

**Yes to Flaherty's Single National Regulator,
No to Canadian Securities Administrators' Proposal for
Corporate Governance Based on Principles Instead of Rules**

**BDO Dunwoody Weekly CEO/Business Leader Poll
By COMPAS in *Canadian Business*
For Publication November 23, 2009**



**COMPAS Inc.
Public Opinion and Customer Research
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1.0 Overview

The provincial securities regulators through the Canadian Securities Administrators launched a project to recommend a change in corporate governance from a system based on rules to one based on principles, and recently withdrew the proposal. The CEOs and business leaders on the COMPAS business panel are greatly relieved. By a margin of more than 3:1, they believe that Canada should turn its back on a rule-based system.

The key reason is their widespread believe that a system of principles is problematic because of a vagueness and hence unenforceability of the principles.

On the slightly different issue of creating a single national regulator, panelists are overwhelmingly supportive of doing so despite provincial opposition in Quebec and Alberta so long as the plan is deemed constitutional by the courts. They believe that the federal government should create a single regulator over the opposition of Quebec, which, they feel, would lose significant investment monies if it were able to opt out of the single regulator regime.

Panelists are bullish on a single regulator, which, they predict, will outperform the current provincial regulators and indeed the U.S. Securities and Exchange Commission as well.

These are the key findings from this past week's Internet survey of CEOs and business leaders on the COMPAS panel. The weekly business survey is undertaken for *Canadian Business* magazine under sponsorship of BDO Dunwoody LLP.



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2.0 Detailed Findings

Table 2a displays evidence of very strong panel support for retaining the current system of governance by rules instead of principles and concern about the vagueness and unenforceability of principles alone. Panelists are divided in their opinions about the weaknesses of rules alone and of the virtues of emulating U.S. governance practices.

Table 2a: (Q1) On a 7 point scale agreement scale where 7 means agree strongly and 1, disagree strongly, how much do you agree with each of the following opinions?¹

| | Mean | 7 | 6 | 5 | 4 | 3 | 2 | 1 | DNK |
|--|------|----|----|----|----|----|----|---|-----|
| Canada should not change from a system of rules to a system of principles | 5.2 | 29 | 24 | 10 | 10 | 2 | 14 | 2 | 9 |
| A system of principles is problematic because of the vagueness and hence unenforceability of the principles | 5.2 | 27 | 29 | 13 | 9 | 7 | 7 | 5 | 3 |
| In the real work of global corporate investment, Canada needs to move in the direction of the governance rules adopted by the world's biggest investment economy, the U.S. | 4.3 | 12 | 9 | 22 | 19 | 11 | 11 | 7 | 10 |

¹ Introductory wording: "There've been some controversies involving national securities regulation. One issue relates to changing the rules for how companies should be governed. The provincial securities regulators that make up the Canadian Securities Administrators (CSA) originally wanted to change corporate governance from a system of rules to a system driven by principles but then withdrew their proposal in reaction to criticism. In a rules system, companies need to observe the rules or justify why not. This was to have been replaced by a "principles-based" approach."



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| | Mean | 7 | 6 | 5 | 4 | 3 | 2 | 1 | DNK |
|--|------|---|----|----|----|----|----|---|-----|
| A system of rules is problematic because corporate boards or executives can just manipulate the rules to their advantage | 4.1 | 7 | 13 | 24 | 17 | 11 | 19 | 3 | 7 |

Table 2b: (Q2) Another source of controversy is the creation of a national securities regulator and opposition to having a single national regulator from Quebec especially and also Alberta. On a 7 point scale agreement scale where 7 means agree strongly and 1, disagree strongly, how much do you agree with each of the following opinions?

