

Ministerial Roundtable on Securities Regulation in Canada

Finance and Treasury Board, Boardroom 4A, 1723 Hollis Street, Halifax, NS

Summary of Consultation Input

Introduction

One of the issues that has been raised in recent months is the continuing federal interest in a national securities regulator. To assist government in considering this matter, the Minister Diana Whalen engaged stakeholders in a consultation on securities regulation in Canada.

The Minister invited a group of securities stakeholders representing reporting issuers, venture capital issuers, CEDIFs, lawyers, investment brokers, exempt market dealers and private capital raisers to a roundtable session held June 17, 2014 at the Department of Finance and Treasury Board. Seventeen (17) people joined her and staff of the Department. A broader invitation was also issued requesting input via electronic mail from 75 other stakeholders. This is to provide a summary of proceedings and advice provided to the Minister.

Minister's Roundtable Session

The Minister outlined the history of securities regulation in Canada to the present day. The "Passport System", established in 2004, brought together 12 of 13 jurisdictions in Canada to cooperate in an updated securities regime. Ontario operates with similar rules on a cooperative basis.

The last attempt by the federal government to establish a national securities regulator in 2010 through proposed federal legislation resulted in a Supreme Court of Canada ("SCC") decision framing the authority for securities regulation as provincial with some opportunity for the federal government to address matters of national importance (e.g. systemic risk). The SCC noted that Canada and provinces could develop a "cooperative approach" to securities regulation. Accordingly, on Sept. 19, 2013, an Agreement in Principle was signed by the federal government, Ontario and British Columbia to form a Cooperative Capital Markets Regulator ("CCMR"). They have invited other provinces to join.

Minister noted **Key Features** of the CCMR:

- Uniform provincial legislation
- Federal legislation to address national matters
- Single market regulator
- Single set of regulations
- Independent adjudicative tribunal
- Self-funded
- Compensation to provinces [noting Nova Scotia's current net revenue from the Nova Scotia Securities Commission (NSSC) is \$13 million]
- Governance – through a Council of Ministers
- Regulatory office in each Province which joins

- Policy Forum for consulting
- Council of Ministers decisions weighted in favor of the major capital markets jurisdiction (10% of GDP for financial services – ON, BC, AB and QC)

Initial Considerations for Nova Scotia include:

- Relinquishing provincial authority for securities regulation in future
- The future of CEDIF programs which require approval by securities regulators
- A voting structure for decisions weighted to larger jurisdictions
- Loss of government revenue
- The extent to which benefits of a single regulator will be realized if not all provinces join
- The long term role and authority of the regulatory office in Halifax
- Future viability of the passport system for jurisdictions that choose not to participate
- Impact of the CCMR on the local business development including the local financial services sector

Roundtable Discussion – What We Heard

Several themes emerged in discussions held. Some supported a national securities regulator believing it would result in enhanced consistency of securities laws, efficiencies and the sharing of expertise and resources. Others feared loss of local control, indicating that the current Passport system works well, allows for local responsiveness and supports local initiatives such as the CEDIF program.

Specific comments voiced are as follows:

- From a broad point of view a national regulator makes sense with opportunities for greater efficiency and cost savings.
- Most are skeptical that greater “efficiency and cost savings” will actually result in better turn-around, service and stakeholder costs\fees.
- A national regulator should be more capable of directing resource and expertise at the appropriate level. There is a view that current regulator is under-resourced in several areas.
- Many predicted little impact in their day-to-day business if a national regulator was adopted.
- It is critical that a high degree of harmonization exist in securities regulation regardless of the creation of a cooperative regulator.
- Encouraged to see that the national model does call for a Halifax office. A national model should ensure that a Deputy Chief Regulator would reside in the region.
- The existing Passport system is efficient and a National Regulator would only provide marginal improvements. Don’t see a great deal of upside in abandoning the passport system. The perception that Ontario is not in the passport system is smoke and mirrors. By and large it works well and is easy to access.

- This decision needs to be made in the context of a larger economic development strategy, equity capital-raising – especially the impact on the private equity strategy for the financial sector.
- Concern was expressed that a national securities regulator could result in a shift of demand for legal services to firms in Ontario and away from regional law firms.
- There is a belief that Nova Scotia and regional concerns and priorities are different from that of large centers. Some fear central decision making will result in unintended consequences at the regional level and unresponsiveness to regional concerns.
- Fear that NSSC will simply become a branch office of the Ontario Securities Commission. There are concerns about receiving the same responsiveness, advice and turnaround under a national model.
- Canada’s ability to withstand the financial strains of 2008 had little to do with the regulation of securities and more to do with the strength of banking regulation.
- Support for the CEDIF program in Nova Scotia and its ability to offer local business growth in particular when combined with tax incentives; some acknowledgement that while important the overall scope of impact of the CEDIF program remains relatively small in the province. Significant investment money goes out of Nova Scotia and we need mechanisms to retain that money. The CEDIF program is one example that has worked.
- There is concern about the loss of local control of securities regulation.
- Primary capital-raising in Nova Scotia is through private markets. However, private companies often aspire to become a public company. There is a need to discuss the transition from private to public within the context of economic and business development.
- Concern that Ontario rules are not favorable to private capital and that moving to a national securities regulatory regime based in Ontario would not create a favorable position.
- Traditionally revenue sharing has been an impediment to formation of a national securities regulator. Revenue of NSSC might be better seen as a tax rather than revenue.
- We were encouraged to also speak with the banking system for input.

