AUTORITÉ DES MARCHÉS FINANCIERS

SINGLE REGULATOR: A NEEDLESS PROPOSAL

Brief Submitted to the Expert Panel on Securities Regulation

July 2008

Executive Summary

On February 21, 2008, the federal Minister of Finance, the Honourable Jim Flaherty, announced the creation of an expert panel to review securities regulation in Canada. The panel is chaired by the Honourable Tom Hockin, former Minister of State (Finance).

The creation of this panel is a further step in the federal government's intrusion in securities regulation, although this is a matter of provincial jurisdiction under the Canadian Constitution. This initiative may be added to the Wise Persons' Report (2003), the Crawford Panel Report (2006), the 2007 federal budget and the update of the Crawford Report (2007), which successively recommended, to varying degrees, federal government intervention in securities regulation and, in particular, the creation of a single securities regulator.

Given its responsibilities as a provincial regulator and the significant impacts on the Québec securities industry that could stem from the eventual application of the panel's recommendations, the *Autorité des marchés financiers* (AMF) wishes to convey its position in this matter.

The AMF believes that current securities regulation in the various regions of the country is adequate in light of the specific features of the Canadian market. On an international scale, Canada operates a small securities market made up of firms located across a vast territory with needs that vary significantly from region to region and which, for the most part, are financed locally.

Against this backdrop, a system of provincial and territorial regulators serves as the most appropriate regulatory framework, as regulators are able to identify and respond more effectively to the specific needs of firms in their jurisdiction, while striving to harmonize securities regulations and processes. Under the umbrella of the Canadian Securities Administrators (CSA), the model fosters information sharing and healthy competition, thereby promoting innovation and the adoption of best practices Canada-wide. In addition, it facilitates consultation with market players.

Because of the size of Canada, the presence of provincial and territorial regulators also enhances consumer protection. Since securities operations are often local in nature, the proximity of regulators to local markets facilitates the detection of fraudulent practices. The benefits derived from the proximity of regulators to markets are comparable to those observed in the U.S., where a securities regulator operates in each of the 50 states.

The adoption of a single securities regulator must be based on a demonstration that such a framework would be superior to the existing system. This Brief underscores that the arguments put forth in support of the federal proposal do not justify the proposed changes in the current regulatory structure. The position of the AMF reflects the findings of a number of international bodies whereby securities regulation in Canada is among the best in the world. The AMF therefore considers it paradoxical that the federal government is proposing to replace a system that meets the needs of Canadian firms and investors and has been widely recognized internationally for its effectiveness. The criticism expressed by the federal government against the country's securities industry is tarnishing the industry's reputation abroad and is generally undermining Canada's economic interests.

Furthermore, it is important to stress that the federal and provincial bodies responsible for regulating Canada's capital markets — the Bank of Canada, the Office of the Superintendent of Financial Institutions (OSFI), and securities regulators — essentially pursue the same objectives and face identical challenges. Indeed, the crisis related to asset-backed commercial paper (ABCP) only highlights that a federal or single regulatory body does not necessarily eliminate such challenges. Any proposal to create a single regulator based on the premise that a federal presence would deliver a more effective regulatory framework therefore lacks merit.

In addition to these general remarks, this Brief sets out five key conclusions:

1. The federal government's criticism of Canada's current securities framework is unsubstantiated

Over the past few years, the federal government has often criticized securities regulation in Canada. Such criticism forms the basis of the federal government's proposal to adopt a common securities act and a single regulator.

According to the government, the presence of 13 regulators in Canada is making business more complex, increasing industry-borne costs, encumbering regulation, impeding the implementation of regulatory changes, compromising the suppression of securities fraud and limiting Canada's ability to speak with one voice internationally in a context of growing market globalization. The AMF considers these arguments to be groundless.

The argument that business has become complex due to the existence of 13 regulators in Canada shows a lack of understanding of market access mechanisms, in particular, the passport system. Securities issuers in Canada need only deal with their principal regulatory authority to reach all investors. Moreover, under the passport system, issuers that conduct business in more than one jurisdiction now benefit from highly harmonized regulations and procedures.

As regards issuer-borne costs, they are generally lower than in the United States. For instance, initial public offerings (IPOs) in Canada cost less than in the U.S. More specifically, the direct cost of IPOs totalling less than U.S.$10 million (brokerage fees and costs related to legal services, fees and the preparation of a prospectus) depends to a large extent on the regulatory framework, and the advantage is 4.5% of gross proceeds. These offerings represent more than 50% of the Canadian market. Studies also show that the cost of capital in Canada is among the lowest in the world.

The federal government's conclusion that securities regulation in Canada is cumbersome and confusing also does not stand up to analysis. A number of independent international bodies have found that Canada's current regulatory framework is among the best in the world:

- the Organisation for Economic Co-operation and Development (OECD) ranked Canada 2nd in the world for the quality of securities regulation;

- a World Bank study ranked Canada 5th out of 175 countries in terms of investor protection;

- the International Monetary Fund (IMF) issued a highly positive review of the securities framework and regulation in Canada following a mission to Québec and Ontario in 2007 as part of the Financial Sector Assessment Program (FSAP).

The federal government's argument that reforms are slow and that co-operation is difficult to achieve is also unsustainable. The argument completely sidesteps the fact that:

- the Provincial/Territorial Council of Ministers of Securities Regulation and the Canadian Securities Administrators (CSA) provide the provinces and territories with a sophisticated and effective co-ordinated structure;

- for more than a decade, the CSA has accomplished, among other initiatives, the substantial task of harmonizing systems and procedures by rolling out national systems such as the System for Electronic Document Analysis and Retrieval (SEDAR), the System for Electronic Disclosure by Insiders (SEDI), the National Registration Database (NRD), the National Registration System (NRS), the Mutual Reliance Review System (MRRS, for prospectuses and exemptive relief applications, etc.) and, more recently, the passport system;

- with the agreement of the respective provincial governments, the CSA has also significantly streamlined securities regulation with the implementation and publication of 45 national instruments and 44 policy statements Canada-wide since 1997.

With regard to the ability of regulatory organizations to deter securities fraud within the current system, it should be noted that suppressing this type of crime is not the sole responsibility of securities authorities. The suppression of securities fraud can only be achieved effectively through the concerted efforts of all parties involved, namely, regulators, self-regulatory organizations, police forces and Crown prosecutors. Moreover, Canada's less successful record of fighting securities fraud compared with the U.S. essentially reflects the challenges of enforcing criminal laws in a country with limited means available for doing so. A single securities regulator would in no way diminish these challenges.

Finally, with regard to criticism about Canada's representation on the international stage, it bears repeating that Canada is very well represented at international forums. For example, Ontario and Québec serve on the five standing committees of the International Organization of Securities Commissions (IOSCO) Technical Committee, of which both provinces are members. The positions upheld by the regulators in these two provinces are co-ordinated as part of the work carried out by the CSA. They are also on the agenda of the Heads of Regulatory Agencies, which brings together the senior managers of the four main securities regulators in Canada, the Bank of Canada, the OSFI and the Department of Finance Canada.

Moreover, the U.S. Securities and Exchange Commission (SEC) recently invited the CSA to undertake a mutual recognition arrangement, and this can only confirm that a single regulator is not a prerequisite for advancing Canada's interests on the international stage.

2. A common securities act and a single securities regulator are unnecessary structural changes

Adopting a single regulator on the basis of a common securities act would raise major issues, in particular, the constitutionality of the approach, the capacity of this new framework to address specific regional needs, the impact on industry costs, and the consequences of any transition towards a new framework model.

After examining these issues, the AMF concludes that the adoption of a single regulator on the basis of a common securities act would simply result in unnecessary structural changes.

From a constitutional standpoint, the courts have, on a number of occasions, confirmed the jurisdiction of the provinces in matters of securities regulation; federal jurisdiction, on the other hand, has never been determined. A decision to move forward with a common law could therefore prompt certain provinces, firms or individuals to dispute the legality of the federal proposal in court. Such action could give rise to unnecessary legal turmoil without demonstrating any underlying benefits.

Moreover, due to the diversity of regional businesses and the predominantly local nature of financing, the current framework is clearly the better model given that provincial and territorial regulators are able to identify and respond more effectively to the specific needs of firms in their jurisdictions, while striving to harmonize regulations and processes.

A framework structure built around a common securities act and a single regulator could be less responsive to the concerns of firms in certain jurisdictions. Under a common securities act, regulatory amendments would be adopted, at best, based on the rule of the majority. Consequently, a province could be obligated to comply with regulation that does not serve the interests of its firms.

Anticipated cost savings could fall short of those reported in some studies, and may not even be generated at all. These savings would only be possible by significantly diminishing the presence of regulators at the regional level, particularly with respect to the deterrence of fraud. Furthermore, these studies do not take into account several factors that would limit any savings, such as the difficulty in harmonizing employment conditions and the various computer systems.

The transition towards a common act and a single regulator would undoubtedly be costly, time-consuming and arduous. It would be irresponsible to impose such structural changes on the industry without first clearly demonstrating substantial benefits down the road. However, as stated previously, this has yet to be done.

3. A single regulator is not a prerequisite to developing more principles-based securities regulation

In its consultation paper, the expert panel referred to the relevance of adopting more principles-based securities regulation in Canada. The paper is clearly inclined towards this approach. The panel's interest in this issue stems from the previous research conducted by other federal committees or task forces. Recently, federal Finance Minister Jim Flaherty publicly expressed his support for principles-based securities regulation in Canada. He even mandated the panel to draft a common securities act premised on this approach.

