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Canada: Financial Sector Assessment Program—Detailed Assessment of the Level of Implementation of the IOSCO Principles and Objectives of Securities Regulation

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FINANCIAL SECTOR ASSESSMENT PROGRAM

CANADA

DETAILED ASSESSMENT OF THE LEVEL OF IMPLEMENTATION OF THE IOSCO PRINCIPLES AND OBJECTIVES OF SECURITIES REGULATION

JANUARY 2008

INTERNATIONAL MONETARY FUND
MONETARY AND CAPITAL MARKETS DEPARTMENT

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GLOSSARY

AASB	Audit and Assurance Standards Board
AIF	Annual Information Forum
AMF	Autorité des Marchés Financiers
AMF SA	Securities Act of the Autorité des Marchés Financiers
ASB	Accounting Standards Board
ATS	Alternative Trading System
BDRVM	Bureau de Décision et de Révision en Valeurs Mobilières
CanPX	CanPX Inc.
Canadian AS	Canadian Accounting Standards
CDCC	Canadian Derivatives Clearing Corporation
CDRP	Continuous Disclosure Review Program
CDRS	Continuous Disclosure Review System
CDS	Canadian Depository for Securities Limited
CEO	Chief executive officer
CIS	Collective investment schemes
CNQ	Canadian Trading and Quotation System, Inc., Canada's new stock exchange
CPAB	Canadian Public Accounting Board
CPP	Canada Pension Plan
CPSS	Committee on Payment and Settlement Systems
CSA	Canadian Securities Administrators
CSF	Chambre de la Securité Financière
GAAP	Generally Accepted Accounting Principles
IDA	Investment Dealers Association of Canada
IFIC	Investment Funds Institute of Canada
IFRS	International Financial Reporting Standards
IMETs	Integrated Market Enforcement Teams
IMM	Intelligent Market Monitor
IOSCO	International Organization of Securities Commissions
IPO	Initial public offering
IRC	Independent Review Committee
MFDA	Mutual Fund Dealers Association of Canada
MMoU	Multilateral Memorandum of Understanding
MoU	Memorandum of understanding
MoF	Minister of Finance
MRRS	Mutual reliance review system
MX	Montreal exchange
NAV	Net asset value
NRS	National Registration System
ONT SA	Securities Act of Ontario
OSC	Ontario Securities Commission
RS	Market Regulation Services Inc.
RSP	Regulation Service Provider
SMARS	Stock Monitor, Alert, and Research
SROs	Self regulatory organizations
TSX	Toronto Stock Exchange
TSXV	TSX Venture Exchange

UMIR	Universal Market Integrity Rules

EXECUTIVE SUMMARY

The regulatory framework for the securities market of Canada exhibits high levels of implementation of the International Organization of Securities Commissions' (IOSCO) Principles. In the largest jurisdictions, regulatory agencies are independent, self funded, and appear to have sufficient resources and skilled personnel to carry out their responsibilities. However, coordination among the provincial regulators to eliminate gaps and overlaps, and to make the most efficient use of resources is not yet at the optimal level.

The regulatory framework for most of the areas covered by securities regulation is robust. Nevertheless, there are gaps in the regulation and supervision of collective investment schemes (CIS) and enforcement is in need of further improvement.

I. INTRODUCTION

1. **An assessment of the Canadian Securities Market was conducted from September 10–21, 2007 as part of the Financial Sector Assessment Program by Ana Carvajal, Monetary and Capital Markets Department**.[1]

II. INFORMATION AND METHODOLOGY USED FOR THE ASSESSMENT

2. **The assessment was conducted based on the IOSCO Principles and Objectives of Securities Regulation and the associated Methodology adopted in 2003**. A Committee on Payment and Settlement Systems (CPSS)/IOSCO Assessment was conducted separately; thus Principle 30 was not assessed here.

3. **As it was impossible to assess 13 provinces, the assessment largely relied on the regulatory frameworks of Ontario and Quebec to draw inferences on the level of implementation of the Principles for the country as a whole**. Given the high level of harmonization in regulations that has been brought about by the adoption of National Instruments, and the fact that these two provinces account for a very significant proportion of the activity of the Canadian securities market, the assessor and the Government of Canada believe that this is a reasonable approach. To the extent possible the assessor has highlighted the cases where important differences exist between the framework of these two provinces and other provinces/territories.

4. **The assessor relied on** (i) self-assessments carried out by the Ontario Securities Commission (OSC) and the Autorité des Marchés Financiers (AMF); (ii) the review of relevant laws, regulations issued by both the OSC and the AMF, and other relevant documents including procedures, manuals and guidelines; (iii) meetings with Board members of the OSC and the president of the AMF, staff of both regulatory agencies, and other public authorities, in particular representatives of Finance Canada and the Bank of Canada; as well as (iv) meetings with market participants, including issuers, financial intermediaries, market operators and self regulatory organizations.

5. **The assessor wants to thank both the OSC and the AMF for their full cooperation as well as their willingness to engage in very candid conversations about the regulatory and supervisory framework in their provinces**. The assessor also wants to extend her appreciation to all other public authorities and market participants with whom she met.

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[1] An IOSCO assessment was conducted in 1999; however at that time a methodology to assess the level of implementation of the Principles had not been developed. In addition, significant reforms have been brought about by the creation of the Canadian Securities Administrators (CSA). Therefore, a decision was taken to conduct a full assessment rather than an update.

III. Description of Regulatory Structure and Practices

6. **Securities markets in Canada are under a system of provincial regulation and supervision**.[2] As a result, there are 13 regulatory authorities, each one administering a separate set of securities laws and regulations. Overall, securities legislation in all the provinces and territories has the same underlying objectives—ensuring investor protection and fair, efficient capital markets—and the regulatory authorities share the same core responsibilities. However, actual regulations developed by each province to address these core set of goals and responsibilities can, and do, differ, and so can the specific requirements applicable to different types of market participants as well as the level of investor protection.

7. **The nature, structure, resources, and powers of the provincial regulators vary.** The assessor was informed that in the smallest provinces in particular, the regulator is still part of the government, funded by it and with limited resources. That is not the case for the four largest jurisdictions—Alberta, British Columbia, Ontario and Quebec—which roughly supervise 95 percent of the market. These regulatory agencies are operationally independent and fully self-funded by levies imposed on market participants. They have comprehensive powers, including enforcement powers. In the case of the AMF, enforcement powers are exercised through an independent tribunal, the Bureau de Décision et de Révision en Valeurs Mobilières (BDRVM).

8. **Under the umbrella of the Canadian Securities Administrators (CSA), provincial regulators are working to coordinate their actions.** The CSA is a non-statutory association that brings together all Canadian securities regulatory authorities with the objective of improving regulation of Canadian securities markets. The CSA has undertaken several initiatives to harmonize securities regulation via the adoption and administration of national instruments.

9. **Authorization and supervision of issuers, CIS, and registrants are the areas where more progress has been achieved.** The provincial regulators have developed a mutual reliance review system (MRRS) for issuers and CIS, whereby decisions are taken by one regulator under a highly harmonized regulatory framework, while the others retain the authority to opt out. A similar regime, the National Registration System (NRS), has been developed for registrants, though regulatory harmonization has not taken place yet. The provincial regulators have also worked on the development of a coordinated approach for exchanges and self regulatory organization (SRO) oversight, with more progress being achieved at the level of the exchanges.

[2] The provinces have regulated capital markets using their jurisdiction over "property and civil rights" set out in Subsection 92(13) of the Constitution Act, 1867. Legal opinions commissioned by the Wise Persons Committee concluded, however, that nothing in the Constitution prevents the federal government from regulating this area.

10. **Provincial regulators rely largely on self-regulatory organizations (SROs) for the regulation and supervision of the market and its participants**. The main SROs are: (i) the Investment Dealers Association of Canada (IDA), which has self regulatory powers over investment dealers; (ii) the Mutual Fund Dealers Association of Canada (MFDA), which has powers over mutual fund dealers; (iii) the Chambre de la sécurité financière (CSF), which regulates mainly mutual fund representatives in Quebec; and (iv) Market Regulation Services Inc. (RS), which has self regulatory powers over the trading in equity marketplaces.[3] In addition, the Montréal Exchange (MX) is recognized as an SRO, and the equity exchanges (the Toronto Stock Exchange (TSX) and the TSX Venture Exchange (TSX V)) should be considered SROs, although they have outsourced market regulation functions to RS. A proposal for the merger of IDA and RS has already been submitted to the regulators.

IV. MARKET STRUCTURE

11. **Canada has a system of specialized securities intermediaries, although the categories and requirements vary across provinces.** In general there are three main categories: investment dealers, mutual fund dealers, and advisors. Investment dealers and mutual fund dealers are required to be members of an SRO (either the IDA or the MFDA; except in Quebec where mutual fund representatives are required to be members of the CSF while mutual fund firms are not). Membership in these SROs has de facto harmonized requirements for these two categories of participants (except for mutual fund dealers in Quebec).

12. **The main exchanges work under a model of specialization.** Under a noncompetition agreement, the TSX and TSXV have specialized in equity (senior and junior, respectively) while the MX is a derivatives market. The TSX has already announced that it will pursue the creation of a derivatives market once the agreement expires in 2009.

13. **The TSX is the 7th largest equity market by market capitalization.** As of December 2006, market capitalization of the TSX Group amounted to US$1,701 billion. It ranks 12th by value of equity trading, with a traded valued of US$1,282 billion for 2006. There is an important link with the U.S. market: in 2006 there were 195 interlisted issuers out of 1,598 TSX-listed issuers, for a combined market value of US$1.2 trillion or 61 percent of the total domestic market. Moreover the regulatory authorities have developed a Multijurisdictional Disclosure System, under which issuers from the United States and Canada largely rely on the filings that they produce in their home countries for purposes of the cross listing.

[3] The equity marketplaces are the Toronto Stock Exchange (TSX), TSX Venture Exchange (TSXV), Canadian Trading and Quotation System—the new Canadian stock exchange (CNQ), and the Alternative Trading System (ATS).

14. **Ontario has a significant share of the market and its participants.** Approximately 31 percent of listed issuers, amounting to 46 percent of Canada's equity markets, are based in Ontario; 60 percent of IDA member firms have their Canadian head office in Ontario; 76 percent of CIS assets are held by firms based in Ontario; and 49 percent of the assets of the top 100 employer funds are also held by Ontario based pension funds.

V. General Preconditions for Effective Securities Regulation

15. **The general preconditions necessary for the effective regulation of securities markets appear to be in place in Canada**. Those preconditions relate to sound macroeconomic policies, appropriate legal, tax and accounting frameworks, and the absence of entry barriers to the market.

VI. Main Findings

16. **Principles related to the regulator—**The largest regulatory agencies work independently of the government under a vigorous system of accountability. They are funded by levies imposed on market participants. Self funding has allowed them to retain sufficient qualified personnel to carry out their functions. They are subject to a high degree of transparency, including public consultation on regulations and published policy statements. At the same time, they abide by high standards of ethics that have been codified into an ethics code, with certain reporting obligations. They are active on investor education. Under the umbrella of the CSA, provincial regulators are coordinating their actions, albeit with uneven progress: issuers, CIS and registrants are the areas where more progress has been achieved.

17. **Principles for SROs—**SROs are subject to authorization based on eligibility criteria that among others address issues of financial viability, capacity to carry out their functions, governance, and fair access. Supervision is based on a set of mechanisms that include off-site reporting, on-site inspections, as well as regular meetings and close contact with SRO staff to discuss ongoing issues.

