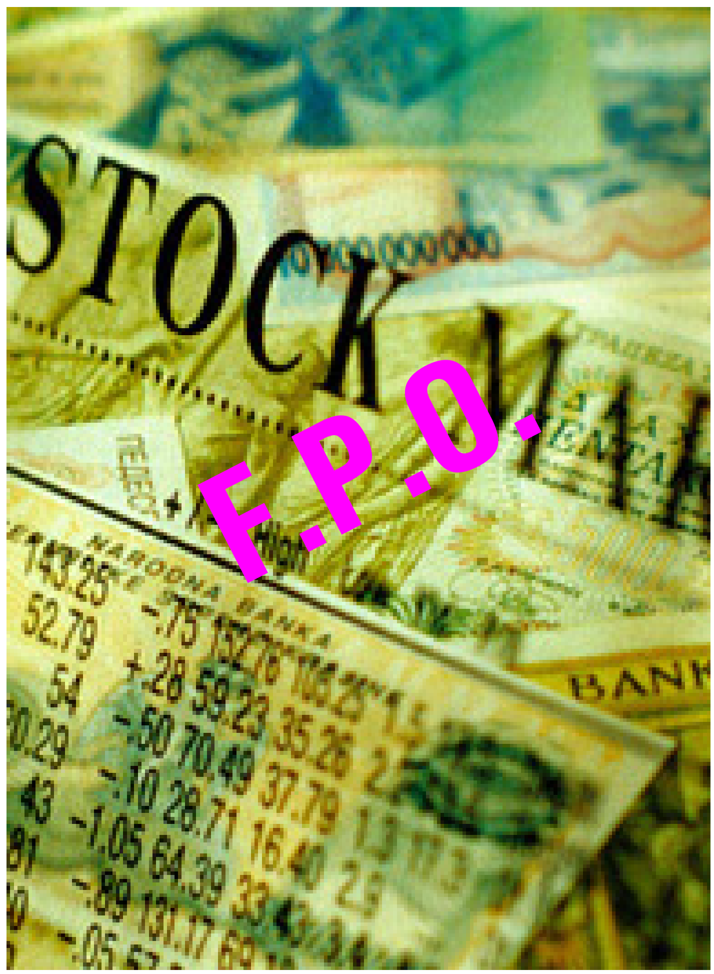
2002 FRASER INSTITUTE

CRITICAL ISSUES

bulletin

Securities Market Regulation in Canada



by Neil Mohindra

THE FRASER INSTITUTE

Critical Issues Bulletins

Critical Issues Bulletins are published from time to time by The Fraser Institute (Vancouver, British Columbia, Canada) as supplements to *Fraser Forum*, the Institute's monthly periodical. Critical Issues Bulletins are comprehensive studies of single issues of critical importance for public policy.

The authors have worked independently and opinions expressed by them are, therefore, their own, and do not necessarily reflect the opinions of the members or the trustees of The Fraser Institute.

To order additional copies of Critical Issues Bulletins, any of our other publications, or a catalogue of the Institute's publications, please contact the **book sales coordinator**:
via our **toll-free order line: 1.800.665.3558, ext. 580**
via telephone: 604.688.0221, ext. 580
via fax: 604.688.8539
via e-mail: sales@fraserinstitute.ca.

For Media enquires, please contact **Suzanne Walters**, Director of Communications:
via telephone: 604.714.4582
or, from Toronto, 416.363.6575, ext. 582
via e-mail: suzannew@fraserinstitute.ca

To learn more about the Institute, please visit our web site at www.fraserinstitute.ca.

Date of Issue: April 2002

Printed in Canada

Canadian Publications Mail
Sales Product Agreement #0087246

ISSN 1480-3666

Editing and design:
Kristin McCahon, Ben D'Andrea, and Irma Rodriguez

Image for front cover:
©Nick Rowe / Getty Images / PhotoDisc Inc.

The Fraser Institute

The Fraser Institute is an independent Canadian economic and social research and educational organization. It has as its objective the redirection of public attention to the role of competitive markets in providing for the well-being of Canadians. Where markets work, the Institute's interest lies in trying to discover prospects for improvement. Where markets do not work, its interest lies in finding the reasons. Where competitive markets have been replaced by government control, the interest of the Institute lies in documenting objectively the nature of the improvement or deterioration resulting from government intervention. The work of the Institute is assisted by an Editorial Advisory Board of internationally renowned economists. The Fraser Institute is a national, federally chartered, non-profit organization financed by the sale of its publications and the tax-deductible contributions of its members, foundations, and other supporters; it receives no government funding.

For information about membership in The Fraser Institute, please contact the Development Department
via mail to: The Fraser Institute, 4th Floor,
1770 Burrard Street, Vancouver, BC, V6J 3G7
via telephone: 604.688.0221 ext. 586
via fax: 604.688.8539
via e-mail: membership@fraserinstitute.ca.

In Calgary, please contact us
via telephone: 403.216.7175 or, toll-free, 1.866.716.7175
via fax: 403.234.9010
via e-mail: barrym@fraserinstitute.ca.

In Toronto, please contact us
via telephone: 416.363.6575
via fax: 416.601.7322.

Contents

About the author

Neil Mohindra is Senior Economist, Financial Sector Regulation at The Fraser Institute. Prior to coming to the Institute, he worked as a policy analyst on financial sector issues at the federal Department of Finance. Before that, he was a research associate with the Task Force on the Future of the Canadian Financial Sector (the "MacKay Task Force." He holds a BA (Honours) in Social Sciences (Economics) from the University of Ottawa and an MBA in Finance from McGill University. Mr. Mohindra co-authored a Critical Issues Bulletin, *Commissions Unbound: the Changed Status of Securities Regulators in Canada*. He has also written various articles and opinion pieces on financial regulation.

Acknowledgments

The author wishes to thank Professor Jeff MacIntosh, Professor Christopher Armstrong, and John Whitmore for their comments and suggestions. John Whitmore provided his comments and suggestions in a personal capacity. The author also wishes to express appreciation to the various securities commissions and other organizations that provided helpful responses to information requests. The author, of course, takes full responsibility for any errors and omissions.

Executive Summary

The existing Canadian securities regulatory system is composed of 13 provincial and territorial securities regulatory authorities (SRAs) as well as various self-regulatory organizations (SROs). The SRAs generally have similar objectives, but there are differences in powers and responsibilities, particularly in the exercise of oversight over SROs.

Increasingly, Canadian SRAs have been tightening the regulatory environment. The traditional philosophy of Canadian SRAs of resorting to regulation only when there is a problem that market participants cannot resolve between themselves has been replaced by a new approach—resorting to regulation first, even before a clear problem arises.

While the tighter regulatory environment reflects, to a large extent, growth in regulation, it is also the outcome of a shift to more micro-oversight of SROs and supervision of market participants. Regulatory oversight of stock exchanges, for example, used to consist mainly of reviews to changes in rules or bylaws. Now, the TSE/CDNX's self-regulatory arm is subject to more comprehensive examinations that cover, not only rule enforcement, but operational and financial integrity. The shift towards more micro-supervision is readily apparent in the continuous disclosure review programs established by some of the SRAs. Public companies face increasing regulatory scrutiny of their continuous disclosures (e.g. quarterly financial statements and press releases).

There are some signs that the combination of a tighter regulatory environment and the existing regulatory framework composed of 13 SRAs is proving to be a toxic mix. For example, compliance costs for junior companies have doubled over a five-year period. Frustrations with the existing regulatory system have lead to calls by both market participants and SRAs for fundamental change. For example, the Ontario Securities Commission (OSC) is calling for a single "pan-Canadian" regulator while the British Columbia Securities Commission (BCSC) has launched a deregulation initiative.

There has been a tendency, not just with Canadian SRAs but others as well, to respond to new developments in capital markets through introducing new regulations. However, this paper argues that some significant developments—such as increasing global integration, advances in information technology, and the demutualization of exchanges—have contributed to the obsolescence of some regulatory functions. For example, a for-profit exchange facing significant domestic or foreign competition has strong incentives to offer quality self-regulation and safeguard the operational integrity of its trading infrastructure. Thus the need for rigorous regulatory oversight is highly questionable.

Authorities seeking to build a better model for regulating Canadian capital markets should break apart the various pieces of the existing regulatory framework and analyze each piece to explore to what extent market forces and private incentives can be relied upon to achieve public policy objectives.

This paper proposes that for SROs this means substituting transparency in place of rigorous regulatory oversight. For the TSE (and its subsidiary, the CDNX), oversight programs and regulatory approvals of rules and by-laws could be replaced by disclosure of its rules and a periodic external performance review that would also be disclosed.

By taking this approach, the TSE would be better able to differentiate itself from its competitors and be able to market itself on the quality of its self-regulation. The current oversight regime constrains the ability of the TSE to innovate and adapt to changing circumstances, as any change of rule or by-law requires the approval of the five SRAs that formally recognize it.

An external performance review that is publicly disclosed is superior to SRA oversight programs—not just for the TSE but other SROs, such as the Investment Dealers Association—because the people who would really value the information this would provide (market participants) would have access to it. In the current system, only the SRAs know how well the SRO is performing its regulatory function. Easing regulatory barriers that inhibit competition from foreign SROs complements the transparency approach by strengthening incentives to offer quality regulation.

The transparency approach can also help alleviate the burden associated with multiple SRAs exercising oversight over SROs. The cost and complexity inherent in the fragmented Canadian regulatory system would be reduced significantly if external performance review requirements are consistent across jurisdictions. By

encouraging authorities in other countries to sign on to the concept of more transparency and less formal oversight, it will further the global integration of capital markets. For example, it would better enable exchanges to establish global platforms if they were not subject to different oversight regimes in every country.

To the extent that regulatory frameworks serve as a barrier to more competition, they run counter to the interests of Canadian investors and other market participants. Because the existing regulatory framework facilitates monopolistic power for Canadian SROs, their incentives to provide quality self-regulation are relatively weaker. Easing regulatory barriers to competition would strengthen the incentives of SROs to offer quality regulation in line with investor preferences. It would also offer other benefits to Canadian market participants, notably greater choice.

The regulation of public companies can also be improved through regulatory competition, an argument made by several speakers at the recent Capital Markets Institute Symposium on Canadian Securities Regulation. One way of facilitating this is for SRAs to rely to a greater extent on exchanges for components of regulation, such as setting disclosure standards, a role that exchanges played before public regulation emerged. Competition, rather than more regulatory harmonization, between Canadian SRAs would also contribute towards healthier capital markets in Canada. Regulatory competition would not only improve the quality of regulation, but it would also facilitate differentiation, and thus regimes could be constructed to accommodate the needs of different types of public companies, such as junior issuers.

While there is a role for public enforcement of securities legislation against transgressions such as fraudulent behaviour, Canadian investors would be better served by a system that places more reliance on private enforcement mechanisms for redress over such actions as deliberately misleading disclosure. In these cases, investors acting in their own interests have stronger incentives than SRAs acting in the public interest to be vigilant. Consequently, SRAs should proceed with a civil liability regime for continuous disclosure and refrain from the resource intense chore of directly scrutinizing the minutiae of every piece of information disclosure.

Introduction

Securities markets in Canada have been subject to some form of government regulation since 1869 when the Dominion of Canada introduced the first general incorporation statute (the *Canada Joint Stock Companies Letters Patent Act*). In the early 1900s, some provinces started to become more active in securities regulation through the introduction of blue-sky type legislation and securities fraud prevention acts to protect investors from fraudsters offering worthless securities. Since that time, provincial securities legislation was revamped on a number of occasions to address new issues such as insider trading and protecting the rights of small investors during mergers and takeover battles. Canada's 13 securities regulatory agencies (SRAs) now play a multitude of different roles, such as safeguarding investors from abusive practices, ensuring adequate fair disclosure by reporting issuers, and oversight of securities exchanges to ensure market and operational integrity.

But are all the various roles that have been taken on by SRAs still relevant for protecting investors and ensuring the smooth functioning of markets? Some might argue that the regulators are more relevant as technology opens up access to markets for unsophisticated retail investors and eases access to cross-border services. Others have argued that such factors as easier accessibility to information have contributed towards the obsolescence of securities regulators (Macey 1995). This paper will explore, not whether securities regulators themselves have become obsolete or more relevant, but to what extent public regulators should continue to play the same roles as in the past, given new developments such as changes in technology and the trend towards globalization.

This study begins with a review of the current regulatory structure. This review is followed by an assessment of the impact of developments in information technology, governance, exchange demutualization, and the globalization of the securities markets. Next, this study examines how regulators have responded to these developments and analyses the ongoing relevance of securities regulators. With the conclusions from that analysis, this paper then outlines a regulatory model that taps into private incentives to obtain public policy goals and to facilitate further integration of Canadian capital markets into a globalized marketplace.

The Current Regulatory Structure

Outlining the entire Canadian securities regulatory structure is a somewhat complex exercise. Canada's system has been described as "a regulatory system hobbled by excessive cost and complexity."[1] Adding to the complexity is the role played by various self-regulatory organizations (SROs) that operate under the oversight of the provincial regulators. Exhibit 1 outlines the main players in the system.

A large number of acronyms are used throughout this paper, so readers who feel they are descending into the murkiness of an acronym swamp should note that a list of all the acronyms used in this paper is included at the end of the paper.

Provincial Regulators

Each province and territory has its own Securities Regulatory Agency (SRA), although they take different forms as shown in Table 1. In five provinces (Alberta, BC, Manitoba, Ontario and Quebec), regulation is undertaken by a Crown corporation that has the ability to set its own budget through the fees generated by its operations. In some provinces, such as Saskatchewan, regulation is undertaken through an agency. Under the agency model, revenue generated by the securities commission belongs to the provincial government, which sets the commission's budget through the appropriations process. In the remaining provinces and territories, regulation is undertaken directly by government ministries.

Table 2 shows the missions or mandates of some of the securities commissions. Generally, they consist of protecting investors and promoting confidence in capital markets and access to capital.

The role played by securities regulators is quite extensive. Unlike other regulated financial sectors such as banking and pensions, where regulation focuses on the institutions themselves, in the securities industry, regulation covers intermediaries, advisers, exchanges, issuers, collective investment schemes, clearing and settlement systems, and even investors themselves. The roles, which vary from province to province, currently undertaken by provincial securities regulators include:

Exhibit 1: Canadian Securities Regulatory Landscape

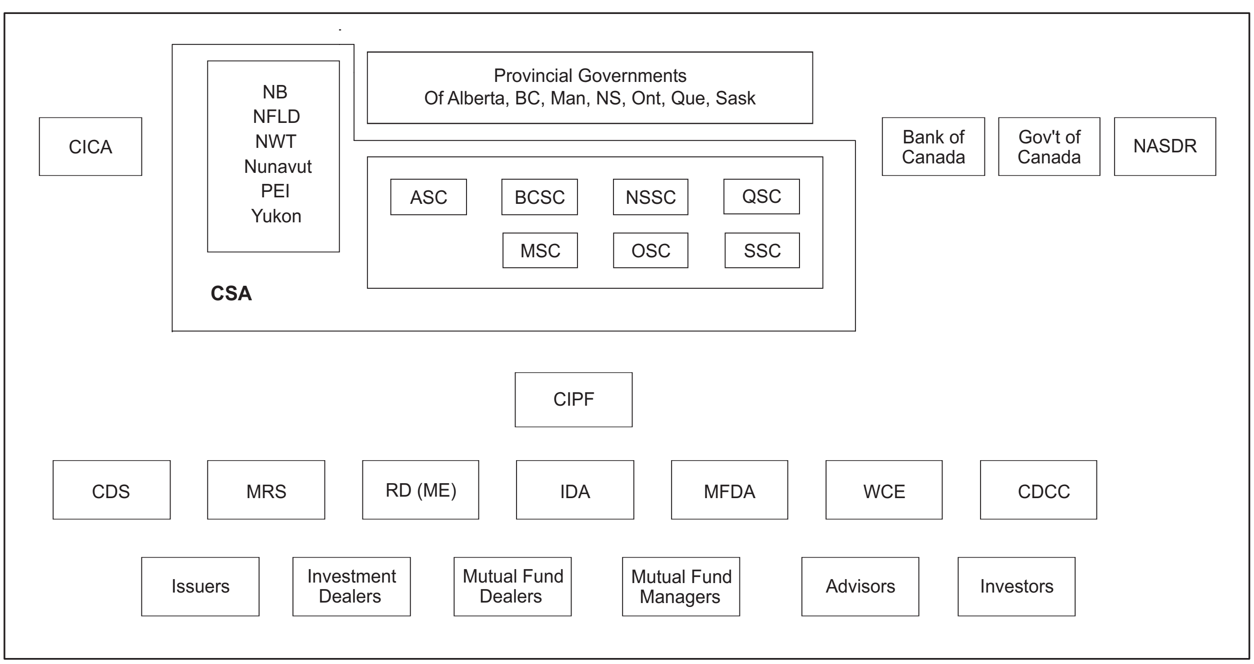


Table 1: Canadian Securities Regulatory Agencies

Alberta*	Alberta Securities Commission
British Columbia*	British Columbia Securities Commission
Manitoba*	Manitoba Securities Commission
Nova Scotia	Nova Scotia Securities Commission
Nunavut	Department of Justice, Legal Registries Division
Ontario*	Ontario Securities Commission
Prince Edward Island	Department of Community Affairs and Attorney General
New Brunswick	Office of the Administrator of Securities
Newfoundland	Department of Government Services and Lands
Northwest Territories	Securities Registry, Department of Justice
Quebec*	Quebec Securities Commission
Saskatchewan	Saskatchewan Securities Commission
Yukon	Registrar of Securities, Government of Yukon

Source: CSA Strategic Plan 2001-2004
*The SRA has Crown corporation status.

Table 2: Missions/Mandates of Selected Canadian SRAs

ASC	Foster a fair and efficient capital market in Alberta and confidence in that market
BCSC	To ensure the securities market is fair and efficient and warrants public confidence; and to foster a dynamic and competitive securities industry in BC that provides investment opportunities and access to capital
MSC	Act in the public interest to protect Manitoba investors and to facilitate the raising of capital while maintaining fairness and integrity in the securities marketplace
OSC	Protect investors from unfair improper and fraudulent practices; foster fair and efficient capital markets; maintain public and investor confidence in the integrity of those markets
QSC	Promote the efficiency of Québec's financial markets, protect investors and regulate information that companies must disclose to their securities holders during public offerings. It also oversees the activities of securities market professionals and organizations responsible for the operation of the securities market.
SSC	Protect Saskatchewan investors by regulating the sale of securities

Source: Commission websites

- investigating breaches of legislation and regulation
- reviewing and processing applications for registration
- ensuring that take-over bids are carried out in accordance with prescribed rules
- developing policy, rules, and legislation
- reviewing prospectuses for financial and legal adherence to securities regulation
- ensuring that public companies and registrants meet continuous disclosure requirements
- providing public education to investors about potentially illegal activity and assisting them in making appropriate investment decisions
- maintaining a public registry of dealers and persons registered to trade in capital markets
- holding administrative hearings to determine a financial penalty[2] and/or to deny, suspend or cancel a registration
- granting or denying exemptions from requirements of securities legislation
- exercising oversight of SROs
- enforcing insider trading rules
- assisting the Crown with the preparation of prosecutions for securities law related offences

The powers of the securities regulators are also extensive. The Critical Issues Bulletin, *Regulators Unbound; The Changing Status of Securities Commissions,* noted that securities legislation blends the functions of investigation, prosecution, judgment, and developing rules, all within the commissions. These are activities for which the legal system normally maintains clear separation. SRAs also have what are known as "public interest powers," which enable them, through an administrative hearing, to take specific actions outlined in legislation, such as suspension or termination of the registration of a person or company, or a cease-trade order of a security even if no actual rule has been broken. Powers vary from jurisdiction to jurisdiction. For example, not all SRAs have the power to formally recognize SROs.

