

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

**PROGRESS REPORT
January 2011 to December 2011**

BACKGROUND

International organizations continue to rank our securities regulatory system as one of the best in the world, attesting to the success and commitments of provincial and territorial governments and their regulators to maintaining an enhanced provincial/territorial regulatory framework that is efficient, cost-effective and simple to use, and protects the investing public.

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 and to explore, on an ongoing basis, new opportunities to strengthen the Canadian securities regulatory framework. With the co-operation of the Canadian Securities Administrators or CSA, the Council achieved its key MOU commitment with the implementation of a fully-operational passport system across Canada in September 2009. This 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.

A Taskforce of provincial/territorial government representatives (established by the Council) works with the CSA to coordinate the timely implementation of work plans to ensure that our provincially-based securities regulatory system continues to be up-to-date and responsive. The Taskforce also coordinates ongoing policy and regulatory reform among the MOU jurisdictions.

2011 RESULTS

The continuing global financial crisis has heightened the importance of international cooperation and harmonization. The G20 continues to focus on financial sector reforms to promote the financial stability of the world's financial markets.

The Council and the CSA remain committed to assisting Canada in meeting its international commitments in a timely fashion. International commitments include initiatives to improve the transparency and oversight of credit rating organizations and their ratings, hedge funds and over-the-counter derivatives in an internationally consistent and nondiscriminatory way.

2011 saw continued cooperation and coordination among MOU jurisdictions and the CSA to further reform and harmonize the Canadian securities regulatory system.

Progress of G20 commitments

Credit Rating Organizations Regulation

- Credit rating organizations are not currently subject to formal securities regulatory authority. Proposed National Instrument 25-101 *Designated Rating Organizations* will establish a Canadian regulatory regime for credit rating organizations based on international standards and developments.
- Québec, Alberta, British Columbia, Nova Scotia and Ontario have already passed credit rating organizations-related amendments.
- In 2011, Manitoba and New Brunswick passed and Saskatchewan introduced amendments to provide a legislative framework for the oversight of credit rating organizations, with the remaining jurisdictions planning to follow suit in 2012.

Hedge Funds

- The CSA continues to work with the International Organization of Securities Commissions and other agencies to establish principles for hedge fund regulation and to assess systemic risks that hedge funds may pose globally and in a Canadian context.

Over-the Counter Derivatives (OTC)

- In 2011, the CSA Derivatives Committee published the first two consultation papers in a series of eight consultation papers that build on the high level proposals for regulation of OTC derivatives outlined in its November 2010 Consultation Paper 91-401 *On Over-the-Counter Derivatives Regulation in Canada*.
- The CSA plans to publish the remaining consultation papers in the first half of 2012.

Harmonized Derivatives Regulation

- The harmonization of derivatives legislation and rules across Canada continues to be a priority for both the Council and the CSA.
- A CSA Derivatives Committee has been tasked with developing a harmonized approach for regulating derivatives across Canada and to identify any necessary legislative amendments.
- Québec already has a detailed regulatory framework in place for derivatives trading under the Québec *Derivatives Act* which came into force in 2009. In December 2010, Ontario passed derivative-related amendments to its securities legislation to provide for a similar detailed regulatory framework but most of these provisions are not yet in force.
- Alberta, British Columbia, Saskatchewan and New Brunswick already regulate exchange-traded derivatives under their securities legislation, while Manitoba and Ontario currently regulates trading in exchange-traded derivatives as commodity future contracts under their commodity futures legislation.
- Jurisdictions plan to bring forward any necessary derivative-related amendments to implement a harmonized derivatives regulatory regime across Canada.

International Financial Reporting Standards

- Effective January 1, 2011, Canadian public issuers are required to present financial statements based on International Financial Reporting Standards (IFRS). These internationally accepted standards of accounting enhance the comparability and transparency of financial information for issuers, investors and other stakeholders in global capital markets.
- British Columbia, Alberta, Nova Scotia and Ontario have already passed IFRS-related amendments. IFRS-related amendments are not required in Québec or Manitoba.
- In 2011, New Brunswick passed, and Saskatchewan introduced, IFRS-related legislative amendments, with the remaining jurisdictions committed to bringing these amendments forward in 2012.