18. **Principles for enforcement—**Canada has established a credible system for the supervision of the market and its participants in which SROs play a significant role. Enforcement has experienced positive change during recent years; however, it is still in need of considerable improvement. Although matters of a criminal nature and securities law matters are enforced by different authorities, these authorities can and do cooperate with each other in certain circumstances. However, the development of a coordinated approach to enforcement between criminal and securities law enforcement, with clear lines of accountability and benchmarks, seems to be missing. Both the federal authorities and the provincial regulators have taken important steps in that direction.

19. **Principles for cooperation—**The largest regulatory agencies have explicit and comprehensive powers to share information with both local and domestic authorities and can

do so without the need of any external approval. The four largest jurisdictions are signatories of the IOSCO Multilateral Memorandum of Understanding (MMoU). They have the power to obtain information that is not in their files on behalf of foreign regulators. They have shown clear a commitment to exchange information and assist other regulatory agencies both domestically and internationally.

20. **Principles for issuers—**Issuers are subject to disclosure obligations at the moment of authorization and on an ongoing basis, fully in line with IOSCO standards. The regulatory agencies have developed a system for review of the prospectus as well as continuous disclosure obligations. Liability provisions are in place to ensure issuers' responsibility for the prospectus.

21. **Principles for CIS—**CIS operators are not subject to a registration regime. As a result, the regulatory agencies cannot impose eligibility criteria on them and it is questionable whether they can exercise full disciplinary powers over them. However some of the risks of this gap are currently being mitigated by the fact that under their respective securities laws, CIS operators are considered "market participants" and as such are subject to certain minimum obligations. Public offerings of CIS are subject to disclosure requirements at the moment of authorization and on an ongoing basis, fully in line with IOSCO principles. There are rules in place on separation of assets; however not all CIS are required to have a custodian. Supervision of mutual funds and their operators is not a regular part of the oversight program of one of the major regulatory agencies, although the agency does carry out targeted reviews.

22. **Principles for market intermediaries—**Market intermediaries (investment dealers, mutual fund dealers and advisors) are subject to a registration regime based on eligibility criteria that include integrity, financial viability, and capacity to carry out their services (including proper internal controls and risk management mechanisms). Supervision of investment dealers and mutual fund dealers is carried out by their respective SRO (except in Quebec where mutual fund dealers are supervised by the AMF). These SROs have developed risk assessment models to determine the focus and frequency of inspections. Supervision of advisors (and mutual fund dealers in Quebec) is carried out by the regulatory agencies, also based on risk assessment models. Investment dealers and mutual fund dealers are required to participate in contingency funds.

23. **Principles for secondary markets—**The operation of an exchange is subject to an authorization regime based on eligibility criteria that include financial viability, capacity, governance, and fair access. Alternative Trading Systems (ATS) are regulated as dealers subject to certain market requirements; however the framework allows the regulatory agencies to regulate them as exchanges once they reach a certain threshold. Exchanges have developed mechanisms for market surveillance, which are complemented by regulatory surveillance. There is sufficient pre-trade transparency for market participants and post-trade transparency for both market participants and the public. There are plans to deal with market

disruptions, although in one of the agencies these should be further developed. The two main clearing entities, one for securities and the other for derivatives, have developed reasonable mechanisms to manage large exposures including selection criteria for clearing members, margins and collateral.

Table 1. Summary Implementation of the IOSCO Principles and Objectives of Securities Regulation

Principle	Findings
Principle 1. The responsibilities of the regulator should be clearly and objectively stated	Responsibilities of the regulatory agencies are clearly stated in the law. Under the umbrella of the CSA, provincial regulators are coordinating their actions, although certain areas still require further improvement.
Principle 2. The regulator should be operationally independent and accountable in the exercise of its functions and powers	The largest regulatory agencies are independent and fully self-funded by levies imposed on market participants. There is a strong system of accountability to the government and to the public that includes ministerial approval of the budget, annual audit of financial statements, an annual report of activities, and judicial review.
Principle 3. The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers	The regulatory agencies have sufficient powers to regulate the market and its participants; except for registration of CIS operators. The largest agencies have also been able to hire and retain personnel with the necessary expertise.
Principle 4. The regulator should adopt clear and consistent regulatory processes	The regulatory agencies are subject to a high degree of transparency including public consultation regarding regulations and policy statements. They are active on investor education.
Principle 5. The staff of the regulator should observe the highest professional standards	The regulatory agencies have developed codes of ethics. Reporting obligations on investment activities are in place as well as mechanisms to monitor compliance.
Principle 6. The regulatory regime should make appropriate use of SROs that exercise some direct oversight responsibility for their respective areas of competence and to the extent appropriate to the size and complexity of the markets	SROs play a significant role in the supervision of the market and its participants. SROs include the IDA, the MFDA, the RS, the MX, and the CSF.
Principle 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	SROs are subject to an authorization regime based on eligibility criteria that address issues of integrity, financial viability, capacity, governance and fair access. SROs are subject to oversight through periodic reporting; on-site inspections under a periodic cycle (approximately three years) and regular meetings.

Principle	Findings
Principle 8. The regulator should have comprehensive inspection, investigation and surveillance powers	The regulatory agencies have broad investigative and surveillance powers over regulated entities. In particular, they can conduct on-site inspections, including of books and records without prior notice; obtain books and records and request data or information without the need for a judicial action; and supervise exchanges and regulated trading systems.
Principle 9. The regulator should have comprehensive enforcement powers	The regulatory agencies have broad enforcement powers. These include the power to seek injunctions; bring an application for civil proceedings; order the suspension of trading and the freezing of assets; compel information, documents, records and testimony from third parties (non-regulated entities) in the course of their investigations; impose administrative sanctions; seek quasi criminal actions; and refer matters to the criminal authorities.
Principle 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.	The regulatory agencies have implemented a credible system of supervision of the market and market participants. While enforcement has experienced positive change, further improvement is needed. The development of a coordinated approach to enforcement between criminal and securities law enforcement authorities, with clear lines of accountability and benchmarks, seems to be missing.
Principle 11. The regulator should have the authority to share both public and nonpublic information with domestic and foreign counterparts	The regulatory agencies have broad authority to share information with both domestic and foreign regulators and have done so even in cases where no memorandum of understanding (MoU) was in place.
Principle 12. Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts	The four largest regulatory agencies are signatories of the IOSCO MMoU. They also have bilateral MoUs, including a MoU with the U.S. Securities Exchange Commission and the U.S. Commodity Futures Trading Commission.
Principle 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	The regulatory agencies have authority to assist foreign regulators in obtaining information that is not in their files.

Principle	Findings
Principle 14. There should be full, timely and accurate disclosure of financial results and other information that is material to investors' decisions	Issuers are subject to disclosure requirements at the moment of authorization and on an ongoing basis.
Principle 15. Holders of securities in a company should be treated in a fair and equitable manner	The framework for corporations addresses issues of shareholders' rights, including notice of meetings; and special majorities for the approval of major changes. A mandatory tender offer is required for the acquisition of control of a listed company.
Principle 16. Accounting and auditing standards should be of a high and internationally acceptable quality	Issuers are required to submit financial information in accordance with Canadian Generally Accepted Accounting Principles (GAAPs). Audits have to be conducted in accordance with Canadian Accounting Standards (Canadian AS).
Principle 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	CIS operators are not subject to registration. On-site inspection is not part of the regular program for the oversight of CIS and its operators in at least one of the largest agencies; however targeted reviews have been conducted.
Principle 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	The legal form and structure of CIS have to be disclosed in the prospectus, along with investors' rights. There are provisions on separation of assets; however not all CIS are required to have a custodian.
Principle 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	CIS are subject to disclosure obligations at the moment of authorization and on an ongoing basis. The regulatory agencies have developed a system to review prospectuses. A continuous obligations review system has been implemented recently.
Principle 20. Regulation should ensure that there is a proper and disclosed basis for assets valuation and the pricing and the redemption of units in a collective investment scheme	CIS are required to value their portfolios at fair value. There are rules for disclosure of prices, subscription and redemption, and best practice regarding pricing errors.
Principle 21. Regulation should provide for minimum entry standards for market intermediaries	Dealers and advisors are subject to a registration regime based on eligibility criteria that address integrity, financial viability, capacity, internal controls, and risk management. Supervision of intermediaries involves periodic reporting and on-site inspections.
Principle 22. There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake	Market intermediaries are subject to minimum capital requirements as well as capital adequacy requirements. IDA and MFDA have an early warning system to detect problems in market intermediaries' financial condition.

Principle	Findings
Principle 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	IDA and MFDA rules contain detailed obligations on internal control and risk management as well as on business conduct.
Principle 24. There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk	The regulatory agencies have at their disposal a set of mechanisms to prevent and deal with a failure, including terms and conditions in the registration; an early warning system, powers to order the cessation of trading and plans to deal with market disruption—although in one case the plan should be further developed. Investment dealers and mutual fund dealers are required to contribute to compensation funds.
Principle 25. The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight	Exchanges are subject to an authorization regime based on eligibility criteria that include integrity, financial viability, and capacity. ATS are regulated as dealers; however the framework allows the regulatory agencies to regulate them as an exchange once they reach a certain threshold.
Principle 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	RS has developed automated surveillance systems that allow them to detect unusual transactions. The MX automated surveillance system is still under development and presently consists more of post trade exception reports. These systems are complemented by surveillance by the regulatory agencies, in particular to detect insider trading. There is currently no MoU between RS and MX.
Principle 27. Regulation should promote transparency of trading	Post-trade information is available to the public for all markets, while some pre-trade transparency exists also, especially in the equity markets (e.g. TSX, TSX Venture) and exchange traded derivatives (MX).
Principle 28. Regulation should be designed to detect and deter manipulation and other unfair trading practices	The Universal Market Integrity Rules (UMIR) contain provisions that prohibit market manipulation and other unfair practices. Similarly, the MX also has trading rules that cover manipulative or deceptive methods of trading. Practices that RS or MX could not pursue—such as insider trading—are in the framework of the regulatory agencies. Some also constitute criminal offenses (for example insider trading).

Principle	Findings
Principle 29. Regulation should aim to ensure the proper management of large exposures, default risk and market disruption	The Canadian Depository for Securities Limited (CDS) and the Canadian Derivatives Clearing Corporation (CDCC) have developed mechanisms to manage large exposures, including capital requirements for clearing members, margins, collateral and caps on the transactions that can be entered for settlement.
Principle 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	A separate CPSS-IOSCO assessment was conducted.