Across Jurisdictions

While securities regulation is exercised on a provincial or territorial basis, it is common practice for industry players in Canada (i.e. securities firms and mutual fund dealers) to operate across two or more provincial jurisdictions. In the Canadian regulatory environment, this entails multiple registrations and filings under rules and fee structures that are often inconsistent.

An example of inconsistent rules can be found in the qualifications required for individual investors to participate in the exempt market.[3] New rules in Ontario allow individuals who own over $1 million in financial assets or earn over $200,000 annually before taxes to purchase exempt securities. In addition, individuals can acquire the exempt securities of an issuer if they have certain personal or professional ties (e.g. the mother of a director). In Saskatchewan, for an individual investor to be eligible for the "qualified investor exemption," that person must have, in addition to meeting investment experience requirements, a net worth of at least $300,000 and an annual income in excess of $75,000. In Quebec, the conditions for the QSC to designate an individual as a sophisticated purchaser include the possession of a securities portfolio greater than $25 million, which must be managed by persons with adequate knowledge of the financial market.

The provincial regulatory structure has also lead to multiple oversight of SROs, which is discussed further on in this paper.

Canadian Securities Administrators (CSA)

Both industry and the provincial securities regulators[4] have recognized that a regulatory system composed of 13 separate statutes along with 13 sets of rules, policies and notices is complex and expensive to comply with. The provincial regulators have an informal body called the Canadian Securities Administrators (CSA) to coordinate their activities and work towards the harmonized regulation of Canadian markets. To date, the CSA has made some progress towards harmonization, including the establishment of several national instruments to create consistent rules across jurisdictions. Table 3 lists National Instruments already in place on a national basis. A CSA Task Force is currently attempting to design a common statute that all provinces and territories could adopt. National Instruments have facilitated the System for Electronic Document Analysis and Retrieval (SEDAR) and the System for Electronic Disclosure by Insiders (SEDI), which are described further on under SROs.

Through the CSA, the provincial securities regulators have established the Mutual Reliance Review System (MRRS) for regulatory filings. Under MRRS, one provincial regulator acts as the lead regulator in analyzing a filing. In the other jurisdictions in which the document is filed, the provincial regulator will rely primarily on the analysis of the lead regulator. So far, MRRS has been confined to prospectuses, annual information forms, and exemptive relief applications.

Despite having made some progress, the CSA has been criticized for being too slow in moving towards harmonization, and not going far enough. For example, Barbara Stymiest, President and CEO of the Toronto Stock Exchange (TSE), has argued that "the MRRS is nothing but a procedural simplification that does not

Table 3: National Instruments in Effect

13-101	System for Electronic Document Analysis and Retrieval (SEDAR)	Requires issuers to transmit certain documents to securities regulatory authorities in electronic format using the System for Electronic Document Analysis and Retrieval known as SEDAR. Sets out certain requirements for filing on SEDAR.
14-101	Definitions	Sets out the definitions of terms used in more than one national instrument for the purpose of interpreting all national instruments.
21-101	Marketplace Operation	Regulates all securities marketplaces operating in Canada including exchanges, quotation and trade reporting systems and alternate trading systems.
23-101	Trading Rules	Sets out common trading rules that apply to all trading whether on a marketplace or not.
32-101	Small Security Holder Selling and Purchase Arrangements	Provides an exemption to an issuer and its agents form the adviser and dealer registration requirements in Canadian securities legislation for certain activities relating to arrangements that permit holder of small amounts of securities of the issuer to sell those securities or acquire additional securities.
33-102	Regulation of Certain Registrant Activity	Requires registrants to provide with disclosure about certain products and risks.
35-101	Conditional Exemption from Registration for US Broker-dealers and Agents	Provides US broker-dealers and their agents with a conditional exemption from the applicable registration and prospectus requirements under Canadian securities legislation.
41-101	Prospectus Disclosure Requirements	Consolidates the prospectus disclosure requirements in National Policy Statement No. 12 Disclosure of "Market Out" Clauses in Underwriting Agreements in Prospectuses, National Policy Statement No. 32 Prospectus Warning Re: Scope of Distribution and National Policy Statement No. 35 Purchaser's Statutory Rights.
43-101	Standards of Disclosure for Mineral Projects	Regulate all disclosure that an issuer makes concerning mineral projects that is reasonably likely to made available to the public. Consolidates and expands National Policy Statements 2-A Guide for Engineers, Geologists and Prospectors Submitting Reports on Mining Properties to the Canadian Securities Administrators.
44-101	Short Form Prospectus Distributions	Prescribes conditions for the use of a short form prospectus to distribute securities to the public. Replaces National Policy Statement 47 Prompt Offering Qualification System.
44-102	Shelf Distributions	Regulates Canadian shelf prospectus distributions. Reformulates and replaces National Policy Statement 44 Rules for Shelf Prospectus Offerings and for Pricing Offerings after the Final Prospectus is Receipted ("NP44")/
44-103	Post-Receipt Pricing	Regulates the Canadian post-receipt pricing regime. Reformulates and replaces the provisions of NP44 relating to post-receipt pricing.
45-101	Rights Offering	Sets out how an issuer may make a rights offering to sell additional securities of its own issue to holders of its securities.
55-101	Exemption from Insider Trading	Provides certain exemptions from the insider reporting obligation.
55-102	System for Electronic Disclosure by Insiders (SEDI)	Requires insiders of SEDI issuers to file their reports on SEDI. SEDI issuers are reporting issuers (other than mutual funds) that are required to file materials on SEDAR.
62-101	Control Block Distribution Issues	Sets out a limited exemption for eligible institutional investors from the prospectus requirements applicable to control block distributions. Modifies the application of hold periods as they may apply to pledges disposing of securities that form part of a control block.
62-102	Disclosure of Outstanding Share Data	Ensures reliable public dissemination by reporting issuers of the designation and number of principal amount of outstanding securities of the reporting issuer.

Table 3: National Instruments in Effect

62-103	Early Warning System & Related Take-over Bid and Insider Reporting Issues	Provides exemptions from the early warning requirements, the insider reporting requirement, and related provision to certain institutional investors that have a "passive intent" with respect to their ownership or control of securities of reporting issuers.
71-101	The Multijurisdictional Disclosure System	Reformulates the multi jurisdictional disclosure system, a joint initiative implemented in 1991 by the CSA and the Securities and Exchange Commission of the United States to reduce duplicative regulation in cross-border offerings, issuer bids, take-over bids, business combinations and continuous disclosure and other filings.
81-101	Mutual Fund Prospectus Disclosure	Implements a new regulatory regime governing the disclosure provided by mutual funds in satisfaction of the prospectus requirements of securities legislation. Requires the preparation and filing of a simplified prospectus and annual information form by all mutual funds in a prescribed form.
81-102	Mutual Funds	Regulates all publicly offered investment funds that give investors the right to redeem securities on demand, including specialized mutual funds such as labour sponsored investment funds and mortgage funds.
81-105	Mutual Fund Sales Practices	Imposes restrictions on certain sales and business practices followed by managers and principal distributors of publicly offered mutual funds, and registered dealers and their sales representatives who sell them.

Source: Saskatchewan Securities Commission (SCC)
http://www.ssc.gov.sk.ca/list.html#National%20Instruments

change the reality that issuers have to comply with the separate securities laws in 13 jurisdictions, including compliance with differing rules, regulations, policies, notices and even unpublished staff position papers."[5] More recently, David Brown, Chair of the OSC, noted that while MRRS has improved response time, it does not achieve the cost savings and efficiencies of having only one decision-maker. The CSA has also been criticized for operating too slowly. Developing a harmonized rule or policy entails all 13 members reaching consensus. Both Ms. Stymiest and Mr. Brown have expressed support for a single regulator.

Joint-Forum of Financial Market Regulators

The Joint-Forum is a coordination mechanism for regulators in securities, insurance, and pensions to examine cross-sectoral regulatory issues. The CSA has indicated in its 2001-2004 Strategic Plan that it intends, through the Joint-Forum, to harmonize the regulation of mutual funds and other investment fund products sold under different regulatory regimes.

OSC Merger with the Financial Services Commission of Ontario (FSCO)

In the provinces that have established securities commissions, the provincial securities regulators have been responsible only for the regulation of securities markets, while other provincial agencies took responsibility for other financial services such as insurance and pensions. In spring 2000, the Minister of Finance for Ontario announced that the OSC would be merged with the Financial Services Commission of Ontario (FSCO), which is currently responsible for credit unions, insurance, mortgage brokers, pensions, and trust and loan companies. Quebec has been exploring a similar move.

The Bank of Canada

The Bank of Canada is responsible for overseeing payment and settlement systems designated as systemically important, which means that potential risk exists for the problems of one participant in the system to spread to other participants or the entire financial system. In this capacity, the Bank of Canada oversees the Debt Clearing System (DCS) for transactions involving federal government treasury bill and bonds and private sector money market securities. The Bank of Canada, in conjunction with the federal Department of Finance, also sets the rules for auctioning Government of Canada securities.

Provincial and Federal Governments

While the regulators themselves are active in the development of securities legislation under which they operate, and the regulation promulgated under that legislation, the provincial and territorial governments are responsible for both the legislation and regulation.

Both the provincial and federal levels of government have corporate statutes under which businesses can incorporate. Businesses must adhere to the requirements of the statute under which they have incorporated, which cover matters such as governance and shareholder rights.

The Canadian Institute of Chartered Accountants (CICA)

The CICA is a private organization that plays a pivotal role in the regulation of issuers. It is responsible for the CICA Handbook, which is the primary source of generally accepted accounting principles (GAAP) in Canada as well as generally accepted auditing standards (GAAS). Public companies must annually disclose financial statements that have been audited by public accountants, who express an opinion on whether the company has followed GAAP. The CICA is not subject to oversight by any SRAs or other public bodies, but is recognized in both securities legislation and corporate statutes.

In addition to the CICA, securities regulators also have the power to set accounting standards for public companies. For example, in 2000 the OSC introduced Rule 52-501 Financial Statements, which sets out content requirements for interim and annual financial statements.

The CICA has local institutes in each province and territory. These local institutes are responsible for the licensing and regulation of chartered accountants.

SROs

An SRO is an organization run by the industry it regulates and is recognized by one or more government authorities. SROs have the power to admit new members, perform compliance reviews, and enforce rules through a disciplinary process that can result in reprimands, fines, suspension, or termination of membership. Because legislation in some provinces requires firms to be SRO members, termination of membership can effectively force a firm to exit a business in those jurisdictions.

The Investment Dealers Association is responsible for the market conduct and capital adequacy of its member firms.[6] Its regulatory functions include:

- screening investment advisors employed by member firms, and overseeing professional standards and educational programs for industry employees;
- auditing investment dealers on a periodic basis to ensure that firms are maintaining adequate capital. If a firm cannot meet its minimum capital requirement, the IDA can require action to correct the deficiency or it will suspend the firm's trading privileges;
- reviewing the procedures that member firms follow to supervise the handling of client accounts;
- investigating complaints against a member firm or one of its employees. The IDA has the authority to prosecute individuals and firms suspected of wrongdoing and, where fault has been proven, to impose penalties in the form of reprimands, fines, suspensions, and expulsion.

In three provinces (Ontario, Alberta, and BC) the IDA registers individual representatives on behalf of the commissions in the provinces. In all other jurisdictions, individual representatives of IDA firms must register with both the provincial securities regulator and the IDA, except in Quebec where individuals register with the Montreal Exchange in addition to the IDA. In addition to its regulatory role, the IDA speaks on behalf of the securities industry on public policy and industry issues. It also plays a role in encouraging Canadians to participate in capital markets through investor education. The IDA has an arbitration program for settling customer disputes with its members for amounts under $100,000.

The IDA describes itself as a "decentralized national organization." It operates through a network of national and regional committees, and its structure includes ten district councils across Canada. Traditionally, the IDA's role as an SRO was informal, but now some SRAs have formally recognized it. In 1997 the IDA took over the member regulation function of the TSE and that of the CDNX in 2000.

The recently established Mutual Fund Dealers Association (MFDA) is taking on responsibility for the market conduct regulation of mutual fund dealers in all provinces except Quebec. Currently, it is recognized as an SRO by the commissions of Alberta, BC, Ontario, and Saskatchewan.

Market Regulation Services (MRS) was recently established as a non-profit subsidiary of the Toronto Stock Exchange (TSE) to take over the TSE's SRO function. It is co-owned by the IDA. Its mandate is to develop, administer, monitor, and enforce market integrity and market quality rules applicable to trading. This mandate entails functions such as:

- assessing and approving new applicants for listing;
- regulating listed companies against listing standards;
- surveillance of market activity;
- investigating irregular activity;
- conducting trade desk reviews of participating organizations;
- developing TSE trading rules and listing standards;
- enforcing provisions of securities legislation applicable to the markets and trading rules;
- conducting background checks of directors, officers, and controlling shareholders;
- assessing applicants for acceptance as participating organizations.

MRS was created as part of the restructuring of the TSE from a non-profit corporation owned by its membership to a for-profit publicly owned company. The establishment of MRS was intended to address the governance concerns of a for-profit company that is responsible for its own regulation by separating the regulatory function from its for-profit activities. MRS is also responsible for the regulation of the Canadian Venture Exchange (CDNX), which the TSE recently acquired. MRS will take on responsibility for the Canadian Quotation and Trade Reporting System (CNQ) once it becomes operational. The CNQ will replace the function of the Canadian Dealer Network, which provided quotes on micro-caps. Under new rules for Alternative Trading Systems (ATS), MRS will be a regulation service provider for ATSs.

When the Montreal Exchange (ME) demutualized, it established a separate department called Regulation Division (RD) to oversee its futures and options markets and its approved participants. The ME is recognized as an SRO by the QSC, and it is responsible for individual registrants on behalf of the QSC. While interest and equity linked derivatives are traded on the ME, the Winnipeg Commodities Exchange (WCE), which is recognized as an SRO by the MSC, handles trading in agricultural futures and options.

The Canadian Derivatives Clearing Corporation (CDCC) is a subsidiary of the ME, which is responsible for issuing, clearing, and guaranteeing exchange-traded interest rate and equity derivatives contracts. It also provides clearing, settlement, and administrative services to the Winnipeg Commodities Exchange (WCE) and the WCE Clearing Corporation. It is recognized as an SRO by the QSC.

The Canadian Depository for Securities (CDS) is responsible for the depository, clearing, and settlement services of securities. It also manages the System for Electronic Document Analysis and Retrieval (SEDAR), which enables securities dealers to file documents with, and remit fees electronically to, the provincial securities regulators. SEDAR also makes documents available to the public. CDS also recently began operating the System for Electronic Disclosure by Insiders (SEDI), through which insiders must file trading reports. CDS is owned by major Canadian banks and by the members of the TSE and IDA. It is recognized as an SRO by the OSC and QSC.

NASD Regulation Inc. (NASDR) is a US SRO that has recently taken on a regulatory role in Canada. In the US, it is responsible for regulating member firms of the National Association of Securities Dealers (NASD) and the Nasdaq Stock Market. NASDR's responsibilities in the US include:

- Education, registration, and testing of securities professionals;
- On-site examinations of securities firms to determine their compliance with federal securities laws, as well as NASD rules;
- Surveillance of the Nasdaq Stock Market;
- Review of advertising and sales literature as well as underwriting arrangements in connection with new securities offerings; and
- Cooperative programs with government agencies and industry organizations to solve problems affecting investors, public companies, and securities firms.

NASDR is subject to oversight in the US by the Securities and Exchange Commission (SEC). In Canada, it regulates direct trading on NASDAQ by securities firms located in Montreal.

The Canadian Investor Protection Fund (CIPF) is a subsidiary of other Canadian SROs (the IDA, the TSE/CDNX, and the ME). The CIPF covers customers' losses of securities, cash balances, and certain other property such as segregated insurance funds, that result from the insolvency of a member. In 1995, the CIPF introduced standards, which cover activities such as record-keeping, capital requirements, internal controls, insurance coverage requirements, and regulatory reporting requirements. It now reviews the regulatory activities of its owners to ensure compliance with its standards through field audits of approximately ten percent of member firms annually. The CIPF reviews all monthly, quarterly, and annual financial reporting of member firms. It also reviews all deficiency letters issued by SROs to member firms, and member responses, to ensure consistency and that all deficiencies have been addressed appropriately. The CSA has mandated the CIPF to conduct oversight of sponsoring SROs such as the IDA.

Oversight—What Does It Mean?

The description of the Canadian securities system in the last chapter noted the various oversight roles that SRAs exercise over SROs. But what exactly does oversight mean? To provide a clear picture of the Canadian securities regulatory landscape, this section will offer some insight into oversight roles and how they have recently evolved.

On the oversight of exchanges, a 2000 IMF report on the Canadian financial sector noted,

> "The securities regulatory agencies (SRAs) have broad oversight powers in relation to exchanges and secondary markets. The SRAs have the power to review any changes in rules or by-laws of the exchanges….While the securities commissions routinely review changes to exchange rules and bylaws, a more general program reviewing exchange regulatory activities is a new development. The OSC has only recently established an infrastructure for exchange oversight and has commenced such a review of the Toronto Stock Exchange (TSE). In British Columbia, the British Columbia Securities Commission has reviewed the Vancouver Stock Exchange in the last few years."[7]

The above quote suggests there has been some evolution in the oversight of the exchanges toward a much more elaborate role for the commissions. Some insight into what oversight now means can be drawn from a memorandum of understanding (MOU) between the OSC, ASC, and BCSC, which sets out the terms of oversight for the Canadian Venture Exchange (CDNX) that were in effect after the exchange restructuring. Under the MOU, the OSC exempts the CDNX from recognition as a stock exchange in Ontario as long as the ASC and BCSC exercise oversight as lead regulators, which entails:

- the review of information filed by CDNX on financial and operational matters and significant changes to operations;
- the review and approval of changes to CDNX by-laws, rules, policies, and other regulatory instruments in accordance with the procedures;
- the periodic examination of CDNX functions, including:
  - corporate finance policies: policies relating to minimum listing requirements, listing or tier maintenance requirements, sponsorship, and continuous disclosure
  - trading halts, suspensions, and delisting procedures
  - surveillance and enforcement: procedures for detection of non-compliance and resolution of outstanding issues
  - corporate governance procedures, including policy and rule-making process
  - risk management and computer systems.

More recently, an MOU has been published by securities regulators that designates the OSC as the lead regulator for MRS. Other provincial regulators with oversight responsibility will be known as "recognizing regulators." This MOU is more vague than the one concerning the CDNX, but it notes that the purpose of the oversight program is to ensure that MRS meets appropriate standards for regulation including:

- fair access to marketplaces
- fair representation of marketplaces in corporate governance
- systems and financial capacity to carry out prescribed regulatory functions
- market integrity through the adoption of rules that prohibit unfair trading practices, and the monitoring and enforcing of these rules
- compliance with the terms and conditions of the recognition of MRS and related undertakings.

A speech by Toni Ferrari at the 1998 annual OSC Dialogue Conference suggests that oversight of the IDA has also recently evolved. The IDA was formally recognized as an SRO by the OSC in 1995. Recognition was conditional on a number of factors, including the requirements that the IDA maintain adequate staff resources to perform its compliance and enforcement functions, and that it keep its trade association and lobbying activities separate from its self-regulatory operations. The OSC's oversight of the IDA has three components:

1) Reporting requirements: The IDA must report to the OSC certain situations involving the non-compliance of its members and material changes in its financial or operational compliance programs or enforcement programs. It must provide copies of notices to members and interpretations of rules. On an annual basis, the IDA must provide its budget, audited financial statements, annual report, and a self-assessment of its performance in carrying out its regulatory responsibilities. On a regular basis, the IDA must report on its investigations and complaints.
2) By-law review: All new rules or rule amendments must be approved by the OSC and published for comment.
3) Compliance examinations: The OSC can undertake compliance reviews to ensure that the IDA has the appropriate procedures and resources to conduct its regulatory functions, and that its regulatory functions are carried out in a manner that results in the appropriate and consistent enforcement of Ontario securities legislation and IDA rules. Initially, the OSC examinations were conducted on a piecemeal basis, such as a sample review of IDA compliance and enforcement files. However, Ms. Ferrari indicated in her speech that comprehensive compliance examinations would be conducted in the future. She also noted the OSC's intention to examine IDA members directly on a very selective basis to compare its results with those of the IDA.

