



A Blueprint for A New Model

A Discussion Paper by the
Crawford Panel on A Single
Canadian Securities Regulator

December 8, 2005

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The Panel and Its Mandate

This discussion paper is produced by a national Panel charged with recommending a model for a common securities regulator for Canada. The Panel's terms of reference are to recommend a securities regulatory framework that features a common securities regulator, a common body of securities law and a single fee structure.

In May 2005, the Hon. Gerry Phillips, Ontario's Minister of Government Services who is also responsible for securities regulation in the province, asked Purdy Crawford to chair the Panel. Panel members are drawn from all regions of Canada and a diversity of relevant backgrounds. The Panel members, whose biographies are included below, are:

<i>Purdy Crawford</i>	Counsel, Osler, Hoskin & Harcourt LLP (Panel Chair)
<i>Brian A. Canfield</i>	Chair, TELUS Corporation
<i>Claude Lamoureux</i>	President and Chief Executive Officer, Ontario Teachers' Pension Plan Board
<i>John MacNaughton</i>	Corporate director and former President and Chief Executive Officer, Canada Pension Plan Investment Board
<i>Jacques Ménard</i>	Chairman, BMO Nesbitt Burns and President, BMO Financial Group, Québec
<i>Gwyn Morgan</i>	President and Chief Executive Officer, EnCana Corporation
<i>Dawn Russell</i>	Associate Professor and former Dean, Dalhousie Law School

The Panel acknowledges the contribution of John Watson, Executive Vice President and Chief Financial Officer of EnCana Corporation; Janet Salter and Lori Stein, lawyers at Osler, Hoskin and Harcourt LLP, who managed this project and who were primarily responsible for researching and writing this paper; and Alexandra Raphael, a lawyer with the Ontario Ministry of Finance, who provided legislative guidance.

The paper is intended to stimulate discussion with governments; with capital market participants at a series of regional roundtables in Vancouver, Calgary, Winnipeg, Toronto, Montreal and Halifax; and through input by interested parties on the web site at www.crawfordpanel.ca. Written submissions may also be provided to the Panel through the website.

The recommendations in this paper are solely those of the Panel and are not made on behalf of the Province of Ontario.

Executive Summary

The objective of this discussion paper is to reach agreement in principle among jurisdictions responsible for securities regulation in Canada on the architecture for a single securities regulator. With an understanding of the basic governance blueprint, the details of how the regulator should function can be addressed more productively.

The Challenge

The regulatory challenge for governments is to develop a system that is consistent across Canada and integrates with best global standards.

In the past five years, Canada's provinces and territories have taken important steps to improve the regulation of capital markets on a more consistent national basis. However, weaknesses remain in a system with 13 separate provincial and territorial jurisdictions. As a result, Canada is the only major country in the world without a single securities regulator.

A single securities regulator, however, will only succeed if it is built on existing provincial strengths and safeguards against domination by one jurisdiction. That means developing a national framework that pools regulatory responsibilities and resources and respects the constitutional authority and oversight of each jurisdiction.

We believe that such a framework can be constructed to the satisfaction of provincial governments and should include the federal government as a participant.

The Realities of the Marketplace

Capital markets are already national and increasingly international in scope. Companies raise funds where they are most readily available and least expensive. Investors place risk capital anywhere in the world where they believe markets are reliable and fair. Issuers and investors think nationally, internationally and globally in large part thanks to advances in technology that make it easy to conduct business, file and share information, and move capital quickly to best advantage.

In this fast-paced global environment, Canada's relatively tiny capital market (approximately 3% of the world market) must compete for attention in bringing capital-seeking companies together with investors so that they can transact business efficiently at the lowest possible cost.

Lessening the cost of capital and the frustrations of regulatory compliance are shared priorities among Canadian securities regulators. Achieving these shared priorities should encourage new business growth by domestic companies, resulting in economic expansion that benefits all jurisdictions.

A Relevant Precedent

Constructing an acceptable governance framework for a single securities regulator should not be a lengthy, costly or complex process.

The Canada Pension Plan Investment Board is an example of federal/provincial ingenuity in creating a solution to a challenge shared by multiple jurisdictions. Developed in the late 1990s, the governance and operational model for the CPP Investment Board has many attributes appropriate to a national securities regulator. The model has been in place now for seven years. It delivers:

- ministerial oversight and legislative control
- a board of independent and qualified directors to provide governance oversight
- a process for nominating directors controlled by participating jurisdictions
- professional day-to-day management
- political accountability, and
- public transparency.

Our vision adapts the best of this governance model to the regulation of capital markets through a Canadian Securities Commission. The framework we propose will protect and advance the political rights and responsibilities of the provinces and territories.

The Proposed Model

The proposed model has five essential components that incorporate safeguards to ensure that no jurisdiction dominates or controls the single national regulator:

1. A **Council of Ministers** with political accountability to the Canadian public. Under our proposed model, each participating jurisdiction would be treated as an equal with each minister having one vote in the selection of the Board of Directors, the Adjudicators for the Canadian Securities Tribunal and the adoption of Rules made by the Canadian Securities Commission.
2. An arm's length **Nominating Committee** appointed by participating jurisdictions and charged with finding, screening and recommending qualified candidates to serve on the Board of Directors and the Canadian Securities Tribunal. This mechanism has worked well for the CPP Investment Board in ensuring that directors have the requisite expertise to provide informed oversight with due regard to regional representation. The ministers will elect Board members only from the list submitted by the committee and would not substitute their own nominees.
3. A **Board of Directors** comprised of individuals with investment and regulatory expertise as well as governance experience, having due regard for the interests of relevant stakeholders and regional diversity. The directors will be appointed by and be accountable to the Council of Ministers. The nominating process defuses the risk of any jurisdiction politically dominating the Board. With a non-executive Chair, the Board will provide governance oversight of management in regulating capital markets throughout Canada. The directors will act in the best interests of issuers, investors, market intermediaries and the public. Consequently, directors would not represent the interests of a specific government.

4. An **Executive Management Team** led by a chief executive officer (the Chief Commissioner) appointed by and reporting to the Board of Directors. Senior managers (vice commissioners) will for the most part be recruited by the Chief Commissioner from existing regulatory regimes and will lead a cohesive team of regulatory professionals who can respond effectively to local, regional, national and international priorities. While no recommendation is made on the location of the head office, it is anticipated that regional offices will be established as “centres of excellence” for specific policy areas, each led by a vice commissioner. A vice commissioner would also be responsible for enforcement.
5. A **Canadian Securities Tribunal** with panels of adjudicators recommended by the Nominating Committee and appointed by the Council of Ministers. Led by a Chief Adjudicator, the tribunal will operate separately from the Canadian Securities Commission with its own offices, administrative staff and budget. The panels of adjudicators will conduct hearings throughout Canada. The tribunal’s rules of procedure would be approved by the Council of Ministers, based on the best practices of existing provincial agencies.

