

Agreement in Principle to Move Towards a Cooperative Capital Markets Regulatory System

The Government of British Columbia, represented by its Minister of Finance, the Government of Ontario, represented by its Minister of Finance, and the Government of Canada, represented by the Minister of Finance of Canada and all other provincial and territorial governments that may choose to participate, agree in principle to move towards a cooperative capital markets regulatory system (the Cooperative System) on the basis set out below.

1. Purpose of the Cooperative System

1.1 The purpose of the Cooperative System would be to regulate capital markets in a manner that would:

- foster more efficient and globally competitive capital markets in Canada and facilitate the raising of capital from investors across Canada and internationally through more integrated markets governed by innovative, responsive and flexible regulation on the basis of national standards reflected in cooperatively-developed regulations consistently applied;
- provide increased protection for investors through a combination of more nationally consistent and active compliance activities, more effective enforcement against misconduct and improved coordination with police and prosecution authorities both within and outside Canada;
- strengthen Canada's capacity to identify and manage systemic risk on a national basis; and
- enable Canada, through the single voice of a new cooperative capital markets regulator, to play a more empowered and influential role in international capital market regulatory initiatives.

1.2 In entering into this Agreement and participating in the Cooperative System, each of the Participating Jurisdictions is addressing matters within its constitutional jurisdiction and is neither surrendering nor impairing any of its jurisdiction, with respect to which it remains sovereign.

1.3 The Cooperative System would preserve the elements of the current system that work well, including the capacity to weigh and consider local perspectives, and would achieve needed reforms.

2. Principal Components of the Cooperative System

The principal components of the Cooperative System would be:

Uniform provincial and territorial legislation: a uniform act of each provincial or territorial Participating Jurisdiction (referred to as a provincial Participating Jurisdiction) addressing all

matters of provincial or territorial jurisdiction in the regulation of capital markets (referred to as provincial legislation);

Complementary federal legislation: complementary federal legislation applying throughout Canada that addresses criminal matters and matters relating to systemic risk in national capital markets and national data collection;

Regulator: a single operationally independent cooperative capital markets regulator (the CMR), with an expert board of directors, a regulatory division and an adjudicative tribunal, that administers the provincial and federal legislation and a single set of regulations under authority delegated by the Participating Jurisdictions, that has responsibility for regulatory, enforcement and adjudicative functions, that has the authority to identify and manage systemic risk and that will represent Canada internationally in matters of capital markets regulation;

Council of Ministers: a council comprising the Ministers responsible for capital markets regulation in each provincial Participating Jurisdiction and the Minister of Finance of Canada (the Council of Ministers) that oversees the CMR, that is accountable to the Participating Jurisdictions for the exercise of the CMR's regulatory powers and to which the board of directors of the CMR is accountable for the exercise of its regulatory powers;

Offices: regulatory offices in every province that is a Participating Jurisdiction providing the same range of services that are currently provided in those offices.

Fees: a single, simplified fee structure designed to allow the self-funding of the CMR that does not impose unnecessary or disproportionate costs on market participants.

Outreach

The Governments of British Columbia and Ontario will initially broach this Agreement with other provinces and territories and then, together with Canada, will use their best efforts and work together to secure the agreement of the government of each remaining province or territory of Canada to participate in the Cooperative System on the basis of the terms of this Agreement in Principle.

3. Council of Ministers

3.1 Responsibilities of Council of Ministers

The Council of Ministers would be responsible for:

- appointing the members of the board of directors and the adjudicative tribunal;
- providing oversight on policy for capital markets regulation and receiving and considering required reports from the board of directors;
- proposing amendments to provincial legislation and the complementary federal legislation;
- approving regulations made by the board of directors; and

- requesting the board to consider making a regulation on a specific matter, subject to the consultation and approval processes that apply to the making of regulations.