Multiple Overseers

Canadian SROs are generally subject to multiple oversight by SRAs. In 2000, the Canadian securities exchanges restructured themselves. All senior equity trading migrated to the TSE, derivatives trading migrated to Montreal, and junior stocks to the new CDNX. Prior to this restructuring, the exchanges of Vancouver, Alberta, and Winnipeg specialized in junior stocks, but some junior equities traded on the ME and the TSE's over-the-counter (OTC) board. After the restructuring, the ME initially retained some junior equity trading, which has since been transferred to the CDNX.

Before the restructuring, SRAs generally left oversight responsibility for each exchange in the hands of the SRA in the province in which the exchange was located. The restructuring lead to much more complex oversight structures.

As noted earlier, an MOU was agreed upon by the OSC, BCSC, and ASC for the oversight of the CDNX. Under the MOU, the ASC and BCSC took responsibility as lead regulators for the CDNX, but the OSC played a significant role. The CDNX's reporting requirements to the OSC were quite extensive (e.g. copies of by-laws, policies, and regulatory instruments). All documents submitted for approval to the lead regulators also had to be submitted concurrently to the OSC. The OSC also received copies of examination reports from the lead regulators. The MOU allowed the OSC, when it had specific concerns, to request that the lead regulators conduct examinations of CDNX offices in Ontario. In addition, the OSC participated in an Oversight Committee. The ASC and BCSC agreed to a similar MOU with the MSC and then another with the QSC when the junior equities on the ME migrated to the CDNX.

After the TSE acquired the CDNX, it applied to the ASC, BCSC, MSC, OSC, and QSC for MRS to be recognized as an SRO for both the TSE and CDNX. In response to this application, these five regulators have developed a new MOU for the oversight of MRS.

Under the new MOU, the OSC, QSC, ASC, BCSC, and MSC will be recognizing regulators for MRS, with the OSC acting as the principal regulator. As noted earlier, the MOU is vague on details, but it indicates that information and rules must be filed with each of the commissions. Such rules will require the approval of all the commissions, but the commissions will review them jointly. The OSC will develop an examination program in consultation with the other recognizing regulators and co-ordinate staffing for examinations.

Only the QSC is currently exercising oversight of the ME. The OSC has exempted the ME on an interim basis from the requirement under the Ontario *Securities Act* to be recognized as a securities exchange as well as the requirement under the *Commodities Futures Act* to register as a commodities exchange. This interim exemption will be in effect until the OSC either recognizes it as a securities exchange and registers it as a commodity futures exchange or exempts it. It appears the OSC may be leaning towards recognition, as its 2001 Annual Report notes that work is continuing towards recognition of the ME as an SRO.

Multiple oversight also exists for the IDA. Three provinces (Alberta, BC, and Ontario) have formally recognized the IDA. The commissions in these provinces, as well as the QSC and NSSC, have established MOUs with the IDA that specify:

- responsibility for, and the extent and frequency of, examinations of the IDA
- IDA reporting requirements; and
- the process through which IDA by-laws are approved by the commissions.

Some SRAs that have not formally recognized the IDA require notice of changes to IDA by-laws for "non-disapproval," while others merely require that IDA by-laws are consistent with provincial or territorial legislation, regulations, and rules. The CSA has established a regulatory oversight group to review IDA rules and organize coordinated operational reviews.

Although all the derivatives trading of the TSE has been moved to the Montreal Exchange, the CDCC is under the joint oversight of the QSC and OSC. CDS is under the oversight of both these commissions and the Bank of Canada as well (because it oversees the DCS). CDS's website notes that it also works with the ASC and BCSC as needed, and reports to the CSA as required.

Forces of Change

With the structure of securities regulation mapped out, the next step is to examine the developments reshaping the securities market industry. Technological change, governance, globalization, and the demutualization of exchanges are factors playing a significant role. These developments have elicited various regulatory responses that are outlined further on in this paper. They also form the basis of an analysis in this paper of how they impact on the relevance of the various regulatory functions undertaken by SRAs.

The Information Age

The extent of change in securities markets, facilitated by developments in information technology and communications, are far-reaching. In this section, the focus is on four major developments pertinent to the issue of regulation.

1) **Markets have become more accessible to retail investors**

   Prior to 1984, brokerage fees were a significant barrier for small Canadian investors interested in owning stocks. Deregulation eased this constraint as it lead to the emergence of discount brokers, but the rise of the Internet as a channel for trading facilitated even sharper reductions in brokerage commissions. According to a TSE survey undertaken in 2000, 62 percent of TSE investors made on-line investments. TSE surveys show that average commissions charged by the largest ten online trading firms dropped from over $50 in 1996 to under $20 in 1999. These studies note that three quarters of shareholders acknowledge that technology is making it easier for them to buy investments. In addition to secondary trading, retail investors can now access some initial public offerings (IPOs) through on-line brokers.

2) **Investors have easier access to information at their fingertips**

   For investors with Internet access, a wealth of information is available through on-line brokers, portals, and even the provincial regulators and SROs themselves. Table 4 lists information available at no charge through commercial websites such as Yahoo.com. Among other things, the Yahoo website includes delayed quotes, historical charts on price and volume, recent news stories, financial data, and analysts' ratings. The exchanges themselves provide similar information. Real-time quotes are available through online brokers and commercial services. Investors can use SEDAR, which was discussed earlier, to download regulatory filings by issuers, including press releases, financial statements, prospectuses, and annual information forms. The recently established SEDI provides up-to-date information on insider trading. Issuers themselves often have websites with corporate and financial information. Several news services providers, such as globeandmail.com, are also sources of information. For mutual fund investors, there are sites like Morningstar.ca where investors can analyze a fund's performance and get information, such as major holdings and fees, about individual funds. Finally, websites of the provincial regulators and SROs, such as the IDA, provide information on the names of registered firms and individuals, as well as details of enforcement proceedings (allegations, decisions, and settlements). Regulators are also using their websites for investor education.

3) **Investors can more easily transact across borders**

   Under provincial statutes, intermediaries selling securities to residents in a given jurisdiction must be registered by the provincial securities regulator. On-line trading has enabled some Canadians seeking lower commissions to circumvent provincial laws by setting up trading accounts in other countries, either by using a home address outside Canada or by finding an on-line broker unaware of, or willing to ignore, Canadian provincial laws. The OSC recently raised an allegation against three on-line brokers in the US, including a subsidiary of a Canadian bank, for executing trades on behalf of Ontario residents.

Table 4: Information Available Without Charge Through Yahoo on Nortel (NT)

Delayed (by 15-20 minutes) stock price info including last trade, bid/ask, day's range*
Daily volume (delayed)
Average volume
52 week price range
Historical price and volume charts (one day, five day, 3 month, 6 month, 1 year, 2 year, 5 year, maximum)
Earnings: earnings per share, price over earnings
Market capitalization
Dividends: dividends per share, yield, dividend date, ex-dividend date
Recent news (Business Wire, Reuters)
Expected earnings release dates
Summary of business operations
Number of employees
Names and compensation of principal officers
Shares: Beta, shares outstanding, size of public float, per share data (i.e. sales per share)
Financial statement data: balance sheet, income statement, cash flow
Valuation ratios (i.e. price to book)
Management performance ratios (i.e. return on assets)
Financial ratios (i.e. debt/equity)
Information on major competitors
Analyst Research: report abstracts, earnings estimates, target prices, history of analyst upgrades/downgrades
Insider trading
Institutional investor holdings

Source: Yahoo.com available at http://finance.yahoo.com/q?s=nt&d=1d
* Limited real time information is also available.

4) **New technologies are fostering more competition for traditional exchanges**
Over the last ten years, Alternative Trading Systems (ATS) have emerged in some jurisdictions, particularly the US,[8] as competitors to traditional exchanges. ATSs are privately operated electronic systems that perform the exchange functions of matching buy-and-sell orders and providing post-trade information. ATSs have not built a significant presence in Canada because securities legislation has restricted them from offering full trading services. New rules have recently been introduced to facilitate ATSs, which are discussed later in this paper.

4) **Technology is facilitating faster settlement of transactions**
A major initiative is underway in both the US and Canada to reduce the settlement time for securities transactions from the current three days (t+3) to one day (t+1). The expectation is that ultimately same-day settlement will become the standard.

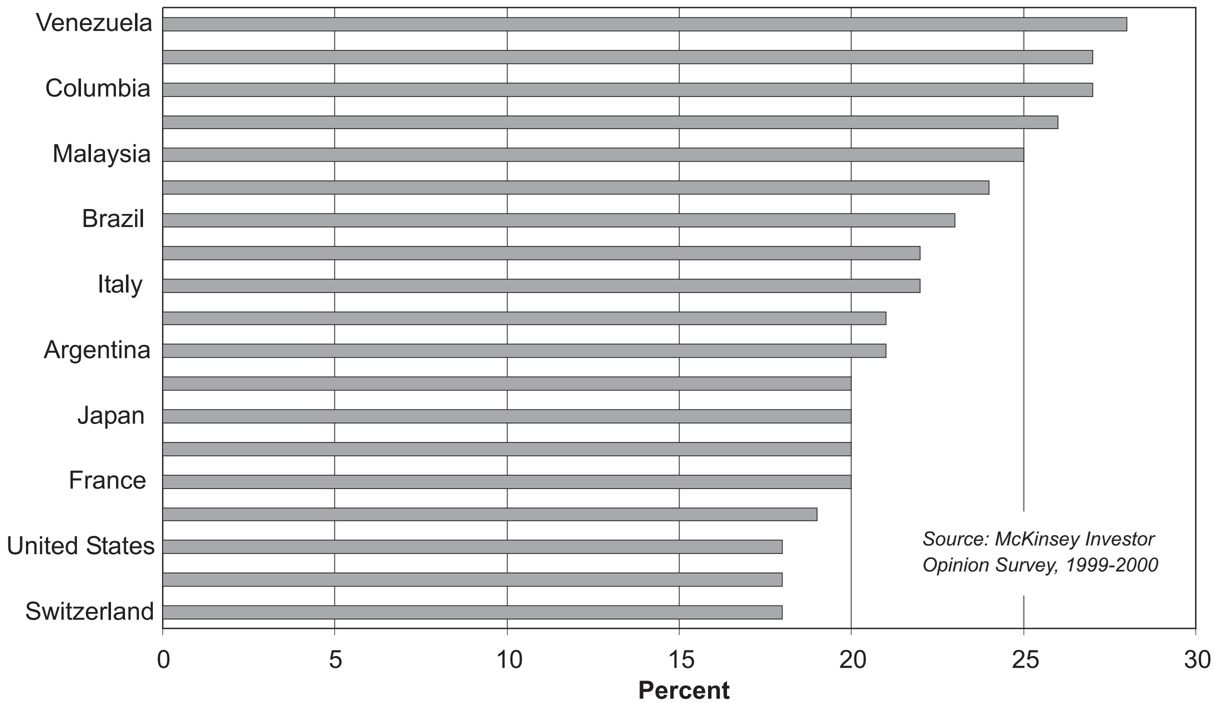
Governance

Public companies are required to meet governance standards under corporate statutes and, for TSE listed companies, to meet also the exchange's disclosure requirements and governance guidelines. Governance is intended to ensure the accountability of management to the owners of a public company, the shareholders. Increasingly, markets, regulators, and self-regulatory organizations are paying greater attention to the importance of corporate governance, both in Canada and elsewhere. Enron's collapse further increased attention on governance.

Governance and disclosure are mutually reinforcing. Timely and accurate disclosure of information by companies improves governance by allowing shareholders to use that information in reviewing management performance. Good governance practices contribute to ensuring the quality of information disclosure.

A study by McKinsey and Company found evidence of a link between the quality of governance and shareholder value. Surveys of investors in both developed and emerging market economies revealed that over 80 percent of investors were willing to pay

Chart 1: Premium that Investors are Willing to Pay for a Well-governed Company



a premium for shares in well-governed companies. As shown in Chart 1, the premium ranged from 18 percent in the US and UK to over 25 percent for some emerging market economies such as Indonesia and Venezuela. In addition, a new working paper describes evidence that investing in well-governed companies pays off. The study revealed that abnormally high returns could be generated by a portfolio of stocks in companies whose governance and shareholders' rights were relatively strong in comparison to management power.[9]

In 1994, the TSE Committee on Corporate Disclosure released the Dey report, which led to new TSE disclosure requirements and governance guidelines.[10] More recently, a Joint Committee on Corporate Governance sponsored by the TSE, CDNX, and CICA released the Saucier Report. The Committee's mandate was to recommend how Canada should respond to new governance requirements on the NYSE and NASDAQ that emerged in the US from the Blue Ribbon Committee on Audit Committee Effectiveness.

The Saucier report included an evaluation of how governance had changed since the new disclosure requirements and disclosure guidelines were implemented. It indicated that corporate governance practices had improved in many Canadian companies, with the key benefit of the new regime being that "it has resulted, in many cases, in a focused and explicit examination by boards of their roles, responsibilities and behavior" (Saucier 2001). However, based on a survey of current practices, the lack of a disclosure regime on the CDNX, and new developments in other jurisdictions, it concluded that there is room for improvement.

The report makes several recommendations to improve governance, including extending disclosure requirements to some CDNX companies, implementing modifications to the TSE guidelines, and making an independent board leader a listing requirement. The report reaffirmed its disclosure approach as opposed to the US practices of setting more prescriptive rules, arguing "Not only is disclosure preferable to regulation as a tool to change behavior, it is also appropriate. The evolution of capital markets has clearly shown that disclosure instills discipline and increases efficiency" (Saucier 2001). The report also recommended that the CSA, in cooperation with the sponsors of the report, develop a program to support and encourage ongoing research, analysis, and education in the area of corporate governance.

A clear sign of increasing corporate interest in governance is the Conference Board of Canada's annual conferences on the subject. There have now been two of these conferences, which emphasize educating appropriate decision-makers on corporate governance strategies. Awards are given to public companies that excel in governance.

A recent federal initiative to improve governance in Canada is the revamping of the *Canada Business Corporations Act* (CBCA) and its regulations. The new legislation includes amendments to improve shareholder rights by easing rules over their communication with each other and enabling them to make proposals and participate in decision-making.

Shareholder activism, with individual shareholders introducing motions for all shareholders to vote on, has become more prevalent. A recent example that has emerged since Enron's collapse is shareholder motions to impose limits on consultancy work by a firm's auditors.

The federal government recently raised the foreign content limit for registered retired savings plans and pension funds from 20 percent to 30 percent. The foreign content limit is detrimental to good governance to the extent that Canadian investors are less powerful relative to management because of more limited choice of investment options. There have been calls for eliminating the foreign content rule altogether, and such a move would probably improve corporate governance in Canada more than any other conceivable initiative.

Exchange Demutualization

Prior to 2000, all the exchanges in Canada were non-profit companies owned by the exchange members. During that year, both the TSE and ME demutualized and became private for-profit companies. The CDNX initially remained a non-profit organization, but its status changed when it was acquired by the for-profit TSE.

These demutualizations are part of a global trend. World Federation of Exchanges' (WFE) 2000 member survey revealed that 45 percent of its members had demutualized, and another 39 percent had plans to do so. In addition to major exchanges that have demutualized, such as Nasdaq and the London Stock Exchange (LSE), junior exchanges, such as the Pacific Exchange in the US, have also taken this step. The pattern also holds true in emerging markets. For example, the Bombay Stock Exchange has announced its intention to demutualize. Some of the new for-profit exchanges have remained privately owned, while others, such as the Australia Stock Exchange, are publicly owned. In some cases, publicly owned exchanges trade on themselves.

The most commonly cited reasons for the demutualizations relate to competitive pressures. For-profit status is seen as a way of creating the right incentives for exchanges to become more efficient and competitive. It also facilitates greater access to the capital needed to invest in more efficient trading platforms and enables exchanges to participate effectively in strategic alliances and mergers.

Moving Towards Global Capital Markets

A review of all the factors contributing to the globalization of capital markets would be a paper in itself, if not a book. Hence, this paper will focus on a few key themes. It will outline evidence (trends in foreign listings and the emergence of global exchanges) on the extent to which markets are integrating globally. It will describe how regulation has emerged at the international level and discuss what barriers exist to further global integration.

Foreign Listings

Table 5 shows the extent to which foreign listings are prevalent on the ten largest stock exchanges by market capitalization, as well as the CDNX, the Bermuda Stock Exchange, and the Luxembourg Stock Exchange. For the ten largest exchanges, the percentage of foreign listings varies significantly. For three exchanges, foreign listings amount to less than three percent of the total. At the other extreme, foreign listings make up approximately 40 percent of the Amsterdam and Swiss exchanges' totals. Neither Canadian exchange has attracted significant foreign listings. Only 10 percent of NASDAQ's listings were foreign in 2000, but almost half of its new listings in that year were foreign.

As shown in Table 6, 214 issuers are inter-listed on a Canadian and US exchange, an increase of 20 percent since 1991. The number of inter-listed Canadian-based issuers has increased by over 50 percent, while the number of US and foreign-based companies inter-listed in both jurisdictions has declined over 43 percent. Some Canadian public companies have chosen not to seek a Canadian listing at all. Data is not available on the total number, but a TSE research study found that 15 Canadian companies listed on the NYSE, the NASDAQ National Market, or the NASDAQ Amex did not have a TSE listing, although eligible. When NASDAQ launched NASDAQ Canada in 2000, its press release noted that 42 of the 146 Canadian companies listed on NASDAQ were not listed elsewhere.

Canadian companies have also been listing in exchanges outside North America. For example, Manulife is listed on the exchanges of Hong Kong and the Philippines, in addition to the TSE and NYSE. A recent *Globe and Mail* article indicated that 22 Canadian companies have listed on the London Stock Exchange (LSE), including three on its Alternative Investment Market (AIM) for junior stocks. According to the article, the LSE is pursuing more listings from Canada and several other countries (Blackwell 2001).

Table 5 includes Luxembourg and Bermuda because in these two jurisdictions foreign listings

Table 5: Foreign Listings as a Percentage of Total (2000)

Exchange	*Total Foreign*	*Total*	*%*	*New Foreign*	*Total*	*%*
NYSE	433	2,862	15.1	60	122	49.2
Nasdaq	488	4,734	10.3	119	605	19.7
Tokyo	41	2,096	2.0	3	206	1.5
London	448	2,374	18.9	33	399	8.3
Euronext Paris	158	966	16.4	8	84	9.5
Deutshe Bourse	245	989	24.8	18	153	11.8
Switzerland	164	416	39.4	5	28	17.9
TSE	42	1,421	3.0	2	116	1.7
Italy	6	297	2.0	1	49	2.0
Euronext Amsterdam	158	392	40.3	3	12	25.0
Cdnx	104	2,598	4.0	N/a	475	N/a
Burmuda	25	47	53.2	4	4	100
Luxembourg	216	270	80.0	8	13	61.5

Source: WFE Annual Report 2000

Table 6: Issuers Inter-listed on Canadian and US Exchanges

	Cdn Based	*US/Foreign Based*	*Total*
Nov 2001	191	23	214
Nov 1991	126	53	179

Source: TSE Review

outnumber domestic ones. It shows that attracting foreign listings appears to be a market niche for some exchanges. The most recent report of the WFE suggests that its members are increasingly turning to foreign listings for growth. A survey conducted by the WFE indicates that 54 percent of its members expect that the largest increase in listings over the next two years will come from foreign issuers. Creating a regulatory environment more attractive to foreign issuers was part of the motivation behind a recent OSC concept paper that proposed issuers listing in Canada be allowed to use either US or international accounting standards (IAS) for Canadian filings.

