

**Local and Regional Interests in the Debate on
Optimal Securities Regulatory Structure**

Research Study Prepared for the
Wise Persons' Committee

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Biography

Poonam Puri

Poonam Puri is an Associate Professor of Law at Osgoode Hall Law School, York University. She is a graduate of the University of Toronto Faculty of Law (LL.B. Silver Medalist) and Harvard Law School (LL.M.). She articulated at Torys and was a summer associate at Paul, Weiss, Rifkind Wharton and Garrison in New York. Professor Puri's research expertise is in corporate governance, corporate law, securities law, corporate and white-collar crime, bankruptcy law, and law and economics. Professor Puri was recently a Visiting Professor at Cornell Law School and recipient of the Osgoode Hall Law School Teaching Award.

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Executive Summary

In considering optimal securities regulatory structure, it is important to determine whether distinctive local and regional capital markets exist. If so, they should be taken into account.

A capital market is comprised of issuers and investors. In respect of issuers, this study finds that local infrastructures for capital raising (LICRs) exist for certain industries and levels of market capitalization. An LICR is defined as a geographic region where there is a critical mass of issuers of a certain industry type or level of market capitalization; this allows local securities regulators and professionals (such as investment bankers, lawyers and accountants) to develop an expertise and respond to the needs of such issuers.

This study finds that Alberta hosts an LICR for oil and gas, B.C. hosts an LICR for micro-cap issuers, and Ontario hosts an LICR for financial services. Certain LICRs exist in more than one province: Both B.C. and Ontario host LICRs for mining; Ontario, Quebec and B.C. for communications and media; Ontario and Quebec for life sciences; and B.C., Alberta and Ontario each host an LICR for small cap issuers.

However, the existence of LICRs for certain industries does not allow us to conclude that the economic activity associated with these industries is local to host provinces or that host provinces have distinct local interests in the capital markets regulation or general regulation of those industries.

The activities of issuers concentrated within an LICR have an impact outside the geographic boundaries of the province that hosts and regulates the LICR. Other provinces may have an interest equal to that of the regulating province, given investor location and the importance of those industries to the economies of other provinces, as borne out by Gross Domestic Product (GDP) data.

Having found that LICRs for certain industries and levels of market capitalization exist in Canada, the issue that follows is whether provincial securities commissions that host an LICR identified in this study are responsive to that infrastructure in a manner that is different than other provincial securities commissions that do not host that LICR.

Factors for determining whether a locally-developed policy is a response to distinctive local interests include the following:

- Was the creation of the local policy followed by multilateral or national adoption by other provincial regulators? If so, then the local policy may be an example of regulatory innovation supporting an argument for regulatory experimentation, but not an argument for local regulation of distinct local markets.

- Was the local policy created for the purpose of supporting an industry that is local to the province? If other provinces do not host the relevant industry in their geographical boundaries and are not interested in its development, then the local policy likely responds to a distinct local market.
- Is the local policy's application limited to issuers and investors that are all within the province? If investors are not located within the same province as the issuers to whom the policy applies, the local policy is not likely responding to a distinct local market. However, the fact that issuers and investors may be located in the same province is not determinative of whether the policy responds to distinctive local interests.
- Can the underlying rationale of an industry-specific local policy be reasonably generalized such that its stated purpose is to allow issuers to raise capital with ease and without the costs associated with preparing a prospectus? If so, then the local interest loses its distinctiveness and the necessity for a local policy may be questionable; a more general national policy that is not industry-specific may serve the local interests.

The Saskatchewan Community Venture Local Policy may be a legitimate example of a local policy serving distinct local needs and hence, supports the importance of provincial regulation of distinctive local and regional markets.

However, most locally-developed policies and regulatory approaches examined in this study have experienced relatively rapid multilateral or national adoption. In addition, most locally-developed policies studied in this report have been (a) in relation to industries that are national, not local, in character; (b) in response to concerns that are common to investors throughout the country; and (c) industry-neutral rules that allow issuers to raise capital in a cost-effective manner.

Overall, the analysis in this study finds that most local regulatory responsiveness is not the product of local and regional distinctiveness. As a result, the main conclusion to be drawn from the study is that existing local and regional differences can be accommodated under different regulatory models without appreciable differences in regulatory outcomes.

This does not amount to an assertion that, in considering alternatives to the current regulatory structure, local regulatory expertise should not be preserved. A uniform securities law model and a passport model would allow for existing regulatory expertise to be maintained within existing local regulatory commissions. A single regulator (whether a model based on provincial delegation or federal action) could, if properly designed (for example, along industry lines and/or with regional offices) maintain existing expertise. To the extent that an LICR does not exist for certain industries and as a result, no one local regulator currently has expertise, a single regulator would allow for a consolidation of scattered expertise.

Local and Regional Interests in the Debate on Optimal Securities Regulatory Structure

1. Introduction

In the long-standing debate on reform of the securities regulatory framework in Canada, the issue of local and regional markets and the concerns of local market regulators have always been at the forefront of the discussion. What is surprising is that while both proponents and critics of securities regulatory reform hold deeply entrenched views on the topic of local and regional interests, little rigorous analysis has been conducted of the topic and the underlying issues.

Critics have stated that a national securities commission would not be able to regulate effectively local and regional markets and would not take into account local and regional issues, priorities and interests.¹

Other commentators, however, have questioned why a national regulator could not be structured to take regional differences into account.²

In the 2002 White Paper released by the Capital Markets Institute entitled “A Symposium on Canadian Securities Regulation: Harmonization or Nationalization?”, Professor Doug Harris identifies the important role that accommodating local and regional interests plays in the debate on Canada’s securities regulatory structure.³ He states:

We need a comprehensive study of the role of local and regional interests in the structure of securities regulation in Canada, the extent to which there are geographically segmented capital markets in Canada, the costs and benefits of such segmentation for the Canadian capital market as a whole, and the role that decentralized securities regulation plays in shaping those costs and benefits. It is only on the basis of this kind of data that the debate can move beyond the unhelpful geographical generalizations that have characterized it to date.⁴

The following analysis attempts to fill this research gap such that stakeholders can engage in a more meaningful debate and so that proposals for reform can be analyzed on a more solid theoretical and empirical foundation.

¹ See, for example, Stephen Sibold’s comments at http://www.rotman.utoronto.ca/cmi/march8.doc_and and Doug Hyndman’s comments at <http://www.rotman.utoronto.ca/cmi/news/Hyndman.doc>.

² See, for example, Anita Anand, “Harmonizing Canadian Securities Laws: Considering Alternatives” in *Globalization: Proceedings of the 8th Queen’s Annual Business Law Symposium* (2001).

³ A. Douglas Harris, *A Symposium on Canadian Securities Regulation: Harmonization or Nationalization? White Paper* (2002).

⁴ *Ibid* at iv.

The objectives of this research study are two-fold. This study first examines the extent to which distinct local and regional capital markets exist in Canada. Second, it considers whether those markets, to the extent they exist, are best regulated on a local or regional basis.

Part 2 examines whether distinct local capital markets exist in Canada. Two primary sets of data are analyzed. First, an analysis is conducted of reporting issuers listed on the Toronto Stock Exchange (TSX) and the TSX Venture Exchange by province, industry type, and market capitalization. Second, GDP by province and industry is analyzed to assess the economic importance of various industries to regions in Canada.

Part 3 assesses whether provincial regulators have developed levels and forms of regulation that have been responsive to the needs of LICRs located within their province. Part 3 concludes by analyzing the relationship of these local regulatory responses to the issue of distinctive local markets and their impact on analyzing optimal regulatory structure.

Part 4 highlights other developments in the Canadian capital markets that are relevant to the debate on local and regional interests.

Part 5 highlights how the securities regulatory structure of the United States addresses local markets and interests.

Part 6 concludes with comments on the weight and significance that ought to be given to local and regional issues in analyzing optimal securities regulatory structure for Canada.

2. Analysis of Local and Regional Capital Markets

In the context of the debate on local and regional markets, the following broad generalizations are often made:

- Alberta has a local market in oil and gas;
- Alberta and B.C. have local markets that focus on micro- and small-cap issuers;
- B.C. has a local market in mining and is known for attracting technology issuers; and
- Ontario has a local market for financial services.

This part of the study tests the validity of these particular assertions, and analyzes whether distinct local markets exist in Canada by (a) examining issuer data; (b) discussing investor location; and (c) conducting an analysis of GDP figures classified by province.

As Professor Harris has pointed out:

If local and regional flexibility is proven by an empirical study to be critical to the development of businesses that will make Canada globally competitive in the future, then the fact that a federal securities regulator does not offer a clear way to provide it may prove to be determinative against that proposal. If, on the other hand, local and regional flexibility

is found to be a red herring, the relative strengths and weaknesses of the various reform proposals would have to be reassessed on a fundamental level.⁵

An analysis is first conducted of reporting issuers listed on the TSX and the TSX Venture Exchange by industry type and by the province in which the issuer's head office is located. The location of an issuer's head office will generally indicate which province's or territory's securities commission is the principal regulator under the Mutual Reliance Review System (MRRS).⁶

To the extent that there is a critical mass of industry or sector specific issuers in a geographical region, there will likely be a development of expertise over time within the securities commission in that geographic area. There will also be a clustering of professionals such as securities lawyers, accountants and investment bankers that service these issuers and develop an expertise in the industry. In this study, I label this phenomenon as a "local infrastructure for capital raising."⁷

In assessing whether an LICR exists for any particular industry, I have analyzed the data from four perspectives for each province and industry:

1. The number of issuers headquartered in a province as a percentage of the total number of issuers in that industry;
2. The number of issuers headquartered in a province as a percentage of the total number of issuers principally regulated by that province's securities commission;
3. The market capitalization of issuers in an industry headquartered in a province as a percentage of the total market capitalization of all issuers in that industry; and
4. The market capitalization of issuers in an industry headquartered in a province as a percentage of the market capitalization all issuers principally regulated by that province's securities commission.

⁵ *Ibid* at 51-52.

⁶ See National Policy 43-201 *Mutual Reliance Review System for Prospectuses and AIFs* and National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications*. The MRRS is intended to reduce unnecessary duplication in the review of materials filed in multiple jurisdictions. While an issuer is nonetheless required to file documents with all of the securities regulators in the jurisdictions in which securities are being distributed, the issuer is allowed to choose a principal regulator that has primary responsibility for reviewing the materials and providing comments. As at January 25, 2002, the securities regulators of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Nova Scotia had agreed to act as principal regulators under National Policy 43-201. Under the MRRS, an issuer's principal regulator is: (a) the local securities regulatory authority in the jurisdiction in which the issuer's head office is located; or (b) if the issuer's head office is not in a jurisdiction in which a participating principal regulator is located, then an issuer can select a participating principal regulator as its principal regulator, if the issuer has a reasonable connection with the relevant jurisdiction. Both an issuer and a principal regulator can propose to change the principal regulator.

⁷ Previously defined as "LICR."

This study assumes that regulatory responsiveness and expertise are proportional to the absolute importance of an issuer segment as well as its market capitalization. It may be, however, that commissions devote slightly more resources to industries that dominate in their respective provinces. For example, if the largest issuer group in any particular province represents one-third of all issuers in that jurisdiction, it may demand and receive more than one third of the regulator's attention. The smallest groups of issuers may receive less than their directly proportionate share of attention.

The issue of the minimum required critical mass of issuers in any particular industry for a regulator to establish expertise in the area also bears on how regulatory expertise is distributed among the provincial and territorial regulators.

It is inferred that local regulatory expertise will develop in provinces that host LICRs because of the volume of transactions that local regulators will review from issuers in the relevant industry and their interaction with such issuers and their service providers. However, the location of an industry's LICR does not provide any indication of the location of its investors. The province in which an issuer's head office is located, which is the basis this study uses for determining whether an LICR exists, does not indicate where the majority of its investors reside. The debate on local and regional interests appears to have focused, thus far, on issuers. However, an analysis of whether distinct local markets exist in Canada must also consider investor location and whether there are appreciable differences among investors throughout the country that would create a need for distinct local regulation.

In addition, the province in which an issuer's head office is located does not necessarily indicate where the majority of its operations takes place. Hence, the LICR for any given industry does not necessarily correlate with the industry's contribution to the provincial economy, as evidenced by GDP data broken down by province and industry. For example, the relative economic impact of the mining industry in the Northwest Territories' GDP is over nine times greater than in B.C.'s GDP.⁸ Certain mining issuers that are headquartered in B.C. and therefore subject to the British Columbia Securities Commission (BCSC) as principal regulator are actually engaged in mining exploration in Newfoundland and the Northwest Territories. Even though the bulk of such issuers' economic activities is taking place in other parts of the country, they may have decided to locate their head offices in B.C. because of the province's LICR for mining. Therefore, the level of mining in B.C. or the significance of the mining industry to the B.C. economy cannot be determined simply based on the number, or percentage, of public companies headquartered there.⁹ As such, it is also difficult to argue that B.C. has more of an interest in the LICR for mining than other jurisdictions where mining activities are actually undertaken.

⁸ See Appendix A, Tables 1b and c.

⁹ Further to this point, Ontario Teachers Pension Plan has stated that "We are uncertain as to whether there are distinctive regional or local characteristics in Canadian capital markets that are not simply the result of particular concentrations of different industry segments in different parts of the country." Ontario Teachers Pension Plan Board, submission to WPC. Furthermore, Osler, Hoskin & Harcourt submitted to the Wise Persons' Committee that "although there are regions of the country where issuers in a particular industry may be concentrated, in our experience the capital markets activities of Canadian issuers generally extend beyond provincial boundaries". Osler, Hoskin & Harcourt, submission to WPC.

(a) *TSX and TSX Venture Exchange Data*

There are a total of 3,263 issuers listed on the TSX and TSX Venture Exchange.¹⁰

Of the 1,222 issuers listed on the TSX, the greatest portion consists of issuers headquartered in Ontario (577 issuers at 47%).¹¹ This is followed by Alberta (233 issuers at 19%), and B.C. and Quebec (each with 177 issuers at 14% each). The remaining provinces and territories each headquarter less than 2% each of TSX listed issuers.

The total market capitalization of all issuers listed on the TSX is approximately \$923.0 billion. Over one-half of the market capitalization is comprised of issuers headquartered in Ontario (\$492.6 billion at 53%).¹² This is followed by Alberta (\$177.8 billion at 19%), Quebec (\$155.6 billion at 17%), B.C. (\$45.2 billion at 5%), and Manitoba (\$30.2 billion at 3%).¹³

Most TSX listed issuers fall into one of four industry classifications: Diversified Industries (339 issuers at 28%), Financial Services (243 issuers at 20%), Mining (159 issuers at 13%), and Oil and Gas (123 issuers at 10%).¹⁴

The Financial Services and Oil and Gas industries each represent a greater proportionate share of total market capitalization than absolute issuer base. Financial Services issuers represent 32% and Oil and Gas 23% of the total market capitalization of the TSX, while Mining represents 9%.¹⁵

Of the 2,041 issuers listed on the TSX Venture Exchange, the greatest portion consists of issuers headquartered in B.C. (983 issuers at 48%).¹⁶ This is followed by Alberta (415 issuers at 22%), Ontario (415 issuers at 20%), and Quebec (142 issuers at 7%).

The total market capitalization of all issuers listed on the TSX Venture Exchange is approximately \$11.8 billion. Over 40% of the TSX Venture Exchange's market capitalization is comprised of issuers headquartered in B.C.¹⁷ This is followed by Alberta (at 27%), Ontario (at 21%), and Quebec (at 7%).¹⁸

¹⁰ See Appendix B, Table 1a and Table 1b. TSX data is current as at May 31, 2003. TSX Venture Exchange data is current as at July 7, 2003.

¹¹ Appendix B, Table 1a.

¹² Appendix B, Table 1c.

¹³ *Ibid.*

¹⁴ Appendix B, Table 1a.

¹⁵ Appendix B, Table 1c.

¹⁶ Appendix B, Table 1b.

¹⁷ Appendix B, Table 1d.

¹⁸ *Ibid.*

Almost one half of all TSX Venture exchange issuers are classified as Mining issuers (918 issuers at 45%) followed by Technology issuers (324 at 16%), Diversified Industry issuers (335 at 16%) and Oil and Gas issuers (282 at 14%).¹⁹

The market capitalization analysis reveals similar results. Mining represents 45% of the total market capitalization of the TSX Venture Exchange, followed by Oil and Gas at 20%, Diversified Industries at 16%, and Technology at 13%.²⁰

(i) Oil and Gas

TSX Data:

Oil and Gas issuers represent 10% of all TSX listed issuers.²¹ Of the 123 Oil and Gas issuers listed on the TSX, 113 (92%) are headquartered in Alberta and therefore most likely regulated by the Alberta Securities Commission (ASC) as the principal regulator under MRRS.²² While Alberta headquarters an overwhelming majority of Oil and Gas issuers in absolute terms, it hosts only slightly more than one-half of the total market capitalization of all Oil and Gas issuers (55%).²³ Ontario follows at 8% and the remaining Canadian jurisdictions each host less than 1% of the market capitalization of this industry.²⁴ Surprisingly, foreign issuers comprise 36% of the industry's market capitalization. In fact, BP p.l.c, the largest of such issuers, represents 27% of the market capitalization of all oil and gas listed on the TSX, followed by Burlington Resources Inc., at 7%.²⁵

The ASC likely acts as principal regulator for 233 TSX listed issuers under MRRS, and as such, Oil and Gas issuers represent 48% (113/233) of the ASC's issuers listed on the TSX that are headquartered in Alberta.²⁶ However, Oil and Gas issuers listed on the TSX comprise 67% of the total market capitalization of all TSX issuers headquartered in Alberta.²⁷

TSX Venture Exchange Data:

Oil and Gas issuers represent 14% of all TSX Venture Exchange listed issuers.²⁸ Of the 282 Oil and Gas issuers listed on the TSX Venture Exchange, a substantial majority (173 issuers at 61%) are headquartered in Alberta.²⁹ Oil and Gas issuers headquartered in Alberta comprise

¹⁹ Appendix B, Table 1b.

²⁰ Appendix B, Table 1d.

²¹ Appendix B, Table 1a.

²² See National Policies 43-201 and 12-201, *supra* note 6.

²³ Appendix B, Table 1c.

