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Ian C.W. Russell: Believe in the securities regulator's board, the glass is still half full



SPECIAL TO FINANCIAL POST | August 17, 2016 5:01 PM ET
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Look at the part of the glass that is half full: the significant breakthrough in the appointment of the new board. Getty Images/Thinkstock

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cooperative securities regulator in his recent article, “A two-tiered single regulator in Canada would mean dark and cloudy days ahead” (Aug 11). Mohinda’s glass is understandably half-empty in light of the three-year delay in the cooperative regulator’s launch, the many complications identified in the related legislation and regulations, and complications in integrating the non-participating provinces.

But, look at the part of the glass that is half full — the significant breakthrough in the appointment of the new board. The independent nomination committee (led by the Honourable Michael Wilson) picked an impressive coterie of talented and experienced people from all parts of the financial sector and business community, broadly representative of the regions of Canada. It will be chaired by the formidable Bill Black, who has a wealth of experience in business and finance. For the first time, the cooperative regulator has the leadership and ownership of the regulatory agenda to overcome obstacles inevitable in an entity heretofore managed by five provincial and one territorial bureaucracies.

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The legislation and initial regulations for the Capital Markets Act (CMA) and the Capital Markets Stability Act (CMSA) are the responsibility of the participating provinces and territories, not the board. However, the tasks are not insurmountable and the formation of the board will put pressure to make progress. The architects have done a good job drafting the legislation, carefully taking into account two rounds of comments. Much of the remaining concerns about the CMA relate to its unfamiliarity, at least for the Ontario bar, as key sections have been lifted from statutes other than the Ontario Securities Act.

Second, legislative and operational features must ensure efficient interface with the non-participating provinces and territories for a well-functioning national market. The Canadian Securities Administrators has already put into practice approaches for cross-border capital flows and

enforcement procedures, through a set of national policies. These can be grounded through passport or mutual recognition of regulatory regimes.

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Concerns about the proposed CMSA mainly relate to uncertainties about what will be deemed “systemic” for purposes of the legislation; the risks of duplicative rules to obtain systemically related information; and the workings of the core collaborative/cooperative mechanism among financial regulators. Many of these issues will be resolved as the legislation and the operating structure are finalized.

A positive step forward was the decision to restrict the cooperative regulator to responsibility for capital market systemic risk, not oversight of individual institutions. Systemic threats to capital markets would be identified, and agreed-upon corrective action would be taken by the appropriate regulators. The board of the cooperative regulator would have an important responsibility to facilitate coordination among the various regulatory authorities.

One of the most important tasks for the board will be overseeing the rule-making process once the regulator is operational. The board will encourage techniques and approaches to ensure rules are cost-effective, and properly balanced between investor protection and market efficiency. Small business start-ups and expansion are at the core of economic prosperity in Canada.

Finally, the board must meet the challenge of developing a vision and a comprehensive strategic plan for the cooperative regulator. The vision and plan will help build a unique culture for the regulator, displacing the competitive and often different approaches taken by provincial commissions.

After the extensive and frequent delays, skepticism is understandable. But, the Rubicon has now been crossed.

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