The Emergence of Global Stock Markets

In the past, stock exchanges, although they attracted foreign listings, operated in a single jurisdiction. However, some exchanges are seeking to build global platforms, either by setting up new operations in other countries or exploring alliances and mergers.

NASDAQ emerged in the US as a screen-based market, structured to allow multiple market participants to trade stocks. Traditionally, the market participants were dealers, but with the emergence of ATSs, electronic communications networks also handle orders. NASDAQ has recently set up subsidiary operations in Canada, Hong Kong, Japan, and Europe, and has plans to enter other countries. Its long-term objective is to build a global, 24-hour-a-day securities market that links companies with investors around the world. NASDAQ Europe is, to date, the most ambitious of NASDAQ's international operations. Regulated by Belgium authorities, it operates as an exchange across the EU.

NASDAQ's current operations in Canada are on a much smaller scale. They consist of NASDAQ terminals placed with Montreal securities dealers to trade NASDAQ listed securities. NASDAQ's Canadian operations are in the first of three phases. Under Phase Two, Canadian companies will be able to list solely on NASDAQ Canada. Phase Three will link NASDAQ Canada to its global securities market.

In June 2000, the TSE announced its intention to participate in discussions to establish a Global Equity Market (GEM) Alliance. The other participants are the New York Stock Exchange (NYSE), Euronext (Paris, Amsterdam, and Brussels) and the exchanges of Tokyo, Hong Kong, Australia, Mexico, and Sao Paulo. The objective of these discussions is to explore the feasibility of creating an around-the-clock trading mechanism by interconnecting the trading systems of each participating exchange. Concurrently with the GEM announcement, the TSE announced that it is exploring a bilateral alliance with the NYSE.

Euronext was formed by combining the Amsterdam, Brussels, and Paris exchanges. Euronext recently acquired the London International Financial Futures and Options Exchange (LIFFE) and plans to build a global derivatives platform based in London. There was a failed attempt by the LSE and the German Borse to merge, and the operator of the OM Stockholm Exchange unsuccessfully tried to acquire the LSE through a hostile takeover. According to WFE's 2000 member survey, 81 percent of its members were in talks with each other.

Exchanges in different countries are entering agreements to facilitate cross-border links. For example, the Australian Stock Exchange (ASX) and the Singapore Exchange (SGX) have an arrangement that allows co-trading between the two in a limited number of securities. The ASX also has linkages with US markets that enable Australian investors to trade, settle, and hold a range of NYSE and Nasdaq listed securities, as well as MOUs with exchanges in several other countries, intended to be used in building additional links.

The 2000 WFE survey indicates that 84 percent of its members believe a truly integrated global 24-hour market will become a reality, with 27 percent predicting it will happen within three years.

The Emergence of International Regulation

Outside of the EU, where EU Directives have played a role in shaping domestic legislation for financial markets, capital market regulation has been set and carried out at the national or, in Canada's case, provincial level. However, the international community has recently taken on a role in this area, driven to a large extent by the need for cross-border regulatory cooperation as well as by the Asian and LTCM crises in the late 1990s.

Securities regulators participate in the International Organization of Securities Commissions (IOSCO), which promotes regulatory standards and serves as a forum of information exchange. The OSC and QSC are both ordinary members, which gives them voting rights and makes them eligible for the Executive Committee (the committee responsible for decisions and actions). The ASC and BCSC are associate members, which do not have voting rights and are ineligible for the Executive Committee. SROs participate as affiliate members. David Brown, the Chair of the OSC, is currently the Chair of the Technical Committee, which reviews major regulatory issues related to international securities and futures transactions and coordinates responses to these concerns. In 1998 IOSCO introduced its Objectives and Principles of Securities Regulation, which now serves as the main international standard for securities regulation. The Principles (see Table 7) cover various structural aspects of securities regulation such as the adequacy of powers and resources of securities commissions, and regulatory cooperation with other authorities.

The International Monetary Fund (IMF) has integrated assessments of the IOSCO Principles into its surveillance work. It has developed a Report on Standards and Codes (ROSC) module for assessing the securities regulation of its members on a five-year cycle. In 2000, the IMF released the first ROSC based on the IOSCO Principles, which consists of an assessment of Canada's securities regulation. A further 15 ROSCs of adherence to IOSCO Principles have since been released. Some international bodies, such as the Financial Stability Forum (FSF), have explored linking a jurisdiction's market access to adherence to IOSCO and other international standards. The FSF has also contemplated regulatory actions against financial institutions that have operations in jurisdictions with inadequate adherence to international standards.

On a limited basis, securities regulators from different countries have engaged in coordinated surveillance exercises. In both 2000 and 2001, IOSCO sponsored "surf days" in which securities regulators from at least 18 different countries co-ordinated efforts to uncover securities fraud on the Internet by visiting websites.

The WFE also takes on a regulatory role for its members. Membership is contingent on adherence to WFE Principles. The WFE's Secretariat reviews applications, which is followed by a due diligence review process carried out by two member exchanges. Members must also agree to further disclosure and monitoring.

Generally, the international efforts in securities regulation to date have complemented, rather than replaced, the activities of domestic securities regulators (i.e. by promoting cooperation).

Barriers to Globalization of Securities Markets

There appears to be a high degree of consensus among securities regulators that the shift towards globalization of securities markets is beneficial. In the 2001 OSC Annual Report, David Brown notes that "technological change and the convergence of global capital markets have created the ability to invest and raise capital wherever one chooses" (OSC 2001). A Report by the Committee of Wise Men on the Regulation of European Securities Markets summarizes the benefits to European integration to include, not only improving the allocation of capital in the European economy, but more efficient

Table 7: IOSCO Objectives and Principles of Securities Regulation

1	The responsibilities of the regulator should be clear and objectively stated.
2	The regulator should be operationally independent and accountable in the exercise of its functions and powers
3	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
4	The regulator should adopt clear and consistent regulatory processes
5	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.
6	The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, to the extent appropriate to the size and complexity of the markets.
7	SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
8	The regulator should have comprehensive inspection, investigation and surveillance powers.
9	The regulator should have comprehensive enforcement powers.
10	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.
11	The regulator should have authority to share both public and non-public information with domestic and foreign counterparts
12	Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.
13	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
14	There should be full, timely and accurate disclosure of financial results and other information that is material to investors' decisions.
15	Holders of securities in a company should be treated in a fair and equitable manner.
16	Accounting and auditing standards should be of a high and internationally acceptable quality.
17	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
18	The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
19	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.
20	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.
21	Regulation should provide for minimum entry standards for market intermediaries.
22	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
23	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.
24	There should be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
25	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
26	There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.

Table 7: IOSCO Objectives and Principles of Securities Regulation

27	Regulation should promote transparency of trading.
28	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
29	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
30	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk

Source: IOSCO www.iosco.org

intermediation of European savings to investment and a strengthening of the EU macro-economy.

Nevertheless, significant barriers impede global integration, including national regulatory structures and institutional arrangements.

Regulatory Barriers

While securities markets are becoming more globalized, there are impediments to its progress, with the largest being existing regulatory structures. A good example of this is the situation in the EU, which has an explicit objective of fully integrating its securities markets. It has put in place a legal framework to facilitate mutual recognition of issuers, investment firms, regulated markets, and other market participants. However, a recent report that assesses progress towards integration states, "Today there are about 40 public bodies in the European Union dealing with securities market regulation and supervision. Competences are mixed. Responsibilities are different. The result at the European level is fragmentation and often confusion.[11]" The report notes that almost everyone agrees that existing rules and regulations are implemented differently, resulting in inconsistencies in the same type of business to the detriment of competitive neutrality of supervision.

The EU situation shows that different regulatory structures act as barriers to entry, even when there is high-level political commitment to securities market integration. The barriers become even more significant between sovereign jurisdictions that are not part of an integrated political structure. Intermediaries in foreign jurisdictions are often barred from offering securities and other services to residents of a domestic jurisdiction in which it is not registered. For example, it would contravene provincial securities statutes for a mutual fund company located in the US to directly sell their funds to Canadian residents. Regulatory barriers also impede the ability of exchanges to operate globally. For example, in some countries, including the US, a foreign exchange cannot place terminals within that jurisdiction.

Limited steps have been taken to ease regulatory barriers between the US and Canada. In 2000, a CSA National Instrument was implemented that allowed US securities dealers to transact with their existing clients who are temporarily in Canada. Concurrently, the SEC and some state regulators began allowing Canadians, temporarily resident in the US, to transact on their tax-deferred retirement accounts. Also in 2000, Quebec facilitated the installation of NASDAQ terminals for some brokers in Montreal through a registration exemption.

The Multi-Jurisdictional Disclosure System (MJDS), implemented in 1991, is a joint-initiative between the CSA and SEC to reduce duplicative regulations in cross-border offerings and other filings. Under MJDS, public distributions of the securities of US issuers that meet specified criteria can be made in Canada on the basis of disclosure documents prepared in accordance with US securities laws (with certain additional disclosures). Similarly, Canadian issuers can use filings with a provincial regulator to meet filing obligations in the US.

The Canadian securities regulatory system is unique in that barriers exist across provinces. For example, a securities dealer registered in Alberta cannot offer securities in BC, unless registered in that province as well. Ms. Stymiest suggested in a speech that the Canadian system impedes the TSE from entering the type of linkage that the exchanges of Australia and Singapore have set up. She indicated that Canadian exchanges are not attractive for this type of arrangement, as the authorities in a foreign jurisdiction would be discouraged from having to negotiate with 13 separate Canadian jurisdictions. She argued that under the one agreement that does exist (the MJDS) not one US company has chosen to use it because it addresses too narrow a part of the problem of having to deal with multiple securities regulators. She also indicated that the cost and complexity of the Canadian system discourages foreign companies from listing in Canada.

The BCSC concept paper on deregulation outlines a concept for issuer regulation that includes allowing foreign issuers to comply with Canadian disclosure requirements by filing documents prepared under the rules of their home jurisdiction. Another concept discusses allowing Canadians to do business with foreign registrants that do not actively solicit business in Canada.

Institutional Barriers

In addition to regulatory barriers, there is a wide range of institutional barriers to global securities markets integration. Differences in legal systems, such as bankruptcy regimes or definitions of collateral, are a significant barrier. Another is different accounting standards. Institutional barriers can also include external trade barriers, ownership rules, and taxation regimes. Cultural differences, such as attitudes towards corporate governance, can also act as barriers. While these barriers continue to impede globalization, some progress has been made towards dismantling them.

Demutualization has played a significant role in this respect. It has facilitated recent mergers and acquisitions, such as the recent takeover of LIFFE by Euronext. Such activity would have been much more difficult under the previous mutual structures. However, demutualization has not completely removed barriers to cross-border consolidation. Some exchanges have broad ownership rules that make takeovers difficult. For example, the ownership rules put in place when the TSE demutualized prevent anyone from owning more then five percent of its shares. In addition, a takeover would require regulatory approval for the TSE to continue operating as a recognized exchange.

Progress is also being made towards addressing differences in accounting standards, although slowly. The International Accounting Standards Committee (IASC) has established a set of International Accounting Standards (IAS). It is working towards the international convergence of accounting standards by developing IAS into a single set of internationally accepted accounting standards. In 2000, IOSCO endorsed IAS as a standard that could be accepted by all regulators for cross-border offerings. In their final report, the Committee of Wise Men on the Regulation of European Securities Markets called for the adoption of IAS across the EU by 2003. In 2000, the SEC released a paper to solicit comments on whether it should modify its requirement that all financial statements prepared under standards other than those of the US Financial Accounting Standards Board (FASB) be accompanied with a reconciliation to those standards.[12]

The CSA released a concept paper in 2001 that discusses permitting the use of foreign GAAP, such as US or international standards, for all securities filings by both foreign and domestic issuers, possibly without any reconciliation to Canadian GAAP. Currently, Canadian issuers are required to use Canadian GAAP for all financial statement filings. Foreign issuers are allowed to use the GAAP of their home jurisdictions but must file reconciliations to Canadian GAAP for financial statements in prospectuses. Relaxing reporting requirements is proposed as a way of making Canada more attractive to foreign issuers and of easing the cost burden for Canadian issuers who prepare sets of financial statements to both Canadian and foreign standards. In addition to participating in international efforts to converge standards, the CICA has also taken steps towards harmonizing with US standards. For example, the CICA and FASB recently implemented new standards for accounting for business combinations that effectively create a common standard across both jurisdictions.

Regulatory Responses to the Forces of Change

Securities regulators have identified a variety of new issues that have emerged from the trends outlined in the previous section. The largest concerns and regulatory responses are outlined below.

Demutualization and Conflicts of Interest

The IOSCO Technical Committee recently released a paper on exchange demutualization that notes that a major concern is that, in a demutualized exchange, the profit motive increases the scope and intensity of the conflicts of interest already inherent within it (IOSCO 2001). Conflicts exist in a non-profit exchange because the commercial interests of its members may be negatively affected by rules set by the exchange in the public interest (IOSCO 2001). Introducing a profit motive may aggravate these conflicts by creating incentives for the exchange to minimize the resources devoted to regulation (IOSCO 2001). In addition, a for-profit exchange may be less willing to take enforcement actions against customers who are a direct source of income (IOSCO 2001).

Another potential conflict identified by IOSCO arises if an exchange is responsible for the regulation of its competitors. If an exchange is the only provider of a particular required service, its monopoly position will increase its ability to influence its competitors (IOSCO 2001).

Table 8 lists the responses that IOSCO has identified for addressing these conflicts. Some of these responses have been used for the Canadian exchanges. As noted earlier, both the TSE and ME concurrently restructured themselves with demutualization so that regulatory services were separated from the other operations of the exchanges. The ME created a separate division governed by a special committee appointed by the ME Board. The Board itself is composed in accordance with the following rules: at least 50 percent are individuals who are not related to any approved participant and a maximum of two members can be officers of the ME.

The TSE set up a separate subsidiary, MRS, to take on responsibility for the regulation of the TSE, CDNX, and any ATSs that choose MRS as a regulatory service provider. This new subsidiary is jointly owned by the IDA and operated on a non-profit basis. The subsidiary has its own Board that can vary in size between three and 25 directors, but will initially have 11. The initial board will include the president of MRS, five independent directors, and five non-independent directors. Both the TSE and IDA will each select two non-independent directors, and the fifth will be an individual experienced with the public venture capital market, who is selected jointly by both organizations. At all times, the Board will include one member representative of

Table 8: Regulatory Responses to Demutualization Conflicts

Corporate governance requirements, such as requirements for "public directors" to increase the likelihood that the board takes its responsibilities for the integrity of the regulatory process seriously
A clear statutory statement of the obligations of the exchange to provide a fair and efficient public trading market
Rigorous regulatory oversight
Enhanced transparency regarding the decisions of the exchange, through requirements to publish rules, actions and decisions or otherwise
Mechanisms to enhance exchange accountability to regulators and the public
Functional separation of the commercial activities of the exchange from its regulatory functions: from dividing lines of authority and accountability within a single firm, to a transfer of some or all regulatory responsibilities to the exchange's regulator or another body

Source: IOSCO www.iosco.org

ATSs, who will initially be an independent director. ATSs that exceed ten percent of market share will be able to appoint non-independent directors.

On the TSE Board itself, half of its members are independent of the exchange's former members. The TSE has also adopted the policy of following its 14-point best practice guidelines for corporate governance, although it is not yet a listed company.

ATSs—Competition and Fragmentation

Securities regulators in many jurisdictions, including Canada, have welcomed the emergence of ATSs as a new source of competition to the traditional exchanges, thus providing benefits such as lower trading spreads. However, despite the benefits of competition to market participants, the fragmentation of buying and selling interest among different securities markets and trading systems presents regulators with concerns over how this dispersal could impair the process of price-formation, the level of transparency, and the accessibility to best available prices by all participants.

The issues are more relevant to some jurisdictions than to others. IOSCO's Technical Committee recently released a paper, Transparency and Market Fragmentation, that notes the extent of competition and fragmentation in trade execution services vary considerably, both across markets and countries. It also indicates that it is difficult to predict whether market forces will sustain the recent increase in competition and fragmentation over the medium term (IOSCO 2001).

Regulatory responses to these issues differ across jurisdictions. In the US, where ATSs already have a significant presence, the SEC responded by adopting Regulation ATS. Prior to 1998, ATSs were regulated as broker-dealers. Under the new rules, ATSs can register as an exchange or as a broker-dealer subject to Regulation ATS. An ATS that registers as a broker-dealer must become a member of an SRO. If an ATS exercises self-regulatory powers, it must register as an exchange. The SEC retains the power to direct a broker-dealer registered as an ATS to register as an exchange, if it decides that it is in the public interest.

ATSs that register as broker-dealers face new requirements under Regulation ATS. These requirements expand as trading volume grows. For an ATS with less than five percent of trading volume in all the securities it trades, the new regulatory requirements consist of filing and record-keeping obligations. If it exceeds this threshold, it must integrate its activities into the national market system by linking with a registered exchange to disseminate best-priced orders for securities. ATSs that achieve greater than twenty percent of trading volume are subject to fair access and operational capacity requirements. In trying to achieve a level playing field between recognized exchanges and ATSs that operate as broker-dealers—in addition to the new requirements under ATS—the SEC also took steps to reduce the regulatory burden on exchanges. For example, it eased certain filing requirements. It also introduced a "pilot trading system rule" to allow exchanges to introduce new trading platforms without prior approval of the SEC to facilitate innovation by exchanges that compete with ATSs.

The UK Financial Services Authority (FSA) has taken a significantly different approach. Under its current regulatory regime, market infrastructure providers (MIPs) may choose to operate as recognized bodies, responsible for regulating their markets, or as authorized firms. An FSA discussion paper notes that non-exchange trading systems have played a smaller role in Europe than in the US, largely because most exchanges have already introduced electronic order books. However, significant opportunities do exist for non-exchange providers, and some UK authorized firms execute a significant portion of retail business, as principals, on their own automated dealing systems.

In response to feedback, the FSA released another paper in which it announces that it would not be putting forward new regulatory proposals for the time being. However, the paper notes that changes in market structure continue to raise issues about arrangements for market regulation and that revisions may be necessary. The FSA will focus on developing a regulatory approach at the EU level, which it believes should be "on a proportionate and graduated basis that properly weighs risks and takes into account the benefits of competition and innovation."[13]

In reaching its conclusions, the FSA agreed with respondents to its first paper that it should take into account the extent to which commercial forces already ensure adequate standards are in place in determining an appropriate level of regulation.

In contrast to the FSA and SEC approaches, the CSA has responded by introducing more rules for all marketplaces, including a new set of trading rules for marketplaces in addition to rules to facilitate ATSs. According to the CSA, the ATS rules are intended to "create a framework that permits competitive operation of traditional exchanges while ensuring that trading is fair and transparent."[14] In fact the set of rules do more than provide a regime for ATSs that addresses fragmentation and access issues: it includes far-reaching regulatory requirements. The rules also extend the commissions' scope into fixed income markets.

Under National Instrument 21-101, marketplaces (exchanges, quotation and trade reporting systems, and ATSs) are subject to regulatory requirements for information consolidation, market integration, reporting and record keeping, and systems capacity. An ATS can operate as a member of an exchange, in which case it must comply with the rules of the exchange. Alternatively, it can register as a dealer, which entails becoming a member of an SRO.

21-101 outlines specific requirements for exchanges, recognized quotation and trading systems, and ATSs. To address fragmentation, the rules require all marketplaces to provide information to a designated information processor that in turn will disseminate the information. The rules also cover requirements for record keeping, clearing and settlement, and the capacity, integrity, and security of marketplaces.

Requirements specific to recognized exchanges and recognized quotation and exchange systems include written standards of access, a prohibition on imposing trading restrictions on other marketplaces, and public interest rules. Rules specific to ATSs include the following: the particular securities that are eligible for trading, the confidentiality of trading information, a prohibition on imposing trading restrictions on other marketplaces, and risk disclosure requirements.

