

# Bill 17, *The Securities Amendment Act*

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## I. INTRODUCTION

Bill 17, *The Securities Amendment Act*,<sup>1</sup> was given Royal Assent in the Manitoba Legislature on 13 June 2006. Bill 17 went through its life cycle in a relatively short period of time considering the vast amount of amendments it proposed. It was introduced for first reading on 22 November 2005 and given Royal Assent in less than seven months. Bill 17 moved quickly because its readings in the legislature and the parliamentary committee meeting where it was reviewed were but formal steps in a process that had started long before.

Bill 17 introduced amendments to the existing *Securities Act*<sup>2</sup> as a part of an overall scheme set in place by 12 provinces and territories to make improvements to the securities regulatory framework in Canada.<sup>3</sup> In recent years, there has been heated debate in this country over whether our securities framework should be overhauled to resolve the differences between the many regulatory bodies in the industry and whether a more uniform securities market should be created. In 2003, the provinces and territories implemented the Provincial Territorial Securities Initiative to begin the process of harmonizing securities laws across the country.<sup>4</sup>

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Bill 17, *The Securities Amendment Act*, 4th Sess., 38th Leg., Manitoba, 2006.

R.S.M. 1988, c. 850, C.C.S.M. c. S50.

These include: British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories, Nunavut Ontario is the sole non signatory to the provincial initiative agreement See Provincial Territorial Securities Initiative, *Reform of the Current Canadian Securities System*, online: Provincial Territorial Securities Initiative <<http://www.securitiescanada.org>>.

Quebec Minister of Finance, News Release, "Securities: Provinces and Territories Agree to Complete the Project to Reform the Current Regulatory System" (17 July 2003), online: Portail Quebec <<http://communiqués.gouv.qc.ca/gouvqc/communiqués/GPQE/Juillet2003/17/c3318.html>>.

*The Securities Amendment Act*<sup>5</sup> is only part of the harmonizing process, but it is a significant portion nonetheless because without uniformity of provincial and territorial laws, a more uniform securities market with fewer regulatory barriers will not be realizable. This paper will analyze the driving factors that led to changes to the *Securities Act* and the role these changes play in the overall scheme of securities regulation in this country.

## II. REASONS BEHIND THE AMENDMENT

### A. The Securities Market in Canada

#### 1. *Securities regulation: the traditional approach*

To understand the reasoning for reforming the *Securities Act*, one must understand how securities are regulated in Canada. Although the Canadian Constitution does not explicitly assign the rights of securities regulation to the provinces or the federal government, securities have traditionally been regulated independently by each province and territory.<sup>6</sup> Securities regulators in each province and territory have been responsible for prospectus reviews, ensuring continuous disclosure by companies, regulation of traders, enforcement of the regulations, and public education. Any company that wanted to get involved in the securities market in Canada had to--prior to the harmonization process--meet the requirements for each province or territory it chose to do business in.

This may have been of little concern in the past, but overhead costs associated with independent provincial securities regulations have been rising as companies increasingly conduct business across provincial and national borders. As a result, key stakeholders have been very active in securities regulatory reform. Different parties have different views on this matter but they share the goal of reducing regulatory barriers to make the securities industry more transparent.

#### 2. *Recent developments in securities regulation*

In recent years every Canadian province and territory, as well as their respective securities regulatory authorities, has made significant progress towards a more harmonized securities regulatory framework. The Canadian Securities Administrators ("CSA"), an agency made up of all of the provincial and

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S.M. 2006, c. 11 [the Act].

