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Terms of Reference of Third-Party Expert Panel on Securities Regulation

With Budget 2007, the Government of Canada set out a plan for Canada's capital markets entitled *Creating a Canadian Advantage in Global Capital Markets*. This advantage requires a shared commitment to enhance the content, structure and enforcement of capital markets regulation.

At their meeting on June 19, the Minister of Finance of Canada and the provincial and territorial ministers responsible for securities regulation discussed various approaches to improve securities regulation. At the conclusion of the meeting, the Minister of Finance of Canada announced that, in parallel to existing efforts of provinces and territories to streamline and harmonize securities regulation, the Government of Canada would form a third-party expert panel to advise ministers on the best way forward.

The expert panel will draw on global best practices and build on the strengths of Canada's capital markets. It will also review efforts to date to harmonize and simplify Canada's regulatory system.

The panel's proposals will be respectful of the jurisdictional framework for securities regulation in Canada and will allow willing participation of provinces and territories.

The expert panel will review and advise on the following:

1. The objectives, outcomes and performance measures that will best anchor securities regulation and the pursuit of a Canadian advantage in global capital markets. For example,
 - Efficient and [competitive](#) capital markets that contribute to [economic growth](#) and prosperity.
 - Market integrity and the protection of investors.
 - The reduction of systemic risk.

2. How Canada could best promote and advance proportionate, more principles-based regulation, starting from existing harmonized legislation and national and multilateral regulatory [instruments](#), with a view to creating a Canadian advantage in global capital markets.

The regulatory framework will set out principles for regulation. For example, regulation will:

- be based on clear and sound principles;
 - be applied only where there is a clear net benefit;
 - be proportionate to reflect the unique make-up of Canadian capital markets and the needs and capacities of small and mid-sized businesses;
 - foster integrity and investor confidence through markets that are fair and transparent;
 - be supported by enforcement that is timely, proportionate, effective and consistent;
 - foster open markets and competition that will drive innovation and choice for issuers and investors;
 - meet or exceed global best practices and standards and minimize impediments to cross-border capital flows;
 - draw on international regulatory cooperation; and
 - be complemented by efforts to enhance the financial literacy of Canadians so that they may exercise choice and seek advice in an informed manner.
- The regulatory framework may also set out principles for business, such as those established by the U.K. Financial Services Authority, e.g.:
- integrity – a firm must conduct its business with integrity;
 - skill, care and diligence – a firm must conduct its business with due skill, care and diligence;
 - management and control – a firm must take reasonable care to organize and control its affairs responsibly and effectively, with adequate risk management systems;

- financial prudence – a firm must maintain adequate financial resources;
- market conduct – a firm must observe proper standards of market conduct;
- customers' interests – a firm must pay due regard to the interests of its customers and treat them fairly;
- communications with clients – a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading;
- conflicts of interest – a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client;
- customers: relationships of trust – a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment;
- clients' assets – a firm must arrange adequate protection for clients' assets when it is responsible for them; and
- relations with regulators – a firm must deal with its regulators in an open and co-operative way and must disclose anything relating to the firm of which the regulator would reasonably expect notice.

3. How proportionate, more principles-based regulation could facilitate and be reinforced by better, more coordinated enforcement that could include a separate securities tribunal.

4. How this approach to regulation could be implemented under a passport or under a common securities regulator; and,

5. A model common securities act and a transition path, including key steps and timelines, that participating provinces and territories could adopt to effect proposed changes to the content, structure and enforcement of regulation, including:

- Implementation of legislation.
- Implementation of changes to the structure of the

regulatory system, as required.

- Interaction with non-participating jurisdictions, and enabling non-participating jurisdictions to opt-in at a later date.

Process

The third-party expert panel will be supported by a small secretariat and will draw as required on researchers and advisors.


The group will consult with governments and regulators. It will also engage self-regulatory organizations and market participants and encourage input through a web site and written submissions.

It will deliver to the Minister of Finance of Canada and provincial and territorial ministers responsible for securities regulation a final report by the end of 2008.

Funding

The federal government will fund the third-party expert panel.

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