

PROVINCIAL/TERRITORIAL COUNCIL OF MINISTERS OF SECURITIES REGULATION

ANNUAL PROGRESS REPORT January 2015 to December 2015

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. Implementation of the fully operational passport system in 2009 resulted from an unprecedented level of cooperation, coordination and consensus among governments to streamline and modernize securities regulation in Canada.

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

2015 DEVELOPMENTS

Cooperative Capital Markets Regulatory System (CCMR) Initiative

In April 2015, the Government of Yukon joined the governments of Canada, Ontario, British Columbia, Saskatchewan, New Brunswick and Prince Edward Island to create a common securities regulator among those jurisdictions.

On August 25, 2015, the CCMR jurisdictions released for public consultation a revised draft of the provincial and territorial Capital Markets Act and draft initial regulations.

With the change in government in 2015, the new federal government's position on the CCMR initiative is unclear. There are no references to the CCMR initiative in either the December 4, 2015 Speech from the Throne or the (Federal) Minister of Finance Mandate Letter.

Partnership Agreement for Securities Regulation (Partnership Agreement)

Alberta and Québec remain committed to signing the Partnership Agreement and oppose a national securities regulator (like that contemplated under the CCMR initiative), preferring a provincially led-regulatory system. Manitoba's new Government has not expressed support for a national securities regulator and maintains a provincially-led regulatory system. The remaining provinces and territories will be invited to participate in the Partnership Agreement. The Partnership Agreement builds on the strengths of the passport system and commits the participating governments and their regulators to work cooperatively to further improve securities regulation that meets the needs of all provinces and territories as well as the expectations of investors. Key elements of the Partnership Agreement are outlined in the 2014 Council Progress Report.

At the request of the Council, government officials continue to review developments relating to:

- the regulation of financial planners;
- the incorporation of registered representatives;
- harmonized regulation of derivatives; and
- the proposed statutory best interest standard for dealers and advisors.

Québec Constitutional Reference

The Québec government is challenging the constitutional validity of the CCMR initiative and the complementary federal legislation.

On August 18, 2015, the Government of Québec referred two constitutional questions to the Québec Court of Appeal for consideration:

1. Does the Constitution of Canada authorize the implementation of pan-Canadian securities regulation under the authority of a single regulator, according to the model established by the most recent publication of the Memorandum of Agreement regarding the Cooperative Capital Markets Regulatory system?
2. Does the most recent version of the draft of the federal Capital Markets Stability Act exceed the authority of the Parliament of Canada over the general branch of the trade and commerce power under section 91(2) of the *Constitution Act, 1867*?

The Québec Reference is expected to be heard by the Québec Court of Appeal in November 2016. Manitoba plans to intervene in support of the Québec Reference, while British Columbia plans to intervene in support of the CCMR initiative.

2015 Accomplishments

We remain committed to improving the securities regulatory system in Canada to ensure that it continues to be modern, flexible and up-to-date, in addition to being responsive to domestic and international developments, which includes the G-20 commitments.

Provincial and territorial governments' commitments to enact legislation to support initiatives identified in the 2015 Council Progress Report do not apply to provinces and territories participating in the CCMR initiative, unless otherwise noted.

Passport System Expansion

The passport system is a harmonized pan-Canadian system that gives a market participant automatic access to capital markets across Canada by obtaining a decision only from its principal (home) regulator and complying with a harmonized set of laws. The regulatory areas currently covered under the passport system include prospectus clearances, exemptive relief applications, registration applications and the designation of credit rating organizations.

In April 2015, the Canadian Securities Administrators (CSA) published proposals to further expand the passport system to two new areas: applications to cease to be a reporting issuer and cease trade orders for the failure to file continuous disclosure documents. As with the other passport areas, streamlined interfaces between the passport jurisdictions and Ontario have also been proposed to ensure that passport benefits continue to be available for all market participants across Canada.

Status of legislation

- Most jurisdictions already have in place legislative amendments to support the proposed expansion of the passport system.
- Alberta (2014, Nova Scotia and Ontario (2015) passed passport expansion-related legislative amendments.
- All jurisdictions remain committed to bring forward any necessary legislative amendments to facilitate the expansion of passport system.

Status of G-20 Commitments

Derivatives Regulation

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

- Over half of the Canadian jurisdictions have passed legislative amendments to implement a regulatory framework for over-the-counter (OTC) derivatives, including the mandatory clearing of standardized OTC derivatives transactions through a central counterparty and the trading of OTC derivatives transactions on exchanges or electronic platforms, where appropriate.
- In 2015, securities regulators in Manitoba, Ontario and Québec amended their local OTC derivatives reporting rules.
- All jurisdictions remain committed to bring forward necessary derivatives-related legislative amendments to implement a harmonized framework for derivatives regulation across Canada.