The *Constitution Act, 1867* (U.K.), 30 & 31 Viet., c. 3, s. 92(13), reprinted in R.S.C. 1985, App. II, No. 5, grants the provinces "property and civil rights" legislating power while s. 91(2) grants the federal government the power to legislate in respect to "trade and commerce".

territorial securities regulatory authorities, has set a goal of harmonizing rules across the country.<sup>7</sup> In 2003, the provinces and territories set up the Provincial Territorial Securities Initiative to coordinate the harmonization process, which led to *The Securities Amendment Act* in Manitoba as well as in other provinces and territories.<sup>8</sup>

Some of the early reforms that were set in place include the Mutual Reliance Review System ("MRRS") and the System for Electronic Document Analysis and Retrieval ("SEDAR").<sup>9</sup> Both were incorporated by the provinces and territories early in the 1990s. MRRS allows for one securities regulator to be designated the "principal regulator" which then reviews the prospectus of the company wishing to issue shares.<sup>10</sup> Other jurisdictions simply rely on the analysis and review of filings by the principal regulator. This allows the shares issued under the approved prospectus to be sold across Canada. Guidelines for continuous disclosure are set out in SEDAR, which requires insiders to file securities disclosure documents only once to comply with the insider reporting obligations of all securities regulators.<sup>11</sup>

Recent developments include the creation of the National Registration Database ("NRD") and the System for Electronic Disclosure by Insiders ("SEDI"). NRD, an initiative of the CSA and the Investment Dealers Association of Canada ("IDA"), is a web-based system that allows individual investment dealers and advisers to file securities registration forms electronically.<sup>12</sup> SEDI, also a web-based tool, complements the previously established SEDAR by facilitating the filing and public dissemination of insider reports in electronic format.<sup>13</sup>

The CSA has also been actively working on the Uniform Securities Legislation ("USL") project, which proposes amendments to securities laws and rules to fill

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Canadian Securities Administrators, *About the CSA*, online: Canadian Securities Administrators <[http://www.csa-acvm.ca/html\\_CSA/about.html](http://www.csa-acvm.ca/html_CSA/about.html)>.

*Supra* note 3. Ontario did not agree to the passport system memorandum of understanding of the Provincial-Territorial Securities Initiative and therefore is not amending its *Securities Act* as other provinces and territories have done or will be doing. See *Ontario's View* at page 228 of this paper.

SEDAR, *Background on SEDAR*, online: SEDAR <[http://www.sedar.com/sedar/background\\_on\\_sedar\\_en.htm](http://www.sedar.com/sedar/background_on_sedar_en.htm)>.

<sup>10</sup> Alberta Securities Commission, *National Policy 12-201: Mutual Reliance Review System for Exemptive Relief Applications*, online: Alberta Securities Commission <[http://www.alberta.securities.com/dms/1144/1408/11391\\_1587913\\_v1\\_-\\_NP\\_12201\\_-\\_CONSOLIDATED\\_-\\_AUGUST\\_6\\_2004.pdf](http://www.alberta.securities.com/dms/1144/1408/11391_1587913_v1_-_NP_12201_-_CONSOLIDATED_-_AUGUST_6_2004.pdf)> at 12.

<sup>11</sup> Canada, Parliament, Parliamentary Information and Research Service, "Reforming Canadian Securities Regulation" in *Library of Parliament*, No. PRB 05-28E (19 September 2005) at 7.

<sup>12</sup> *Ibid.* at 8.

<sup>13</sup> See SEDI website: <<http://www.sedi.ca>>.

in the remaining differences between the laws. Launched in the spring of 2002, the USL project provides the provinces with model legislation containing clauses and definitions that the CSA believes should be common across all provinces and territories.<sup>14</sup> The change to securities laws made by *The Securities Amendment Act* is Manitoba's first step toward compliance with the USL project, but further changes will be required to meet the CSA's proposals.

## B. Options for Securities Regulatory Change

All stakeholders appear to agree that barriers should be reduced through changes to securities regulation in Canada but there are differences of opinion as to how that goal should be implemented. The two basic options for securities regulatory reform are:

- A national securities regulator; or
- An interprovincial securities agreement.

From a government perspective, Ontario and the federal government back the option of a national securities regulator, while every other province and territory is calling for an interprovincial framework.

### *1. Interprovincial agreement: the Passport System*

The Provincial/Territorial Securities Initiative is the driving force behind the passport model to securities reform. The goal of the ministers involved in the initiative is to put in place a provincial/territorial framework that:

[I]nspires investor confidence and supports competitiveness, innovation and growth through efficient, streamlined and cost-effective securities regulation that is simple to use for investors and other market participants.<sup>15</sup>

The passport system would:

[E]nsure that issuers and registrants (firms, brokers, etc) can access markets all across Canada, by complying with the legislation in force under, and by dealing with, only one authority, their primary jurisdiction.<sup>16</sup>

The passport system proposes a single window of access to market participants through mutual recognition or legal delegation. Under legal delegation, host jurisdictions would delegate powers to make decisions to the primary jurisdiction. Mutual recognition would allow participating jurisdictions to recognize market participant credentials that have complied with regulatory requirements of the primary jurisdiction.

