

A Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation

BETWEEN: The Governments of the participating jurisdictions represented by their respective Ministers responsible for securities regulation

Preamble

WHEREAS effective securities regulation is vitally important to investor protection and efficient, vibrant and competitive national and local capital markets;

WHEREAS provinces and territories have the authority to regulate securities;

WHEREAS participating jurisdictions agree to work closely together to develop and sustain a provincial/ territorial framework for securities regulation that inspires investor confidence and supports competitiveness, innovation and growth;

THEREFORE participating jurisdictions agree to move ahead with a passport system for an improved securities regulatory framework, to develop highly harmonized securities laws, simplified where appropriate, and to explore further options to consolidate and/or strengthen co-ordination and consistency of securities laws among provinces and territories, including a commitment to explore, on an ongoing basis, new opportunities to strengthen the Canadian securities regulatory framework.

1. Definitions

1.1. In this MOU:

“Action Plan” means the document appended to this agreement entitled “Action Plan to Improve Canada’s Securities Regulatory Framework”, as amended from time to time by the agreement of participating jurisdictions;

“Council” means the Provincial/Territorial Council of Ministers responsible for securities regulation, as described in Section 3 of this MOU;

“host jurisdiction” for an issuer or registrant means a province or territory in which an issuer is distributing/offering securities or is a reporting issuer, or a registrant is providing trading or advising services and which is not the issuer or registrant’s primary jurisdiction;

“market participant” includes an issuer or registrant;

“Minister” means a Minister responsible for securities regulation in a participating jurisdiction;

“participating jurisdiction” means a province or territory that is or becomes a signatory to this agreement;

“primary jurisdiction” means the province or territory to which a market participant is considered to be most closely connected for the purposes of the measures contemplated in this MOU, which in most circumstances, and subject to section 5.12 will be:

- i) for an individual registrant, the jurisdiction in which the individual’s normal working office is located;
- ii) for a registrant that is not an individual, the jurisdiction in which the registrant’s head office is located;
- iii) for an issuer, the jurisdiction in which the issuer’s head office is located;

“primary regulator” means the securities commission or equivalent securities regulatory authority in the primary jurisdiction of a market participant;

“securities laws” means legislation, regulations, rules and blanket orders pertaining to securities;

“securities regulator” means the securities commission or equivalent securities regulatory authority in a province or territory.

2. Principles

2.1. Ministers agree that the following principles will be used to assess the appropriateness and effectiveness of the actions being considered:

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

3. Provincial-Territorial Council of Ministers of Securities Regulation

3.1. Ministers responsible for securities regulation in participating jurisdictions will form a Council of Ministers of Securities Regulation. The Council's role will be to approve strategies and action plans to enhance the regulatory framework for securities through:

- Implementing the passport system and monitoring its operation
- Leading and overseeing the development of highly harmonized securities laws and monitoring their effectiveness
- Monitoring and reviewing the securities regulatory framework and conducting ongoing regular reviews of securities policy and laws
- Identifying priority policy initiatives for securities regulators and establishing clear timelines for the completion of such initiatives
- Discussing major policy issues and providing direction to the securities regulators with respect to those major policy issues
- Ensuring key international issues are addressed
- Sharing information about local rules contemplated under section 5.10 of this MOU
- Reviewing this MOU regularly and amending it as necessary.

3.2. The Council will meet annually and as required to discharge its responsibilities.

3.3. The Chair of the Council will rotate annually among Ministers as determined by the Council. Common costs associated with the Council may be shared by participating jurisdictions in a manner determined by the Council. Such costs may include website design and maintenance, joint communications and/or consultation activities, conference calls and meeting facilities and other costs as determined by the Council.

- 3.4. Advisory Committees may be appointed by the Council. The purpose of such Advisory Committees would be to provide advice to the Council on matters relating to the ongoing development of the provincial/ territorial framework for securities regulation and the implementation and operation of this MOU. The mandate and appropriate terms and conditions for the Advisory Committees would be determined by the Council.
- 3.5. Ministers will encourage securities regulators to continue their ongoing efforts to co-ordinate and harmonize the regulation of Canadian capital markets, which they are currently doing through the Canadian Securities Administrators (CSA).
- 3.6. Securities regulators may bring forward policy issues, including new issues, to the Council for the Council's discussion and/or direction.
- 3.7. Ministers will request that their securities regulators work together, through the CSA, to achieve consensus positions on international issues that could be presented as a common view at international meetings of regulators.

4. Decision Making Procedures

- 4.1. The Council will strive to reach consensus on matters relating to the implementation and operation of this MOU.
- 4.2. Ministers will make best efforts to promote the decisions of the Council, but it is clearly recognized that participating jurisdictions retain ultimate sovereignty.
- 4.3. Local rules could be implemented as contemplated under section 5.10 of this MOU.
- 4.4. Where the Council has reached consensus on an issue, the Chair of the Ministers' Council will represent a common view with respect to securities regulation in response to key international issues.

5. Passport System

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

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

5.2. The passport system will initially apply to areas that have been identified where there are already highly harmonized securities laws across jurisdictions, or where highly harmonized securities laws can be achieved in an accelerated timeframe.

5.3. The passport system for issuers will initially include:

- prospectus requirements and clearance;
- prospectus and registration exemptions;
- continuous disclosure requirements;
- routine discretionary exemptions.

5.4. The passport system for registrants will initially include:

- registration process, requirements and related filings;
- general and routine discretionary registration exemptions.