The AMF notes that the CSA acknowledges the advantages of principles-based regulation in certain circumstances. Indeed, key areas of securities regulation in Canada and Québec are modelled on this regulatory approach.

In addition, assuming that the goals of securities regulation are generally to ensure market effectiveness and protect investors, the AMF is of the opinion that a combination of rules and principles would best achieve these goals. This approach is used in the United Kingdom, which is considered to be at the forefront of principles-based regulation. However, it is impossible to conclude that one regulatory approach is better than another without reference to the objectives being sought by the regulator.

Lastly, it is important to point out that a single regulator is not necessary in order to implement more principles-based securities regulation in Canada. Such regulation, when deemed advisable, can easily be adopted within the scope of the work of the CSA.

4. The best approach in matters of securities regulation in Canada is continued co-operation among provincial and territorial regulators under the umbrella of the CSA

Once the idea of a common act and a single regulator has been dismissed, our attention must turn to the orientations necessary for the purpose of ensuring that Canada's securities framework enables the industry to achieve its full potential and protects investors, in light of the challenges facing the industry.

The AMF considers that the best approach is continued co-operation among the provincial and territorial regulators responsible for securities regulation under the umbrella of the CSA. This approach:

- respects the power granted to the provinces under the Constitution in matters related to securities regulation;

- acknowledges the small size of firms and their significant regional diversity, while achieving a high degree of harmonization;

- sustains the development of a modern, efficient and internationally competitive Canadian securities market.

One of the main challenges ahead for the provinces, territories and the CSA is to complete the implementation of the passport system. Once this has been accomplished, all industry participants, be they issuers or dealers, will be able to access the Canadian securities market by dealing only with their principal regulator.

A further step aimed at strengthening the harmonized regulatory system would be the adoption in each province of a securities tribunal based on Québec's *Bureau de décision et de révision en valeurs mobilères* (BDRVM, the securities decision and review board).

The idea of empowering a separate body with the quasi-judicial functions exercised by securities regulators has been proposed many times in recent years, in particular by the Wise Persons' Committee set up by the federal government and by the Task Force to Modernize Securities Regulation in Canada of the Investment Dealers Association (IDA). In Ontario, the Osbourne Committee report recommended establishing an administrative tribunal separate from the Ontario Securities Commission. Québec Finance Minister Monique Jérôme-Forget recently upheld this position before her colleagues on the Provincial/Territorial Council of Ministers of Securities Regulation.

A quasi-judicial body or tribunal separates the enforcement and adjudicative roles currently performed by the securities regulators in each province and territory except Québec. It also helps eliminate the risk of perceived partiality that arises when such functions are combined within a single body.

Québec's experience with the BDRVM is testimony to the effectiveness of this model. Assigning quasi-judicial functions to this administrative tribunal, which is independent from the AMF, has not caused procedures to be cumbersome or resulted in undue delays or costs.

Implementation over the medium term of a quasi-judicial system involving all provinces and territories is currently under study. Such a system would ensure a more uniform interpretation of securities legislation across the country.

5. Within its jurisdiction, the federal government should support the securities regulation efforts of the provinces and territories by raising awareness about the importance of economic crime, enhancing the effectiveness of Integrated Market Enforcement Teams and working with jurisdictions to improve the tools available to investigators

There is broad consensus in Canada that a key challenge for securities regulation is more effective deterrence of securities fraud. As stated, this responsibility is shared by a number of players: securities regulators, self-regulatory organizations, police forces and Crown prosecutors.

Close co-operation between the federal government and the provinces in this regard is essential. RCMP operations and enforcement of the Criminal Code are the responsibility of the federal government. As such, the federal government is in a position to take concrete action to deter securities fraud within its jurisdiction, without the need to create a single securities regulator or adopt a common securities act.

The AMF believes that federal, provincial and territorial authorities should work closely together to:

- raise awareness about the importance of economic crime;
- enhance the effectiveness of investigation teams, in particular Integrated Market Enforcement Teams (IMETs);
- improve the tools available to investigators. Four priorities are noted:
  - study the feasibility of adopting an investigative summons power in Canada;
  - improve information sharing between regulators and police forces;
  - enhance co-operation between parties with respect to case intake and referral;
  - facilitate the seizure of proceeds of economic crime.

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INTRODUCTION

On February 21, 2008, the Honourable Jim Flaherty, federal Minister of Finance, announced the creation of a new expert panel to review securities regulation in Canada.

The mandate of the panel, chaired by the Honourable Tom Hockin, former Minister of State (Finance), is to propose a common securities act that would apply to all jurisdictions in Canada. As part of its mandate, the panel will examine five key areas:

- the outcomes, principles and performance measures of securities regulation;
- the development of principles-based securities regulation;
- the development of securities regulation proportionate to certain economic attributes of businesses, especially size;
- the application of laws (repression);
- the securities regulation structure, in particular the implementation of a single commission or the passport system.

The work of this expert panel follows on the heels of various federal committees and task forces, in particular the Wise Persons' Committee[1] and the Crawford Panel.[2] Some of these groups have proposed a Canadian securities act and a single regulator. The conclusions of the Hockin panel therefore are fairly predictable.

In its role as the agency responsible for regulating and developing the securities industry in Québec, the *Autorité des marchés financiers* (AMF) wishes to convey its position on the issues being examined as part of the consultation process led by the federal expert panel.

This Brief contains four sections.

- The first section analyzes the criticisms made over the past few years by the federal government and its various task forces with respect to the current securities framework in Canada.
- The second section discusses the consequences of implementing a common securities act and a single securities regulator in Canada.

- The third section examines the challenges related to developing more principles-based securities regulation.
- The last section sets out the recommended approach to regulation with a view to ensuring the growth of the Canadian securities industry, in the best interests of investors.

1. THE GOVERNMENT'S ANALYSIS OF CURRENT SECURITIES REGULATION: UNWARRANTED CRITICISM

Over the past few years, the federal government and its task forces have put forward arguments to justify the federal presence in Canada's securities regulation and, in particular, the implementation of a single regulator. The federal government mainly argues that:

- the complexity stemming from dealing with 13 securities regulators (ten provinces and three territories) prejudices the market and increases costs;
- current securities regulation is cumbersome and confusing;
- Canada's regulatory process is too slow in responding to changes in the environment because of the need for agreement among the different agencies involved;
- the presence of numerous regulators hampers the ability to deter financial crime;
- market globalization calls for a common securities act in Canada, and it is imperative that Canada speak with one voice internationally.

The AMF believes that these arguments are essentially without merit. Given that they form the basis of the federal government's position, they should be carefully covered.

1.1 COMPLEXITY AND COST OF REGULATION

The federal government argues that the presence of 13 separate securities regulators makes it more complex for firms to conduct business, and this translates into higher costs.

THE COMPLEXITY STEMMING FROM 13 REGULATORS IS HIGHLY OVERSTATED

The federal government's argument about complexity is highly overstated and reflects a misunderstanding about the market and market access mechanisms.

According to the studies carried out by professors Jean-Marc Suret and Cécile Carpentier,[3] the securities industry in Canada is highly concentrated. In fact, firms in four Canadian jurisdictions (British Columbia, Alberta, Ontario and Québec) account for 90% of new securities offerings. In addition, these reports indicate that, in connection

with securities listings, issuers in Canada deal only with a limited number of regulators. In fact, more than 60% of listings involve no more than three regulators.

Furthermore, under the passport system, issuers who wish to do business in more than one province need only file an application in their home jurisdiction to reach all Canadian investors. They also benefit from highly harmonized regulations and procedures. The harmonization measures undertaken by the provinces and territories in recent years refutes this criticism by the federal government.

THE COST OF INITIAL PUBLIC OFFERINGS (IPOS) IS LOWER IN CANADA

Initial offerings are probably the aspect of the securities business over which regulation may have the most significant effect. The change to reporting issuer status is subject to greater requirements. The principal factors determining the cost of IPO financing are:

- brokerage fees;
- costs related to legal services, fees and the preparation of the prospectus;
- initial undervaluation of share price.

The first two factors are affected by regulation, whereas the initial undervaluation of share price is more dependent on market conditions, in particular issue risk. The data (Table 1) show that Canada offers an advantage in terms of direct costs (brokerage fees and various costs) over the U.S. For example, the advantage is 4.5% of gross proceeds for issues totalling less than U.S.$10 million.

It is therefore incorrect to maintain that regulation in Canada imposes excess costs on issuers. Ongoing harmonization initiatives by provincial and territorial securities regulators help further strengthen Canada's position.

TABLE 1

COST OF INITIAL ISSUES IN CANADA AND THE U.S. BASED ON SIZE (2004-2006)

Size of issue (US$ millions)	No. of IPOs	Brokerage fees %	Other expenses %	Total direct costs %	Under-valuation %
Canada					
1.0 – 9.9	102	7.8	6.6	**14.4**	16.9
10.0 – 49.9	61	6.2	3.7	**9.9**	3.6
50 – 99.9	19	6.1	1.9	**7.9**	2.8
100 AND OVER	15	5.8	1.6	**7.4**	2.9
United States					
1.0 – 9.9	4	8.2	10.7	**18.9**	8.9
10 – 49.9	129	7.1	5.4	**12.4**	5.8
50 – 99.9	153	7.1	3.3	**10.3**	11.1
100 AND OVER	312	6.4	1.9	**8.3**	11.6

SOURCE: SURET AND CARPENTIER

THE COST OF CAPITAL IN CANADA IS AMONG THE LOWEST IN THE WORLD

The federal government maintains that having a single securities regulator would reduce the cost of capital, especially for small and medium-sized firms.

