By STEVE SALTERIO

That loud nose back in February was a collective yawn from those unable to muster much enthusiasm about federal Finance Minister Jim Flaherty’s announcement of yet another committee charged with designing a Canada-wide national securities regulator.

The panel of the Tom Hockin “expert panel” is to produce draft legislation for a model common securities act by year’s end. It is to be accompanied by a transition plan that would allow Canada to shed its status as the only G8 nation without a national securities regulator.

As we wait for the sixth committee in five years to weigh in on what is becoming a quest for the holy grail, the International Monetary Fund (IMF) characterizes Canada as a country where the enforcement of securities laws is “still in need of considerable improvement.”

My research on compliance with various national and multilateral securities regulations reveals that market registrants do not act as if they believe enforcement is uniform across Canada. For example, compliance by companies with Multilateral Instrument 52-109, which requires reporting on the effectiveness of disclosure controls and the design effectiveness of internal controls, was highly inconsistent across the Toronto Stock Exchange and TSX Venture Exchange.

Further digging into the province of incorporation for firms not complying with the two exchanges showed that differences were closely associated with the provincial securities regulator who would be responsible for enforcing disclosure requirements.

Those regulated by the B.C. Securities Commission, which held out until late 2005 against any control reporting, were the most likely not to comply with the regulation, despite the unusual made-in-Canada solution of a much watered-down regulation.

The IMF says that Canada needs to develop “a co-ordinated approach to enforcement between criminal and securities law enforcement, with clear lines of accountability and benchmarks.”

If enforcement is the big international concern, and it certainly is the biggest problem, maybe we should try for something more modest, something more achievable than waiting for the nirvana of a national securities regulator.

I suggest a national securities enforcement body.

What’s the difference? A national securities enforcement body would be a common, co-ordinated and focused organization whose sole mandate is to investigate and enforce the various multilateral and national securities laws and regulations that are in effect across Canada.

The power to make laws and regulations would remain where it has been for the last 100 years, with the provincial governments and their securities commissions. There would be no loss of sovereignty or jurisdiction at the provincial level but enforcement would make a quantum leap forward.

At the very least, the various laws and regulations that we do have in Canada would be policed consistently across the country.

Some may ask if that is enough. The example of the separation of enforcement from the quasi-judicial part of regulation in Quebec provides intriguing evidence of what is a separate, well-funded enforcement body might be able to do.

L’Autorité des marchés financiers (AMF), established in 2004, has an enforcement team of 85 people, with 17 lawyers that include former crown prosecutors, and it is not hesitant to hire external legal counsel, as well as expert forensic accountants, to aid investigations.

Its record? The AMF achieved the largest penalty under Canadian securities law for fraud in the Norbourg financial scandal. Former Norbourg CEO Vincent Lacroix received a prison term of 12 years less a day for his part. Further, it took less than two-and-a-half years from the time Norbourg’s assets were frozen, on Aug. 24, 2005, until conviction on Jan. 28, 2008. That is a time frame unheard of in the annals of Canadian securities prosecutions.

In addition, the AMF is not a one-trick pony. It has achieved other criminal convictions in its short life.

So what are the advantages of a national securities enforcement body?

Focus: The body would only focus on investigation and enforcement of regulations, leaving day-to-day administration and adjudications of securities regulations at the provincial level. Indeed, securities commissions have frequently worried about the apparent conflict between their combined roles as police, prosecutors and judges under the current setup, which led Quebec to separate the quasi-judicial function from the other two.

Expertise and capacity development: As an elite enforcement unit with national level responsibilities, the organization would be better placed to attract the best and brightest lawyers and accountants, for both career placement and through secondment from the private sector. A larger organization would also have more room for career development, as well as specialization in areas of securities infractions, which should make investigations and prosecutions more efficient.

Linking with national, provincial and local police agencies: The current RCMP Integrated Market Enforcement Teams (IMET) appeared to be a step forward, but a fundamental problem quickly arose. The various agencies staffing the teams transferred members in and out due to other needs. In contrast, a national securities enforcement agency would be the hub, liaising with the various policing agencies, and would be less reliant on stability in IMET.

Development of specialized prosecution support teams: Research shows that there has been relatively little success in securities law prosecution in Canada. That has been attributed in part to the need to educate judges about complex technical business and accounting matters. Crown prosecutors need support from dozens of lawyers and accountants to ensure that they are able to clearly explain these matters to judges. This proved to be a key part of the success in the Norbourg case, according to prosecutors.

Economies of scale in enforcement: Research in other countries suggests that the larger the enforcement unit, the lower the cost per investigation.

While there are many advantages to such an agency, it is certainly not a panacea to what ails the Canadian securities markets. Such a national enforcement body would still not deal with the problem of lowest common denominator regulation that occurs in Canada due to the need to negotiate, among 13 provincial and territorial regulators, national and multilateral securities regulations.

There would be co-ordination issues between the national enforcement body and the individual securities commissions. No doubt, some complaints received at the provincial securities commissions would not get passed on in a timely manner to the national enforcement body.

Furthermore, in the early days, the national enforcement organization would flounder as it struggles to ensure that its investigation procedures comply with the subtle differences in the various provincial securities acts.

A well-resourced enforcement body, which can investigate and enforce our current regime of securities regulations and laws, would be a huge step forward for our capital markets and a real disincentive for those inclined to play games with other people’s money.

While some dream of perfection and national securities regulators, maybe we should be a tad more Canadian and realistic. Let’s create an enforcement agency that has some real teeth.

Maybe that is something we can all agree upon.

Steve Salterio PhD, FCA is a professor of business and the PricewaterhouseCoopers/Tom O’Halloran Faculty Research Fellow in Accounting at the Queen’s School of Business where he is also the director of research for the Ca-Queen’s Centre for Governance. He focuses on auditing and governance issues both in for profit and not-for-profit sectors. He can be reached at ssalterio@business.queensu.ca.