²⁴ *Ibid.*

²⁵ The total market capitalization of all foreign oil and gas issuers listed on the TSX is \$77.0 billion. BP p.l.c, (headquartered in the U.K.) has a market capitalization of \$58.4 billion. This is followed by Burlington Resources Inc. (headquartered in the U.S.) with a market capitalization of \$14.5 billion, Murphy Oil Corporation (headquartered in the U.S.) with a market capitalization of \$2.1 billion, and Ultra Petroleum Corp. (headquartered in the U.S.) with a market capitalization of \$1.2 billion (as at May 31, 2003).

²⁶ Appendix B, Table 1a.

²⁷ *Ibid.*

²⁸ Appendix B, Table 1b.

²⁹ Appendix B, Table 1d.

77% of the market capitalization of all oil and gas issuers listed on the TSX Venture Exchange (\$1.9 billion out of total industry market capitalization of \$2.4 billion).³⁰

The ASC acts as principal regulator for 440 TSX Venture Exchange listed issuers under MRRS, and as such, Oil and Gas issuers represent 39% (173/440) of the ASC's issuers listed on the TSX Venture Exchange that are headquartered in Alberta.³¹ However, Oil and Gas issuers represent 58% of the total market capitalization of all TSX Venture Exchange issuers principally regulated by the ASC.³²

Analysis:

These figures provide strong support for the claim that there is an LICR for Oil and Gas issuers in Alberta.

(ii) Mining

TSX Data:

Mining issuers represent 13% of all TSX listed issuers. Ontario and B.C. are headquarters to over 80% of the 159 Mining issuers listed on the TSX.³³ Slightly more are headquartered in Ontario (68 issuers at 43%) than in B.C. (60 issuers at 40%).

In respect of market capitalization, Mining issuers headquartered in Ontario comprise 49% of the total market capitalization of all Mining issuers listed on the TSX, while those headquartered in B.C. comprise 16% of the industry's total market capitalization.³⁴

These data are surprising given that a blanket generalization is often made that the majority of Mining issuers are located in B.C. The data does not bear this claim out in respect of TSX listed issuers, although there is more merit to the claim upon examination of TSX Venture Exchange data, set out below.

However, Mining issuers represent a greater proportionate share of the BCSC's total TSX listed issuer base as compared to the Ontario Securities Commission (OSC). Mining issuers represent 9% of the total market capitalization of all TSX issuers principally regulated by the OSC but 31% of those regulated by the BCSC.³⁵

³⁰ Appendix B, Table 1d.

³¹ Appendix B, Table 1b.

³² Appendix B, Table 1d.

³³ Appendix B, Table 1a.

³⁴ Appendix B, Table 1c.

³⁵ *Ibid.*

TSX Venture Exchange Data:

Mining issuers represent almost one-half of all TSX Venture Exchange listed issuers (45%). A large majority of the 918 Mining issuers are headquartered in B.C. (584 issuers at 64%).³⁶ Ontario (168 issuers at 18%) and Alberta (77 issuers at 8%) follow.

The market capitalization analysis roughly parallels the above analysis. Mining issuers headquartered in B.C. comprise 60% of the market capitalization of all Mining issuers listed on the TSX Venture Exchange (\$3.2 billion out of total industry market capitalization of \$5.2 billion).³⁷ This is followed by Ontario at 21%, Alberta at 8% and Quebec at 7%.³⁸

Mining issuers headquartered in B.C. comprise 65% of the total market capitalization of all TSX Venture Exchange issuers principally regulated by the BCSC.³⁹ This is followed by Saskatchewan at 61%, Ontario at 43%, Quebec at 42%, Nova Scotia at 17%, and Alberta at 13%.⁴⁰

Analysis:

The data suggest that both B.C. and Ontario host an LICR for TSX listed mining issuers. The data also support the claim that B.C. hosts an LICR for TSX Venture Exchange listed mining issuers.

(iii) Technology

TSX Data:

Technology issuers represent 10% of all TSX listed issuers. Of the 128 Technology issuers on the TSX, the majority are headquartered in Ontario (74 issuers at 58%).⁴¹ This is followed by B.C. (24 issuers at 19%), Quebec (19 issuers at 15%), and Alberta (10 issuers at 8%).⁴² The market capitalization data are slightly more pronounced than the absolute numbers in favour of Ontario. Technology issuers headquartered in Ontario comprise 83% of the market capitalization of all technology issuers listed on the TSX.⁴³ This is followed by Quebec at 9% and B.C. at 7%.⁴⁴

Technology issuers represent a relatively low proportion of each provincial regulator's overall TSX listed issuer base with each of B.C., Ontario, Quebec and Alberta at 14% or under.⁴⁵

³⁶ Appendix B, Table 1b.

³⁷ Appendix B, Table 1d.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Appendix B, Table 1a.

⁴² *Ibid.*

⁴³ Appendix B, Table 1c.

⁴⁴ *Ibid.*

⁴⁵ Appendix B, Table 1a.

Technology issuers represent 8% of the total market capitalization of all TSX issuers principally regulated by the OSC. This is followed by B.C. at 7% and Quebec at 3%.⁴⁶

TSX Venture Exchange Data:

Technology issuers represent 16% (324/2041) of all TSX Venture Exchange listed issuers. Of the 324 Technology issuers on the TSX Venture Exchange, a significant number are headquartered in B.C. (139 issuers at 43%).⁴⁷ This is followed by Ontario (78 at 24%), Alberta (62 issuers at 19%) and Quebec (34 issuers at 10%).⁴⁸

B.C.'s lead is slightly less pronounced when market capitalization data are analysed. Technology issuers headquartered in B.C. comprise 32% of the market capitalization of all technology issuers listed on the TSX Venture Exchange, followed closely by Ontario at 30%, Alberta at 16% and Quebec at 10%.⁴⁹

From the perspective of the provinces, technology issuers represent between 14% to 25% of each of Alberta, B.C., Manitoba, N.B., N.S., Ontario, Quebec, and Saskatchewan's TSX Venture Exchange issuer base.⁵⁰ However, Technology issuers represent more of the total market capitalization of all TSX Venture Exchange issuers principally regulated by Ontario and Quebec (19% and 18% respectively) than B.C. and Alberta (10% and 8% respectively).⁵¹

Analysis:

While a generalization is often made that B.C. is a hotbed for technology issuers, the data reveal that Ontario actually hosts an LICR for TSX listed technology companies while B.C. hosts an LICR for TSX Venture Exchange listed technology issuers.

It is interesting to note that there are many similarities between technology companies and mining companies, which provides a partial explanation as to why an LICR for TSX Venture Exchange listed technology issuers is developing in B.C. Both mining and technology companies often have no or limited revenue streams in the early part of their business cycle, making investments in such companies rather speculative. Relatedly, the LICR for technology companies in B.C. is at a much more nascent stage than the LICR for mining companies because the technology industry is at a much earlier stage in its development than mining.

⁴⁶ Appendix B, Table 1c.

⁴⁷ Appendix B, Table 1b.

⁴⁸ *Ibid.*

⁴⁹ Appendix B, Table 1d.

⁵⁰ Appendix B, Table 1b.

⁵¹ Appendix B, Table 1d.

(iv) Financial Services

TSX Data:

Financial Services issuers represent 20% of the TSX listed issuers.⁵² Of the 243 Financial Services issuers listed on the TSX, almost 80% (193 issuers at 79%) are headquartered in Ontario. The market capitalization data produces similar results. Financial Services issuers headquartered in Ontario comprise 76% of the market capitalization of all financial services issuers listed on the TSX.⁵³

TSX listed Financial Services issuers represent 33% of the OSC's TSX listed headquartered issuers,⁵⁴ but 45% of the total market capitalization of all TSX issuers headquartered there.⁵⁵

TSX Venture Exchange Data:

Financial Services issuers represent a very small component of the TSX Venture Exchange at 4% (81 issuers).⁵⁶ Of those 81 issuers, a significant portion is headquartered in Ontario (32 issuers at 40%). This is followed by B.C. (31 issuers at 25%) and Alberta (17 issuers at 21%). Financial Services issuers clearly do not cluster on the TSX Venture Exchange.

The market capitalization data maintains the above rankings, but Ontario's lead is more pronounced and B.C. and Alberta share of market capitalization is slightly less than their absolute numbers suggest. Financial Services issuers headquartered in Ontario comprise 61% of the market capitalization of all financial services issuers listed on the TSX Venture Exchange.⁵⁷ This is followed by B.C. at 15% and Alberta at 13%.

Financial Services issuers listed on the TSX Venture Exchange represent less than 5% of each provincial regulator's headquartered issuer base.⁵⁸ Financial Services issuers comprise 11% of the total market capitalization of all TSX Venture Exchange issuers principally regulated by the OSC.⁵⁹

⁵² Appendix B, Table 1a.

⁵³ Appendix B, Table 1c.

⁵⁴ Appendix B, Table 1a.

⁵⁵ Appendix B, Table 1c.

⁵⁶ Appendix B, Table 1b.

⁵⁷ Appendix B, Table 1d.

⁵⁸ Appendix B, Table 1b.

⁵⁹ Appendix B, Table 1d.

Analysis:

The data indicate that Ontario hosts an LICR for financial services issuers.

(v) Communications & Media

TSX Data:

Communications and Media issuers represent only 5% of all TSX listed issuers. Ontario and Quebec are headquarters to 73% of all Communications and Media issuers listed on the TSX.⁶⁰ More are headquartered in Ontario (31 issuers at 46%) than in Quebec (18 issuers at 27%).

In respect of market capitalization, however, both Ontario and Quebec each headquarter 39% of the total market capitalization of this industry.

However, Communications and Media issuers appear to consume a greater proportionate share of the Quebec Securities Commission's (QSC) resources as compared to the OSC. Communications and Media issuers represent 10% of all TSX listed issuers principally regulated by the QSC, as opposed to 5% of the OSC's principally regulated TSX listed issuer base. In respect of market capitalization, Communications and Media issuers represent 8% of the total market capitalization of all TSX issuers principally regulated by the OSC but one quarter of those regulated by the QSC.⁶¹

TSX Venture Exchange Data:

Communications and Media issuers represent only 1% of all TSX Venture Exchange listed issuers. Of the 29 Communications and Media issuers, almost one half are headquartered in B.C. (14 issuers at 48%), followed by Ontario at 31%, Alberta at 17% and Quebec at 4%.⁶²

The market capitalization data suggest quite different results: Alberta's issuer base for this industry represents 71% of the industry's total market capitalization.⁶³ This is followed by B.C. at 15%, Ontario at 13% and Quebec at 2%.⁶⁴

Communications and Media issuers headquartered in each of the provinces and territories comprise less than 2% of the issuers principally regulated by that province and less than 6% of the total market capitalization of all TSX Venture Exchange issuers principally regulated by that jurisdiction's securities regulator.⁶⁵

⁶⁰ Appendix B, Table 1a.

⁶¹ *Ibid.*

⁶² Appendix B, Table 1b.

⁶³ Appendix B, Table 1d.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

Analysis:

Ontario and Quebec each have an LICR in Communications and Media issuers listed on the TSX. This industry appears to consume more proportionate resources of the QSC than the OSC. B.C., Ontario and Alberta appear to have an LICR in Communications and Media issuers listed on the TSX Venture Exchange: B.C. and Ontario because of the absolute number of issuers in the industry headquartered in there and Alberta because of the strength of the market capitalization of the industry's issuers that are located in that province.

(vi) Diversified Industries

TSX Data:

Diversified Industry issuers represent 28% of all TSX listed issuers. Of the 339 Diversified Industry issuers on the TSX, the majority are headquartered in Ontario (155 issuers at 46%).⁶⁶ This is followed by Quebec (65 issuers at 19%), Alberta (57 issuers at 17%), and B.C. (40 issuers at 12%).⁶⁷

The market capitalization data shows that Ontario still ranks first (at 43%) but with a smaller lead than the absolute numbers above suggest.⁶⁸ Diversified Industry issuers headquartered in Quebec comprise 29% of the total market capitalization of all Diversified Industry issuers listed on the TSX, which represents a larger share than the absolute numbers indicate above.⁶⁹ This is followed by Alberta and B.C. each at 15%.⁷⁰

Diversified Industry issuers represent 37% of the QSC's TSX listed issuer base and 27% of the OSC's TSX listed issuer base. This is followed by the ASC at 24% and the BCSC at 23%.⁷¹

The above rankings remain the same when market capitalization data are considered, although the industry represents a smaller proportion of each regulator's overall TSX listed issuer base: Diversified Industry issuers represent 29% of the TSX listed issuer base headquartered in Quebec. This is followed by Ontario at 20%, and Alberta and B.C., each at 15%.⁷²

⁶⁶ Appendix B, Table 1a.

⁶⁷ *Ibid.*

⁶⁸ Appendix B, Table 1c.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Appendix B, Table 1a.

⁷² Appendix B, Table 1c.

TSX Venture Exchange Data:

Diversified Industries issuers represent 16% (335/2041) of all TSX Venture Exchange listed issuers. Two thirds of the 335 Diversified Industry issuers on the TSX Venture Exchange are headquartered in Ontario and B.C., (33% each at 111 issuers each).⁷³ This is followed by Alberta (81 at 24%), and Quebec (31 issuers at 9%).⁷⁴ In respect of market capitalization, B.C. ranks first, as headquarters to 36% of Diversified Industry issuers listed on the TSX Venture Exchange. This is followed by Ontario at 25%, Alberta at 18% and Quebec at 13%.⁷⁵

From the perspective of the provinces, however, Diversified Industry issuers represent the greatest portion of the OSC's TSX Venture Exchange issuer base: the industry represents 24% of the QSC's TSX Venture Exchange issuer base, followed by the QSC at 24%, 18% of the ASC's TSX Venture Exchange issuer base and 11% of the BCSC's TSX Venture Exchange issuer.⁷⁶

However, the market capitalization data suggest that Diversified Industry issuers represent the greatest portion of Quebec's TSX headquartered issuer base at 29%, which is greater than Ontario, Alberta and B.C., all of which are under 20%.⁷⁷

(vii) Life Sciences

TSX Data:

Life Sciences issuers represent only 6% of all TSX listed issuers. Ontario and Quebec are headquarters to over 70% of all Life Sciences issuers listed on the TSX.⁷⁸ Slightly more are headquartered in Ontario (27 issuers at 37%) than in Quebec (25 issuers at 34%). This is followed by B.C. (14 issuers at 19%) and Alberta (5 issuers at 7%).⁷⁹

However, Ontario is headquarters to two-thirds of the total market capitalization of this industry, while Quebec is headquarters to only 12% of the total market capitalization of the industry.⁸⁰

From the perspective of the provinces, however, Life Sciences represent the greatest portion of the QSC's TSX headquartered issuer base at 14%. Life Sciences represent less than 10% of all other jurisdictions' TSX headquartered issuer base.⁸¹

⁷³ Appendix B, Table 1b.

⁷⁴ *Ibid.*

⁷⁵ Appendix B, Table 1d.

⁷⁶ Appendix B, Table 1b.

⁷⁷ Appendix B, Table 1d.

⁷⁸ Appendix B, Table 1a.

⁷⁹ Appendix B, Table 1a.

⁸⁰ Appendix B, Table 1c.

⁸¹ Appendix B, Table 1a.

TSX Venture Exchange Data:

There are no Life Sciences issuers listed on the TSX Venture Exchange.⁸²

Analysis:

The data suggest that Ontario and Quebec each host an LICR for TSX listed Life Sciences issuers.

(viii) Micro and Small Cap Issuers

For the purpose of this analysis, a micro cap issuer is defined as having a market capitalization of less than \$5 million and a small cap issuer is defined as having a market capitalization of \$5 to \$75 million.⁸³

TSX Data:

Micro cap issuers represent 7% of all TSX listed issuers.⁸⁴ Of the 85 micro cap issuers listed on the TSX, more than half (46 issuers at 55%) are headquartered in Ontario. This is followed by B.C. at (22 issuers at 26%), and then Quebec and Alberta (each at 7 issuers at 8% each.)

Micro-cap issuers listed on the TSX represent between 12% to 3% of B.C., Ontario, Quebec and Alberta's issuers headquartered in each province.

Small cap issuers represent 43% of all TSX listed issuers. Of the 520 small cap issuers listed on the TSX, just under half (227 issuers at 45%) are headquartered in Ontario and therefore most likely regulated by the OSC as the principal regulator under MRRS. This is followed by B.C. and Alberta (95 issuers each at 18% each) and Quebec (84 issuers at 16%.)

Small cap issuers represent a relatively high proportion of each regulator's headquartered issuers listed on the TSX: 54% for B.C., 47% for Quebec, and 41% for each of Alberta and Ontario.

TSX Venture Exchange Data:

Micro cap issuers represent 76% of all TSX Venture Exchange listed issuers.⁸⁵ Of the 1,705 micro cap issuers listed on the TSX Venture Exchange, over one half (882 issuers at 52%) are headquartered in B.C. and therefore most likely regulated by the BCSC as the principal regulator under MRRS. This is followed by Alberta (335 issuers at 20%), Ontario (329 issuers at 19%) and Quebec (112 issuers at 7%).

⁸² Appendix B, Table 1b.

⁸³ See submission from the Ontario Securities Commission to Wise Persons' Committee which also used the same classification. Ontario Securities Commission, submission to WPC.

⁸⁴ See Appendix B, Tables 2a and 2b.

⁸⁵ See Appendix B, Tables 3a and 3b.

Micro cap issuers represent an extraordinary percentage of each regulator's headquartered issuers listed on the TSX Venture Exchange. B.C. ranks first (886/983 issuers at 81%). This is followed by Quebec and Ontario (112/142 issuers and 329/415 issuers, respectively, at 79% each) and then Alberta (335/440 issuers at 76%).

Small cap issuers represent 23% of all TSX Venture Exchange listed issuers. Of the 519 small cap issuers listed on the TSX Venture Exchange, 204 (39%) are headquartered in B.C. and therefore most likely regulated by the BCSC as the principal regulator under MRRS. This is followed by Alberta (139 issuers at 27%), Ontario (108 issuers at 21%) and Quebec (43 issuers at 8%).

Small cap issuers represent 32% of Alberta's headquartered TSX Venture Exchange issuer base, followed by Quebec at 30%, Ontario at 26% and B.C. at 19%.

Combined TSX and TSX Venture Exchange Data:

Micro cap issuers represent 52% of all issuers listed on either the TSX or the TSX Venture Exchange.⁸⁶ Of the 1,789 micro cap issuers listed on one of the two exchanges, a majority (908 issuers at 51%) are headquartered in B.C. and therefore most likely regulated by the BCSC as the principal regulator under MRRS. This is followed by Ontario (375 issuers at 21%), Alberta (342 issuers at 19%) and Quebec (119 issuers at 7%).

