

Obsessing about a national securities commission

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(This comment reflects the opinion of the author and not necessarily that of the Institute or of its board of directors)

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It is curious, even strange, to hear the federal finance minister on May 26th 2010 repeat, like a well-trained parrot, the same lame arguments about why Canada must have a single, national, securities commission. The French version of the argument was even more pathetic.

Let's single out some pearls of tortured logic.

“A national commission will result in cost savings for the benefit of issuers”; but the new system will call for a new national super-structure; yet there should not be any staff reduction in the personnel of provincial commissions (who, in participating provinces, will become (better paid?) federal civil servants)!

“Canada is the only country member of the OECD which does not have a national securities commission”; but as Terence Corcoran wrote in the *Financial Post* on May 26th “Canada is the only developed country without a national regulator and the only country not to be burned by the global financial crisis, therefore Canada will create a national regulator. Doesn't work as a logical syllogism.” Canada indeed fared best when most everywhere else their financial system was going over the cliff!

“Canada is an international laughing stock with its 13 jurisdictions”; but international organizations, far from laughing at Canada, regularly rank our country among the best for its corporate governance and the protection of investors! For instance, in an **OECD** report, Canada came in 2nd for the quality of overall securities regulation ahead of the USA (4th) and the UK (5th). **The World Bank** ranked Canada in 5th place for investor protection, again ahead of the United States (7th) and the United Kingdom (9th).

“A single national regulator will do a better job of enforcing the law and prosecuting criminals”; but the federal government is already responsible for the legal framework governing the prosecution of criminal cases, a framework that differs radically from the American system of justice; furthermore, the evidence is mounting that efforts at centralized investigation and litigation have been disappointing; moreover, the track record of “national” securities commission in other countries provides very tepid support for centralized arrangements. It is instructive and discomfoting to read how the Boston office of the SEC had tried, in vain, for several years to bring the Washington SEC enforcement authorities to look into Bernard Madoff’s affairs; so much for the superior coordination of a centralized organization.

“A national securities commission will result in simpler, more effective processes for investors”; again the bugaboo of 13 jurisdictions is trotted out; there is a wilful ignorance of the effective coordination that has been put in place by provincial securities commission (with Ontario opting out!), that a single filing is required to satisfy the requirements, that a recent, little known invention, called the Internet, has made filing and reporting a simple, inexpensive process.

Companies merely have to file their documents on SEDAR, the electronic, Internet-based system. Here’s what filing documents look like in Canada under the current system:

VIA SEDAR

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Administrator of Securities, New Brunswick
Nova Scotia Securities Commission
Registrar of Securities, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Yukon
Registrar of Securities, Government of Nunavut, Department of Justice
The Toronto Stock Exchange

Very simple, very inexpensive!

“A national securities commission will result in more effective international representation and influence for Canada”; that’s probably the lamest argument; the provincial securities commission have formed an effective organization called the “Canadian Securities Administrators”. The chair of that organization, presently Mr. St-Gelais, the CEO of the Autorité des marchés financiers du Québec, becomes a legitimate and credible spokesperson to present and defend Canadian views in any international forum.

Something else is going on here. The suspicion, growing now into a conviction, traces this unnatural obsession to a political calculus. The financial establishment of Toronto will support a party that delivers on a key strategic move to make Toronto the unchallenged and exclusive financial center of Canada. The deafening silence of the Liberal Party and of the NDP on that matter is revealing. All federal parties (except of course for the Bloc Québécois) are frightened of losing support in the all-important province of Ontario.

There could be, however, a monkey-wrench, a fly in the ointment in implementing this national commission and it will not come from the Supreme Court.

Would a federal, or national, commission have to require all publicly traded companies to communicate with their investors in both official languages? Indeed, would a francophone investor, regardless of where he or she lives in Canada, be entitled to receive a French version of the prospectus, annual reports and all other financial communications published by a publicly traded, nationally regulated, company?

Canadian consumers, by law, are informed of the contents of products they buy in both official languages wherever in Canada they are residing. So why would it be any different when it comes to a national organization that is supposed to ensure Canadian investors are adequately informed about a “financial product” they have bought or are considering buying?

Let us look at a concrete example. In the spring of 2008, Visa Inc. became a publicly listed company in Canada. To avoid the financial costs and delays involved in translating the (503-page) prospectus and related documents, Visa decided not to distribute and sell its shares to Quebec investors. Under the present system, that is a clear and legal option. How would that be possible if a national commission had regulated Visa? How could a national agency created by the federal government endorse a scenario that would deprive *francophone investors outside of Quebec* as well as in Quebec of information in French?

This is not a minor issue. The cost to produce legally binding translations of all documents is very considerable and adds an element of time delay that must be managed very carefully. At this time, even among the 253 largest listed companies in Canada, the companies making up the TSX/S&P Index, **only 81 (37%)** publish their annual report in French as well as in English. **Only 60%** actually provide a French version of the all-important Management Information Circular, the proxy document that provides information on executive compensation, on board members proposed for election as well as on any special resolution submitted to a vote by the general assembly of shareholders.

For the thousands of smaller companies listed on Canadian exchanges, the problem would be even more formidable. For instance, from May 2009 to May 2010, the Ballard Power Systems company, based in British Columbia and listed on the Toronto Stock Exchange, has transmitted some 537 pages of document to its shareholders and to the media. Given that most of these documents are legally sensitive, their translation in French would have to be carried out by a law firm at a cost which could reach \$100,000, plus the hassle; and there are **1465** companies listed on the TSX!

Proponents of a national securities commission better make sure they have a legal, and politically palatable, answer to that question before proceeding too hastily with their plan. Were a national securities commission to result in a requirement that all communications of publicly traded companies with their investors be made available in both official languages, the total cost would be astronomical. But that may be the cost of an obsession...or of a political gambit!