Table 2. Detailed Assessment of Implementation of the IOSCO Principles and Objectives of Securities Regulation

Principles Relating to the Regulator	
Principle 1.	The responsibilities of the regulator should be clear and objectively stated.
Description	Canada's securities market is under provincial regulation. As a consequence, there are 13 regulatory agencies whose authority derives from provincial legislation. Overall all provincial regulators have a clear mandate, as is the case for the OSC and the AMF. **Responsibilities** Responsibilities of both the OSC and the AMF are properly stated in provincial laws. OSC's authority and responsibilities derive mainly from the Securities Act and the Commodities Futures Act. As a unified regulator, the AMF's responsibilities encompass regulation of the financial sector in Quebec, including the areas of securities, insurance, deposit taking—except for federally chartered banking and insurance institutions—and the distribution of financial products. The AMF's responsibilities concerning securities markets stem from a number of legislative acts, including the Securities Act, and the Act respecting the distribution of financial products and services (Distribution Act). They both have authority to interpret the legal and regulatory framework. In both cases they have the authority to issue policy statements. Policies, notices and decisions are all published in their respective bulletins and they are also available on their respective web sites. In their respective jurisdictions, both the OSC and the AMF are the sole public authority with responsibility over securities regulation. The OSC and the Office of the Superintendent of Financial Institutions (OSFI) entered into an Accord in 1987 to address potential overlap in the regulation of federal institutions and their subsidiaries and affiliates that engage in securities related activities. In addition, an MoU was signed in 1988. In the case of the AMF, its nature as a unified regulator allows it to internally address any issues, gaps or overlaps in the regulation of different intermediaries. The AMF and the OSFI signed an MoU in 1998 to ensure proper coordination. **Coordination among the provincial regulators** At a national level, all 13 securities regulators are part of the CSA. The CSA is a non-statutory association that brings together all the Canadian securities regulatory authorities with the objective of improving regulation of Canadian securities markets. It has been instrumental in the development and implementation of a series of initiatives that have improved the current provincial framework of regulation and supervision. A Policy Coordination Committee, composed of six members, is responsible for approving projects and policy initiatives to ensure that they conform to CSA's strategic plan. Work is carried out through permanent committees, as well as special project committees. A permanent secretariat, located in Montreal, monitors and coordinates the work of the various committees. **Self regulatory organizations**

	Canada has a long tradition of relying on SROs—the first SRO, the IDA was established in 1916. Responsibilities of SROs are set out in their recognition orders. To ensure coordination in oversight, provincial regulators have entered into MoUs for the oversight of the different SROs. Currently there are MoUs pertaining to the oversight of the IDA, the MFDA, and the RS. **Coordination with other financial regulators** The Joint Forum was established in 1999 by the CSA, the Canadian Council of Insurance Regulators and the Canadian Pension Supervisory Authorities with the objective of helping pension, insurance and securities regulators to coordinate, harmonize, and streamline the regulation of financial products and services.
Assessment	Broadly implemented
Comments	From the perspective of market participants, there is still significant duplication caused by the system of provincial regulation that should be addressed. However, the assessor acknowledges that under the umbrella of the CSA the provincial regulators have made significant improvements, in particular in the areas of issuers, CIS and registrants.
Principle 2.	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	The degree of independence and accountability of each one of the 13 regulatory agencies depends on their respective legal frameworks. The assessor was informed that there are differences in the level of financial independence of the different regulatory agencies. However, at least the four largest provinces have regulatory agencies that are operationally independent, under a system of accountability. **Independence** Both the OSC and the AMF are separate legal entities. The OSC is a self-funded crown corporation with a board of directors composed of 13 commissioners. The board has a Chair and two Vice Chairs, who are all full-time officers. There is also one Secretary to the Commission. The AMF is a legal person, with a mandate from the state and with a single person governing body (the president and chief executive officer—CEO). **Independence of staff** Both regulatory agencies have similar statutory immunities for acts/omissions of the board/agency head and staff in the good faith exercise of their functions. In addition, in Quebec the statute expressly states that the AMF assumes the defense of its personnel and pays damages awarded unless the person acted in gross negligence. The Securities Act of Ontario (ONT SA) does not explicitly address those issues, except regarding the defense of a narrower set of personnel (commissioners and secretaries). OSC Commissioners are appointed by Order in Council of the Lieutenant Governor in Council on the recommendation of the Premier of Ontario. The OSC has established a Corporate Governance and Nominating Committee that provides input into the process. According to the ONT SA, the term of office of the commissioners may not exceed five years, but they may be re-appointed. The appointments are made, and the terms fixed, by the Lieutenant Governor in Council. According to judicial precedents and recent amendments to the legal framework, fixed-term appointments cannot be rescinded except with due cause. According to the AMF Act, the president and CEO of the AMF is appointed by the

	government, for a five-year period and cannot be removed without valid reason. **Government involvement in regulatory issues** According to the legal framework of both the OSC and the AMF, the issuance of regulations and the signature of MoUs for exchange of information require the approval of the Minister of Finance (MoF)—though in the case of the AMF approval is only required for MoUs with local authorities. The authorities informed that the AMF is currently exploring with the government ways to streamline the approval process. Other than in those areas, the government does not have any direct role in the day-to-day operations of the regulatory agencies. In the case of the OSC, an MoU between the OSC and the MoF delineates the roles and responsibilities of both entities. This MoU has to be renewed every five years. **Budget independence** Both the OSC and the AMF are fully self-funded and their budgets are independent from the government budget. However, the Minister does have certain powers on financial and administrative matters. In the case of the AMF, by law its budget has to be approved by the MoF, as well as the overall level of compensation of the staff. An advisory committee, created by law, provides advice to the Minister in those areas. In both cases, as well as to hire key personnel, the president has to obtain the opinion of the advisory committee—although its opinion is nonbinding. In the case of the OSC, the MoF does not approve the OSC's statement of priorities but does, under the terms of the MoU, approve the annual business plan. **Accountability** There are provisions in the legal framework of both the OSC and the AMF that set up the mechanisms for accountability to the government and the public. These mechanisms include the following: a) Submission of the budget for the approval of the MoF. b) Obligation to have their financial statements audited by the Auditor General. c) Submission to the MoF of the audited annual financial statements along with an annual report on their activities—to be delivered within 6 months after the end of the fiscal year (OSC), or not later than July 31 (AMF). In both cases the annual report is public and available on their respective web sites. d) Submission by the MoF of the annual report to the legislative body—within a month of its submission to the Minister. The legislative body has the power to summon the head of the regulatory agency. e) Judicial review of decisions of both the OSC and the AMF.
Assessment	Implemented
Comments	Both regulatory agencies are subject to a strong accountability to the MoF that might create tensions. However both the OSC and the AMF commented that the Minister has not used the powers he has on financial matters to impose his own priorities on the institutions; and there have not been instances where the budget presented by them has been modified by the Minister.
Principle 3.	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.

Description	Powers, resources and capacity of the 13 regulatory agencies can only be assessed in reference to their specific conditions and legal framework. Overall, all regulatory agencies have sufficient powers to carry out their function—with the exception of the registration of CIS operators. As for resources, the assessor was informed that there could be significant differences in the level of funding and resources available to different provinces. However the largest four provinces are self funded and appear to have sufficient resources to carry out their functions. **Powers** The legal framework for the OSC and the AMF does provide them with sufficient powers to regulate and supervise the market and its participants (issuers, CIS, SROs and exchanges, and securities intermediaries), with the exception of fund operators/managers who under the current framework are not subject to a registration regime (see Principle 17). It is also important to mention that, while both agencies have rulemaking authority, their regulations have to be approved by the Minister. In the case of the AMF, enforcement powers are exercised via an independent tribunal, the BDRVM. The BDRVM members are appointed by the government for fixed terms and can only be removed with due cause. **Resources and capacity to carry out their functions** Both the OSC and the AMF are funded by fees levied on market participants. Fees are set up by the agencies but have to be approved by the Minister. Currently both agencies have surpluses. Their financial independence has allowed them to pay salaries that are competitive with the private sector (in the case of OSC, salaries are aimed at the 75th percentile of the market, for example). Thus turnover ratios are low (around 7 percent for the OSC and 5 percent for the AMF). It appears that both institutions have sufficient staff to carry out their responsibilities (current staffing level is 424 staff at the OSC and 630 at the AMF, whose responsibilities go beyond securities markets). In this regard, during recent years both agencies have made a priority of hiring additional staff for their investigation and enforcement divisions, and in the case of the AMF also for their SRO division. In general, market participants expressed their opinion that the personnel of both agencies have the skills necessary to carry out their functions. Both regulatory agencies have established mechanisms to ensure that day-to-day operations are in conformity with the strategic direction set up by the governing body. They both have internal audits in charge of reviewing whether the agencies are properly discharging their functions. In particular in the case of the OSC, this exercise involves the development of a matrix of risk and internal controls to identify areas where risks are not properly controlled. Based on this matrix correction plans are set up. In addition, in both cases the staff is required to present periodic reports of performance to the head of the organization.
Assessment	Partly implemented
Comments	The grade reflects the lack of a registration regime for CIS managers. Under proposed National Instrument Registration Requirements 31–103 and related statutory

	amendments, CIS operators will be required to register. Thus, this Principle will then be considered as implemented.
Principle 4.	The regulator should adopt clear and consistent regulatory processes.
Description	Overall, all regulatory agencies work under a high degree of transparency that requires them to submit their regulations to public consultation, and their decisions are subject to judicial review. **Consultation process** Both the OSC and the AMF are subject to a statutory mandated process of consultation with the public of their regulations and policies. Draft regulations and draft policy statements are published in their respective bulletins with a consultation notice, and a notice is also published in the official newspaper. All comments along with the explanation of the position taken by the respective agency are also published in their bulletins. Changes to regulations and policy statements are also subject to the same consultation process. In addition both the OSC and the AMF have made use of consultative committees and groups to gather input for market participants on important issues. They are required by statute to take into account the economic impact of regulations before their adoption. In particular the OSC has made significant progress in this area, through the creation of the Economic Analysis, Strategy and Project Branch whose function is to prepare a cost-benefit analysis for significant policy projects (for example, detailed cost benefit analyses were prepared for proposals regarding auditor oversight; certification of disclosure in issuers' annual and interim filings; and mutual fund governance). **Procedural fairness** Both regulatory agencies are required by their legal frameworks to act in a fair manner. AMF is required to provide reasons in the case of unfavorable decisions (Section 319 of the AMF SA and Section 8 of the Act respecting administrative justice), while the OSC must provide written reasons upon request (Statutory Powers Procedure Act). However, as a matter of practice both institutions provide reasons for the major decisions they adopt. Persons directly affected by a decision taken by the AMF—except those taken based on the Distribution Act—can seek review of the decision by an independent tribunal the BDRVM (Section 318 of the AMF SA). SROs can also appeal before this tribunal (Section 322 of the AMF SA). Decisions taken by both the AMF and the OSC are subject to judicial review (Section 324 of the AMF SA; Section 9 of the ONT Act and Section f of the Ontario Commodity Futures Act). **Criteria for granting licenses** The legal and regulatory framework of both the OSC and the AMF establish the criteria for granting, denying or revoking licenses. **Investor education** Both regulatory agencies play an active role in investor education. Their investor education programs include community outreach via seminars and presentations;

	exhibitions at trade shows and events; publishing information brochures and similar publications; preparing investor alerts on hot topics and public advertising. They both have sections on their web sites that highlight educational resources as well contact centers. Finally, they both have investor education funds constituted with resources from administrative penalties, to provide support for various initiatives related to investor education and protection and improving financial literacy.
Assessment	Implemented
Comments	
Principle 5.	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.
Description	Overall, all regulatory agencies have developed a code of ethics and professional conduct for their staff that deals with issues of honesty and integrity; procedural fairness; prevention of conflict of interest and confidentiality. **Transactions in securities** Under the current framework of both agencies staff can invest in securities; however specific conditions, restrictions and prohibitions do exist (for example staff is prohibited from carrying out transactions on securities that are being investigated; buy securities in margin; and sell securities short). Both regulatory agencies have established certain reporting obligations. In the case of the OSC, commissioners and staff are required to file an undertaking that they understand their obligations and to sign a certificate of compliance annually. This certificate includes a detailed list of investments. In addition, they must report all securities trades, other than in exempt securities, within five days. Directors are required to periodically review trading of the staff under their supervision and provide a certification of their compliance with the OSC Bylaws. The OSC is subject to the provisions of the recently enacted Public Service of Ontario Act 2006 dealing with ethical conduct, and disclosure and investigation of wrongdoing. This Act enables OSC staff to make disclosure of wrongdoing externally to a third party. The OSC is also in the process of setting up a system for the disclosure of wrongdoing within the organization, which will include a process for the investigation of reports under the system. The AMF's president and personnel with delegated authority are required to provide a detailed report of their assets on an annual basis. This report has to be updated every time that a material change occurs. These reports are analyzed by the secretariat of the CEO. The assessor was informed that in the past on a few occasions the secretariat has given orders to staff in relation to investments, including setting up blind trusts for the management of their investments. **Confidentiality** The current legal framework for both regulatory agencies contains explicit provisions that require the staff to maintain the confidentiality of information obtained in the course of their functions (OSC By Law No. 2 and Section 16 of the AMF). **Investigations of violations of the code of ethics** Their respective code of ethics contains the procedures to investigate and resolve allegations of violations of the code. The nature of an investigation or alleged violation of