The BCSC acts as principal regulator for 1,271 issuers on both exchanges under MRRS and as such, micro cap issuers represent 71% (908) of the BCSC's issuers listed on either exchange. This is followed by Alberta (51%), Ontario (38%) and Quebec (37%).

Small cap issuers represent 30% of all issuers listed on either the TSX or the TSX Venture Exchange. Of the 1,036 small cap issuers listed on both exchanges, just under one third (335 issuers at 32%) are headquartered in Ontario and therefore most likely regulated by the OSC as the principal regulator under MRRS. Ontario is followed closely by B.C. (29%) and Alberta (23%). Quebec ranks fourth (12%).

Small cap issuers represent between 24 and 40% of each regulator's headquartered issuers with Quebec at 40%, Alberta at 35%, Ontario at 33% and B.C. at 24%.

Analysis:

The TSX data suggest that Ontario hosts an LICR for both micro and small cap issuers. However, the TSX Venture Exchange data suggests that B.C. hosts the LICR for both micro cap and small cap issuers on this exchange. The aggregate data from both exchanges highlight that B.C. hosts an LICR for micro cap issuers and Ontario, B.C. and Alberta each host LICRs for small cap issuers.

⁸⁶ See Appendix B, Tables 4a and 4b.

(b) *Investor Location*

The debate on local and regional markets appears to have focused on issuers. However, an analysis of whether distinct geographic markets exist in Canada must also consider investor location and whether there are appreciable differences among investors throughout the country that would create a need for distinct local regulation.

As the OSC states in its submission to the Wise Persons' Committee:

There are, of course, regional economic concerns within Canada, but no longer is anything just a regional concern; no economic sector or issue is the exclusive concern of any province, territory or region. The oil industry is as much potential interest to investors in Ontario or Quebec as it is in Alberta. The auto parts industry is of as much potential interest to investors in Alberta as it is to investors in Ontario; the biotech industry is as important to investors in Prince Edward Island as to investors in Quebec.⁸⁷

The location of an industry's LICR does not provide any indication of the location of its investors. The province in which an issuer's head office is located, which is the basis for determining LICR, does not indicate where the majority of its investors reside.

While Professors Cumming, Kaul and Mehrotra find that most private equity investors reside in the same province as the entrepreneurs in whose companies they invest,⁸⁸ their findings cannot be generalized for all stages of financing and investors because of the distinct nature of the venture capital and private equity market. In addition, data on investor location for public companies is generally unavailable.⁸⁹

If it is true that investors are located throughout the county for other types of financings, then in considering the issue of distinct local and regional interests from the perspective of investors, one would need to consider whether investors that reside in particular provinces have distinct characteristics that would justify the need for different levels or forms of regulation.

⁸⁷ *Supra* note 83. Similarly, the Prospectors and Developers Association of Canada stated the following in relation to the mining industry in its submission to the Wise Persons' Committee: "We believe that the exploration industry is a national industry for several reasons. First, the issuers are resident in primarily B.C. and Ontario but they also exist in Quebec, Alberta, Saskatchewan and the Maritimes. Second, investors are resident in primarily B.C. and Ontario but they also exist in Quebec, Alberta, Saskatchewan and the Maritimes. This means that issuers, regardless of their home jurisdiction, must raise financing in multiple jurisdictions – particularly as their projects advance. We don't accept the notion that certain provincial regulators should be charged with advancing the interests of certain industries or certain sized issuers because this implies that the other regulators are letting down companies or investors who reside in their jurisdictions. As well, we don't see why these so-called regional issues could not be handled by the local offices of a single regulator or by the office of a single regulator which is charged with administering the affairs of an industry or other issuer group." PDAC, submission to WPC.

⁸⁸ D. Cumming, A. Kaul and V. Mehrotra, "Provincial Preferences in Private Equity" (WPC Research Study, 2003).

⁸⁹ See D. Cumming, A. Kaul and V. Mehrotra, "Fragmentation and the Canadian Stock Markets" (WPC Research Study, 2003).

It should be noted that issuers are more likely than investors to apply pressure on local regulators to develop locally and regionally-specific rules and policies. Issuers and their professional advisors have frequent and sustained contact with securities regulators and many opportunities to have their views heard. This statement cannot be made with the same force about investors. Despite having a mandate of “investor protection”, securities regulators have infrequent contact with retail investors. Retail investors in widely held public companies do not have the economic incentives to apply pressure on regulators to adopt locally-specific rules or policies. While institutional investors have better incentives to make their views known to regulators, they are unlikely, as a general matter, to focus on rule changes that deal with local or regional issues. Instead, institutional investors are more likely to apply pressure on regulators to develop rules and policies that can be applied across the board to the entire spectrum of issuers in which they invest, such as corporate governance initiatives. There may, however, be some instances where investors’ interests are closely aligned with issuers’ interests, as in the context of a private company about to go public, and where both sets of stakeholders have an interest in pressuring regulators.⁹⁰

(c) GDP Analysis

The stock exchange data above allow us to conclude that Alberta hosts an LICR in oil and gas, B.C. an LICR in mining and technology, Ontario an LICR in mining, technology, financial services, communications and media, and life sciences, and Quebec an LICR in communications and media and life sciences. As well, the data allow us to conclude that Alberta, B.C. and Ontario each host an LICR for small cap issuers, and B.C. an LICR for micro-cap issuers.

To be sure, however, the above data do not allow us to conclude that these industries are local to host provinces or that host provinces have distinct local interests in the capital markets regulation or general regulation of those industries.

This section examines data on GDP,⁹¹ classified by province and industry, to examine the economic significance of selected industries to the provinces that host their LICRs and other provinces.

Statistics Canada provides only aggregate figures for “Mining and Oil and Gas Extraction.” Mining and Oil and Gas Extraction represents 17.1% (\$20.5 billion) of Alberta’s GDP but only 3% of B.C.’s GDP (\$3.2 billion).⁹² This industry is of greater proportionate significance to the economies of the Northwest Territories⁹³ (representing 28% of its GDP at

⁹⁰ As discussed in the following section, provincial securities regulators have been responsive to the needs of both issuers and early stage investors.

⁹¹ Industry GDP estimates are prepared using a value added approach, which is the value of an industry’s gross output less the value of intermediate inputs required in the production process. GDP is *gross* in the sense that it does not deduct items such as the depreciation of capital assets.

⁹² See Appendix A, Tables 1a and b.

⁹³ See Appendix A, Table 1c.

\$766 million), Newfoundland⁹⁴ (representing 17.9% of its GDP at \$2.3 billion) and Saskatchewan⁹⁵ (representing 14% of its GDP at \$4 billion).

GDP data by province and industry reveal that “Finance, Insurance and Real Estate” represents 22% of Ontario’s GDP (\$88.7 billion) but also represents 12% to 23% of all the other provinces and territories’ GDP.⁹⁶ As such, it would not be valid to claim that financial services is an industry local to Ontario: financial services is important to the economies of all the provinces and no one province has inherent ownership in fostering the general growth of this industry or encouraging capital formation for this industry.

Even though the infrastructure for capital raising for these industries may be clustered in certain regions of the country, the above GDP data suggest that the economic significance of these industries transcends regional boundaries, and that many provinces are interested in fostering policies and programs that encourage such industries. As a result, it is not improper to conclude that these industries are national in character.

(d) *Implications for Optimal Regulatory Structure*

The above analysis reveals that infrastructures for capital raising for certain industries are centred in certain regions in Canada. Other provinces may have an interest equal to that of the province that hosts the LICR, however, given investor location and the importance of those industries to the economies of other provinces, as borne out by GDP data.

While securities regulatory responsibility is currently divided on the basis of issuer location, it is not the only plausible allocation; investor location and economic impact are two other bases that could potentially be used.

In assessing possible alternatives to the current regulatory structure, the local regulatory expertise that has developed as a result of LICRs for certain industries should be preserved.

Under a USL Model, existing provincial commissions would continue to operate in a manner similar to that under the current system, and thus would allow existing local regulatory expertise to be maintained.

A Passport Model based on issuer location or issuer choice will also likely preserve existing regulatory expertise because issuers will likely choose to headquarter or choose to be regulated by the regulator that is considered to be the expert for that particular industry.

⁹⁴ See Appendix A, Table 1d.

⁹⁵ See Appendix A, Table 1e.

⁹⁶ See Appendix A, Tables 1a to 1g.

A single regulator model, properly designed, can also preserve existing local regulatory expertise.⁹⁷ This model will also allow for a consolidation of expertise to the extent that it is dispersed among many regulators under the current system. A single regulator ought to also be divided along major industry lines that currently have LICRs, and should also have a unit focused on smaller issuers.

A single regulator model must also address the issue of whether the existing regulatory expertise should be housed in regional offices. With advances in communication technology, regulatory experts need not necessarily be housed in the existing LICR. However, it may be desirable to do so. The impact of this desire depends on the weight to be accorded to it, relative to factors favouring centralized staffing and expertise. Stakeholders have expressed the view that “face to face” contact with regulators (or the possibility of the same) is important to issuers and their professional advisors. This close contact may in part account for the development of LICRs and help to explain the development of the regulatory expertise in these industries. A single regulator model must also address the issue of the power and scope of authority that may be vested in regional offices.

A concern that is often expressed is that a single regulator model will pay more attention to larger issuers and not be as responsive to smaller issuers; a concerted effort must be made to avoid this result.⁹⁸ As discussed in Part 5 below, the SEC has a small business unit within its Division of Corporation Finance, which suggests one approach to addressing this concern.

It should be highlighted here that the needs of smaller issuers should not be conflated with the need for local rules. Smaller issuers that engage in (or expect to engage in) inter-provincial capital activity need rules that will allow for the raising of capital in a cost effective manner.⁹⁹ As will be discussed in Part 4, even exclusively intra-provincial issuers may not need

⁹⁷ CIBC’s submission to the Wise Persons’ Committee states “The governance structure [of a national regulator] must represent the regional needs of the country using the high level of skills and securities experience currently found in the provincial commissions... The high levels of regulatory, legal, accounting and other skills currently available in many provinces should continue to be used in the creation of the national regulator for example by using certain offices as the centres for certain kinds of specializations.” CIBC, submission to WPC. See also, Phillips, Hager & North, which has stated in this regard: “we do not see why a central regulator cannot develop or hire the expertise to address regional and local needs. Be it oil and gas, mining, fishery, expertise can be bought with savings from having a centralized regulator rather than 13 jurisdictions.” Phillips, Hager & North, submission to WPC.

⁹⁸ According to Discovery Capital Corporation, a B.C. venture capital firm, “The Inter-Provincial Securities Framework must preserve the opportunity to innovate regionally that has resulted in significant improvements to the regulatory regime for junior issuers in Canada.” Discovery Capital Corporation, submission to WPC.

⁹⁹ See also Ogilvy Renault’s submission to the Wise Persons’ Committee, in which it states, “local laws are perceived to facilitate access to the securities market by, and appropriate regulation of, smaller regional or sectoral issuers. We are of the view that these laws can also be enacted and enforced on a uniform basis. There are smaller market participants in all jurisdictions of Canada who need to access low-cost, innovative financing. Smaller issuers are not well served by having separate non-uniform compliance regimes in thirteen provinces and territories: in fact, their ability to raise capital in more than one jurisdiction is impaired by cost and complexity.” Ogilvy Renault, submission to WPC.

purely local rules, depending on the underlying rationale for the rule.¹⁰⁰

3. Local Regulatory Responsiveness

This part analyzes whether local securities regulators have developed regulatory products that are responsive to their distinct local and regional capital markets.

This part examines only external indicia of regulatory activity such as legislation, rules, and policies and does not examine internal regulatory activity such as different approaches to the administration of legislation, rules and policies that may exist between provincial regulators.

In particular, this part reviews the regulatory products that have emerged from the provincial securities commissions, and that have been argued to be the products of regulatory responses to local and regional market needs, including: (a) the Junior Capital Pool Programs; (b) the System for Shorter Hold Periods with an Annual Information Form and Multilateral Instrument 45-102 *Resale of Securities*; (c) National Instrument 51-101 *Standards of Disclosure for Oil & Gas Activities*; (d) the OSC's Accredited Investor Exemption and Multilateral Instrument 45-103 *Capital Raising Exemptions*; and (e) Saskatchewan's Local Policy 45-601 *Community Venture Exemption*.

The following list of non-exhaustive factors is instructive in analyzing the issue of whether local regulators have been responsive to distinct local markets or issues:

- Was the creation of the local policy followed by multilateral or national adoption by other provincial regulators? If so, then the local policy may be an example of regulatory innovation possibly supporting an argument for regulatory experimentation but not an argument for local regulation of distinct local markets. In assessing this factor, there may be a difference of degree rather than kind; that is, the need for a policy, while not unique to any one local jurisdiction, may be more pronounced there, and so may have led to the innovation.
- Was the local policy created for the purpose of supporting an industry that is local to the province? If other provinces do not host the relevant industry in their geographical boundaries and are not interested in its development, then the local policy likely responds to a distinct local market.
- Is the local policy's application limited to issuers and investors that are all within the province? If investors are not located within the same province as the issuers to whom the policy applies, the local policy is not likely responding to a distinct local market.

¹⁰⁰ Given that one potential model of regulatory reform would leave the provinces regulating purely intra-provincial offerings, it is important to understand the economic significance of such offerings. The focus is on offerings - whether exempt or by prospectus - that are extended only to residents of the province in which the issuer is located. Even offerings that were available to a single resident of one additional province would not count, as they would be considered inter-provincial. This study was not able to obtain aggregate data to analyze the extent of such intra-provincial offerings in Canada.

However, the fact that issuers and investors may be located in the same province is not determinative of whether the policy responds to distinctive local interests.

- Can the underlying rationale of an industry-specific local policy be generalized such that its stated purpose is to allow issuers to raise capital with ease and without the costs associated with preparing a prospectus? If so, then the local interest loses its distinctiveness and the necessity for a local policy may be questionable; a more general national policy that is not industry-specific may serve the local interests.

This part concludes by assessing the relationship of local regulatory initiatives and responses to the issue of distinctive local and regional markets and optimal securities regulatory structure.

(a) *Junior Capital Pool Programs*

Alberta's Junior Capital Pool Program (JCPP)¹⁰¹ is cited as an example of local regulatory responsiveness to the needs of small businesses and issuers that are at an early stage and need to raise capital from public markets.¹⁰²

This section sets out details of the program and its successes in nurturing and raising capital for small businesses. This section also analyses the program's relationship with local regulation of distinct markets and optimal regulatory structure.

(i) History and Development

The JCPP began in Alberta in 1986. The ASC stated that the objective of the JCPP was as follows:

The Junior Capital Pool concept is designed to provide junior start up companies with an enhanced opportunity to become listed on The Alberta Stock Exchange thereby providing a viable and efficient mechanism to enable junior companies to raise further equity capital from the investing public. The Exchange recognizes however that as the listing and prospectus disclosure requirements for Junior Capital Pool Companies are substantially less than what is required for other companies, additional requirements are necessary to provide the market with sufficient disclosure and to limit abuse of this system.¹⁰³

In 1997, the BCSC and Vancouver Stock Exchange (VSE) adopted a similar program, the Venture Capital Pool Program (VCPP). When the Alberta Stock Exchange (ASE) and the VSE

¹⁰¹ See Alberta Securities Commission Rule 46-501 *Junior Capital Pool Offerings*.

¹⁰² See the submission of the Alberta Securities Commission to the Wise Persons' Committee. See also the submission of DesJardins Ducharme Stein Monast to the Wise Persons' Committee.

¹⁰³ M. Robinson, "Raising Equity Capital for Small and Medium-Sized Enterprises Using Canada's Public Equity Markets" in P. Halpern, ed., *Financing Growth in Canada* (1997) 593 at 611.

merged in 1999, forming the Canadian Venture Exchange (CNDX),¹⁰⁴ the JCPP and the VCPP policies were replaced with the Capital Pool Company Policy (CPC Program) of the CDNX. Shortly thereafter, CDNX and the Winnipeg Stock Exchange (WSE) merged, and the WSE's Keystone Company Program (a program similar to the JCPP) was replaced with the CPC Program. Currently, the TSX Venture Exchange operates a CPC Program in B.C., Alberta, Saskatchewan, Manitoba, Ontario and Quebec (collectively known as, the "CPC Jurisdictions"). This program, among other things, assists in harmonizing the ability of entrepreneurs to raise capital in the CPC Jurisdictions.

As a general matter, this initiative was undertaken to provide a financing alternative for early stage firms that would normally raise seed capital privately.

(ii) The Operation of the CPC Program

TSX Venture Exchange Policy 2.4 provides that an issuer, meeting certain requirements, wishing to participate in the CPC Program must file a preliminary prospectus and related supporting documents with the TSX Venture Exchange as well as with each of the relevant securities regulatory authorities in the CPC Jurisdictions where the proposed distribution will be made. Upon issuance of the final receipt and completion of the initial public offering (IPO) (i.e. distribution of shares to at least 200 arm's length shareholders), securities of a CPC issuer will trade on Tier 2 of the TSX Venture Exchange.

A CPC issuer has 18 months following its IPO in which to identify an appropriate business and complete its "Qualifying Transaction", which requires the CPC issuer to seek the approval of both the TSX Venture Exchange and a majority of its minority shareholders prior to completion. In connection with obtaining shareholder approval, the CPC issuer must prepare a comprehensive information circular containing full, true and plain disclosure concerning the CPC issuer's proposed activities.

Following shareholder approval and the closing of the Qualifying Transaction, the CPC issuer transforms into a regular listed issuer on the TSX Venture Exchange.

As of May 30, 2003, there were 145 CPC issuers listed on the TSX Venture Exchange, 59 of which had not announced their Qualifying Transaction.¹⁰⁵

(iii) Success of the Program

The original JCPP in Alberta was very successful in increasing the access of junior firms to the capital markets to finance their expansions:

- The failure rate by the end of 1992 for JCPP issuers listed on the ASE was just 26%.¹⁰⁶

¹⁰⁴ Now known as the TSX Venture Exchange.

¹⁰⁵ See <http://www.tse.com/en/pdf/CPCReport.pdf> and <http://www.tsx.com/en/pdf/TSXVentureCapitalPoolCompanyList.pdf>.

