

**Backgrounder:**  
***Capital Markets Stability Act – Draft for Consultation***

**Overview**

The Governments of British Columbia, Ontario, Saskatchewan, New Brunswick, Prince Edward Island, Yukon and Canada are working together to establish the Cooperative Capital Markets Regulatory System. The Cooperative System reflects the Supreme Court of Canada’s guidance that the provinces and the federal government share responsibility for the regulation of capital markets.

Participating provinces/territories and the federal government have agreed to delegate the administration of the *Capital Markets Act* and the *Capital Markets Stability Act* (CMSA), respectively, to the Capital Markets Regulatory Authority as part of moving to the Cooperative System.

The consultation draft CMSA has been revised to respond to stakeholder comments received on the August 2014 version of the draft federal legislation. The proposed CMSA will empower the Capital Markets Regulatory Authority (the Authority) to monitor national capital markets to identify emerging systemic risks and address them as necessary through regulatory measures focused on products, practices, and benchmarks. The legislative proposal also includes new investigative tools and updated capital markets-related criminal offences to strengthen criminal enforcement.

**Responding to stakeholders**

The revised consultation draft CMSA responds constructively to public comments received during the initial consultation in 2014.

Many stakeholders who made submissions on the August 2014 consultation draft of the CMSA advised that the new systemic risk powers should be used only if necessary and in coordination with other regulators. Subsection 6(2) of the proposed legislation specifies that in fulfilling its mandate, “the Authority must coordinate, to the extent practicable, its regulatory activities with those of other federal, provincial and foreign financial authorities so as to promote efficient capital markets, to achieve effective regulation and to avoid imposing an undue regulatory burden.” Revisions to other sections of the proposed legislation, as outlined below, serve to strengthen this obligation.

*What is systemic risk related to capital markets?*

The revised consultation draft CMSA adds a materiality threshold to the definition as follows:

- 1) A threat to the stability of Canada’s financial system that originates in, is transmitted through, or impairs capital markets; and
- 2) Has the potential to have a material adverse effect on the Canadian economy.

This definition establishes a threshold for the exercise of the Authority's regulatory powers, along with specific factors included in the proposed legislation. The definition accords with those espoused by international regulatory organizations, such as the Financial Stability Board and the International Organization of Securities Commissions.

#### *Information collection and disclosure*

The revised consultation draft CMSA requires that the Authority, if practicable, first seek information from existing sources, including other regulators, before making a regulation or requesting the information directly from a market participant. The revised draft also better protects confidential information by tightening the restrictions on the circumstances under which information may be disclosed by the Authority.

#### *Addressing capital markets-related systemic risk*

Part 2 of the proposed federal legislation sets out the framework for the Authority to address systemic risk related to capital markets. All entity-level designation powers, except for trade repositories, have been removed from the revised consultation draft. The updated draft of the CMSA narrows the range of regulation-making powers to focus on systemically important products and benchmarks, and systemically risky practices, which would apply to anyone who deals in those products or engages in such practices.

#### *Enhanced regulatory coordination*

The revised consultation draft CMSA strengthens the obligation of the Authority to coordinate its regulatory activities with other regulators by:

- Requiring the Authority to consider whether requirements already exist in respect of information retention and collection and whether it can be obtained through existing sources before making new regulations or requesting information directly from a market participant;
- Considering whether and how a benchmark is already regulated before imposing new requirements respecting systemically important benchmarks;
- Considering whether and how systemically important securities and derivatives and systemically risky practices are already regulated before making new regulations; and
- Notifying capital markets regulators in non-participating provinces and territories of key steps in the urgent order-making process.

#### *Procedural fairness*

The revised consultation draft CMSA includes the following changes to address stakeholder comments:

- “Opportunity to be heard” replaces “opportunity to make representations”;

- Any person directly affected by an urgent order will have an opportunity to be heard as soon as feasible after the order is made if no such opportunity was afforded before making the order; and
- Notices of violation for administrative monetary penalties can now be contested directly before the Tribunal.

It should also be noted that common law rules of procedural fairness generally entitle persons to participate, in a manner appropriate to the circumstances, in the making of administrative decisions that impact them.