Under this model, the line of accountability is clear:

- Management is accountable to an independent Board
- The Board is accountable to the Council of Ministers, where all jurisdictions sit as equals, and
- The Council is accountable to the respective governments and legislatures of participating jurisdictions.

Public transparency will be a common thread throughout with full and timely communications obligations assigned to Management, the Board and the Council.

A Single Canadian Securities Act

Markets regulated consistently from a single platform of policies and rules encourage capital to be invested where it can drive economic expansion, entrepreneurial innovation and productivity gains. Uniform regulation fosters responsible corporate behaviour and investment practices by removing uncertainties about how rules and practices may be interpreted in different domestic jurisdictions at different times under different political regimes.

A single regulatory framework will reassure foreign investors that Canada is an attractive place in which to place risk capital.

And average Canadians, who directly and indirectly are the largest shareholders of Canada’s publicly traded companies, primarily through mutual and pension funds, can gain comfort from knowing that their rights – indeed, their financial wealth and future retirement income – are being protected consistently throughout the country.

To achieve a single securities act, it is proposed that all participating jurisdictions would adopt by reference the legislation enacted by one province as the *Canadian Securities Act*.

It is proposed that this *Canadian Securities Act* set out the powers, responsibilities and duties of the Commission, Council of Ministers, Board of Directors, Nominating Committee and Canadian Securities Tribunal along with basic principles of securities law. Rulemaking, and the ability to grant exemptions, would be delegated to the Canadian Securities Commission.

Rules proposed by Commission staff will be presented to the Board for preliminary approval and then published for public comment. Final rules, including any changes that might arise from public consultation, will be formally approved by the Board and submitted to the Council of Ministers. Rules will become effective on a date determined by the Board unless a majority of the Council of Ministers vetoes the proposed rule within 45 days of it being referred to the Council.

A Single Fee Structure

The Canadian Securities Commission will be self-financing. A single securities regulator should result in less administrative expense than the aggregate costs of the current multi-jurisdictional system. Fees will be set on a cost-recovery basis, with an allowance for a reasonable reserve fund for unexpected expenses.

Benefits of a Single Canadian Securities Regulator

The proposed framework gives considerable shape to how a national securities regulator could be governed in the best and equal interests of all jurisdictions:

- It will build a single national organization with strong lines of accountability from professional regulators to an independent and experienced Board, and from the Board to the Council of Ministers.
- It will create consistent securities regulation and enforcement across Canada.
- It will consolidate regulatory expertise by economic sectors or size of companies in regional centres of excellence.
- It will reduce the compliance frustrations and costs of small and mid-sized firms seeking to expand within and beyond their home province.
- It will bring Canada into line with other major nations that have a single securities regulator, overcoming perceptions among would-be investors of a fragmented regulatory system.
- It will enhance Canada's attractiveness as a destination for both domestic and foreign capital.
- It will enable Canada to speak with one voice at the International Organization of Securities Commissions and other international forums.

Panel Member Biographies

Purdy Crawford, *Counsel, Osler, Hoskin & Harcourt LLP*

Mr. Crawford practiced corporate and commercial law at Osler, Hoskin & Harcourt LLP, where he became senior partner. He left Osler in 1985 and spent 15 years at Imasco Limited as chief operating officer, chief executive officer, and executive and non-executive chairman. He was also non-executive chair at CT Financial Services Inc. and has served on the boards of several large Canadian and U.S. companies. Mr. Crawford rejoined Osler in 2000. He chaired the committee appointed to review securities legislation in Ontario, and chaired the Securities Industry Committee on Analysts Standards.

Brian A. Canfield, *Chair, TELUS Corporation*

Mr. Canfield's long career in telecommunications includes terms as chief executive officer of BC Telecom Inc. and TELUS during its formative period. He has extensive experience as a board member of major corporations, is a member of the Canadian Public Accountability Board and served as a director of the Toronto Stock Exchange.

Claude Lamoureux, *President and Chief Executive Officer, Ontario Teachers' Pension Plan Board*

Mr. Lamoureux established Ontario Teachers as an independent corporation in 1990 following a career as a financial executive with Metropolitan Life in Canada and the United States. He has led Teachers' growth into an \$85 billion investment organization and strong corporate governance advocate. Experienced as a corporate director, he co-founded the Canadian Coalition for Good Governance.

John A. MacNaughton, *Corporate Director*

From 1999 to 2005, Mr. MacNaughton was founding President and Chief Executive Officer of the Canada Pension Plan Investment Board, a federal crown corporation responsible for investing approximately \$80 billion of Canada Pension Plan assets. Previously he spent 31 years in the investment business with BMO Nesbitt Burns and its predecessor companies. He served as president of Burns Fry and Nesbitt Burns from 1989 to 1999. A corporate director, he chaired the Investment Dealers Association of Canada.

L. Jacques Ménard, *Chairman, BMO Nesbitt Burns and President, BMO Financial Group, Québec*

Mr. Ménard chairs the board of one of Canada's leading investment firms and oversees the activities of the Bank of Montreal and its subsidiaries in Québec. He has extensive experience as a corporate director, including the Canadian Public Accountability Board, and is past chair of Hydro-Québec, the Montreal Exchange, Trans-Canada Options Corporation and the Investment Dealers Association of Canada. He has worked in the securities field for more than 30 years.

Gwyn Morgan, *President and Chief Executive Officer, EnCana Corporation*

Prior to the merger that created EnCana Corporation, Mr. Morgan was President and Chief Executive Officer of Alberta Energy Company Ltd, which he joined in 1975 during the start-up of operations. He has more than 30 years of technical, operational, financial and management experience in oil and gas exploration, production, marketing and pipelines. He is a director of numerous corporations.

Dawn Russell, *Associate Professor, Dalhousie Law School*

Prof. Russell served for nine years as Dean of Dalhousie Law School and has an academic career dating back to 1987 following a career as a practicing lawyer with a Nova Scotia law firm. She chaired the Nova Scotia Law Reform Commission between 1995 and 2002, and has served as a corporate director.

A Blueprint for A New Model

Introduction

This Panel was appointed by the Minister responsible for securities regulation in Ontario¹ to propose a model for a common securities regulator for Canada. Even though a provincial minister appointed us and provided our mandate, we are not proposing a model on behalf of the Province of Ontario. We are proposing a model that we, as Panel members, believe is the right one for Canada. We come from a variety of backgrounds, including business and academia, and from diverse regions of Canada that have significantly different views regarding the current securities regulatory regime and the best method for improving it. We are sensitive to the concerns of various Canadian jurisdictions that a single regulator may be susceptible to domination by one or more large provinces or by a federal policy agenda. We are also sensitive to concerns that such a regulator may not respond effectively to local issues, adequately service small and medium-sized issuers (“SMEs”) or draw upon the regional expertise that has developed at certain provincial and territorial securities regulators. Our model seeks to address these concerns while at the same time achieving three goals set out in our mandate: a single regulator, a single law and a single fee structure.