3.2 Voting on the Appointments of Board and Tribunal Members and an Interface with Non-participating Jurisdictions

The appointment of the members of the board of directors of the CMR; the appointment of the members of the adjudicative tribunal of the CMR; and the approval of an interface mechanism with non-Participating Jurisdictions would require the approval of:

- at least 50% of all members of the Council of Ministers,
- the Minister from each provincial Participating Jurisdiction that represents at least 10 percent of the national gross domestic product derived from financial services (i.e., British Columbia and Ontario initially, and referred to as a major capital markets jurisdiction), and
- the Minister of Finance of Canada.

3.3 Voting on a Regulation made by the Board of the CMR

As a condition to this Agreement in Principle, each Participating Jurisdiction would have to approve the initial legislation and regulations governing the CMR. In developing the initial regulations, Participating Jurisdictions agree to the following:

- the regulations would be drafted taking into consideration the economic and regional interests of each Participating Jurisdiction;
- the regulations would need to reflect the needs of the various participants in those capital markets within a national securities framework; and
- the initial regulations of the CMR would be published in each Participating Jurisdiction for comment.

A regulation made by the board of the CMR subsequent to the initial regulations would be put before the Council of Ministers before it came into force. Unless the Council of Ministers asked the board of the CMR to reconsider the regulation or the Council of Ministers decided to reject the regulation within a specified time period, the regulation would be considered to be approved by the Council of Ministers.

The Council of Ministers must request the board of the CMR to reconsider a regulation before the Council makes a decision to reject the regulation. A request to the board of the CMR to reconsider a regulation would require the approval of:

- at least 50% of all members of the Council of Ministers, and
- any one of the Ministers from the major capital markets jurisdictions and from Canada taken together.

A decision to reject a regulation that has been reconsidered by the board of directors of the CMR at the request of the Council of Ministers and once again put before the Council of Ministers before it comes into force would require the approval of:

- at least 50% of all members of the Council of Ministers, and
- a majority of the Ministers from the major capital markets jurisdictions and from Canada taken together.

3.4 Voting on a Request to CMR to consult on, develop and consider making a Regulation

A request from the Council of Ministers to the board of the CMR to consult on, develop and consider making a regulation on a specific matter, subject to the consultation and approval processes that apply to the making of regulations, would require the approval of:

- at least 50% of all members of the Council of Ministers, and
- any one of the Ministers from the major capital markets jurisdictions and from Canada taken together.

3.5 Voting on a Proposal to amend Provincial Legislation

The provincial legislation would be agreed to before the CMR is launched. A subsequent proposal to amend the provincial legislation would require the approval of:

- at least 50% of all members of the Council of Ministers, and
- the Ministers from each major capital markets jurisdiction.

3.6 Consultation on Proposal to amend Federal Legislation

The complementary federal legislation would be agreed to before the CMR is launched. The Minister of Finance of Canada would consult with the other members of the Council of Ministers prior to any subsequent federal proposal to amend the complementary federal legislation.

3.7 Fundamental Changes

The following matters would require the approval of (i) the Minister from each major capital markets jurisdiction and (ii) the Minister of Finance of Canada:

- an amendment to this Agreement and any subsequent agreements relating hereto;
- the accession by any provincial or territorial jurisdiction to this Agreement in Principle or the Cooperative System and any amendments to this Agreement in Principle related to the accession ;
- a fundamental change to the governance or operational structure of the CMR;
- any relocation of geographic-specific elements and functions addressed in this Agreement; and

- any proposal to merge the provincial legislation and the complementary federal legislation.

3.8 Chairmanship of Council of Ministers

The Council of Ministers would have two co-chairs responsible for the administration of the Council of Ministers: (i) the Minister of Finance of Canada and (ii) on a two-year rotational basis, the responsible Minister from each major capital markets jurisdiction.

4. Non-Criminal Provisions of Federal Legislation

The provisions of the federal legislation forming part of the Cooperative System that address systemic risk in national capital markets would be “platform” in nature. Rather than containing detailed provisions, the federal legislation would provide for the delegation by the Government of Canada to the CMR of federal authority to:

- make regulations of national application (including in non-Participating Jurisdictions) related to systemic risk in national capital markets and national data collection,
- make orders regarding practices determined by the CMR to give rise to systemic risk in national capital markets, and
- exercise national emergency powers related to systemic risk in national capital markets and national data collection

The CMR’s regulation-making authority regarding systemic risk would for example include the authority to gather information to identify and monitor warning signs of emerging systemic risks to the financial system originating in the national capital markets.