	the OSC Code of Conduct or By Law No.2 and the person who will conduct the investigation will depend on the nature and seriousness of the violation.
Assessment	Implemented
Comments	
Principles of Self Regulation	
Principle 6.	The regulatory regime should make appropriate use of SROs that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.
Description	Canada has a long history of reliance on SROs. The following entities have been recognized as SROs: a) The MX, which performs market regulation functions for its own market; b) The IDA, which performs member regulation functions for all broker/dealers in Canada. c) The MFDA, which regulates mutual fund dealers in all the provinces/territories except Quebec. d) The CSF, which regulates, in Québec, mainly mutual fund representatives. d) The RS, which provides market regulation services for some of the stock exchanges including the TSX, TSXV, the CNQ and equity ATS. e) Under the IOSCO Principles TSX, TSXV should also be considered SROs. Although they have outsourced market regulation to RS, they retain responsibility for this function. Under the Canadian system their recognition is reviewed under the framework for "exchanges" and not SROs. Nevertheless, it is important to mention that the current framework for exchanges does address all the issues that an oversight regime for SROs should cover.
Assessment	Implemented
Comments	This Principle only requires determining whether there are SROs in the respective jurisdiction and if so, the Principle should be considered implemented.
Principle 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.
Description	**Interprovincial coordination of SROs regulation and oversight** Provincial regulators have developed a coordinated approach toward SRO regulation and oversight. This approach has been formalized in MoUs. Currently there are MoUs for the oversight of RS, the IDA and MFDA. For the MX, there is not a specific MoU; however, an MoU exists for the oversight of all exchanges, including the MX, TSX, TSXV and others. **Exchanges** Exchanges are regulated and supervised under a "lead regulator" approach whereby one regulator is fully responsible for the authorization of an exchange and any change in the conditions of the authorization as well as for the approval of the regulations of the exchange. Relying on the recognition order and oversight program of the lead regulator, the other regulators exempt the exchange from recognition in their respective jurisdictions. If at any point in time one regulator decides that it is no longer in the best interest of its jurisdiction to rely on the lead regulator, then it would revoke the exemption and require the exchange to become recognized in its jurisdiction. In accordance with this model, OSC is currently the lead regulator for TSX and CNQ, AMF for MX, and the Alberta Securities Commission and British Columbia Securities Commission are the lead

	regulators for the TSXV. **Self regulatory organizations** The SROs (IDA, MFDA, and RS) are subject to a "principal regulator" approach whereby one regulator is the single point of contact for an SRO, but all the regulators retain full authority over the SRO and therefore each one is required to issue a recognition order, approve any change in the conditions of the recognition and approve the regulations of the SROs. On-site inspections are also coordinated by the principal regulator; but in this case it is common that other regulators participate in the inspection especially in the cases where the SRO has regional offices. Therefore it is possible that several reports could be sent to an SRO in relation to an inspection. In accordance with this model, currently the OSC is the principal regulator of RS and IDA, and British Columbia of the MFDA. **Mechanisms for regulation and oversight of SROs** Provincial regulators have developed a set of mechanisms for oversight of SROs, including the recognition order; the approval of regulations; periodic reporting; on-site inspections and the review of decisions taken by the SROs. **Recognition orders** The orders contain terms and conditions under which the SRO has to perform its regulatory functions. Terms and conditions address all the "registration" criteria identified by the IOSCO Principles including demonstration by the SRO that it has financial and operational viability; adequate corporate governance; the capacity to perform its functions, including proper risk management; that it treats all members in a fair manner; and that it develops adequate standards for its members that promote investor protection. In addition, terms and conditions require the submission of rules and regulations for the approval of the regulator; as well as the obligation of the SRO to exchange information with the regulator and other SROs. **Approval of SROs rules** As stated above, rules have to be approved by the regulators of the provinces where the SROs would operate. The provincial regulators work under a "consensus" approach. As a result, timely approval of regulations or their amendments can become challenging. **Periodic reporting obligations** All the SROs are subject to certain periodic reporting obligations, most of them determined on an ad-hoc basis, at the time of recognition, based on the nature of the services that the SRO would provide. The majority of these obligations would be the same across the different provinces; however there are cases of additional/different reports requested by one regulator. All of them are required to present annual financial statements and monthly reports on investigation and enforcement actions. The IDA and the MFDA are required to submit a self assessment of the performance of their self regulatory function on an annual basis. The exchanges and clearing houses are required to submit an independent review of their IT systems, while the equity exchanges submit an annual report on RS's performance of its regulatory functions. **On-site inspections** The goal of CSA members is to conduct on-site inspections of all SROs and exchanges on a three-year cycle. Except for the case of the CDCC, this goal has been met so far.

	The authorities informed that an inspection of CDCC is currently being conducted. Given that the CSF was only recognized as an SRO in 2004, an inspection has not been conducted yet, but the AMF stated that it is already in the planning stage and should be conducted during this year. Given the limited number and different roles of SROs, the CSA members have not developed a formal template for their on-site inspections, rather each time that an inspection is to be conducted members take the most recent template, consult with each other and decide the scope of the inspections and later on develop the modules for inspection. The modules of past inspections are used as an input for the preparation of these modules. The OSC and the AMF noted that, except for the first on-site inspection of the IDA, no major deficiencies have been found. In the case of the IDA, the first on-site inspection did show important deficiencies, as a result of which additional reporting obligations were established and are currently part of the off-site system of oversight—reporting obligations on investigations. **Review of decisions taken by the SROs** Third parties affected by decisions taken by the SROs, for example on registration or on enforcement, have a right to appeal before the regulator (the BDRVM or the AMF in the case of Quebec).
Assessment	Broadly implemented
Comments	From the self assessments as well as the meetings with AMF staff, the assessor concludes that the lack of sufficient staff has affected its capacity to effectively oversee SROs. In fact the AMF has not yet conducted an on-site inspection of the CSF. However, the AMF has informed that the corresponding department has been given four additional staff (three full time and one part time) and that with the additional personnel it will have the capacity to exercise better oversight of SROs, including the inspection of the CDCC currently under way and the inspection of CSF also scheduled for 2007. It appears that SROs is an area where additional coordination is needed. The assessor acknowledges that TSX, TSXV and CNQ are required to present a report on RS's performance of its regulatory functions. However, each report can only give a fragmented opinion on RS's work, while a self assessment by RS would cover the services it performs for all exchanges and ATS.
Principles for the Enforcement of Securities Regulation	
Principle 8.	The regulator should have comprehensive inspection, investigation and surveillance powers.
Description	Inspection, investigative and surveillance powers depend on the legal framework of each of the 13 regulatory agencies. Most of the agencies have comprehensive investigation and surveillance powers, including the four largest jurisdictions. **Powers** Both regulatory agencies have sufficient legal powers to conduct surveillance, undertake investigations, obtain information and take the corresponding enforcement actions on regulated entities. In particular, both regulatory agencies can: a) conduct on-site inspections, including books and records, without prior notice,

	(Sections 13, 19, 20 of the OSC Act and Section 9 of AMF Act); b) obtain books and records and request data or information without the need for a judicial action (Sections 19 and 20 of the OSC Act and Section 10 of AMF Act); and c) supervise exchanges and regulated trading systems. **Record keeping obligations** Market participants are subject to book and record keeping obligations both by statute, rules and regulations of the regulatory agencies as well as of the respective SROs. In general the regulations of RS, IDA and the MFDA require members to keep books and records for a period of seven years. NI 21–101 requires market places to keep records also for seven years. Regulated entities are also required to maintain records of clients' identity, as well as records that permit tracing of funds and securities, both under federal law (Proceeds of Crime and Terrorist Financing Act) and provincial regulation. They are also required to put in place mechanisms to minimize money laundering. **Access to information** Both regulatory agencies have authority to access the identity of all customers of regulated entities. They both have full access to the information kept by the SROs under the applicable terms of their recognition orders. They can impose terms and conditions on the SROs, and in fact have done so in their respective recognition orders. SROs are subject to similar confidentiality requirements as those applicable to the regulator (Section 16 of the AMF Act).
Assessment	Implemented
Comments	
Principle 9.	The regulator should have comprehensive enforcement powers.
Description	Enforcement powers depend on the legal framework of each regulatory agency. Most of the agencies have comprehensive enforcement powers. A few of them have quasi-criminal authority. Both OSC and AMF have the power to conduct investigations to ensure compliance with laws and regulations (Sections 11 and 12 of the OSC Act and Section 12 of the AMF Act). The OSC has also been provided with power to impose administrative sanctions as well as seek quasi criminal sanctions (Section 127 of the OSC Act). In the case of the AMF, most of the administrative sanctions are imposed by an independent tribunal, the BDRVM, upon request by the AMF. For intermediaries governed by the Distribution Act and for specific topics, for example, delays in filing insider trading reports (Section 274.1 of the AMF Act), the AMF has direct enforcement powers. As for quasi criminal sanctions, they are imposed by the provincial court. Both the OSC and the AMF have: a) the power to seek injunctions; b) bring an application for civil proceedings; c) order the suspension of trading, and the freezing of assets; d) compel information, documents, records and testimony from third parties (non-regulated entities) in the course of their investigations. This information includes

	information on bank accounts; and e) refer matters to the criminal authorities. In the case of the OSC, information obtained through compulsory powers (for example bank accounts of a non-regulated entity) can only be shared if the Commission orders so, prior notification is given to the party that provided the information and an opportunity is given for that party to be heard. The authorities informed that this procedure altogether is relatively fast (around a week). Private persons can seek their own remedies for any misconduct related to securities laws, the main one being a right of action for damages. Both the OSC and the AMF can share information with SROs for the purpose of enforcement. They can also share information that they have obtained in the course of their functions with the police. At least in the case of the OSC, some restrictions apply, however, to the exchange of information obtained under compulsion. (Sections 16 and 17 of the OSC Act).
Assessment	Implemented
Comments	The assessor considers that the existence of restrictions on sharing with the police information obtained under compulsion should not affect the grade of this Principle. These cases covered information obtained from non-regulated entities (third parties). Thus the assessor believes that the existence of additional safeguards is reasonable.
Principle 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.
Description	**Investigation and surveillance** Overall, the assessor believes that the regulatory authorities have developed reasonable systems for the supervision of the securities market and their participants. Some improvements could be made; in particular regarding on-site inspection of CIS and their operators and certain SROs. A detailed description of the mechanisms in place for the supervision of the market and its participants are provided elsewhere in this assessment (see Principle 7 for SROs; Principle 27 for exchanges; Principle 22 for intermediaries; Principle 14 for issuers and Principle 17 for CIS). **Enforcement** Overall it appears that a coordinated approach to enforcement is still partly missing, although both the federal authorities and the provincial regulators are taking measures in that direction. Criminal enforcement appears to be particularly weak. While comprehensive statistics are not available, market participants commented that very few cases have been taken for criminal prosecution and even less have resulted in criminal sanctions. To address this issue, in 2003 the federal government created Integrated Market Enforcement Teams (IMETs) led by the Royal Canadian Mounted Police to prosecute major financial crime. IMETs were located in the major financial centers. The federal government allocated CAN$30 million per year for the IMETs and in its budget plan of 2007 renewed its commitment to supplement IMET resources. In the case of the Toronto IMET, coordination appears to be working adequately since the majority of the cases that IMET has currently under investigation were referred by the OSC. However, market

participants expressed their concern about the lack of visible accomplishments by IMETs, as well as of clear national priorities, accountability and benchmarks. In addition, many of them believe that attracting and retaining personnel with the right expertise is also a challenge for the IMETs. Finally participants also believe that judges might lack knowledge on capital market issues. The federal government has recently appointed an independent expert to review IMETs work.

