Ontario Securities Commission
PERSPECTIVES
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FEATURE

CSA Publishes Concept Paper on Market Regulation

Saying that "it is time for something more than incremental improvements," a concept paper prepared by the Canadian Securities Administrators (CSA) recommends that Canada move to a functional model of financial services regulation instead of an institutional model. The paper says the new regulatory regime would result in a "more comparable regulatory treatment of similar services and products."

The concept paper, intended to spark discussion on financial services regulation following the release of the MacKay Task Force Report, was commissioned by the CSA. The paper notes that there is an increasing amount of overlap in the products and services provided by the Canadian financial services industry's traditional "four pillars" — the banks, insurance companies, securities firms and trust companies. Despite these changes, Canadian regulation of financial services providers continues to be performed on an institutional basis. The concept paper argues that this has produced "an increasing number of circumstances where similar activities are regulated in very different manners, depending on the

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POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Electronic Delivery of Documents and Internet Trading

With Internet trading and offerings becoming increasingly popular – and controversial – the CSA has requested comments on two policies dealing with electronic issues – proposed National Policies 11-201 (Delivery of Documents by Electronic Means) and 47-201 (Trading in Securities Using the Internet and other Electronic Means).

In 1997, the CSA published a Concept Proposal dealing with Delivery of Documents by Issuers using Electronic Media and requested comments. At that time, the CSA formed a committee to address regulatory issues on the use of the Internet and other electronic media by market participants. The committee has held numerous meetings and received comments on the issues. It became apparent that the electronic delivery of documents in connection with trades and offerings raised issues that went beyond merely complying with statutory delivery obligations. As a result, separate policies on document delivery (NP 11-201) and on securities trading using the Internet (NP 47-201) were developed.

Under National Policy 11-201, the CSA indicates that the delivery requirements of Canadian securities legislation may be satisfied electronically. There are four components to electronic delivery necessary for good delivery: notice of delivery to recipient, access to the document by recipient, evidence of delivery, and non-corruption or alteration of the document in the delivery process. The first three can be satisfied using consent to electronic delivery by a person or company to a proposed deliverer of documents by electronic means. Regarding NP 47-201, the CSA has decided that statutory requirements relating to trading and offering securities should not change as a result of the involvement of the Internet or other electronic means. Thus in the absence of the Policy, a trade or offering involving the Internet or other electronic means could still take place, given compliance with appropriate securities legislation. The Policy represents the CSA's views on how best to comply with securities legislation when electronic media are used. It also points out issues that a market participant should consider when conducting trading or offerings on the Internet.

For more information, please call **Randee Pavalow**, (416) 593-8257 or **Terry Moore**, (416) 593-8133.

21 OSCB Dec. 18, page 7782, 7801

Shelf Distributions and Post-Receipt Pricing

In October 1998, the OSC and other members of the CSA published for comment proposed National Instrument 44-102 "Shelf Distributions" and National Instrument 44-103 "Post-Receipt Pricing" and their Companion Policies. The comment period expired on January 8, 1999.

The purpose of NI 44-102 is to reformulate and replace NP 44 as it relates to shelf distributions. The purpose of NI 44-103 is to reformulate and replace NP 44 as it relates to post-receipt pricing. The new National Instruments would add clarity, operational efficiency and enhanced access.

For more information, please call **Iva Vranic**, (416) 593-8115.

21 OSCB Oct. 2, page 6191, 6233

Registration of Non-Residents/ International Advisors

The OSC has proposed Rule 35-501 on the registration of non-residents of Ontario.

The general practice of the Commission has been to require all dealers registered under the *Securities Act*, other than international dealers and limited market dealers, to maintain an office and a trading officer in Ontario. In recent years, OSC staff has issued Staff Notices and OSC Policy Statement No. 4.7, providing exceptions to the residency requirement. The proposed Rule reformulates the Statement and Notices, setting out residency requirements and providing exemptions.

For more information, please call **Randee Pavalow**, (416) 593-8257.

21 OSCB Oct. 2, page 6248

Mutual Reliance for Exemptive Relief Applications

The CSA has requested comments on proposed National Policy 12-201, establishing a mutual reliance review system for exemptive relief applications (ERA). Upon implementation, ERA will become part of the mutual reliance review system.

Testing of ERA began in March 1998 and will continue until implementation. To date over 100 applications have been filed under ERA. The proposed National Policy incorporates some changes based on testing and on industry comments on a Concept Proposal that was published in January 1998.

For more information, please call **Margo Paul**, (416) 593-8136.

21 OSCB Nov. 2, page 7211

Proposed Rule on Over-the-Counter Derivatives

The OSC has requested comments on its proposed Rule 91-504 and its Companion Policy on over-the-counter (OTC) derivatives. The measures contained in the proposed Rule will protect people and companies in need of protection without negatively impacting on the OTC derivatives market.

