Expert Panel on Securities Regulation

Creating an Advantage in Global Capital Markets

A PUBLIC CONSULTATION PAPER
ISSUED BY THE EXPERT PANEL
ON SECURITIES REGULATION
IN CANADA

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Overview

On February 21, 2008, the federal Minister of Finance established the Expert Panel on Securities Regulation in Canada. The Expert Panel is charged with providing advice and recommendations to the Minister of Finance, and the provincial and territorial ministers responsible for securities regulation, on the best way forward to improve securities regulation in Canada. The Terms of Reference and membership of the Expert Panel can be found at www.expertpanel.ca.

The Expert Panel has been asked to provide recommendations on the content, structure, and enforcement of securities regulation in Canada. In particular, it will advise on the creation of a framework to measure the performance of securities regulation in Canada. It will assess how Canada could benefit from a proportionate, more principles-based approach to securities regulation, with a greater focus on outcomes, as well as how this approach could facilitate and be reinforced by the better enforcement of securities law and regulation. It will review and advise on the best securities regulatory structure for Canada. Finally, the Expert Panel will develop a model common securities act and a transition path, including the key steps and timelines, to effect the recommended changes.

The Expert Panel will build on Canada's strengths and on the positive steps taken in recent years by the full range of partners, including the provinces, territories, and regulators. It will take into account the recommendations put forward by other expert groups, and it will draw on the best regulatory practices of our international counterparts. The Expert Panel has also put in place a research agenda that will further inform decision-making.

The Expert Panel is interested in hearing the views of a broad range of market participants on how to improve securities regulation in Canada. This input will provide important insight to the Expert Panel as it works to fulfill its mandate. The Expert Panel is particularly interested in garnering views on the consultation items presented in this document, which have been prepared to focus the discussion on the key issues and questions that relate directly to the mandate of the Expert Panel.

Consultation Item 1: Objectives, Outcomes, and Performance Measures

Securities regulation needs clear objectives, outcomes, and performance measures. There is growing recognition in Canada that a comprehensive performance measurement framework, able to evaluate regulatory outcomes against clearly defined objectives, could support organizational improvements, enhancing regulatory effectiveness and promoting greater accountability. The Council of Ministers of Securities Regulation[1], for example, is supportive of the development of performance benchmarks to advance the efficiency and effectiveness of securities regulation in Canada.

A number of countries have put in place systems to measure the performance of securities regulation. The financial sector regulator in the United Kingdom, the Financial Services Authority (FSA), has a performance measurement system that uses a range of metrics to assess how well its regulators perform against regulatory objectives and outcome indicators (see Table A). The Australian Securities and Investment Commission has service-level standards for regulators, the results of which are presented to the public in its annual report. Service-level standards include, for example, the percentage of public complaints that were addressed and finalized within 28 business days of receipt; and the percentage of relief applications (under securities law) that were decided within 15 business days.

Table A
Financial Services Authority:
Strategic Objectives and Outcome Indicators

Strategic Objectives	Outcome Indicators
Help retail consumers achieve a fair deal	Consumers receive and use clear, simple and relevant information from the industry and from the FSA
	Consumers are capable and confident in exercising responsibility when dealing with the financial services industry
	Financial services firms treat their consumers fairly and help to meet their needs
Promote, efficient, orderly and fair markets	Firms are financially sound and well managed
	Firms and other stakeholders understand their respective responsibilities and mitigate risks relative to financial crime and arising from market conduct
	Financial markets are efficient, resilient, and internationally attractive
Improve our business capability and effectiveness	The FSA is professional, fair, efficient and easy to do business with
	The FSA is effective in identifying and managing risks with respect to the statutory objectives
	The costs and benefits of regulation are proportionate

Source: The Financial Services Authority. *Principles-based regulation: Focusing on the outcomes that matter* (2007).

The creation of a performance measurement framework for securities regulation in Canada requires defining a set of clear objectives of securities regulation. The International Organization of Securities Commissions (IOSCO)[2] defines three core objectives: the protection of investors; the promotion of fair, efficient, and transparent capital markets; and the reduction of systemic risk. As Table B indicates, the first two objectives are generally explicitly addressed in the mandates of the securities regulatory agencies across Canada. The reduction of systemic risk is not stated explicitly.

Should Canada have a common set of objectives? What should be the objectives of securities regulation in Canada? Given the current context in global financial markets, should the reduction of systemic risk be an explicit objective of securities regulation? If so, how broadly should it be defined? Are there objectives for Canada that go beyond those defined by IOSCO? For example, should an objective be to enhance the competitiveness of Canada's capital markets?