5.5. Existing investor protections will be maintained or enhanced and investors will continue to be able to bring a civil action against a market participant in the investor's own jurisdiction.

- 5.6. Host jurisdictions will rely on the securities regulator in the primary jurisdiction of a market participant for the enforcement of the requirements of securities laws applicable to those areas covered by the passport system.
- The securities regulator in a host jurisdiction that receives a complaint about a market participant will conduct a preliminary assessment of the complaint and refer the complaint along with their findings and the documents compiled to the primary jurisdiction for further investigation and, if appropriate, enforcement action.
 - The host securities regulator will await the outcome of the primary securities regulator's investigation and will undertake its own investigation and, if appropriate, enforcement action if it is in the public interest to do so or if the primary securities regulator has referred the matter back to the host securities regulator for further action.
- 5.7. An exception to section 5.6 will be made in cases where an investor has made a claim for financial loss to a host jurisdiction's securities regulator in those jurisdictions where the securities regulator has the authority to provide such compensation. In such cases, the host jurisdiction may not refer the complaint to the primary jurisdiction's securities regulator, but may undertake its own investigation and, if appropriate, take enforcement action.
- 5.8. Not all participating jurisdictions are required to act as a primary jurisdiction. A participating jurisdiction can choose to delegate or assign responsibility for regulating all or a class of market participants to another participating jurisdiction, with the agreement of the delegate. Such delegation would apply to all or a class of market participants whose primary jurisdiction would otherwise be the delegator.
- 5.9. Ministers agree to raise concerns with recognizing a given jurisdiction as a primary jurisdiction with the Council. Each Minister retains the right to cease to recognize a jurisdiction as a primary jurisdiction, if, in the opinion of a given Minister, that jurisdiction is not making reasonable best efforts to abide by this MOU, or is not maintaining the regulatory capacity needed to administer and enforce securities law as a primary jurisdiction.

5.10. Local rules will provide the ability for a participating jurisdiction to innovate and test new and unique initiatives. Prior to approval of any proposed change to securities law or proposed amendment to securities law that would not be highly harmonized with those of other participating jurisdictions, a Minister will consider:

- Whether the initiative is necessary to meet a policy objective;
- How the impact on other jurisdictions would be minimized;
- How the impact on the efficiency of the provincial/territorial passport framework would be minimized;
- Making the measure subject to regular reassessment to ensure the integrity of the passport system is maintained.

5.11. Ministers will direct a review of fees collected by securities regulators by officials and securities regulators. The fee review will examine the fee structure in the context of a passport system. All jurisdictions will retain the authority to set and collect fees.

5.12. Ministers will request that securities regulators establish a “single window of access” for foreign market participants that wish to access the capital markets of participating jurisdictions, and assign foreign market participants to an appropriate primary regulator.

6. New Legislation, Regulation and Rules to Implement Passport

6.1. Ministers agree to make best efforts to implement the passport system for securities regulation in their own jurisdictions.

6.2. Ministers will recommend to their respective governments legislation to implement the passport system that would come into force by the date specified in the Action Plan.

6.3. Ministers will make best efforts to have such securities laws as needed to implement the passport system adopted by the date(s) specified in the Action Plan.

6.4. To facilitate the passport system, legislation, regulations and/or rules will need to be developed or amended in order to achieve a high degree of harmonization across all participating jurisdictions for those areas that the passport will initially cover. Ministers will make best efforts to have such legislation, regulations and/or rules adopted in their respective jurisdictions by the date(s) specified in the Action Plan.

7. Harmonized and Simplified Legislation

- 7.1. Ministers will work together to implement highly harmonized securities laws, simplified where appropriate, that build on existing harmonized laws and take into consideration the securities regulators' Uniform Securities Law (USL) project. This is in addition to, and wider in scope than, the commitment in section 6.4 of this MOU. The Council will continue to drive harmonization of securities laws, simplified where appropriate.
- 7.2. Ministers will make best efforts to retain and enhance the degree of harmonization and simplicity achieved through the process described in section 7.1 by working with the Council to decide on proposed amendments.
- 7.3. Ministers will work together to explore options to further enhance investor protection, including initial work on issues identified in the Action Plan.

8. Exploring Further Reform

- 8.1. A review of the effectiveness of the passport system will be conducted after three years of operation. As part of the review, further measures to integrate laws and administrative practices will be identified.
- 8.2. Ministers, through the Council, will continue to explore options for further reform of the securities framework that would respect individual provincial and territorial responsibilities for securities regulation.
- 8.3. Options for further reform will be consistent with the original goal of the provincial/territorial securities initiative: to develop a provincial/territorial framework that inspires investor confidence and supports competitiveness, innovation and growth through efficient, streamlined and cost-effective securities regulation that is simple to use for investors and other market participants.

9. Accession to and Voluntary Exit from this MOU

- 9.1. After the signing of this MOU by all of the participating jurisdictions referenced under section 12.0, any non-participating jurisdiction may become a participating jurisdiction by providing to all participating jurisdictions a separate completed signature page to this MOU.
- 9.2. A Minister may withdraw from this MOU by providing at least six months' written notice to other participating jurisdictions.

10. Transitional Period - Action Plan

10.1. Ministers agree to make best efforts to achieve results by dates specified in the Action Plan so that the passport system can be implemented in a timely manner.

11. Amendment

11.1. This MOU may be amended with the unanimous written consent of all Ministers.

12. Ratification

12.1. We, the undersigned, agree to the terms and conditions described in this MOU and commit to seeing that the intent of this MOU is carried out.