Along with 21-101, the CSA also introduced National Instrument 23-101, which sets out trading rules for recognized exchanges and ATSs. Prior to 23-101, exchanges were subject only to their own rules, although new rules and amendments had to be approved by provincial regulators. The new rules cover manipulation and fraud, best execution, regulatory halts, trading hours, monitoring and enforcement of rules, and audit trail requirements.

Some of the rules are very high level such as the requirement for recognized exchanges to set, monitor, and enforce rules of conduct on its members. Other rules, such as audit trail requirements, are much more specific.

The TSE and CDNX responded to the CSA trading rules by proposing its Uniform Market Integrity Rules (UMIR) as an alternative to the CSA rules. UMIR, a more in-depth set of rules than those of the CSA, was developed through a review by the TSE and CDNX of their respective rules to determine if the CSA trading rules were appropriate for their markets and to determine the extent to which the rules of the two exchanges could be harmonized. The proposal of these exchanges indicates that UMIR was drafted to recognize that other market regulators could exist. It argues that a standard set of market integrity rules should exist and that the standard should be UMIR.

The CSA responded to the UMIR proposal by requesting comments on the UMIR proposals. This request included specific questions such as whether UMIR should replace some or all of the CSA rules. Commentators on UMIR (including ATSs, securities dealers, and institutional investors) expressed concerns that the TSE proposals to establish UMIR as a standard for all markets may create a new regulatory barrier if adopted, thus discouraging competition.

Cross-border Issues

In its first report on securities activity on the Internet, IOSCO identified regulatory jurisdiction over cross-border securities activity as an important issue. It recommended that assertion of regulatory jurisdiction depend on (a) the provider being located in the regulator's own jurisdiction and (b) whether the provider will have a significant effect upon residents or markets in a regulator's jurisdiction. On (b), the regulator could consider the condition met if residents are targeted in the regulator's jurisdiction. Conversely, a regulator could determine (b) is not met if the provider clearly states who the offer is directed at, if the provider indicates in which jurisdictions it is authorized (or not), and/or if the provider takes precautions designed to prevent sales in the regulator's jurisdiction.

The CSA responded to the jurisdictional issue in National Policy 47-201, which addresses a number of Internet issues related to securities distribution. It states that offering documents accessible to residents in a local jurisdiction will constitute a trade or offering in that jurisdiction, unless steps are taken not to transact with residents. These steps include:

- including a disclaimer in the document that identifies the jurisdictions in which the offering is qualified to be made and that does not include the local jurisdiction;
- taking reasonable precautions not to sell in the local jurisdiction; and
- reminding market participants that registration requirements apply with the posting of an offering document on the Internet for distribution in a local jurisdiction.

The ASC recently encountered a cross-border jurisdictional issue when an Internet-based exchange, the World Stock Exchange (WSE), actively solicited Albertans to list companies on the exchange. Although it operated off servers located in the Caribbean, the ASC sanctioned the Edmonton based promoters.

Investor Protection Issues

While the Internet is useful to investors seeking information, it has raised regulatory concerns over investor protection issues such as its impact on market manipulation and fraud. For example, IOSCO's second report on Internet issues indicates that while Internet Discussion Sites (IDSs) can be useful tools for investors trying to locate information such as research reports, they can also be a rapid, cheap, and effective way of disseminating false or misleading information about securities (IOSCO 2001). Such behaviour can be used to manipulate market prices. The IOSCO report notes that while this type of activity is not specific to IDSs or the Internet, an IDS significantly reduces the costs of engaging in this activity (IOSCO 2001).

The report describes a range of responses that regulators in different jurisdictions have taken to address the potential use of IDSs for manipulation. These responses include the direct regulation of IDSs, the surveillance of IDSs with enforcement of violations, and investor education. The report also suggests that IDSs may voluntarily formulate and adopt codes of good practices.

Canadian SRAs have responded to consumer protection issues through surveillance, new enforcement initiatives, and public education. For example, the BCSC's Strategic Plan indicates it will establish an Internet surveillance body that will participate in a permanent CSA surveillance committee. Internationally, Canadian regulators have participated in IOSCO surf days.

The CSA's 2001–2004 Strategic Plan attributes an escalation in the number of national and international enforcement cases to technology and globalization, which have increased the speed and geographic reach of illegal and abusive market activity (CSA 2001). To address this escalation, the CSA plans to respond through several new projects such as revising its policy governing the regulation of SROs and participating in a database to automate information-sharing among North American enforcement agencies.

SRAs have used a variety of tools for public education. The QSC published a brochure on how to avoid cyber-fraud when investing on the Internet. An innovative initiative by the OSC was the establishment of a phony website (NoRiskWealth.ca) that promised high returns with minimal risk to show investors the risks involved in investing over the Internet. The BCSC has presented seminars about the risks of investing on the Internet as part of investor education initiatives in conjunction with the Vancouver School Board. In addition to broader public education exercises, securities regulators have also posted investor alerts on their Internet sites to warn of possible Internet scams.

Day trading (taking positions in securities for under a few days if not under a day) is another investment protection issue identified by IOSCO. Its second report on Internet issues notes that recent developments in Internet order-routing mechanisms have created an environment in which day trading is both feasible and attractive for retail investors (IOSCO 2001). Serious financial difficulties could potentially arise for investors who engage in day trading without adequate capital and knowledge of market and trading conditions. The range of regulatory measures identified by IOSCO to address this issue include risk and cost disclosure requirements, margin requirements, restrictions on advertising, and suitability requirements for day traders.

In Canada, the QSC responded to day trading concerns by introducing new rules that include all the regulatory measures listed above. The IDA has submitted a regulation for securities commission approval, consisting of new rules for members who promote day-trading, such as a requirement to warn clients about the risks.

Operational and Financial Integrity

The shift towards automated trading has led to securities regulators becoming more active in monitoring the operational capacity and integrity of exchanges. Operational difficulties experienced in the October 1987 market drop lead to the SEC publishing policy statements in 1989 and 1991. These statements established a review program and called on SROs to establish comprehensive planning, testing, and assessment programs to determine systems' capacity and vulnerability.

Canadian securities regulators turned their attention towards the operational capacity and integrity of the Canadian exchanges, with their introduction of review programs in the late 1990s. These reviews cover, not only operational matters, but also financial health. More recently, the ATS rules established actual regulations in this area.

The IOSCO paper on exchange demutualization suggests that because of the public interest in the continued operations of exchanges, regulators need to consider actions to ensure financial viability (IOSCO 2001). A demutualized exchange usually loses the right to demand more capital from its shareholders (members). The IOSCO paper discusses alternatives such as capital requirements, reserves, and monitoring of financial conditions by regulators.

A More Robust Regulatory Presence

The CIB *Commissions Unbound: the Changing Status of Securities Regulators in Canada* documented the recent escalations of staff resources of the ASC, BCSC, and OSC. The ASC and BCSC both increased their staff by close to 50 percent between 1995 and 2000, while the OSC increased its staff by 67 percent between 1997 and 2000. In its 2001 annual report, the OSC notes that it increased staff over the year by 12 percent to 301 and expects to increase staff to 360 in 2002. Some spokespeople for the commissions have attributed the staff growth to growth in the industry itself. However, evidence suggests that another reason for staff growth is that the commissions have been increasing their regulatory presence. The growth in regulatory presence has two components: more regulation and expanded supervision and oversight.

Both the BCSC and OSC have announced reviews aimed at reducing the regulatory burden. The BCSC has released a paper for comment that outlines its ideas for doing so.

New Regulation

Increasingly, regulators themselves acknowledge that the burden of regulation is detrimental to securities markets. For example, when announcing a deregulation project, BCSC Chair Douglas Hyndmann noted, "The current regulatory burden on the securities market is too heavy…One doesn't have to look to far to see how over-regulation imposes costs on the securities industry and the investors it serves."[15]

Some concrete changes have eased the regulatory burden. For example, the CSA introduced a policy in 2000 that allows securities dealers who provide only trade execution services to apply for relief from the requirement to review the suitability of every trade initiated by an investor before execution.

However, in general the scope and depth of regulation appears to be increasing. A notice released by the BCSC noted that, "In the past ten years, the volume of regulation has increased by about 65%. In the past five years, compliance costs have doubled for junior issuers."[16]

A large source of new regulation is the CSA National Instruments to facilitate ATSs discussed earlier, which include a new layer of rules applicable to all exchanges and ATSs, many of which are not required to facilitate an ATS presence in Canada. According to survey results that are part of IOSCO's paper on fragmentation, Canada goes further than any other respondent with its requirements for the consolidation of market information (IOSCO 2001).

These rules also extend the reach of provincial regulators into fixed income markets (Mohindra 2001). Dealers in these markets now face new reporting requirements for order information and will have to enter agreements with regulation service providers (SROs) that will be responsible for monitoring and enforcing conduct. The OSC has also expressed interest in regulating the OTC derivatives market. It submitted a rule in 2000 to that effect to the Ontario Minister of Finance. However, the Minister returned the rule for further consideration.

If implemented, new CSA proposals for mutual fund manager regulation will also broaden the scope of regulation. The proposals include registration requirements for mutual fund managers and a requirement to set up governance agencies. The registration regime will impose minimum standards on fund managers in areas such as proficiency standards and capital requirements. Fund management companies will require independent governance agencies to ensure funds are managed in the best interests of investors as well as in compliance with regulation. Even before the release of the proposals, the OSC announced it will use a "risk-based compliance monitoring" model in which questionnaire responses will determine risk rankings. Risk rankings will be used to determine priorities for regulatory scrutiny.[17]

Ever expanding disclosure requirements have been adding to the depth of regulation. Rules and notices have been introduced in individual jurisdictions, or across the CSA, that cover specific types of disclosure (e.g., mineral projects), the content of financial statements, and more recently, the presentation of non-GAAP financial information. In their Concept Proposal for an Integrated Disclosure System[18] (IDS), the CSA outlines a set of disclosure enhancements being considered for general application, such as annual disclosure of market risks and more stringent material change reporting requirements. Some SRAs have already introduced some of the disclosure enhancements, such as requirements for audit committee reviews and board approvals for annual financial statements and review requirements for interim statements.

Generally, shareholders have had civil recourse only in relation to disclosure associated with primary offerings. The CSA has developed a proposal for amending securities legislation that would give investors in the secondary market the right to sue any public company and key related persons for making public misrepresentations about the company in their continuous disclosure filings or for failing to make required timely disclosure.

More Supervision, Enforcement, and Oversight

The expansion in oversight of SROs has already been outlined. Oversight of the exchanges evolved from approving changes to rules and bylaws to in-depth reviews of the operations of the exchanges. The new ATS rules provide validation to this expanded role by covering aspects of the operation of exchanges such as those related to capacity levels. The commissions have also strengthened their oversight of the IDA. For example, the 1998 speech by Toni Ferrari notes that the OSC, which initially conducted piecemeal reviews of the IDA, was shifting towards comprehensive examinations.

Enforcement is another area where securities regulators have become increasingly active. The CSA indicated in its 2001–2004 Strategic Plan that its vision for the future includes "aggressive, tenacious, and fair enforcement activities that maintain investor and market confidence in, and respect for, the regulatory system" (CSA 2001). The Plan notes that the CSA needs to respond to escalating enforcement issues and outlines initiatives for doing so. Individual commissions have been introducing new enforcement programs. For example, the OSC set up a joint securities fraud unit with the RCMP in 2000, while the BCSC established the Charge Approval Project to develop cases in a way that would improve success of prosecutions in the criminal court system. Some commissions, such as the OSC, have been increasing the human resources devoted to enforcement. A newspaper article noted that in 2000, the OSC alone initiated 377 enforcement actions, which was over 75 percent of the number initiated by the SEC for the entire US. (Tedesco 2001).

Another source of supervisory growth has occurred in the review of continuous disclosure documents. Traditionally, SRAs have taken a high level approach to continuous disclosure (e.g., ensuring filings were on time and complete). Since the early 1990s, the financial statements and accounting policies of public companies have been subject to higher levels of scrutiny. The ASC introduced in 1991 its Financial Statement Review Program to monitor the financial reporting of issuers. The OSC established a program in 1995 for reviewing financial statements and Management Discussion and Analysis documents.

More recently, the commissions have been broadening the scope of their review of the continuous disclosure of issuers. The BCSC set up a program in 1998 that covers financial statements, management discussion and analysis, annual information forms, material change reports, press releases, and websites. The OSC followed suit in 2000.

Under the OSC's "Continuous Disclosure (CD) Review Program" issuers with a head office in Ontario are subject to a CD review, on average, once every four years. Full CD reviews are designed to review all CD documents (e.g. annual reports, quarterly financial statements, and websites) in the same depth as a prospectus review. Reviews can also cover trading activity, industry data, analysts' reports, transcripts of investor/analyst meetings, and Internet bulletin boards. In addition to full reviews, the program includes issue-oriented reviews, limited reviews, and insider trading report reviews. The OSC has indicated that it is participating on a CSA Committee working towards ensuring that all reporting issuers in Canada, including foreign regulators, are treated equitably.[19]

The increase in resources devoted to reviewing continuous disclosure documents has occurred concurrently with other initiatives to improve disclosure, such as the requirement for Boards to sign off on annual audited financial statements and the development of a civil remedy regime.

Signs indicate that the commissions will continue to increase their level of supervision. The OSC's 2001 Notice of Statement of Priorities notes the OSC's intention to "increase resources allocated to SRO oversight activities and review of continuous disclosure documents."[20]

Efforts to Ease the Regulatory Burden

As shown earlier in Table 3, the CSA has made some progress in harmonizing regulation across jurisdictions. It has also started a project, expected to be completed in 2003, led by Stephen Sibold, ASC Chair, to develop a common securities statute that could be adopted by each province and territory.

How successful has the CSA been in streamlining the regulatory processes associated with dealing with multiple regulators? The most significant streamlining initiative implemented by the CSA to date is the MRRS, which covers prospectuses, AIFs, and exemptive relief applications. The OSC noted in its 1998 annual report that "MRRS, instituted by the CSA, during this reporting period, has effectively created a Virtual National Securities Commission."[21] However, as noted earlier, Barbara Stymiest has described the MRRS as nothing but a procedural simplification. Given this criticism, it is worth examining how the MRRS works for prospectus filings.

Mutual reliance for prospectuses is covered under National Policy 43-201, which includes the following rules:

- Although the filer will generally deal with its principal regulator in connection with materials filed under the MRRS, the Canadian securities legislation and Canadian securities directions of each jurisdiction in which the materials are filed apply to the materials. However, the principal regulator is responsible for reviewing materials according to the local securities regulation and directions.
- The filer is responsible for determining the lead regulator through the criteria outlined in the national instrument.
- Materials must be filed through SEDAR with both the lead regulator and each relevant non-principal regulator.
- Non-principal regulators can choose to opt out and deal directly with the filer.
- The principal regulator is responsible for reviewing all materials in accordance with the Canadian securities legislation and Canadian securities directions of the jurisdiction in which the principal regulator is located.
- While the non-principal regulators may review the materials and will advise the principal regulator of any material issues relating to the materials that, if left unresolved, would cause the non-principal regulators to opt out of the MRRS, the filer will generally deal solely with the principal regulator.

The rules for MRRS suggest that Ms. Stymiest's comments may have some merit. The MRRS does not prevent the same multiplicity of reviews that would have taken place prior to MRRS' implementation, but it merely enables a filer to deal with only one regulator directly rather than several (unless non-principal regulators choose to opt out). David Brown made this point in his speech, calling for a single regulator when he noted that each regulator must still make and publish decisions. The OSC's concept proposal on revamping its fees probably summed up the weaknesses of MRRS best: "It is proposed that the flat fees for filing a prospectus be the same whether or not Ontario is designated as the principal regulator by the issuer. This is appropriate since staff review all prospectuses filed with the OSC."[22]

The MRRS shows that while CSA initiatives may provide some relief from the burden of dealing with multiple regulators, the benefits are limited because each regulator still needs to satisfy statutory obligations. This will likely limit the benefits of a new national registration system that the CSA is implementing.

Individual securities regulators have also launched initiatives to reduce the regulatory burden in their specific jurisdictions. In October 2001, the OSC announced the launch of a new working group to identify opportunities to reduce regulatory costs for market participants by pinpointing those regulatory activities that create efficiency impediments and associated cost impacts that can outweigh their public interest benefits.

In response to a BC government call for all government agencies to reduce regulatory requirements by one-third, the BCSC announced a deregulation project in November 2001. The two-year project will include an examination and assessment of current regulatory requirements. The project is intended to produce a revised Securities Act and a set of rules ready to come into force by December 2003. The BCSC project team intends to work closely with the Sibold project to establish a common statute.

As part of the deregulation project, the BCSC released a paper, *New Concepts for Securities Regulation*, that includes a number of concepts to reduce the regulatory burden including:

- extending the concept of IDS to a continuous market access system in which public issuers would no longer be required to file prospectuses but would be subject to an enhanced continuous disclosure regime;
- revamping the registration system, including replacing prescriptive rules with general codes of conduct and permitting anyone registered in one jurisdiction to do business across Canada;
- revamping the mutual funds regime, including possibly eliminating mutual fund prospectuses.

The paper also proposes a significant increase to the existing powers of the commissions, including the ability to bar professionals from preparing regulatory filings and the power to force individuals that breach securities laws to make restitution. It also incorporates a civil liability regime for continuous disclosure. The extent to which other SRAs will buy into the BCSC initiative is unclear. The BCSC is consulting industry across Canada and intends to feed into the harmonized statute project.

Are Securities Regulators Still Relevant?

As new issues, such as Internet securities fraud, have emerged through the changing structure of securities markets, regulators have responded through new regulatory initiatives to address each specific concern. In Canada's case, it appears that the larger securities regulators have made use of their crown corporation status to both widen and deepen their regulatory presence. Should Canadian securities regulators be strengthening their existing roles and taking on new ones? Or have changes in the industry structure rendered them obsolete?

The Obsolescence Case

A 1995 paper by Professor John Macey argues that the SEC is an example of an agency that has become obsolete. The paper explores "what happens when technological change, market processes, or other exogenous variables cause the basic purposes of an administrative agency to cease to be relevant from the perspective of the public policies that originally led to the creation of the agency" (Macey 1995).

In the case of the SEC, Macey presents a number of arguments as to why it has become obsolete. His principal argument is that market forces have become sufficiently efficient at generating accurate information that a regulatory system of mandated disclosure is no longer needed (Macey 1995).[23] Macey recognizes that the possibility of fraud continues to exist even in the most efficient markets but argues that the opportunities for manipulation and fraud are probably lower now then in any time in history (Macey 1995). He notes that rules against fraudulent behaviour existed long before the SEC and are all that is needed now (Macey 1995).

Macey cites the emergence of competition for exchanges as another factor contributing to the SEC's obsolescence. When the SEC was created, there were no rivals to the NYSE of consequence. The NYSE was a monopoly for many years, and as such, it could be argued that it needed to come under government supervision to protect it from abusing its monopoly position (Macey 1995). However, US exchanges now compete vigorously against domestic and international competitors for listing. Macey argues that rules promulgated by exchanges themselves are superior to those of the SEC, which as a monopoly "has fewer incentives to innovate and no incentives to customize its legal rules to meet the individualized needs of particular market participants" (Macey 1995). Macey also notes that, even before the creation of the SEC, the NYSE had disclosure and auditing requirements,[24] and argues that "vigorous competition provides exchanges with strong incentives to draft innovative rules that provide effective protections for investors and insure low capital costs for issuing firms" (Macey (1995).

The development of superior risk management mechanisms and modern financial theory also contributes to the SEC's obsolescence (Macey 1995). Investors can take advantage of professional management through institutional investors such as mutual funds. The emergence of robust derivatives markets and portfolio insurance enable investors to manage risk. Portfolio theory suggests diversification can be used to eliminate company specific risk.