It is difficult to reconcile this point of view with the fact that several studies[4] have shown that the cost of capital in Canada is already among the lowest in the world. For instance, according to a 2006 study conducted by Hail and Leuz, the cost of capital in Canada is, after the cost of capital in the United States and France, the lowest in the world.

This study also shows that a key factor explaining the low cost of capital in Canada is the quality of its regulatory framework (disclosure requirements, regulation quality, legal system, etc.). The data in Table 2 show the strong negative correlation between the cost of capital and certain indicators measuring different aspects of regulation quality.

TABLE 2

RELATIONSHIP BETWEEN THE COST OF CAPITAL AND THE QUALITY OF REGULATION IN VARIOUS COUNTRIES

Country	Cost of equity (%)	Quality of disclosure indicator	Quality of securities regulation indicator	Quality of legal system indicator
United States	10.24	1.0	0.87	1.0
France	10.37	0.75	0.58	0.9
Canada	**10.53**	**0.92**	**0.91**	**1.0**
Italy	10.61	0.67	0.46	0.83
United Kingdom	10.64	0.83	0.73	0.86
Australia	10.72	0.75	0.77	1.0
Belgium	11.00	0.42	0.34	1.0
New Zealand	11.14	0.67	0.48	1.0
Austria	11.21	0.25	0.18	1.0
Israel	11.41	0.67	0.65	0.48
Holland	12.75	0.5	0.62	1.0
Finland	13.40	0.5	0.49	1.0
India	14.39	0.92	0.75	0.42
Hong Kong	14.58	0.92	0.81	0.82
Mexico	15.59	0.58	0.35	0.54
Brazil	20.85	0.25	0.39	0.63
Egypt	25.27	0.5	0.34	0.42
Total (average)	**12.97**	**0.65**	**0.56**	**0.74**

Source: Hail and Leuz (2006)

1.2 CUMBERSOME AND CONFUSING REGULATION

Federal commissions and task forces generally conclude that the securities regulation administered by the provinces and territories is confusing and inadequately enforced.

This conclusion seems to disregard the major initiatives undertaken by the CSA in recent years to harmonize and streamline processes. Furthermore, this conclusion is incompatible with the reports of international bodies, such as the OECD, the IMF and the World Bank, which draw the very opposite conclusion, namely, that Canada's current securities regulatory regime is among the most effective in the world.

THE OECD RANKS CANADA 2ND IN THE WORLD FOR THE QUALITY OF SECURITIES REGULATION

In a study entitled *Economic Policy Reforms: Going for Growth 2006*,[5] the OECD developed a global indicator for measuring the quality of securities regulation. This indicator reflects, in particular, the capacity to enforce contractual obligations, access to credit, investor protection and bankruptcy procedures.

On this basis, the OECD ranked Canada 2nd out of 29 countries for the quality of securities regulation, ahead of the United States (4th), Great Britain (5th) and Australia (7th).

TABLE 3

RANKING OF COUNTRIES ACCORDING TO THE OECD SECURITIES REGULATION QUALITY INDICATOR – 2005

Country	Rank
New Zealand	1
Canada	**2**
Norway	3
United States	4
Great Britain	5
Japan	6
Australia	7
Ireland	8
Iceland	9
Belgium	10

A STUDY BY THE WORLD BANK RANKED CANADA 5TH IN TERMS OF INVESTOR PROTECTION

A major study on business practices in 175 countries conducted by the World Bank[6] ranked Canada 5th in terms of investor protection, ahead of the United States (8th) and the United Kingdom (9th).

TABLE 4

RANKING OF COUNTRIES BASED ON CONSUMER PROTECTION QUALITY INDICATOR FROM THE WORLD BANK STUDY – 2007

Country	Rank
New Zealand	1
Singapore	2
Hong Kong	3
Malaysia	4
Canada	**5**
Ireland	6
Israel	7
United States	8
United Kingdom	9
South Africa	10

To assess the strength of investor protection, the study took into account information provided to investors, officer liability and access to litigation remedies.

THE IMF APPLAUDED SECURITIES REGULATION AND ENFORCEMENT IN CANADA

As part of its Financial Sector Assessment Program,[7] in fall 2007, the IMF conducted a mission to Québec and Ontario.

Its findings regarding the Canadian securities framework were positive. In particular, the report concluded that:

- Canada's financial system is mature, sophisticated and well-managed;
- Canada has established a highly effective and virtually unified regulatory and supervisory framework;
- The regulatory framework for the securities market exhibits a high degree of implementation of the Principles of the International Organization of Securities Commissions (IOSCO);
- In the largest provinces, at least, the regulatory authorities are independent and self funded, have sufficient resources and skilled personnel, and are clearly accountable to the government;

- The framework for issuers, self-regulatory organizations (SROs), market intermediaries and secondary markets is robust;

- Significant improvements to the regulatory system have been made as a result of the creation of the Canadian Securities Administrators (CSA), including those generated by the implementation of the passport system;

- Under the umbrella of the CSA, co-ordination between the 13 regulatory agencies has significantly improved;

- The areas related to issuers, collective investment schemes and registrants are where most progress in co-ordination and harmonization has been achieved;

- Enforcement has shown positive change in recent years;

- The passport system, which is currently being implemented, will further rationalize the regulatory system for issuers, collective investment schemes and market intermediaries.

Paradoxically, despite the applause, the IMF took a position in favour of the creation of a single securities regulator as opposed to the passport system then in development. In doing so, the IMF expressed an opinion on a hypothetical structure, contrary to its customary practice.

1.3 THE SLOW PACE OF REFORMS DUE TO LACK OF AGREEMENT AMONG REGULATORS

The federal government argues that the existence of 13 regulators results in difficulties reaching agreement, which, in turn, hampers the necessary reforms and regulatory effectiveness.

This point of view overlooks the detailed and effective co-ordination structure created by provincial and territorial regulators within the CSA. The CSA is a permanent forum whose mission is to give Canada a securities regulatory system that protects investors from unfair, improper or fraudulent practices and fosters fair and efficient capital markets.

The forum is headed by a Chair and a Vice-Chair, who are elected for a two-year term. The CSA also has a permanent Secretariat that assures organizational stability and monitors and co-ordinates the work of several CSA committees on policy initiatives. The Policy Coordination Committee oversees the CSA's policy development initiatives and facilitates decision making. It acts as a forum for timely resolution of policy development issues, monitors ongoing issues and provides recommendations to the CSA Chairs for resolution. The CSA has also set up several permanent and project committees to review issues related to regulation and enforcement.

A key benefit of the CSA is that it acts as a counterbalance and an arbitrator for participants' points of view.

FOR MORE THAN 10 YEARS, THE CSA HAS ACCOMPLISHED THE SUBSTANTIAL TASK OF HARMONIZING SYSTEMS

For more than a decade, the CSA has been implementing a number of systems and processes Canada-wide that have gradually consolidated numerous functions once performed locally by each securities regulator.

— System for Electronic Document Analysis and Retrieval (SEDAR)

Launched on January 1, 1997, SEDAR enables issuers to file the documents required by the various regulators (prospectus, financial statements, etc.) in a single Web-based application. The implementation of this system has significantly reduced the regulatory burden on reporting issuers. Prior to the introduction of SEDAR, issuers were required to send all documents to each jurisdiction in compliance with regulatory requirements. SEDAR also makes it easier for the public to obtain information on issuers.

— System for Electronic Disclosure by Insiders (SEDI)

SEDI enables insiders to electronically send their reports in a single filing. Insider reports are automatically received in each Canadian jurisdiction. The public can more quickly access the information and regulators are able to monitor compliance with insider reporting requirements.

— National Registration Database (NRD)

The NRD is a Canada-wide Web-based site that enables the securities industry and regulators to electronically process registration-related applications. NRD expedites the registration process by enabling regulators to process applications simultaneously. It also operationalizes the National Registration System (NRS).

— National Registration System (NRS)

Under the NRS, securities firms or individuals can apply for registration in any Canadian jurisdiction provided they comply with the requisite standards of their principal regulator. The NRS is therefore premised on principles of mutual trust between the principal regulator and non-principal regulators with respect to application acceptance. The NRS greatly streamlines the registration process, since it is not necessary for an entity to apply for registration in each jurisdiction where it wishes to do business.

— Mutual Reliance Review System (MRRS)

The MRRS is a process that defines the principles of mutual reliance among CSA members. These principles apply to reviews of exemptive relief applications, prospectuses and annual information forms. Through the MRRS, applicants file various documents with each securities regulator in whose jurisdiction they wish to obtain a decision or a receipt. The applicant only needs to deal with one regulator (its principal regulator). At the end of the process, the principal regulator issues a document confirming the decision of all regulators (principal and non-principal) who have confirmed their agreement with the decision. As is the case with the NRS, the MRRS is based on principles of mutual trust between the principal regulator and non-principal regulators.

Again, this system greatly streamlines the task of industry participants in that they need only deal with one regulator.

— Passport System

The implementation and application of the above-described systems and processes over the past decade have paved the way for the implementation of the passport system now being undertaken by the CSA. This system is a logical step in the CSA's initiatives to harmonize securities regulation and implement national systems.

Based on principles of mutual recognition, the passport system replaces the mutual trust concept (used with NRS and MRRS). When the principal regulator makes a decision, that decision is automatically deemed to be made by the other regulators.