1. Our Vision

In order for any model of a common securities regulator to gain broad acceptance in Canada, it is fundamental that the regulator is structured in such a way that it cannot be dominated or controlled by any one participating jurisdiction. In addition, a Canadian securities regulator must provide (i) accountability to all participating jurisdictions, (ii) transparent governance, and (iii) regulatory expertise, efficiency and flexibility in the areas of investor protection and market efficiency. We have developed a model that meets these criteria.

The cornerstone elements of the proposed model are:

- a Council of Ministers with government oversight over securities regulation;
- a geographically representative Nominating Committee which recommends candidates for the Board of Directors;
- a Board of Directors that provides governance oversight of the regulator;
- executive management consisting of a Chief Commissioner as chief executive officer and vice commissioners; and
- a separate adjudicative tribunal that conducts hearings and determines penalties for breach of securities laws.

Our model proposes that each province and territory of Canada and the federal government² delegates its authority to administer securities legislation to one regulator (the “Canadian Securities Commission” or “CSC”). It is essential that there be a strong core group of jurisdictions that participate in the CSC at the outset, ideally including the federal government. However, we recognize the

¹ Minister Gerry Phillips, then Chair of the Management Board of Ontario and now, since June 2005, Minister of Government Services of Ontario.

² In our view, federal government participation is desirable to ensure that the CSC possesses the necessary authority to regulate across the country, which is particularly important for establishing a seamless enforcement structure.

possibility that some jurisdictions may not support the CSC initially, and therefore, we propose an “opt in” structure under which jurisdictions may choose to participate in the CSC at a later time with the approval of the Council of Ministers. We expect that, over time, as the CSC establishes a regulatory track record and gains recognition in Canada and abroad, all Canadian jurisdictions will opt in. We refer to the jurisdictions that choose to participate in the CSC as the “Participating Jurisdictions”.

The CSC will administer a single *Canadian Securities Act* (the “Act”) that has been adopted by all Participating Jurisdictions and one set of regulations and rules. The CSC will be governed by a strong Board constituted with a non-executive Chair and highly qualified directors. The Board will be accountable to a Council of Ministers, which is comprised of the minister responsible for securities regulation in each Participating Jurisdiction. The Council of Ministers represents the ultimate stakeholders in the CSC – the people of the Participating Jurisdictions through their elected representatives. The directors and the non-executive Chair will be nominated by a Nominating Committee comprised of one representative from each Participating Jurisdiction and will be elected by the Council of Ministers. The Board will appoint the chief executive officer (“Chief Commissioner”) of the CSC and several vice commissioners as recommended by the Chief Commissioner. Vice commissioners will oversee specific policy areas and supervise regional offices. We expect the Chief Commissioner and vice commissioners to manage an experienced staff capable of providing excellent regulatory service to all Canadian market participants regardless of their size, industry sector or geographic location. The CSC will operate on a cost-recovery basis and will allocate resources efficiently across the country. In particular, enforcement offices will be established in each jurisdiction where warranted by the level of capital markets activity.

The adjudicative function will be performed by a separate tribunal (the “Canadian Securities Tribunal” or “CST”) comprised of adjudicators appointed by the Council of Ministers based on the recommendations of the Nominating Committee. Adjudicators will sit in panels of three and will be capable of conducting hearings in all Participating Jurisdictions.

Our proposed model – with CSC management supervised by a Board that has been elected by, and is responsible to, the Council of Ministers – enhances the accountability of the regulator to its ultimate stakeholders. The Board ensures that the CSC operates independently and is not vulnerable to domination by any one Participating Jurisdiction, while the Council of Ministers ensures that the CSC remains ultimately accountable to the elected representatives of the Participating Jurisdictions, whose constituents will benefit from the enhanced investor protection and market efficiency that only a single or common securities regulator is capable of providing for Canada. The Board will meet regularly and frequently and will be charged with overseeing the operations of the CSC and regulatory policy matters while the Council of Ministers will meet as frequently as needed to receive reports from the Board and to approve Rules.

Our proposed model offers a meaningful role to all Participating Jurisdictions through the Council of Ministers, and the Nominating Committee’s recommendations concerning the Board, the non-executive Chair and the adjudicators for the Canadian Securities Tribunal. By vesting primary responsibility for governance of the CSC in an independent Board, we have removed the CSC sufficiently from the political arena to avoid possible domination by the government of any one Participating Jurisdiction. The Council of Ministers will ensure democratic oversight of the regulatory process. Ultimate responsibility for securities regulation will remain in the legislatures of the Participating Jurisdictions as they will retain control over the *Canadian Securities Act*.

2. Why We Need a Common Canadian Securities Regulator

Currently, Canadian securities regulation is performed by 13 provincial and territorial regulators administering 13 bodies of securities legislation and charging 13 sets of fees. This regime increases the cost of capital for Canadian issuers in comparison to their competitors in other nationally-regulated capital markets. Prospective foreign investors have difficulty understanding why Canada, which represents approximately 3.2% of the world's equity capital market³ and approximately 1.5% of the world's fixed income capital market,⁴ requires 13 securities regulators, while the United States, the United Kingdom and the rest of the G-10 nations, many with significantly larger economies, each has one national capital markets regulator.⁵

Working together through the forum of the Canadian Securities Administrators (the "CSA"), Canada's 13 securities regulators have harmonized a significant amount of securities law, and streamlined the prospectus filing, application and registration processes for issuers and registrants that seek to do business in multiple Canadian jurisdictions. Most recently, all of the members of the CSA except for the Ontario Securities Commission ("OSC") have introduced the "Principal Regulator System", a passport system that, for some matters, permits capital market participants to gain access to the capital markets in all passport jurisdictions by complying with the laws of, and dealing only with the regulator in, their principal jurisdiction.

The initiatives of the CSA and the introduction of the Principal Regulator System are important and positive improvements in Canada's current securities regulatory system. However, we believe that more progress is required in order to bring Canadian capital markets regulation into the 21st century.⁶ The Principal Regulator System does not reduce the volume of regulation or the number of securities regulators in Canada. As a result, we expect that slow policy development and other operational inefficiencies will persist under the passport system. In addition, the Principal Regulator System perpetuates regulatory fragmentation by permitting a participating jurisdiction to adopt a local standard if it disagrees with the national or multilateral instrument endorsed by the CSA in respect of a particular policy area. In situations where different standards are accepted, the local standard applies to all issuers and registrants for which the disagreeing jurisdiction acts as principal regulator, and the standards in force in other passport jurisdictions do not apply. As a result, the Principal Regulator System permits issuers and registrants to carry on business in the same jurisdictions, and compete directly with each other for capital or clients, while being governed by different securities regulatory standards depending upon which regulator is their principal regulator. In addition, the Principal Regulator System does not address the challenges and constitutional limitations of inter-jurisdictional enforcement proceedings, nor does it fully address the disparity in securities regulatory resources and expertise across the 13 regulators.⁷ Finally, the Principal Regulator System does not provide Canada with a national voice at

³ This percentage figure is derived from data provided by the World Federation of Exchanges. It takes the aggregate total of the market capitalization of the Toronto Stock Exchange, the TSX Venture Exchange and the Natural Gas Exchange (collectively, the TSX Group) as of the end of 2004 as a percentage of the total market capitalization of the nearly 60 stock exchanges that are members of the World Federation of Exchanges. See the official website of the World Federation of Exchanges at www.world-exchanges.org.