In closing, the Minister noted that we would be discussing the matter with Economic and Rural Development and Tourism. She extended thanks and appreciation for the advice provided, and indicated that we would be looking at all the pros and cons.

Written Submissions - What We Heard:

In response to the electronic invitation seeking input we had six replies which are summarized as follows:

- Support a national securities regulator on the basis that it will bring greater harmonization and coordination, with anticipated reduced costs. A national securities regulator, if managed correctly, would have the potential to simplify and streamline regulation in Canada.
- Rare opportunity for Nova Scotia to join as an early participant in the CCMR, and help to steer the direction of such an organization.
- A single securities regulator would enable a more efficient process for small business to raise growth capital, provide investors from across the country more opportunities to invest in Nova Scotia companies and increase the investment of capital in our Province.
- Do not feel that the distinction of being independent from other provincial regulators, and the differences which accompany such independence, outweigh the potential benefits of a single set of regulations, voice and protective programs. It would not require closure of the local office and elimination of a team of professionals in Nova Scotia.
- Being part of a single body, with consistent regulations, and requirements would have a positive effect on our business.
- Participation in a national securities regulator would make it more straight-forward, cost less in listing and associated professional service fees for corporate issuers and therefore make it simpler and more efficient for companies based in our province to tap the capital markets for equity and debt.
- A single set of standards, regulation, enforcement programs would make it more effective for individual investors, protecting their interests, as well as for those looking to raise capital anywhere in the country.
- A single combined effort to improve education, leverage successful programs from across the country and roll out literacy programs would be of greater benefit than running such programs in each province.
- Early support and participation in the creation of a single Cooperative Capital Markets Regulator offers far more to both individual investors and how their interests are served as well as to Nova Scotia businesses looking to access capital.
- Ensure that a regional deputy chief regulator is positioned in the region.
- Support for the CEDIF program and equity tax credits which continue to allow for \$200,000 to \$1.2 million to be raised annually in Cape Breton; the full potential of this program to transform struggling rural economies has yet to be realized.
- Concern that government not make this decision too quickly.

- General sense that a local office and program will benefit Nova Scotia more than a national regulatory office.
- The role of the NSSC is less important where strong self-regulatory bodies also work to protect the investing public.
- Imperative to have both a local office and a seat on the CCMR board.

Summary:

Several themes emerged from the consultations held.

There are some who feel government should move quickly to take advantage of an opportunity to influence considerations at a formative stage. They noted that a cooperative regulator has the potential for several benefits:

- A national securities regulator should enable more efficient regulation through a single set of standards, rules, regulations and coordinated enforcement and compliance mechanisms.
- It should allow for resources to be put to regions and service areas currently under-resourced. There is potential for increased resources given that the Government of Canada is a party to the cooperative system.
- It should result in lower costs and more steam-lining which supports capital-raising and business opportunities.
- It affords an early opportunity to Nova Scotia to participate and influence the structure and organization of operation.
- We also heard that regardless of the structure of securities regulation in Canada, securities laws must be highly harmonized.

Alternatively, there are some who feel government should take a cautious, more defensive stand to ensure that benefits in fact materialize, and services and responsiveness are maintained or improved. We heard support for the current Passport regime:

- The current Passport system is working well and has implemented a number of efficiencies.
- Many are concerned that Nova Scotia not be forced to jump too quickly into a national securities regime where effectiveness is not certain.
- Purported efficiencies may not result in cost reductions and may result in a lack of local responsiveness.

- Loss of local control over securities law may result in a shift in demand for legal and other related advisory services away from this region.
- We heard, rather strongly, that Nova Scotia needs to maintain and protect its independence to respond to local concerns and develop provincial tools such as the CEDIF program, which, while remaining relatively small, is an effective tool for rural investment.
- Many noted that the current discourse should be happening within a broader discussion of an economic development strategy for Nova Scotia.

Next Steps:

The Minister will take the advice provided to her under advisement. Government expects to also obtain advice from other Departments, and to continue discussions with other jurisdictions, including the federal government. All this will be considered and a decision made that reflects what is in the best interests of Nova Scotians.

2014 07 17