Other Securities-related Initiatives

Incorporation of Individual Representatives of Registered Dealers and Advisers

- In December 2010, a working group of provincial and territorial government officials (working group) published a consultation paper to explore potential incorporation options (including legislative options) for individual representatives of registered dealers and advisers.
- The working group received 63 written responses from a diverse range of stakeholders, including individual registrants, registered firms, exempt market dealers, investor protection, trade and professional organizations and self-regulatory organizations.
- The majority of commenters (over 93 percent) were supportive of the incorporation concept. The consultation paper, comment letters and a summary of consultation responses are posted on the Alberta Finance website (www.finance.alberta.ca/) and written comment letters received in French are posted on the Québec Finance website (www.finances.gouv.qc.ca).
- In July, the Council approved the next stage of the incorporation project directing the working group to develop key elements of an acceptable incorporation model and supporting draft legislative amendments.
- In December, Saskatchewan introduced amendments to its securities legislation (Bill 14) to provide individual representatives of registered dealers and advisers with an option to provide securities-related services through a professional corporation.
- The working group plans for further consultation with stakeholders on key elements of the incorporation model and supporting draft legislative amendments capable of being adopted across Canada.

Canadian Public Accountability Board (CPAB)

- CPAB was created in 2003 to provide independent oversight of auditors of Canadian public companies and derives its authority from National Instrument 52-108 *Auditor Oversight*.
- In 2011, Manitoba and New Brunswick passed, and Saskatchewan introduced, CPAB-related amendments, joining Québec and British Columbia, to provide powers and protections to CPAB, with oversight of CPAB based on a traditional recognition

model found in securities legislation. Ontario passed stand-alone CPAB legislation in 2006.

- The remaining jurisdictions have committed to bringing forward harmonized CPAB-related legislative amendments in 2012 or 2013.

Harmonized Securities Transfer Legislation

- All jurisdictions except Prince Edward Island have adopted highly harmonized securities transfer legislation (STA). This legislation establishes a comprehensive system for holding and transferring of securities to better reflect current market practices.
- Prince Edward Island plans to introduce the STA in 2012.

Investor Protection Initiatives

The Council and the CSA continue to focus on means of enhancing investor protection from fraudulent, manipulative and misleading practices through a variety of mechanisms, including education, effective disclosure and market oversight mechanisms. Examples include:

Point of Sale Disclosure Project

- The CSA is proceeding with a phased (three stages) implementation of the Point of Sale disclosure project. Stage 1 (completed on January 1, 2011) established a Canada-wide disclosure regime for mutual funds based on the use of the new Funds Facts disclosure document and stage 2 will require delivery of the Funds Facts disclosure document to investors within two days of a purchase of a mutual fund security. Stage 3 will consider point of sale delivery for other types of publicly offered investment funds.
- British Columbia, Alberta, Québec and New Brunswick have already enacted stage-2 related legislative amendments. Stage 2-related legislative amendments are not required in Manitoba.
- In 2011, Saskatchewan introduced amendments to implement stage 2 of the project. The remaining jurisdictions plan to follow suit with stage 2-related amendments in 2012.

Restitution

- In 2011, Saskatchewan introduced amendments that will eliminate the \$100,000 maximum cap for Saskatchewan's financial compensation provision for investors.

CSA ACTIVITY

- Some jurisdictions and their securities regulators allocated time and resources to CSA projects and the federal securities regulator transition process during 2011.
- CSA members continued to work collaboratively on harmonized policies and regulations, which are highlighted in the Appendix.