⁴ Bank of Canada Review (Summer 2004).

⁵ We recognize that in the United States, the states retain jurisdiction over certain local securities regulatory issues; however, substantially all regulation is performed by the U.S. Securities and Exchange Commission (the "SEC").

⁶ Currently the Principal Regulator System applies only to specific areas of securities law that were already highly harmonized among the passport jurisdictions, and more progress is needed in those areas of securities law where there has historically been little harmonization. See also Background Paper A – *Various Models of Securities Regulation*, which provides further analysis of the strengths and limitations of Canada's current regulatory structure, the Principal Regulator System and other proposed models of securities regulation.

international forums such as the International Organization of Securities Commissions or facilitate coordination with other Canadian financial sector regulators, most of which operate nationally.

We believe that until Canada has one securities regulator administering one body of securities law and charging one set of fees, our regulatory structure will lag behind most other nations and diminish the competitiveness and credibility of our capital markets. This Panel was not asked *whether* there should be a common securities regulator for Canada – various exhaustive studies have already concluded that one is necessary.⁸ This Panel was asked to suggest an appropriate structure for the common securities regulatory system.

3. Development of Our Model

We began the process of developing our model Canadian securities regulator by considering various regulatory models that have been proposed by Canadian securities law reformers and/or which are in force in other jurisdictions, as set out in Background Paper A – *Various Models of Securities Regulation*. We then reviewed the history of securities law reform proposals in Canada and considered several sets of criteria for evaluating securities regulatory structures that have been developed by Canadian academics, committees and industry groups, as set out in Background Paper B – *Previous Studies and Reform Initiatives*. Finally, we reviewed the structure of the Canada Pension Plan Investment Board, an effective and innovative example of cooperation between the federal and provincial levels of government, as discussed in Background Paper C – *Structure of the Canada Pension Plan Investment Board*. Copies of these Background Papers can be found on our website at www.crawfordreport.ca. Based on our review of these materials, we developed the vision and model for a Canadian securities regulator presented for discussion in this paper.

The Model

1. Participants

In our view, all provincial and territorial governments and the federal government should participate in the CSC in order to provide the most comprehensive and effective securities regulatory system for Canada. Federal government participation will strengthen the ability of the CSC to regulate across the country, facilitating a seamless enforcement structure as well as comprehensive regulation of all interprovincial matters. A federal presence will also strengthen the CSC's international position as Canada's capital markets regulator.

While the involvement of all provinces, territories and the federal government from the outset is ideal, it is not necessary. What is essential is that there be an initial core group of Participating Jurisdictions that agrees to enact, or to enact through incorporation by reference, common legislation that establishes the CSC and delegates to it authority over capital markets regulation. The remaining jurisdictions, with the approval of the Council of Ministers, may “opt in” to the CSC over time as the CSC establishes a regulatory track record and gains recognition in Canada and abroad. As a matter of constitutional law, Participating Jurisdictions will retain the

⁷ The Principal Regulator System recognizes that only certain jurisdictions have the resources and expertise necessary to be “principal regulators”; however, it does not propose to allocate additional resources to those provinces and territories where additional resources may be required to deal with, for example, enforcement matters.

⁸ See Background Paper B – *Previous Studies and Reform Initiatives*.

ability to “opt out” of the CSC by repealing the Act (see Section 3(i), “The Model – Legislation – A Single Act”).⁹

Various elements of our model cannot be decided with certainty because it is not clear if all jurisdictions will initially participate in the CSC. For example, the location of the head office and regional offices of the CSC and appropriate policy functions for the regional offices will depend upon the identities of the initial Participating Jurisdictions (see Section 2(v), “The Model – Structure – Executive Management” and Section 4, “The Model – Location of Offices and Role of Regional Offices”). We recommend that, as discussions relating to the CSC progress, the Participating Jurisdictions should prepare a memorandum of understanding (an “MOU”) to address these matters. This MOU will be subject to change over time as the CSC matures. Eventually, we hope that many of these matters will be decided by the Board of Directors on an ongoing basis to reflect the current needs of the CSC and the Canadian capital markets.

2. Structure

(i) Establishment and Mandate

The CSC will be established as a corporation by the *Canadian Securities Act*, a special-purpose statute.¹⁰ The mandate of the CSC will be the traditional twin mandate of securities regulation – to protect investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in those capital markets. The CSC will be expected to achieve these mandates as efficiently as possible for the Canadian capital markets as a whole.

(ii) Council of Ministers

The Council of Ministers will be comprised of the minister responsible for securities regulation in each Participating Jurisdiction. The Council of Ministers will represent the ultimate stakeholders in the CSA, namely, the people of the Participating Jurisdictions. The Council of Ministers will be responsible for:

1. electing directors to the Board and, at least initially, appointing the Chair of the Board based on the recommendations of the Nominating Committee (see Section 2(iv), “The Model – Structure – Board of Directors”);
2. overseeing the Canadian Securities Tribunal (CST), including appointing a Chief Adjudicator and other adjudicators to the CST based on the recommendations of the Nominating Committee (see Section 6, “The Model – A Separate Tribunal”);
3. approving Rules proposed by the CSC (see Section 3(iii), “The Model – Legislation – Rulemaking”);
4. approving any changes to the MOU whereby the Participating Jurisdictions may agree on various structural matters relating to the CSC including adding or removing Participating

⁹ Some commentators have suggested that a model under which participants may opt out any time is inherently unstable. However, in our view, once the CSC is established, Participating Jurisdictions will have a vested interest in cooperating to make it work rather than going back to the fragmented regulatory structure.

¹⁰ In order to ensure that the CSC and its Board, Chief Commissioner, vice commissioners and other officers and employees, as well as the Canadian Securities Tribunal and its adjudicators and administrative staff, are provided with immunity against lawsuits for carrying out their duties, it is preferable to incorporate the CSC and create the Canadian Securities Tribunal under a special-purpose statute, as opposed to under an existing corporate statute.