<sup>14</sup> Canadian Securities Administrators, *Blueprint For Uniform Securities Laws For Canada*, online: Alberta Securities <[http://www.albertasecurities.com/dms/2990/10153/10160\\_Final\\_Version\\_of\\_USL\\_Concept\\_Proposal\\_-\\_English\\_January\\_30,\\_2003.pdf](http://www.albertasecurities.com/dms/2990/10153/10160_Final_Version_of_USL_Concept_Proposal_-_English_January_30,_2003.pdf)> at 4.

<sup>15</sup> Provincial-Territorial Securities Initiative, *supra* note 3.

<sup>16</sup> *Supra* note 4.

The primary jurisdiction is defined as the province or territory to which a market participant is most closely connected. In most cases the primary jurisdiction for an individual registrant will be the jurisdiction in which the individual's normal working office is located; for a non-individual registrant it will be the jurisdiction in which the registrant's head office is located; and for an issuer it will be the jurisdiction in which the issuer's head office is located.<sup>17</sup>

The host jurisdiction for the issuer is the province or territory in which the securities are being distributed/offered or where the issuer is a reporting issuer. The host jurisdiction for a registrant is where the registrant is providing trading/advising services and which is not the registrant's primary jurisdiction.<sup>18</sup>

For issuers, the passport system will initially include:<sup>19</sup>

- Prospectus requirements and clearance;
- Prospectus and registration exemptions;
- Continuous disclosure requirements; and
- Routine discretionary exemptions.

For registrants, the passport system will initially include:<sup>20</sup>

- Registration process, requirements and related filings; and
- General and routine discretionary registration exemptions.

The passport system also builds on investor protection by maintaining existing protection or enhancing protection to investors through higher and consistently applied standards.<sup>21</sup> Individual provinces have discretionary power to introduce legislation for further investor protection. With the implementation of the passport system, investors will still be able to continue to bring legal actions in their own jurisdictions, regardless of the primary jurisdiction.

Enforcement of securities laws will be carried out by a co-operative effort between the primary jurisdiction and the host jurisdiction. After receiving a complaint and a preliminary assessment of the situation, the host jurisdiction

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<sup>17</sup> See Provincial-Territorial Securities Initiative, *A Provincial/Territorial Memorandum Regarding Securities Regulation*, online: Provincial-Territorial Securities Initiative <[http://www.securitiescanada.org/2004\\_0930\\_mou\\_english.pdf](http://www.securitiescanada.org/2004_0930_mou_english.pdf)> [MOU]. AU participating jurisdictions are not required to act as a primary jurisdiction. The primary jurisdiction's responsibility to regulate all or certain market participants can be assigned or delegated to another participating jurisdiction, with the agreement of the delegate: sees. 5.8. Also, each minister can cease the primary jurisdiction recognition if he or she believes the jurisdiction is not using its reasonable best efforts to abide by the MOU) or its regulatory scheme has fallen below an acceptable standard: see s. 5.9.

<sup>18</sup> *Ibid.* at s. 1.1.

<sup>19</sup> *Ibid.* at s. 5.3.

<sup>20</sup> *Ibid.* at s. 5.4.

<sup>21</sup> *Ibid.* at s. 2.1.

would pass on its findings to the primary jurisdiction. The primary securities regulator may, after conducting an investigation, undertake enforcement action or refer the matter back to the host jurisdiction for enforcement.<sup>22</sup>

Although the goal is harmonization, the passport system does allow for local and unique initiatives. In doing so, a minister is to consider:<sup>23</sup>

- Whether the initiative is necessary to meet a policy objective;
- How the impact on other jurisdictions would be minimized;
- How the impact on the efficiency of the provincial/territorial passport framework would be minimized; and
- Making the measure subject to regular reassessment to ensure the integrity of the passport system is maintained.