Various actions taken by the SEC are described by Macey as consistent with the behaviour of an obsolete agency. Macey argues that agencies facing obsolescence have stronger incentives to substitute private bureaucratic objectives for the public objectives for which they were created (Macey 1995). He suggests that these agencies are more likely to be captured by industry segments to secure their public support, engage in turf battles with other agencies, and skew the flow of information to the public to make it seem that problems that justify their existence continue to remain (Macey 1995).

Macey describes examples of all three types of behaviour by the SEC. He argues that the *Penny Stock Reform Act* of 1990, which established a system for more disclosure and regulatory oversight, was implemented in the absence of any real regulatory need and was justified through a crisis fabrication generated through a distorted information flow (Macey 1995). Macey suggests the Act benefited entrenched SEC constituencies by curbing the migration of order flow away from organized exchanges towards less regulated OTC markets (Macey 1995).

Macey documents several turf battles, including an attempt to take regulatory authority for US government securities markets away from the US Treasury. In this particular case, an SEC supported bill that would have increased the commission's powers to regulate the government securities market was voted down in Congress as restrictive and unnecessary (Macey 1995).

In addition to the costs associated with all obsolescent agencies, which include the direct waste of resources and over-regulation, Macey argues that the SEC's agenda makes the problems of its obsolescence more acute. When the SEC disrupts the capital allocation process, it distorts the allocation of resources throughout society generally (Macey 1995).

Obsolescence and the Canadian Securities Regulators

Macey's paper on the obsolescence of the SEC was published in 1995. Recent developments significantly affecting the industry, such as demutualization, were outlined earlier in this paper, as were regulatory responses, which generally consist of specific responses to new issues. Have recent developments further contributed towards the obsolescence of securities regulators? This section will examine this question in the context of the Canadian securities regulatory system. Instead of examining the obsolescence of securities regulation agencies themselves, the section examines specific areas of securities regulation, namely securities exchanges, intermediaries, issuers, and manipulation/fraud.

Securities Exchanges

Historically, securities exchanges were ahead of governments in recognizing the need to regulate the conduct of market participants. In the US, the NYSE practised self-regulation long before the *Securities and Exchange Act of 1934*. In Canada, it was not until 1945, when the *Ontario Securities Act* was promulgated, that Ontario had the legal power to close the TSE. It was only in 1966 that the OSC took on responsibility for reviewing the TSE's bylaws. The Final Report of the SRO Consultative Committee of IOSCO notes that "In several jurisdictions around the world, effective self-regulation existed before statutory regulation. As markets developed, market participants recognized that regulation was necessary in order to protect the integrity of the market" (IOSCO SRO Consultative Committee 2000).

A strong case can be made that rigorous regulatory oversight of formal exchanges is, not only no longer needed, but in fact detrimental to the public interest objectives of securities regulators. IOSCO argues in its paper on demutualization that the process aggravated existing conflicts of interest among industry participants (IOSCO 2001). However, a case can be made that demutualization and the increase in competitiveness among marketplaces for issuers and trading volume have resulted in the private incentives of for-profit exchanges to become more aligned with the public interest objectives of SRAs (i.e. fostering fair and efficient capital markets).

Investors are generally considered to be risk adverse. In other words, they seek to minimize the risk associated with the level of return they expect from their investments. The Mckinsey studies referred to earlier show that investors are willing to pay a premium to invest in well-governed companies. This willingness is consistent with risk-adverse behavior. It is a reasonable assumption that investors, given the choice, will choose securities offered on well-regulated marketplaces as long as spreads are competitive with those on other markets. Investors will migrate towards well-regulated markets to minimize the risk of loss from unfair trading practices.

Issuers also have an incentive to migrate towards well-regulated markets. It is in their interest to seek healthy secondary trading of their securities in order to serve the interests of shareholders seeking liquidity on their investments. Strong secondary trading also facilitates the ability of raising further capital in the primary markets, as greater liquidity makes their securities more attractive. It is clearly in their interest to make their securities available for trading in markets that are attractive to investors.

A for-profit exchange has the incentive to respond to the interests of investors and issuers by maintaining a well-regulated marketplace. In the past, the quality of the regulation of self-regulated exchanges, including the TSE, has endured strong criticism. For example, a Royal Commission in the 1960s concluded that TSE members treated the Exchange "like a private gaming club for their own benefit"(Armstrong 2001). Such behaviour is logical, given that the TSE's members owned it and possessed incentives to run it in their own interests.[25] But a for-profit exchange that is more broadly owned would not have the incentives to put the interests of its members first.

Now that exchanges are converting to a for-profit basis and increasingly competing against each other, as well as against new forms of competition such as ATSs, they have clear incentives to offer investors and issuers quality regulation in order to attract issuers and investors. Indeed, the promotional literature of some exchanges, such as NASDAQ Europe (see Exhibit 2), show that their regulation has become a selling point in the search for listings.[26] As noted in the Report of the SRO Consultative Committee of ISOCO, "Reputation and competition are powerful motivating forces for sustained proper behaviour (IOSCO 2000)."

The oversight practices of SRAs, both in Canada and in other countries, are becoming increasingly

Exhibit 2: A Well Regulated Marketplace

Nasdaq Europe's unified infrastructure and single set of rules are designed to maintain the highest possible level of transparency and market regulation.

Nasdaq Europe's Market Supervision Group facilitates regulatory oversight of the market in order to promote transparency, maintain a level playing field for all investors and protect the integrity of the marketplace.

Market Supervision ensures that Nasdaq Europe issuers and members comply with the market's rules, both pre- and post admission to the market.

In addition, the group provides real-time surveillance and conducts in-depth reviews of Nasdaq Europe market activity, with the purpose of identifying manipulative activity. It also carries out disciplinary proceedings in accordance with Nasdaq Europe rules and regulations.

Nasdaq Europe is committed to supporting pan-European and global efforts to improve the transparency and regulation of markets.

Source: Introducing *Nasdaq Europe.* Available at www.nasdaqeurope.com

detrimental to the public interest because these practices inhibit competition and stifle the ability of exchanges to innovate. In a competitive environment, exchanges need to respond quickly to new issues and concerns as they emerge. A SRA approval process merely serves to inhibit the ability of exchanges to respond quickly. In Canada's case, the approval process is absurdly burdensome as approval from five separate provincial regulators will be required whenever MRS changes its rules.[27]

The new ATS rules introduced by the CSA, with their uniform trading rules for marketplaces, may also impede the ability of exchanges to differentiate themselves through their self-regulatory regimes. UMIRs, if adopted for all marketplaces, would be even more restrictive.

Securities regulation serves as a barrier to new entry. For example, for a foreign securities exchange to enter the US, it has to be approved and subject to the regulation of the SEC, even if it is already subject to comparable regulation in its home jurisdiction. In Canada, this entry barrier is particularly acute because a new entrant could face multiple regulatory regimes. By moving towards greater standardization of trading rules across marketplaces, the CSA is effectively strengthening access barriers.

Instead of promoting fair and efficient capital markets, securities regulators, by constraining new entry, are effectively accomplishing the opposite. In shielding existing exchanges from competition, SRAs are dampening the incentives that exchanges have to promote themselves as well-regulated trading environments.

As noted earlier, SRAs in Canada have expanded their oversight roles to include monitoring the financial and operational integrity of exchanges. IOSCO's paper on demutualization outlines a possible justification for this approach. The paper argues that the fair and efficient functioning of an exchange is of significant benefit to the public because it facilitates the efficient raising of capital for commercial enterprises, thus benefiting the wider corporate sector and the entire economy (IOSCO 2001).

But does this benefit justify regulatory oversight of the operational and financial integrity of exchanges? The same argument can be made for other types of private organizations, such as rating agencies, that could also be seen as providing significant public benefit but that continue to operate free of this kind of oversight. The failure of an exchange may have wider economic implications, but that would also be the case for the failure of any large corporation such as General Electric, Ford, or Exxon. Does it follow that all these companies should be subject to regulatory oversight of their operational and financial integrity? Clearly, the fact that a private organization provides significant public benefit is not a justification, in itself, for this kind of regulatory oversight.

Moreover, exchanges that have demutualized clearly have the right private incentives to ensure their financial and operational activity. Operational disruptions and even failures do not impair the intermediation process but result in damaged reputations and the migration of trading to other platforms. In a case where the failure of an exchange has the potential to disrupt the ability of the corporate sector to raise financing, regulatory oversight itself is likely be the root cause of the disruption because it limits access, thus creating too much reliance on too few exchanges and impeding other marketplaces from filling the void.

The collapse of Enron demonstrates that the disruption of a major trading platform does not lead to a systemic event if competitors stand ready to take up the slack. Even though Enron was the largest energy trading platform in the world, its collapse caused minimal market disruption, as trading simply migrated to rivals such as the InterContinental Exchange (Economist 2002).

Regulatory oversight of the operational and financial integrity of securities exchanges also creates a perverse incentive for the management of these exchanges. By applying this oversight, regulators are signaling to both the management of exchanges and the public that exchanges are too important to the public interest to be allowed to fail. This creates incentives for the management of exchanges to engage in risky behaviour to improve profitability, since a government bailout would be inevitable in the event of financial difficulties. Lenders, drawing the same conclusions, are willing to facilitate the risky behaviour by providing easier access to credit.

Fragmentation is an issue that has recently emerged from new forms of competition such as ATSs. However, allowing market forces to address the new concerns that flow out of fragmentation before taking other steps is a valid regulatory response. IOSCO's paper on fragmentation suggests that market-led solutions could arise in a number of ways (IOSCO 2001). Given the lack of a significant ATS presence in Canada, the SRAs were acting prematurely in bringing in extensive new rules.

In the case of exchanges themselves, it appears that the argument that SRAs are obsolete has become much stronger since 1995.

Issuers

Macey argues that a mandated disclosure regime was established in the US because market forces did not generate the accurate information that investors and other market participants need to make capital allocation decisions (1995). However, information that was supplied by force of law is now supplied by the market, and society no longer needs to devote resources to a system of mandated disclosure (Macey 1995).

Two significant developments, outlined earlier, that affect securities markets were the emergence of the Internet as an information tool for investors and other market participants and the trend towards improved governance.

Both developments further contribute to the obsolescence of the securities regulation of issuers. A wealth of information is now easily accessible through the Internet for investors who choose to seek it out. Investors have now come to expect a continuous flow of information from public companies, and will avoid, or at least demand a premium from, companies that choose not to provide it.

There is some recent empirical evidence that questions the value of mandated disclosure. A paper by Roberta Romano refers to several studies that support her argument that because companies must compete against other investment alternatives, they have powerful incentives to voluntarily disclose information in order to lower their cost of capital (Romano 1998). For example, she cites studies showing that European firms listing in London typically comply with higher UK disclosure requirements, although not required to do so under EU directives, which allow them to comply with the lower requirements of their own jurisdictions (Romano 1998). She also notes studies that show European stock markets are no less efficient than US stock markets, although European accounting and disclosure regimes require the disclosure of considerably less information than does the SEC (Romano 1998).

While disclosure is conducive to minimizing capital requirements, management may in fact face short-term incentives to avoid or delay the disclosure of some information. Such behavior might be motivated by considerations such as camouflaging poor managerial performance or enhancing the value of options to be exercised in the near future. For this reason, there is a need for some lines of defense to discourage this type of behavior.

The best assurance of the quality of disclosed information is good governance—strong shareholder power relative to that of management. It could be argued that a trade-off exists between the quality of governance and regulation for public issuers. As governance improves, investors can have greater confidence in the quality of information released by an issuer. While perfect governance may by a theoretical concept, evidence outlined earlier in this paper suggests the quality of governance in Canada is improving (despite recent concerns in the wake of Enron), and steps are being taken towards further improvements, such as the recent reforms to the *CBCA*.

The recent Enron affair, which raised concerns over creative accounting, demonstrated that issuers respond to the information disclosure demands of investors. A BusinessWeek article noted, "Corporate America is finally getting the message: Financial reporting that is technically correct but does not clearly reflect a company's operating health is no longer acceptable."[28]

The article describes how US companies have responded to investor concerns by voluntarily disclosing more information. Companies are reacting to investor concerns rather than regulatory disclosure requirements.

Intermediaries

The obsolescence case for oversight of SROs responsible for regulating intermediaries, such as the IDA or the recently established MFDA, is weaker than that of securities exchanges, but its weakness flows from the regulatory framework itself. Exchanges face some competitive forces because issuers can list their shares on any exchange in the world as long as they meet the local SRA's rules and exchange listing requirements. Canadian investors can purchase securities on exchanges in other countries. But Canadian investors cannot acquire securities or mutual funds through dealers that are not registered to do business in their province or territory of residence, without contravening Canadian securities legislation. The IDA and MFDA have essentially monopolist positions in Canada because of the lack of competition from other SROs within Canada, and regulation prohibits cross-border sales and distribution of securities to Canadian residents.

A monopolist SRO does not have the same incentives to establish and promote a high quality regulatory framework because dissatisfied investors cannot choose to move their business to a member of another SRO.[29]

In addition to market conduct and investor protection, the objectives of securities regulation of intermediaries is also intended to cover systemic risk, the risk that financial distress with one investment dealer will spill over to other market participants that are counter-parties to the distressed dealer. Settlement times for securities transactions were reduced from five days to three in 1995. There is currently an initiative to reduce settlement to one day. Faster settlement times reduce the need for SRAs to be concerned with systemic risk.

Manipulation and Fraud

As recognized by Macey, the possibility of fraud continues to exist even in the most efficient of markets. He argues that opportunities for manipulation and fraud are probably fewer than in any time in history (Macey 1995). However, IOSCO's argument that the Internet has now emerged as an effective tool for carrying out abusive practices has merit.

Generally, it is important for SRAs to set realistic and obtainable goals. In a speech to the Financial Services Institute, David Brown noted, "When investors look at Canada, the only risks they should see are the inevitable ones associated with any marketplace—the dynamic ebb and flow that is central to wealth creation. We must continue to make clear our commitment to minimize or eradicate the risks of fraud, unfairness and lack of compliance."[30] This seems to be his view on how Canada, a relatively small marketplace, can distinguish itself among world markets. However, it is as impossible to eradicate manipulation and fraud as it is to stamp out the illegal drug trade, petty crime, or traffic violations. Efforts to seek this objective can only obtain it by completely choking off markets.

Canadian SRAs are likely taking a sound approach in placing emphasis on public education. Surveillance is probably most effective if used as a means of staying abreast of new types of scams in order to educate the public. More ambitious objectives for surveillance could potentially create a black hole for regulatory resources, given the proliferation of information on the Internet.

Conclusions

Many facets of securities regulation appear to be moving towards obsolescence, possibly with the exception of discouraging fraudulent activity. The biggest obstacles to further obsolescence are within the regulatory regimes themselves, which limit the use of private incentives and competition to obtain the public interest objectives of the regulators.

A Regulation Model for the Future

A paradox seems to exist in Canadian securities regulation. Despite a strong case that many aspects of securities market regulation are becoming increasingly obsolete, SRAs have been expanding the scope of their activities. The paradox is becoming more visible through the recent behaviour of the securities commissions themselves, which have increasingly been recognizing the need for change and have taken steps such as setting up committees to review regulatory requirements or advocating ideas such as national securities regulation.

This section will take on the task of proposing a new model for securities regulation, a model that:

- reflects that recent developments have contributed towards the obsolescence of securities regulation;
- accounts for the regulatory and institutional legacy that is now embedded in our economic and social framework;
- promotes market forces and private incentives as tools to obtain the public policy objectives espoused by securities regulators;
- better achieves those public policy objectives, and in a more efficient manner; and
- attempts to ease regulatory barriers to entry, including cross-border.

The model will cover four elements of securities regulation: exchanges, intermediaries, issuers, and manipulation/fraud. SRAs are also responsible for many other activities, such as collective investment schemes and oversight of payment and settlement systems, but the intent of this proposed model is not to be comprehensive but to show the value of tapping into market forces and private incentives to achieve public objectives.

The intent of this section is to examine what securities regulators should be doing, rather than who is doing it (i.e., provincial versus national securities regulator). However, the issue of "who" will also be touched upon, given that any attempt to design a model that meets the criteria above precludes the burden of multiple regulation.

Exchanges

In the last section, a case was made that comprehensive regulatory oversight of exchanges is no longer needed or desirable. However, eliminating regulation overnight would raise a number of problems. For example, foreign regulators might react by restricting access by their residents to a market without oversight. Public confidence might be eroded, given the long-standing expectations that oversight provides protection against unfair practices. In addition, current regulatory and institutional barriers to entry have weakened private incentives to use quality regulation to attract business from competitors. These barriers may also have contributed towards the entrenchment of the existing players. Experience in Europe has shown that liquidity tends to be "sticky," although the mass migration of liquidity in German Bund contracts from LIFFE to Eurex is an obvious exception.

A Transparency Approach

An alternative to existing oversight regimes for exchanges could be disclosure and external performance review requirements. The regulation service provider of an exchange would be free to set its own rules without hindrance, better enabling it to use the quality of its self-regulatory framework to differentiate itself from competitors. Oversight would consist of:

a) a requirement to disclose its rules; and
b) a requirement for a periodic external review of how effective the regulatory service provider of an exchange has been in ensuring rules have been followed. Exchanges would be required to release the reviews publicly.

In addition to fostering quality self-regulation, this approach has the capacity to improve public confidence. Under the existing regulatory framework, the results of reviews by the SRAs of exchanges are confidential, or at least generally not publicly available, and therefore do not provide investors and other market participants with any information about the quality of an exchange's self-regulation.

The approach becomes more effective at fostering fair and efficient markets if foreign marketplaces are not discriminated against because this would maximize the potential benefits from competition. This approach is consistent with trends in other regulated financial sectors, such as banking, where regulators are increasingly emphasizing the benefits of transparency, disclosure, and market discipline in achieving public objectives. If the CSA members involved in oversight adopt common rules for the performance review requirement, they would effectively eliminate the burden of multiple regulation for exchanges.

A transparency approach is a logical step forward, not just for Canadian regulators struggling with what is widely recognized as a costly and inefficient system, but for all jurisdictions with well-developed capital markets that recognize the benefits of globalization. If several countries adopt a transparency approach, it will ease regulatory barriers to cross-border entry so that marketplaces will not be subject to multiple regulatory regimes when operating in more than one jurisdiction. A transparency approach would also facilitate the emergence of global stock markets that some marketplaces, such as NASDAQ, have already publicly stated as their strategic objective. Consideration could be given to a high level international set of standards that could be used for market access decisions to cover institutional foundations, such as legal regimes and settlement system infrastructures.

Consideration would also need to be given to competition policy for the review of mergers and acquisitions.

One possible criticism of this approach is the free rider issue. A trading place could conceivably establish itself as a marketplace that undercuts competitors that devote more resources to regulating its issuers. The likely market outcome for addressing this issue, if this issue does materialize, would presumably be in pricing structures that provide a high-end market self-regulator the incentive to continue to fulfill that role.

Distribution

SROs

In the case of the IDA and MFDA, completely replacing the current regulatory oversight regimes with a transparency approach may not yet viable. As noted earlier, as self-regulators, these organizations are essentially monopolies and do not have the same private incentives as competing SROs to use quality regulation as a competitive advantage for their members. In addition, there are incentives for the SROs, as non-profit organizations, to act in the interest of members rather than dispersed, profit-seeking shareholders.

However, the transparency approach can greatly reduce the need for the micro-oversight that SRAs are increasingly engaging in, and steps can be taken to promote some competition to reduce even more the need for this oversight. This approach could also contribute towards building stronger public confidence in SROs responsible for financial product advice and distribution.

A first step towards fostering regulatory competition would be for the CSA to reconsider its national policy on cross-border activity in order to facilitate some competition from members of foreign SROs. CSA members have chosen the strictest conditions, outlined by IOSCO in its first Internet paper, for not exercising regulatory authority over cross-border securities activities by an intermediary located in another jurisdiction, including requiring intermediaries to take steps to prevent sales to residents of a CSA jurisdiction.