Jurisdictions (see Section 1, “The Model – Participants” and Section 3(ii), “The Model – The Legislation - Amending the Act”); and

5. arranging for special examinations of the CSC from time to time relating to internal controls and financial reporting.

Other than the specific responsibilities of the Council of Ministers enumerated above, the Board of Directors will be responsible for all aspects of the governance of the CSC (see Section 2(iv), “The Model – Structure – Board of Directors”). Amendments to the *Canadian Securities Act* will be the exclusive responsibility of the legislatures of the Participating Jurisdictions (see Section 3(ii), “The Legislation – Amending the Act”).

(iii) Nominating Committee

Each Participating Jurisdiction will appoint a representative to serve on the Nominating Committee, providing effective regional representation. The Nominating Committee will identify, screen, interview and recommend to the Council of Ministers nominees for the Board of Directors and for the Chair of the Board. The Council of Ministers may initially appoint the Chair of the Board. However, over time, we expect the Board to appoint its own Chair. The Nominating Committee will also recommend to the Council of Ministers candidates for adjudicators (including the Chief Adjudicator) of the CST and the CST Administrator (see Section 6 “The Model – A Separate Tribunal”). Nominating Committee members should be highly experienced in the capital markets, whether at the public service or industry level.

(iv) Board of Directors

The Board of Directors will be elected by, and will be responsible to, the Council of Ministers. The Nominating Committee will recommend Board nominees to the Council of Ministers, taking into consideration:

- the experience in the public and/or private sector in the securities and/or financial services sectors of the proposed nominees;
- the skill sets required on the Board at the time of the election;¹¹
- the integrity, reliability and reputation of the proposed nominees; and
- geographic representation.

We expect the Board to be comprised of directors from across Canada. However, the experience and integrity of prospective Board nominees, as well as the skill sets needed on the Board at the time of the election, are of equal or greater importance to the effectiveness of the Board than a director’s home province or territory. We therefore explicitly reject the notion that the Board must, at all times, include one director from each Participating Jurisdiction. Indeed, the number of directors on the Board is unlikely to equal the number of Participating Jurisdictions. In addition, the Nominating Committee’s search for candidates should not be restricted to the Participating Jurisdictions, as some qualified individuals may reside in provinces and territories of Canada that

¹¹ The Board should include directors who represent the matrix of experience and backgrounds desired on corporate boards (i.e., financial, human resources, operations, communications) with members who have expertise in various regulatory areas for which the CSC will be responsible (i.e., equity markets, fixed income markets, institutional investors, compliance, SMEs, investment funds, specific industry sectors, investor rights).

have not yet opted into the CSC. The Nominating Committee should seek out the most qualified nominees available from across Canada with a view to maintaining geographic diversity.

The Council of Ministers will elect directors only from the list submitted by the Nominating Committee and will not substitute candidates. This approach will ensure the integrity of the process, insulate it from partisanship and prevent any one Participating Jurisdiction from exercising undue influence. Each director will be elected for a three-year term, or until his or her successor is elected, except that the terms of some initial directors will be four or five years to create a staggered Board.

The Chair of the Board will be a non-executive Chair. At the outset, the Chair will be appointed by the Council of Ministers based upon the recommendation of the Nominating Committee. For the CSC to achieve success, it is essential for the initial Chair to be perceived by the Participating Jurisdictions and their constituents as being a strong and independent leader of the utmost integrity.

The Board will be responsible for supervising (but not managing) the operations of the CSC. The Board will be responsible for all aspects of the governance of the CSC, other than those items that have been reserved for the Council of Ministers (see Section 2(ii) “The Model – Structure – Council of Ministers” above). The responsibilities of the Board will include, without limitation:

1. appointing the Chief Commissioner, reviewing his or her performance, compensation and terms of employment and terminating the Chief Commissioner, if appropriate;
2. reviewing and approving the Chief Commissioner’s recommendations regarding the appointment of vice commissioners and their regional office locations;¹²
3. appointing from among its members various committees of directors, including an audit committee,¹³ a governance committee, a compensation and human resources committee and a regulatory committee;
4. approving draft Rules before they are published for comment (see Section 3(iii) “The Model – Legislation – Rulemaking”);
5. approving the annual Statement of Priorities and budget of the CSC and submitting it to the Council of Ministers;
6. appointing the auditor to conduct the annual audit of the CSC;
7. approving the annual report of the CSC and submitting it to the Council of Ministers. Members of the Council of Ministers could table the annual report in their legislatures;
8. reporting annually to the Council of Ministers concerning the exercise of its responsibilities; and
9. ensuring that management of the CSC has appropriate policies, procedures and systems for managing and reporting on its responsibilities and activities.

¹² We expect that decisions respecting the location of the head office and regional offices will initially be set out in the MOU; however, once the CSC has been operating effectively for a number of years and the majority of provinces and territories are Participating Jurisdictions, the Council of Ministers may approve an amendment to the MOU that delegates this responsibility to the Board.

¹³ The audit committee should include one director with financial expertise and all members should be financially literate.

The Chief Commissioner and the Chair of the Board will make themselves available to address the legislature or standing or special committee of the legislature of any Participating Jurisdiction, if required.

(v) *Executive Management*

The Chief Commissioner will be the chief executive officer of the CSC. The Chief Commissioner will be appointed by, and will be directly accountable to, the Board. The Chief Commissioner will also be a member of the Board, but will not be permitted to act as the Chair of the Board. Other than the Chief Commissioner, all members of the Board will be independent of management.

The Chief Commissioner will have all the authorities and responsibilities normally assigned to a chief executive officer, including without limitation:

1. recommending to the Board the appointment of vice commissioners as members of the executive team. Each vice commissioner will be responsible for one or more policy areas and each regional office will be headed by a vice commissioner;
2. structuring the CSC and allocating its resources, subject to approval by the Board;
3. in consultation with the Board and where appropriate, rotating vice commissioners among regional offices to ensure that they gain experience in different policy areas with a view to succession planning;
4. recommending amendments to the *Canadian Securities Act* and changes to regulatory policies and rules;
5. presenting the annual Statement of Priorities and budget of the CSC to the Board for approval;
6. presenting the annual report of the CSC to the Board for approval;
7. reporting quarterly to the Board on the operating performance and financial position of the CSC; and
8. representing Canada at international forums on securities regulation.

The appropriate number of vice commissioners will depend on which jurisdictions participate in the CSC. If all jurisdictions participate at the outset, we recommend that at least four vice commissioners be appointed as heads of regional offices located in British Columbia, Alberta, Ontario and Québec, unless one of these jurisdictions is the location of the head office, in which case one or more vice commissioners may work out of the head office with the Chief Commissioner.¹⁴ Decisions regarding the appropriate number of vice commissioners and the location of the head office and regional offices will be set out in the MOU between the Participating Jurisdictions, which may be amended as additional jurisdictions opt in to the CSC.