Table B Mandates of Selected Agencies for Securities Regulation in Canada	
British Columbia Securities Commission	To protect and promote the public interest by fostering a securities market that is fair, efficient, and warrants public confidence; and a dynamic and competitive securities industry in British Columbia that provides investment opportunities and access to capital.
Alberta Securities Commission	To foster a fair and efficient capital market in Alberta and to protect investors.
Saskatchewan Financial Services Commission*	To protect consumer and public interests; and to support economic well-being through responsive financial marketplace regulation.
Manitoba Securities Commission	To protect investors and promote fair and efficient business investment practices throughout the province.
Ontario Securities Commission	To provide protection to investors from unfair, improper, and fraudulent practices; foster fair and efficient capital markets; and promote market integrity.
Autorité des marchés financiers (Quebec)*	To provide assistance to consumers of financial products and services; ensure that the financial institutions and other regulated entities of the financial sector comply with the solvency standards applicable to them as well as with the obligations imposed on them by law; supervise the activities connected with the distribution of financial products and services; supervise stock market and clearing house activities and monitor the securities market; and, see to the implementation of protection and compensation programs for consumers of financial products and services, and administer the compensation funds set up by law.

***Source*:** Website (2008) of the British Columbia Securities Commission; Alberta Securities Commission; Saskatchewan Financial Services Commission; Manitoba Securities Commission; Ontario Securities Commission; and the Autorité des marchés financiers (Quebec).
* Quebec and Saskatchewan have an integrated financial sector regulator.

Performance measurement also requires developing criteria to evaluate outcomes against the objectives of securities regulation. The FSA, as shown in Table A, uses outcome indicators to measure how well it is meeting its strategic objectives. The outcome indicators include whether "[C]onsumers receive and use clear, simple, and relevant information from the industry and from the FSA" and whether the "FSA is professional, fair, efficient and easy to do business with." The Government of Canada evaluates regulation based on a number of criteria, including whether the regulatory activity protects and advances the public interest; supports a fair and competitive market economy; advances efficiency and effectiveness; and is accessible, understandable, and responsive.[3]

What criteria should be used to evaluate securities regulation in Canada?

Consultation Item 2: Principles-Based Securities Regulation

Canada's capital markets are becoming increasingly more sophisticated and dynamic. Continuous financial innovation and new product development are important ways in which the financial sector meets the needs of investors and businesses, in support of the growth of Canada's economy. The effective and efficient regulation of securities in this

environment is crucial to protect the interests of investors, promote financial innovation, and support fair, efficient, and competitive capital markets in Canada.

Canada's approach to securities regulation is heavily reliant on rules.[4] Securities regulators tend to provide explicit detail on how a regulatory outcome is to be achieved. Proponents of the rules-based approach argue that rules are simple to apply, easy to use, and provide certainty to market participants on the actions required to achieve compliance. Critics argue that rules cannot effectively address the changing market circumstances and practices at all times, creating delays and inhibiting innovation. They argue that rules cause market participants to focus on compliance with the rules rather than on achieving the best regulatory outcome. A rules-based approach is also criticized for not supporting effective enforcement actions against market participants that complied with the rules but did not act in the best interest of the marketplace.

In recent years, there has been growing support in Canada and in other G7 countries to reduce the reliance on rules by adopting a more principles-based approach. In 2004, the British Columbia legislature passed a bill to create a principles-based Securities Act. The legislation was not brought into force, and the implementation has been deferred, to focus resources on the implementation of the passport system. In 2006, the Allen Task Force and the Crawford Panel recommended a more principles-based approach.[5] In the United States, a number of prominent expert groups, including the Committee on Capital Markets Regulation, support the move to more principles. In the United Kingdom, the FSA continues to foster the development of an increasingly more principles-based approach.

A principles-based approach generally establishes high-level regulatory principles or objectives for business.[6] The FSA, for example, has eleven regulatory principles for business, ranging from acting with skill, care, and due diligence to being cooperative and open with regulators (see Table C). The emphasis, in contrast to rules, is on the desired regulatory outcome rather than on how the outcome is to be achieved. Businesses would be responsible for establishing internal compliance controls to meet the outcomes. Regulators would intervene less and collaborate more with businesses. This approach, however, would not eliminate rules and, in some cases, would expand guidance on how to achieve compliance. The FSA, even with its significant use of regulatory principles, publishes a handbook that contains guidance and an extensive set of rules. The principles-based approach would, in theory, keep the rules that matter, provide guidance as necessary, and reduce regulatory interventions.