The passport system replaces the MRRS and has applied, since March 17, 2008, to continuous disclosure, prospectuses and discretionary exemptions. The system will become fully operational and will replace the NRS in all jurisdictions, except Ontario, when registration provisions (Regulation 31-103) come into force in 2009. Ontario will, however, benefit from the passport system, since under the interfaces used to reflect non-participation in the system, market participants in Ontario will have direct access to other jurisdictions.

Essentially, the passport system offers market participants a single window of access to Canada's capital markets. Under the system, they will deal with only one regulator to gain access to capital markets while meeting the requirements of fully harmonized legislation. The CSA has therefore proven that a decentralized structure is in no way an impediment to co-ordination and effectiveness and at the same time ensures investor protection and effective market operations.

PASSPORT

On September 30, 2004, the ministers responsible for securities regulation in all provinces and territories in Canada, except Ontario, signed a memorandum of understanding under which they agreed to implement a passport system in certain areas of securities regulation.

On March 17, 2008, *Regulation 11-102 respecting Passport System* for issuers came into force in all jurisdictions except Ontario. Amendments to Regulation 11-102 will be published for consultation in mid-July 2008 to give effect to the passport system in the area of registration.

Under the passport system, issuers and, once the amendments to Regulation 11-102 are in force, dealers and advisers can gain access to markets across Canada by dealing only with their principal regulator and complying only with the harmonized legislative provisions. Therefore:

- Issuers who are reporting issuers in multiple Canadian jurisdictions:

  - will only be required to comply with harmonized continuous disclosure requirements;
  - will still benefit from exemptions from continuous disclosure requirements available under *Regulation 11-101 respecting Principal Regulator System* (Phase 1 of the passport system).

- Issuers who file a prospectus in multiple Canadian jurisdictions:

  - will only be required to comply with the harmonized prospectus requirements;
  - will be subject to a prospectus review by only one securities regulator, namely, their principal regulator;
  - will only be required to obtain a receipt for the prospectus from their principal regulator;
  - will have their prospectus automatically deemed to be issued in each of the other relevant jurisdictions following the decision by their principal regulator.

- Market participants requiring discretionary exemptions in multiple Canadian jurisdictions:

  - will need only file an application in their home jurisdiction;
  - will apply to their principal regulator for review of their application;
  - will only be required to obtain a decision from their principal regulator;
  - will automatically be exempted from equivalent provisions in each of the other relevant jurisdictions following the decision by their principal regulator.

- Moreover, following the concomitant coming into force of *Regulation 31-103 respecting Registration Requirements* and amendments to Regulation 11-102, scheduled for spring 2009, firms or individuals that are registered in a category as dealer or adviser in their home jurisdiction and apply for registration in the same category in another passport jurisdiction:

  - need only file one application;
  - will apply to their principal regulator for review of their application;
  - will be automatically registered in the non-principal jurisdiction where, in the case of an individual, the individual applies or, in the case of a firm, receipt of the firm's application is acknowledged.

The Ontario government has not adopted Regulation 11-102 and, consequently, interfaces have been developed to ensure the regulation is effective in the circumstances for all participants.

SIGNIFICANT REGULATORY STREAMLINING INITIATIVES

Not all the harmonization and streamlining initiatives undertaken by the CSA over the past few years have been focused on systems and processes. Substantial efforts have been placed on regulatory harmonization. Since 1997, a total of 45 national instruments and 44 policy statements have been approved and implemented by governments.

These initiatives cover key areas of securities regulation such as prospectus requirements, fund regulation, take-over bid regulation, prospectus and registration exemptions, and continuous disclosure requirements. The Appendix presents a full listing of these instruments and policy statements.

The extensive regulatory work undertaken by the CSA has greatly simplified the task of firms operating in the securities industry.

The CSA therefore serves as an effective co-ordination structure for discussing, analyzing and monitoring emerging securities issues across Canada. The work of the CSA is bolstered by the presence of the Provincial/Territorial Council of Ministers of Securities Regulation.

1.4 IMPEDIMENTS TO THE SUPPRESSION OF SECURITIES FRAUD

Proponents of a single regulator argue that a centralized body would be able to better co-ordinate efforts to deter securities fraud, a conclusion that is often supported by the successful track record of the United States in this regard. This conclusion requires some qualification.

SUPPRESSION OF SECURITIES FRAUD IS NOT THE SOLE RESPONSIBILITY OF REGULATORS

Suppressing securities fraud is not the sole responsibility of regulators, which are but one of the players involved. The suppression of securities fraud is effectively achieved through the concerted efforts of all parties involved, namely, regulators, self-regulatory organizations, police forces and Crown prosecutors. Criticism of Canada's performance in fighting securities fraud should therefore not target only regulatory bodies, but all entities responsible for enforcing laws.

THE U.S. CRIMINAL JUSTICE SYSTEM IS KEY TO THE SUCCESS IN SUPPRESSING SECURITIES FRAUD

Critics of Canada's efforts in suppressing securities fraud often highlight the successful track record of the U.S. However, it is important to note that the essential difference between Canada and the U.S. lies with the criminal justice system.

In reality, most cases held as models for the effectiveness of the U.S. in combating fraud are not regulatory in nature, but instead are criminal matters under the jurisdiction of the U.S. Justice Department or a state prosecutor. The fight against securities offences is different in Canada and the U.S. in the following ways:

- penalties handed down by Canadian courts are generally less harsh than those imposed by their U.S. counterparts, reflecting the cultural differences in the social and legal environments of the two countries;

- Canada's criminal system does not attribute as much importance to economic crime as it does to violent crime, unlike the U.S. criminal system;

- the powers of criminal investigation teams in Canada are more limited, especially with regard to the ability to compel testimony as part of an investigation and the exchange of information with securities regulators;

- fewer resources are assigned to fighting economic crime;

- certain provisions in the Criminal Code of Canada with respect to economic crime make it very difficult to assume the burden of proof.

This latter point can be illustrated by the example of insider trading.

Under the Criminal Code of Canada, an individual is liable to imprisonment for a term of 10 years when he or she *knowingly uses* inside information in a transaction with the intent to make gain or profit or cover a loss. In such cases, it must be proven that the individual carried out the transaction with this intent rather than in the normal course of business. This is obviously very difficult to prove given the multitude of factors that could justify a transaction at a given point in time.

This example illustrates why experts agree that the current provisions of the Criminal Code pose virtually insurmountable hurdles for investigations that prevent integrated market enforcement teams from fully performing their role. On this very topic, Michael Wilson, Director, Enforcement at the Ontario Securities Commission, speaking at the Standing Senate Committee on Banking, Trade and Commerce, stated:

> "*There is a specific concern that the requirement that the offender knowingly used insider information sets a bar that enforcement or prosecution officials will be unlikely to clear. However, there is one possible exception to that about which I can think from the years in which I have been involved in enforcement in the securities industry. I can only think of one case that we investigated where, I suspect, we probably could clear the bar of demonstrating somebody knowingly used the information."*[8]

A SINGLE REGULATOR WILL NOT OVERCOME THE DIFFICULTY OF ESTABLISHING PROOF IN CRIMINAL MATTERS

A single regulator would not make it any easier to conduct investigations and obtain guilty verdicts under the Criminal Code.

Moreover, based on the experience in other jurisdictions, a single regulator does not guarantee that securities fraud will not occur. In fact, cases of fraud such as WorldCom, Enron and Tyco in the U.S.,[9] Parmalat in Italy or Adecco in Switzerland all took place in countries where the companies were under the eye of a single regulator.

1.5 MARKET GLOBALIZATION AND THE NEED FOR CANADA TO SPEAK WITH ONE VOICE

For proponents of a single securities regulator, it is essential that Canada be able to speak with one voice on the international stage given the globalization of trade. Again, this argument does not stand up to analysis.

CANADA IS CURRENTLY WELL REPRESENTED AT INTERNATIONAL FORUMS

Through the participation of provincial regulators, Canada occupies a number of seats on international forums.

Provincial regulators play an active role in the work of the IOSCO.

- Ontario and Québec serve on the five standing committees of the IOSCO Technical Committee, of which they are both members.
- Québec chairs the IOSCO Monitoring Group, which is responsible for monitoring compliance with the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MOU).
- British Columbia, Ontario and Québec are members of the Screening Group, which studies applications from prospective MOU signatories.
- Ontario currently chairs the Task Force on Corporate Governance, set up in the wake of recent financial scandals to examine governance issues.

All the provinces participate in the activities of the North American Securities Administrators Association (NASAA), primarily those related to fighting securities fraud. As its name implies, NASAA is made up of the securities regulators operating in the Americas.

Ontario, British Columbia, Alberta, Québec and New Brunswick are members of the Council of Securities Regulators of the Americas (COSRA).

In addition, through the co-ordinated efforts of the CSA, provincial regulators that participate in international forums are able to uphold harmonized positions. These positions are also discussed at the forum of the Heads of Regulatory Agencies, which brings together the senior managers of the four main securities regulators in Canada, the Bank of Canada, the OSFI and the Department of Finance Canada.

THE MUTUAL RECOGNITION INITIATIVE UNDERTAKEN WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION (SEC) SHOWS THAT A SINGLE REGULATOR IS NOT A PREREQUISITE FOR ADVANCING CANADA'S INTERESTS ON THE INTERNATIONAL STAGE

On March 24, 2008, the SEC formally announced its intention to take steps with certain jurisdictions that had high-quality regulatory regimes, including Canada, to put in place a mutual recognition concept. The CSA was favourable to the proposal and began informal discussions with SEC representatives.

The fact that such a prominent body as the SEC is prepared to discuss issues of international scope with the CSA underscores the argument that a singe securities regulator is not necessary.

