Reaching Consensus on Reforming Securities Regulation in Canada

Gerry Phillips
Chair of Management Board of Cabinet

Economic Club of Toronto

June 24, 2004

- Check Against Delivery

Thank you Mark for that kind introduction and good morning to everyone.

I'm very pleased to have this opportunity to address you this morning on a matter that is important to me for two reasons.

The issue is securities regulation in Canada.

Naturally it's important to me as the minister responsible for overseeing regulation of the securities industry in Ontario.

But it's also important to me as someone who has first-hand experience in the business and financial communities.

I started my business career with the U.S. multi-national Proctor and Gamble and I understand what is required to be successful in a global economy.

I also understand what it takes to get a company off the ground and keep it off the ground. I've done it twice. When I first ran for office I was the chair of three companies with a combined workforce of more than 300 people.

I had my share of frustrations – jurisdictional overlap, duplication, regulatory red tape and other barriers to investment and trade.

Those are the types of problems we must address in fixing the patchwork securities regulatory system that exists in Canada today.

I think every province and territory realizes that the status quo is not acceptable.

There is a lot of momentum to move forward on creating a single regulator. Many financial and business organizations have come out publicly and stated their solid support as well. The Wise Persons committee strongly recommended a single regulator.

Our Premier Dalton McGuinty has also taken a personal interest in this matter.

Last February he travelled to Calgary to build stronger ties between Alberta and Ontario. While there he outlined Ontario's commitment to the creation of a single securities regulator.

He made it clear that improving the investment climate can bring prosperity for people in all provinces and that a single securities regulator is an important step in accomplishing that goal.

Finding common ground on which to build a new securities framework is a daunting task.

I think Alberta Revenue Minister Greg Melchin, who chairs our inter-provincial steering committee, has done an outstanding job in building goodwill among provinces and moving us forward on this issue.

As you know Canada remains the only major developed country in the world without a single regulator.

As I see it, Canada's system of provincial and territorial securities regulation has two serious flaws:

- Laws are not uniform across the country, which is not a surprise when there are 13 separate sets of securities laws;
- And there are problems from dealing with multiple decision-makers, which, again, is not a surprise when there are 13 securities regulators.

The current system is expensive and complicated. It is an obstacle to companies that are raising capital in Canada and doing business across Canada.

I recognize the efforts of regulators in all jurisdictions to make the present system more workable for companies while ensuring investor protection.

I believe one of the most important things we can do to lay the foundation for strong and stable growth is to ensure that our capital markets – in Ontario and across the country – function effectively.

To function effectively, capital markets must be attractive both to companies seeking to raise capital and to the investors that provide the capital.

We believe it is easier for companies to do business if there is one-window access to Canada's capital markets with one set of fees and clear and consistent rules. That encourages capital formation and economic growth.

Strong protections are needed to assure investors that their investments are safe and secure. They need to know there are high standards that will be enforced consistently, regardless of where they live or where they invest within Canada. Those standards must be easy for investors to understand

All strong economies have strong capital markets. A national capital market is attractive to investors and companies in Ontario, in other provinces and internationally.

Canada is not just competing to attract companies to do business here. We are also competing for investors.

Today, investment funds and large institutions can invest wherever they want. If we want them to invest here, we have to inspire confidence in our markets and our regulatory system. We have to make it easy for them to invest.

To paraphrase one observer, we can't have 13 regulators in an economy the size of Texas.

If we fail to attract and keep investors, companies will be driven to other markets.

You are no doubt aware of the inter-provincial passport system being proposed to overcome some of the complications inherent in Canada's existing framework for securities regulation.

Recently, a new draft proposal was put forward by some provinces to implement a passport system. It is not my purpose today to go into a lot of detail about the draft passport proposal, but I do want to highlight its main features and some of my concerns with it.

In essence, the passport is a proposal to co-ordinate the work and decision-making of securities regulators – each province would still have its own regulator and its own securities laws.

The proposed passport model covers two aspects of current securities regulation. First, it would allow individuals and securities firms to participate in capital markets by dealing with one 'primary' regulator when they come into the system and complying with one province's laws.

Second, companies could issue stock in all jurisdictions by complying with the primary provincial regulator's rules and laws.