There are arguments for and against this approach, which must be carefully considered. Proponents argue that it would promote more effective regulation, since businesses are often better positioned than regulators to steward effective regulatory outcomes in increasingly sophisticated capital markets. Proponents also argue that this approach could reduce complexity, enhance regulatory efficiency, and improve enforcement by being able to hold individuals accountable for rule infractions as well as actions that defy the spirit of proper market conduct.

Critics suggest that it could impose undue regulatory burden on businesses, which would have to develop and monitor internal compliance controls to achieve the desired regulatory outcome. This burden could be particularly acute for smaller businesses, which generally have limited resources and expertise for these purposes. A principles-based approach could also reduce the regulatory certainty for market participants while allowing enforcement actions to be conducted without any violation of a guideline or rule.

Could a more principles-based approach improve securities regulation in Canada? Are there areas of securities law or regulation that are overly prescriptive and could benefit from a more principles-based approach? What core regulatory principles should constitute the foundation of securities law? What are the risks and challenges of a more principles-based approach to regulation?

Table C Financial Services Authority: Eleven Regulatory Principles for Business
Integrity. A firm must conduct its business with integrity.
Skill, care and diligence. A firm must conduct its business with due skill, care and diligence.
Management and control. A firm must take reasonable care to organize and control its affairs responsibly and effectively, with adequate risk management systems.
Financial prudence. A firm must maintain adequate financial resources.
Market conduct. A firm must observe proper standards of market conduct.
Customers' interests. A firm must pay due regard to the interests of its customers and treat them fairly.
Communications with customers. A firm must pay due regard to the information needs of its customers, and communicate information to them in a way which is clear, fair and not misleading.
Conflicts of interest. A firm must manage conflicts of interest fairly, both between itself and its customers and between one customer and another.
Customers: relationships of trust. A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
Customers' assets. A firm must arrange adequate protection for customers' assets when it is responsible for them.
Relations with regulators. A firm must deal with its regulators in an open and cooperative way, and must tell the FSA promptly anything relating to the firm of which the FSA would reasonably expect prompt notice.
Source: Financial Services Authority. *The FSA Handbook: Principles for Business* (2008).

Consultation Item 3: Proportionate Securities Regulation

Canada has a large number of small public companies and a small number of very large public companies. The smallest 1,000 public companies account for less than 1 percent of Canada's market capitalization, while the largest 250 public companies account for close to 85 percent.[7]

A number of expert commentators, including the Allen Task Force[8], have suggested that the bifurcation of the size of Canada's public companies poses unique challenges for securities regulators. Small companies do not have the resources to meet extensive regulatory requirements, yet tend to be subject to less public scrutiny (e.g., coverage by media and financial analysts), and embody greater regulatory risk. Large companies, which are generally listed on more than one stock exchange, are subject to significant formal regulatory requirements and, by virtue of their size, are subject to rigorous public scrutiny. Regulators must balance the need to reduce the relative compliance cost for small companies, without compromising regulatory effectiveness, with the need to ease certain formal requirements for the largest companies.

The need to tailor regulation to small and large companies is addressed to some extent through the different listing requirements prescribed by the TSX Venture Exchange and Toronto Stock Exchange (TSX). The TSX Venture is largely comprised of small, emerging, junior issuers, while the senior issuers are listed on the TSX. The TSX Venture tends to have less onerous regulatory requirements than the TSX. For example, with regard to continuous disclosure, less stringent obligations are applied to companies on the TSX Venture than to companies listed on the TSX. This approach bases regulation solely on the location of the company's listing rather than on the economic characteristics of the company. It, therefore, excludes small TSX-listed companies that could benefit from more focused regulation, and it does not ease the regulatory requirements for larger companies that are listed on multiple exchanges.

To improve the status quo, there have been calls to tailor securities regulation to certain economic characteristics of the company, notably size and business risk. The Allen Task Force, for example, envisaged a system where issuers with the lowest market capitalization would be subject to regulatory requirements appropriate for their size and complexity, while the largest issuers would be afforded less formal regulatory oversight.

Proportionate securities regulation could reduce compliance costs and improve regulatory outcomes for Canada's largest and smallest public companies. It could also attract additional listings and business activity. However, by creating different classes of issuers, it could increase the complexity of the system and make it less transparent to domestic and foreign market participants. The opportunities and risks of proportionate regulation therefore merit careful consideration.