For intermediaries outside their jurisdiction, Canadian SRAs could choose to decline to exercise regulatory authority, as long as the intermediary does not deliberately target residents in that jurisdiction. This policy was discussed in the BCSC Paper, *New Concepts for Securities Regulation*. It is consistent with IOSCO's recommendations and would introduce limited competition for Canadian SROs that are essentially regulatory monopolies. This policy would also benefit Canadian investors, by allowing them access to foreign providers that might be more competitive in price or service. SRAs could consider applying this policy to all jurisdictions or only to jurisdictions that have adequate institutional underpinnings, such as robust legal regimes and reliable settlement systems.

The benefits of competition would further increase if Canadian SRAs pursue "passport" agreements with other jurisdictions. Under the EU's Investment Services Directive, investment firms other than banks are allowed to operate anywhere in the Community, once they have obtained authorization in their home member state (the single passport system). Passport arrangements with other jurisdictions would result in the establishment of competing SROs in Canada, thus paving the way for the transparency approach to fully replace regulatory oversight regimes.

Registration

The other key element of intermediaries regulation by SRAs is the registration function. In the past, a case may have existed for each Canadian jurisdiction to require registration of intermediaries already registered in other Canadian jurisdictions. This requirement could be justified by practices such as setting up in one province a boiler-room for telephone sales of questionable securities to investors in a different province to avoid the local authorities. These justifications no longer exist, given the extent of the level of co-operation between SRAs that now exists.

CSA members are introducing a National Registration Database (NRD) through which firms and individuals can submit registration applications to SRAs and SROs. Despite the cost savings that NRD might generate, the absurdities of multiple registrations within Canada remain. This system is also a huge barrier to pursuing passport agreements with other jurisdictions that could unlock the public benefits of competition for SROs.

One solution is for SRAs to withdraw from the registration function altogether, leaving it in the hands of SROs that operate nationally across Canada. Implementing the transparency approach to reduce the need for oversight would help facilitate the SRAs' departure from direct involvement in the registration function, through its contribution to public confidence in SROs. SRAs would still be able to restrict intermediaries directly, but only through disciplinary measures undertaken as part of enforcement activities. Other possible solutions include a national securities authority that would be responsible for registration and using the EU's "passport system" within Canada.[31]

Issuers

The Governance-Gap Approach

Some SRAs have publicly stated the objective of pursuing a "compliance culture" for corporate disclosure by issuers. An alternative approach that reflects the secondary relevance of SRAs for quality corporate disclosure could be called the "governance-gap" approach. This approach recognizes that governance is the best tool (rather than regulation) to ensuring that issuers make the best decisions, in their shareholders' interests, regarding information disclosure. Since perfect governance is a theoretical notion and governance quality varies in practice, this approach would promote quality governance but rely on civil remedies and, to a lesser extent, regulation to address governance shortfalls.

The problem with promoting a culture of compliance is that issuers will increasingly focus on compliance (i.e. follow the rules in their smallest detail) as opposed to setting the best possible disclosure as an objective. Earlier in the paper, it was noted that disclosure and governance reinforce each other. This reinforcement leads to the notion of a governance-disclosure virtuous circle, whereby improved disclosure contributes to good governance and good governance leads to improved disclosure.

Aggressively encouraging a compliance culture with mandated disclosure requirements throws a monkey wrench into the virtuous cycle, while ideally a regulatory framework should be structured to foster the cycle. Thus, a governance-gap approach would include some of the recommendations of the Saucier Final Report, such as developing a program to support and encourage ongoing research, analysis, and education in corporate governance. Indeed, better measurements of governance quality need to be developed.

The Gompers, Ishii, and Metrick paper offers some insight on measuring governance quality. Rather than take into account how the board was structured (i.e. the number of independent board members on the audit committee and whether the CEO is separate from the Chair), the authors measured governance quality by examining the balance of power between management and shareholders. For example, if a firm adopts a poison pill, this will count against the firm in the measurement of its governance quality. This appears to be a sound approach for defining and measuring corporate governance, given the linkage to shareholder value the study found.

Introducing new regulations to improve governance offer limited benefits. McKinsey's review of corporate governance practices concluded that initiatives in this vein have been ignored or applied in the spirit of technical compliance with the law (McKinsey 2001). The study suggests that reformers need to pay more attention to institutional reforms (i.e. the underlying structure of property rights).

As noted earlier in this paper, SRAs have been expanding mandated disclosure requirements and increasing the resources allocated to the review of continuous disclosure filings. Under the governance-gap approach, SRAs would rely more on governance and civil liability as the first and second lines of defense against inadequate disclosure, rather than expanding the role of regulatory supervision and continuing to add to mandated disclosure requirements. While some SRA review may be useful in determining trends and identifying new issues, taking direct responsibility for the quality of the minutiae in the continuous disclosure of all issuers is a potential bottomless pit for regulatory resources. Either massive staff increases for the commissions would be required, creating unsustainable regulatory costs, or a sub-standard job would be done because of corner-cutting. A more realistic continuous disclosure role for SRAs is warranted—one that can be clearly articulated to investors and that is achievable cost effectively.

Despite the reputational damage to the auditing profession from the Enron collapse, public auditors, rather than SRAs, should be relied on to ensure the integrity of financial statements. In Enron's case, the SEC[32] had a role in ensuring the integrity of financial statements, which were also the responsibility of Enron's management, board, and auditor. The auditing firm is being sued and has been criminally indicted, while it appears likely that the SEC will get a significant budget increase. Clearly auditors have stronger incentives to do a good job.[33]

Under the governance-gap approach, SRAs would scale back on their disclosure requirements to provide exchanges with the opportunity to set both disclosure and governance standards as they see fit. Having both disclosure and governance rules set at the exchange level is preferable because it allows exchanges to set a mix of these rules to differentiate themselves from their competitors. It also allows exchanges to tailor their rules to their target niches. For example, an exchange designed for junior issuers might choose to set higher requirements for disclosure and less prescriptive requirements for governance than an exchange focused on large companies.

Finally, the governance-gap approach would incorporate a civil remedy regime for continuous disclosure filings as recommended by the Allen Committee on Corporate Disclosure, which the CSA has moved forward, but which has yet to be adopted in any jurisdiction in Canada.[34] By facilitating private enforcement, a civil remedy regime would serve as the first line of defense against governance failures. The case for private enforcement in general is outlined in a paper by Trebilcock and Roach: "The private enforcement of public laws can act as a check on the monopoly power of enforcement that would otherwise enjoy. A private individual who has suffered a violation may be in a better position and may have better information to enforce public laws than a public official. It is the aggrieved person rather that the public official who has the greatest incentive to seek corrective justice in the form of damages or other remedies."[35]

The case for private enforcement in investor protection was recently strengthened by the Supreme Court of Canada ruling on Cooper *v.* Hobart. In 1997, the BC Registrar of Mortgage Brokers, a statutory regulator, suspended a mortgage broker and froze its assets because the broker was allegedly using the funds for unauthorized purposes. A suit was brought forward against the registrar by an investor who alleged that losses would have been avoided had the broker been closed down sooner.

The Supreme Court upheld a decision in favour of the defendant. It ruled that although, to some degree, the provisions of the *Mortgage Brokers Act* serve to protect the interests of investors, the overall scheme of the *Act* mandates that the Registrar's duty of care is not owed to investors exclusively, but to the public as a whole. Thus, it could be argued that aggrieved investors clearly have stronger incentives to seek remedy in the form of damages.

One drawback of civil liability is that it can lead to a "liability culture." Similar to a "compliance culture," in a liability culture, disclosure is structured primarily around avoiding liability rather than informing investors. Governance clearly needs to be the first line of defense. A second drawback is that increasing director liability can discourage competent and qualified people from becoming directors (Saucier 2001).[36]

In the governance-gap approach, the role of SRAs would primarily be to complement private enforcement by taking public enforcement action against deliberate disclosure of misleading information and other contraventions of securities legislation. Depending on the extent to which a new civil remedy regime facilitates class action, there might also be a role for SRAs to take enforcement actions in situations where there is inadequate incentives to sue by any individual investor. There may also be a beneficial role to play in regulating mandated disclosure for issuers on local exchanges or unlisted securities.

Multiple SRAs

As noted earlier, it is well recognized, including by some of the SRAs themselves, that the Canadian regulatory system is costly and inefficient. Issuers who choose to offer securities across Canada face the regulatory requirements of all thirteen jurisdictions. This may in fact be part of the reason for the significant decline in foreign-based issuers choosing to inter-list in Canada. Without question, a model along the criteria set out at the beginning of this section would stipulate that any given issuer in Canada should not have to face more than one regulatory regime. There are two ways this could be achieved.

The first option is to move the regulation of issuers to a national level. This would be the most logical choice, if CSA members proceed with adopting the same statute. A common statute negates any conceivable benefit that could flow from having multiple regulators unless the statute is eroded through non-statutory instruments in which case a system of inconsistent regulatory regimes continues to persist. National regulation is attractive in terms of simplicity, may generate scale economies, and may be helpful in building international agreements on market access. However, to the extent that a national regulator is effectively a monopoly, its incentives to stay responsive to the needs of market participants are weaker. Another drawback is that a “one size fits all” approach may not produce a regulatory system suitable to meet the needs of both large seasoned issuers and junior companies.

The other option is to leave issuer regulation to provincial commissions, but under a system in which an issuer can choose which commission it wants as a regulator and can offer securities across Canada based on the authorization of that one regulator.[37] This option extends a concept outlined by Mr. Brown in his speech calling for a pan-Canadian regulator, in which he indicated that SRAs were exploring legislative changes that would allow them to delegate authority to make specified decisions.

The advantage of this option is that it creates competition among SRAs.[38] A study by Roberta Romano concludes that state competition in the US has produced innovative corporation codes that quickly respond to changing market conditions and firm demands (Romano 1993). Competition for incorporation revenues makes US states sensitive to investor concerns, and empirical studies have shown that investors benefit from state competitive behavior (Romano 1993).[39] In a subsequent paper, Romano makes the case that extending competition into the production of securities laws would be desirable because promoters of firms would be able to lower their cost of capital by choosing the regime that investors prefer (Romano 1998). Through registration fees, states have the financial incentives to adopt securities regimes to attract companies to their jurisdiction (Romano 1998).

Competition among different jurisdictions could lead to more dynamic regulation than under a national regulator. In addition to discouraging SRAs from burdening market participants with unnecessary or poor quality regulation, another benefit is the financial discipline that would be imposed on the commissions, as fees would be a consideration for issuers in choosing an SRA.[40] The monopolist disadvantages associated with national regulation could, however be minimalized through fostering more regulatory competition from SRAs in foreign jurisdictions.

The competition approach would address the concerns of some provincial regulators that national regulation would not be suitable for junior markets, as one or more commissions could specialize in this area. A regulatory response to slumping junior markets in 2001 provides a good illustration of this point. The ASC and BCSC chose to respond to these market conditions by easing the public offering requirements for CDNX listed companies.[41]

One drawback of this model is the lack of a national voice for representation in organizations like IOSCO and other international discussions. Another is that experience in the EU shows this type of arrangement is more difficult to implement in practice than the theory suggests.

Final Conclusions

The previous section covered only a few major elements of securities regulation, rather than offer a comprehensive model for securities regulation. The objective was to present a methodology by which SRAs, currently reviewing regulatory requirements with an intent to improve regulation and ease the regulatory burden, can take advantage of market forces. In this methodology, the regulatory roles of SRAs are broken up into various pieces, and the need for each piece is evaluated against existing private incentives that can be tapped into to achieve public policy goals.

By and large, it appears that Canadian investors and companies, relying on markets for funding, could be better served with a regulatory model constructed on this premise. Some other conclusions that can be drawn from this review of the Canadian regulatory landscape and industry structure are outlined below.

1) *Despite signs of increasing obsolescence, Canadian SRAs have significantly tightened practically every aspect of the regulatory environment, and some commissions are keen to tighten things further.* The growing levels of supervision of SROs and market participants show that the recent build-up of staff levels by some of the commissions cannot be attributed merely to rising levels of market activity.

2) *Given the extent of the financial and policy independence of commissions that converted to Crown Corporations, provincial authorities should give strong consideration to defining appropriate accountability measures.* Prior to the conversion to crown corporations, the commissions possessed a high level of policy independence. Conversion of the larger commissions into Crown corporation status has added financial independence and has enabled them to build resources to significantly tighten the regulatory environment. This paper questions the value of this stronger regulatory presence. Others will certainly have different views. However, given the importance of securities markets in providing the corporate sector with access to capital, external oversight and accountability measures can help ensure that resources are directed towards socially desirable goals. A review of international best practices could shed light in this area.

3) *Market participants in Canada should not be burdened by multiple SRA oversight.* While a national regulator is one way of achieving this change, it is by no means the only option. One alternative outlined in this paper is competition between provincial SRAs. In the case of the TSE/CDNX, forcing it to deal with five recognizing regulators is an effective plan for dooming Canada's one stock exchange in an increasingly competitive global market. Confining oversight to disclosure and performance review requirements is one option for eliminating this burden.

4) *Canadian SRAs should encourage IOSCO to study how regulatory barriers to cross-border activity impede the public objectives of regulators themselves.* The proposed regulatory model outlined in the previous section argues that transparency and competition are more effective tools than oversight in ensuring the quality of self-regulation by SROs. For a relatively small country like Canada, foreign competition for Canadian SROs is the key to effective competition for Canadian SROs such as MRS or the IDA. Work in this area by IOSCO could play an important role in encouraging domestic regulatory regimes to restructure themselves in a way more amenable to tapping into the benefits of globalization. This work could include an exploration of what role international regulation can play.

5) *Canadian SRAs should resort to regulatory solutions only when other options fail.* The massive regulatory response by the CSA in the ATS rules shows that Canadian SRAs are becoming too quick to resort to regulation, even in the absence of discernible problems. The proposed new regulations for mutual fund managers is another example. Market solutions should be considered before resorting to new regulations and more supervision.

6) *Canadian SRAs need to, in the words of IOSCO's SRO Consultative Committee, "avoid potential broadening of the government regulator's role from oversight to supervision, direction and policy-making"* (IOSCO SRO Committee 2000). Canadian SRAs have moved significantly in this direction and risk endangering their market confidence objectives by "encumbering or usurping an SRO's ability to respond quickly and flexibly to changing market conditions and business needs" (IOSCO SRO Committee 2000).

7) *Canadian SRAs should be prepared to act unilaterally in easing regulatory barriers to foreign entry.* Ideally, in allowing foreign market participants better access to Canadian investors and issuers, Canadian SRAs should pursue equal access to foreign markets. However, a case can be made that the benefits of allowing competition to improve corporate Canada's access to capital and to discipline the regulatory regimes of Canadian SROs, outweigh safeguarding the interests of market participants such as the TSE.

Historically, Canadian authorities have a long track record in taking a hands-off approach to markets, preferring to rely on self-regulation, unless significant problems emerge. However, they have been rapidly shifting to the other extreme, taking steps such as "filling gaps," even when no obvious problem exists.[42] "Gaps" and inconsistencies permeate the entire Canadian financial regulatory landscape. For example, there is currently no regulation of marine insurance providers that do not provide other classes of insurance. But without a clear problem surfacing that a market solution cannot resolve, there is no rationale for introducing regulation and the burden it imposes on society.

Increasingly, regulation is becoming the first line of defense for investors when it should be taking a back seat to other lines such as governance. Canadian SRAs need to regain confidence in market forces as an effective tool for the pursuit of public objectives.

Appendix — Acronyms

AIM	Alternative Investment Market (LSE)
ASC	Alberta Securities Commission
ASX	Australia Securities Exchange
ATS	Alternative Trading System
BCSC	British Columbia Securities Commission
CBCA	Canada Business Corporations Act
CD	Continuous Disclosure
CDCC	Canadian Securities Clearing Corporation
CDS	Canadian Depository for Securities
CDNX	Canadian Venture Exchange
CICA	Canadian Institute of Chartered Accountants
CIPF	Canadian Investment Protection Fund
CNQ	Canadian Quotation and Trade Reporting System
CSA	Canadian Securities Administrators
DCS	Debt Clearing System
FASB	Financial Accounting Standards Board (US)
FSA	Financial Services Authority (FSA)
FSCO	Financial Services Commission of Ontario
FSF	Financial Stability Forum
GAAP	Generally Accepted Accounting Principles
GAAS	Generally Accepted Auditing Standards
GEM	Global Equity Market
IAS	International Accounting Standards
IASC	International Accounting Standards Committee
IDA	Investment Dealers Association
IDS	Internet Discussion Sites
IDS	Integrated Disclosure System
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
IPO	Initial Public Offering
LIFFE	London International Financial Futures and Options Exchange
LSE	London Stock Exchange
ME	Montreal Exchange
MFDA	Mutual Fund Dealers Association
MIPS	Market Infrastructure Providers (MIPs)
MJDS	Multi-Jurisdictional Disclosure System
MOU	Memorandum of Understanding
MRRS	Mutual Reliance Review System
MSC	Manitoba Securities Commission
NASD	National Association of Securities Dealers
NASDR	National Association of Securities Dealers Regulation Inc.
NRD	National Registration Database
NSSC	Nova Scotia Securities Commission
NYSE	New York Stock Exchange
OSC	Ontario Securities Commission
OTC	Over-the-Counter
RD	Regulation Division
ROSC	Report on Standards and Codes
QSC	Quebec Securities Commission
SEC	Securities and Exchange Commission
SEDAR	System for Electronic Document Analysis and Retrieval
SEDI	System for Electronic Disclosure by Insiders
SGX	Singapore Exchange
SSC	Saskatchewan Securities Commission
SRA	Securities Regulatory Authority
SRO	Self-Regulatory Organization
TSE	Toronto Stock Exchange
MRS	Market Regulatory Services
UMIR	United Market Integrity Rules
WCE	Winnipeg Commodities Exchange
WFE	World Federation of Exchanges

Notes

1 Brown, David. [Chair OSC] (Nov. 20, 2001). Dialogue with the OSC. [Keynote Address]. http://www.osc.gov.on.ca/en/About/News/Speeches/db_dka_011119.html.

2 The OSC does not have the power to levy fines but can arrive at a settlement in which the alleged offender makes a "donation" to a third party (typically the Investor Education Fund) that serves as an equivalent to a fine.

3 Securities offered on a limited basis without the use of a prospectus.

4 The CSA's Strategic Plan for 2001-2004 notes that "Despite significant progress in harmonization, this framework, and many instruments within it, can still be complicated and expensive for market participants who must comply with it" (p. 6).

5 Speech to International Equity Traders Association 8th Annual Canadian Traders Conference, August 24, 2001.

6 Not all investment dealers are part of the IDA. According to the IDA, its members account for over 97 percent of the industry revenue and capital.

7 Report on the Observance of Standards and Codes. Canada — Securities Supervision, IMF. June 2000. http://www.imf.org/external/np/rosc/can/securities.htm. (p. 7).

8 ATS captured 43 percent of trades in NASDAQ equities during the month of July 2001.

9 Paul Gompers, Joy Ishii, and Andrew Metrick (July 2001). Corporate Governance and Equity Prices.

10 The TSE now requires companies listed in Canada to disclose annually a complete description of their system of corporate governance with respect to each of the TSE governance guidelines.

11 EU. (February 15, 2001). Final Report of the Committee of Wise Men on the Regulation of European Securities Markets. (p. 15). http://europa.eu.int/comm/internal_market/en/finances/general/lamfalussy.htm

12 The collapse of Enron could provide further momentum to easing differences in accounting standards as an institutional barrier, as it has shaken the arguments of some US authorities that the more prescriptive American standards are superior to more conceptual standards such as IAS.

13 FSA. (June 2001). The FSA's Approach to Regulation of the Market Infrastructure [feedback on discussion paper]. (p. 7).

14 OSC. (August 17, 2001). Alternative Trading System (National Instruments, Companion Policies and Forms – The Regulation of Marketplaces and Trading. (p. 89). http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Rules/rules.html.