Enforcement by the provincial regulators has also been subject to criticism, in particular the lack of sufficient resources, the low level of sanctions imposed and the length of the administrative procedures. At least in the OSC and the AMF, the situation appears to have improved in recent years. First, both the OSC and the AMF have doubled the staff of their enforcement divisions (in the case of the OSC from roughly 39 in 1999 to 116 in 2007 and in the case of the AMF from around 46 in 2006 to 91 in 2007—including supporting staff). The number of investigations has also increased. They have also set up goals to shorten the time necessary to conduct an investigation, as well as to send a case to litigation, and in fact important reductions have already been achieved (for example, in the case of the AMF the average time necessary to finish an investigation and have the file ready for litigation decreased from 44 months to 22 months and the end goal is to reduce it to 18 months). In addition, the authorities informed that they have made use of their quasi criminal powers. In the case of the OSC in the past seven years there have been roughly 15 quasi criminal prosecutions, and in 11 of them sanctions included imprisonment. In the case of the AMF, during the last three years there were a total of 37 quasi criminal sanctions.

In addition the authorities have informed that provincial regulators are increasingly providing assistance to one another in their investigations, conducting joint investigations and even joint hearings. Also under the umbrella of the CSA, there is a permanent committee on enforcement to coordinate enforcement actions and discuss issues of common concern. The committee has monthly conference calls and in person meetings twice a year. In addition, training in enforcement is carried out every two years.

The CSA has issued semi-annual reports on enforcement covering activity dating back to 2005. Below is a table of enforcement activity by all CSA members for a three-year period:

Period	Proceedings Commenced	Sanctions Ordered	Settlement Agreements	Withdrawn No Contrav.
4/2004–3/2005				
Regulators	142	66	81	8
SROs1/		8	19	
4/2005–3/2006				
Regulator	96	62	70	7
SROs		39	31	
4/2005-3/2007				
Regulator	122	69	59	10
SROs		33	31	

Source: Canadian Securities Administrators' Annual Reports.

	1/Only second semester available The federal government also set up a task force on enforcement with the mandate to review enforcement in Canada and provide recommendations. The report is due in the fall 2007.
Assessment	Partly implemented
Comments	Enforcement is a responsibility that securities regulators share with other entities including the police and the courts. Thus the assessment of whether a country has a credible and effective enforcement system cannot look only at the actions taken by the securities regulator, rather it also requires an assessment of enforcement actions in the criminal arena, and whether there is proper coordination between all the responsible authorities. The assessor acknowledges that regulatory agencies may have different strategies toward enforcement, including giving more emphasis to prevention. Thus the number of cases opened or sanctions imposed in a jurisdiction are only a partial indicator of enforcement activity in a country. However, those numbers taken together with the comments from market participants do lead to the conclusion that enforcement is an area where considerable improvement is still needed.
Principles for Cooperation in Regulation	
Principle 11.	The regulator should have authority to share both public and nonpublic information with domestic and foreign counterparts.
Description	Both regulatory agencies have been provided with the authority to share information with both domestic and foreign regulators (Section 153 of the OSC Act and Section 297 of the AMF SA). There are no limitations on the type of information that they can share, and thus, they can share information in connection with authorization and licensing, surveillance, market events, client identification, regulated entities, listed companies and companies that go public. This information can be shared without the need for external approval. Moreover, the existence of an MoU is not a precondition for sharing information and thus both regulatory agencies can share information even in the absence of an MoU with the jurisdiction that has requested the information. Existence of an independent interest—i.e., the case under investigation by the foreign authority also constitutes a misconduct in Canada—is not a precondition for the exchange of information. Both the OSC and the AMF can share information on an unsolicited basis.
Assessment	Implemented
Comments	
Principle 12.	Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts.
Description	Both regulatory agencies have the authority to enter into MoUs to establish the conditions for the exchange of information and cooperation. However, in the case of the OSC, MoUs both with local and foreign authorities have to be approved by the Minister (Section 143.10 of the OSC Act). In the case of the AMF, approval is required for the signature of the MoU at the local level. (Section 3.8 of the Act respecting the Minister du Conseil executif). The AMF informed that it is currently exploring ways to streamline the

	authorization process. Both regulatory agencies, as well as the regulatory agencies in Alberta and British Columbia, are signatories of the IOSCO MMoU. In addition, both authorities have signed bilateral MoUs with many regulatory agencies including the US SEC. Both the IOSCO MMoU as well as the bilateral agreements contain provisions to protect the confidentiality of the information shared between the signatories. MoUs are published in their respective bulletins. The OSC is the jurisdiction that receives the largest number of requests for information. The OSC Surveillance team is responsible for responding to requests for information and assistance from local and foreign regulators. In the fiscal year 2005–2006 it has responded to approximately 16,000 requests for information, of which 775 were from foreign regulators. In addition, there were nine ongoing enforcement related investigations of mutual interest to the OSC and other regulators.
Assessment	Implemented
Comments	Only the four largest jurisdictions are signatories of the MMoU. However the assessor believes this is sufficient since in almost all cases foreign regulators would be able to channel their requests to Canada via these regulators.
Principle 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.
Description	Both the OSC and the AMF are able to provide assistance to foreign regulators in obtaining information that is not already in their files. This information includes records of brokerage accounts, and in particular client records for securities and derivative transactions that identify the name of the account holder; the name of the person authorized to transact business; the amount purchased or sold; the time of the transaction; the price of the transaction; the individual and the bank or brokerage house that handled the transaction. The provision of banking account information obtained under compulsion is subject to the limitations stated under Principle 9. Ontario is the jurisdiction that receives the largest number of requests for assistance. During last year the OSC provided assistance in over 45 cases. In roughly 10 of those cases there was no MoU with the jurisdiction that requested the assistance.
Assessment	Implemented
Comments	
Principles for Issuers	
Principle 14.	There should be full, accurate and timely disclosure of financial results and other information that is material to investors' decisions.
Description	The regulatory framework for public offerings ("distribution of securities" in the Canadian system) has been harmonized via a set of National Instruments. The main instruments include: NI 41–101 Prospectus Disclosure Requirements; 44–101 Short Form Prospectus Distributions, NI 44–102 Shelf Distributions; NI 45–106 Prospectus and Registration Exemptions; NI 51–102 Continuous Disclosure Obligations; NI 71–102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers. Under the current framework, distribution of securities is not permitted until the regulator

	has issued a receipt for the prospectus. Overall, the prospectus must include: general business and financial information about the issuer, details about the terms of securities the issuer is offering, use of the proceeds and the risk factor associated with the purchase of securities. Continuous disclosure requirements include: 1) Annual financial statements, with an audit report and the Management Discussion and Analysis report within 90 days of the end of the fiscal year—120 days for venture issuers. 2) Annual Information Form (except venture issuers) that includes updated information on the company, its operations, prospects, risks and other external factors that can impact the issuer. The deadline is the same as that for financial statements. 3) Management proxy circulars: management must send an information circular to each holder entitled to vote at an annual meeting or any special meeting. 4) Quarterly financial statements and related Management Discussions and Analysis, within 45 days after the interim period ends—60 days for venture issuers. 5) Material changes report: issuers must immediately issue and file a press release and then file a formal report within 10 days of the date on which the change occurs. In addition under TSX rules issuers must disclose material information, which is more broadly defined to include also material facts. **Prospectus review** Under the MRRS, issuers who want to raise capital in more than one jurisdiction are assigned a “principal regulator” based on the location of their head office. The principal regulator is in charge of carrying out the review of the prospectus. The other jurisdictions have the right to opt out of the decision made by the principal regulator. For that purpose they have a five-day deadline to provide comments. However, the non-principal regulators can opt out at any time before the receipt for a prospectus has been issued. The authorities noted that the number of “opt outs” has decreased to very few or no cases at all. Under the umbrella of the CSA, the 13 provinces have also developed guidelines for the review of the prospectus to ensure that a similar type of review is done by all the provinces in their function as principal regulator. **OSC and AMF** All prospectuses filed at the OSC and the AMF are subject to some level of review. Both use a risk-based approach for reviewing the preliminary prospectuses. At the OSC a senior lawyer and an accountant determine the level of review that is suitable, which could be a full review, an issue oriented review or a basic review. A full review is carried out on all initial public offerings (IPOs) as well as other prospectuses identified using the risk based approach. The AMF conducts two types of review: a full review for IPOs and new issues when the AMF is the principal regulator and for novel structures or issues when the AMF is a non-principal regulator; and a limited review for other prospectuses. **Continuous disclosure review** Provincial regulators created the CSA Continuous Disclosure Review Committee in 2000 to coordinate and streamline the review of issuers’ continuous disclosure obligations. Under the continuous disclosure review system (CDRS) the principal regulator is in charge of the review of all documents submitted by issuers under their disclosure

	obligations (annual financial statements, quarterly financial statements, Annual Information Forum (AIF), material changes). The goal set by CSA members is to review 25 percent of the large issuers and 10 percent of the smaller issuers (by number)—the AMF has set up stricter goals: a three year cycle for the 30 largest issuers, 25 percent of the remaining large issuers that are all to be covered on a four-year cycle and a ten-year cycle for the rest. Provincial regulators have also conducted cross jurisdictional peer review as part of the CDRS program. In addition they have conference calls every two weeks to discuss any issue of concern. Jurisdictions have also coordinated targeted reviews, for example on issues such as disclosures and accounting of related party transactions and implementation of the audit committee requirement. **OSC and AMF** Both regulatory agencies have two mechanisms in place for the review of issuers' compliance with continuous disclosure obligations: 1) "Fast review" by financial examiners, when the information is filed. This is a first level of review basically aimed at ensuring that the information has been filed in time and in the prescribed formats. If a deficiency is found then the examiner filters it and sends it to senior personnel. Both the AMF and the OSC, for example, have developed basic templates for the examiners. 2) In depth/full review: Personnel is divided into industry specialized teams. In the case of the OSC, at the beginning of each year each team determines the issuers that will be subject to review based on a risk based approach. The OSC has developed a quantitative risk model, which along with information on the news, and the team's knowledge of the industry, helps to determine the "level of risk" of the issuer. Team reports are also subject to peer review within the OSC. The AMF has adopted a different approach and has set up stricter goals on its Continuous Disclosure Review Program (CDRP), notably a more frequent review of its 30 largest issuers. It is important to note that the AMF has senior personnel in charge of the internal quality control review. In addition, the Continuous Disclosure Review (CDR) Committee has implemented industry specialization teams composed of representatives of jurisdictions that share information on the selected industries and work to develop approaches to specific issues. **Responsibility for the information in the prospectus and for continuous disclosure** Liability provisions have not yet been harmonized across the provinces. However all provinces do have liability provisions for issuers and underwriters for the prospectus. Issuers are subject to a system of strict liability while underwriters are subject to a due diligence regime. In the case of Ontario, Alberta and Québec (new legislation adopted November 9th, 2007), recent legal amendments have extended liability to continuous disclosure obligations. Other provinces are in the process of adopting similar provisions. **Derivatives** Currently new products are subject to approval by the AMF. However the AMF informed that there is legislation under consultation that would change the system to a system of "self certification" of products by the derivatives exchange.
Assessment	Implemented
Comments	
Principle 15.	Holders of securities in a company should be treated in a fair and equitable manner.