Some of the other key features of this proposal include:

- Legislation in each province to confer authority on the regulator that acts as the primary decision-maker and to recognize compliance with the home province's laws;
- A commitment to work towards 'highly harmonized securities laws. I think it is fair to say there are different perspectives on what that means;
- A willingness to consider further reforms, including steps towards a joint provincial securities agency, but no commitment to move in that direction;
- A council of ministers from each province and the territories to oversee the operation of the passport system and further regulatory reform.

Under the passport proposal, regulatory responsibility would be split between the investor's jurisdiction (for investor complaints) and the primary regulator (for enforcement actions).

Because investor protection could vary and regulatory responsibilities would be split, companies would need to know and comply with the laws in all provinces.

While we are encouraged by the efforts of the provinces to work together, we are concerned that this proposal does not address the structural problems with the current regulatory framework.

Ontario has a slightly different perspective. Ontario's approach has been and continues to be — one new regulator, one common body of securities law and one set of fees.

We appreciate that some provinces have difficulty with this approach and are asking questions about details of how it would work.

Let me assure you that Ontario wants to be as flexible as possible in reaching our goal, and we want to include the views of all provinces and territories.

Today we are releasing our discussion draft entitled *Modernizing Securities Regulation in Canada*. It outlines what we believe is a workable solution on where we need to go. I recently shared it with my ministerial colleagues across the country for their feedback.

Ontario's proposal envisions an entirely new regulatory agency with a mandate that reflects the needs of capital markets across Canada while providing protection for all investors.

Our intention is to get agreement on the proposal's key features and use that as the basis to move forward and implement a modern new securities framework.

Let me highlight the main features:

- First, there would be a new common securities regulator with strong local offices to deliver services close to where businesses and investors are located. What that means is companies and investors would benefit from a common interpretation and consistent application of regulatory requirements. We believe this would allow securities laws to be enforced more effectively. That helps inspire confidence in our markets and attracts capital for investment.

- Secondly, there would be a common body of securities law. There would be no lost financing opportunities because of the delays and complexities of dealing with a number of different laws and regulators. Moreover, investors would have one set of clear, consistent protections.

- Finally, there would be a single fee structure, with fees set on a cost-recovery basis. So, market participants would get fair treatment, and compliance would be much simpler, which would lower regulatory costs for businesses.

We believe that our model would better address concerns around international investment and regulatory burden, while improving investor protection.

Some provinces are concerned that their businesses not lose the benefit of existing regulatory expertise in specific sectors and the responsiveness of a local regulator.

We think our proposal will accommodate those concerns and offer significant improvements – for example, by drawing on existing expertise in staffing the new agency, by giving local staff real decision-making authority and by having their decisions under the common body of law apply across Canada.

Let me outline a few examples of how that could work. For an industry like oil and gas, the regulators in some provinces have significant specialized expertise.

A new single regulator could draw on that expertise to deliver true one-stop service to investors, to companies raising capital and to market participants such as securities dealers and advisers.

Staff in local offices could have real decision-making authority and those decisions would carry across provincial borders in applying the common securities laws and high standards of investor protection.

Lead policy roles could be assigned to the relevant offices for issues relating to the oil and gas sector needed to regulate that sector effectively.

We also recognize that decisions on policy development must be responsive to the regions that are most directly affected. One way to ensure responsiveness could be to allocate decision-making on a sector-by-sector basis.

For example, an Oil and Gas Sub-Council of Ministers could be empowered to make decisions on policy proposals in relation to that sector.

To ensure that securities regulation is responsive to the needs of small and medium-sized enterprises policy development could be assigned to a highly identifiable focused group within the agency. That group could be headquartered in a local or regional office.

Another concern expressed by some provinces is their revenue loss in moving to a single fee structure. We recognize that is an issue and it will have to be resolved in moving forward.

We know that all provinces have concerns about what's on the table. But there is no value in shying away from addressing those concerns now rather than in two, five or 10 years.

In my view, NOW is the time to resolve those concerns and incorporate the solutions into the model we eventually agree upon.

In weighing the potential benefits of the draft passport proposal against moving to a new single regulator, we see the passport as only a partial response to the need for change. It is not a comprehensive solution.