2. A SINGLE REGULATOR: AN UNNECESSARY STRUCTURAL CHANGE

The previous section of this Brief maintained that the federal government's criticism of securities regulation as carried out by Canada's provincial and territorial regulators is unsubstantiated. The government's proposed structural changes, in particular the adoption of a common securities act and a single regulator, aimed at remedying the purported weaknesses in the system, is therefore completely unnecessary.

However, it is important to complete the analysis and examine other issues arising from the adoption of a national securities law and a single regulator, particularly the constitutionality of the federal government's approach, the ability to respond more effectively to specific regional needs, the impact on the direct costs of regulation and the challenges of migrating to a new framework model.

In these regards, the AMF wishes to highlight the following:

- The courts have, on numerous occasions, confirmed the jurisdiction of the provinces in matters of securities regulation; federal jurisdiction in these matters, on the other hand, has never been determined. A decision to move forward with a common law could therefore prompt certain provinces, firms or individuals to dispute the legality of the federal proposal in court. Such action could give rise to unnecessary legal turmoil that would be detrimental to the growth of the industry.

- Due to the small size and regional diversity of firms and the predominantly local nature of financing, the current framework is clearly the better model given that provincial and territorial regulators are able to identify and respond more effectively to the specific needs of firms in their jurisdictions, while striving to harmonize regulations and processes.

- A framework structure built around a common securities act and a single regulator could be less responsive to the concerns of firms in certain jurisdictions. Under a common securities act, regulatory amendments would be adopted, at best, based on the rule of the majority. Consequently, a province could be obligated to comply with regulation that does not serve the interests of firms operating under its jurisdiction.

- Anticipated cost savings could fall far short of those put forth in some studies, and may not even be generated at all. These savings would only be possible by significantly diminishing the presence of regulators at the regional level. Furthermore, several factors that would limit any savings are not taken into account.

- The transition towards a common act and a single regulator would undoubtedly be costly, time-consuming and arduous. It would be irresponsible to impose such structural changes on the industry without first clearly demonstrating substantial benefits down the road. However, by all accounts, this has yet to be done.

2.1 CONSTITUTIONAL SUPPORT FOR THE FEDERAL PROPOSAL IS TENUOUS

The courts have recognized provincial jurisdiction for securities regulation in Canada on numerous occasions; however, federal authority to generally regulate the industry has never been recognized.

Much of the work carried out as part of federal government initiatives, in particular by the Wise Persons' Committee and the Crawford Panel, has cited federal jurisdiction in matters of trade and commerce (section 91(2) of the Constitution) in support of the government's authority to adopt legislation regulating all areas related to securities.

A clear demonstration that section 91(2) of the Constitution is adequate support for federal legislation has yet to be made.

- The Supreme Court has often ruled that legislation adopted by the federal government under the general authority of section 91(2) must not be limited to a specific sector of activity or industry. The securities industry is definitely a specific sector of the economy.

- It is argued that the provinces inadequately enforce securities regulation, but this cannot be demonstrated. The provinces and territories have overseen securities regulation for more than 30 years. Furthermore, as indicated, reputable international bodies such as the OECD, the IMF and the World Bank consider Canadian securities regulation to be among the most effective in the world.

- Finally, in addition to referring to the general provisions of section 91(2), the federal government makes note of interprovincial and international commerce. As such, the federal government can only draw on interprovincial and international securities matters. Existing provincial laws have often been deemed valid because of their

interprovincial dimension, which leaves little room for federal legislation based on aspects of securities regulation that are essentially interprovincial or international.

Any decision by the federal government to legislate with the intention of implementing comprehensive securities regulation under a common act could prompt certain jurisdictions to dispute the legality of the proposal in court. The uncertainty surrounding such action and the future of securities regulation would spawn an unenviable environment for the growth of this industry.

Finally, it is appropriate to recall that all three political parties represented in the Québec National Assembly support the maintenance of the current system.

2.2 RISK TO REGIONAL FIRMS

Business financing in Canada holds specific characteristics:

- the size of initial offerings is very small (median gross proceeds of less than $1 million between 1986 and 2006 against nearly $100 million in the U.S.);

- size of issuers is also very small (median pre-offering shareholders' equity of $300,000);

- the Canadian initial offerings market is characterized by a large number of resource companies active in the market (on average 44.3% of offerings from 1986 to 2003);

- Ontario accounts for a large share of initial offerings made through firms operating in the financial services (higher offering size) and technology industries. In addition, a large number of offerings in Québec are conducted by technology and pharmaceutical firms.

- offerings often target local markets. Most initial offerings are small and involve very few securities regulators.

In short, Canada's securities market is made up of small, mainly natural resources firms, that vary significantly from region to region and, for the most part, are financed locally.

This therefore begs the question as to whether a common securities act and a single regulator would deliver a framework that could meet the diverse needs of firms and,

ultimately, foster investment and economic growth in all regions across Canada. For instance, who would have stood up for Québec's interests in connection with the combination between the Montréal Exchange and the TSX?

Federal task forces have proposed that a common securities act could only be amended "by a majority of provinces representing a majority of the Canadian population" (Wise Persons' Committee) or by the legislatures of two-thirds of the participating jurisdictions (Crawford Panel). In the event one of these governance models were implemented, firms in Québec or another jurisdiction could have restricted access to financing because their situation is not similar to that of most provinces.

In this respect, the passport system better reconciles the interests of local issuers with the need to ensure a high degree of harmonization of processes and rules throughout Canada. Even if each jurisdiction recognizes and participates in the harmonization of regulations, it can still maintain local rules based on the realities of its firms.

Similarly, the presence of numerous independent regulators acting on the basis of local concerns can, in a Canada-wide perspective, help spur innovation and enhance competition, thereby promoting the identification and widespread adoption of best practices. For instance, the Alberta Capital Pool Company (CPC) program or the Québec Stock Savings Plan (QSSP) were created in response to local concerns and copied in other provinces.

2.3 COST SAVINGS TO BE DEMONSTRATED

It is fitting to ask whether a single regulator would reduce the direct cost of regulation in Canada and create any competitive advantage.

To the AMF's knowledge, the only study that examined in detail the potential cost savings related to a single regulator was conducted by Charles River Associates Canada[10] for the Wise Persons' Committee, which was created by the federal government.

This research study concluded that in 2002, the implementation of a single regulator would result in a 32% reduction ($40.1 million) in the costs of operating a set of regulators in Canada, falling from $128.2 million to $88.1 million. These savings would primarily be generated by economies of scale achieved through regulatory development and administration. In the study, the 13 regulators are replaced by a head office, located

in Ontario, and four regional offices in Alberta, British Columbia, Québec and the Maritime provinces.

There are several reasons for believing that these cost savings are highly overstated:

- The study contains several technical weaknesses, particularly with respect to data and methodology.

- According to the study, the budget of the office of the single regulator in Québec would only be $4.6 million, whereas the budget of the *Commission des valeurs mobilières du Québec* (Québec securities commission) in 2002 was $28.2 million. Under the proposed model, the regulatory activities in Québec would disappear, which is neither advisable nor realistic.

- Given constitutional limitations, the study ignores the additional costs inherent in a 14th regulator, namely, the federal government.

- The implementation of a single regulator would require harmonization of working conditions. Experience has often shown that this type of harmonization is accomplished ''at the highest common denominator.'' Experience has also shown that it is very difficult, at least in the short term, to achieve the potential savings due to the rigid nature of employment contracts in particular.

- The study does not take into account the costs of transitioning to the new model.

2.4 A TRANSITION THAT COULD RESULT IN SIGNIFICANT COSTS AND IMPACTS

A detailed discussion of the issues surrounding any transition to a single securities regulator is obviously premature. However, it is clear that transition-related costs and impacts for the industry would be significant (redeployment of expertise and teams, harmonization of collective agreements, link-up of computer systems, reorganization of client services, processing of industry requests, etc.).

The AMF considers that it would be irresponsible to impose such structural changes on the industry in view of the uncertainties and associated costs without first clearly demonstrating substantial benefits down the road. By all accounts, this has yet to be done.

3. A SINGLE REGULATOR IS NOT A PREREQUISITE TO DEVELOPING MORE PRINCIPLES-BASED REGULATION[11]

In its consultation paper, the expert panel referred to the relevance of adopting more principles-based securities regulation in Canada. The paper is clearly inclined towards this approach.

The expert panel's interest in this matter stems from the previous research conducted by other task forces. In 2006, the IDA's Task Force to Modernize Securities Regulation in Canada recommended "that Canadian securities regulation be based on clearly enunciated regulatory principles which do not need a detailed set of interventionist rules for sound implementation."[12] In 2007, the Crawford Panel concluded that the principles-based approach would strengthen the competitiveness of Canada's capital markets.[13]

Recently, Finance Minister Jim Flaherty publicly expressed his support for principles-based securities regulation in Canada. He even mandated the panel to draft a common securities act premised on this approach.

With respect to principles-based regulation, the AMF notes the following:

- The securities regulatory authorities in Canada acknowledge the advantages of principles-based regulation in certain circumstances. Indeed, key areas of securities regulation in Canada and Québec are already built on this approach.

- The purpose of securities regulation is generally to ensure market effectiveness and protect investors. A combination of rules and principles would best achieve these objectives. It is impossible to conclude that one regulatory approach is better than another without reference to the objectives being sought by the regulator.

- The U.K.'s experience with principles-based regulation, in particular through the Alternative Investment Market (AIM), should be cited with caution. Several factors beyond a principles-based regulatory framework can explain the strong growth of this exchange. One should also be cautious in qualifying as remarkable a regulatory approach that has been in use for only a limited number of years.