Description	The majority of the issues related to shareholders' rights have not been harmonized via a National Instrument; thus, they have to be assessed in relation to the provincial framework for corporations. However the authorities informed that a significant number of the issues are treated in a similar manner throughout the provinces. In addition the framework for takeover bids and proxies are highly harmonized The framework for corporations in Ontario and Quebec contains explicit provisions that deal with the fair treatment of shareholders. a) Election of directors: in general voting is subject to the rule of one share one vote; although the articles of incorporation could provide for cumulative voting. b) Approval of changes affecting the terms and conditions of their securities: in general these changes have to be approved in meetings of the shareholders of the respective type/class of shares. c) Approval of other fundamental changes: there are statutory voting requirements, usually two-thirds votes are required and dissenting shareholders are entitled to be paid a fair price for their shares by the corporation; minority approval may be requested if the transaction is an acquisition by an insider or an insider is getting preferential treatment when the issuer is being acquired. d) Timely notice of shareholders' meetings: there are obligations to provide notice to shareholders. e) Proxies for voting: NI 54–101 sets out extensive procedures that reporting issuers must follow in sending proxy-related material. f) Receipt of dividends. g) Takeover bids: A mandatory tender offer is required when a person wants to exceed a 20 percent threshold. However, acquisitions of not more than five percent during a 12 month period do not require a tender offer. Tender offers can be partial. Tender offers by insiders are subject to an independent valuation requirement. h) Accountability of directors and management: in generally shareholders have certain statutory rights of actions against the issuer, director and officers for misrepresentations in the prospectus. i) Winding-up. **Substantial and insider holdings disclosure** Both the framework for issuers in Ontario and Quebec have disclosure obligations for substantial and insider holdings. A person that directly or indirectly beneficially owns, or has control or direction over 10 percent (it drops to five percent if a formal bid is outstanding) or more of an issuer's voting securities must file a press release and issue a report when they reach 10 percent and each time they or a person controlled by them acquires an additional two percent (early warning requirements). Directors and officers are insiders with the following disclosure obligations: a) within 10 days of becoming a director or officer of a reporting issuer, they must file an insider report disclosing any direct or indirect beneficial ownership over securities of the reporting issuer; b) any change in their holdings, within 10 days of the change; and c) in the case that they own or have control or direction over more the 10 percent of issuers' voting securities they are subject to the early warning requirements.

	An issuer must include in the prospectus information about substantial holdings and insider holdings. In addition, this information must be updated annually in the AIF. Also, insiders must file their reports via an electronic database called System for Electronic Disclosure by Insiders (SEDI). The information gathered in this database is available to the public.
Assessment	Implemented
Comments	
Principle 16.	Accounting and auditing standards should be of a high and internationally acceptable quality.
Description	The regulatory framework for accounting and auditing has been harmonized in NI 52–107 Acceptable Accounting Principles, Auditing Standards and Foreign Currency. Under the current framework, issuers have to prepare their financial statements according to Canadian GAAP that are issued by the Accounting Standards Board (ASB). Canadian GAAP provides a comprehensive set of standards for preparing financial statements. In the past the goal of the ASB was to seek convergence with U.S. GAAP; however this goal was reassessed and now the goal is to minimize differences with and implement International Financial Reporting Standards (IFRS) by 2011. Convergence with IFRS does pose certain challenges for the Canadian market given that IFRS does not address specific standards for oil, gas and mining/extraction activities. Under the current framework, audits have to be prepared in accordance with Canadian AS issued by the Audit and Assurance Standards Board (AASB) of the Canadian Institute of Chartered Accountants. However, the AASB's goal is to adopt the international auditing standards. **Auditor's independence** NI 52–108 Auditors Oversight and NI 52–110 Audit Committees have put in place mechanisms to ensure auditors' independence: 1) the auditor must report directly to the audit committee, which is responsible for overseeing and must pre-approve all non-audit services; and 2) the auditor must comply with the rules established by the Canadian Public Accounting Board (CPAB), which has issued rules on independence. The CPAB is an independent corporation, whose mandate is to oversee external auditors that provide auditing services to listed companies throughout the country. Its governing body is a council of governors on which securities regulators are represented. The CPAB conducts on-site inspections of auditing firms, which are obliged to correct any deficiency found by the CPAB. In addition, if a regulatory authority believes that the financial statements of an issuer do not comply with the accounting standards, it can order the issuer to amend the statements. In addition, it can suspend trading of an issuer and impose sanctions on it. Also both the OSC and the AMF make public the list of issuers with deficiencies in their reporting obligations. Once the issuer corrects the deficiency, it is removed from that list. In Ontario, if the deficiency is identified as a result of a continuous disclosure review the issuer is placed on an errors and refiling list.
Assessment	Implemented

Comments	The assessor encourages the authorities to continue convergence toward IFRS and International Accounting Standards.
Principles for Collective Investment Schemes	
Principle 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.
Description	The regulatory framework for CIS has been harmonized in NI 81–101 Mutual Fund Prospectus Disclosure. Under the current framework, dealers who market or sell CIS units and advisers who provide investment advice to CIS are subject to registration requirements. In addition dealers who market CIS must be members of an SRO (the MFDA, the IDA or in the case of Quebec the CSF for individuals only). The CIS itself is also subject to registration. However, the registration regime does not cover CIS operators/managers and therefore provincial regulators do not have the authority to subject them to a registration regime and eligibility criteria and it is questionable whether they would have full disciplinary powers over them. Nevertheless the authorities informed the assessor that during the review of the prospectus for a CIS they conduct a review of “integrity” of the officers and directors, and they also inquire about the experience of the operator—which has to be disclosed in the prospectus. The result can be the denial of permission to continue to offer securities to the public in appropriate circumstances. In addition, CIS operators are subject to a statutory duty of care and therefore could be found liable in court. Also if they commit a criminal act they could be prosecuted. In both provinces, they are also “market participants” under the Securities Acts, and in the case of Ontario, this allows the OSC to impose record keeping obligations on them and to conduct on-site inspections. In Québec, the AMF conducts targeted reviews. It is also important to mention that to a large extent issues of conflict of interests have been addressed. NI 81-107 Independent Review Committee (IRC) for Investment Funds in effect since late 2006 requires the CIS operator to set up an independent review committee for all its publicly offered CIS. This committee is in charge of reviewing any conflict of interests that may arise between the interest of the CIS operator and its duty to manage a CIS in the best interest of the unit holders. The committee is required to provide an annual report on issues of conflict of interest to the regulator. In addition, the regulatory agencies can take precautionary measures regarding a CIS in the event that they believe that actions of the CIS operator might be detrimental to the interests of unit holders, such as freezes of subscription and redemption.. Finally, the authorities mentioned that the majority of the fund operators are also dealers or investment advisers and as such are required to register. Thus, indirectly fund operators are being scrutinized through the registration regime for dealers and advisers. **Continuous Disclosure Review Program** CSA members have developed a CDRP for CIS, although it is in an earlier stage than the program for issuers. As in the case of issuers, the review is carried out by the province assigned as “principal regulator.” A pilot project was conducted in 2006 on compliance with new disclosure obligations imposed by NI 81–106. The authorities informed that they expect more interprovincial work on this area.

	OSC The Investment Fund Branch is currently implementing a CDRP to review CD documents of a sample of CIS. Selection criteria are based on the size of the CIS complex, the type of CIS and the financial reporting period. The authorities stated that in time they expect to develop more detailed risk-based criteria. The OSC does include on-site inspection as part of the regular program of oversight of CIS. **AMF** The AMF has also developed a CDRP for CIS. Given that the number is more limited, the goal of the AMF is to review all families of funds on an annual basis (currently the AMF is the principal regulator for 23 families of funds). The AMF does not include on-site inspections as a regular part of the oversight program for CIS and its managers. However, they do carry out inspections if an issue of concern arises, for example they participated in a targeted on-site inspection on market timing. Inspections are also conducted upon recommendation from the Investment Branch during the process of prospectus examination, for deficiencies or default in the continuous disclosure of information or other matters.
Assessment	Partly implemented
Comments	The lack of a registration regime for CIS operators/managers is a significant deficiency under the IOSCO Principles. The assessor acknowledges, however, that to a large extent the risks arising from this gap are mitigated by the factors mentioned in the description of this Principle. Proposed National Instrument NI 31–103 Registration Requirements and related statutory amendments, still pending Ministerial and other approval, will address this deficiency and require registration of CIS operators/managers. Proposed substantive requirements include those relating to integrity, proficiency, capital and insurance solvency, compliance and conflicts of management. This National Instrument was published for a first comment in February 2007. The authorities informed that they expect the National Instrument to be implemented by July 1, 2008 along with the passport system for registrants. Once this instrument becomes effective the Principle would be considered Broadly Implemented. The lack of on-site inspections as a regular part of the oversight program for CIS of the AMF is a weakness; however, the assessor acknowledges that the AMF conducts targeted reviews.
Principle 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.
Description	**Legal form** The current framework does not contain provisions on the legal form of CIS; rather there is freedom to use different legal forms (trust, a corporation or limited partnership) as long as the structure and rights of unit holders are described in the prospectus. In practice there is no substantial difference in the rights of investors due to the legal structure. The majority however are set up as trusts largely due to a favorable tax treatment. **Segregation of assets** All conventional funds (open-ended funds) must have a custodian. Banks, trust companies with capital of at least $10,000,000 and a company that is an affiliate of a bank or trust company with a capital of not less than CAN$10,000,000 are the only entities authorized to provide custodial services to CIS. According to this framework the

	CIS operator cannot be the custodian and cannot relieve the custodian or subcustodians from liability. The custodian could be part of the same financial group. This risk has been mitigated by the creation of the IRC and the fact that the custodian is subject to supervision. Non conventional funds are not required to have a custodian; however the authorities noted that as a matter of practice they do. **Record keeping** In general, books and records must be kept for seven years, with the first two years in a readily accessible place. **Winding up** CIS operators are obliged to give notice to the regulator if the CIS is part of a merger, amalgamation arrangement, winding up, reorganization or other transaction that will result in the CIS ceasing to be a reporting issuer. Also the framework requires the CIS to give notice to unit holders.
Assessment	Broadly implemented
Comments	Pending NI 41–101 will require all CIS to have a custodian. This Principle would be considered implemented once NI 41–101 is implemented.
Principle 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.
Description	Disclosure requirements for CIS have been harmonized via NI 81–106. Public offering of CIS requires the submission of a prospectus to the regulatory authority. In general, the prospectus must include information about the legal constitution of the CIS; the rights of unit holders; the CIS operator; the custodian; investment objectives; investment strategies; risks; suitability of the CIS to particular investors; valuation; subscription and redemption issues; fees and expenses. On an ongoing basis CIS are subject to disclosure obligations that include: 1) Annual financial statements. 2) Semi-annual financial statements. 3) Management Report of Fund Performance that provides a discussion of a fund's performance along with the analysis and explanation of the fund manager. The report has to be provided with the annual financial statement as well as the semi-annual statement. 4) Portfolio composition on a quarterly basis. 5) Net asset value at least once a week or if the CIS uses derivatives on a daily basis. 6) Annual report by the independent review committee Financial statements have to be prepared in accordance with Canadian GAAP. Audits have to be conducted in accordance with Canadian AS.
Assessment	Implemented
Comments	
Principle 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.