3. Legislation

(i) *A Single Act*

Canada needs a common body of securities law that applies across the country. Consistent regulation will encourage capital investment in Canada, which will drive economic expansion and increase productivity. Uniform regulation fosters responsible corporate behaviour and investment practices by removing uncertainties about how legislation and policy may be interpreted in different domestic jurisdictions at different times under different political regimes.

The CSC will administer the *Canadian Securities Act*, which will be in force in all Participating Jurisdictions. One Participating Jurisdiction will enact the Act and the other jurisdictions will enact the Act by incorporating it by reference.¹⁵ The Act will set out the powers, responsibilities and duties of the CSC, the Council of Ministers, the Board of Directors, the Nominating Committee and the Canadian Securities Tribunal as well as basic principles of securities law. In addition, the Act will set out the securities regulatory offences triable in court, such as insider trading, and the penalties for such offences. (See Appendix 1 – Outline of the *Canadian Securities Act*, for a more complete list of matters to be addressed in the Act.)

The Act will grant authority to the CSC to make Rules that will provide the details of Canadian capital markets regulation. This grant of rulemaking authority should be established in the broadest possible terms so as to avoid the necessity of amending the Act frequently to add new areas of rulemaking authority. (See Section 3(iii), “The Model – Legislation – Rulemaking”.) The CSC will also be empowered to grant orders exempting issuers, registrants and others from the specific provisions of the Rules.

(ii) *Amending the Act*

Because the detailed rules governing Canadian capital markets will be contained in Rules (see Section 3(iii), “The Model – Legislation – Rulemaking”), we expect that the Act will seldom require amendment. Amendments to the Act will be necessary to change the powers of the CSC, the oversight mechanisms of the Participating Jurisdictions (such as the role of the Board, Council of Ministers or Nominating Committee), the securities regulatory offences set out in the Act and other matters set out in Appendix 1 – Outline of the *Canadian Securities Act*.

The *Canadian Securities Act* will provide that amendments to the Act must be approved by the legislatures of two thirds of the Participating Jurisdictions.¹⁶ The Act will further provide that, once an amendment is approved by this extraordinary majority, the legislatures of all Participating Jurisdictions will be required to enact the amendment (directly or through incorporation by reference) within a

¹⁵ Because the legislature of each Participating Jurisdiction will have to incorporate by reference the Act and all amendments, the process for adopting the Act and its amendments will be complicated and time-consuming. An alternative method for bringing the Act into force would be for the Participating Jurisdictions to delegate to the CSC the authority to bring the Act into force and to amend the Act from time to time. The enactment and amendment of the Act would be subject to approval by an extraordinary majority of the Council of Ministers. We note that such a structure has been used before in Canada to establish marketing boards, for example. Further, any Participating Jurisdiction may revoke such delegation to the CSC and repeal the Act at any time. However, we understand that there may be a perceived “democratic deficit” with this approach, as the legislatures will have delegated all legislative authority to a non-elected body.

¹⁶ In our view, this voting formula is optimal to ensure that the CSC is not susceptible to domination by one or more Participating Jurisdictions. However, we expect that the provinces and territories may have different views as to the appropriate voting formula, including, for example, allocating votes based on percentage of population, gross domestic product or some other factor. This issue should be open for discussion and may be subject to revision as additional Participating Jurisdictions opt into the CSC.

specified time period.¹⁷ If the legislature of a Participating Jurisdiction refuses to enact an approved amendment, the Act will provide that, with the approval of the Council of Ministers, that jurisdiction will cease to be a Participating Jurisdiction.

Currently, in most provinces, amendments to the local *Securities Act* may be suggested by either the securities regulator or the provincial legislature. For example, we understand that it is common for a securities regulator to propose to the responsible minister amendments to the offence provisions while the governments also may initiate amendments, for example relating to oversight of the regulator. Our model contemplates that amendments to the Act may be initiated either by the CSC or by the legislature of one or more Participating Jurisdictions. Amendments proposed by a government should not require endorsement by the Board of the CSC or the Council of Ministers or be subject to public consultation because legislation enacted by the legislatures of the Participating Jurisdictions is approved by the elected representatives of the public. Nonetheless, we expect that the Council of Ministers would be a logical venue in which a Minister could raise a proposal with his or her colleagues to determine whether there would be sufficient support for the amendment in the legislatures of the Participating Jurisdictions.

(iii) Rulemaking

The substance of Canadian capital markets regulation will be provided in Rules made by the CSC pursuant to rulemaking authority granted under the *Canadian Securities Act*. Rules will address subjects such as prospectus and registration requirements and exemptions, continuous disclosure obligations for public issuers, take-over bids, and investment funds.¹⁸ This structure should be an improvement over current practice under which an increasing number of provisions in provincial and territorial statutes are inconsistent with, or have been superseded by, corresponding provisions in multilateral or national instruments. Relocating substantive regulation from the Act into Rules will provide the CSC with maximum flexibility to develop timely policy responses to evolving market conditions.

All Rules proposed by the CSC will be approved by the Board and published for public comment in the same way that securities regulators currently publish their own proposed Rules and CSA instruments for comment. We expect vice commissioners to take the lead on Rules that are relevant to the policy areas assigned to them by the Board. Final Rules will be approved by the Board¹⁹ and presented to the Council of Ministers for approval. Rules will become effective on a date determined by the Board unless a majority of the Council of Ministers vetoes or returns the Rule to the CSC for reconsideration within 45 days of it having been referred to the Council of Ministers for approval.

We expect that, as a matter of good practice, the Chief Commissioner will keep the Council of Ministers informed regarding policy direction and the progress of proposed Rules throughout the drafting and public comment process.

¹⁷ While it is constitutionally permissible for a legislature to delegate legislative authority to a regulatory body, it is not permissible for a legislature to delegate legislative authority to another legislature. Therefore, it would not be permissible for the Participating Jurisdictions that have incorporated the Act by reference to delegate the ability to amend the Act to the jurisdiction that enacted the Act initially, for example, by adopting the Act “as amended from time to time”.

¹⁸ See Appendix 1 – Outline of the *Canadian Securities Act*, for further examples of subjects to be addressed in Rules.

¹⁹ If a proposed Rule does not change significantly as a result of the public comment process, it may not be necessary for the final Rule to be approved by the Board prior to being submitted to the Council of Ministers. The Board can decide this on a case-by-case basis at the time when it approves each draft Rule for publication.

4. Location of Offices and Role of Regional Offices

The Chief Commissioner will be located in the head office of the CSC. The Chief Commissioner and senior staff at the head office will play the lead role in setting policy priorities, overseeing policy development and allocating CSC resources. The head office will also be responsible for all inter-provincial enforcement matters, will represent the CSC internationally and will coordinate with other financial sector regulators in Canada.