The proposed Rule deals with the regulation of transactions consisting of OTC derivatives in Ontario and provides complete exemptions from Ontario securities law for some transactions. It also provides exemptions from the registration and prospectus requirements of the Act for other transactions. The Commission has previously received comments on the Draft Rule and Companion Policy, published in 1996.

For more information, please call **Tracey Stern**, (416) 593-8167.

21 OSCB Dec. 18, page 7755

Registrants Acting as Corporate Directors

The Commission has adopted Multilateral Policy 34-202 on Registrants Acting as Corporate Directors and rescinded National Policy Statement No. 18 on Conflict of Interest – Registrants Acting as Corporate Directors. The Multilateral Policy came into force on October 16, 1998.

21 OSCB Oct. 16, page 6608

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

OSC Reorganization and Management Appointments

At the beginning of 1999, the Commission reorganized Market Operations into two new branches, Corporate Finance and Capital Markets, to better serve those specific sectors.

- Corporate Finance Branch, which is responsible for the regulation of reporting issuers, includes the two Filings Teams, the Takeover/Issuer Bid and M&A Team and the Administration and Document Management Team. **Kathy Soden** has been named Director of Corporate Finance, **Margo Paul** and **Iva Vranic** have been named Managers of the Corporate Finance Filings Teams, and **Stan Magidson** has been recently seconded to the OSC for a two-year term as Director of the Takeover/Issuer Bid and M & A Team.
- Capital Markets Branch includes Market Regulation, Compliance, Registration and Investment Funds. The director of the Branch is expected to be named shortly. **Rebecca Cowdery** has been named Manager of Investment Funds and **Randee Pavalow** was named Manager of Market Regulation. **Toni Ferrari** continues as Manager of Compliance and **Gina Sugden** remains as General Manager of Registration.
- Other recent appointments within the OSC include **Kathleen Finlay** is named Manager, Project Office, **Mark McManus** is Manager, Inquiries in Corporate Relations and Nancy Stow is Manager, Investor Education Projects.

With these appointments the OSC continues to build on a strong, experienced Management Team.

New Vice-Chair of the OSC and Director of Enforcement Named

- **Howard Wetston, Q.C.**, former justice of the Federal Court of Canada, has been appointed to the position of full-time Vice-Chair of the OSC. Mr. Wetston had been a judge in the Federal Court since 1993, and previously served as Director of Investigation and Research, Bureau of Competition Policy, from 1989 to 1993. He also served as General Counsel of the Canadian Transport Commission, Assistant General Counsel to the National Energy Board and as General Counsel to the Consumers' Association of Canada. He has also served as Crown Counsel with the Federal Department of Justice and with the Nova Scotia Attorney General's Department.
- **Michael J. Watson, Q.C.**, has been appointed as the OSC's new Director of Enforcement. Previously, he was Executive Director of the British Columbia Securities Commission. He has also served as Director of Enforcement at the BC Commission, and previously was a Crown Prosecutor, Chief Crown Prosecutor and Appellate Counsel in Alberta. He has also been Director of Regional Prosecutions and Deputy Director, Trials and Special Prosecutions in the Manitoba Department of Justice.

Proposal for Financial Planning Proficiency Standards

The Canadian Securities Administrators and the Financial Services Commission of Ontario (FSCO) have proposed new proficiency requirements for financial planning and similar advice. Under the proposal, several financial sector services associations will establish a group to create and administer a common exam, and establish experience, ethics, and continuing education requirements. The members of the industry group will include the Investment Dealers Association of Canada, the Investment Funds Institute of Canada, the Canadian Bankers Association, and the Canadian Association of Insurance and Financial Advisors. People licensed by the members of the CSA or the Canadian Council of Insurance Regulators (CCIR) will be prohibited from holding themselves out as having financial planning or similar capabilities unless they have met the requirements established by the industry group.

"The regulators will review all grandfathering proposals for existing providers of financial planning advice."

The regulators will review all grandfathering proposals for existing providers of financial planning advice and will determine whether they are reasonable in the circumstances. They also will specify any top-up educational requirements for people who are grandfathered, and the time frames for completing requirements in order to be grandfathered. Transitional arrangements will ensure that people currently studying towards a financial planning designation will not be precluded from offering financial planning advice, although some top-up requirements may be deemed appropriate.

Background on developing the proposal
In looking for the best route to achieve an acceptable minimum proficiency financial planning standard, the OSC met with current and former members of the recently formed body established to set proficiency standards for financial planners, the Financial Planning Standards Council of Canada (FPSC). The Council is authorized to confer the US-based Certified Financial Planner accreditation.