| | Mean | 7 | 6 | 5 | 4 | 3 | 2 | 1 | DNK |
|--|------|----|----|----|----|----|----|----|-----|
| If the courts say that the constitution allows the federal government to create a single securities regulator, the federal government should go ahead despite the opposition of Quebec | 6.1 | 54 | 21 | 11 | 7 | 3 | 0 | 2 | 2 |
| If Canada were to have a single securities regulator for all provinces except Quebec, Quebec would end up with less money invested in its corporations than if Quebec went along with a single national regulator | 5.5 | 28 | 19 | 17 | 13 | 7 | 1 | 1 | 14 |
| If the courts say that the constitution allows the federal government to create a single securities regulator, the federal government should create one regulator just for those provinces that want one and let Quebec go its own way | 3.0 | 8 | 8 | 13 | 8 | 10 | 17 | 34 | 3 |



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Table 2b presents evidence that panelists are overwhelmingly supportive of creating a single national regulator despite provincial opposition in Quebec and Alberta so long as the plan is deemed constitutional by the courts. They believe that the federal government should create a single regulator over the opposition of Quebec, which, they feel, would lose significant investment monies if it were able to opt out of the single regulator regime.

Table 2c presents detailed findings show the confidence of panelists in the proposed national regulator, which they anticipate would outperform current provincial regulators as well as the U.S. S.E.C.

Table 2c: (Q3) With respect to protecting investors, what performance score on a 100 point school report-card type scale would you give...

| | Mean | DNK |
|--|------|-----|
| Canada's potential national securities regulator | 64 | 8 |
| Canada's provincial securities commissions | 57 | 3 |
| The U.S. Securities and Exchange Commission | 45 | 4 |

The following verbatims provide a nuanced sense of panel opinion:

A separate securities regulator exclusively for Quebec (in addition to a national regulator) will add needless cost to the cost of doing business in Quebec and in Canada and will be detrimental to attracting capital and new investment into the country.

A symptom of the global financial collapse of the past 18 months is the inability, ignorance and/or unresponsiveness of any major governing body (read SEC) to monitor large financial corporations with any degree of competency. Surely an agency that is established to have organizations report regularly on business activities could have identified the risks



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associated with the mortgage lenders and the bogus instruments that were utilized to fuel the meltdown. A National Securities Regulator would have to be given wide ranging powers and supportive tools (systems/personnel) in order to manage the reviews.

Canada has enough experience and knowledge to create an environment where rules are tight and enforceable.

Having one body instead of the multiple bodies we now have will create a more respected view of oversight and eliminate the need by organizations to comply with the multitude of varying regulations.

I don't think principle centered and laws centered governance are mutually exclusive. I think the real difference is between laws built on principles and laws built on personality i.e. cronyism. Objectivity is one of the most important factors around which to determine rules of operation to achieve the goals of an organization.

I was unclear on the second round. I would have a national for all provinces except Quebec if they wanted to stay out.

If Copenhagen fails, who cares?

Its time has come. Regulation to protect investors has failed miserably. At least with one (hopefully coordinated) regulator, it can't be any worse than what we now have.

Quebec should be careful what it asks for this time...they may just get it!

SEC didn't catch Madoff

These agencies are only as good as the people they have working for them - none of them have been shining lights in the last few years.



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They say locks only keep out honest people. The same holds true for regulations applied to corporations. It works for those corporations who respect the rules and act in good faith, but no amount of regulation will deal with those who are prone to nefarious activity.

This body is long overdue.

We can't score a potential regulator as per last question.

What we desperately, desperately need in Canada is some real jail time for those that obviously misuse the system. No one gets punished in this country, ever.

3.0 Methodology

The COMPAS web-survey of CEOs and leaders of small, medium, and large corporations was conducted November 18-19, 2009. Respondents constitute an essentially hand-picked panel with a higher numerical representation of small and medium-sized firms.

Because of the small population of CEOs and business leaders from which the sample was drawn, the study can be considered more accurate than comparably sized general public studies. In studies of the general public, surveys of n=92 are deemed accurate to within approximate 10.3 percentage points 19 times out of 20. The principal and investigator on this study is Conrad Winn, Ph.D.