¹⁰⁶ *Supra* note 103 at 616.

- Between 1986 and 1992, 405 companies were listed as JCPP issuers, raising over \$77 million in initial JCPP offerings.¹⁰⁷
- Although the number of JCPP issuers had drastically declined in the early 1990's, 99 companies were listed as JCPP companies by 1994.¹⁰⁸
- Of the 384 JCPP issuers that went public between 1986 and 1992, 86% had completed a major transaction by the end of 1992.

Since the TSX Venture Exchange's adoption of the JCPP, the CPC program has achieved the same successes:

- Between 1987 and 2000, 1,236 CPC issuers listed and raised over \$369 million in capital.¹⁰⁹
- One hundred and twenty-nine new CPC issuers were listed in 2000, raising nearly \$40 million.¹¹⁰
- Twenty-four percent of TSX Venture Exchange issuers that graduated to the TSX in 2000 are former CPC issuers.¹¹¹
- In 2002, \$15.6 million was raised by CPC issuers,¹¹² 45 CPC issuers were listed on the TSX Venture Exchange,¹¹³ and 37% of TSX Venture Exchange graduates to TSX were former CPC issuers.¹¹⁴

(iv) Analysis and Relationship to Optimal Regulatory Structure

The ASC's JCPP is a clear example of responsiveness to the issuer community, in particular by providing smaller issuers with an innovative method to raise public capital as an alternative to private funding.

The fact that the ASC's JCPP was quickly adopted by the BCSC and the VSE, as well as the WSE indicates that it was an extremely positive development that was well regarded by capital market players. Its wider adoption by other provinces suggests, however, that financing for early stage companies is not of unique interest to any one locality or region. In my view, the ASC was not responding to a local or regional issue; the JCPP is an example of regulatory

¹⁰⁷ *Ibid* at 613.

¹⁰⁸ *Ibid.*

¹⁰⁹ See the Canadian Venture Exchange's CPC Brochure, online at <http://www.cdnx.com/Listing/MarketingPubs/CPCBrochure.pdf>.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² See the TSX Venture Exchange's CPC Brochure, online at <http://www.tse.com/en/pdf/CPCBrochure.pdf>.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

responsiveness to the needs of early stage businesses, a class of issuer that all jurisdictions want to develop and encourage.¹¹⁵

The ASC's JCPP is an example of regulatory innovation that may support the case for regulatory experimentation but it is not the product of local or regional market distinctiveness.

In analyzing optimal regulatory structure, the issue is whether alternative regulatory models would be as responsive to the needs of smaller and early stage businesses. Under a USL, the provincial securities regulators would need to achieve consensus to implement such a program, but individual commissions would likely not have the authority to create local rules to implement a program of this type because it does not serve the needs of distinct local markets. Under a Passport Model, each provincial commission would have the authority to create a similar program, and other provincial commissions would have to make a decision as to whether to recognize it. A properly designed single regulator model could have a department that houses expertise and focuses on the needs of smaller and early stage businesses.¹¹⁶ As discussed in Part 5, a single Canadian regulator could house such expertise in an office similar to the SEC's small business office.

(b) *SHAIF and Multilateral Instrument 45-102 Resale of Securities*

In response to the strict hold-period requirements imposed on certain issuers, the BCSC and the ASC reduced the hold periods for certain securities offerings from twelve months to four months by introducing the System for Shorter Hold Periods for Issuers Filing an AIF (SHAIF System). Their innovation was then adopted by all of the Canadian securities regulators other than Quebec through Multilateral Instrument 45-102 Resale of Securities (MI 45-102).¹¹⁷

The SHAIF System reduced the twelve-month hold period to four months if the issuer of the securities was a "qualifying issuer" and had satisfied certain other conditions, including having filed an annual information form (AIF). The SHAIF system reduced the need for special warrant financings, stimulated private placements and provided an alternative option to prospectus financing.

The BCSC developed the SHAIF system on an interim basis in late November 1997 through a policy and blanket order. Working with the ASC, the BCSC fine-tuned the system and together the commissions adopted the SHAIF system in both jurisdictions in 1998. Alberta adopted it by way of local rule.

The adoption of MI 45-102 in November 2001 introduced a new regime for the resale of securities previously issued under exemptions from the prospectus requirements in all Canadian provinces and territories except Quebec.

¹¹⁵ As stated by the OSC, "Small businesses exist in every province, and they all require capital. Policies which encourage small business investment, publicly or privately, should not be concentrated in one region." See submission by Ontario Securities Commission, *supra* note 83.

¹¹⁶ See the submissions of Ogilvy Renault, the Ontario Bar Association and Discovery Capital Corporation.

¹¹⁷ Online at [http://www.bcsc.bc.ca:8080/comdoc.nsf/0/d9c540943f47853b88256cbf0058c1bf/\\$FILE/MI%2045-102.pdf](http://www.bcsc.bc.ca:8080/comdoc.nsf/0/d9c540943f47853b88256cbf0058c1bf/$FILE/MI%2045-102.pdf).

In November 2001, the QSC issued a decision which set out circumstances under which the QSC would permit the resale restrictions applicable to privately placed securities in that province to be reduced from twelve months to four months.¹¹⁸

Analysis and Relationship to Optimal Securities Regulatory Structure:

SHAIF is an example of a rule that was created locally but it was not a response to a distinctive local interest. The rule did not focus on any particular local industry. The fact that the rule was rapidly adopted by regulators across the country demonstrates that it had applicability in other provinces as well.

In this instance, the BCSC and the ASC were clearly responsive to the needs of issuers and early stage investors. Both the JCPP and the SHAIF system suggest that there may be a distinct small and medium sized business community and entrepreneurial culture in B.C. and Alberta to which local regulators are particularly sensitive and responsive. However, this is not to say that similar rules and policies could not emerge from a single regulator model, properly designed, so long as it is responsive to the early stage financing needs of small and medium sized issuers.

(c) *National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities*

National Instrument 51-101 (NI 51-101) creates new disclosure standards for oil and gas issuers, including the details of their operations, their compliance, corporate governance requirements, and their reserve reports.¹¹⁹

As a result of the ASC's expertise in this industry, the Canadian Securities Administrators (CSA) deferred to the ASC in heading this project.¹²⁰ NI 51-101 was approved by the ASC on June 11, 2003.¹²¹ It was developed by the ASC on behalf of the 13 provincial and territorial securities commissions, which together form the CSA. Other CSA members will consider adopting the rule over the next few months.¹²²

¹¹⁸ Decision No. 2001-C-0507.

¹¹⁹ Online at [http://www.bcsc.bc.ca:8080/comdoc.nsf/0/9bc2fe07500a096d88256cb8005e882c/\\$FILE/NI51-101.pdf](http://www.bcsc.bc.ca:8080/comdoc.nsf/0/9bc2fe07500a096d88256cb8005e882c/$FILE/NI51-101.pdf).

¹²⁰ As was pointed out by the ASC in its submission to the Wise Persons' Committee, "The ASC's sectoral interest and expertise in the oil and gas sector was recognized by the CSA when it assigned the ASC the lead role in developing the new oil and gas disclosure". Alberta Securities Commission, submission to WPC. See also Discovery Capital Corporation's submission to the Wise Persons' Committee.

¹²¹ See http://www.albertasecurities.com/DATA/items/press_rel/0000000713/.pdf.

¹²² *Ibid.*

Analysis and Relationship to Optimal Securities Regulatory Structure:

The ASC's spearheading of this initiative on behalf of the CSA clearly signals an interprovincial acknowledgement that the ASC has significant expertise in oil and gas issues.

It does not signify that Alberta has a distinctive local interest in oil and gas, as discussed in detail in Part 2. Even though oil and gas issuers may be clustered in Alberta as a part of the LICR, investors are not necessarily resident in Alberta and the industry has national economic significance.

In considering alternatives to the current system, the ASC's leadership on this program underscores the need to preserve the expertise that local regulators have gained as a result of their province hosting an LICR. As well, the strength of the LICR for oil and gas issuers in Alberta suggests the possibility of another regulatory method to rationalize or re-allocate responsibility among commissions such that the ASC would effectively become the "oil and gas securities commission" responsible for all oil and gas issues and other commissions would focus on their area of relative expertise. This model could be based on a similar rationalization process that was undertaken at the level of Canadian stock exchanges, as discussed in Part 4 below.

It should be noted, however, that some larger interlisted oil and gas issuers are of the view that their interests are marginalized in policymaking in respect of the industry. For example, Nexen Inc., a large Canadian-based oil and gas and chemicals company, has stated that NI 51-101 "is geared to smaller Western Sedimentary Basin based companies which presents an entirely new set of problems for inter-listed companies such as Nexen."¹²³ Nexen's submission to the Wise Persons' Committee suggests that the policy "is a prime example of a 'made-in-Canada' solution that could further marginalize Canada and Canadian issuers from international capital markets" and "reduce the attractiveness of Canadian capital markets to foreign issuers who would be required to comply with NI 51-101" as a result of its different approach to reserves disclosure.

(d) *OSC's Accredited Investor Exemption and Multilateral Instrument 45-103 Capital Raising Exemptions*

Although there has not been a nationally co-ordinated approach to the reform of private placement exemption rules, Multilateral Instrument 45-103 (MI 45-103) follows the implementation of OSC Rule 45-501 – Exempt Distributions (OSC Rule 45-501) by the OSC on November 30, 2001.

OSC Rule 45-501 replaced the most commonly used prospectus exemptions in the *Securities Act* (Ontario)¹²⁴ with two new exemptions: the closely-held issuer exemption and the

¹²³ See Nexen Inc.'s submission to the Wise Persons' Committee.

¹²⁴ These previous exemptions included: the private company exemption; the \$150,000 aggregate acquisition cost exemption; and the seed capital exemption. See *Securities Act*, R.S.O. 1990, c. S.5.

accredited investor exemption.¹²⁵ The accredited investor exemption contained in of OSC Rule 45-501 is substantially the same as the exemption found in MI 45-103.

The OSC revised its rules in order to make it easier for small businesses to raise start-up capital from the public without being subject to the registration or prospectus requirements of the *Securities Act* (Ontario). These changes responded to a 1996 report of the OSC Task Force on Small Business Financing¹²⁶ and a 1999 Ontario budget initiative, both of which called for a simplification of the previous requirements.

According to the OSC, the number and value of investments in small businesses tripled in the 11 months after it relaxed prospectus rules for them. The OSC has indicated that there were 3,528 transactions worth \$21 billion in the eleven-month period following the rule change in November 2001, as compared with an average of 1,287 transactions worth just over \$6 billion in the years before.¹²⁷

Moreover, the OSC noted that investors were willing to invest more money in a wider range of companies. The most obvious impact was the size of the typical investment. Previously, the most common investment was \$150,000, the minimum allowed. After the new rule was implemented, the median investment fell to just \$3,000.¹²⁸

After Ontario published its draft private placement rule changes in September 2000, the ASC and BCSC expressed concerns that the new proposals in Ontario were not suitable for small to mid-sized businesses because they contained many limitations and did not address access to middle income investors. As a result, the ASC and BCSC announced in November 2000, a private placement exemption harmonization project.

The new private placement rules were implemented on March 30, 2002 in Alberta and April 3, 2002 in B.C. Since then, MI 45-103 has come into force in each of the remaining

¹²⁵ The “accredited investor” exemption permits issuers to raise any amount at any time from any person or company defined as an “accredited investor”. These investors are considered to have the capacity to obtain and analyze the information needed to assess an investment opportunity without the assistance provided by a prospectus and to have the financial ability to withstand the loss of the investment. In order to rely on the “accredited investor” exemption, certain requirements must be met: (a) the “accredited investor” must purchase as principal; (b) the investor must be an “accredited investor” listed in Rule 45-501 (the “accredited investor” list includes financial institutions, registered advisors and dealers, governments, pension funds and registered charities¹²⁵); and (c) most trades to an “accredited investor” require that a Form 45-501FI together with the applicable form, be filed with the OSC within 10 days of the trade together with the applicable fee.

¹²⁶ Ontario, Ontario Securities Commission, *Ontario Securities Commission Task Force on Small Business Financing – Final Report* (1996).

¹²⁷ Ontario Securities Commission, News Release, “New Financings More Than Triple to \$21 Billion, Benefiting Businesses in Ontario” (April 21, 2003).

¹²⁸ See Office of the Chief Economist, Ontario Securities Commission, “One Step Forward: A Study of the Economic Impact of OSC Rule 45-501 Exempt Distributions” (2002). See also analysis by Peter Dungan, University of Toronto, Department of Economics, which, based on assumptions specified by the OSC, indicates that the rule change (a) generated 16,500 jobs in 2002 and will generate about 19,400 in 2003, shaving about 0.2 percentage points off the Ontario unemployment rate;(b) raised Ontario's labour productivity by 0.29 percentage points in 2002 and will raise it by a further 0.19 percentage points in 2003; and (c) added \$2.63 billion to Ontario's GDP in 2002, and will add \$2.42 billion in 2003. *Ibid.*

Canadian provinces and territories, with the exception of Ontario, Quebec, New Brunswick and Yukon.

MI 45-103 contains four exemptions that allow the raising of capital without complying with the registration and prospectus requirements: 1) the private issuer exemption; 2) the family, friends and business associates exemption; 3) the offering memorandum exemption; and 4) the accredited investor exemption.

Analysis and Relationship to Optimal Securities Regulatory Structure:

The OSC's initiative does not represent a response to a distinctive local market or issue. The exemption is not industry specific and other provincial commissions rapidly adopted it. The initiative allows issuers to raise capital in a cost-effective manner without the requirement to prepare a prospectus. As discussed in the JCPP analysis above, alternative models to the current regulatory structure could accommodate such initiatives.

(e) *Saskatchewan Local Policy 45-601 Community Venture Exemption*

The Saskatchewan Securities Commission (SSC) created the Community Venture Exemption in 1993 as Local Policy 45-601 (the "Community Venture Exemption").¹²⁹ It allows issuers to raise up to \$1 million in a small geographical area of Saskatchewan to fund the creation or development of a "Community Venture" that can provide jobs in, or economic development of, the community.¹³⁰ The basis for the exemption is that securities are sold only to local residents involved in the project who do not need a prospectus because of their personal knowledge regarding the issuer and the investment.

While the policy exempts issuers from preparing a prospectus, issuers must provide investors with an offering document. The securities regulators in Saskatchewan have prepared a "fill in the blanks" offering document for this purpose.

The Securities Division of the Saskatchewan Financial Services Commission (SFSC) has indicated that these exemptions have been used successfully by Saskatchewan farmers for the development of local hog farms and grain terminals.¹³¹ Senior staff at the SFSC indicated that more than a dozen large grain terminals in Saskatchewan began their operations using these exemptions, and subsequently conducted prospectus offerings to raise additional capital. The

¹²⁹ This policy came into force on April 2, 1993. This policy replaced Local Policy 5.1, which came into force in 1987 with no substantive changes from the previous policy.

¹³⁰ *The Securities Act (1988)* Saskatchewan Policy Statement 45-601, Part 3.

¹³¹ Quadra Investment Group was cited by the SFSC as an example of how issuers can successfully rely on these local exemptions to start up multiple hog farms in Saskatchewan. Quadra would set up a joint venture with local residents and then use the exemptions to raise up to \$2 million capital to start up the venture: Interview with Dean Murrison, Acting Deputy Director, Registration, Securities Division, SFSC (July 18, 2003). In November 2000, all of Quadra's 14 hog farms amalgamated into Community Pork Inc., a TSX-listed company. See generally, R. Wright, "Quadra Group and Community Pork Ventures: An Evolution" (2002) (on file with author).

SFSC indicated that the ability to raise inexpensive capital at an early stage in the business cycle of these issuers was directly attributable to these exemptions.

Analysis and Relationship to Optimal Regulatory Structure:

Saskatchewan's Community Venture Exemption is an example of a local rule that appears to respond to distinctive local issues and interests. This local rule has been in existence for several years and, unlike the other local regulatory initiatives analyzed in this part of the study, it has not experienced multilateral or national adoption.

The current regulatory system allows for local regulators to formulate local policies of this sort to respond to local interests. The USL model as proposed by the CSA would also allow for local rules, but only on an exceptional basis. A passport model would presumably also allow provincial commissions to create local rules for local needs.

A single regulator model, in theory, poses the greatest challenge for local rules to be created to respond to distinctive local interests and issues. One can imagine that it would be much more difficult for Saskatchewan farmers to attract the attention of a single regulator than under the current system, where they have (or are perceived to have) a more ready audience with the provincial securities regulator. As a result, a single regulator model may need to allow for a limited role for distinctive local rules by local regulators.

Interestingly, the SFSC is of the opinion that MI 45-103 will likely supersede the Community Venture Exemption.¹³² This result is foreseeable given the fact that MI 45-103's offering memorandum exemption is not industry specific and is broad enough to accommodate the financing needs of these issuers.

The SFSC's views on the prospects of the Community Venture Exemption are instructive in determining whether the adoption of a local rule is necessary and whether it responds to a distinctive local market or interest. Is the Community Venture Exemption about the development of a distinctly local industry or economy? In this case, it has assisted in the development of hog farms and grain terminals in Saskatchewan, but Alberta and Manitoba also have hog farms and grain terminals, which suggests that these industries are not a local interest.

Another factor to consider is whether one can reasonably make a generalization that the underlying rationale for the exemption is to allow issuers to raise capital in a cost effective manner. In this case, the fact that many of the hog farms grew and listed on the TSX, suggests that the local aspect of the business may be for a limited period of time, and at some point, the issuer becomes a small-medium sized business, like any other, that is concerned, among other things, about raising capital at low cost.¹³³ As the SFSC has noted, the more general exemptions in MI 45-103 will likely serve the needs of the local market that has previously been served by this exemption.¹³⁴ This above analysis suggests that by generalizing the underlying rationale of

¹³² Interview with Dean Murrison, Acting Deputy Director, Registration, Securities Division, SFSC (July 18, 2003).

¹³³ *Ibid.*

¹³⁴ *Ibid.*

a proposed local rule, a uniform or national rule of broader application might serve as an effective response.

(f) *Relationship to Regulatory Innovation*

Most of the local regulatory responses discussed in this section are not the responses to distinct local and regional markets, although they may support the case for local regulatory innovation and experimentation.

While not central to the objectives of this study, a relevant question in considering optimal regulatory structure is the extent to which alternative regulatory models would produce the same or greater levels of innovation as the current system.