OTC Derivatives - Cash Collateral

- In all provinces and territories (except Québec) *Personal Property and Security Act* (PPSA) legislation does not address the use of cash as collateral for OTC derivatives transactions, especially those cleared through a central counterparty.
- On April 21, 2015, the Québec government adopted final form amendments to the *Civil Code of Québec* to facilitate a perfection control regime for cash collateral that will ensure a first ranking security interest can be granted for cash collateral for OTC derivatives transactions. The amendments came into force on January 1, 2016.
- All jurisdictions remain committed to bring forward harmonized PPSA amendments to facilitate the use of cash as collateral for OTC derivatives transactions.

International Financial Reporting Standards (IFRS)

- Most Canadian jurisdictions have passed IFRS-related amendments to support the adoption of IFRS in Canada.

Other Securities-Related Initiatives

Incorporation of Individual Representatives of Registered Dealers and Advisers

- Alberta and Saskatchewan have passed (but have not yet proclaimed) incorporation-related legislative amendments to provide representatives of registered dealers or advisers with the option of providing securities-related services through a professional corporation, without compromising investor protection.
- Manitoba, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut remain committed to bring forward harmonized incorporation-related amendments. Québec does not plan to adopt the amendments at this time.

Canadian Public Accountability Board (CPAB)

- Most jurisdictions 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.
- Nova Scotia, Newfoundland and Labrador and Nunavut remain committed to bring forward harmonized CPAB-related legislative amendments.

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:

New Automatic Reciprocal Enforcement Regime Implemented in Alberta

- In December 2014, Alberta passed amendments to its *Securities Act* to create a new automatic reciprocal enforcement regime in Alberta, which came into force on July 1, 2015.
- Securities regulatory authorities in the other jurisdictions are currently required to conduct a separate hearing in order to reciprocate an enforcement order against a person or company sanctioned by another Canadian securities regulatory authority.
- Jurisdictions are committed to bring forward harmonized legislative amendments to improve the interjurisdictional reciprocal enforcement regime in Canada.

Secondary Market Civil Liability

- On December 4, 2015, the Supreme Court of Canada (by a 4-3 majority) ruled that leave is required to suspend the limitation period for statutory secondary market misrepresentation claims under the Ontario *Securities Act*.
- Alberta, Ontario and New Brunswick (2014) and Nova Scotia (2015) passed legislative amendments to provide for the suspension of the limitation period upon filing of motion material.
- Jurisdictions remain committed to bring forward amendments to address the limitation period applicable to secondary market misrepresentation claims.

Point of Sale Disclosure Project

Since 2010, the CSA has proceeded with a three staged-approach for implementing the Point of Sale (POS) disclosure project. The focus of the POS disclosure document is to provide investors with more meaningful and effective prospectus disclosure of mutual funds, segregated funds and exchange traded funds.

Stage 1

- All provinces and territories have amended their legislation to support a disclosure regime for mutual funds to support the use of a Fund Facts disclosure document.

Stage 2

- Most jurisdictions have amended their legislation to support Stage 2 of the POS project requiring dealers to deliver the Fund Facts within two days of buying a conventional mutual fund.
- Newfoundland and Labrador and Nunavut remained committed to follow suit to bringing forward Stage 2-related legislative amendments.

Stage 3

- Significant progress has been made by the regulators to complete the final stage of the POS project, which consists of three sub-projects (see Appendix).
- Ontario (2011), followed by Alberta and Nova Scotia (2015), amended their legislation to support Stage 3 of the POS project to support the use of an exchanged-traded mutual funds (ETF) Facts disclosure document for EFT.
- Manitoba already has the necessary legislative authority in place.
- Québec, Newfoundland and Labrador, Northwest Territories and Nunavut remain committed to bring forward Stage-3 related legislative amendments.

Canadian Securities Administrators 2013-16 Business Plan

The CSA members have issued their final report on the significant progress made on CSA's priorities outlined in the CSA 2013-16 Business Plan. The CSA has recently published its 2016-19 Business Plan. Additional information on the CSA 2016-19 Business Plan can be obtained at www.securities-administrators.ca/.

The Appendix highlights the CSA's progress on meeting deliverables outlined in its 2013-16 Business Plan.

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.