To what extent is there need for proportionate regulation in Canada? What areas of securities regulation impose undue burden and could benefit from proportionate regulation? Should the economic characteristics of a company determine how it is regulated? If so, what should be the economic characteristics? What role could risk analysis play in the regulation of businesses?

Consultation Item 4: Enforcement

Timely, consistent, and visible enforcement of securities laws and regulation is critical for protecting investors, fostering investor confidence, and encouraging participation in capital markets. Strong enforcement is also important to ensuring efficient and effective market performance.

The system of enforcement in Canada is complex and multifaceted. Numerous experts have identified concerns with enforcement in Canada.[9] Efforts are underway by multiple bodies and authorities to improve enforcement. The focus of this consultation is not to broadly revisit the subject of enforcement, but to focus the discussion on two issues pertaining to the Terms of Reference. The first is whether a more principles-based approach could improve enforcement.[10] The second is whether the adjudicative function, which determines the application of administrative sanctions, should be made independent of the regulator. That said, enforcement will be reviewed in its entirety.

1) Enforcement under a more principles-based approach

A more principles-based approach to securities regulation could strengthen enforcement. This approach would allow enforcement actions to be conducted against market participants that have breached one or more principles of good business conduct (e.g., act with integrity), even in the absence of a violation of securities law, regulation, or rule.

The FSA has shown that enforcement can be strengthened with a set of clearly articulated principles that are meant to act as a last check to guide and enforce proper market conduct. In recent years, the FSA has conducted several successful enforcement actions against market participants based solely on the breach of one or more of its principles for business. For example, in 2004, the FSA found Citigroup Global Markets Limited (CGML) in breach of two principles (skill, care, and diligence; management and control) for how it conducted its bond business.[11] In 2005, CGML was fined over €20 million.

Some commentators have suggested that a more principles-based approach might expose business to greater enforcement risk.[12] Businesses would establish compliance processes to meet regulatory outcomes without knowing whether the approach would withstand regulator scrutiny. There is also concern that the regulator's power to enforce would become too expansive, since enforcement actions could be undertaken on the breach of very broad, subjective principles.

Others have noted that a more principles-based approach requires the system of enforcement to be coordinated and strong.[13] The regulator should be able to articulate and monitor its desired outcomes, as well as adapt to change and new regulatory risks, on an ongoing basis. Enforcement actions should be consistent and fair. This requires coordination. The system would also need strong enforcement as, in the absence of a credible deterrent, and in an environment where businesses are given more latitude to manage compliance, the system could attract greater misconduct.

What would be the opportunities and risks to enforcement under a more principles-based approach in Canada? Should enforcement action be taken solely on the basis of a breach of principle? Would the current system be sufficiently well-positioned to enforce a more principles-based approach?

2) Independent adjudication

Securities regulatory agencies in Canada use administrative sanctions against market participants that are in violation of securities law or regulation. Sanctions range from preventing the trading in securities (i.e., cease trade order) to denying the exemption of securities regulatory requirements. Administrative sanctions are not meant to be punitive; however, they can be severe and significantly limit participation of individuals in the jurisdiction's capital market.

Generally, the application of administrative sanctions is adjudicated by the securities regulatory agencies. Quebec is the only jurisdiction in Canada whose adjudicative function is independent of its regulator. In other jurisdictions, the adjudicative function comes under the direct authority of the regulator.

Market participants and legal experts have recommended that the adjudicative function be made independent of the regulator.[14] It is argued that the status quo perpetuates a perception of bias and promotes partiality in the adjudicative process, as the agency responsible for policymaking, investigating, and prosecuting is also responsible for rendering judgment on the application of administrative sanctions.

Some have proposed the creation of an independent pan-Canadian adjudicative tribunal.[15] One could conceive of a tribunal comprised of representatives from each province and territory that could hear cases across Canada. The tribunal could promote independence in the adjudicative process. It could also promote a more consistent application of administrative sanctions across Canada.

Should the adjudicative function be made independent of the securities regulatory agency? Should a pan-Canadian adjudicative tribunal be established? What governance model should be considered in the creation of this tribunal? Would a separate adjudicative tribunal help with the enforcement of principles-based regulation?

In what ways could the enforcement of securities law and regulation be strengthened in Canada?

Consultation Item 5: Securities Regulatory Structure

There is broad consensus that the securities regulatory structure in Canada can be improved.[16] The enforcement of securities law and regulation is impeded by the lack of coordination, disparate priorities, and inconsistent funding across Canada. The policy development process is often slow, lacking responsiveness. Compliance costs are unduly burdensome. Canada's voice internationally is not as strong as it could be.

