

ACTION PLAN

Provincial/Territorial Securities Initiative Action Plan to Improve Canada's Securities Regulatory Framework

Responding to the Need for Change

Early in 2003, Canada's provincial and territorial Ministers responsible for securities regulation agreed to work together to make significant reforms to the existing framework. Recognizing the significant advances that regulators have made in recent years, and wishing to respond to the need for change in a timely way, Ministers strove to identify the most pressing issues with the current system, and then identified a solution which they felt would address the majority of these issues in a timely and practical way, while at the same time providing a high standard of investor protection.

The goal identified by Ministers for this reform initiative is to develop a provincial/territorial framework that inspires investor confidence and supports competitiveness, innovation and growth through efficient, streamlined and cost-effective securities regulation that is simple to use for investors and other market participants.

The solution proposed was a passport system for securities that would allow an issuer to gain access to the capital markets across participating jurisdictions by dealing with one regulator and complying with one jurisdiction's law and rules. Similarly, registrants would be allowed to do business across participating jurisdictions by dealing with only one regulator and one jurisdiction's law and rules to become and remain registered. By providing a single window of access to capital markets, complexity and costs faced by market participants should be reduced.

The principles guiding Ministers as they develop the passport system are:

- Highest standards of investor protection that are effectively and consistently applied
- Efficient access to capital
- Efficient and cost-effective, streamlined and simplified, regulation
- Ability to adapt to evolving marketplace conditions
- Transparency, accessibility and accountability for stakeholders, within a clearly defined framework for accountability to governments
- Highly harmonized securities laws, with well-defined parameters for exceptions to accommodate local and regional differences.

Defining a Passport System

The passport system for securities regulation will provide a single window of access to market participants. This could be done through mutual recognition, legal delegation, or a combination of these approaches, as one approach may work best in certain areas of regulation but be less than optimal in other areas.

Under mutual recognition, participating jurisdictions would recognize that a market participant who complies with, files documents under and/or receives approvals respecting market access requirements of the primary jurisdiction, is deemed to be in compliance with or exempt from the market access compliance, document filing and/or approval requirements of its host jurisdiction(s). Through legal delegation, participating jurisdictions would delegate powers to make decisions to the primary jurisdiction.

Legislation to implement the passport system will include provisions such that a province or territory that wishes to participate in the passport system, but does not wish to participate as a primary jurisdiction, can delegate all or part of its responsibilities which it would otherwise incur as a primary jurisdiction to another jurisdiction that agrees to the delegation. Provisions for rule making or at least regulation making authority in those jurisdictions that currently do not have regulation or rule making authority under their securities legislation would also be necessary in those jurisdictions should they wish to act as a primary jurisdiction.

<p>To underscore their commitment to the passport system, Ministers have signed a Memorandum of Understanding that outlines the basic system each participating province or territory will make best efforts to adopt and provides for ongoing co-operation and co-ordination in the future.</p>
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Improving Access to Capital Markets

The passport will initially apply to areas that have been identified where there is already a high degree of harmonization across jurisdictions, or where a high degree of harmonization can be achieved in an accelerated timeframe. The passport system for issuers will initially apply to prospectus requirements and clearance, prospectus and registration exemptions, continuous disclosure requirements and routine discretionary exemptions. This will provide issuers with a single window of access to capital markets across participating jurisdictions.

The passport system for registrants will initially apply to the registration process, requirements and related filings and general and routine discretionary registration exemptions. Registrants will need to deal with one regulator to be registered to do business across participating jurisdictions. In areas not covered by the passport system, registrants and issuers will need to continue to comply with the laws in each jurisdiction. Working towards highly harmonized, streamlined and simplified laws will address many issues raised by stakeholders in these areas.

Enhancing Investor Protection

Existing investor protections will be maintained or enhanced. An investor will continue to be able to bring a civil action against a market participant in the investor's own jurisdiction. In addition, Ministers are committed to work together on an ongoing basis to ensure that the highest standards of investor protection are effectively and consistently applied. Ministers will work together to explore options to further enhance investor protection.

Options that Ministers will explore to further enhance investor protection include:

- developing highly harmonized primary and secondary market civil liability provisions
- increasing consistency of policies across provinces with respect to approaches to and priorities for enforcement
- improving existing enforcement practices
- improving co-ordination among provincial securities regulators, self-regulatory organizations and policing agencies to prevent, detect and prosecute securities-related offences
- further harmonizing, where appropriate, sanctions, remedies and maximum penalties
- providing for disgorgement, compensation for financial loss and/or restitution orders in all jurisdictions (as has been done in some provinces)
- separating the adjudicative function from the regulator by establishing a separate tribunal (as has been done in Quebec)

Building on the Work of Regulators – Highly Harmonized Securities Laws

The majority of stakeholders supported the need for ongoing, increased harmonization and cooperation among provinces and territories. Many also felt that the existing legal framework is unnecessarily complex. In response to these concerns, Ministers are committed to implementing highly harmonized securities laws, simplified where appropriate, building on the work already done by regulators. By the end of 2006, such laws will be developed and implemented. This will enhance the passport system and provide a basis of common ground on which further improvements can be made.