Right now, having 13 regulators and 13 sets of laws discourages investment in Canada. Given the relatively small size of Canada's market, investors should not be forced to evaluate securities regulatory differences among Canadian provinces and territories.

It just doesn't make our markets attractive to investors, particularly foreign investors. Varying standards in different jurisdictions in Canada weaken the perception of the Canadian capital market as a whole.

The passport would go a small way to addressing this concern by letting public companies and securities firms deal with one regulator and one set of laws for some things such as registration and disclosure requirements. But otherwise they would still have to cope with multiple regulators and multiple laws.

By contrast, Ontario's plan is more comprehensive – there would be one regulator and one set of laws on all matters for companies, for securities firms and for investors. That would encourage investment in Canada.

Another issue that we feel the passport does not fully address is the need for stronger enforcement of our securities laws. Regulators would face the same hurdles they face today in enforcing securities laws on matters that span provincial borders.

Without common priorities and co-ordination, the passport system does not significantly improve the enforcement of securities laws.

With one regulator and one set of securities laws there would be one set of clear, consistent standards across all jurisdictions.

Common enforcement priorities and coordination of enforcement activity would be facilitated. That makes Canada's markets much more attractive to investors.

We also think that our proposal offers a more complete solution on investor protection. Under the passport proposal, different companies in our market would be subject to different laws and regulated by different regulators – even companies in the same sector could be subject to different regimes.

Investor protection could vary from province to province, so investors will have to understand those differences. Under our proposal, there would be one set of clear, consistent standards across all jurisdictions. That is easier for investors to understand. Coupled with stronger enforcement of securities laws, it will help inspire investor confidence and attract investment to all parts of Canada.

As I said earlier, we believe the market is ready for a more comprehensive solution than a passport system.

To achieve that, all provinces will have to be flexible and willing to work together. We are willing to do that and I hope that others also will respond to that challenge.

So, where do we go from here?

Ontario would be willing to consider a transition model in which the passport proposal would be used.

A common body of securities law and a single fee structure would need to be put in place as part of that transition. And there would need to be agreement on moving to a new single securities regulator within a specific timeline, say three to four years.

I will continue to work with my colleagues across the country in an effort to arrive at consensus on a model that best serves the needs of investors and markets and all provinces and territories.

In the meantime, our commitment to improving securities laws continues.

As part of that commitment, we will be recommending to the Legislative Assembly that a committee hold hearings on the *Five-Year Review Committee Final Report – Reviewing the Securities Act.*

You may recall that Mr. Purdy Crawford chaired the Five-Year Review Committee that examined Ontario's securities legislation and the legislative needs of the Ontario Securities Commission. The Final Report covers a wide range of securities law issues.

The report notes that the need for a single Canadian securities regulator is, and I quote: "the most pressing securities regulation issue in Ontario and across Canada."

It recommends that all governments work towards a single securities regulator with responsibility for the capital markets across Canada.

If the Assembly agrees, the committee will hear from interested parties and make recommendations to the legislature on amendments to the *Securities Act.*

We also expect that sometime in the next few months, Ontario and the other provinces will be asked to make a decision on the approach to securities regulatory reform.

The framework for securities regulation is extremely important – not just because of its impact on Bay Street but also because of its impact on individual investors, on job creation and on the standard of living in every province.

Our government’s goal is to foster vibrant capital markets because they are instrumental to Canada’s and Ontario’s future economic growth.
Canada’s largest companies already know this – they use capital markets actively as a source of finance.

Capital markets are critical for the success of small companies that drive innovation and future growth.

Strong capital markets make it possible for new businesses to get off the ground and to expand by providing access to additional capital.

They make it possible for citizens to get a stake in the economy and to save for their future needs. They make it possible for Canada to attract capital from abroad.

Reforming securities regulation is about economic growth. It’s about opportunity. It’s about maintaining a fair investment environment. It’s about prosperity for people.

Ontario is ready to do what is necessary to make this happen and we hope that other jurisdictions will want to join us.

I believe we can reach consensus on reforming Canada’s securities regulatory framework.

I look forward to future discussions with my counterparts across the country as we move forward.

Thank you.