CONSTITUTIONAL REFERENCES UPDATE

- In January, the Québec Court of Appeal heard Québec's constitutional reference, in which Alberta intervened in support of Québec. In late March, the Québec Court of Appeal, in a 4 -1 majority decision, concluded the proposed federal legislation was unconstitutional and exceeded the legislative authority of the Parliament of Canada.
- In January, the Alberta Court of Appeal heard Alberta's constitutional reference, in which Québec intervened in support of Alberta. In mid-March, the Alberta Court of Appeal unanimously ruled that the proposed federal legislation would, if enacted, be unconstitutional.
- In April, the Supreme Court of Canada heard the federal government's constitutional reference. Alberta, Québec, British Columbia, Saskatchewan, Manitoba and New Brunswick intervened to oppose the federal proposal, while Ontario supported the federal proposal.
- On December 22, the Supreme Court unanimously ruled that the proposed federal legislation, creating a national securities regulator, "... is not valid under the general branch of the federal power to regulate trade and commerce under s. 91(2) of the *Constitution Act, 1867*" or in other words is unconstitutional.
- The Supreme Court decision recognized that the day-to-day regulation of securities is a matter of provincial jurisdiction.
- The Supreme Court also noted that provinces and the federal government could pursue a cooperative approach for regulating securities in Canada that respects provincial jurisdiction, while allowing the federal government to deal with matters of national concern, such as systemic risk.

FUTURE REFORMS/REVIEWING PROGRESS

Going forward, the Council remains committed to on-going reform of Canada's securities regulatory system to ensure it remains fair, efficient and stable.

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, consistently 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 – 2011 Canadian Securities Administrators Activity

2011	CANADIAN SECURITIES ADMINISTRATORS INITIATIVES
MARCH	<ul style="list-style-type: none"> <li data-bbox="289 310 1468 489">– New Mobile Money Management “App” Launched to Track Saving and Spending: On March 8, 2011, the CSA launched a new free mobile money management application (“app”) and an interactive website called “My Make it Count” to help youth better understand and monitor their spending behaviour in real time. This personal finance tool will also benefit Canadians of all ages. <li data-bbox="289 489 1468 737">– Rule to Regulate Designated Rating Organizations in Canada Republished: On March 18, 2011, the CSA republished for second comment revisions to National Instrument 25-101 <i>Designated Rating Organizations</i>. The republished rule addresses feedback received by the CSA from the initial July 2010 publication of the instrument and includes enhancements to maintain consistency with international standards. The comment period expired May 17, 2011.
APRIL	<ul style="list-style-type: none"> <li data-bbox="289 758 1468 1041">– New Proposed Framework for Securitized Products in Canada: On April 1, 2011, the CSA published for comment a proposed a framework for the regulation of securitized products in Canada to strengthen investor protection through enhanced transparency and disclosure requirements for securitized products. These new disclosure requirements have been designed to ensure consistency with international developments. Non-reporting issuers that distribute securitized products in the exempt market will also be subject to certain initial and ongoing disclosure requirements. The comment period expired July 1, 2011. <li data-bbox="289 1041 1468 1367">– New Proposed Canada-wide Regulatory System for Electronic Trading: On April 8, 2011, the CSA published for comment a new National Instrument 23-103 <i>Electronic Trading and Direct Electronic Access to Marketplaces</i> to establish a regulatory framework for electronic trading in Canada. The proposed instrument was developed following comprehensive consultations, with marketplaces, marketplace participants and service vendors, and is consistent with international developments in electronic trading. The new rules do not apply to retail trading where clients’ access accounts through the internet, such as a discount brokerage. The comment period expired July 8, 2011. <li data-bbox="289 1367 1468 1614">– Updated Registration Regime For Registrants: On April 15, 2011, the CSA announced changes to the registration regime for firms and individuals dealing in securities who provide investment advice or management investment advice. The revised national registration rules codify current exemption orders, provide new filing timelines, refine certain exemptions, and provide extended transition periods in respect of certain requirements. The updated registration regime came into effect across Canada on July 11, 2011.