The federal legislation would delegate to the CMR national emergency powers in the event of a financial crisis to address an imminent threat to the stability of the national capital markets. The Minister of Finance of Canada would be authorised in such extraordinary circumstances to direct the CMR to exercise its national emergency powers (for limited duration) following consultation with the responsible Minister from each major capital markets jurisdiction.

5. Principal Components of CMR

5.1 Overview

The CMR would have:

- a regulatory division encompassing the policy, regulatory operations, advisory services and enforcement functions of the CMR and led by the chief regulator administering national standards;
- an adjudicative division consisting of an independent adjudicative tribunal led by the chief adjudicator; and

- a regulatory policy forum for consultation on policy issues, which would include all members of the executive committee of the regulatory division, all members of the adjudicative tribunal and such other participants as may be appropriate. The forum would serve to facilitate discussion among the regulators and adjudicators of the CMR on significant policy issues.

5.2 Board of Directors of CMR

Nominating Committee - The Council of Ministers would appoint a nominating committee, which, in turn, would recommend to the Council candidates for appointment to the regulator's board of directors and adjudicative tribunal. The nominating committee would be composed of one member selected by each of the Ministers from a major capital markets jurisdiction and the Minister of Finance of Canada and (after appointment of the initial board and tribunal) either: an equal number of members selected by the Board from among its members in the case of the Board nominee process; or an equal number of members selected by the adjudicative tribunal in the case of the adjudicative tribunal nominee process. The members must be independent of the governments represented by the Council of Ministers and possess appropriate qualifications and capital markets-related experience.

Responsibilities of Board of Directors – The board of directors of the CMR would be responsible for:

- supervising the management of the business and affairs of the CMR (other than the adjudicative function);
- overseeing organization design decisions for the CMR consistent with the principles set out in this agreement;
- appointing the chief regulator and approving the deputy chief regulators proposed by the chief regulator based on a merit-based search by the chief regulator;
- exercising the CMR's power to make regulations under the relevant provisions of the provincial legislation and complementary federal legislation;
- setting the policy priorities and strategy of the CMR; and
- overseeing the chief regulator as Canada's lead regulatory voice on domestic and international capital market issues and affairs.

Composition and meetings of the Board of Directors – The board of directors of the CMR would have at least nine (or five during the transition period) and not more than 12 members, all of whom would be independent. As a group, the board of directors would possess the requisite capital markets expertise, including international capital and venture market expertise, and would be broadly representative of the regions of Canada. The board of directors of the CMR would meet at the executive head office of the CMR and other larger offices of the CMR on a regular basis.

Appointment of Directors – All appointments to the board of directors by the Council of Ministers will be on the recommendation of a Nominating Committee. The nominees will be selected by the Nominating Committee pursuant to a merit-based search and evaluation process

in accordance with the highest standards of corporate governance. The board of directors would recommend a chair from among its members for confirmation by the Council of Ministers.

5.3 Office Structure

The CMR would have an effective executive head office located in Toronto and a nationally integrated executive management team. The executive head office would house the Chief Regulator and a sufficient number of the executive management team and executive corporate staff of the regulatory division to permit the executive head office, as part of the integrated executive management team with the Deputy Chief Regulators and executive management and executive corporate staff based in Vancouver and the regulatory offices in other major capital markets jurisdictions, to provide the necessary leadership, direction and coordination for the regulatory division of the CMR to deliver effective and responsive securities regulation and to position the CMR as a global regulatory leader exerting commensurate international influence.

The CMR would have a regulatory office located in each province that is a Participating Jurisdiction. If every province joined the Cooperative System, the CMR would have a regulatory office in each of:

- Vancouver;
- Calgary;
- Regina;
- Winnipeg;
- Toronto;
- Montreal;
- Saint John;
- Halifax;
- Charlottetown; and
- St. John's.

