i>; and National Instrument 51-102 <i>Continuous Disclosure Requirements</i>. – CSA/IIROC Joint Consultation: On September 30, 2009, the CSA and the Investment Industry Regulatory Organization of Canada (IIROC) published a consultation paper to solicit feedback on several developments that have occurred in market structure in Canada, specifically the emergence of dark pools, different order types, and smart order routers. The CSA/IIROC Joint Consultation Paper 23-404 on <i>Dark Pools, Dark Orders, and Other Developments in Market Structure in Canada</i> comment period expired December 29, 2009. Because of the importance of the issues raised in the consultation paper, the CSA and IIROC plan to convene a roundtable in 2010 to discuss the issues highlighted and the submissions received.
October	<ul style="list-style-type: none"> – Transition to IFRS for Investment Funds. The CSA also published for comment proposed IFRS-related amendments to National Instrument 81-106 <i>Investment Fund Continuous disclosure</i>, its companion policy and related forms. – Use of Client Brokerage Commissions Requirements: On October 6, 2009, the CSA introduced requirements governing the use of client brokerage commissions. The new rule (National Instrument 23-102 <i>Use of Client Brokerage Commissions</i>) clarifies the obligations of advisers and registered dealers when advisers obtain goods and services other than order execution in connection with client brokerage commissions, and also introduces new disclosure requirements for advisers.
November	<ul style="list-style-type: none"> – Canadian Corporate Governance Regime Changes Delayed: On November 13, 2009, the CSA announced that it will defer proposed changes to the Canadian corporate governance regime published for comment in December 2008. The CSA had proposed replacing the existing corporate governance policy with a more principles-based approach to corporate governance and audit committee regimes. The most significant changes were in three key areas: National Policy 58-201 <i>Corporate Governance Principles</i>; National Instrument 58-101 <i>Disclosure of Corporate Governance Practices</i>; and National Instrument 52-110 <i>Audit Committees</i>. The CSA indicated that any further proposed changes to corporate governance regime will be published for comment and would not be effective until the 2011 proxy season at the earliest.
December	<ul style="list-style-type: none"> – Improved disclosure standards for oil and gas activities. On December 18, 2009, the CSA published for comment proposed changes to National Instrument 51-101 <i>Standards of Disclosure for Oil and Gas Activities</i>, its related forms and companion policy. The public comment period expires March 19, 2010.