

September 13, 2010

Alberta and Quebec urge provinces to resist federal push on national securities regulator

Provinces should not sign onto Ottawa's plan

Calgary... The governments of Alberta and Quebec are calling on other provinces to hold off signing any agreement supporting the federal government's single securities regulator scheme.

Ted Morton, Alberta's Minister of Finance and Enterprise, and Raymond Bachand, Quebec's Minister of Finance and Minister of Revenue, are urging their counterparts not to rush into signing so-called "development agreements" with Ottawa.

Morton said provinces should not feel compelled to sign on by September 30, as directed by federal Minister of Finance Jim Flaherty, especially in light of the fact that three Canadian courts have yet to even hear evidence as to the constitutionality of the federal proposal.

"The deadline imposed by Ottawa is completely arbitrary and is just an attempt to put pressure on provinces and push its agenda forward in the face of mounting opposition," said Morton. "There are other provinces, besides Alberta and Quebec, that do not support the federal proposal and others that have not taken a position, and I would urge these provinces not to feel pressured into signing something that will be taken by Ottawa as a sign of support."

Bachand and Morton, representing two provinces that are contesting in court the federal government's proposal for a single national securities regulator, met in Calgary September 13 and agreed to send a joint letter to other provincial finance ministers to warn them of the implications of signing the federal "development agreement."

"There is a very real concern that Ottawa will use the signed agreements as evidence of support, not only in the court of public opinion, but in the three courts that will be hearing this matter early next year," said Bachand, referring to judicial references that have been put before the Alberta Court of Appeal, the Quebec Court of Appeal and the Supreme Court of Canada.

"Provinces that do not support this, or that haven't yet decided their positions, should bear that in mind and not feel compelled to act before they're ready. Entering into an agreement with the Canadian Securities Transition Office is a step in the wrong direction."

Bachand is in Alberta this week to join Morton in explaining to the business communities of Calgary and Edmonton their reasons for opposing the federal plan.

Bachand recalled that securities regulation in Canada has always been provincial jurisdiction according to the Canadian Constitution, since it is a matter of property and civil rights. Federal intrusion in this area could set a precedent for federal intrusion into other areas related to the

financial sector, such as pensions, insurance and credit unions.

“The federal government wishes to amend the constitution without following the proper process,” said Bachand. “The decision of a province to sign an agreement supporting the federal government’s single securities regulator scheme could cause long-term and possibly unintended consequences to the provincial jurisdiction and should therefore be weighted very carefully.”

Morton said a single national securities regulator would hinder investment opportunities for many Alberta businesses and investors because it wouldn’t be responsive to regional interests. The current system, which respects provincial jurisdiction, is flexible enough to accommodate the unique needs of local markets while also providing a single point of access to markets across Canada through highly harmonized regulation with other provinces and regulators.

“The system we have now already accomplishes all that we’re told this new system will - and more,” Morton said. “It is a system that is proven to work well and one that is consistently ranked as one of the best in the world by international organizations and think tanks.”

Alberta and Quebec will be supporting each other’s references before their respective courts of appeal and both will also take part in the federal reference being heard by the Supreme Court of Canada. All three references are scheduled to be heard in early 2011.

-30-

Backgrounder: Council of Ministers of Securities Regulation letter

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September 13, 2010

Council of Ministers of Securities Regulation

Dear Minister:

We are writing to urge your government not to be rushed into signing the development agreements provided for under the federal transition plan. Like us, you may have serious reservations about the federal proposal. We are aware that federal representatives are visiting participating jurisdictions and regulators to actively lobby them to sign the development agreements in September.

Last February, the Council agreed not to make decisions regarding the federal proposal until we had an opportunity to discuss our response to the draft federal legislation. Our conference call is scheduled for September 30, 2010.

We strongly encourage you to consider the impact of entering into these development agreements by the end of September. The federal government has stated that it will take up to three years to establish a single securities regulator. The transition plan acknowledges that the earliest date for a new regulator to be up and running would be July 2012, and only in the event the federal government obtains a favourable opinion from the Supreme Court of Canada on the validity of the draft federal legislation.

So why the rush to pressure participating jurisdictions to sign development agreements by September 30?

The deadline is arbitrary, imposed by the federal authorities to suit their political agenda /strategic plan. The deadline comes well before the three constitutional references have even been considered by the courts. We have a real concern that Canada will use the signed development agreements as evidence of support for the federal proposal in the three courts that will hear the constitutional references early next year.

The Supreme Court of Canada has agreed to fast track the federal reference by setting a mid-April 2011 hearing date. This provides the Quebec and Alberta Courts of Appeal with an unusually tight timeframe in which to consider the reference questions and issue their opinions. It is important that the Supreme Court has the benefit of their thoughtful considerations and opinions before hearing the federal reference. It will be at least several more months before the Supreme Court is expected to issue its opinion on whether the federal Parliament has the legislative authority to enact federal securities legislation.

In our view, the federal government is continuing to push its agenda forward in the face of growing opposition to the federal proposal.

We are aware that not all participating jurisdictions support the federal regulator proposal or have not yet finalized their position on this issue. We urge you not to feel pressured to sign the development agreements before the Council has had the opportunity to meet and your government has fully considered all of the implications of signing these agreements.

We look forward to continuing this discussion on our September 30 conference call. Please do not hesitate to contact us should you have any questions or concerns.

Sincerely,

Original signed by:
Ted Morton
Alberta Minister of Finance and Enterprise
Chair, Council of Ministers of Securities Regulation

Original signed by:
Raymond Bachand
Québec Minister of Finance
Québec Minister of Revenue

cc: Mr. Don Leitch, Taskforce Chair

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