Description	NI 81-106 has harmonized provisions regarding valuing the assets of publicly held CIS. This includes how the value is calculated, how often it is calculated and in what currency. Currently the net asset value (NAV) must be calculated in accordance with Canadian GAAP. The CICA Accounting Guideline 18 specifies that CIS should value all their assets at fair value and present them on this basis in the financial statements. Specific rules on the calculation of the fair value of liquid assets were changed in October 2006: under the new rules, investments in an active market must be valued at the bid and ask price, rather than at closing price. This change will have an impact on CIS information technology systems as well as on the NAV of CIS. As a result, the regulators provided a one year exemption. However, the financial statements still have to be calculated based on Canadian GAAP. Valuation of illiquid assets is covered in the Investment Funds Institute of Canada (IFIC) guidance. **Transparency** The NAV has to be calculated at least once each week if the CIS does not use derivatives and every business day if it does. If a CIS publishes its prices in the financial press it must provide its current price to the financial press in a timely manner. The Companion Policy specifies that the CIS should attempt to meet the publishing deadlines of the financial press to ensure that the NAV is available to the public as soon as possible. The market prices of CIS that are traded on the exchanges are also available through the exchange. **Pricing errors** The current regulatory framework does not include explicit provisions on pricing errors. However IFIC has developed voluntary industry standards that are based on the understanding that, due to its fiduciary duty, the manager is ultimately responsible for valuing the CIS, whether it does the valuation itself or contracts it to a third party. The standards address topics of determining if there has been an error, material thresholds, processing errors and assigning the cost of errors. **Suspension of redemption** CIS may suspend redemption when normal trading is suspended on the exchange or with the approval of the regulator. While redemption rights are suspended, CIS can postpone paying redemptions and cannot accept purchases.
Assessment	Implemented
Comments	The authorities informed that they are currently considering delinking the calculation of the NAV from Canadian GAAP for purposes of subscription and redemption. The result would be that subscription and redemption would be calculated with the closing price. However, financial statements will still have to be calculated in accordance with Canadian GAAP.
Principles for Market Intermediaries	
Principle 21.	Regulation should provide for minimum entry standards for market intermediaries.
Description	**Registration regime** Market intermediaries are subject to a registration regime. The registration regime, however, has not yet been harmonized via a National Instrument. As a result, categories of market intermediaries as well as their corresponding requirements may vary from

province to province. For example, the OSC has six different categories of dealers and five categories of advisers, each one with its own set of requirements.

Registration criteria
It is important to mention that in practice requirements for dealers have been harmonized via the IDA and the MFDA requirements, since they are required to be members of these organizations. However, representatives of mutual fund dealers in Quebec are required to be members of the CSF and are regulated under a separate piece of legislation (the Distribution Act).

In general, registration criteria include: integrity and proficiency of certain controlled persons, financial solvency and insurance (via initial and risk-adjusted capital requirements, and maintenance of bonding or insurance, as well as participation in a compensation fund); adequacy of internal controls and risk management systems.

Registration process
Provincial regulators have developed a National Registration System (NRS). Under the NRS, market intermediaries who want to provide services in more than one province are assigned a "principal regulator" based on the location of their head office. The principal regulator is in charge of carrying out the review of the registration files. The other jurisdictions have the right to opt out of the decision made by the principal regulator within a 48-hour deadline. The authorities informed that the number of "opt outs" has been minimal (two in the last year).

Under the terms of its recognition order, the regulatory agencies have delegated to investment dealers in the IDA the registration of individuals that provide services.

Powers to deny, suspend, or revoke registration
The legal framework provides discretion to the regulatory agencies to impose terms and conditions on registration; deny a request for registration; suspend registration, and revoke registration if it is in the public interest to do so.

IDA and the MFDA rules also allow them to refuse to register an applicant for membership if the applicant does not meet the requirements under their respective laws, rules and policies; suspend or terminate members' rights and privileges of membership; and impose conditions on their continued membership.

Notification of changes in registration information
Under IDA rules, members must notify IDA of any change in the information included in the registration forms within five business days. MFDA members are required to notify both the MFDA and the regulator within five business days.

Transparency
A list of firms and persons registered with the OSC and AMF are publicly available on their respective Web site.

Oversight of market intermediaries
Provincial regulators rely on the IDA and the MFDA for the oversight of the securities intermediaries that are required to have membership, both regarding their financial condition as well as their business conduct. The regulatory agencies have developed

	their own oversight programs for the intermediaries not covered by the SROs (advisors and in the case of the OSC also mutual fund operators). **IDA and MFDA** As will be explained under Principle 22, the MFDA and IDA have developed and implemented internal risk assessment models for determining the risk level and frequency of on-site inspections of their member firms. They complete their risk assessment models based on information gathered through internal sources including sales and financial compliance field reviews, the enforcement department, complaints, and general knowledge of the firm. Both the IDA and the MFDA carry out sales and financial compliance reviews. Participants are ranked according to four predefined categories: high, medium, medium-low and low. They use the results to both monitor activities of market participants on an ongoing basis and determine the frequency and extent of compliance field reviews (on-site inspections). For high risk firms IDA conducts financial on-site reviews annually and for the rest every other year. Sales reviews are under a more flexible schedule that ranges from one to five years depending on the risk level. For high risks MFDA conducts financial on-site reviews annually and sales reviews under a three year cycle. For the rest financial compliance reviews are carried out on a three year cycle. **OSC** OSC conducts on-site inspections on advisors and mutual fund operators. The OSC has developed a risk assessment model. Advisers and fund managers are required to complete a risk assessment questionnaire. This questionnaires must be filled out every two years and the OSC risk assessment model is updated accordingly. As in the case of the MFDA and the IDA, the OSC ranks market participants according to four defined risk categories and uses the results to monitor activities of market participants on an ongoing basis and determine the frequency and extent of on-site inspections. OSC's goal is to review annually all intermediaries that are rated as high risk, roughly 60 percent of those rated medium risk and a sample of the medium-low and low risk. **AMF** AMF conducts on-site inspections of advisors and mutual fund dealers (due to the fact that the MFDA is not a recognized SRO in Quebec). Intermediaries are ranked based on a risk matrix that the AMF has developed and that includes both quantitative as well as qualitative information (for example complaints received, result of previous examinations). Last year the AMF conducted 47 inspections and this year the goal is to complete 60.
Assessment	Implemented
Comments	The lack of harmonization of requirements for intermediaries (especially those not covered by the IDA and the MFDA) adds unnecessary complexity to the system. The authorities informed however that Proposed National Instrument NI 31–103 Registration Requirements, still pending Ministerial and other approvals, will harmonize the regime for market intermediaries. This is a very comprehensive instrument that deals with all aspects associated with market intermediaries regulation.
Principle 22.	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	Both the IDA and the MFDA have established minimum capital requirements for the

	different types of dealers. The regulatory agencies have established minimum capital for advisors. Minimum capital requirements for IDA dealers range from CAN$25,000 for level 1 to CAN$200,000 for level 4; while for MFDA dealers they range from CAN$75,000 for type 1 to CAN$250,000 for type 4. IDA and MFDA members must have insurance coverage in the form of a financial bond that covers against losses that arise from dishonest or fraudulent acts and theft or forgery. Minimum capital has to be adjusted in relation to the risks to which the intermediary is subject including market risk, credit risk, liquidity risk, operational risk, and legal risk. Members are subject to financial disclosure obligations that allow both the SROs and the regulators to know their financial position in a timely manner, including: a) audited annual financial statements; and b) monthly financial statements. In addition, under IDA and MFDA rules, members have additional reporting obligations: a) They must send the monthly capital calculation through the monthly financial report. This calculation has to be reviewed by a senior person. b) They must notify the IDA or the MFDA of any breach in minimum capital levels. The IDA and the MFDA have early warning systems in place to help the early detection of a breach of capital requirements. In addition to filing unaudited monthly financial statements, IDA and MFDA members must submit capital calculations through the early warning system. This allows the IDA and the MFDA to determine if the capital calculation has triggered the system and placed the member in an early warning position. Under both the rules of the IDA and the MFDA, there are a number of factors with different thresholds that can trigger a member into an early warning. For IDA members there are two levels of early warning, determined by the severity of the breach in capital requirements. If a member triggers any of these early warning systems, the IDA or the MFDA will immediately call the member and request in writing the correction of the breach in capital. The member must in turn (a) provide an explanation; (b) file its next monthly financials statements within 15 days; and (c) not engage in any activity that would reduce its capital. If the IDA or the MFDA believes that the member does not show the ability to rectify the problem they can restrict the member from opening new branches and opening new accounts. Under their respective terms of recognition the IDA and the MFDA must report to the regulatory authorities if any member does not file their financial statements on a timely basis or triggers an early warning threshold.
Assessment	Implemented
Comments	
Principle 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.
Description	The regulatory framework as well as the rules of both the IDA and the MFDA require market intermediaries to: a) have an appropriate management structure;

	b) adequate internal controls; c) appropriate standards of conduct; d) periodic assessment of their internal controls; e) efficient and effective mechanisms for the resolution of investor complaints; and f) measures to ensure segregation of assets and assist in an orderly wind-up. Regarding their relationship with clients, market intermediaries are required to: a) obtain and retain basic information from a customer on its investment characteristics; b) provide written contract to clients; c) disclose information about the financial products they offer; c) keep clients informed about their accounts; and d) adequately manage conflict of interest. The current framework requires market participants to appoint a person to monitor their compliance with legal and regulatory requirements and with internal policies and procedures. **Record keeping requirements** Market intermediaries are subject to record keeping requirements. In general they are required to keep records for seven years, the first two in an easily accessible location.
Assessment	Implemented
Comments	
Principle 24.	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	Both regulatory agencies have at their disposal a set of mechanisms to deal with the eventuality of the failure of a firm. First, they use terms and conditions in registration to address potential risks or concerns. Second, reporting obligations and in particular the early warning system of the IDA and the MFDA allow the SROs and the regulator to have an early notice of potential problems. Information on members placed under the early warning system is also shared with the investor compensation schemes operated by the IDA (Canadian Investor Protection Fund) and the MFDA (Mutual Fund Dealer Investor Protection Fund). In the case of the CIPF, there is a formal agreement for cooperation., In addition, both the SROs and the regulator can take different actions to restrict the activities of the intermediary, can require it to transfer clients' assets to a different intermediary, and in the extreme can also appoint a monitor to oversee and report on registrant activities and a receiver to ensure orderly wind-up. In addition, the OSC has developed a market disruption plan. This plan covers logistical issues, such as the contact list, as well as most substantive issues (type of questions or areas that should be looked into) and templates for certain basic types of actions. The AMF has a list of key people to contact in the case of a crisis; but has not yet developed a comprehensive plan. IDA and MFDA members are also required to contribute to the compensation funds operated by each entity. The funds cover the losses suffered by customers as a result of the insolvency of the intermediary. The maximum coverage is $1,000,000 per customer account. The compensation funds would normally work with the trustee or receiver appointed to deal with the insolvency of the intermediary to return monies/and or

	securities to eligible customers. Both the CIPF and the MFDIPF are required to provide reports to the regulators related to the triggering of the use of the fund. **Interprovincial coordination** The CSA Registrant Regulation committee meets regularly by conference call to discuss all matters related to registration.
Assessment	Implemented
Comments	
Principles for the Secondary Market	
Principle 25.	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	NI 21-101 Marketplace Operation has harmonized the framework for the recognition of exchanges and ATS. The operation of an exchange or ATS is subject to an authorization regime. In practice, under the “lead regulator” approach for exchanges, the authorization of an exchange is given by one province via a recognition order while the others would grant an exemption. ATS are members of the IDA and subject to its oversight. They are initially regulated as broker dealers; however they must meet certain marketplace requirements and provide filings to the regulators. In addition, the framework allows the regulatory agencies to regulate them as exchanges once they reach a certain threshold. In addition to the general framework set out in the NI 21–101, regulatory agencies have developed more detailed criteria for the recognition of exchanges. Although these criteria are not enshrined in regulations, they are included in other types of documents (such as notices) and therefore are publicly available. The recognition orders for TSX, TSXV and MX include terms and conditions that address all the criteria required by the IOSCO Principles, as explained below. a) Financial viability: exchanges are required to maintain sufficient financial resources. b) Capacity: exchanges are required to (i) at least annually make capacity tests, conduct stress tests and in general develop and implement procedures for reviewing and keeping up-to-date the development and test methodology for the systems; (ii) have an annual independent system review performed; (iii) review the vulnerability of their systems; (iv) establish contingency plans; and (v) take reasonable steps to ensure that directors are fit and proper. c) Clearing and settlement: exchanges are required to conduct clearing through clearing agencies recognized by the OSC and the AMF. d) Equitable treatment of members: exchanges are required to allocate fees in a fair manner; in addition, rules should not permit unreasonable discrimination among dealers and issuers or impose unnecessary burdens to competition. e) Dispute resolution mechanisms: exchanges are required to maintain dispute resolution mechanisms under the oversight of the regulator. f) Record-keeping: exchanges are required to keep records for a period of seven years. For the first two years records must be kept in a readily accessible location. g) Mechanisms in place to identify and address disorderly trading and deal with any contravening conduct: exchanges are required to have appropriate mechanisms and resources in place for performing regulation, evaluating compliance with exchange requirements and disciplining members. h) Approval of rules: exchanges are required to submit rules for the approval of the