The end result of the passport system is that it allows for harmonization of securities laws while still allowing each province and territory to independently maintain ultimate control over their respective securities markets. While it provides local authorities with a degree of autonomy, the aggregation of separate passport systems creates a larger regulatory regime for registrants and issuers.

## **2. Ontario's view: a national regulator**

Ontario, home to Canada's largest securities market, has an influential role in securities reform in Canada. The province,

[E]nvisions provinces and territories working together to move to a new securities regulatory framework that features a common securities regulator, a common body of securities law and a single fee structure.<sup>24</sup>

This is in contrast to the passport system, where all jurisdictions retain the authority to set and collect fees.<sup>25</sup> Under the passport system, each province would maintain its own securities regulator and securities laws with no guarantee of uniformity in the future. This is also problematic because the existence of 13 securities regulators in Canada fails to address the absence of a single window of access for foreign market players.<sup>26</sup>

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<sup>22</sup> *Ibid.* at s. 5.6.

<sup>23</sup> *Ibid.* at s. 5.10. Interestingly, the ability to make local rules is one of the arguments against a provincial regulatory scheme.

<sup>24</sup> Government of Ontario, News Release, "Ontario's proposal-Modernizing Securities Regulation in Canada" (24 June 2004), online: Ministry of Government Services <<http://www.gov.on.ca/MGS/en/News/052867.html> >.

<sup>25</sup> MOU, *supra* note 17 at s. 5.11.

<sup>26</sup> *Ibid.* at s. 5.12. Ministers request securities regulators to establish a single window of access by having one jurisdiction act as the primary jurisdiction.

Ontario wants the common regulator to be an entirely new agency instead of having 13 separate agencies. While all provinces have banded together to form the Provincial, Territorial Securities Initiative, Ontario disagrees with the initiative's recommendations and it is not a signatory to the passport system Memorandum of Understanding ("MOU") presented to the provinces on 30 September 2004.<sup>27</sup> Ontario believes the passport model does not go far enough to address the concerns of national and international issuers and registrants and, "[T]hat it may in fact delay the move to a common regulator by diverting resources and slowing momentum."<sup>128</sup> Ontario continues to endorse the idea of a single national securities regulator because it does not believe in what it calls the fragmented structure of the passport system.<sup>29</sup>

The Wise Persons' Committee ("WPC,") established by the federal government and composed of industry professionals from across the country presented a report on securities regulation in December 2003 entitled *It's Time*.<sup>30</sup> The report calls for a national securities regulator. It states that there was a time when Canadian businesses seeking to raise capital were primarily located in the same region as the investors who bought their securities.<sup>31</sup> At that time investors were "well served by a provincially based regulatory structure" but as capital markets have become increasingly national and international, Canada's securities regulatory industry must change.<sup>32</sup> Although the report finds some benefits resulting from the passport system, including the reduction in the number of securities regulations that market participants must comply with and the satisfaction of local needs, the report concludes the passport system does not go far enough to address most securities regulation issues. For example, the report indicates the passport system does not significantly improve enforcement because it lacks central coordination.<sup>33</sup> In addition, the report indicates a major weakness of the passport system is its failure to maximize cost savings and efficiencies. With 13 separate regulators there is still a need for market participants to pay fees in each jurisdiction even though they might deal with only one regulator. With a provincially controlled passport system there is also a risk of instability because nothing prevents any jurisdiction from opting out of

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<sup>27</sup> *Ibid.* See also *supra* note 3.

<sup>28</sup> Government of Ontario, News Release, "Towards a Common Securities Regulator For Canada" (28 June 2006), online: Ministry of Government Services <[http://www.gov.on.ca/MGS/static/STEL02\\_047205.html](http://www.gov.on.ca/MGS/static/STEL02_047205.html)>.

<sup>29</sup> *Ibid.*

<sup>30</sup> Wise Persons' Committee, *It's Time (Committee to review the structure of securities regulation in Canada)*, (Distribution Centre: Department of Finance Canada, 2003), online: Wise Persons' Committee <<http://www.wiseaverties.ca/reports/WPC%20Final.pdf>>.