While there is some scope for innovation under the current system because provincial securities regulators can experiment within their own jurisdictions, issuers engaged in interprovincial securities offerings cannot take advantage of innovations that are only available in one province, as they need to comply with the laws of the strictest jurisdiction. Hence, provincial regulators do not have proper incentives to achieve maximum utility for issuers, *ex ante*, to be innovative on matters that require interprovincial agreement. On the other hand, provincial regulators do have proper incentives to experiment and engage in innovation with respect to early-stage issuers that are engaged in securities activity often entirely within only one province, for example, in the context of prospectus exemptions.

A passport model (either based on issuer headquarters or issuer choice) would allow for greater innovation and experimentation than the current system in all areas of securities regulation because provincial regulators presumably would not need to obtain agreement or consent on specific matters for issuers subject to their jurisdiction to take advantage of innovative products in relation to interprovincial securities activity. However, beyond a certain point, innovation may threaten the base level of harmonization that appears to be necessary for a passport model to operate.

A key assumption that often underlies an assessment of innovation and alternative regulatory models is that “more heads are better than one.” Specifically, with respect to achieving the optimal level of innovation, it is often assumed that the greater the number of institutions that analyze an issue, the greater the quality and quantity of ideas that will emerge. However, a single regulator could lead to equal or greater levels of innovation than the current system. The assumption that more heads are better than one and lead to more innovation is not entirely valid in this context. To the extent that LICRs for certain industries exist in more than one province, a single regulator could consolidate that expertise. To the extent that there is no critical mass of issuers in any one locale and hence no clearly identifiable LICR for certain industries, current regulators likely do not have much expertise in those industries and hence are not being innovative in respect of those industries. A single regulator would allow for a consolidation of scattered expertise.

4. Other Developments in Canada Capital Markets

This part analyzes other developments in the Canadian capital markets that affect the analysis of local and regional issues in the determination of optimal regulatory structure.

(a) Consolidation of Stock Exchanges

The consolidation of stock exchanges in Canada reveals a great deal about the power of globalization and market forces in re-shaping the capital markets framework in Canada.¹³⁵ The merger of five regional stock exchanges into three, each with specialized expertise, suggests that the capital markets in Canada are increasingly national, as opposed to regional, in character.¹³⁶ These market forces might propel a similar rationalization of the securities regulatory structure in Canada at the level of the securities commissions.

The merger of the VSE and the ASC into the CDNX in 1999 may provide some useful lessons for reform at the securities regulator level.

Stakeholders have different views on the success of this merger. Some stakeholders were of the view that the merger of the two exchanges was successful. They were pleased with the flexibility and the discretion that local offices were given to interpret and apply the CDNX rule book (which involved a merger of the rule books of the VSE and the ASE) differently in the two offices of the exchange (Vancouver and Calgary) based on the different issuer base (mining versus oil and gas) and the different regulatory concerns that each industry presents.

Other stakeholders were of the view that the merger of the stock exchanges was rash and that the rule books were poorly integrated. They expressed the concern that the rule book is being administered differently in the Vancouver office as compared to the Calgary office. These stakeholders suggested that more time and thought should have been put into the merger prior to it taking place, but recognized that these issues will likely resolve themselves over time.

The main lesson to be learned from the merger of the VSE and ASE for the current debate on optimal regulatory structure at the level of securities commissions is that the possibility of varying application at the local level of uniform national rules must be acknowledged or addressed.

(b) The Role of the CSA and the Uniform Securities Legislation Project

This section describes the role of the CSA, its initiatives in respect of harmonization, and the Uniform Securities Legislation Project (USL Project).

¹³⁵ For a history of the stock exchange rationalization process in Canada, see Appendix C.

¹³⁶ In its submission to the Wise Persons' Committee, the TSX Group notes that "the broader secular changes that have created this new situation essentially involve new global imperatives insinuating themselves into a market governed within the bounds of a regulatory framework that was and is primarily local in its preoccupations." TSX Group Inc., submission to WPC. The Canadian Bankers Association stated in this regard: "the market recognized the need for economies of scale in the face of international competition and regulators allowed the needed changes to take place." Canadian Bankers Association, submission to WPC.

The CSA is an umbrella organization representing the 13 provincial and territorial securities commissions. It is an informal body that functions through meetings, conference calls and day-to-day cooperation among its members. Funding and support comes from the member commissions on a voluntary basis. The CSA's purpose is to coordinate and harmonize regulation of the Canadian capital markets.¹³⁷ Its mission is to foster fair and efficient capital markets while protecting investors from unfair, improper and fraudulent practices.¹³⁸ Even though the CSA is criticized as being slow and inefficient, its initiatives in respect of coordination and harmonization to date have been quite significant.¹³⁹

The CSA's USL Project was initiated in 2001 and is scheduled to be ready for adoption across Canada by 2004. The project is part of a broader CSA strategy that aims to: 1) reduce the regulatory burden on market participants; and 2) make regulation more effective in protecting investors and market integrity.¹⁴⁰

The objective of the USL Project is to eliminate the differences in provincial and territorial securities laws by developing a uniform act and uniform rules for adoption by each jurisdiction of Canada.¹⁴¹

The CSA's Blueprint states: "Since the USL Project is a harmonization initiative, the resulting Uniform Act and Uniform Rules would contain few substantive differences from current securities laws."¹⁴² However, the CSA's USL allows for local rules that take into account local markets. The Blueprint states:

Where a harmonized approach may not be appropriate, the majority position would be set out in the Uniform Act and Uniform Rules. Local differences would be set out by way of exceptions in a local provincial or territorial rule (Local Rule) or the relevant Administration Act, [anticipating] that the use of Local Rules would be exceptional and infrequent. Local Rules would be reviewed regularly to ensure that they reflect obvious local needs rather than theoretical differences.¹⁴³

¹³⁷ The CSA coordinates securities regulation initiatives on a national scale, leaving enforcement and complaint handling to provincial and territorial jurisdiction. As noted on the CSA website at http://www.csa-acvm.ca/html_CSA/about_who_are_csa.html, "this provides a more direct and efficient service since each regulator is closer to its local investors and market participants."

¹³⁸ See http://www.csa-acvm.ca/pdfs/CSA_Strategic_Plan-2002.pdf.

¹³⁹ See *Blueprint for Uniform Securities Law for Canada* (Canadian Securities Administrators, 2003), online at <http://www.gov.ns.ca/nssc/docs/conceptproposal.pdf>. CSA has developed: national instruments and national policies in areas including prospectus requirements, mutual fund regulation, rights offerings, take-over bids, and marketplace operations; the Mutual Reliance Review System ("MRRS") for prospectus vetting and exemptive relief; the System for Electronic Document Analysis and Retrieval ("SEDAR"), which makes available on the Internet public documents filed by reporting issuers; the National Registration Database ("NRD"), a web-based system that allows dealers and advisors to file registration forms electronically; and the System for Electronic Disclosure by Insiders ("SEDI"), a central electronic system for insider reporting that was made operational in May, 2003.

¹⁴⁰ *Blueprint*, *supra* note 139.

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

The Blueprint does not state what appropriate local rules would be and why they would be necessary. The factors that were set out in Part 4 above to determine whether a local rule is necessary and responds to a distinct local interest or market ought to be used in this analysis.

Even though local regulators claim that mining is a local concern, it is telling that the Prospectors and Developers Association of Canada (PDAC), the national association for the mining industry, is not in favour of the concept of local rules. It states:

In our submissions on the draft USL legislation, we disagreed with the need for local rules. Local Rules should not be permitted to change the substantive provisions of securities legislation. Issuers need to be able to look to one source to determine the relevant securities regime across the country. Having to check in each case for Local Rules would result in complication, delay and expense.¹⁴⁴

PDAC appears to be arguing that the benefits of any local rules would be outweighed by the costs incurred by issuers (and ultimately passed down to investors) in complying with multiple sources of regulation.

(c) BCSC's Deregulation Project: New Proposals for Securities Regulation¹⁴⁵

The BCSC has initiated a two-year project with the aim of streamlining and simplifying the B.C. *Securities Act* as a response to the provincial Liberal government's call for all government bodies to reduce their regulations by one-third.¹⁴⁶

BCSC Chair Douglas Hyndman has identified three sources of regulatory burden: (1) differences in regulatory requirements among jurisdictions; (2) separate decision-making processes in each jurisdiction; and (3) the volume and complexity of regulatory requirements.¹⁴⁷ He notes that the current national focus on addressing the first two issues has negatively affected the third issue. The BCSC's response in the form of a deregulation project is aimed at making regulation less complex and burdensome and more effective in achieving the goals of investor protection and market integrity.¹⁴⁸

The BCSC discussion paper, *New Proposals for Securities Regulation* proposes key changes in respect of continuous market access (CMA), registration, investor remedies and

¹⁴⁴ Presentation on the Inter-Provincial Securities Initiative by the Prospectors and Developers Association of Canada, online at <http://www.pdac.ca/pdac/sr/030715.html>.

¹⁴⁵ See *New Proposals for Securities Regulation* (Vancouver: British Columbia Securities Commission, 2002) at 69.

¹⁴⁶ British Columbia Securities Commission Annual Report 2001-02, online at http://www.gov.bc.ca/cas/down/2001_02_annual_reports/bcsc_ar_2001_02.pdf.

¹⁴⁷ Speech dated October 9, 2002, online at http://www.bcsc.bc.ca/Publications/Hyndman_EconomicClub.pdf.

¹⁴⁸ *Ibid.*

enforcement and public interest powers.¹⁴⁹ The BCSC is also proposing ways to simplify the province's mutual fund regulation.

The BCSC Deregulation Project was undertaken in conjunction with the USL project described in the preceding section. While the BCSC proposed that its changes be adopted nationally by all provincial securities commissions, the other CSA members appear to have rejected the proposal for now.

The policy goals of the BCSC's proposals are certainly laudable,¹⁵⁰ but the proposals appear to contradict the CSA's USL project, because the BCSC's implementation of its proposals will result in a wider divide in regulatory requirements between jurisdictions. The BCSC CMA model does present an "interface" for issuers that wish to conduct inter-provincial offerings such that the BCSC will recognize compliance with the laws of a foreign jurisdiction (which includes other Canadian provinces) for the purpose of compliance with the B.C. system so that issuers will not have to comply with inconsistent regulatory requirements.¹⁵¹

However, other provincial commissions have yet to indicate that they will recognize the B.C. proposed model. Until they do, issuers will only benefit from the cost savings associated with CMA if they engage in an exclusively intra-provincial offering (with both the issuer being headquartered in B.C. and all investors being located in B.C.) or wait until all provincial securities commission adopt or recognize B.C.'s CMA model.

Chair Douglas Hyndman and his senior staff emphasized that the proposals are not a regulatory response to distinct local or regional markets.¹⁵² They emphasized that the proposals are a "top-down" initiative based on the BCSC's view of how securities markets should be regulated. The fact that the BCSC invited other securities commissions to participate in the new framework, and that other provincial regulators acknowledged that the proposals had some merit,¹⁵³ (although they decided that their priorities in respect of securities regulatory reform lay elsewhere) also suggests that the proposals are not a local regulatory initiative in response to distinct local markets or issues.

¹⁴⁹ The concepts were based on five guiding principles: (1) keep the right balance between regulatory restrictions and market freedom; (2) make the rules as simple and clear as possible; (3) foster a culture of compliance in industry; (4) act decisively against misconduct; and (5) equip investors with self-protection tools. See also <http://www.share.ca/files/newsletters/prospectus3.pdf>.

¹⁵⁰ The Investment Dealers Association of Canada has voiced its support of the B.C. proposals, stating that "The BCSC initiative stands out by recognizing that improved disclosure, the harmonization of rules across provincial jurisdictions and tougher enforcement can be achieved not only through fewer and better-focused rules, but by shifting emphasis to the judicial and quasi-judicial system to impose a discipline on market participants." Investment Dealers Association of Canada, submission to WPC. Also, Discovery Capital Corporation commented in its submission to the Wise Persons' Committee that Canadian securities regulation must tolerate the testing of innovative regulatory solutions, such as the B.C. model, on a pilot basis within regions. Discovery Capital Corporation, submission to WPC.

¹⁵¹ *New Proposals for Securities Regulation*, *supra* note 145, at 70-72.

¹⁵² Meeting with BCSC Chair Douglas Hyndman and his senior staff on June 16, 2003.

¹⁵³ See Letter from D. Brown to D. Hyndman (27 June 2003), online at http://www.osc.gov.on.ca/en/About/News/Speeches/spch_20030627_brown-re-bcsc.pdf.

While the B.C. proposal is not a response to distinct local markets, it may be an example of regulatory innovation that may ultimately be adopted or recognized by other provincial commissions, not unlike the other regulatory initiatives discussed in Part 4.

5. The U.S. Approach

This part highlights the approach of the SEC in addressing local and regional issues in its securities regulatory structure. In particular, this part highlights the roles and responsibilities of the SEC's district and regional offices as well as the mandate of the SEC's small business office. This part does not focus on the issue of federal-state interaction in respect of securities regulation, which is dealt with in detail by Professor Joel Seligman in a separate study commissioned by the Wise Persons' Committee.¹⁵⁴

(a) District and Regional Offices

Aside from its Washington, DC headquarters, the SEC has 10 regional and district offices throughout the country.¹⁵⁵ The four regional offices report up to the different divisions at the headquarters in Washington. The SEC's six district offices report to four regional offices. Approximately 1400 staff members work at the regional and district offices, which represents approximately one-third of the SEC's total staff.¹⁵⁶

The regional and district offices are primarily responsible for enforcement (including the investigation of securities fraud and cases involving market intermediaries) and examination (of market intermediaries such as investment dealers and investment advisors.) These two responsibilities are split about evenly in most regional offices.¹⁵⁷ The regional offices do about 95% of the SEC's examinations and inspections work, and about 70% of the SEC's enforcement work.

In completing their work, regional office staff work in teams that include staff from SEC headquarters. As well, regional office staff work closely with self-regulatory organizations (SROs) such as the National Association of Securities Dealers (NASD).

The regulation of stock exchanges, however, is primarily handled by SEC staff at headquarters, with secondary assistance from the regional offices. For example, in overseeing the New York Stock Exchange (the NYSE), senior examiners from the Northeast Regional Office in New York City assist staff from SEC's Washington headquarters.¹⁵⁸

¹⁵⁴ Joel Seligman, "The United States Federal-State Model of Securities Regulation" (WPC Research Study, 2003).

¹⁵⁵ See Appendix D.

¹⁵⁶ Interview with Jim Clarkson, Director, Regional Office Assistance and Program Management, Securities and Exchange Commission and Elizabeth Jacobs, Assistant Director, Office of International Affairs, Securities and Exchange Commission (July 28, 2003).

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

The Division of Enforcement¹⁵⁹ in Washington oversees the enforcement activities of the regional offices. The Director of the Division of Enforcement decides on priorities, which are communicated to the regional office heads at regular meetings.¹⁶⁰ The heads of the regional office provide input on issues that are indigenous to their regions.

In respect of enforcement, all staff must obtain the approval of a five-member commission¹⁶¹ prior to commencing an investigation or filing an action. All staff must also obtain the approval of this commission prior to settlement of any action that is being settled for less than the full remedy that was sought.

Prior to appearing before the five-member commission, "action memos" must be sent to the "Office of the General Counsel"¹⁶² which ensures that the file is consistent with the direction that the Commissioners are taking. Staff from the Office of the General Counsel is responsible for particular regional offices, and build relationships with those offices.¹⁶³

Once an investigation begins, it is under the control of the regional or district office. These offices are responsible for taking testimony, negotiating settlements, and so forth. As a result, the offices have a great deal of autonomy for investigation and enforcement and can do a lot of work without approval or authorization from the SEC's headquarters.¹⁶⁴

In respect of examinations, the Office of Compliance Inspections and Examinations¹⁶⁵ (OCIE) serves the same role as the Division of Enforcement at SEC headquarters. This division develops national policies for the regional offices. At the beginning of the year, senior staff from the OCIE meet with senior staff of the regional offices to develop priorities.¹⁶⁶

¹⁵⁹ The Division of Enforcement investigates possible violations of securities laws, recommends Commission action when appropriate, either in a federal court or before an administrative law judge, and negotiates settlements on behalf of the Commission. While the SEC has civil enforcement authority only, it works closely with various criminal law enforcement agencies throughout the country to develop and bring criminal cases when the misconduct warrants more severe action. See <http://www.sec.gov/divisions/enforce.shtml>.

¹⁶⁰ Interview with Jim Clarkson and Elizabeth Jacobs, *supra* note 156.

¹⁶¹ See <http://www.sec.gov/about/commissioner.shtml>.

¹⁶² The General Counsel is the chief legal officer of the Commission. Primary duties of the Office include representing the SEC in certain civil, private, or appellate proceedings, preparing legislative material, and providing independent advice and assistance to the Commission, the Divisions, and the Offices. Through its amicus curiae program, the Office often intervenes in private appellate litigation involving novel or important interpretations of the securities laws. See <http://www.sec.gov/about/whatwedo.shtml#org>.

¹⁶³ Interview with Jim Clarkson and Elizabeth Jacobs, *supra* note 156.

¹⁶⁴ *Ibid.*

¹⁶⁵ The Office of Compliance Inspections and Examinations administers the SEC's nationwide examination and inspection program for registered self-regulatory organizations, broker-dealers, transfer agents, clearing agencies, investment companies, and investment advisers. The Office conducts inspections to foster compliance with the securities laws, to detect violations of the law, and to keep the Commission informed of developments in the regulated community. Among the more important goals of the examination program is the quick and informal correction of compliance problems. When the Office finds deficiencies, it issues a "deficiency letter" identifying the problems that need to be rectified and monitor the situation until compliance is achieved. Violations that appear too serious for informal correction are referred to the Division of Enforcement. See <http://www.sec.gov/about/whatwedo.shtml#org>.

¹⁶⁶ Interview with Jim Clarkson and Elizabeth Jacobs, *supra* note 156.

SEC headquarters reviews regional examination reports for the purposes of quality control, but regional offices have autonomy in conducting examinations, writing reports and making deficiency reports, if necessary.¹⁶⁷

There are “subject matter experts” in Washington who provide guidance and counsel in respect of legal questions. Policy work is finalized in Washington, but in drafting rules, Washington seeks the input of the regional offices.¹⁶⁸

Regional and district offices interact frequently with the state securities commissioners. They share information, send and receive enforcement referrals and meet regularly during the year. At these meetings, the SEC hears the state regulators’ concerns and conveys its own regulatory and enforcement concerns.¹⁶⁹ For examinations, joint “exam summits” take place at which senior state examination officers, SROs and regional office examination staff discuss the examination of market intermediaries and develop coordinated sweeps.