The location of the head office of the CSC has been described as a “hot potato”. It is essential that the CSC not be susceptible to domination by the government of any Participating Jurisdiction. We believe that, by vesting primary responsibility for supervision of the CSC in an independent Board elected by the Council of Ministers on the recommendation of the geographically representative Nominating Committee, we have adequately safeguarded the CSC from domination by one Participating Jurisdiction, such that the location of the head office should not be a matter of paramount concern. At this time, we make no specific recommendation as to the location of the head office. However, we assume that the head office will be located in one of four largest provinces, namely, British Columbia, Alberta, Ontario or Québec, assuming that each is a Participating Jurisdiction at the outset.

We are aware that many provinces and territories desire a continued regulatory presence in their jurisdiction under a common Canadian securities regulator model. These jurisdictions seek to preserve local expertise and remain responsive to local registrants and issuers. To address these concerns, we recommend the establishment of regional offices headed by vice commissioners, as described in Section 2(v), “The Model – Structure – Executive Management”. These regional offices may build upon existing areas of expertise and become “centers of excellence” in certain policy areas. However, we believe that most policy matters will affect all regions of the country. For example, SMEs thrive across the country, the mining industry is present in numerous jurisdictions and the mutual fund industry services the entire Canadian population. The virtue of our model is that the CSC will set policy priorities nationally and ensure that policy is consistently applied across the country, while drawing upon the “centers of excellence” housed in regional offices.

Thanks to cooperative technological efforts of the CSA, many administrative functions of the CSC can be discharged from the head office or any regional office. With the System for Electronic Document Analysis and Retrieval (“SEDAR”) and the National Registration Database (“NRD”), functions that were historically performed by local offices are currently performed electronically and accessed by all 13 Canadian securities regulators. We believe that technology can bridge geographic boundaries between Participating Jurisdictions and expect the CSC to build extensively on the technological efficiencies available today and in the future.²⁰ We envision that either the head office or a regional office will act as gatekeeper for all regulatory filings and/or applications, which will be assigned to CSC staff with the requisite policy expertise, regardless of their office location.

We recommend that local enforcement offices be established in those Participating Jurisdictions where they are warranted by the level of capital markets activity (see Section 5, “The Model – Enforcement”).

²⁰

See Background Paper A – *Various Models of Securities Regulation*, Section 1, “The Status Quo”, for a brief overview of SEDAR and NRD.

5. Enforcement

We expect the CSC to improve the enforcement regime that exists under Canada's current securities regulatory structure. See Background Paper A – *Various Models of Securities Regulation*, Section 1(iv), “The Status Quo – Impediments to Effective Enforcement” for a discussion of enforcement challenges under the current system. The CSC will have one senior officer (the Chief Commissioner or a vice commissioner) responsible for all enforcement matters across the Participating Jurisdictions, including appropriate allocation of resources. Enforcement staff in the regional and local offices will keep the senior officer and his or her staff informed regarding investigations and proceedings. These communications will facilitate the coordination of enforcement efforts among all Participating Jurisdictions, reducing duplication and enabling local staff to apply the experience of their colleagues in other Participating Jurisdictions to their own enforcement activities.

The fact that the law will be uniform across the Participating Jurisdictions will improve the ability of CSC staff to build on experience gained in other Participating Jurisdictions, unlike under the current system where differences between legislation in force in various Canadian jurisdictions sometimes impede the effective use of precedent between jurisdictions. Ideally, this coordination will result in a more consistent approach to investigations and proceedings relating to breaches of securities legislation across Canada.

Federal government involvement in the CSC will overcome the jurisdictional challenges that have plagued some enforcement proceedings under Canada's current system. Offenders will no longer be able to use jurisdictional arguments to avoid prosecution nor will they be able to relocate from one province or territory in which they have been barred from registration to another jurisdiction where they can resume offensive conduct. Enforcement orders will be effective across all Participating Jurisdictions, without the necessity for holding multiple hearings and issuing multiple orders that slow down the current system.²¹ Federal government participation in the CSC may also permit better coordination between the CSC and the federal agencies and provincial Attorneys-General concerning the enforcement of *Criminal Code* securities fraud provisions and the prosecution of serious offences.

6. A Separate Tribunal

Currently, most provincial and territorial securities regulators are responsible for making policy, conducting investigations and sitting as adjudicative tribunals. The Supreme Court of Canada has held that a multi-functional agency cannot be attacked on the grounds of reasonable apprehension of bias if its structure is statutorily authorized.²² However, some participants in the capital markets sector, along with certain academics, are of the view that an agency that regulates, investigates, prosecutes and adjudicates could be seen to suffer from an inherent conflict of interest.

²¹ For a discussion of jurisdictional limitations under the current system, see Background Paper A – *Various Models of Securities Regulation*, Section 1(iv) “The Status Quo – Impediments to Effective Enforcement”.

²² See *Brosseau v. Alberta (Securities Commission)*, [1989] 1 S.C.R. 301 and *Ocean Port Hotel Ltd. v. British Columbia (General Manager; Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781.

Recently, in Ontario, the Osborne Report suggested that, while the current multi-functional structure of the OSC is constitutionally permissible and valid, there is a “perception of bias” when one regulator is the “architect of the laws, the enforcer and the judge”.²³ The Osborne Report recommended that the OSC separate its adjudicative role from its policy making and regulatory functions. The Standing Committee on Finance and Economic Affairs of Ontario endorsed this recommendation.

We recommend that the *Canadian Securities Act* provide for the establishment of the Canadian Securities Tribunal as a separate agency from the CSC. The CST will be comprised of adjudicators that sit in panels of three. The CST will convene hearings to consider CSC staff allegations of violations of the Rules and the Act, although serious offences will be tried in provincial courts. Applications for exemptive relief from the requirements of the Rules will not be handled by the CST but instead will be dealt with by the CSC through the Chief Commissioner and vice commissioners.

Adjudicators will travel across the Participating Jurisdictions to conduct hearings in the location that is most appropriate in the circumstances based on a “significant connection” or similar test. We expect the CST to conduct telephonic and/or video hearings in cases where not all adjudicators sitting on a particular panel are able to attend at the hearing location. Adjudicators will work out of separate offices from the head, regional and local offices of the CSC and will have a separate administrative staff. The appropriate number of adjudicators and panels will depend on the identities of the initial Participating Jurisdictions and should be dealt with in the MOU discussed in Section 1, “The Model – Participants”.

Adjudicators, including a Chief Adjudicator, will be appointed by the Council of Ministers based on recommendations of the Nominating Committee. Adjudicators should be experienced adjudicators, such as retired judges, and should ideally have experience relating to the securities or financial services industry. The Council of Ministers will also appoint a CST Administrator recommended by the Nominating Committee. The CST Administrator, together with staff, will coordinate hearing schedules and provide other administrative and support services to the CST. We expect the CST Administrator to take instructions from and communicate regularly with the Chief Adjudicator. The Chief Adjudicator will report periodically to the Council of Ministers regarding budget and other matters.