2011	CANADIAN SECURITIES ADMINISTRATORS INITIATIVES
MAY	<ul style="list-style-type: none"> – Investment Funds Modernization Project Moving Forward: On May 26, 2011, the CSA published a notice to provide an update on the investment funds modernization project and to seek feedback on the next phase of the project. Work is currently underway to finalize amendments to National Instrument 81-102 <i>Mutual Funds</i> (Phase 1 amendments). The CSA plans to proceed with a two-stage approach for the final phase of the modernization project. The objective for Phase 2 will be to identify and address any market efficiency, investor protection or fairness issues that arise out of the differing regulatory regimes that apply to different types of publicly offered investment funds. The comment period expired July 25, 2011.
JUNE	<ul style="list-style-type: none"> – Proposal to Improve Regulatory Oversight of Over-The-Counter Derivatives Transactions: On June 23, 2011, the CSA published a consultation paper (Consultation Paper 91-402 – <i>Derivatives: Trade Repositories</i>) designed to improve regulatory oversight of over-the-counter (OTC) derivatives transactions and to be consistent with international developments. This consultation paper is the first in a series of published papers stemming from the regulatory proposals outlined in the November 2010 Consultation Paper 91-401 <i>On Over-the-Counter Derivatives Regulation in Canada</i> (Consultation Paper 91-401). The comment period expired September 12, 2011.
JULY	<ul style="list-style-type: none"> – Proposed Refinements to Prospectus Rules: On July 15, 2011, the CSA published amendments to a number of prospectus rules including National Instrument 41-101 <i>General Prospectus Requirements</i> and NI 81-101 <i>Mutual Fund Prospectus Disclosure</i>. The proposed amendments will clarify and streamline certain provisions of the current prospectus rules and codify certain types of prospectus relief that had been previously granted by the CSA. The comment period expired October 14, 2011. – Proposed New Regulatory Regime for Venture Issuers: On July 29, 2011, the CSA published for comment proposed National Instrument 51-103 <i>Ongoing Governance and Disclosure Requirements for Venture Issuers</i> to establish a new Canada-wide mandatory regulatory regime for venture issuers. The new regime will streamline and tailor venture issuer disclosure to make it more useful and user-friendly for investors. The proposed national instrument reflects stakeholder feedback in response to May 2010 Multilateral Consultation Paper 51-403 <i>Tailoring Venture Issuer Regulation</i>. The comment period expired October 27, 2011.
AUGUST	<ul style="list-style-type: none"> – Second Stage of Point of Sale of Disclosure Project Proceeding: On August 12, 2011, the CSA proposed amendments to National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i> for the implementation of the second stage of the point of sale disclosure project for mutual funds. These amendments will allow for the delivery of the Funds Facts document to satisfy the current two day prospectus delivery requirement for a mutual funds purchase. As part of the final stage of the project, the CSA will consider point of sale delivery for other types of publicly offered investment funds. The comment period expired November 10, 2011.

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NOVEMBER	<ul style="list-style-type: none"> <li data-bbox="289 237 1474 485">– Review of Prospectus Exemptions: On November 10, 2011, the CSA announced that they will be reviewing the \$150,000 minimum amount prospectus exemption and the accredited investor prospectus exemption contained in National Instrument 45-106 <i>Prospectus and Registration Exemptions</i>. The CSA also confirmed its intention to propose changes to these exemptions based on stakeholder feedback. The comment period expires February 29, 2012. <li data-bbox="289 495 1474 709">– Further Enhancements to Scholarship Plan Disclosure: On November 25, 2011, the CSA republished for second comment revisions to National Instrument 41-101 <i>General Prospectus Requirements</i> and proposed Form 41-101 <i>Information Required in a Scholarship Plan Prospectus</i> aimed at further clarifying disclosure requirements for scholarship plans. The comment period expires January 24, 2012. <li data-bbox="289 720 1474 1031">– Proposal to Improve the Regulation of Over-the-Counter Derivatives Surveillance and Enforcement: On November 25, 2011, the CSA published for comment CSA Consultation Paper 91-403 <i>Derivatives: Surveillance and Enforcement</i>, the second consultation paper in a series of eight consultation papers, that builds on the regulatory proposals contained in Consultation Paper 91-401. The CSA Derivatives Committee provided various recommendations regarding surveillance and monitoring, market conduct and enforcement, which are intended to strengthen Canada’s financial markets and manage specific risks related to OTC derivatives. The comment period expires January 25, 2012.