Regional and district offices house regional regulatory expertise. For example, the Boston and Philadelphia District Offices focus on the investment management industry and receive a disproportionate share of the SEC’s resources devoted to regulating the investment management industry, due to the very large population of investment management that takes place in those cities.¹⁷⁰

Hiring for regional and district offices is done locally, and local offices have authority to emphasize recruiting and hiring in industries that are important to that region.¹⁷¹

Local and regional offices do not review corporate filings. Washington headquarters handles review of corporate filings.¹⁷²

Most regional offices were established at the same time that the SEC was created. The key rationale for setting them up was that SEC staff should be physically close to the firms that they are regulating and to the state authorities with which they work. The SEC has, on occasion, closed certain offices and expanded others, based on changing workloads and priorities.¹⁷³

(b) *The SEC’s Small Business Office*

The SEC has undertaken several initiatives to be responsive to the needs of small businesses. Most importantly, the SEC has created a unit entitled the Office of Small Business, a unit that is under the control of the Corporate Finance division. This unit, housed in Washington D.C., specializes in small company filings and the needs of small businesses, including crafting

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ See also, H.H. Mackens, “An American State-Federal Perspective on the Proposals” (1981) 19 Osgoode Hall Law Journal 424 at 428.

¹⁷⁰ Interview with Jim Clarkson and Elizabeth Jacobs, *supra* note 156.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

rules to lessen the burden of the SEC's regulation on these issuers.¹⁷⁴ The SEC's definition of "small business" includes firms with less than \$5 million in net assets.¹⁷⁵

The SEC's website also has a section devoted to providing guidance to small issuers, which contains the text of a number of forms and regulations of interest to smaller issuers.¹⁷⁶

Since 1996, the SEC has also held a number of town hall meetings with small businesses throughout the United States. These meetings convey basic information to small businesses about raising capital through public markets. These meetings also allow the SEC to learn more about the concerns and problems facing small businesses in raising capital so that programs can be designed to meet their needs.

The SEC also participates in the annual Government-Business Forum on Small Business Capital Formation, mandated by the *Small Business Investment Incentive Act of 1980*.¹⁷⁷ It is the only government-sponsored national conference for smaller issuers, and offers a yearly opportunity for small businesses to provide government officials with input on how regulatory requirements affect their ability to raise capital. Past conferences have developed numerous recommendations for legislative and regulatory changes in the areas of taxation, securities and financial services regulation and state and federal assistance.

At the 2003 Government-Business Forum, the corporation finance working group discussed the impact of the *Sarbanes-Oxley Act of 2002*¹⁷⁸ on small companies.¹⁷⁹ What emerged from the conference is that small companies may be less inclined to pursue public offerings or voluntarily register as public companies, given the increased cost of compliance with the new rules. As well, compliance with the new rules might be too burdensome for currently reporting smaller companies given their more limited resources. As a result of the concerns expressed, the SEC staff noted that there was a need to monitor and assess the impact of the new rules on the small business community.

6. Conclusion

This study finds that LICRs exist for certain industries and levels of market capitalization. This study finds that Alberta hosts an LICR for oil and gas, B.C. hosts an LICR for micro-cap issuers, and Ontario hosts an LICR for financial services. Certain LICRs exist in more than one province: Both B.C. and Ontario host LICRs for mining; Ontario, Quebec and B.C. for communications and media; Ontario and Quebec for life sciences; and B.C., Alberta and Ontario each host an LICR for small cap issuers.

¹⁷⁴ United States, *Securities and Exchange Commission* (2000) at 23-24, online at <http://www.sec.gov/pdf/cfcr112k.pdf>.

¹⁷⁵ See Letter from U.S. Small Business Administration's Office of Advocacy to J. Katz (August 19, 2002).

¹⁷⁶ Online at <http://www.sec.gov/info/smallbus/qasbsec.htm>.

¹⁷⁷ Online at <http://www.sec.gov/info/smallbus/sbforum.shtml>.

¹⁷⁸ *The Sarbanes-Oxley Act of 2002*, H.R. 3763.

¹⁷⁹ United States, *Final Report: 2003 Conference on Federal-State Securities Regulation* (2003) at 2-3.

However, the existence of LICRs for certain industries does not allow us to conclude that the economic activity associated with these industries is local to host provinces or that host provinces have distinct local interests in the capital markets regulation or general regulation of those industries.

The activities of issuers concentrated within an LICR have an impact outside the geographic boundaries of the province that hosts and regulates the LICR. Other provinces may have an interest equal to that of the regulating province, given investor location and the importance of those industries to the economies of other provinces, as borne out by GDP data.

Having found that LICRs for certain industries and levels of market capitalization exist in Canada, the issue that follows is whether provincial securities commissions that host an LICR identified in this study are responsive to that infrastructure in a manner that is different than other provincial securities commissions that do not host that LICR.

The Saskatchewan Community Venture Local Policy may be a legitimate example of a local policy serving distinct local needs and hence, underscore may support the importance of provincial regulation of distinctive local and regional markets. However, most locally-developed policies and regulatory approaches examined in this study have experienced relatively rapid multilateral or national adoption. In addition, most locally- developed policies studied in this report have been (a) in relation to industries that are national, not local, in character; (b) in response to concerns of investors located throughout the country; and (c) industry-neutral rules that allow issuers to raise capital in a cost-effective manner.

Overall, the analysis in this study finds that the majority of local regulatory responses are not the product of local and regional distinctiveness. As a result, the main conclusion to be drawn from the study is that existing local and regional differences can be accommodated under different regulatory models without appreciable differences in regulatory outcomes.

Appendix A – The Decomposition of Gross Domestic Product by Province

Table 1a – The Decomposition of GDP in Alberta

	<u>1997 Constant Dollars</u>	<u>Percent of Total</u>
GDP of Alberta (Millions of Dollars)		
1. Agriculture, Forestry, Fishing, and Hunting	\$2,294	1.9%
2. Mining and Oil and Gas Extraction	\$20,527	17.1%
3. Utilities	\$2,881	2.4%
4. Construction	\$9,461	7.9%
5. Manufacturing	\$11,204	9.3%
6. Wholesale and Retail Trade	\$12,667	10.6%
7. Transportation and Warehousing	\$6,601	5.5%
8. Information and Cultural Industries	\$4,408	3.7%
9. Finance, Insurance, Real Estate and Renting	\$20,361	17.0%
10. Educational Services	\$4,605	3.8%
11. Healthcare and Social Assistance	\$4,920	4.1%
12. Public Administration	\$4,892	4.1%
13. Arts, Entertainment, and Recreation	\$773	0.6%
14. Administrative and Support Services	\$1,987	2%
15. Professional, Scientific, and Technical Services	\$6,385	5%
16. Other Services	<u>\$6,079</u>	<u>5%</u>
TOTAL	\$120,046	100%

Table 1b – The Decomposition of GDP in British Columbia

	<u>1997 Constant Dollars</u>	<u>Percent of Total</u>
GDP of British Columbia (Millions of Dollars)		
1. Agriculture, Forestry, Fishing, and Hunting	\$4,367	4%
2. Mining and Oil and Gas Extraction	\$3,203	3%
3. Utilities	\$2,507	2%
4. Construction	\$5,804	5%
5. Manufacturing	\$12,249	10%
6. Wholesale and Retail Trade	\$13,418	11%
7. Transportation and Warehousing	\$6,763	6%
8. Information and Cultural Industries	\$5,446	5%
9. Finance, Insurance, Real Estate and Renting	\$27,144	23%
10. Educational Services	\$6,120	5%
11. Healthcare and Social Assistance	\$7,898	7%
12. Public Administration	\$6,195	5%
13. Arts, Entertainment, and Recreation	\$1,329	1%
14. Administrative and Support Services	\$2,321	2%
15. Professional, Scientific, and Technical Services	\$5,009	4%
16. Other Services	<u>\$7,116</u>	<u>6%</u>
TOTAL	\$116,888	100%

Table 1c – The Decomposition of GDP in Northwest Territories (N.W.T.)

	<u>1997 Constant Dollars</u>	<u>Percent of Total</u>
GDP of N.W.T. (Millions of Dollars)		
1. Agriculture, Forestry, Fishing, and Hunting	\$12	0.4%
2. Mining and Oil and Gas Extraction	\$766	28.3%
3. Construction	\$584	21.6%
4. Utilities	\$38	1.4%
5. Manufacturing	\$9	0.3%
6. Wholesale and Retail Trade	\$184	6.8%
7. Transportation and Warehousing	\$149	5.5%
8. Finance, Insurance, and Real Estate	\$325	12.0%
9. Healthcare and Social Assistance	\$107	3.9%
10. Public Administration	\$330	12%
11. Other Services	<u>\$201</u>	<u>7.4%</u>
TOTAL	\$2,704	100%

Table 1d – The Decomposition of GDP in Newfoundland

	<u>1997 Constant Dollars</u>	<u>Percent of Total</u>
GDP of Newfoundland (Millions of Dollars)		
1. Agriculture	\$412	3.3%
2. Forestry and Logging	99	0.8%
3. Fishing and Trapping	\$247	2.0%
4. Mining and Oil Extraction	\$2,255	17.9%
5. Manufacturing	\$724	5.7%
6. Construction	\$567	4.5%
7. Utilities	470	3.7%
8. Wholesale and retail trade	\$1,252	9.9%
9. Transportation and Warehousing	\$467	4%
10. Finance, Insurance, Real Estate, Renting and Leasing	1,920	15.2%
11. Educational Services	\$784	6.2%
12. Healthcare and Social Assistance	\$1,024	8.1%
13. Public Administration	\$1,102	8.7%
14. Information and Cultural	\$598	4.7%
15. Other Services	<u>\$688</u>	<u>5.5%</u>
TOTAL	\$12,609	100%

Table 1e – The Decomposition of GDP in Saskatchewan

	<u>1997 Constant Dollars</u>	<u>Percent of Total</u>
GDP of Saskatchewan (Millions of Dollars)		
1. Agriculture, Forestry, Fishing, and Hunting	\$1,742	6%
2. Mining and Oil and Gas Extraction	\$4,006	14%
3. Manufacturing	\$2,054	7%
4. Construction	\$1,239	4%
5. Transportation, Warehousing and Utilities	\$2,485	9%
6. Wholesale and Retail Trade	\$3,245	12%
7. Finance, Insurance, Real Estate, and Renting and Leasing	\$4,843	17%
8. Information and Cultural industries	\$1,009	4%
9. Education, Healthcare, and Social Assistance	\$3,293	12%
10. Public Administration	\$1,693	6%
11. Other Service Industries	<u>\$2,506</u>	<u>9%</u>
TOTAL	\$28,114	100%

Table 1f – The Decomposition of GDP in Ontario

GDP of Ontario (Millions of Dollars)	<u>1997 Constant Dollars</u>	<u>Percent of Total</u>
1. Agriculture	\$4,510	1%
2. Forestry and Logging	\$874	0.2%
3. Fishing and Trapping	\$16	0.0%
4. Mining and Oil Extraction	\$2,952	1%
5. Utilities	\$10,460	3%
6. Construction	\$20,779	5%
7. Manufacturing	\$83,849	20%
8. Wholesale and Retail Trade	\$50,688	12%
9. Transportation and Warehousing	\$15,756	4%
10. Information and Cultural	\$19,665	5%
11. Finance, Insurance, and Real Estate	\$88,628	22%
12. Health and Education	\$40,422	10%
13. Other Services	<u>\$72,982</u>	<u>18%</u>
TOTAL	\$411,581	100%

Table 1g – The Decomposition of GDP in Quebec

GDP of Quebec (Millions of Dollars)	<u>1997 Constant Dollars</u>	<u>Percent of Total</u>
1. Agriculture, Forestry, Fishing and Hunting	\$3,787	2%
2. Mining and Oil and Gas Extraction	\$1,587	1%
3. Utilities	\$8,802	4%
4. Construction	\$10,763	5%
5. Manufacturing	\$45,213	21%
6. Wholesale and Retail Trade	\$24,448	11%
7. Transportation and Warehousing	\$9,395	4%
8. Information and Cultural	\$10,991	5%
9. Finance, Insurance, Real Estate, Renting and Leasing	\$36,877	17%
10. Health and Education	\$22,987	11%
11. Other Services	<u>\$38,953</u>	<u>18%</u>
TOTAL	\$213,803	100%

Source: Statistics Canada – CANSIM

Appendix B – Regional and Sectoral Representation of Canadian Issuers¹⁸⁰

Table 1a – Regional and Sectoral Representation of TSX-Listed Issuers

	Total	Alberta	Percentage of Sectoral Total	British Columbia	Percentage of Sectoral Total	Manitoba	Percentage of Sectoral Total	New Brunswick	Percentage of Sectoral Total
Total	1222	233		177		24		2	
Communications and Media	67	5	7%	6	9%	3	4%	0	0%
Percent of Provincial Total		2%		3%		13%		0%	
Diversified Industries	339	57	17%	40	12%	8	2%	1	0%
Percent of Provincial Total		24%		23%		33%		50%	
Financial Services	243	16	7%	5	2%	9	4%	1	0%
Percent of Provincial Total		7%		3%		38%		50%	
Forest Products	26	0	0%	12	46%	1	4%	0	0%
Percent of Provincial Total		0%		7%		4%		0%	
Life Sciences	73	5	7%	14	19%	2	3%	0	0%
Percent of Provincial Total		2%		8%		8%		0%	
Mining	159	5	3%	63	40%	0	0%	0	0%
Percent of Provincial Total		2%		36%		0%		0%	
Oil & Gas	123	113	92%	5	4%	0	0%	0	0%
Percent of Provincial Total		48%		3%		0%		0%	
Real Estate	41	10	24%	7	17%	0	0%	0	0%
Percent of Provincial Total		4%		4%		0%		0%	
Technology	128	10	8%	24	19%	1	1%	0	0%
Percent of Provincial Total		4%		14%		4%		0%	
Utilities and Pipelines	23	12	52%	1	4%	0	0%	0	0%
Percent of Provincial Total		5%		1%		0%		0%	

Source: Raw Data from Toronto Stock Exchange (at May 31, 2003)

¹⁸⁰ Certain columns and/or rows in Appendix B tables may not add up to 100% because foreign issuers headquartered outside of Canada are not represented on the tables.

Table 1a – Regional and Sectoral Representation of TSX-Listed Issuers (Continued)

	Newfoundland	Percentage of Sectoral Total	Northwest Territories	Percentage of Sectoral Total	Nova Scotia	Percentage of Sectoral Total	Ontario	Percentage of Sectoral Total	Quebec	Percentage of Sectoral Total	Saskatchewan	Percentage of Sectoral Total
Total	6		1		18		577		177		7	
Communications and Media	1	1%	0	0%	3	4%	31	46%	18	27%	0	0%
Percent of Provincial Total	17%		0%		17%		5%		10%		0%	
Diversified Industries	3	1%	1	0%	6	2%	155	46%	65	19%	3	1%
Percent of Provincial Total	50%		100%		33%		27%		37%		43%	
Financial Services	1	0%	0	0%	2	1%	193	79%	16	7%	0	0%
Percent of Provincial Total	17%		0%		11%		33%		9%		0%	
Forest Products	0	0%	0	0%	0	0%	4	15%	9	35%	0	0%
Percent of Provincial Total	0%		0%		0%		1%		5%		0%	
Life Sciences	0	0%	0	0%	0	0%	27	37%	25	34%	0	0%
Percent of Provincial Total	0%		0%		0%		5%		14%		0%	
Mining	0	0%	0	0%	2	1%	68	43%	18	11%	3	2%
Percent of Provincial Total	0%		0%		11%		12%		10%		43%	
Oil & Gas	0	0%	0	0%	0	0%	3	2%	1	1%	1	1%
Percent of Provincial Total	0%		0%		0%		1%		1%		14%	
Real Estate	0	0%	0	0%	3	7%	19	46%	2	5%	0	0%
Percent of Provincial Total	0%		0%		17%		3%		1%		0%	
Technology	0	0%	0	0%	0	0%	74	58%	19	15%	0	0%
Percent of Provincial Total	0%		0%		0%		13%		11%		0%	
Utilities and Pipelines	1	0%	0	0%	2	9%	3	13%	4	17%	0	0%
Percent of Provincial Total	17%		0%		11%		1%		2%		0%	

Table 1b – Regional and Sectoral Representation of TSX Venture Exchange-Listed Issuers

	Total	Alberta	Percentage of Sectoral Total	British Columbia	Percentage of Sectoral Total	Manitoba	Percentage of Sectoral Total	New Brunswick	Percentage of Sectoral Total
Total	2,041	440		983		18		6	
Communications and Media	29	5	17%	14	48%	0	0%	0	0%
Percent of Provincial Total		0%		1%		0%		0%	
Diversified Industries	335	81	24%	111	33%	3	1%	3	1%
Percent of Provincial Total		4%		11%		17%		50%	
Financial Services	81	17	21%	25	31%	2	2%	0	0%
Percent of Provincial Total		1%		3%		11%		0%	
Forest Products	1	0	0%	1	100%	0	0%	0	0%
Percent of Provincial Total		0%		0%		0%		0%	
Mining	918	77	8%	584	64%	6	1%	1	0%
Percent of Provincial Total		4%		59%		33%		17%	
Oil & Gas	282	173	61%	89	32%	1	0%	0	0%
Percent of Provincial Total		8%		9%		6%		0%	
Real Estate	61	22	36%	16	26%	2	3%	1	2%
Percent of Provincial Total		1%		2%		11%		17%	
Technology	324	62	19%	139	43%	4	1%	1	0%
Percent of Provincial Total		3%		14%		22%		17%	
Utilities and Pipelines	10	3	30%	4	40%	0	0%	0	0%
Percent of Provincial Total		0%		0%		0%		0%	

Table 1b – Regional and Sectoral Representation of TSX Venture Exchange-Listed Issuers (Continued)