After extensive discussion, the OSC concluded that this body was not likely to be able to establish criteria with broad support from the financial services sector within the short time frame necessary to achieve investor protection. However, nothing in the CSA proposal precludes the FPSC from being chosen to perform some or all of the functions outlined in the proposal. Similarly, nothing in the proposal precludes existing course providers or accreditation bodies from offering their services on a competitive basis to people interested in becoming proficient in financial planning and similar advice.

Current Status
The CSA hopes to publish for comment by April 30, 1999 a draft rule that would require any registrant who wants to offer comprehensive financial advice, including financial planning, to pass the common exam that is now being developed by the industry group. The industry group has been meeting regularly for 2 months with the OSC providing assistance in this area.

For more information, please call **Julia Dublin** at (416) 593-8593.

Financial Planning

Financial planning advice is generally retirement focused, looking at a client's overall financial situation both present and future. Most individuals who offer financial planning advice are registered as salespersons of a mutual fund dealer or as life insurance agents, and are primarily or in part remunerated by selling products needed to implement the plan. Because of changes within the financial services industry, in the future many "financial planners" are likely to be employees of financial institutions, such as banks and credit unions, and of full service dealers. In recent years the number of people and firms offering financial advice has grown tremendously. But while there are a variety of courses that purport to confer financial planning proficiency, none are universally recognized as meeting an acceptable minimum standard. In order to protect investors, the CSA has focused on ensuring an adequate level of proficiency for financial planning advice. While the CSA is sensitive to the impact of new standards on people who make their living as financial planners and will consider appropriate transitional arrangements, it believes the interest of investors must come first.

Joint Study to Compare Seg and Mutual Funds

With the increasing popularity of segregated funds and mutual funds, insurance and securities regulators have established a working group to look at issues surrounding the funds. The group will present a report to the Spring combined meeting of the Canadian Securities Administrators and the Canadian Council of Insurance Regulators. The report will focus on understanding the two products and their regulation.

Segregated funds have become increasingly popular in the past two years, as investors respond to the promise of guaranteed capital, death benefits, and other advantages. Many new segregated fund products involve a partnership between life insurance companies and mutual fund companies, with the life insurance company putting an insurance "wrapper" around a mutual fund.

"The CSA and CCIR wish to ensure that their respective regimes of regulation give investors similar protections."

The working group is comparing the regulation of segregated funds and mutual funds as a critical first step in the CSA and CCIR's goal of ensuring that coordinated and harmonized regulation exists for these products. Both the CSA and the CCIR wish to ensure that their respective regimes of regulation give investors similar protections in these different, yet functionally similar products.

The joint working group includes the Ontario Securities Commission, the British Columbia Securities Commission, the Financial Services Commission of Ontario (FSCO), the Investment Funds Institute of Canada, Canadian Life and Health Insurance Association, Canadian Association of Insurance and Financial Advisors, and life insurance and mutual fund company representatives. In addition to the seg fund study, there are broader efforts to change insurance regulation as the industry converges with investment services. In Ontario, a provincial Council of Financial Regulators has been proposed to harmonize financial services regulations. The Council would include the heads of the OSC, FSCO and the proposed Insurance Distribution Regulatory Board.

For more information, please call **Rebecca Cowdery**, (416) 593-8129.

Y2K Update

Recent Y2K-related regulatory developments include the CSA's announcement that it will act against registered firms that fail to comply with Y2K requirements; a report on disclosure by the CSA; preparations for industry testing; and the formation of a CSA Contingency Planning Task Force.

• On February 11, 1999, the CSA announced that members would publish a list of registered firms that fail to comply with Y2K preparation reporting requirements, and is prepared to take regulatory action. This action could include imposing terms and conditions of continued registration, suspending registration or terminating registration. This list was published on February 26, 1999.

In October 1998, the CSA adopted a National Instrument requiring registered firms to file information relating to their preparations for the Year 2000 with their provincial securities regulator.

"59 percent provided statements that CSA staff regard as little more than a boiler plate description."

• A report by the Canadian Securities Administrators suggests that a significant percentage of publicly traded companies have serious inadequacies in Year 2000 disclosure. Released in January, the report reviewed the disclosure contained in the annual reports and prospectuses of more than 100 companies. The report finds:
  • 23 percent of the companies reviewed did not disclose any information about Year 2000 issues.
  • 74 percent of those that did disclose some information about Year 2000 issues did not address adequately the key elements of their risk exposure and efforts to mitigate that risk.
  • 59 percent of the companies that disclosed some information provided statements that CSA staff regard as little more than a boiler plate description.

In the report, CSA staff emphasized the need for disclosure that clearly explains risk exposure and how it is being managed. With the short time remaining before January 1, 2000, CSA staff believes a key focus should be companies' contingency plans and their reliance on the Year 2000 readiness of third parties, including suppliers, customers, lenders and borrowers.

For more information, please call **Heidi Franken**, (416) 593-8249.