Appendix: 2013-16 CSA Business Plan – Progress on Deliverables of Selected CSA Priorities

CSA Priorities	Identified Deliverables	Progress on Deliverables
1. Enhanced Retail Investor Protection		
1. Enhanced Disclosure to Investors	<ul style="list-style-type: none"> Complete rulemaking and implement point of sale disclosure and delivery regime for conventional mutual funds 	<p>Stage 1 of the POS Project</p> <ul style="list-style-type: none"> Effective January 1, 2011: Fund managers are required to prepare and file a Fund Facts for each class or series of each of their mutual funds and to post the Fund Facts to their website. <p>Stage 2 of the POS Project</p> <ul style="list-style-type: none"> Effective June 13, 2014: Dealers are required to deliver the Fund Facts within two days of buying a conventional mutual fund. <p>Stage 3 of the POS Project</p> <ul style="list-style-type: none"> Effective May 30, 2016: Implementation of a pre-sale delivery requirement of the Funds Facts for conventional mutual funds. Dealers are required to deliver the Fund Facts to a purchaser before accepting instructions for the purchase of a mutual fund. The prospectus will continue to be available to investors upon request.
	<ul style="list-style-type: none"> Introduce summary document and delivery obligation for comparable products such as ETFs and complete rule-making and implementation 	<p>Stage 3 of the POS Project</p> <ul style="list-style-type: none"> June 18, 2015: The CSA published for comment proposed amendments to National Instrument 41-101 <i>General Prospectus Requirements</i> and related companion policy, in addition to proposed related consequential amendments to National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> and related companion policy to establish a new disclosure regime for exchange-traded mutual funds (ETFs) based on the use of a “ETF Facts” summary disclosure document and a delivery regime for ETF Facts. Under the proposed amendments: <ul style="list-style-type: none"> An ETF would be required to produce and file and ETF Facts and make it available on the ETF’s or the ETF manager’s website. Dealers that receive an order to purchase ETF securities will be required to deliver an ETF Facts to investors within two days of the purchase. The CSA is currently finalizing the proposed rule.
	<ul style="list-style-type: none"> Publish the CSA risk calculation methodology to identify a mutual fund’s risk level on the scale prescribed in the Funds Facts 	<p>Stage 3 of the POS Project</p> <ul style="list-style-type: none"> December 10, 2015: The CSA published for comment proposed amendments that will require fund managers to use a standardized risk classification methodology when determining the risk level for conventional mutual funds and ETFs in the Fund Facts and proposed ETF Facts, respectively.

CSA Priorities	Identified Deliverables	Progress on Deliverables
2. Mutual Fund Fees	<ul style="list-style-type: none"> Conduct stakeholder consultations and determine extent of regulatory response, as appropriate 	<ul style="list-style-type: none"> December 17, 2013: The CSA published CSA Staff Notice 81-323 <i>Status Report on Consultation under CSA Discussion Paper and Request for Comment 81-407 Mutual Fund Fees</i>, a status report on consultations related to mutual fund fees. April 7, 2014: The CSA issued a request for proposals for two independent research papers to support the CSA's mutual fund fees review. June 11, 2015: The CSA published a research paper on the topic of "the use of fee-based vs. commission-based compensation changes the nature of advice and investment outcomes over the long term" conducted by the Brondesbury Group. The research paper is posted on the CSA website. October 22, 2015: The CSA published a research paper on the topic of "sales and trailing commissions influence fund sales" conducted by Professor Douglas Cumming, Ontario Research Chair at the Schulich School of Business at York University. The research paper is posted on the CSA website.
2. Capital Raising by Small and Medium Sized Enterprises and Exempt Market		
1. Prospectus Exemptions	<ul style="list-style-type: none"> Amend as appropriate current prospectus exemptions based on investor sophistication/accreditation, investment size or short term debt issuance 	<ul style="list-style-type: none"> February 19, 2015: The CSA announced changes to the accredited investor (AI) prospectus exemption and minimum amount investment (MI) prospectus exemption in National Instrument 45-106 <i>Prospectus Exemptions</i> (NI 45-106) to address investor protection concerns. There have been no changes made to the income and asset thresholds for an individual to qualify as an accredited investor. Effective May 5, 2015: <ul style="list-style-type: none"> issuers must obtain a signed risk acknowledgement form from individual investors under the AI prospectus exemption. The form describes, in plain language, the categories of individual accredited investor and identifies the key risks associated with purchasing securities in the exempt market; issuers can no longer rely on the MI prospectus exemption to distribute securities to individuals (or retail investors) across Canada. February 19, 2015: The Ontario Securities Commission adopted a family, friends and business associates prospectus exemption, which came into force in Ontario on May 5, 2015 – a harmonization initiative with the other provinces and territories. October 29, 2015: Securities regulators in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan published Multilateral CSA Notice of Amendments to National Instrument 45-106 <i>Prospectus Exemptions Relating to the Offering Memorandum Exemption</i> announcing changes to the existing offering memorandum (OM) prospectus exemption in NI 45-106 and the introduction of an OM prospectus exemption in Ontario.
	<ul style="list-style-type: none"> Complete review and amendment, as appropriate, 	<ul style="list-style-type: none"> April 9, 2015: The CSA published final amendments to National Instrument 51-102 <i>Continuous Disclosure Obligations</i>, National Instrument 41-101 <i>General Prospectus Requirements</i> and

