

December 18, 2009

Alberta to launch court challenge over federal move to create a national securities regulator

Challenge made to protect provincial jurisdiction from federal intrusion

Edmonton... The Alberta government will be going to the Alberta Court of Appeal to test the constitutional soundness of the federal government's move to create a single Canadian securities regulator.

"Securities regulation is a matter of provincial jurisdiction, and acknowledging federal authority in this area would have implications in other areas of financial regulation that have historically been provincial responsibility," said Iris Evans, Minister of Finance and Enterprise. "The interests of Albertans and the Alberta capital market are best served by the existing regulatory structure. There is no need for this intrusion into provincial jurisdiction."

Alberta will also intervene in support of a similar challenge by the Québec government to the Québec Court of Appeal. Joining with Québec will allow the two provinces to share resources and co-operate in other aspects of the two cases. It also sends a stronger message of opposition to the federal plans.

Alberta will argue the federal move to enact federal securities legislation and establish a single national securities regulator represents an unwarranted expansion of the federal trade and commerce constitutional power, opening the door to the federal regulation of other areas that have historically been regulated by the provinces. This could impact many areas that are currently considered to be matters of provincial responsibility. It could also hinder investment opportunities for small Alberta businesses.

The federal government has announced its intention to ask the Supreme Court of Canada to confirm that it has the power to enact comprehensive legislation regulating securities. However, as it may be many months before a federal reference is initiated, Alberta is moving forward now with both its own reference and its intervention in Québec's reference.

"We believe this intrusion into this important area of provincial jurisdiction will set a precedent for the federal government to intrude in other critical areas of provincial jurisdiction, and we must take bold action now to defend against that," said Evans.

Alberta has been a leader in the development of harmonized securities laws and the implementation of the fully operational passport system to streamline and improve securities regulation across Canada. Under the passport system, market participants can clear a prospectus, obtain a discretionary exemption or register as a dealer or adviser with their home regulator, and have that clearance, exemption or registration apply automatically in all other passport provinces and territories (except Ontario).

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Backgrounder Passport System for Securities Regulation

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Passport System for Securities Regulation

- Since 2005, Alberta has been a leader in the development of the passport system for securities regulation based on highly harmonized securities laws. Under the passport system, market participants who meet regulatory requirements in one jurisdiction would automatically meet the requirements in all other passport jurisdictions.
- For example, market participants can clear a prospectus, obtain a discretionary exemption from the regulator in their home province or territory or register as a dealer or adviser with their home regulator, and have that clearance, exemption or registration apply automatically in all other passport provinces and territories.
- Regulators have developed a mechanism, known as the “one-way passport,” that enables Ontario issuers and market participants to enjoy the full benefits of the passport system.
- The passport system for securities regulation was fully implemented on September 28.
- The passport system can be expanded to accommodate international free trade in securities, which is currently being discussed with the United States and other G7 countries.

The passport system demonstrates an unprecedented level of co-ordination and consensus among governments and regulators in Canada to streamline and improve securities regulation. This has been accomplished by the Council of Ministers of Securities Regulation, and Alberta has been a leader in that process.

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