

Reform before regionalism

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At a meeting on June 19, the federal and provincial ministers responsible for securities regulation discussed the prospects for a common regulator for Canada's capital markets, but failed to reach any consensus. They even failed to generate support for a future meeting. But they did not oppose the appointment by the federal Minister of Finance of an expert panel to explore and make recommendations on new securities legislation and regulations, and alternatives for their implementation under the Passport System or under a common securities act administered by a common securities regulator.

This outcome came as a surprise to the many who thought we had reached the tipping point for a common regulator. The failure to obtain enough support from large and small jurisdictions to move forward with such an initiative is quite remarkable. Virtually everyone now recognizes that the existing multiple-regulatory system is badly flawed and in need of repair. One is left in awe at the remarkable inability of our provincial and territorial governments to rise above regional interests in the face of a rapidly integrating and competitive global world.

Whether a national model can accommodate regional needs and goals in the regulatory process and achieve satisfactory reform of regulatory content is a valid issue. But the answer is not intransigently to reject a common regulator. Rather, it is to create a system with guarantees and a detailed process, including time-lines and milestones, to assure regional participation and regulatory content as part of a commitment to a common regulator. The provincial Passport System, with all provinces and territories participating, could serve as a first step toward the common regulator while it is being assembled.

The decision to appoint an expert group to recommend concrete reforms in securities regulation in a collaborative process involving the federal government, the provinces and the territories can be positive. The key is to get knowledgeable and high-profile individuals on board. We should think outside the box. The group should include not only qualified Canadians but also individuals like Howard Davies or John Tiner, former chief executives at the Financial Services Authority, the U.K. regulator that is at the leading edge of principle-based securities reform.

The potential benefits are worth the effort to keep the initiative alive. First, a common regulator will eliminate the multiple fees and charges now paid to 13 regulators, along with the heavy compliance costs incurred from having to deal with the details of multiple regulatory regimes. Principles-based regulatory reform may replace existing thick

rulebooks and the mechanical "box ticking" approach to compliance oversight of internal firm operations and process. It is client outcomes that count, not the imposition of detailed rules on how the business is conducted.

Another important benefit is that a common regulator will strengthen investor protection by delivering a co-ordinated focus to enforcement, mobilizing national resources and expertise. This will boost confidence among rank-and-file investors.

The small-issuer community has expressed concerns that under a common regulator, regulatory power and influence will shift to Central Canada. Although small-cap markets are national in scope, the commissions in Western Canada have built considerable expertise and provided innovative and effective regulation of venture issuers. But the advantages of local regulation need not be lost if a common regulator is created. A common regulator can be required to give special consideration to small issuers. Its regulatory operations for such companies could be located in Western Canada, following the example of TSX Group with the TSX Venture Exchange, which is located in Calgary in the midst of the small-cap marketplace.

Finally, skeptics of Ottawa's ability to manage anything effectively should be reminded that no one has suggested that the federal government will run the common regulator. The Crawford proposal, for example, is for a national regulator governed by provincial decision-making, with each participating jurisdiction having a single vote. Ontario, the locus of most capital market activity in the country, would have one vote out of 13 or 14. The federal government would have no more. Other alternatives are possible, and perhaps desirable, without giving Ontario or Ottawa a dominant voice. For example, the voting structure could be weighted to give the larger jurisdictions greater influence in decision-making. Decisions could require a 75% majority, or a simple majority plus a majority of the participating large provinces -- say, three out of four, or two out of three, as the case may be. Or, depending on the role of the government of Canada, the figure could be, for example, three out of five.

There is yet another reason to continue the effort to develop a common regulator. The U.S. Treasury and the Securities & Exchange Commission have accepted the desirability of liberalizing access to U.S. capital markets through mutual recognition of regulatory standards. The SEC is currently developing a model that would permit market professionals in foreign jurisdictions with comparable regulatory standards to access the U.S. institutional

marketplace. This has enormous appeal for Canadian investment dealers, who now must comply with the full panoply of complex and expensive U.S. regulatory standards if they wish to deal directly with U.S. institutions.

Given the strong historic relationship between Canadian regulators and the SEC, the similarity in regulatory concepts and institutions, our contiguous capital markets and our long-standing trade agreement, Canada should logically be the first country to benefit from such proposals. But from discussions with SEC staff, this is not at all clear. The SEC will undoubtedly wish to obtain comparable access for U.S. broker-dealers to Canadian institutional markets. In any such process, the absence of a single regulator able to negotiate on Canada's behalf puts us at a disadvantage, as the SEC will either have to negotiate with multiple provincial jurisdictions, complicating its negotiating process, or to deal only with one or two jurisdictions, which would create unwanted political problems. Alternatively, it could direct its initial efforts to unitary jurisdictions in Europe or the Pacific. On the basis of the discussions with SEC staff, this is a concern for Canada.

There is currently a greater consensus about a common securities regulator among industry, investors and government in Canada than ever before. The chair of the Senate banking committee has tabled a bill calling for a single national regulator; the NDP's finance critic has advocated a Canada Securities Commission; the Minister of Finance has declared his commitment to a common regulator and his party's adoption of this issue as part of its platform for the next election. Now is a time for statesmanship. Canada's securities market and our economic welfare should not be sacrificed to parochial perspectives.

- Ian C.W. Russell is chief executive of the Investment Industry Association of Canada, the national association of the Canadian investment industry.