<sup>31</sup> *Ibid.* at vii.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.* at 55.

the agreement. With a passport system, Canada's standing in the international capital market as being overly regulated would not change, as 13 separate regulators would still exist for a country with less than 3% of the world's capital markets.<sup>34</sup>

In addition to the WPC report, Ontario commissioned a Five Year Review Committee on the Ontario *Securities Act*,<sup>35</sup> which also recommended that all levels of government work toward the creation of a national securities regulator. The final report of the committee stresses "the need for a single, coordinated approach to securities regulation in Canada and notes that "a nation that commands only two per cent of the global economy suffers daily from a regulatory regime which is comprised of 13 separate regulators.,<sup>36</sup>

The latest committee to issue reports in agreement with Ontario's view is the Crawford Panel, which issued reports in December 2005<sup>37</sup> and June 2006.<sup>38</sup> The panel calls for one national securities regulator as a means of enhancing "market efficiencies and Canada's economic competitiveness."<sup>39</sup> The reports also call for respect for provincial "expertise, specialized knowledge and professionalism.. within a new national regulator.<sup>40</sup> The Crawford Panel has established a blueprint for a national securities regulator that is endorsed by the Ontario and federal governments.

The Ontario Securities Commission ("OSC"), the largest securities regulator in Canada, also supports the idea of a single national securities regulator. It cites shortcomings with the current system, such as increased costs for issuers and investors, regulatory burdens, and the unattractiveness of the Canadian securities market. Commenting on the WPC's final report, David Brown, chair of the OSC, cites a study by the IDA showing that a national regulator would save issuers and investors \$73 million a year directly.<sup>41</sup> Mr. Brown also states that market participants have emphasized the need for efficiency and reduced

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<sup>34</sup> *Ibid.* at 56.

<sup>35</sup> R.S.O. 1990, c. S.5.

<sup>36</sup> Five Year Review Committee, *Final Report (Reviewing the Securities Act-Ontario)*, (Toronto: Queen's Printer 2003), online: Ministry of Finance <<http://www.fin.gov.on.ca/english/publications/2003/5yrsecuritiesreview.pdf>> at 2.

<sup>37</sup> Crawford Panel, *A Blueprint for a New Model (A Discussion Paper by the Crawford Panel on A Single Canadian Securities Regulator)*, (December 2005), online: Crawford Panel <[http://www.crawfordpanel.ca/Osler\\_Blueprint\\_for\\_A\\_New\\_Model\\_English.pdf](http://www.crawfordpanel.ca/Osler_Blueprint_for_A_New_Model_English.pdf)>.

<sup>38</sup> Crawford Panel, *Blueprint for a Canadian Securities Commission Final Paper* (June 2006), online: Crawford Panel <[http://www.crawfordpanel.ca/Crawford\\_Panel\\_final\\_paper.pdf](http://www.crawfordpanel.ca/Crawford_Panel_final_paper.pdf)>.

<sup>39</sup> *Ibid.* at 2.

<sup>40</sup> *Ibid.*

<sup>41</sup> Letter from David Brown (Chair OSC) to Michael Phelps (Chair WPC) (8 July 2003), online: Ontario Securities Commission <[http://www.osc.gov.on.ca/Media/Speeches/sp\\_20030708\\_brown-re-wpc.pdf](http://www.osc.gov.on.ca/Media/Speeches/sp_20030708_brown-re-wpc.pdf)> at 1.



costs. According to Mr. Brown, the Ontario Teachers' Pension Plan, one of the largest institutional investors in Canada, has said that:

[T]he discretion of provinces and territories in securities law matters is an example of provincial and territorial jurisdiction getting in the way of common sense, which results in increased costs to investors and the Canadian economy.' <

The Ontario Teacher's Pension Plan also states that the current regulatory system is "both a puzzle and a deterrent to non Canadians when they compare our system to single regulators in other countries."<sup>43</sup> Other market players have also voiced their opinion in favour of a single national regulator. The Canadian Council of Chief Executives strongly believes in a single securities regulator and states that "13 regulators simply cannot provide the same efficiency of operation, simplicity of compliance, consistency of interpretation or flexibility in handling change as a single regulator."<sup>44</sup>

Notwithstanding the comments of powerful market players in support of a single national securities regulator, the provinces and territories, less Ontario, have moved ahead with a plan for an interprovincial agreement beginning with amendments to their respective Securities Acts. With two distinct solutions still in play, Manitoba has decided to proceed in the direction of the majority of the provinces in opting for a passport system, allowing it to still keep substantial control over its own securities market. This choice does not address the issue of securities overregulation, however.