CSA Priorities	Identified Deliverables	Progress on Deliverables
	<p>of exemption and disclosure rules relating to securitized and complex products</p> <ul style="list-style-type: none"> • Evaluate whether to adopt a prospectus exemption to permit the distribution of securities through crowdfunding and the appropriate registration regime • Consider further harmonizing the exempt market regulatory framework, including the development and implementation of any new prospectus exemptions that are harmonized across CSA members to the extent possible 	<p>related companion policies, and National Instrument 52-110 <i>Audit Committees</i> that will streamline and tailor disclosure by venture issuers. The amendments to the existing rules and related policies came into effect on June 30, 2015.</p> <ul style="list-style-type: none"> – The amendments are intended to make disclosure requirements for venture issuers more suitable and manageable for issuers at their stage of development. • Effective May 14, 2015: Securities regulators in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia adopted substantially harmonized prospectus and registration exemptions that allows start-up and early stage non-reporting issuers to raise capital through crowdfunding in those jurisdictions, subject to certain conditions. The participating regulators have implemented the start-up crowdfunding exemptions by way of local blanket orders. • November 5, 2015: Securities regulators in Manitoba, Ontario, Québec, New Brunswick and Nova Scotia published in final form Multilateral Instrument 45-108 <i>Crowdfunding</i> (MI 45-108) introducing a crowdfunding prospectus exemption and a registration framework for funding portals, which would be available to both reporting and non-reporting issuers. MI 45-108 came into effect in the participating jurisdictions on January 25, 2016. • October 19, 2015: The Alberta Securities Commission and the Nunavut Securities Office published for comment proposed Multilateral Instrument 45-109 <i>Prospectus Exemption for Start-Up Businesses</i> providing a prospectus exemption, but not a registration exemption, for start-up and early stage companies to raise capital, and is not limited to crowdfunding. The comment period expired December 18, 2015. <ul style="list-style-type: none"> – The proposed exemption is intended to harmonize with the crowdfunding blanket orders adopted by securities regulators of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia.
3. Shareholder Democracy and Protection		
Take-over Bid Regime	<ul style="list-style-type: none"> • Review and amend rules as applicable to the early warning system, shareholders' rights plans and defensive tactics 	<ul style="list-style-type: none"> • March 31, 2015: The CSA published for comment proposed amendments to Multilateral Instrument 62-104 <i>Take-Over Bids and Issuer Bids</i> (MI 62-104), the related national policy and consequential amendments to other instruments and policies to enhance the quality and the integrity of the take-over bid regime in Canada.
4. Market Regulation		
3. OTC Derivatives Framework	<ul style="list-style-type: none"> • Develop and implement rules for an OTC Derivatives regulatory framework, including clearing and trade 	<ul style="list-style-type: none"> • The CSA has published eight consultation papers that deal with OTC related matters since 2010, which are: <ul style="list-style-type: none"> – November 2010, <i>CSA Consultation Paper 91-401 on Over-the-Counter Derivatives</i>