- A single regulator is not a condition for implementing more principles-based regulation in Canada, where necessary. Such regulation, when deemed advisable, can readily be adopted within the scope of the work of the Provincial/Territorial Council of Ministers of Securities Regulation and the CSA.

3.1 SECURITIES REGULATION IN CANADA: A COMBINATION OF RULES AND PRINCIPLES

The federal government's call for a principles-based securities regime gives the impression that Canadian regulation ignores for the most part this type of framework, when in fact key components of current regulation use this approach.

For example, with respect to the primary market, disclosure of all material facts in a prospectus and the drafting of information in an easy-to-read format suitable for all investors are requirements formulated as principles. On the other hand, public issue regulation adopts a rules-based approach to govern the scope of application and the process for issuing and marketing securities. And likewise for disclosure requirements with respect to prospectus content.

With respect to the secondary market, the provisions under the continuous disclosure system whereby material changes must immediately be disclosed by the reporting issuer are set out by way of principles. Similarly, rules are adopted to govern periodical disclosure, namely, financial statements, interim and annual MD&As (management discussion and analysis), insider reporting and information circulars.

Take-over bids are governed by regulations that are both principles- and rules-based to determine the scope of application, bid mechanics, standards of conduct, and disclosure requirements.

In matters of corporate governance, there are, on the one hand, prescriptions that are formulated as rules with respect to audit committees and certification. On the other hand, regulation of governance practices is based on principles, since the regulation requires only that issuers disclose their governance practices with respect to the best practices recommended by the CSA.

Significant provisions of *Regulation 31-103 respecting Registration Requirements*, in particular those with respect to business triggers, conduct and management of conflicts of interest, reflect a principles-based approach. Other aspects, such as those relating to proficiency categories, draw on a more rules-based approach.

In Québec, the *Derivatives Act,* introduced in the Québec National Assembly in June 2008, is essentially principles-based. More generally, it is important to highlight that the drafting of Québec securities legislation has traditionally reflected the Québec Civil Code, which also has a number of principles-based features.

In short, the above examples show that securities regulation in Canada is characterized by the concurrent use of rules-based and principles-based approaches.

3.2 FULLY ACHIEVING REGULATORY OBJECTIVES REQUIRES A BALANCE BETWEEN THE USE OF RULES AND PRINCIPLES

The mixed model framework being used in Canada is not a political or ideological choice of governments or the CSA. Rather, the choice has been made on a case by case basis for the purpose of achieving securities regulation objectives.

It is impossible to state, without referring to the achievement of specific objectives, that one regulatory model should be recommended over another. This conclusion can be illustrated by examining the impacts of each model on key aspects of regulation: cost of development, compliance and enforcement. As demonstrated in Table 6, none of the regulatory models is unanimously recommended for all aspects of regulation under examination.

3.3 THE UNITED KINGDOM'S EXPERIENCE WITH PRINCIPLES-BASED REGULATION TO BE CITED WITH CAUTION

The United Kingdom is often touted as a leader in the use of a principles-based regulatory approach. The expert panel often refers to the United Kingdom in its consultation paper.

From the outset, it is important to highlight that principles-based regulation in the United Kingdom, while well developed, still leaves ample room for the prescriptive approach. Callum McCarthy, Chairman of the Financial Services Administration (FSA), recently stated:

> *For the firms and individuals, we have eleven core principles – short enough to be put on a 5'' by 3 ½'' card; only 194 words; and the Financial Services and Markets Act which gives the FSA its powers and duties enshrines various principles – consultation, assessment of costs and benefits, the need to have regard to the potential detriment to competition inherent in any regulatory initiative – which we are required to respect (as indeed we do). But*

the FSA is also an organisation with a very large rule book (8,500 pages of rules and guidance), and could equally – or equally misleadingly – be described as a rule bound regulator. The reality is – and will always be – that the FSA has and will always have a mixture of general principles and particular rules."[14]

That said, an element that has contributed to creating special interest in the United Kingdom's experience with principles-based regulation is the strong growth of the Alternative Investment Market (AIM) of the London Stock Exchange. In the past few years, this exchange has enjoyed strong growth at the expense of North American markets, which has led some analysts to question whether this reflects the influence of regulation.

TABLE 6

RULES-BASED REGULATION AND PRINCIPLES-BASED REGULATION – IMPACT BASED ON VARIOUS DECISION MAKING CRITERIA

CRITERIA	RULES	PRINCIPLES
1. Cost of developing regulation	The cost of devising regulation is higher for the regulator because of the necessity to formulate market participant requirements and amendments at the time of subsequent revisions.	Principles are broader, and therefore require fewer resources to formulate them.
2. Compliance		
2.1 Transparency	It is easier for market participants to adapt their conduct in compliance with regulatory prescriptions.	The content of requirements is only specified at the interpretation stage, which reduces transparency.
2.2 Flexibility	Rules are more rigid and more difficult to adapt to innovations and market changes.	Because of the inherent flexibility of principles due to their broad-based nature, they can respond to market participants' various needs and can more easily be adapted to complex situations requiring contextual analysis.
2.3 Predictability and certainty	Rules are formulated in a detailed and precise manner, which enables market participants to quickly understand the requirements imposed on them. They generate savings by reducing the need to seek legal advice to grasp the scope of the requirements to which they are subject.	Participants must define the application of principles based on their respective situations; this may require waiting for administrative or judicial decisions or obtaining legal opinions, with the resulting costs.
2.4 Standardization	By setting out specific requirements, rules help standardize practices. They also reduce the cost of advisory services since issuers acquire expertise that can be transferred for the preparation of disclosure documents.	Principles-based regulation can result in less standardization of practices.
2.5 Formal vs. substantive compliance	Rules allow for easier identification of compliant conduct. Experience has shown that participants may not develop behaviours being sought through principles.	With a principles-based approach, participants must reflect on the consequences of standards of conduct and integrate them into their activities. This promotes the development of a compliance culture.
3. Enforcement	Rules-based regulation may be more effective in suppressing conventional offences.	Principles-based regulation may be more useful in respect of client offences involving general conduct or behaviour that threatens market stability. It is, however, associated with a more selective enforcement of regulation.

To gain a listing and conduct business on AIM, a company must subscribe to principles-based regulation to all intents and purposes. It must hire a Nominated Adviser (NOMAD), who confirms that a company has the requisite qualities for market admission. To do this, the NOMAD must ensure that the company complies with certain guidelines of the Financial Service Administration (FSA). It should be mentioned that during this related period, U.S. corporate governance standards were tightened with the adoption of the Sarbanes-Oxley Act.

The growth of AIM in the past few years is indeed impressive. Created in 1995, it has attracted 2,900 companies, including numerous foreign companies that are interlisted or have gone public on AIM. Between 1998 and June 2008, the number of foreign companies listed on AIM surged from 4 to 339. Although we cannot deny that the principles-based approach could have had a positive effect on the growth of AIM compared with North American markets, a number of other factors may have contributed to its success:

- In many European countries, stock market capitalization has been relatively low compared with the size of their economies. As this gap narrows, market exchanges are growing.

- London has a clear advantage in terms of time zone; this allows for layering of trading periods in both Asia and North America.

- Hedge funds, mutual funds and pension plans are growing and will continue to do so at a faster rate outside North America. And likewise for economic growth, particularly in India, China and Russia.

Aside from these factors, the success of AIM is quite a recent phenomenon and as such, it is relatively difficult to pinpoint the impact of various factors.

Based on this examination of AIM, one should be careful before qualifying as remarkable a regulatory approach that has only been applied over a limited number of years.

3.4 A SINGLE REGULATOR IS NOT A PREREQUISITE TO DEVELOPING PRINCIPLES-BASED REGULATION

The preceding discussion shows that a major challenge for securities regulatory bodies is to develop a regulatory framework that strikes a balance between rules and principles.

This balance is not dependent on the nature or structure of the regulatory body. A balanced framework can be developed by governments and provincial and territorial regulators through joint forums to promote harmonization of rules and principles. The presence of a single regulator is not a prerequisite to achieving this objective.

4. IMPROVE CANADA'S SECURITIES FRAMEWORK

The above sections of this Brief have underscored the weakness of the arguments put forth to justify the implementation of a common securities act and a single regulator.

We must now turn our attention to the orientations necessary for the purpose of ensuring that Canada's securities framework enables the industry to achieve its full potential and protects investors.

The AMF considers that the recommended approach should focus on three key areas:

- continued co-operation among provincial and territorial governments and among the provincial and territorial regulators responsible for securities regulation under the umbrella of the CSA;

- implementation of a quasi-judicial adjudicative securities system Canada-wide modelled on Québec's BDRVM;

- improvement of efforts to suppress securities fraud in co-operation with the federal government. Special attention should be placed on:

  - raising awareness about the importance of this type of fraud;

  - enhancing the effectiveness of investigation teams, in particular Integrated Market Enforcement Teams (IMETs);

  - improving the tools available to investigators.

4.1 CONTINUED CO-OPERATION AMONG REGULATORS UNDER THE UMBRELLA OF THE CSA

As stated, co-operation among provincial and territorial securities regulators, in particular under the umbrella of the CSA, has generated solid results over the past several years in terms of harmonizing regulation and streamlining procedures. It is important to reiterate that these efforts have been recognized by independent international bodies.