### III. THE *SECURITIES* AMENDMENT ACT

The *Securities Amendment Act* was introduced in the Manitoba Legislature for first reading on 22 November 2005. The *Act* was created in response to the initiative set forward by the provincial ministers responsible for securities regulation.<sup>45</sup> It introduces amendments that are necessary for the implementation of a passport system and also includes some amendments to increase investor protection. The first step in the creation of the passport system was the acceptance of the *Notice of Multilateral Instrument 11,101 Principal Regulator System*,<sup>46</sup> agreed upon by every province and territory in Canada

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<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.* at 2.

Canadian Council of Chief Executives, *Competing for Growth: Doing What is Right for Canada in Reform of Securities Regulation*, online: Canadian Council of Chief Executives-Innovation and Competitiveness <[http://www.ceocouncil.ca/en/view?document\\_id=145&type\\_id=5](http://www.ceocouncil.ca/en/view?document_id=145&type_id=5)>.

<sup>45</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 17B (22 November 2005) at 581 (Greg Selinger).

<sup>46</sup> See e.g. Manitoba Securities Commission, *Form 1110IF1: Notice of principal regulator under Multilateral Instrument 11 101*, online: Manitoba Securities Commission <<http://www.msc>.

except Ontario. Manitoba implemented the instrument in 2005 as Rule 2005 21 (Section 149.1 of the *Securities Act*).<sup>47</sup> This rule is a temporary measure that facilitates the functioning of the passport system to the extent that is possible without actually making changes to the existing legislation. The *Act* is the next step in the passport system process by amending, repealing, and creating new sections in the *Securities Act*.

### A. First Reading

The Minister of Finance, Greg Selinger, introduced Bill 17 at the same time as Bill 16, *The Corporations Amendment Act*.<sup>48</sup> Mr. Selinger stated the purpose of the legislation was to "strengthen and improve investor rights and to enhance access to capital markets across Canada."<sup>49</sup> As Bill 17 was being introduced as a requirement of the passport system established by the Provincial/Territorial Security Initiative, Mr. Selinger stated the bill had "been done in consultation with securities industry stakeholders, as well as other ministers across the country."<sup>50</sup> As the bill is non controversial and non partisan, the motion was adopted with no further commentary or questions.

### B. Second Reading

Bill 17 was introduced into the Legislative Assembly for second reading on 24 November 2005. Mr. Selinger went into further detail about the bill, mentioning that it was created as part of an overhaul of national securities legislation to "harmonize securities law requirements across Canada to make it easier to do business here and across Canada."<sup>51</sup> He stated that the passport system requires the delegation of regulatory powers to other provinces and the acceptance of other provinces' regulatory powers. Mr. Selinger discussed how the bill would enhance investor protection by making "it easier for investors to take court action [against] a public company that makes misrepresentations in written or oral statements or fails to make timely disclosure of material changes."<sup>52</sup> The bill was also touted as giving:

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gov.mb.ca/legal\_docs/legislation/rules/11\_101fl.pdf>. This is one example of a consent form generated as a result of the agreement.

<sup>47</sup> *Multilateral Instrument 11101 Principal Regulator System*, M.S.C. Rule 2005-21 (19 September 2005), online: Manitoba Securities Commission <[http://www.msc.gov.mb.ca/legal\\_docs/legislation/rules/11\\_101\\_mscrule2005\\_21.pdf](http://www.msc.gov.mb.ca/legal_docs/legislation/rules/11_101_mscrule2005_21.pdf)>.

