
Game On For A Single Securities Regulator In Canada

Industry Spotlight

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Today the **Toronto Stock Exchange (TSX Group)** is the **8th largest stock exchange** in the world based on market capitalization.¹ With the competitive challenges of **globalization, technology** and **consolidation** staring it in the face, the **Canadian Securities industry** has undergone a number of regulatory and structural changes to become **more competitive** in a **global marketplace** including the demutualization of the Canadian exchanges, the realignment and consolidation of the exchanges by market specialization and the introduction of special exemptions to attract international investors. Despite these changes, the apparent need for a **common securities regulator** in **Canada** appears to be the only pressing issue holding Canada back from becoming a **truly dynamic capital market** like New York, London, and Hong Kong.

Need for Change

According to **Finance Minister Jim Flaherty**, Canada would benefit with more investment, jobs, protection of investors, save money and give all regions of Canada a say with the implementation of a common securities regulator. He believes that the "fragmented structure of securities regulation hurts the ability of Canadian firms to raise money, a situation that puts [Canada] at a **distinct global competitive disadvantage**."²

Echoing this sentiment, **Barbara Hendrickson**, a partner at **McMillan Binch Mendelsohn LLP** who practices securities law, sees Canada's multi-jurisdictional regulatory structure as a "**turn-off for foreign investors** as they would view Canada as having **13 different sets of securities regulations**". According to Ms. Hendrickson, "A more attractive market for many international investors is **AIM [Alternative Investment Market]**, London's junior exchange because of its **lack of regulation and easy access to high risk capital**."

With the growing criticism from the international financial community about Canada's current securities regulatory framework, and the idea of a common securities regulator endorsed by the **Canadian Coalition for Good Governance**, the push has been on by the federal government to **move the process forward** with an "**expert panel with time-limits** to provide third-party advice, validation, and recommendations to all ministers on a federal, provincial and territorial level on how to move this forward."³

Exercising Power

Pending the findings of the expert panel which are likely to endorse a common securities regulator, the provinces (with the exception of Ontario) and territories may still refuse to commit to forming a common securities regulator which may leave Finance Minister Jim Flaherty and the federal government no choice but to exercise its power in the best interest of Canadians.

According to **Glorianne Stromberg**, an independent commentator on the financial services industry and the former Commissioner of the **Ontario Securities Commission**, this would be "**one course of action but a difficult one**" and would be met with resistance from the provinces who would "likely tie up the process in legal actions which would be unfortunate and detract from keeping the focus on the true benefits of having a single regulator."

¹ **Source:** "Listing on the Toronto Stock Exchange – Your Key to North American Capital", Authors: Abigail Etches & Annie Lin Tao, Toronto Stock Exchange, June 2007

²⁻³ **Source:** Department of Finance Canada, "Speech by the Honourable Jim Flaherty, Minister of Finance, to a Conference on Securities Law Enforcement Co-Hosted by the Capital Markets Institute, Rotman School of Management and C.D. Howe Institute", June 27, 2007

An Expensive and Inefficient System

Despite all the regulatory and structural changes to attract investment and to protect investors in Canada, the **current multi-jurisdictional structure** of securities regulators in 13 provinces and territories is **expensive and inefficient** according to Glorianne Stromberg:

"13 jurisdictions making up their minds to pursue [securities] issues is costly and a time consuming experience. People operating throughout the country are not going to use their own resources to improve it."

Investor Protection

She emphasizes that moving to a single regulator and a common set of requirements **is necessary** not only to attract investment, but more importantly to **maximize investors' protection**. She is supportive of the **Crawford report** [*"Blueprint for a Canadian Securities Commission"*, Crawford Panel on A Single Canadian Securities Regulator, June 7, 2006] on how a single regulator would operate. "This would allow for **meaningful input from all parts of the country** and would result in the **fair treatment of issues** regardless of where you are from."

Self-regulatory organizations (SROs) like **Market Regulation Services Inc. (RS)**, **Investment Dealers Association of Canada (IDA)**, and **Mutual Fund Dealers Association of Canada (MFDA)** were formed to regulate Canada's securities markets and to protect investors' interests. But according to Ms. Stromberg, "both types of regulators [i.e. provincial/territorial regulators and SROs] **put no particular emphasis on the investor** but on **protecting the industry**." Even with the **Canadian Investor Protection Fund (CIPF)**, a trust fund established in 1969 to protect investors in the event of insolvency of an SRO member firm, the protection provided to investors **is limited** and **does not protect investors from fraud**. According to Glorianne,

"The **enforcement process is not working effectively** as some [cases] have carried over to criminal law. The **high cost to justice** has always been a barrier and to tell investors to resort to court action is **not realistic** and usually **not feasible** because they **do not have enough resources** to bring about court action."

She emphasizes that although it is next to impossible to protect investors from fraud, **changes can be made** to make it **more difficult** for it to occur.

What the Future Holds

"A **single securities regulator** is a **step in the right direction** but a **better alternative** would be to have a **single financial services regulator** covering the **four pillars of the financial industry** i.e. securities, pensions, banking and insurance because the services are so inter-related" says Glorianne Stromberg.⁴ Whether Canada will see a common securities regulator in the near future remains to be seen but one thing is certain, **this change is necessary** to encourage **investment confidence, efficiency and to provide maximum protection** for those investing in Canada's capital markets.

⁴ **Note:** For Glorianne Stromberg's detailed recommendations for a "single financial services regulator" please refer to her two reports: *"The 1995 Stromberg Report: Regulatory Strategies for the Mid-90s – Recommendations for Regulating Investment Funds in Canada"* and *"The 1998 Stromberg Report: Investment Funds in Canada and Consumer Protection: Strategies for the Millennium"*

About the Author:

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