The best way of meeting the challenges facing the securities industry is to pursue and strengthen this co-operation. This approach is the best guarantee of success in that it:

- respects the power granted to the provinces under the Constitution in matters related to securities regulation;

- acknowledges the significance of regional diversity, while achieving a high degree of harmonization;

- sustains the development of a modern, efficient and internationally competitive Canadian securities market.

Provincial and territorial governments and the CSA will however continue to be faced with various challenges over the coming years.

COMPLETE IMPLEMENTATION OF THE PASSPORT SYSTEM

The first challenge will be to complete the implementation of the passport system. An initial step was achieved with the adoption of Regulation 11-102. Since March 17, 2008, issuers have had access to capital markets across Canada, except Ontario, by dealing only with their principal regulator, while meeting harmonized legislative requirements. The passport system will be fully operational by June 2009 when *Regulation 31-103 respecting Registration Reform* comes into force. Until then, it will apply to the area of registration and will replace the NRS in all jurisdictions, except Ontario.

For the adoption of Regulation 31-103 and the registration segment of the passport system, each jurisdiction will have to take significant action to ensure that its technical infrastructure can support the new regulatory framework. The ultimate aim of adopting a single window of access to Canadian markets will essentially have been achieved. Since Ontario has elected not to participate in the passport system, interfaces have been introduced to ensure that Ontario's absence does not undermine effective capital market operations in Canada.

EMERGING ISSUES

The securities industry has experienced spectacular growth in the past few years world-wide. Emerging markets have developed, the flow of capital between countries has increased and new, often complex, products have been launched.

In light of this new reality, the CSA is mindful of the need to expedite processes aimed at improving operational efficiency, mutual recognition, the regulatory framework and the suppression of fraud in an international perspective. In this context, implementing an agreement with the SEC on mutual recognition is a priority.

Securities regulatory bodies must continue to respond to specific events such as the recent ABCP crisis. In recent years, the CSA has demonstrated that it has the expertise and leadership to meet such challenges.

4.2 A QUASI-JUDICIAL SECURITIES TRIBUNAL IN EACH PROVINCE

Provincial and territorial securities regulators have made significant strides in recent years in harmonizing regulation. To further strengthen the harmonized regulatory regime, a securities tribunal modelled on Québec's BDRVM in each jurisdiction is advisable.

Such a tribunal separates the enforcement and adjudicative roles currently performed by the securities regulators in each province and territory except Québec. It also helps eliminate the risk of partiality or the appearance of partiality that arises when such functions are combined within a single body.

The idea of empowering a separate body with the quasi-judicial functions exercised by securities regulators has been proposed many times in recent years, in particular by the Crawford Panel, set up by the federal government, and by the Task Force to Modernize Securities Regulation in Canada of the Investment Dealers Association (IDA). In Ontario, the report of the Osbourne Committee[15] recommended establishing an administrative tribunal separate from the Ontario Securities Commission. Québec Finance Minister Monique Jérôme-Forget recently upheld this position before her colleagues on the Provincial/Territorial Council of Ministers of Securities Regulation.

Québec's experience with the BDRVM is testimony to the effectiveness of this model. Giving quasi-judicial functions to this administrative tribunal, which is independent from the AMF, has not caused procedures to be cumbersome or resulted in undue delays or costs.

Implementation over the medium term of a quasi-judicial system in respect of securities decisions involving all provinces and territories could also be considered. Such a system would ensure a more uniform interpretation of securities legislation across the country.

Such a tribunal system is currently being studied by the Provincial/Territorial Council of Ministers of Securities Regulation.

4.3 WORK WITH THE FEDERAL GOVERNMENT TO IMPROVE FRAUD SUPPRESSION

There is broad consensus in Canada that a key challenge for securities regulation is more effective deterrence of securities fraud. As stated, this responsibility is shared by a number of players: securities regulators, self-regulatory organizations, police forces and Crown prosecutors.

Close co-operation between the federal government and the provinces in this regard is essential. RCMP operations and enforcement of the Criminal Code are the responsibility of the federal government. As such, the federal government is in a position to take concrete action to deter securities fraud within its jurisdiction, without the need to create a single securities regulator or adopt a common securities act.

THE CSA HAS MADE CONSIDERABLE EFFORTS TO FURTHER SUPPRESS FRAUD

In recent years, the CSA has made significant progress in suppressing securities fraud. Additional resources have been added for the purpose of monitoring markets and suppressing fraud.

For example, in Québec, the AMF has increased its market surveillance staff from 47 in 2004 to 93 in 2008. These resources are assigned to inspection, investigation and prosecution teams.

These additional resources have generated concrete results. Processing times for investigation cases have decreased significantly, with the average age of cases dropping from 4 years to 12 months in the past few years. Moreover, AMF prosecutors initiate more proceedings, while the number of active cases has doubled in the past year. Furthermore, the AMF has scored excellent results in penal, civil or administrative court, with favourable decisions on average in 95% of cases.

The CSA has set up an Enforcement Committee. This Committee, made up of key enforcement professionals in each of the jurisdictions, meets monthly to discuss general enforcement issues, processes and specific cases where reciprocal or joint action is appropriate. The Committee issues a report on its results twice a year. It also holds an annual meeting with its North American counterparts as part of the agenda of the North American Securities Administrators Association (NASAA).

In September 2006, the CSA issued a paper entitled "Better Enforcement Against Securities Fraud"[16] to raise awareness among ministers responsible for securities regulation and justice about issues related to securities fraud.

In response, federal, provincial and territorial ministers responsible for justice created a task force in October 2006 to review, among other issues, the concerns raised in the CSA paper.

RAISE AWARENESS ABOUT THE IMPORTANCE OF SECURITIES FRAUD

The CSA discussion paper underscored how little importance is given to securities fraud in Canada, compared with other types of crime, even though the social consequences are equally, if not more, significant. The paper also highlighted the fact that courts, prosecutors and police forces devote insufficient attention to securities-related fraud because such cases are complex, are difficult to build and require specialized expertise.

This cycle needs to be broken. Currently, regulators are left to prosecute securities-related cases, whereas the public would be better served if these cases were prosecuted under the Criminal Code. This situation also puts a strain on regulators' resources, which could be assigned to areas where their expertise is utilized more effectively.

It is critical that the various related entities become fully aware of the significant impact of economic crime on society and the importance of fully carrying out their respective roles.

ENHANCE THE EFFECTIVENESS OF IMETS

In the wake of several major financial scandals, the federal government set up IMETs in 2003. These teams were expected to be made up of seasoned RCMP investigators with experience in capital markets fraud, legal advisors appointed by the Public Prosecution Service of Canada (PPSC) and civil staff with specialized competencies. IMETs work in co-operation with securities regulatory agencies and other police forces.

When they were established, IMETs were seen as a key element in the fight against economic crime. However, IMET results have been very disappointing, according to many commentators. In October 2007, Nick Le Pan,[17] Special Advisor to the Commissioner of the RCMP, submitted a report on IMETs which identified a number of shortcomings: lack of resources, lack of leadership, recruitment difficulties, insufficient

co-operation with other parties. The report's recommendations to overcome these shortcomings primarily focused on improving relationships between IMETs and securities regulators.

Due to the importance of fighting securities fraud, it is imperative that the federal government follow up on the Le Pan report recommendations and take the necessary steps to enhance IMET effectiveness.

4.4 IMPROVE THE TOOLS AVAILABLE TO INVESTIGATORS

The task of the teams assigned to suppressing securities fraud in Canada is directly or indirectly restricted by various provisions in federal and provincial laws. The limited resources available to Canadian investigators is a major handicap that contributes to the perception that Canada is less effective than the U.S. in suppressing this type of fraud.

Some of the proposals intended to improve the effectiveness of the tools available to investigation teams should therefore be examined.

INVESTIGATIVE SUMMONS

In Canada, employees of corporations suspected of offences or other persons with knowledge of relevant facts are frequently instructed not to speak to investigators. Refusal by witnesses to co-operate is an important handicap in understanding business operations and determining the factors that warrant further investigation or prosecution. In the case of persons who are the subject of a criminal investigation, the right to choose not to speak with police is protected under the Canadian Charter of Rights and Freedoms. The Charter provides protection against self-incrimination, but does not guarantee the right to silence for third-party witnesses.

Consequently, it would be advisable to study the feasibility of adopting an investigative summons power in Canada. This would enable the police, subject to appropriate protective measures, to compel third-party witnesses to provide evidence to assist in investigations.

INFORMATION SHARING BETWEEN REGULATORS AND POLICE

Capital market offences may, in some instances, be investigated by both securities regulators and police forces. Investigations may proceed concurrently or successively. Often, both investigations will require information from the same sources, creating the potential for duplication of effort, inefficient allocation of resources, and delay.

The sharing of information among various agencies involved in securities law enforcement is a sensitive and important area because it raises issues of privacy and fundamental protections under the Charter. Information sharing is a particularly sensitive issue where securities regulators obtain information that may be used in the course of criminal investigations. Without appropriate information sharing between investigative parties, investigations may be prolonged and further crimes perpetrated.

Accordingly, Crown prosecutors, securities regulators and police agencies should establish detailed protocols or best practices to facilitate and expedite information sharing without compromising investigations.

CASE INTAKE AND REFERRAL

The review and referral of potential securities fraud cases today take place in isolation. Currently, securities regulators that identify cases for criminal prosecution do not have any viable avenues for ensuring that criminal law authorities undertake to investigate and prosecute such cases. Similarly, police agencies should be able to draw on a clear process for referring appropriate matters to securities authorities to initiate penal proceedings. This compartmentalization is impeding co-ordination between various law enforcement agencies and regulatory bodies, thereby causing delays and potential shortcomings in law enforcement.