Organization design and culture of the CMR would be guided by the following principles, which would be applied by the board of directors:

- Every regulatory office should have staff, expertise and resources that are commensurate with the capital markets activity, and regulatory and enforcement demands of the Participating Jurisdiction.
- Each regulatory office should continue to provide the range of services that it does today with local decision making authority within national standards and the employment of current staff in that office would continue.
- Management and staff in each regulatory office should be empowered to make day-to-day decisions on regulatory matters, guided by common interpretations and national standards.
- Management and staff from all offices should communicate actively to exchange information about best practices and to consult, and bring specialized skills and knowledge to bear, on novel issues.

- Regional and market sector perspectives should be weighed and considered in major policy and operational decisions by including regionally-based staff in developing policy approaches and operating priorities and processes.
- The CMR should foster an environment that helps recruit and retain in all offices talented and qualified staff who will embrace the vision for the organization and work to fulfil its mandate.
- The CMR should promote a culture of innovation that values ideas and perspectives from all offices and from other sources (including investors, market participants and other stakeholders) that contribute to delivering better and more cost- effective regulation.

This office structure is intended to leverage the expertise in capital markets regulation available across Canada to enhance efficiencies and reduce costs, while remaining responsive to local needs. The provincial regulatory offices would deliver consistent regulation in accordance with national standards in a way that is responsive to the interests of Canada’s investors, regions and market sectors.

5.4 Regulatory Division of CMR

Chief Regulator –The chief regulator of the CMR would serve as the chief executive officer of the regulatory division of the CMR responsible for the management of its business and operations, would be accountable to the board of directors of the CMR and would be based in the executive head office of the CMR. The responsibilities of the chief regulator would include recommending the deputy chief regulators to the Board for approval.

Deputy Chief Regulators (Vancouver, Toronto) – The regulatory division of the CMR would have a deputy chief regulator based in each of the Vancouver and Toronto regulatory offices (and in the regulatory office of any other major capital markets jurisdiction participating in the Cooperative System) who would be accountable to the chief regulator, would be invited to attend board meetings when appropriate and would be responsible for:

- overseeing the operations and staff of their office and exercising delegated statutory authority within national standards;
- participating in the Executive Committee and Regulatory Policy Forum of the CMR, contributing to policy development and providing insights into the needs, interests and perspectives of the local regulatory offices, investors, market participants and other stakeholders in their region; and
- representing the regulatory division of the CMR in their region.

Executive Committee – The CMR would have an executive committee that would include the chief regulator and the deputy chief regulators. The Executive Committee would be expected to meet regularly and serve as the primary executive decision-making body for the CMR. Its responsibilities would include:

- providing input to the chief regulator in the discharge of his or her responsibilities; and
- providing a forum for the integration of regional and functional perspectives.

5.5 Adjudicative Tribunal

Composition of the Adjudicative Tribunal – The adjudicative tribunal of the CMR would have sufficient members to conduct hearings (both in the English and French languages) across Canada, all of whom would be independent. As a whole, the adjudicative tribunal would possess the requisite capital markets and adjudicative expertise.

Appointment of Adjudicators – All appointments to the adjudicative tribunal by the Council of Ministers will be on the recommendation of the Nominating Committee. The nominees will be selected by the Nominating Committee pursuant to a merit-based search and evaluation process in accordance with the highest standards of corporate governance. The Council of Ministers would select the chief adjudicator.

Chief Adjudicator – The chief adjudicator would be responsible for supervising and directing matters related to the performance by the adjudicative tribunal of its functions, including the allocation of work among members and the assignment of members to sit and to preside at the tribunal's hearings.

Staff of the Adjudicative Tribunal – In the exercise of its responsibilities, the adjudicative tribunal of the CMR would be supported by a secretary, counsel and other staff dedicated to the tribunal and its functions.