<sup>48</sup> Bill 16, *The Corporations Amendment Act*, 4th Sess., 38<sup>ch</sup> Leg., Manitoba, 2006.

<sup>49</sup> *Supra* note 45.

<sup>50</sup> *Ibid.*

<sup>51</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 19B (24 November 2005) at 687 (Greg Selinger).

<sup>52</sup> *Ibid.*

[I]nvestors new statutory rights when they buy securities relying on an offering memorandum allowing investors have their money returned or to sue for damages when the offering memorandum contains misrepresentations.<sup>53</sup>

Mr. Selinger also mentioned that more powers need to be granted to the Securities Commission to more accurately enforce securities laws and that Bill 17 would address this concern. The last main point of the bill covered by Mr. Selinger was the increase of the maximum fine for breaches of the *Securities Act* to \$5 million from the present \$1 million.

Debate on the second reading continued on 7 December 2005. David Faurischou, the MLA for Portage la Prairie, said he was happy to see amendments proceed that would benefit all investors, "[R]egardless of whether the investment is made in the rural [area] of Manitoba or the city of Winnipeg or other cities throughout the province."<sup>54</sup> Mr. Faurischou recognized that Manitobans would like to invest elsewhere in the nation and would want:

[T]o have legislation that will provide the needed assurances that the corporations to which they are investing in are, in fact, legitimate and that the prospectus that has been provided for review prior to investment is in keeping with accurate figures and conforms to the business activity that the company is engaged in.<sup>55</sup>

Mr. Faurischou concluded his comments by stating his support for Bill 17, and noting that he wanted to see the bill receive second reading so that it could go on to committee, which would provide an opportunity for public comment.

## C. Legislative Affairs Committee

Bill 17 headed into committee on 24 May 2006, and with most of the groundwork laid by the Provincial/Territorial Securities Initiative, the bill's progression through the committee was a quick one. Interested parties, such as investor groups, securities commissions and public corporations had already been involved in expressing their opinions and therefore there was no public discussion. The bill was read clause by clause with no adjustments. Though there were questions about the bill, no changes were made. This was because members accepted the bill was part of a Canada-wide provincial agreement to harmonize securities laws.

## D. Third Reading

Third reading and Royal Assent were given on 13 June 2006.

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<sup>53</sup> *Ibid.*

<sup>54</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 26 (7 December 2005) at 998 (David Faurischou).

<sup>55</sup> *Ibid.*

#### IV. CONCLUSION

Bill 17 was introduced as part of a larger initiative by the provinces to move forward with the passport system, the provincial solution to securities reform in Canada. Manitoba is but one player in this process and each province and territory needs play its respective role. Bill 17 and the passport system may eventually be successful, but the efficacy of Manitoba's system is dependent on other provinces and territories. These governments must implement similar changes to their respective Securities Acts if Manitoba's legislation is to be effective.

Although Bill 17 may succeed in helping to harmonize securities laws and providing increased investor protection, the bigger question is whether the passport system will work. As Ontario has pointed out, the passport system does not go far enough and without Ontario's participation the effectiveness of such a system is questionable. Ontario and other stakeholders have mentioned that the time and changes put forward by the provinces may be wasted because a federal regulatory scheme is a necessary ingredient for success. The passport system relies on the continued participation of all provinces and territories and even with that participation not all of the regulatory barriers are reduced, because market participants still need to comply with 13 different provincial and territorial rules and regulations.

Even provincial ministers agree that without substantial harmonization of securities laws-both now and into the future-there will be greater potential for some jurisdictions avoid participation in the passport system, thus leading to its failure.<sup>56</sup> Only a federal regulator would create true uniformity now and into the future and act as Canada's single voice internationally. Bill 17, *The Securities Amendment Act*, does not accomplish this, thus its success may be limited.

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<sup>56</sup> See Provincial Territorial Securities Initiative, *Securities Regulation in Canada: An Inter-Provincial Securities Framework (Discussion Paper)*, online: Provincial-Territorial Securities Initiative <[http://www.securitiescanada.org/securities\\_discussion\\_paper\\_english.pdf](http://www.securitiescanada.org/securities_discussion_paper_english.pdf)> at 3.