	Newfoundland	Percentage of Sectoral Total	Northwest Territories	Percentage of Sectoral Total	Nova Scotia	Percentage of Sectoral Total	Ontario	Percentage of Sectoral Total	Quebec	Percentage of Sectoral Total	Saskatchewan	Percentage of Sectoral Total
Total	9		1		16		415		142		11	
Communications and Media	0	0%	0	0%	0	0%	9	31%	1	3%	0	0%
Percent of Provincial Total	0%		0%		0%		2%		1%		0%	
Diversified Industries	1	0%	1	0%	0	0%	101	30%	31	9%	3	1%
Percent of Provincial Total	11%		100%		0%		24%		22%		27%	
Financial Services	0	0%	0	0%	1	1%	32	40%	4	5%	0	0%
Percent of Provincial Total	0%		0%		6%		8%		3%		0%	
Forest Products	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Percent of Provincial Total	0%		0%		0%		0%		0%		0%	
Mining	7	1%	0	0%	5	1%	168	18%	66	7%	4	0%
Percent of Provincial Total	78%		0%		31%		40%		46%		36%	
Oil & Gas	1	0%	0	0%	4	1%	12	4%	1	0%	1	0%
Percent of Provincial Total	11%		0%		25%		3%		1%		9%	
Real Estate	0	0%	0	0%	2	3%	13	21%	4	7%	1	2%
Percent of Provincial Total	0%		0%		13%		3%		3%		9%	
Technology	0	0%	0	0%	4	1%	78	24%	34	10%	2	1%
Percent of Provincial Total	0%		0%		25%		19%		24%		18%	
Utilities and Pipelines	0	0%	0	0%	0	0%	2	20%	1	10%	0	0%
Percent of Provincial Total	0%		0%		0%		0%		1%		0%	

Source: Raw Data from TSX Venture Exchange (at July 7, 2003)

Table 1c – Market Capitalization of TSX-Listed Issuers

			Percentage of Sectoral		Percentage of Sectoral		Percentage of Sectoral		Percentage of Sectoral		Percentage of Sectoral
Total	Total	Alberta	Total	British Columbia	Total	Manitoba	Total	New Brunswick	Total	Newfoundland	Total
	\$922,994,659,202	177,789,567,775		45,229,873,133		30,232,642,383		275,722,708		2,063,467,490	
Communications and	100,550,211,465	4,062,445,514	4%	7,620,397,323	8%	3,177,706,260	3%	0	0%	88,397,919	0%
Percent of Provincial Total		2%		17%		11%		0%		4%	
Number of Issuers	67	5		6		3		0		1	
Avg. Market Cap/Issuer	1,500,749,425	812,489,103		1,270,066,220		1,059,235,420		0		88,397,919	
Diversified Industries	226,728,836,046	27,289,129,636	12%	6,997,700,729	3%	1,285,708,642	1%	63,135,508	0%	751,313,010	0%
Percent of Provincial Total		15%		15%		4%		23%		36%	
Number of Issuers	339	57		40		8		1		3	
Avg. Market Cap/Issuer	668,816,626	478,756,660		174,942,518		160,713,580		63,135,508		250,437,670	
Financial Services	292,411,479,885	5,857,275,157	2%	375,453,499	0%	24,235,439,011	8%	212,587,200	0%	265,000,000	0%
Percent of Provincial Total		3%		1%		80%		77%		13%	
Number of Issuers	243	16		5		9		1		1	
Avg. Market Cap/Issuer	1,203,339,423	366,079,697		75,090,700		2,692,826,557		212,587,200		265,000,000	
Forest Products	16,132,087,784	0	0%	4,170,652,574	26%	741,000,000	5%	0	0%	0	0%
Percent of Provincial Total		0%		9%		2%		0%		0%	
Number of Issuers	26	0		12		1		0		0	
Avg. Market Cap/Issuer	620,464,915	0		347,554,381		741,000,000		0		0	
Life Sciences	23,610,856,034	649,974,535	3%	3,800,694,741	16%	790,694,715	3%	0	0%	0	0%
Percent of Provincial Total		0%		8%		3%		0%		0%	
Number of Issuers	73	5		14		2		0		0	
Avg. Market Cap/Issuer	323,436,384	129,994,907		271,478,196		395,347,358		0		0	
Mining	86,788,899,857	3,311,735,419	4%	14,134,499,089	16%	0	0%	0	0%	0	0%
Percent of Provincial Total		2%		31%		0%		0%		0%	
Number of Issuers	159	5		63		0		0		0	
Avg. Market Cap/Issuer	545,842,137	662,347,084		224,357,128		0		0		0	
Oil & Gas	215,994,742,984	119,689,631,290	55%	1,081,841,708	1%	0	0%	0	0%	0	0%
Percent of Provincial Total		67%		2%		0%		0%		0%	
Number of Issuers	123	113		5		0		0		0	
Avg. Market Cap/Issuer	1,756,054,821	1,059,200,277		216,368,342		0		0		0	
Real Estate	19,529,852,155	1,478,151,264	8%	1,326,068,252	7%	0	0%	0	0%	0	0%
Percent of Provincial Total		1%		3%		0%		0%		0%	
Number of Issuers	41	10		7		0		0		0	
Avg. Market Cap/Issuer	476,337,857	147,815,126		189,438,322		0		0		0	
Technology	47,645,213,483	269,070,389	1%	3,389,016,223	7%	2,093,755	0%	0	0%	0	0%
Percent of Provincial Total		0%		7%		0%		0%		0%	
Number of Issuers	128	10		24		1		0		0	
Avg. Market Cap/Issuer	372,228,230	26,907,039		141,209,009		2,093,755		0		0	
Utilities and Pipelines	37,093,240,328	15,182,154,572	41%	2,333,548,995	6%	0	0%	0	0%	958,756,562	3%
Percent of Provincial Total		9%		5%		0%		0%		46%	
Number of Issuers	23	12		1		0		0		1	
Avg. Market Cap/Issuer	1,612,749,579	1,265,179,548		2,333,548,995		0		0		958,756,562	

Table 1c – Market Capitalization of TSX-Listed Issuers (Continued)

	Northwest Territories	Percentage of Sectoral Total	Nova Scotia	Percentage of Sectoral Total	Ontario	Percentage of Sectoral Total	Quebec	Percentage of Sectoral Total	Saskatchewan	Percentage of Sectoral Total
Total	5,368,501		11,663,584,126		492,615,671,302		155,565,364,310		7,553,397,474	
Communications and Media	0	0%	4,422,615,328	4%	39,483,604,126	39%	39,261,269,099	39%	0	0%
Percent of Provincial Total	0%		38%		8%		25%		0%	
Number of Issuers	0		3		31		18		0	
Avg. Market Cap/Issuer	0		1,474,205,109		1,273,664,649		2,181,181,617		0	
Diversified Industries	5,368,501	0%	3,714,489,192	2%	98,129,228,392	43%	45,090,591,933	20%	825,640,138	0%
Percent of Provincial Total	100%		32%		20%		29%		11%	
Number of Issuers	1		6		155		65		3	
Avg. Market Cap/Issuer	5,368,501		619,081,532		633,091,796		693,701,414		275,213,379	
Financial Services	0	0%	441,599,500	0%	221,328,675,068	76%	36,548,892,481	12%	0	0%
Percent of Provincial Total	0%		4%		45%		23%		0%	
Number of Issuers	0		2		193		16		0	
Avg. Market Cap/Issuer	0		220,799,750		1,146,780,700		2,284,305,780		0	
Forest Products	0	0%	0	0%	1,474,498,435	9%	9,664,093,515	60%	0	0%
Percent of Provincial Total	0%		0%		0%		6%		0%	
Number of Issuers	0		0		4		9		0	
Avg. Market Cap/Issuer	0		0		368,624,609		1,073,788,168		0	
Life Sciences	0	0%	0	0%	15,531,840,728	66%	2,795,513,145	12%	0	0%
Percent of Provincial Total	0%		0%		3%		2%		0%	
Number of Issuers	0		0		27		25		0	
Avg. Market Cap/Issuer	0		0		575,253,360		111,820,526		0	
Mining	0	0%	125,745,595	0%	42,734,220,018	49%	14,216,044,246	16%	6,682,394,870	8%
Percent of Provincial Total	0%		1%		9%		9%		88%	
Number of Issuers	0		2		68		18		3	
Avg. Market Cap/Issuer	0		62,872,798		628,444,412		789,780,236		2,227,464,957	
Oil & Gas	0	0%	0	0%	18,138,115,083	8%	121,232,768	0%	45,362,466	0%
Percent of Provincial Total	0%		0%		4%		0%		1%	
Number of Issuers	0		0		3		1		1	
Avg. Market Cap/Issuer	0		0		6,046,038,361		121,232,768		45,362,466	
Real Estate	0	0%	850,751,286	4%	15,347,507,736	79%	527,373,615	3%	0	0%
Percent of Provincial Total	0%		7%		3%		0%		0%	
Number of Issuers	0		3		19		2		0	
Avg. Market Cap/Issuer	0		283,583,762		807,763,565		263,686,808		0	
Technology	0	0%	0	0%	39,401,793,332	83%	4,093,843,825	9%	0	0%
Percent of Provincial Total	0%		0%		8%		3%		0%	
Number of Issuers	0		0		74		19		0	
Avg. Market Cap/Issuer	0		0		532,456,667		215,465,464		0	
Utilities and Pipelines	0	0%	2,076,123,294	6%	1,046,188,384	3%	3,246,509,684	9%	0	0%
Percent of Provincial Total	0%		18%		0%		2%		0%	
Number of Issuers	0		2		3		4		0	
Avg. Market Cap/Issuer	0		1,038,061,647		348,729,461		811,627,421		0	

Table 1d – Market Capitalization of TSX Venture Exchange-Listed Issuers

	Total	Alberta	Percentage of Sectoral Total	British Columbia	Percentage of Sectoral Total	Manitoba	Percentage of Sectoral Total	New Brunswick	Percentage of Sectoral Total	Newfoundland	Percentage of Sectoral Total
Total	\$11,798,298,645	3,229,480,214		4,854,155,926		92,447,303		33,631,209		67,800,327	
Communications and Media	252,278,586	178,540,653	71%	37,421,916	15%	0	0%	0	0%	0	0%
Percent of Provincial Total	2%	6%		1%		0%		0%		0%	
Number of Issuers	29	5		14		0		0		0	
Avg. Market Cap/Issuer	8,699,262	35,708,131		2,672,994		0		0		0	
Diversified Industries	1,830,109,249	335,352,890	18%	662,249,433	36%	6,567,093	0%	1,745,268	0%	14,026,750	1%
Percent of Provincial Total	16%	10%		14%		7%		5%		21%	
Number of Issuers	335	81		111		3		3		1	
Avg. Market Cap/Issuer	5,463,013	4,140,159		5,966,211		2,189,031		581,756		14,026,750	
Financial Services	464,558,595	62,458,428	13%	68,382,674	15%	12,175,845	3%	0	0%	0	0%
Percent of Provincial Total	4%	2%		1%		13%		0%		0%	
Number of Issuers	81	17		25		2		0		0	
Avg. Market Cap/Issuer	5,735,291	3,674,025		2,735,307		6,087,923		0		0	
Forest Products	320,353	0	0%	320,353	100%	0	0%	0	0%	0	0%
Percent of Provincial Total	0%	0%		0%		0%		0%		0%	
Number of Issuers	1	0		1		0		0		0	
Avg. Market Cap/Issuer	320,353	0		320,353		0		0		0	
Life Sciences	0	0	0%	0	0%	0	0%	0	0%	0	0%
Percent of Provincial Total	0%	0%		0%		0%		0%		0%	
Number of Issuers	0	0		0		0		0		0	
Avg. Market Cap/Issuer	0	0		0		0		0		0	
Mining	5,264,639,235	422,791,808	8%	3,156,569,789	60%	24,317,630	0%	4,924,913	0%	49,924,691	1%
Percent of Provincial Total	0%	13%		65%		0%		0%		0%	
Number of Issuers	918	77		584		6		1		7	
Avg. Market Cap/Issuer	5,734,901	5,490,803		5,405,085		4,052,938		4,924,913		7,132,099	
Oil & Gas	2,400,768,362	1,859,817,604	77%	288,669,785	12%	2,621,001	0%	0	0%	3,848,886	0%
Percent of Provincial Total	0%	58%		6%		0%		0%		0%	
Number of Issuers	282	173		89		1		0		1	
Avg. Market Cap/Issuer	8,513,363	10,750,391		3,243,481		2,621,001		0		3,848,886	
Real Estate	298,616,167	64,870,708	22%	56,050,788	19%	4,732,400	2%	26,961,028	9%	0	0%
Percent of Provincial Total	0%	2%		1%		0%		0%		0%	
Number of Issuers	61	22		16		2		1		0	
Avg. Market Cap/Issuer	4,895,347	2,948,669		3,503,174		2,366,200		26,961,028		0	
Technology	1,571,555,021	244,047,869	16%	508,140,372	32%	9,912,211	1%	0	0%	0	0%
Percent of Provincial Total	0%	8%		10%		11%		0%		0%	
Number of Issuers	324	61		139		4		1		0	
Avg. Market Cap/Issuer	4,850,478	4,000,785		3,655,686		9,912,211		0		0	
Utilities and Pipelines	476,762,570	45,401,504	10%	22,807,978	5%	31,351,122	7%	0	0%	0	0%
Percent of Provincial Total	0%	1%		0%		34%		0%		0%	
Number of Issuers	10	3		4		2		0		0	
Avg. Market Cap/Issuer	47,676,257	15,133,835		22,807,978		15,675,561		0		0	

Table 1d – Market Capitalization of TSX Venture Exchange-Listed Issuers (Continued)

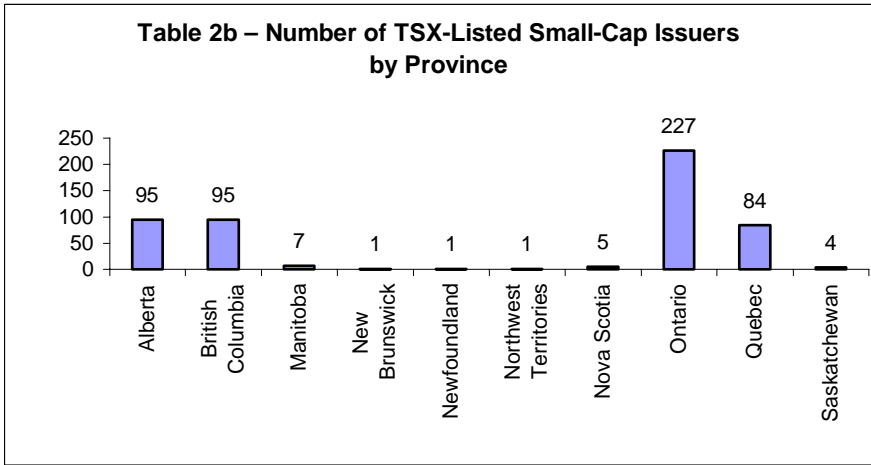
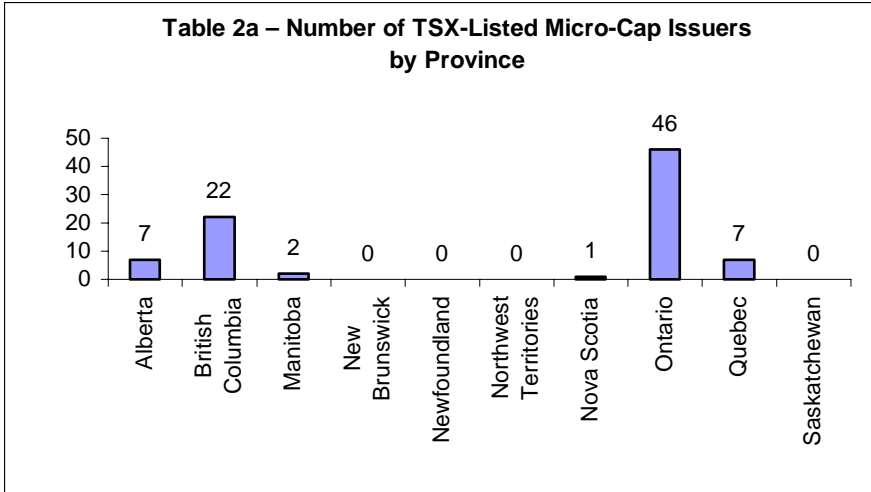
Total	Northwest Territories 2,983,500	Percentage of Sectoral Total	Nova Scotia 88,391,747	Percentage of Sectoral Total	Ontario 2,491,408,980	Percentage of Sectoral Total	Quebec 860,049,935	Percentage of Sectoral Total	Saskatchewan 77,949,504	Percentage of Sectoral Total
Communications and Media	0	0%	0	0%	32,458,346	13%	3,857,670	2%	0	0%
Percent of Provincial Total	0%		0%		1%		0%		0%	
Number of Issuers	0		0		9		1		0	
Avg. Market Cap/Issuer	0		0		3,606,483		3,857,670		0	
Diversified Industries	2,983,500	0%	0	0%	452,035,980	25%	245,833,939	13%	9,314,449	1%
Percent of Provincial Total	100%		0%		18%		29%		12%	
Number of Issuers	1		0		101		31		3	
Avg. Market Cap/Issuer	2,983,500		0		4,475,604		7,930,127		3,104,816	
Financial Services	0	0%	240,000	0%	283,592,355	61%	5,914,038	1%	0	0%
Percent of Provincial Total	0%		0%		11%		1%		0%	
Number of Issuers	0		1		32		4		0	
Avg. Market Cap/Issuer	0		240,000		8,862,261		1,478,510		0	
Forest Products	0	0%	0	0%	0	0%	0	0%	0	0%
Percent of Provincial Total	0%		0%		0%		0%		0%	
Number of Issuers	0		0		0		0		0	
Avg. Market Cap/Issuer	0		0		0		0		0	
Life Sciences	0	0%	0	0%	0	0%	0	0%	0	0%
Percent of Provincial Total	0%		0%		0%		0%		0%	
Number of Issuers	0		0		0		0		0	
Avg. Market Cap/Issuer	0		0		0		0		0	
Mining	0	0%	14,584,915	0%	1,081,717,876	21%	363,793,913	7%	47,263,288	1%
Percent of Provincial Total	0%		17%		43%		42%		61%	
Number of Issuers	0		5		168		66		4	
Avg. Market Cap/Issuer	0		2,916,983		6,438,797		5,512,029		11,815,822	
Oil & Gas	0	0%	22,493,090	1%	48,113,716	2%	36,949,297	2%	537,047	0%
Percent of Provincial Total	0%		25%		2%		4%		1%	
Number of Issuers	0		4		12		1		1	
Avg. Market Cap/Issuer	0		5,623,272		4,009,476		36,949,297		537,047	
Real Estate	0	0%	9,628,999	3%	97,807,176	33%	38,431,939	13%	133,127	0%
Percent of Provincial Total	0%		11%		4%		4%		0%	
Number of Issuers	0		2		13		4		1	
Avg. Market Cap/Issuer	0		4,814,500		7,523,629		9,607,985		133,127	
Technology	0	0%	41,444,742	3%	472,371,661	30%	153,971,407	10%	19,551,593	1%
Percent of Provincial Total	0%		0%		19%		18%		0%	
Number of Issuers	0		4		78		34		2	
Avg. Market Cap/Issuer	0		10,361,186		6,056,047		4,528,571		9,775,796	
Utilities and Pipelines	0	0%	0	0%	7,986,004	2%	2,512,274	1%	0	0%
Percent of Provincial Total	0%		0%		0%		0%		0%	
Number of Issuers	0		0		2		1		0	
Avg. Market Cap/Issuer	0		0		3,993,002		2,512,274		0	