CSA Priorities	Identified Deliverables	Progress on Deliverables
	reporting	<p><i>Regulation in Canada</i></p> <ul style="list-style-type: none"> – June 23, 2011, CSA Consultation Paper 91-402 <i>Derivatives: Trade Repositories</i> – November 25, 2011, CSA Consultation Paper 91-403 <i>Derivatives: Surveillance and Enforcement</i> – February 10, 2012, CSA Consultation Paper 91-404 <i>Derivatives: Segregation and Portability in OTC Derivatives Clearing</i> – April 13, 2012, CSA Consultation Paper 91-405 <i>Derivatives: End-User Exemption</i> – June 20, 2012, CSA Consultation Paper 91-406 <i>Derivatives: OTC Central Counterparty Clearing</i> – April 18, 2013, CSA Consultation Paper 91-407 <i>Derivatives: Registration</i> – January 29, 2015, CSA Consultation Paper 92-401 <i>Derivatives: Trading Facilities</i> • The CSA has developed a number of rules to implement an OTC Derivatives regulatory framework in Canada, which includes the following. <ul style="list-style-type: none"> – June 6, 2013: Regulators in Ontario, Québec and Manitoba published for comment proposed provincial rules and updated model rules relating to product determination and trade repositories and data reporting. – Effective December 31, 2013: Local rules relating to derivatives product determination (91-506) and trade repositories and derivatives data reporting (91-507) came into effect in Ontario, Québec and Manitoba. – January 21, 2015: Securities regulators in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan published for comment proposed Multilateral Instrument 91-101 <i>Derivatives: Product Determination</i> (MI 91-101) and proposed Multilateral Instrument 96-101 <i>Trade Repositories and Derivatives Data Reporting</i> (MI 96-101). The two proposed instruments form a derivatives reporting regime in those jurisdictions that is largely harmonized with regimes previously implemented in Ontario, Québec and Manitoba.
5. Enhancement of Enforcement Effectiveness		
1. Reciprocal Orders	<ul style="list-style-type: none"> • Promote greater use of reciprocal orders across CSA members 	<ul style="list-style-type: none"> • Effective July 1, 2015: The Alberta government proclaimed into force legislative amendments to provide the Alberta Securities Commission with a new automatic reciprocal enforcement order mechanism. <ul style="list-style-type: none"> – When another provincial or territorial securities regulator issues an enforcement order or enters into an agreement that imposes sanctions, conditions, restrictions or requirements on a person or company, reciprocation of that enforcement order or agreement will automatically apply in Alberta.

CSA Priorities	Identified Deliverables	Progress on Deliverables
6. Enhancement of Information Technology		
1. CSA National Filing Systems	<ul style="list-style-type: none"> Develop and build a new national filing system to replace core CSA national systems (SEDAR, SEDI, NRD), including a national exempt distribution reporting system 	<ul style="list-style-type: none"> October 2014: The CSA initiated a competitive process to seek proposals to develop and build a new national filing system to replace core CSA national systems. Proposals were due by January 9, 2015.
7. Other CSA Projects and Initiatives		
Other projects and initiatives, in addition to initiatives already identified in the CSA 2013-16 Business Plan	<ul style="list-style-type: none"> Possible expansion of the passport system 	<ul style="list-style-type: none"> April 16, 2015: The CSA published proposed amendments to Multilateral Instrument 11-102 <i>Passport System</i> (MI 11-102) and related policies (includes new interface policies) to expand the passport system to two new areas: <ul style="list-style-type: none"> – applications to cease to be a reporting issuer; and – cease trade orders resulting from the failure to file continuous disclosure documents.
	<ul style="list-style-type: none"> Other regulatory projects 	<p>Improved Disclosure - Gender Diversity</p> <ul style="list-style-type: none"> January 16, 2014: The Ontario Securities Commission published for comment proposed amendments to Form 58-101F1 <i>Corporate Governance Disclosure</i> (Form 58-101F1) of National Instrument 58-101 <i>Disclosure of Corporate Governance Practices</i> (NI 58-101) related to gender diversity. <ul style="list-style-type: none"> – The proposed amendments would require TSX-listed and other non-venture issuers to provide disclosure on matters that include the number of women on the board and in executive officer positions and policies regarding the representation of women on the board, on an annual basis. July 3, 2014: Securities regulatory authorities in Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut published for comment proposed amendments to Form 58-101F1 of NI 58-101 related to gender diversity. The proposed amendments mirrored the proposed amendments previously published by the OSC in January 2014. October 15, 2014: Securities regulatory authorities in Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut adopted new disclosure requirements for non-venture issuers in those jurisdictions relating to gender diversity of boards and in executive officer positions and board renewal mechanisms, which came into effect on December 31, 2014. <p>September 28, 2015: The CSA published the results of a review that assessed the disclosure of over 700 TSX-listed issuers following the implementation of amendments to NI 58-101.</p>

CSA Priorities	Identified Deliverables	Progress on Deliverables
		<p>Improved Disclosure for Certain Exempt Market Filings</p> <ul style="list-style-type: none"> • June 30, 2015: CSA members (except Ontario and BC) published for comment proposed amendments to National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval</i> (SEDAR) to require certain exempt market filings (includes the report of exempt distribution and the offering memorandum), which are currently filed in paper format, to be filed in electronic format on SEDAR. <ul style="list-style-type: none"> – This will enable issuers to make filings in multiple jurisdictions through one electronic submission. – Ontario and BC already have local systems in place to receive these filings electronically.