6. Transition and Implementation

6.1 Moving Forward

The Parties agree in principle to move forward to:

- establish a Cooperative System reflecting the principles set out in this Agreement;
- use their best efforts to cause their respective legislatures to enact or approve the legislation, legislative amendments or regulations necessary to implement the Cooperative System; and
- enter into all agreements and take all actions necessary to give effect to this Agreement.

6.2 Oversight of Implementation

The Ministers representing each Participating Jurisdiction (or their designees) would form a committee to oversee the transition and implementation of the Cooperative System. The committee would establish and supervise an implementation team which would deal with the day-to-day transition and implementation of the Cooperative System including the planning, execution and completion on a timely basis of all the Implementation Milestones set forth in section 6.3. Each major capital markets jurisdiction and Canada would select one member for the implementation team. The implementation team would report at least monthly to the Ministers' oversight committee on the status of its efforts to satisfy the Implementation Milestones. The implementation team would work collaboratively with all Participating Jurisdictions.

6.3 Implementation Milestones

The Parties expect the implementation of the Cooperative System to occur in several phases and agree to use their best efforts to achieve implementation milestones on the following timeline:

- on or before January 31, 2014, the execution of a Memorandum of Agreement by each of the Participating Jurisdictions setting out the terms and conditions of the Cooperative System (to which the draft Cooperative Legislation (subject to legislative approval), as approved by the Participating Jurisdictions, will be attached);
- on or before March 31, 2014, the publication of the initial draft regulations of the Cooperative Legislation for public comment;
- on or before May 30, 2014, the execution of an agreement by each of the Participating Jurisdictions setting out the terms and conditions for the integration of their securities regulatory body into the CMR (which may differ as between Participating Jurisdictions to accommodate their distinctive circumstances); and
- on or before December 31, 2014, the enactment of provincial legislation by each provincial Participating Jurisdiction and the enactment of the complementary federal legislation by Parliament.

Based on this timeline, the Parties expect the CMR to be operational by July 1, 2015.

6.4 Funding of Transition

The Government of Canada will:

- lend funds to the CMR to cover its deficiency in funding during the transition period up to the date that the Cooperative System is in operation;
- reimburse, upon written request, each provincial Participating Jurisdiction for the services of its employees who are seconded by mutual agreement to the new implementation organization to assist the implementation team, over the 24 months following signing of this Agreement in Principle, for purposes of the implementation of the Cooperative System up to a certain limit to be established by the Government of Canada; and
- make payments to Participating Jurisdictions that will lose net revenue as a result of the transition to the Cooperative System on a transparent basis.

6.5 Interface with Non-Participating Jurisdiction

The CMR will use its best efforts to negotiate and implement an interface mechanism with each jurisdiction that is not a Participating Jurisdiction such that the cooperative capital markets regulatory system contemplated by this Agreement is, effectively, of national application.

By signing this Agreement in Principle, in counterparts, the Ministers representing the Parties indicate their agreement to it and their acknowledgment that this Agreement in Principle constitutes the entire agreement between them with respect to its subject matter (superseding all prior and current agreements and understandings) and is the only agreement or understanding entered into by each of the Parties with respect to the subject matter of this Agreement in

Principle. Each counterpart shall be deemed to be an original and such counterparts together shall constitute one and the same instrument deemed to be dated as of the latest date on which a counterpart is signed (notwithstanding the earlier execution of the remaining counterparts).

Without prejudice to future negotiations among any of the Parties, if this Agreement in Principle has not been signed by all Parties on or before September 30, 2013, then it shall be of no further effect (unless two Parties who have signed it on or before such date earlier waive this provision in writing whereupon this Agreement in Principle shall remain in effect only in relation to such signatories).

Her Majesty the Queen in right of British Columbia as represented
by the Minister of Finance for the Province of British Columbia, Michael de Jong

Date

Her Majesty the Queen in right of Ontario as represented
by the Minister of Finance for the Province of Ontario, Charles Sousa

Date

Her Majesty the Queen in right of Canada as represented
by the Minister of Finance for Canada, James Flaherty