15 (November 20, 2001). BC Securities Commission deregulation project aims to cut regulatory burden. http://www.bcsc.bc.ca/news/NR01_59.asp.

16 BCSC. (February 15, 2002). New Concepts for Securities Regulation. (p. 5). http://www.bcsc.bc.ca:8080/comdoc.nsf/comdoc.nsf/webpolicies/A68DCE2EFFB8575588256B64005970F8?OpenDocument.

17 The OSC has also started a review of fund managers' practices of valuing stocks and managing client records and transfers. This audit is expected to take months, if not years, to complete (Blackwell 2001).

18 Under the proposals, issuers eligible for IDS would have lower disclosure requirements for new share issues in exchange for higher continuous disclosure requirements.

19 The OSC program goes significantly beyond the recommendations of the TSE Committee on Corporate Disclosure, which proposed that Annual Information Forms should be reviewed at least once every five years.

20 OSC. (June 29,2001). Notice of Statement of Priorities For Financial Year to End March 31, 2002. (p. 5).

21 OSC. 1998 Annual Report. (p. 3).

22 OSC. (March 30, 2001). 11-901 Schedule 1 (Fees) to the Regulation to the Securities Act (Ontario). http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/conceptpro/conceptproposal_list.html.

23 Various empirical studies suggest the case for mandatory disclosure was weak even in the 1930s when it was introduced in the US. For example, a study by Carol Simon concluded that investors in seasoned securities and securities traded on the NYSE earned normal risk-adjusted returns both before and after the *Securities Act* of 1933 was implemented, indicating the gains from the new regulation for these investors was small. However, the benefits were greater for investors in IPOs on smaller regional exchanges (Simon 1998).

24 The SEC's original disclosure requirements borrowed largely from the NYSE's listing standards (Mahoney 1997). In addition to disclosure requirements, the NYSE had rules prohibiting fictitious transactions and other fraudulent acts (Mahoney 1997).

25 A paper by Paul Mahoney proposing that exchanges undertake securities regulation notes that stock exchanges may lack the incentive to adopt optimal rules. However, exchanges facing competition had better incentives than public regulators, as well as informational advantages (Mahoney 1997).

26 IOSCO's Issue Paper on Exchange Demutualization notes that several commentators indicated that a reputation for integrity is key to operating a successful exchange.

27 The MOU for the oversight of MRS includes a provision for immediate implementation of a rule by MRS, but each recognizing regulator must be provided with written notice at least seven business days in advance, and all five recognizing regulators must agree to immediate implementation.

28 (March 4, 2002). "Slammed: Investors are telling companies that creative accounting will no longer fly." *Business Week*. (p. 34).

29 The Report of the SRO Consultative Committee of IOSCO notes that "In the absence of the natural checks and balances of market forces, the oversight framework may need to address the potential for conflicts of interest to occur where industry participants may favour their interests over those of the investing public" (p. 8).

30 Brown, David. (September 27, 2000). "Relevant Regulation in a Global Economy." http://www.osc.gov.on.ca/en/About/News/Speeches/globalecon_davidbrown_20000927.html.

31 A passport approach for registering firms was outlined in the BCSC concept paper on deregulation. The paper also questioned whether it was necessary for SRAs to register individuals.

32 The SEC reviews financial statements filed as part of continuous disclosure on a selective basis.

33 In addition, it appears that SRAs can face significant conflicts in determining whether to disclose material information to the public. One recent example is the OSC keeping silent when tipped off by police that a company called YBM could be linked to Russian money laundering (Francis 2002). Instead, the OSC approved a YBM prospectus.

34 A civil remedy regime was also outlined in the BCSC Deregulation concept paper.

35 Trebilcock, Michael J., and Kent W. Roach. (1996). "Private Enforcement of Competition Laws." *Osgoode Hall Law Journal* 34: 472.

36 A *Financial Times of London* article indicates that the Enron affair has left many executives questioning whether the benefits of serving as a director outweigh the costs.

37 There are precedents for this approach in the provincial regulatory treatment of trust companies. For example, Background Paper 5 of the Final Report of the Mackay Task Force notes that BC has delegated solvency regulation of trusts incorporated in other provinces and operating in BC to the province of the home jurisdiction.

38 Several participants at the March 8 TSE Symposium on Capital Markets in Toronto proposed regulatory models that would foster regulatory competition.

39 A study by Douglas Cummings and Jeffrey MacIntosh on Canadian corporate law found that institutional barriers have limited the extent of competitive corporate law production (Cummings and MacIntosh 2000).

40 Since 1992/1993 the ASC, BCSC, and OSC have generated surpluses (Chant and Mohindra 2001). In 2001, the OSC generated approximately 1.8 times its expenditures in fees (OSC 2001). In the US, SEC fees collections have been greater than outlays since 1983 and have often been more than double (Romano 1998).

41 CDNX News Release. "CDNX introduces policy changes to provide relief for public venture issuers and investors." http://www.cdnx.com/whatsnew/newsreleases/bulletin2.htm

42 In a news article outlining the OSC's review of mutual fund managers that began in 2001, a spokesperson for the OSC was quoted as saying the review was launched "simply because they have not been looked at in the past," rather than because of any concerns or complaints about mismanagement. (*Globe and Mail*, October 8, 2001)

References

Armstrong, Christopher. (2001). *Moose Pastures and Mergers: The Ontario Securities Commission and the Regulation of Share Markets in Canada, 1940-1980*. Toronto: University of Toronto Press.

ASC. Annual Report 2001. http://www.albertasecurities.com/pdfs/ASC_2001Report.pdf.

ASX. International Alliances. http://www.asx.com.au/shareholder/l3/InternationalAlliances_AS3.shtm.

Atkinson, Tom. [VP Regulatory Services, TSE]. (September 26, 2001). TTSE News Release. Financial Institutions Regulatory Compliance Conference.

http://www.tse.com/tse_inc/index.html

BCSC. (February 15, 2002). “New Concepts for Securities Regulation.” http://www.bcsc.bc.ca:8080/comdoc.nsf/comdoc.nsf/webpolicies/A68DCE2EFFB8575588256B64005970F8?OpenDocument.

BCSC News Release. (November 20, 2001). “BC Securities Commission Deregulation Project Aims to Cut Regulatory Burden.” http://www.bcsc.bc.ca/news/NR01_59.asp.

BCSC. (April 30, 2001). *Business Plan 2001–2004*. http://www.bcsc.bc.ca/Publications/bus_plan01_04.pdf.

BCSC. *Annual Report 2000/2001*. http://www.bcsc.bc.ca/.

Blackwell, Richard. (February 28, 2002). “ASC eyes action on brokers.” *Globe and Mail*: B8.

Blackwell, Richard. (November 30, 2001). “Canadian Companies Wooed to List on London Exchange.” *Globe and Mail*.

Blackwell, Richard. (October 8, 2001). “OSC to Review Operations of All Canadian Mutual Fund Managers.” *Globe and Mail*.

Canadian Securities Administrators Strategic Plan 2001–2004. (May 2001). http://www.cvmq.com/en/publi/doc_admin_pdf/csa_strategic_plan_2001-2004-a.pdf.

Chant, John, and Neil Mohindra. “Regulators Unbound: the Changing Status of Securities Commissions.” www.fraserinstitute.ca.

Coombes, Paul, and Mike Watson. (2000). “Three Surveys on Corporate Governance.” *The McKinsey Quarterly* 4. http://www.mckinseyquarterly.com/article_page.asp?tk=412273:965:37&ar=965&L2=37&L3=97

CSA Concept Proposal 81-402. (March 1, 2002). “Striking a Balance: A Framework for Regulating Mutual Funds and their Managers.” http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/conceptpro/cpro_81-402_20020301_proposal.pdf.

CSA Request for Comments 23-401. (April 20, 2001). “Proposed Universal Market Integrity of TSE RS and CDNX.” http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/csanotices/010420_csan_23-401.pdf.

CSA Discussion Paper 52-401. (March 16, 2001). “Financial Reporting in Canada’s Capital Markets.” http://www.albertasecurities.com/.

CSA Notice 53-302. (November 3, 2000). “Proposal for a Statutory Civil Remedy for Investors in the Secondary Market and Response to the Proposed Change to the Definitions of ‘Material Fact’ and ‘Material Change.’” http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/csanotices/csa_list.html.

CSA. (April 10, 2000). “CSA Provides Relief from Suitability Obligations.” http://www.osc.gov.on.ca/en/About/News/NewsReleases/csa_suitabilityobligations_20000410.html.

Cumming, Douglas, and Jeffrey MacIntosh. (2000). “The Role of Interjurisdictional Competition in Shaping Canadian Corporate Law.” *International Review of Law and Economics* 20: 141-186.

EU. “Transactions in Securities; Current Position and Outlook.” http://europa.eu.int/scadplus/leg/en/lvb/124031.htm.

EU. (February 15, 2001). *Final Report of the Committee of Wise Men on the Regulation of European Securities Markets*. http://europa.eu.int/comm/internal_market/en/finances/general/lamfalussy.htm.

Ferrari, Toni. (November 3, 1998). "Oversight of Self-regulatory Organizations." OSC Dialogue Conference. http://www.osc.gov.on.ca/en/About/News/Speeches/toniferrari_19981103.html.

Francis, Diane. (April 2, 2002). "OSC is Guilty of Incomplete Disclosure." *National Post*

FSA. (June 2001). "The FSA's Approach to Regulation of the Market Infrastructure." [feedback on discussion paper]. http://www.fsa.gov.uk/pubs/.

FSA. (January 2000). "The FSA's Approach to Regulation of the Market Infrastructure." http://www.fsa.gov.uk/pubs/.

Goldstein, Tally, and Andrew Hill. (March 3, 2002)."Enron Affair makes board vacancies hard to fill." *Financial Times of London*.

IDA. (March 2002). Regulatory Update.

IDA. (November 2001). Regulatory Update. http://www.ida.ca/Files/Regulation/Regulatory_Update_November_2001_En.pdf.

IFSE. Market Principles. http://www.fibv.com/index.asp?resolutionX=800&resolutionY=600.

IMF. (June 2000). *Report on the Observance of Standards and Codes: Canada—Securities Supervision*. http://www.imf.org/external/np/rosc/can/securities.htm.

Industry Canada. Welcome to the Corporate Law Policy Information Page. http://strategis.ic.gc.ca/SSG/cl00150e.html.

International Federation of Stock Exchanges. *Annual Report 2000*. http://www.fibv.com/index.asp?resolutionX=800&resolutionY=600.

IOSCO. (November 2001). "Transparency and Fragmentation." http://www.iosco.org/docs-public-2000/2001-transparency_and_market_fragmentation.html.

IOSCO. (June 2001). "Issues Paper on Exchange Demutualization." *Report of the Technical Committee*. http://www.iosco.org/docs-public-2000/2001-exchange_demutualization.html.

IOSCO. (June 2001). "Report on Securities Activity on the Internet II." http://www.iosco.org/docs-public-2000/2001-securities_activity_internet.html.

IOSCO. (May 2000). "Model for Effective Regulation, Report of the SRO Consultative Committee." http://www.iosco.org/docs-public-2000/2000-effective_self-regulation.html.

IOSCO. (September 1998). "Objectives and Principles of Securities Regulation." http://www.iosco.org/docs-public/1998-objectives.html.

Joint Committee on Corporate Governance. (November 2001). "Beyond Compliance: Building a Governance Culture." http://www.jointcomgov.com/cica/cicawebsite.nsf/public/JCCG.

Kroll Associates. (2001). "Protecting the Public Interest: The Role of the Chartered Accountancy Profession." http://www.cica.ca/cica/cicawebsite.nsf/public/PROPublicInterest/$file/EngKroll_FINALAug24.pdf.

Macey, Johnathan R. (1995). "Administrative Agency Obsolescence and Interest Group Formation: A Case Study of the SEC at Sixty." *Securities Law Review* 535: 75.

MacIntosh, Jeffrey. (2000). "Securities Regulation and the Public Interest: Of Politics, Procedures and Policy Statements—Part 1." *Canadian Business Law Journal* 24: 77-120.

Mahoney, Paul. (1997). "The Exchange as a Regulator." *Virginia Law Review* 83:1453.

McKinsey Emerging Market Investor Opinion Survey. (2001). [Summary of preliminary findings]. "Giving New Life to the Corporate Governance Reform Agenda for Emerging Markets." http://www.mckinsey.com/knowledge/articles/pdf/emergingmarketsurvey2001.pdf.

Mohindra, Neil. (December 2001). "Stretching Their Mandates." *Fraser Forum*. www.fraserinstitute.ca.

Notice of National Instrument 71-101. (August 14, 1998). Companion Policy 71-101CP, Rule 71-108 and Form 71-101F1. The Multijurisdictional Disclosure System. http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Rules/71-101ni_71-101cp_71-801.html.

NYSE Press Release. (June 7, 2000). "10 Leading Equities Exchanges Jointly Announce Global Equity Market Partnership Talks." http://www.nyse.com/press/press.html.

Oliver, Joe J. [President and CEO, IDA]. (June 18, 2001). "The Public Interest in Self-Regulation." http://www.ida.ca/Files/Media/AnnualConf/2001/Speeches/2001OpenAddress_en.pdf.

OSC Dialogue with the OSC Keynote Address. (November 20, 2001). [Remarks by David Brown]. http://www.osc.gov.on.ca/en/About/News/Speeches/db_dka_011119.html.

OSC National Policy 43-201. (November 19, 2001). Mutual Reliance Review System for Prospectus and Initial AIFS. http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Policies/policies.html.

OSC Staff Notice 51-706. (November 13, 2001). Continuous Disclosure Review Program—November 2001. http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/staffnotices/staffnotice_list.html.

OSC. (August 17, 2001). Alternative Trading System (National Instruments, Companion Policies and Forms—The Regulation of Marketplaces and Trading. http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Rules/rules.html.

OSC Staff Notice 51-703. (June 16, 2001). Implementation of Reporting Issuer Continuous Disclosure Review Program, Corporate Finance Branch. http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/staffnotices/staffnotice_list.html.

OSC Request for Comments 11-901. (March 31,2001). Concept Proposal to Revise Schedule 1 (Fees) to the Regulation of *Securities Act* (Ontario). http://www.osc.gov.on.ca/en/Regulation/Rulemaking/rule.html.

OSC News Release. (October 30, 2001). "OSC to Identify Opportunities for Reducing the Regulatory Burden." http://www.osc.gov.on.ca/en/About/News/NewsReleases/011030oscnr_regulatory_burden.html.

OSC News Release. (March 29, 2001). "Phoney Website Alerts Investors to Internet Hazards." http://www.osc.gov.on.ca/en/About/News/NewsReleases/phoneywebsite_121_010329.html.

OSC. (February 15, 2002). "Hot Topics—Recognition of Market Regulation Services Inc.—Notice of Approval and Memorandum of Understanding." http://www.osc.gov.on.ca/en/HotTopics/currentinfo/MPRegulation/mpr_20020215_mrs-not-and-mou.pdf.

OSC. (November 17, 2000). "Notice of National Instrument 35-101 and Companion Policy 35-101CP Conditional Exemption from Registration for US Broker-Dealers and Agents." http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Rules/notice_ni35101_001117.html.

OSC Notice of Commission Approval of Memorandum of Understanding with the Alberta Securities Commission and the British Columbia Securities Commission. (September 1, 2000). http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/mouss/memomoranda_list.html.

OSC 2001 Annual Report. http://www.osc.gov.on.ca/en/About/publications.html.

OSC News Release. (August 31, 2000). "RCMP/OSC Announce New Collaboration in the Fight Against Organized Crime." http://www.osc.gov.on.ca/en/About/News/NewsReleases/rcmposcintelligenceunit_20000831.html.

OSC. (January 2000). "CSA Concept Proposal for an Integrated Disclosure System." http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/csanotices/csa_list.html.

OSC. (December 17, 1999). Notice of Policy Under the Securities Act National Policy 47-201 Trading Securities Using the Internet and Other Electronic Means. http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Policies/policies.html.

OSC 1998 Annual Report. http://www.osc.gov.on.ca/en/About/publications.html.

OSC. Rule 45-501 Exempt Distributions. http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Rules/45-501_011123.pdf.

QSC. (November 5, 2001). "MOU Regarding the Oversight of the Canadian Venture Exchange by the BCSC and ASC between the ASC, BCSC and CVMQ." http://www.cvmq.com/fr/publi/dossier_doc/mouquebec_final.pdf.

QSC Press Release. (February 1, 2000). "Day Trading: the Position of the Commission des Valeurs Mobilieres du Quebec." http://www.cvmq.com/Upload/fichier_pdf/communique/rpcom175_EN.pdf.

QSC. "Policy Statement Q-13 Sophisticated Purchasers." http://www.cvmq.com/Upload/fichier_pdf/norme/Q-13ang.pdf.

Romano, Roberta. (1998). "Empowering Investors: A Market Approach to Securities Regulation." *The Yale Law Journal* 107: 2359.

Romano, Roberta. (1993). *The Genius of American Corporate Law, AEI Studies in Regulation and Federalism*. Washington, DC: AEI Press.

SEC. (November 13, 1998). "The Regulation of Securities Offerings." http://www.sec.gov/rules/proposed/337606a1.txt.

SEC. (December 8, 1998). "Regulation of Exchanges and Alternative Trading Systems." http://www.sec.gov/rules/final/34-40760.txt.

"The Ship that Sank Quietly." (February 16, 2002). *The Economist:* 57-58.

Simon, Carol J. (June 1989). "The Effect of the 1933 Securities Act on Investor Information and the Performance of New Issues." *The American Economic Review* 79, no. 3: 295-318.

SSC. "Saskatchewan Policy Statement 45-402 Qualified Investor Exemptions in Clauses 39(1)y and 81(1)(s)." http://www.ssc.gov.sk.ca/files/loc-poli/45-602.pdf.

Stymiest, Barbara. [President and Chief Executive Officer, Toronto Stock Exchange].(November 5, 2001). TSE News Release. [comments to Emirates Institute for Banking and Financial Services]. http://www.tse.com/tse_inc/index.html.

Stymiest, Barbara. [President and Chief Executive Officer, Toronto Stock Exchange]. (August 24, 2001). TSE News Release. International Equity Traders Association 8th Annual Canadian Traders Convention. http://www.tse.com/tse_inc/index.html.

Supreme Court of Canada. (November 16, 2001). Cooper *v.* Hobart. http://www.lexum.umontreal.ca/csc-scc/en/rec/html/cooper2.en.html.

Task Force on the Future of the Canadian Financial Services Sector. (September 1998). Background Paper 5: Improving the Regulatory Framework. http://finservtaskforce.fin.gc.ca/rpt/report.htm.

Tedesco, Teresa. (October 11, 2001). "OSC Appears More Vigilant than US Counterparts—Vigorous Enforcement." *National Post*.

Tonder, Sophy, and Steve Slater. (October 30, 2001). "Euronext Secures LIFFE Purchase." *Globe and Mail*.

TSE. (September 28, 2001). Application for Recognition of Market Regulation Services Inc. http://www.cvmq.com/upload/fichier_pdf/norme/1-demande%20rs%20incang_cons.pdf.

TSE Research Bulletins. (August 31, 2000). "Canadian Company Listings—Home Market Advantage." http://www.tse.com/tse_inc/index.html.

TSE News Release. (June 7, 2000). "TSE to Join Global Equity Market Alliance." http://www.tse.com/tse_inc/index.html

TSE Research Bulletins. (June 1, 2000). "Canadian Shareholder Study: Canadians Propel Equity Markets." http://www.tse.com/tse_inc/index.html.

TSE Research Bulletins. (November 12, 1999). "Trading Online." http://www.tse.com/tse_inc/index.html.

TSE Committee on Corporate Disclosure. (March 1997). "Responsible Corporate Disclosure: A Search for Balance."

Williamson, Peter. (1960). *Securities Regulation in Canada*. Toronto: University of Toronto Press.