	regulator. i) Transparency: all rules proposed by the exchanges are subject to a consultation process. Final regulations are publicly available.
Assessment	Implemented
Comments	
Principle 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.
Description	NI 23–101 Trading Rules has harmonized the framework for the surveillance and monitoring of trading activities on exchanges and ATS. According to the provisions of this instrument, exchanges must monitor the conduct of their members and enforce requirements directly or through a regulation service provider (RSP), under the supervision of the regulatory agencies. ATS must sign an agreement with a RSP. **TSX** TSX has retained RS to provide market regulation services; however, according to the recognition order the exchange retains ultimate responsibility for performing these functions. RS has the status of an SRO, with a mandate to foster investor confidence and market integrity through the administration, interpretation and enforcement of a common set of market integrity rules. Under their respective recognition orders TSX must assess annually RS performance of its regulatory functions, report this assessment to its board of directors and provide copies of the report to the OSC. ***Market surveillance by RS*** RS has set trading rules in UMIR. RS conducts automatic, real time monitoring of trading activity on the exchanges to which it provides regulatory services (TSX, TSXV, CNQ, and equity ATS) to ensure compliance with securities trading rules. Its system has the capacity to handle 650,000 trades a day. The required capacity is determined by calculating 2.5 times the volume of a peak day. This number is validated every quarter. RS has a dedicated surveillance facility with state of the art systems and software that uses algorithms to detect price or volume anomalies in a stock trading pattern. The Stock Monitor, Alert and Research System (SMARS) is the main alert software the RS uses. Its Intelligent Market Monitor (IMM) sends alerts to the surveillance officers. Types of alerts include changes in trade rate; order rate; interday price drift; interday average price drift; customer-principal trade; freeze alerts. Alerts are prioritized to reflect their severity. The alert window shows the date, time, stock symbol, stock price, net change, accumulated volume and the status of the alert (new, open, and closed). The system also generates a possible explanation of the trading. When an officer receives an IMM and opens the investigation window, the officer receives additional information on the stock. In cases of suspected insider trading, the RS has developed a fast-track procedure, whereby it refers the preliminary investigation to the regulatory authorities within five days. ***Surveillance by OSC and the AMF*** Given that RS does not have disciplinary powers over third parties, its surveillance has to be complemented by surveillance of the OSC and the AMF—based on the location of the insider or head office of the issuer—for purposes of detecting insider trading. The

	Surveillance Team monitors unusual activity in the stock market on a post-trading basis by reviewing material changes reports, news releases and other relevant documents. ***OSC and AMF oversight of RS and TSX surveillance functions*** OSC and AMF perform oversight of RS through its oversight program of SROs, described in Principle 7. **MX** Market surveillance is carried out by the Market Analysis Unit. Monitoring of trading activities is currently done on a post-trading basis. MX has developed a semi-automated surveillance system (SOLA Surveillance) that monitors market activity, based on pre-defined criteria and ad hoc alerts. Any unusual situation is referred to the Investigation Unit for further inquiry. When an investigation is completed and a potential regulatory violation is identified, the case is sent to the enforcement and discipline unit. ***Market surveillance by AMF*** Given that MX does not have disciplinary powers over third parties, its surveillance has to be complemented by surveillance by the AMF for purposes of detecting insider trading. A surveillance team monitors the market on a post-trading basis; however the AMF's goal is to move to real time access of information and real time surveillance. For that purpose it is planning to acquire the software SMARTS (market surveillance system). ***AMF oversight of MX surveillance function*** AMF conducts oversight of MX through its oversight program of SROs, described in Principle 7. ***Coordination of oversight of equity and derivatives markets (RS and MX)*** Currently there is no MoU for coordination of market surveillance activities between the RS and MX. However, AMF and OSC have already requested that RS and MX develop such an MoU.
Assessment	Broadly implemented
Comments	Further improvement is needed in coordination between the equity and derivatives exchanges, including the signature of the MoU. The AMF stated that a draft MoU already exists but has not been signed due to the pending merger of IDA and RS.
Principle 27.	Regulation should promote transparency of trading.
Description	NI 21–101 Marketplace Operation has harmonized transparency requirements for market places. Under such instrument, exchanges and ATS that display orders of exchanges-traded securities must provide accurate and timely pre- and post-trade information about these orders to an information processor. Similar requirements are imposed on market places that deal with unlisted securities as well as on interdealer brokers and brokers. If there is no information processor, then the information has to be provided to an information vendor. Currently there is only an information processor for corporate debt (CanPX). Accordingly marketplaces trading corporate debt and interdealer brokers and brokers that execute trades of corporate debt outside of a market place are required to provide trade information to CanPX within an hour of trade. Under the companion policy of NI 21–101 CanPX must display the following information about each reported trade: issuer, coupon,

	maturity; price time of trade and volume traded, subject to volume caps. In the case of equity and derivatives, the information is being provided to information vendors in real time. In addition, the information is publicly available on the web site of the exchanges with a 15 minute delay. There is currently an exemption for government debt securities.
Assessment	Implemented
Comments	
Principle 28.	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	National Instrument 23-101 Trading Rules harmonizes the framework for provincial regulators is this area. The UMIR contains provisions that prohibit market manipulation and other unfair practices in the equity markets. As the SRO for those marketplaces, RS has disciplinary powers to impose sanctions for the violation of UMIR rules. Similarly, the MX also has trading rules that cover manipulative or deceptive methods of trading and has disciplinary powers to impose sanctions for the violation of its rules. Serious misconduct that cannot be pursued by RS or MX—for example insider trading—is within the framework of the provincial regulators and therefore they have disciplinary powers and procedures to sanction them. Certain misconduct such as insider trading also constitutes a criminal offence under the Criminal Code of Canada. The criminal code is federal legislation that applies in all the provinces and territories; however its application is carried out via the police and courts.
Assessment	Implemented
Comments	While the framework to detect and deter unfair practices is robust, actual enforcement is in need of improvement as discussed under Principle 10.
Principle 29.	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	**TSX** The Canadian Depository for Securities Limited (CDS) provides two central counterparty services, one for equity securities and the other for government debt instruments. A trade that is to be settled in a central counterparty (CPP) service must pass a certain number of edits before the CDS settles it to be sure of the collateralization of the payment obligations at all points of time. One of the pre-settlement edits ensures that a settlement does not result in a negative balance in a participant's fund account exceeding the participant's limit (which is calculated as the sum of the used portion of its operating cap and any available credit lines) and that there is sufficient collateral to cover any negative imbalance. CDS imposes a soft CPP cap (presently set at CAN$80 million) on participants on a CPP service. Certain obligations and actions are triggered if the participants exceed certain thresholds, including the provision of additional collateral and notification to the regulator and the IDA. CDS Participant Rules authorize CDS to share information on its participants with any exchange or ATS, securities depository, securities clearing agency,

	payment clearing system or SRO of which the participant is a member or the services of which the participant uses in connection with its participation in CDS, any insurer of the participant including CIPF or the Canada Deposit Insurance Corporation (CDIC) or the participant's primary Canadian regulatory body. In addition, the IDA requires members to calculate their exposure on a daily basis. A report is sent to the OSC and the AMF on a monthly basis. **MX** The CDCC is the clearing house of the MX. CDCC manages the risk of large exposures through: a) Selection criteria for clearing members, mainly capital. b) Initial margin as well as daily margins. c) Additional margins are prescribed for low capitalized members. **Coordination** There are MoUs between IDA and CDS, and between IDA and CDCC. Under these MoUs, IDA monitors the financial soundness of IDA members. If IDA receives information of material concern about a member through its monitoring, it must immediately notify CDS or CDCC as appropriate. If a CDS participant is on early warning, he is subject to additional collateral charge imposed by CDS. In addition, under the terms and conditions of its recognition order, IDA must notify the OSC and the AMF if an IDA member is placed on early warning, which includes if members have an overexposure to certain counterparties.
Assessment	Implemented
Comments	
Principle 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.
Description	A CPSS-IOSCO assessment has been carried out. Therefore Principle 30 was not assessed.
Assessment	Not assessed
Comments	

Table 3. Recommended Action Plan to Improve Implementation of the IOSCO Principles and Objectives of Securities Regulation

Principle	Recommended Action
Principle 1	The provincial regulators should continue to improve coordination.
Principle 3	The provincial regulators should impose a registration system for mutual fund operators. Approval of the proposed National Instrument 31–103 Registration Requirements and related statutory amendments would achieve this goal.
Principle 7	1) The provincial authorities should further streamline coordination of regulation and supervision of SROs, including the approval process for regulations. 2) The AMF should conduct an on-site inspection of CSF. 3) The provincial regulators should explore a shorter cycle of on-site inspections for SROs, in particular the IDA and the MFDA. 4) The provincial regulators should explore requesting from RS an annual self-assessment of the performance of its regulatory function.
Principle 10	1) The provincial regulators should give priority to the discussion of the report from the task force appointed by the federal government. 2) The provincial regulators along with the federal government should work towards the adoption of a coordinated strategy for enforcement, with clear lines of accountability and benchmarks. A formal MoU is encouraged. 3) The OSC and the AMF should continue to commit to reducing the time necessary to conduct an investigation and have the case ready for litigation. 4) The CSA could explore compilation of additional statistics for enforcement activity, including timeliness of procedures.
Principle 12	1) The AMF and the Government of Quebec should work together on defining an efficient procedure for the approval of MoUs.
Principle 14	1) The assessor encourages the Government of Quebec to give prompt approval to the new framework for derivatives markets. 2) The assessor encourages all provincial regulators to expand liability to continuous disclosure obligations.
Principle 17	1) The provincial regulators should establish a registration regime for CIS operators. Approval of the proposed National Instrument 31–103 Registration Requirements would achieve this goal. 2) The AMF should include on-site inspection as a regular part of its supervision of CIS. 3) The provincial regulators should continue to enhance the continuous disclosure review system for CIS, if necessary with the development of a more defined risk based approach.

Principle	Recommended Action
Principle 18	The provincial regulators should require *all* CIS to have a custodian. Approval of the proposed National Instrument 41–101 would achieve this goal.
Principle 21	1) The provincial regulators should harmonize regulations for market intermediaries. Approval of the proposed NI 31–103 Registration Requirements would achieve this goal. 2) The Government of Quebec should explore bringing mutual fund dealers under the Securities Act.
Principle 26	The MoU between RS and MX should be finalized.
Principle 27	The provincial regulators should explore whether additional transparency is needed in the government debt market.

Authorities' response to the assessment

The authorities are largely in agreement with the results of the IOSCO assessment. They emphasized that the adoption of the proposed National Instrument NI 31-103-Registration Requirements will address the gaps in the regulatory framework for collective investment scheme operators. In addition, the approval of the proposed National Instrument 41-101 will extend custodian requirements to all types of collective investment schemes.