The approach to improve the securities regulatory structure, in order to achieve the best possible stewardship of Canada's capital markets, has been the subject of much debate in recent years. Some have advocated for keeping the current structure intact while promoting greater harmonization and coordination. Others have proposed more fundamental changes. The following provides a discussion of the regulatory structures that are central to this debate.

Passport System of Securities Regulation

All provinces and territories, except Ontario, are working to establish the passport system, which is intended to improve the current system by creating a more coordinated and harmonized securities regulatory environment. The focus is on reducing complexity and compliance costs for market participants.

Under the passport system, market participants are subject to the requirements of one securities regulator in Canada (i.e., the principal regulator). Compliance with the rules and decisions of the principal regulator constitute deemed compliance with the requirements of all other participating jurisdictions, in essence providing a passport to undertake capital markets activity across Canada.

The passport system is being implemented in two phases. The first phase was completed in September 2005, which allows market participants to obtain regulatory approval from the principal regulator to operate in other jurisdictions. The second phase is currently being implemented. In March 2008, a comprehensive and transparent set of national prospectus requirements for issuers was created. Market participants are still consulting on a national registration rule, which is the second key component to the passport system. It is anticipated that this rule will be implemented in early 2009.[17] Once phase two is complete, market participants would rely solely on the decisions of their principal regulator, as they relate to nationally harmonized instruments (e.g., prospectus and registration requirements), which would be legally binding in all participating jurisdictions.

Ontario supports the harmonization and streamlining of securities regulation in Canada, however, it did not wish to participate in the passport system. To address Ontario's absence, interfaces were established that are intended to provide maximum efficiencies to all market participants. Broadly speaking, under the passport system, an Ontario-based market participant would deal with the Ontario Securities Commission as its principal regulator. Any decision by the Ontario Securities Commission would apply automatically in other jurisdictions.

What are the strengths and weaknesses of the passport system as it is currently being implemented?

Single Securities Regulator

A number of expert groups in recent years have proposed models that would consolidate the governance of securities regulation into a single entity governed by the federal, provincial, and territorial governments. These proposals strive to enhance regulatory efficiency, improve policy development, enhance enforcement, and improve international representation.

The proposed models would involve a single securities act and a single set of regulations and rules for capital market participants in Canada. There would be a single point of contact for capital market participants and a single fee structure, with fees set on a cost-recovery basis. There would be a head office and functionally empowered regional offices. Commissioners of the single regulator would be appointed with a view to ensuring geographic balance. Enforcement would be coordinated and investors would be protected in a uniform manner across Canada.

Wise Persons' Committee[18] Proposal

In 2003, the Wise Persons' Committee proposed a federal governance model. Under this model, the federal, provincial, and territorial governments would work together to govern securities regulation; however, the federal government would play the dominant role and ultimately be accountable to the public for securities regulation in Canada.

The federal government would enact a comprehensive Canadian Securities Act, which could only be amended with agreement of a majority of the provinces representing a majority of the Canadian population. Provinces and territories would not be allowed to opt-out.

The proposal would create the Canadian Securities Commission (CSC). The CSC would be governed by commissioners from all regions (two each from Ontario and Quebec; one from each of British Columbia and Alberta; two from the remaining provinces and territories, and one from any jurisdiction). The federal Minister of Finance would appoint commissioners from nominees proposed by a nominating committee with representation from each province. All provincial ministers responsible for securities regulation and the federal Finance Minister would be on a Securities Policy Ministerial Committee. The CSC would report to Parliament through the federal Minister of Finance.

Crawford Panel Proposal

In 2006, the Crawford Panel proposed a common governance model, where the federal, provincial, and territorial governments would collaboratively govern securities regulation in Canada. In contrast to the Wise Persons' Committee model, all jurisdictions would be given equal decision-making power and all jurisdictions would be accountable to the public for securities regulation. Provinces and territories would also be allowed to opt-out of the model.

The Crawford Panel envisaged an initial core group of participating jurisdictions governing the CSC. A Council of Ministers would be formed from the ministers of each participating jurisdiction that would be accountable to the public for securities regulation. The Council would elect the Board of Directors; oversee the adjudicative body; approve rules and changes to structural matters; and arrange reviews of the CSC internal controls and financial reporting. There would also be a nominating committee (one member from each participating jurisdiction) that would present nominees to the Council for the Board and the separate securities tribunal. The CSC's Chief Executive Officer would be the Chief Commissioner, supported by a number of Vice Commissioners.

