

Expert Panel recommends common national approach to Canadian derivatives regulation

The Expert Panel on Securities Regulation released its Final Report and Recommendations entitled “Creating an Advantage in Global Capital Markets” on January 12, 2009 (available at www.expertpanel.ca). The Expert Panel was established by the federal Minister of Finance to provide advice and recommendations on various areas of securities regulation. Its key recommendations include establishment of a single securities regulator to administer a national securities act, establishment of an independent adjudicative tribunal, advancing a more principles-based approach to securities regulation and modernizing Canada’s approach to the regulation of derivatives. Along with its Final Report the Expert Panel also published a draft national Securities Act to serve as a starting point for the development of national legislation to govern Canadian capital markets.

With respect to derivatives, the Expert Panel recommends adopting a common regulatory basis for the regulation of exchange-traded derivatives. Specifically, the Expert Panel has endorsed an approach similar to that taken by British Columbia and Alberta through provincial securities legislation and by Ontario through its *Commodity Futures Act*. Reflecting this recommendation, the draft national Securities Act provides for the regulation of exchange-traded derivatives by imposing registration requirements on those who trade in exchange contracts and by requiring that exchanges facilitating the trading and clearing of exchange contracts be recognized and their form of contract be accepted by the securities regulator. The Expert Panel also favours more regulatory oversight for over-the-counter (OTC) derivatives under the authority of a national securities regulator. However, it deferred making any specific recommendations on an appropriate regulatory approach, advocating instead that the national regulator have sufficient policy depth and resources to determine the best approach to the regulation of OTC derivatives working in conjunction with regulators in the United States and in other jurisdictions who are undertaking similar reviews of OTC regulation.

The Expert Panel recommends a voluntary approach for transitioning from thirteen separate regulators to a single, national regulator. Until all provinces and territories choose to participate in a common regulatory scheme, the Expert Panel recommends that the federal government consider a transition feature to allow some market participants to opt-in to exclusive regulation under the national regime.

This newsletter was prepared by members of the Structured Finance Group at Stikeman Elliott.

For further information, please contact your Stikeman Elliott representative or any member of our Structured Finance Group listed at www.stikeman.com