Through the work of the Canadian Securities Administrators (CSA), regulators have made significant progress in recent years in harmonizing securities regulation and co-ordinating their action in Canada. The ongoing work of the securities regulators will complement the passport system and the Ministers' harmonization and streamlining project. The Uniform Securities Law (USL) project, British Columbia's new securities law and the Final Report of the Five-Year Review Committee on Ontario's securities laws will be reviewed to determine the extent to which they can provide a base for highly harmonized laws. It is recognized that such law would need to be adapted as appropriate to accommodate Quebec's Civil Code, Charter of the French language, and single financial regulator structure.

Moving Beyond the Passport

Ministers have decided to come together as a formal Council to oversee the passport system, develop highly harmonized securities laws and make future improvements.

The Council of Ministers of Securities Regulation will meet regularly to preserve and enhance the regulatory framework for securities through:

- Implementing the passport system and monitoring its operation
- Leading and overseeing the development of highly harmonized securities laws and monitoring their effectiveness
- Monitoring and reviewing the securities regulatory framework and conducting ongoing regular reviews of securities policy and law
- Identifying priority policy initiatives for securities regulators and establishing clear timelines for the completion of such initiatives
- Discussing and providing direction to the securities regulators with respect to major policy issues
- Ensuring key international issues are addressed
- Sharing information about local rules
- Reviewing the MOU regularly and amending it as necessary

Taking Action

Ministers strongly believe that now is the time to act and have established an ambitious timeframe. Our objective is to have a passport system, building on the work done by regulators, implemented by August 2005 and highly harmonized, streamlined and simplified securities laws in force by the end of 2006.

Governments will develop highly harmonized securities legislation, simplified and streamlined where appropriate, and will identify and consult on additional areas that could be more highly harmonized, streamlined, and simplified. To ensure that stakeholders remain involved in the process, additional consultations will be undertaken over the next few years.

Reviewing Progress

Ministers want to keep stakeholders informed of the progress that is being achieved. Regular updates will be posted at www.securitiescanada.org. A review of progress versus the goals set out in the Action Plan will be conducted annually and posted on the website.

The Council will ensure a review of the passport system is conducted to assess its effectiveness after three years of operation. As part of the review, further measures to integrate administration practices and laws will be identified.

Continuing to Explore Reform

Ministers, through the Council, will continue to explore options for further reform of the securities framework that would respect individual provincial and territorial responsibilities for securities regulation.

Options for further reform would need to be consistent with the original goal of the provincial/territorial securities initiative: to develop a provincial/territorial framework that inspires investor confidence and supports competitiveness, innovation and growth through efficient, streamlined and cost-effective securities regulation that is simple to use for investors and other market participants.

Provincial/Territorial Securities Initiative Action Plan Timeline

Sign Provincial/Territorial Memorandum of Understanding

Ministers formally agree to work together and demonstrate this intent by signing a Memorandum of Understanding that lays out the Ministers' commitments, including establishing a passport system and a Council of Ministers of Securities Regulation in the near term, developing highly harmonized securities laws, conducting a fee review and exploring further reform.

Proposed Timing:

Completed by September 30, 2004

Implement the "Passport" System

Through provincial legislation, enable delegation, adoption and/or incorporation by reference so that regulators can expand and enhance their ability to rely on each other to act as a lead regulator.

There are areas where a high degree of harmonization currently exists that provides a solid base for a passport system. These areas include:

- Prospectus requirements and clearance
- Continuous disclosure requirements
- Routine discretionary exemptions

There are areas where a higher degree of harmonization than currently exists would greatly facilitate a passport system. Securities regulators, through the Canadian Securities Administrators, should, prior to implementation of a passport system, develop and implement highly harmonized rules, simplified where appropriate, in the following areas:

- Registration process, requirements and related filings
- Prospectus and registration exemptions

Proposed Timing:

Completed by August 1, 2005

Develop and Implement Highly Harmonized Securities Laws

Develop and implement highly harmonized provincial securities legislation, regulation and rules, simplified where appropriate, that build on existing harmonized laws.

Proposed Timing:

Completed by December 31, 2006

Conduct Fee Review

Ministers will direct a review of fees by officials and regulators to ensure that the fee structure is consistent with the concept of a passport system.

Proposed Timing:

Completed by December 31, 2006

Explore Further Reform

Explore options for further reform to consolidate and/or strengthen co-ordination and consistency of securities law among provinces that would respect individual provincial/territorial responsibilities for securities regulation.

Proposed Timing:

Completed by December 31, 2007