The CSC would be governed by a single act, enacted by one participating jurisdiction (a province) and incorporated by reference by the other jurisdictions. The legislation would grant broad powers to the CSC to make rules that set out the substantive details of securities regulation. Amendments to the legislation would initially require approval by the legislatures of two-thirds of the participating jurisdictions.

Which structural model (passport or single securities regulator) would be best for Canada? Which model would best support the adoption of new regulatory approaches, including proportionate regulation and a more principles-based approach? Which would fulfill the need for the effective governance of Canada's capital markets?

What are the opportunities and risks of moving to a single securities regulator? How could a single securities regulator be implemented without being unduly disruptive to the marketplace? In particular, what can be done to effect a smooth transition?

What is the best way forward for the federal and provincial governments? In the absence of an agreement, what do you suggest as an alternative model?

Concluding Remarks

Getting securities regulation right in Canada will support increases in investment, create more and better jobs, and, over time, enhance the prosperity of Canadians. Securities regulation must protect investors and promote market integrity, while achieving effective regulatory outcomes without imposing undue regulatory burden. In an increasingly competitive global capital market, Canada must have a securities regulatory system that is best in class.

The Expert Panel will bring forth recommendations to improve the content and structure of securities regulation for Canada. These recommendations will be embodied in a common model securities act along with a transition plan to implement the recommended changes.

Overall, what should be the key elements of a model common securities act to improve securities regulation in Canada? How should the transition be managed and executed to minimize the disruption in Canada's capital markets?

Endnotes

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[1] The Council of Ministers of Securities Regulation in Canada is comprised of the ministers (and the attorney generals) responsible for securities regulation in the provinces and territories. The members of the Council are committed to working together to improve the securities regulatory framework in Canada.

[2] IOSCO is an international cooperative forum for securities regulatory agencies. IOSCO members regulate more than 90 percent of the world's securities market.

[3] More information on the Government of Canada's initiative to streamline regulation is available at www.regulation.gc.ca.

[4] See pages 97-101 of Mark R Gillen. *Securities Regulation in Canada,* 3rd Edition (2007), or Page 7 of *One Year On: Seeing the Way Forward* (2007) by the Crawford Panel on a Single Canadian Securities Regulator.

[5] The Allen Task Force is formally entitled The Task Force to Modernize Securities Regulation in Canada, while the Crawford Panel is formally entitled the Crawford Panel on a Single Canadian Securities Regulator.

[6] In this document, businesses are those that are regulated by virtue of their participation in the capital markets.

[7] TSX Group (data as at December 31, 2006).

[8] See Chapter 3 of the Final Report (2006) of The Task Force to Modernize Securities Regulation in Canada.

[9] See Peter Cory and Marilyn Pilkington. *Critical Issues in Enforcement* (2006). The Task Force to Modernize Securities Regulation in Canada.

[10] Consultation Item 3 describes principles-based regulation in greater detail.

[11] See FSA communication entitled "FSA fines Citigroup £13.9 million (€20.9 million) for Eurobond trades." It is available at http://www.fsa.gov.uk/pages/Library/Communication/PR/2005/072.shtml.

[12] See Julia Black. *Making Principles-based Regulation a Success* (2007). Herbert Smith and the London School of Economics.

[13] See Cristie Ford. *New Governance, Compliance, and Principles-Based Securities Regulation*. American Business Law Journal 45:1 (2008)

[14] See Peter Cory and Marilyn Pilkington. *Critical Issues in Enforcement* (2008). The Task Force to Modernize Securities Regulation in Canada.

[15] The Council of Ministers of Securities Regulation, in its 2007 progress report, noted that it is examining the potential benefits of establishing an independent securities tribunal.

[16] For a discussion of the shortcomings of the current securities regulatory structure, see Chapters 16 and 17 of David Johnston and Kathleen Doyle Rockwell. *Canadian Securities Regulation*, 4th Edition (2006), or Chapter 3 of the final report (2003) of the Wise Persons' Committee to Review the Structure of Securities Regulation in Canada.

[17] The initial implementation date for harmonized registration requirements was August 2005, as stated in the Council of Ministers of Securities Regulation Action Plan (September 2004).

[18] The Wise Persons' Committee is formally entitled the Wise Persons' Committee to Review the Structure of Securities Regulation in Canada.

www.expertpanel.ca