Decisions of the CST may be appealed to the superior or divisional court in the province or territory where the hearing was conducted.

The Rules of Procedure of the CST will be approved by the Council of Ministers in the same way that Rules are approved. The fees of the CSC will cover the costs of the CST as well.

7. Fee structure

The CSC will be self-funding. Its fees will be set on a cost-recovery basis with an allowance for a reasonable reserve fund for unexpected expenses. Fees will not be set in excess of the cost of regulation, as that would tax market participants and undermine some of the economic efficiencies that the CSC is designed to achieve.

8. Transition Matters

We recommend that the structure of the CSC, the text of the Act and as many of the Rules as possible be finalized prior to commencing the transition period during which issuers and registrants will migrate from their existing provincial regulators to the CSC. One commentator notes that although “issuers and investors react poorly to uncertainty ... transitional uncertainty can only be minimized, not prevented.”²⁴ With this in mind, we echo his recommendations:

Thoroughly preparing the investment community is one way to minimize the destabilizing effects of this uncertainty. Therefore, the [governments of the Participating Jurisdictions] should set a realistic and achievable transition time frame, clearly disclose that time-frame, and ensure that it is met. All possible planning and preparation should be done before the transition period, to minimize its length and disruptiveness. Issuers and investors who know with certainty what to expect will be less likely to abandon Canada’s capital markets in the short term.²⁵

As discussed in Section 1, “The Model - Participants”, certain structural decisions relating to the CSC and the CST should be made by the Participating Jurisdictions and documented in an MOU. The MOU should also include a transition protocol.

Conclusion

In our view, implementing a common securities regime will benefit the Canadian capital markets and all those who invest in them. The transition to a common Canadian securities regulator should be assisted by recent regulatory initiatives. Through the forum of the Canadian Securities Administrators, the provinces and territories have harmonized a large amount of securities law and streamlined the prospectus filing, application and registration processes for issuers and registrants that seek to do business in multiple Canadian jurisdictions. The recently launched Principal Regulator System, or passport system, has gone a step further by permitting capital market participants to deal and comply exclusively with the securities legislation of their head office jurisdiction in certain matters.

The next step – a common national securities regulator – will further reduce the volume of securities regulation in Canada, encourage coherent and consistent policy development, speed up the time to market for issuers and lower the cost of capital. These and other expected efficiencies should improve Canada’s competitive position in the global capital markets, facilitating economic growth and increased prosperity. Under our proposed CSC framework, the Act and Rules will apply and be interpreted consistently across all Participating Jurisdictions, creating certainty for capital market participants.

Establishing the CSC will require give and take among the provincial, territorial and federal governments. We strongly urge all potential participants in the CSC to be sensitive to the concerns of their fellow governments. Tolerance, flexibility and the willingness to accommodate differing views will be necessary along the path toward the CSC. We believe that the CSC is achievable in the foreseeable future provided that all stakeholders evince the necessary will – and goodwill – to realize this mutually beneficial goal.

²⁴ David L. Johnston, *Canadian Securities Regulation*, 3rd ed. (Toronto: Butterworths, 2003), page 366.

²⁵ *Ibid.*

APPENDIX 1:
OUTLINE OF THE *CANADIAN SECURITIES ACT*

The following is a list of some of the matters we believe should be addressed in the *Canadian Securities Act*:

1. Council of Ministers

- Composition – the Minister responsible for securities regulation in each Participating Jurisdiction
- Role – oversight of the Canadian Securities Commission and the Canadian Securities Tribunal

2. Nominating Committee

- Composition – one member selected by each Participating Jurisdiction
- Role – recommending Board nominees, non-executive Chair, adjudicators (including the Chief Adjudicator) and CST Administrator

3. Canadian Securities Commission

- Mandate – investor protection and fair and efficient capital markets
- Board of Directors
 - (i) Composition – including that the Chief Commissioner will be a director but may not be the Chair
 - (ii) Role – supervising management, appointing the Chief Commissioner and vice commissioners, approving draft Rules, etc.
- Executive management – Chief Commissioner and vice commissioners
- By-laws – will govern the operations of the CSC and will be subject to the same approval procedure by the Council of Ministers as are Rules
- Financial reporting requirements – the annual report of the CSC, including audited financial statements, will be tabled in the legislature of each Participating Jurisdiction
- Funding – the CSC will be funded from fees collected pursuant to a Fee Schedule Rule – fees to be established on cost recovery basis

4. Rulemaking¹

- Delegation by each Participating Jurisdiction to the CSC of subordinate legislative authority to regulate capital markets activity under the Act; CSC to exercise this authority by making Rules

¹ Delegation of rulemaking authority of the CSC should be very broad so as to overcome the current challenges in Ontario and other jurisdictions where the enumerated list of heads of rulemaking authority continually needs to be amended and/or updated to respond to new market developments.

- Exemption orders – CSC is authorized to grant exemption orders to capital markets participants that have applied for relief from specific provisions of the Rules
- Rulemaking procedure – approval of draft rules by the Board, public comment process, review by Council of Ministers
- The following is a non-exhaustive list of subjects to be addressed in Rules:
 - (i) prospectus requirements and exemptions
 - (ii) registration requirements and exemptions for advisers and dealers, including proficiency requirements and categories of registration
 - (iii) continuous disclosure obligations of public issuers (i.e., obligations to file financial reports, insider reports, material change reports and other disclosure)
 - (iv) governance requirements for public issuers
 - (v) take-over bids, issuer bids, insider bids and other significant transactions
 - (vi) investment funds
 - (vii) stock exchanges, clearing agencies and self regulatory organizations
 - (viii) fees
- MOUs – CSC is authorized to enter into MOUs with securities regulators in other jurisdictions or other regulators

5. Offences and penalties

6. Canadian Securities Tribunal

- Composition – adjudicators (including the Chief Adjudicator) appointed by the Council of Ministers
- Jurisdiction – adjudicating alleged breaches of the Act and the Rules
- Authority to adopt Rules of Procedure to govern the conduct of hearings – Rules of Procedure to be reviewed by the Council of Ministers
- Chief Adjudicator – accountability to the Council of Ministers
- CST Administrator and staff
- Funding – approved by the Council of Ministers

7. Immunity provisions – from prosecution while carrying out their duties

- Immunity rights of the CSC and its Board of Directors, Chief Commissioner, vice commissioners, officers and employees
- Immunity rights of the CST and its adjudicators (including the Chief Adjudicator), and the CST Administrator and his or her staff

8. Voting formula for amending the Act

- Amendments must be approved by the legislatures of two thirds of Participating Jurisdictions
- Any Participating Jurisdiction that does not enact an approved amendment (directly or through incorporation by reference) within a specified time period will, with the approval of the Council of Ministers, cease to be a Participating Jurisdiction

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