Securities regulators and police forces should develop a standardized principles-based framework for the review, co-ordination and assignment of securities fraud complaints. Such a model would specify the co-operation required of teams for the four following core functions: case analysis and preparation, case review and assessment, case referral and national police co-ordination.

PENALTIES AND PROCEEDS OF CRIME

The effective enforcement of securities laws depends on an appropriate regime of penal and criminal sanctions intended to ensure that offenders do not profit from their violations. Together with penal sanctions, the current system should be optimized by improving the training of prosecutors in connection with capital markets offences to increase judicial effectiveness at sentence hearings. This would ensure more effective and consistent use of forfeiture and restitution provisions in existing legislation.

It would also be appropriate to examine the advisability of extending the reverse onus forfeiture provisions governing proceeds of crime in the Criminal Code, codifying aggravating circumstances and circumstances that are not attenuated in provincial securities legislation, as well as strengthening programs designed to recover property in order to enhance the effectiveness of confiscation legislation.

CONCLUSION

The AMF believes that Canada's current regulatory framework is adequate in light of the specific features of the Canadian market.

On an international scale, Canada operates a small securities market made up of firms located across a vast territory with needs that vary significantly from region to region and which, for the most part, are financed locally.

Against this backdrop, a system of provincial and territorial regulators serves as the most appropriate regulatory framework, as regulators are able to identify and respond more effectively to the specific needs of firms in their jurisdiction, while striving to harmonize securities regulations and processes. Under the umbrella of the Canadian Securities Administrators (CSA), the model fosters information sharing and healthy competition, thereby promoting innovation and the adoption of best practices Canada-wide.

Because of the size of Canada, a multi-regulator system also enhances consumer protection. Since securities operations are often local in nature, the proximity of regulators to local markets facilitates the detection of fraudulent practices. The benefits derived from the proximity of regulators to markets are comparable to those observed in the U.S., where a securities regulator operates in each of the 50 states.

The adoption of a single securities regulator must be based on a demonstration that such a framework would be superior to the existing system. This Brief underscores that the arguments put forth in support of the federal proposal do not justify the proposed changes in the current regulatory structure. The position of the AMF reflects the findings of a number of international bodies whereby securities regulation in Canada is among the best in the world. The AMF therefore considers it paradoxical that the federal government is proposing to replace a system that meets the needs of Canadian firms and investors and has been widely recognized internationally for its effectiveness. This approach is tarnishing the securities industry's reputation abroad and is generally undermining Canada's economic interests.

Furthermore, it is important to stress that the federal and provincial bodies responsible for regulating Canada's capital markets — the Bank of Canada, the Office of the Superintendent of Financial Institutions (OSFI), and securities regulators — essentially pursue the same objectives and face identical challenges. Indeed, the crisis related to asset-backed commercial paper (ABCP) only highlights that a federal or single regulatory body does not necessarily eliminate such challenges. Any proposal to create a single regulator based on the premise that a federal presence would deliver a more effective regulatory framework therefore lacks merit.

In addition to these general remarks, this Brief sets out five key conclusions:

1. The federal government's criticism of Canada's current securities framework is unsubstantiated.

2. A common securities act and a single securities regulator are unnecessary structural changes.

3. A single regulator is not a prerequisite to developing more principles-based securities regulation. This objective, when deemed advisable, can readily be achieved within the scope of the work of the provinces and territories and the CSA.

4. The best approach in matters of securities regulation in Canada is continued co-operation among provincial and territorial regulators. Setting up a securities tribunal modelled on Québec's securities decision and review board (BDRVM) in each province is advisable. A quasi-judicial system may be implemented over the medium term subsequent to the work of the Provincial/Territorial Council of Ministers of Securities Regulation.

5. Within its jurisdiction, the federal government should support the securities regulation efforts of the provinces and territories by raising awareness about the importance of economic crime, enhancing the effectiveness of IMETs and working with jurisdictions to improve the tools available to investigators.

APPENDIX

NATIONAL INSTRUMENTS AND POLICY STATEMENTS IN FORCE IN QUÉBEC

NATIONAL INSTRUMENT OR POLICY STATEMENT
1 – PROCEDURES AND RELATED MATTERS
Regulation 11-101 respecting Principal Regulator System
Policy Statement to Regulation 11-101
Regulation 11-102 respecting Passport System
Policy Statement to Regulation 11-102
Policy Statement 11-202 respecting Process for Prospectus Reviews in Multiple Jurisdictions
Policy Statement 11-203 respecting Process for Exemptive Relief Applications in Multiple Jurisdictions
Policy Statement 12-202 respecting Revocation of a Compliance-related Cease Trade Order
Regulation 13-101 respecting the System for Electronic Document Analysis and Retrieval (SEDAR)
Regulation 14-101 respecting Definitions
2 – CAPITAL MARKET PARTICIPANTS
Regulation 21-102 respecting Marketplace Operation
Policy Statement to Regulation 21-101
Regulation 23-101 respecting Trading Rules
Policy Statement to Regulation 23-101
Regulation 24-101 respecting Institutional Trade Matching and Settlement
Policy Statement to Regulation 24-101
3 – REGISTRATION REQUIREMENTS AND RELATED MATTERS
Regulation 31-101 respecting National Registration System
Policy Statement 31-201 respecting National Registration System
Regulation 31-102 respecting National Registration Database
Policy Statement to Regulation 31-102
National Instrument 33-102, Regulation of Certain Registrant Activities
Companion Policy 33-102
Regulation 33-105 respecting Underwriting Conflicts
Policy Statement to Regulation 33-105
Regulation 33-109 respecting Registration Information
Policy Statement to Regulation 33-109
National Instrument 35-101, Conditional Exemption from Registration for United States Broker-Dealers and Agents
Companion Policy 35-101
4 – SECURITIES DISTRIBUTIONS
Regulation 41-101 respecting General Prospectus Requirements
Policy Statement to Regulation 41-101
Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings

NATIONAL INSTRUMENT OR POLICY STATEMENT
Regulation 43-101 respecting Standards of Disclosure for Mineral Projects
Policy Statement to Regulation 43-101
Regulation 44-101 respecting Short Form Prospectus Distributions
Policy Statement to Regulation 44-101
Regulation 44-102 respecting Shelf Distributions
Policy Statement to Regulation 44-102
Regulation 44-103 respecting Post-Receipt Pricing
Policy Statement to Regulation 44-103
Regulation 45-101 respecting Rights Offerings
Policy Statement to Regulation 45-101
Regulation 45-102 respecting Resale of Securities
Policy Statement to Regulation 45-102
Regulation 45-106 respecting Prospectus and Registration Exemptions
Policy Statement to Regulation 45-106
National Policy 46-201, Escrow for Initial Public Offerings
Regulation No. 15 respecting Conditions Precedent to Acceptance of Scholarship or Educational Plan Prospectuses
5 – CONTINUOUS DISCLOSURES
Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities
Policy Statement to Regulation 51-101
Regulation 51-102 respecting Continuous Disclosure Obligations
Policy Statement to Regulation 51-102
National Policy 51-201, Disclosure Standards
Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency
Policy Statement to Regulation 52-107
Regulation 52-108 respecting Auditor Oversight
Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings
Policy Statement to Regulation 52-109
Regulation 52-110 respecting Audit Committees
Policy Statement to Regulation 52-110
Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer
Policy Statement to Regulation 54-101
Regulation 54-102 respecting Interim Financial Statement and Report Exemption
Regulation 55-101 respecting Insider Reporting Exemptions
Policy Statement to Regulation 55-101
National Instrument 55-102, System for Electronic Disclosure by Insiders (SEDI)
Companion Policy 55-102
Regulation 55-103 respecting Insider Reporting for Certain Derivative Transactions (Equity Monetization)
Policy Statement to Regulation 55-103

NATIONAL INSTRUMENT OR POLICY STATEMENT
Regulation 58-101 respecting Disclosure of Corporate Governance Practices
Policy Statement 58-201 to Corporate Governance Guidelines
National Policy No. 50, Reservations in an Auditor's Report
6 – TAKE-OVER BIDS AND SPECIAL TRANSACTIONS
Regulation 61-101 respecting Protection of Minority Security Holders in Special Transactions
Policy Statement to Regulation 61-101
Regulation 62-103 respecting the Early Warning System and Related Take-Over Bid and Insider Reporting Issues
Regulation 62-104 respecting Take-Over Bids and Issuer Bids
Policy Statement 62-203 respecting Take-Over Bids and Issuer Bids
7 – SECURITIES TRANSACTIONS OUTSIDE JURISDICTION
National Instrument 71-101, The Multijurisdictional Disclosure System
Companion Policy 71-101
Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers
Policy Statement to Regulation 71-102
8 – MUTUAL FUNDS
Regulation 81-101 respecting Mutual Fund Prospectus Disclosure
Policy Statement to Regulation 81-101 respecting Mutual Fund Prospectus Disclosure
Regulation 81-102 respecting Mutual Funds
Policy Statement to Regulation 81-102
Regulation 81-104 respecting Commodity Pools
Policy Statement to Regulation 81-104
Regulation 81-105 respecting Mutual Fund Sales Practices
Companion Policy 81-105
Regulation 81-106 respecting Investment Fund Continuous Disclosure
Policy Statement to Regulation 81-106
Regulation 81-107 respecting Independent Review Committee for Investment Funds
Policy Statement to Regulation 81-107
Regulation No. 29 respecting Mutual Funds Investing in Mortgages
9 – DERIVATIVES
Not applicable

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