Table 1e – Combined Market Capitalization of TSX- and TSX-Venture Exchange Listed Issuers

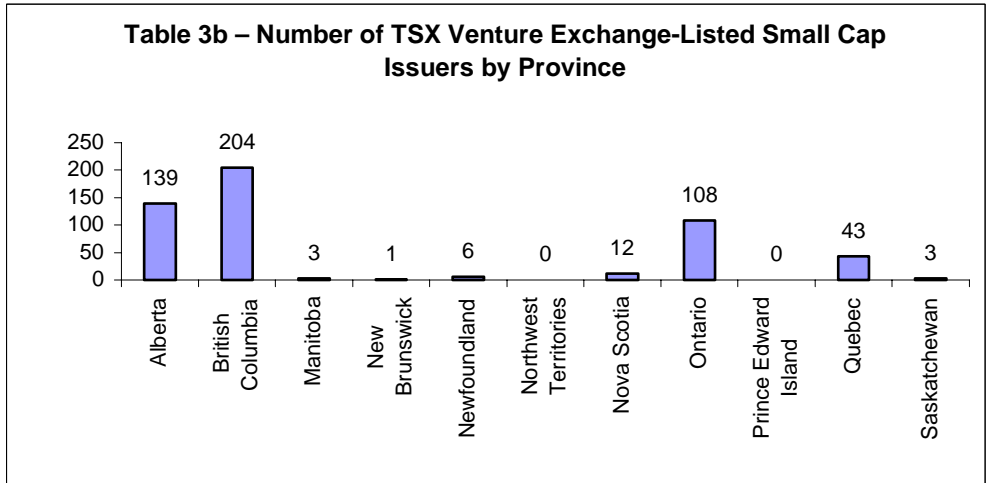
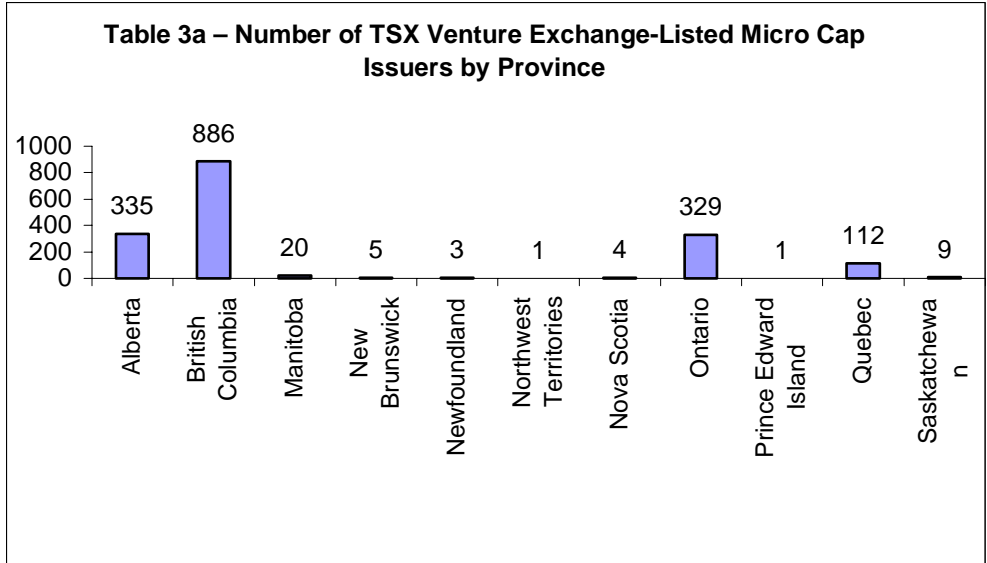
Total	Total	Alberta	Percentage of Sectoral Total	British Columbia	Percentage of Sectoral Total	Manitoba	Percentage of Sectoral Total	New Brunswick	Percentage of Sectoral Total
	\$934,792,957,847	181,019,047,989		50,084,029,059		30,325,089,686		309,353,917	
Communications and Media	100,802,490,051	4,240,986,168	4%	7,657,819,238	8%	3,177,706,260	3%	0	0%
Percent of Provincial Total		2%		15%		10%		0%	
Number of Issuers	96	10		20		3		0	
Diversified Industries	228,558,945,295	27,624,482,526	12%	7,659,950,162	3%	1,292,275,735	1%	64,880,777	0%
Percent of Provincial Total		15%		15%		4%		21%	
Number of Issuers	674	138		151		11		4	
Financial Services	292,876,038,480	5,919,733,584	2%	443,836,173	0%	24,247,614,857	8%	212,587,200	0%
Percent of Provincial Total		3%		1%		80%		69%	
Number of Issuers	324	33		30		11		1	
Forest Products	16,132,408,137	0	0%	4,170,972,927	26%	741,000,000	5%	0	0%
Percent of Provincial Total		0%		8%		2%		0%	
Number of Issuers	27	0		13		1		0	
Life Sciences	23,610,856,034	649,974,535	3%	3,800,694,741	16%	790,694,715	3%	0	0%
Percent of Provincial Total		0%		8%		3%		0%	
Number of Issuers	73	5		14		2		0	
Mining	92,053,539,092	3,734,527,227	4%	17,291,068,878	19%	24,317,630	0%	4,924,913	0%
Percent of Provincial Total		2%		35%		0%		2%	
Number of Issuers	1077	82		647		6		1	
Oil & Gas	218,395,511,346	121,549,448,894	56%	1,370,511,492	1%	2,621,001	0%	0	0%
Percent of Provincial Total		67%		3%		0%		0%	
Number of Issuers	405	286		94		1		0	
Real Estate	19,828,468,322	1,543,021,972	8%	1,382,119,041	7%	4,732,400	0%	26,961,028	0%
Percent of Provincial Total		1%		3%		0%		9%	
Number of Issuers	102	32		23		2		1	
Technology	49,216,768,504	513,118,257	1%	3,897,156,595	8%	12,005,966	0%	0	0%
Percent of Provincial Total		0%		8%		0%		0%	
Number of Issuers	452	71		163		5		0	
Utilities and Pipelines	37,570,002,898	15,227,556,076	41%	2,356,356,973	6%	31,351,122	0%	0	0%
Percent of Provincial Total		8%		5%		0%		0%	
Number of Issuers	33	15		5		2		0	

Table 1e – Combined Market Capitalization of TSX- and TSX-Venture Exchange Listed Issuers (Continued)

	Newfoundland	Percentage of Sectoral Total	Northwest Territories	Percentage of Sectoral Total	Nova Scotia	Percentage of Sectoral Total	Ontario	Percentage of Sectoral Total	Quebec	Percentage of Sectoral Total	Saskatchewan	Percentage of Sectoral Total
Total	2,131,267,817		8,352,001		11,751,975,873		495,107,080,282		156,425,414,245		7,631,346,978	
Communications and Media	88,397,919	0%	0	0%	4,422,615,328	4%	39,516,062,472	39%	39,265,126,769	39%	0	0%
Percent of Provincial Total	4%		0%		38%		8%		25%		0%	
Number of Issuers	1		0		3		40		19		0	
Diversified Industries	765,339,760	0%	8,352,001	0%	3,714,489,192	2%	98,581,264,373	43%	45,336,425,873	20%	834,954,586	0%
Percent of Provincial Total	36%		100%		32%		20%		29%		11%	
Number of Issuers	4		2		6		256		96		6	
Financial Services	265,000,000	0%	0	0%	441,839,500	0%	221,612,267,423	76%	36,554,806,519	12%	0	0%
Percent of Provincial Total	12%		0%		4%		45%		23%		0%	
Number of Issuers	1		0		3		225		20		0	
Forest Products	0	0%	0	0%	0	0%	1,474,498,435	9%	9,664,093,515	60%	0	0%
Percent of Provincial Total	0%		0%		0%		0%		6%		0%	
Number of Issuers	0		0		0		4		9		0	
Life Sciences	0	0%	0	0%	0	0%	15,531,840,728	66%	2,795,513,145	12%	0	0%
Percent of Provincial Total	0%		0%		0%		3%		2%		0%	
Number of Issuers	0		0		0		27		25		0	
Mining	49,924,691	0%	0	0%	140,330,511	0%	43,815,937,895	48%	14,579,838,159	16%	6,729,658,159	7%
Percent of Provincial Total	2%		0%		1%		9%		9%		88%	
Number of Issuers	7		0		7		236		84		7	
Oil & Gas	3,848,886	0%	0	0%	22,493,090	0%	18,186,228,799	8%	158,182,065	0%	45,899,514	0%
Percent of Provincial Total	0%		0%		0%		4%		0%		1%	
Number of Issuers	1		0		4		15		2		2	
Real Estate	0	0%	0	0%	860,380,286	4%	15,445,314,912	78%	565,805,555	3%	133,127	0%
Percent of Provincial Total	0%		0%		7%		3%		0%		0%	
Number of Issuers	0		0		5		32		6		1	
Technology	0	0%	0	0%	41,444,742	0%	39,874,164,993	81%	4,247,815,231	9%	19,551,593	0%
Percent of Provincial Total	0%		0%		0%		8%		3%		0%	
Number of Issuers	0		0		4		152		53		2	
Utilities and Pipelines	958,756,562	0%	0	0%	2,076,123,294	6%	1,054,174,387	3%	3,249,021,958	9%	0	0%
Percent of Provincial Total	45%		0%		18%		0%		2%		0%	
Number of Issuers	1		0		2		5		5		0	



Source: Raw Data from Toronto Stock Exchange (at May 31, 2003)



Source: Raw Data from TSX Venture Exchange (at July 7, 2003)

Table 4a – Number of TSX- and TSX Venture Exchange-Listed Micro Cap Issuers by Province

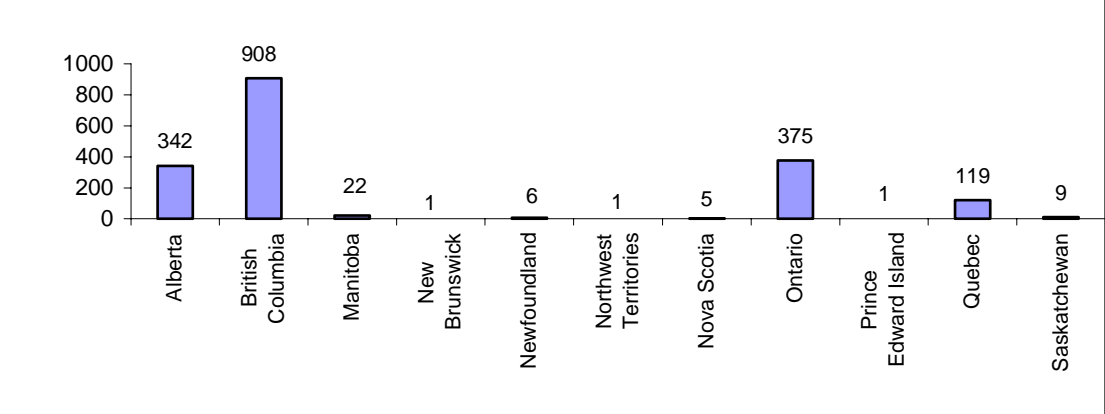
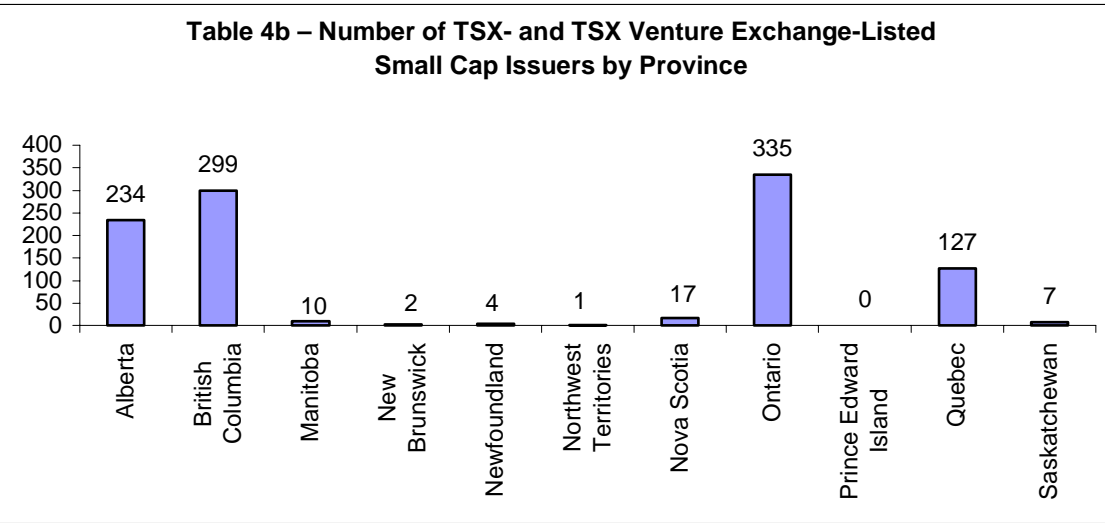


Table 4b – Number of TSX- and TSX Venture Exchange-Listed Small Cap Issuers by Province



Source: Raw Data from Toronto Stock Exchange (at May 31, 2003) and TSX Venture Exchange (at July 7, 2003)

Appendix C – History of the Merger of Stock Exchanges in Canada

Prior to 1999, there were five stock exchanges in Canada. The four major exchanges included the Vancouver Stock Exchange (VSE), Alberta Stock Exchange (ASE), Toronto Stock Exchange (TSE, now known as TSX) and Montreal Exchange (ME). Canada's smallest exchange was the Winnipeg Stock Exchange (WSE). In addition, the TSE operated an over-the-counter trading system known as the Canadian Dealing Network (CDN). It was the exchange's market for small equity trading.

In 1999, Canada's stock exchanges went through a major restructuring. The purpose was to create a globally competitive trading market through market specialization, increased liquidity, and operating cost savings. To achieve this goal, the four major exchanges entered into an agreement to restructure the Canadian trading markets. As a result of this agreement, the ASE, VSE and "parts" of the ME and TSE (specifically, the CDN) merged into a new market called the Canadian Venture Exchange (CDNX). CDNX became Canada's junior equities exchange and was centralized in Western Canada (with a head office in Calgary and another office in Vancouver). The TSE became the sole senior equities exchange in Canada.¹⁸¹ The ME became the exchange for derivatives trading.¹⁸² An invitation was extended to the WSE to participate in the new junior market.

In 2000, several developments occurred in respect of the restructuring of the Canadian capital markets: the WSE merged with CDNX and became a regional office, and CDNX opened an office in Toronto.

By 2001, the TSE purchased CDNX and began operating it as a subsidiary that continued to service the junior venture capital market. This development brought all of Canada's equity trading under one roof.¹⁸³ CDNX's head office remained in Calgary, and operational branches were located in Vancouver, Toronto, Winnipeg and Montreal.

In 2002, the Toronto Stock Exchange Inc. changed the logo of the exchange from "TSE" to "TSX". As well, the CDNX became the TSX Venture Exchange and continues to trade junior equities.

Currently, the TSX Group of companies – TSX, TSX Venture Exchange and TSX Markets (formerly TSE-CDNX Markets Inc.) – collectively manages Canada's senior and junior equity markets. The TSX group of companies is headquartered in Toronto and maintains division offices in Montreal, Winnipeg, Calgary and Vancouver.¹⁸⁴

In the TSX Group's submission to the Wise Persons' Committee, it states that it plans to expand the TSX Venture Exchange into the Atlantic provinces. It states: "The interest among all regulators in TSX Venture Exchange will almost certainly increase as we increase the national

¹⁸¹ The TSX transferred its junior equity trading to CDNX and its derivatives trading to the MSE.

¹⁸² The MSE transferred its junior equity trading to CDNX and its senior equities trading to the TSE.

¹⁸³ See TSX Media Release, online at <http://www.tse.com/en/pdf/TSXGroupOverview.pdf>.

¹⁸⁴ See TSX website, online at <http://www.tsx.ca/en/aboutus/index.html>.

character of the exchange which, you will recall, was created out of the merger of five small, predominantly local and, for the most part, western Canadian stock exchanges. Since acquiring the consolidated exchanges – Canadian Venture Exchange (CDNX) – in 2001, we have expanded its operations in Ontario and Quebec. We see further expansion ahead, both in Central Canada and in the Atlantic Provinces, both areas that were long under-served in terms of the public venture market.”¹⁸⁵

¹⁸⁵ TSX Group Inc., submission to WPC.

Appendix D – SEC Locations: Headquarter, Regional and District Offices¹⁸⁶

Name of Office	Location	Region Covered
Headquarters (includes Office of Investor Education & Assistance)	Washington, DC	
1. Northeast Regional Office	New York, NY	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia
2. Pacific Regional Office	Los Angeles, CA	Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon and Washington
3. Southeast Regional Office	Miami, FL	Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee and Virgin Islands
4. Midwest Regional Office	Chicago, IL	Illinois, Indiana, Iowa, Kentucky, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming
5. Atlanta District Office	Atlanta, GA	
6. Forth Worth District Office	Fort Worth, TX	
7. Salt Lake District Office	Salt Lake City, UT	
8. San Francisco District Office	San Francisco, CA	
9. Boston District Office	Boston, MA	
10. Philadelphia District Office	Philadelphia, PA	

¹⁸⁶ SEC Addresses: Headquarters, Regional, and District Offices, online at <http://www.sec.gov/contact/addresses.htm>.