• At the same time, the OSC is moving forward on several other Y2K initiatives. CSA staff has been working with the Canadian securities industry to develop and implement a Year 2000 industry test program. CSA staff led the creation of two industry testing task forces, a securities industry testing task force and a mutual fund industry task force. These task forces are responsible for creating and implementing appropriate Year 2000 tests for the Canadian securities and mutual fund industries. Work on the tests is progressing, with Beta tests (tests of the tests) scheduled for the week starting March 13, 1999, and industry tests scheduled for the week of May 29.

In addition, a Canadian Depository for Securities (CDS) demonstration test is serving as the industry test for the Canadian debt markets, as CDS is the only central utility in the Canadian debt markets. This test will occur in March.

• The CSA formed a Contingency Planning Task Force in November 1998 to help develop plans to support the smooth functioning of markets on January 1, 2000, and to provide guidance to market participants in establishing contingency and continuity plans.

The industry contingency planning task force will address issues related to the continued business operations of industry infrastructure providers such as exchanges, clearing corporations, information systems providers, custodians, bank dealers and other market participants. To this end, the task force will identify core industry processes and establish strategies to mitigate Year 2000 risks. It is not in the task force's mandate, however, to develop contingency and continuity plans for individual market participants.

For more information, please call **Maxime Paré** (416) 597-3650, or **Levi Sankar,** (416) 597-8279.
21 OSCB Jan. 8, page 58; Jan. 15, page 294

Debt-Like Derivatives Report

On February 5, 1999, the Report of the Task Force on Debt-Like Derivatives was published. In the Report, the Task Force noted that the regulation of derivative instruments in Ontario has been a rather awkward exercise in which regulators have attempted to fit derivatives within pre-existing regulatory structures that were designed with the regulation of nonderivative securities in mind. While the emergence of derivative instruments in the Ontario capital markets during the 1980s gave rise to what has sometimes been described as a "merit-based" approach to regulation, it appears trite today to say that derivative instruments have become an important component of the capital markets. Regulators appear to accept that a "disclosure-based" regulatory approach is no less suitable for derivative instruments than for more conventional securities.

In the Report, the Task Force recommended the adoption of a disclosure regime for debt-like securities. This regime would apply whether or not the instrument falls within the definition of "security" in the *Act*. The Task Force concluded that retail investors in Ontario should reasonably expect a level playing field and the same minimum standard of disclosure in connection with debt-like derivative instruments sold to them whether or not the instrument is properly characterized as a security, as a deposit or as an insurance contract.

The recommended disclosure regime does not create additional prospectus and registration exemptions but, rather, involves the imposition of regulatory requirements that do not presently exist. It would remove existing exemptions for certain debt-like derivative securities, which would then be required to be distributed by way of prospectus. The Report further proposes a simplified disclosure regime for "qualified" debt-like derivatives. A qualified debt-like derivative is one in which the initial purchase price is not at risk, all amounts payable pursuant to the debt-like derivative are due not later than ten years after issuance and the amounts payable are derived from or based on one or more permitted underlying interests. The definition of "permitted underlying interest" would exclude underlying interests which are not widely known or are potentially subject to manipulation by the issuer or others.

The proposed requirements for the distribution of qualified debt-like derivatives include an obligation to deliver to prospective purchasers a generic risk disclosure statement concerning debt-like derivatives and a term sheet describing the economic terms of, and risks specific to, the particular debt-like derivative being sold.

The Task Force anticipates that its recommendations are a further step in the ongoing review by the Commission of the regulation of derivatives generally.

For more information, please call **Margo Paul**, (416) 593-8136; or the Report is available on the OSC website *www.osc.gov.on.ca*

Final Mining Report Issued

The Final Report of the Mining Standards Task Force was released on February 2. The Report contains recommendations on changes designed to preserve Canada's position as a world leader in mineral exploration development and mining financing (see Perspectives, Summer 1998).

The Final Report reflects the feedback received on the Interim Report recommendations from over 100 commentors. The fundamental recommendations remain but additional clarification of the concepts and their implementation has been added. In the area covering analysts, the recommendations have been strengthened and expanded.

The Final Report's recommendations include:

- Formalization in securities regulations of the Qualified Person (QP) concept, whereby the QP is responsible for scientific and technical matters;
- Establishment of industry standards, specifically:
  - Best practice guidelines for the conduct of mineral exploration programs, development programs and mining operations;
  - Standards for reporting resources and reserves estimates and exploration and mining activities;
  - Accreditation and quality control standard for analytical laboratories;
  - Standards for professionalism and supervision for mining analysts;
- Establishment of requirements for technical reports and content requirements for news releases disclosing technical information, including exploration information;
- Increased emphasis on sound corporate governance practices, regulatory oversight of the mining industry and the enforcement of securities laws.

Many of the Task Force's recommendations on disclosure and reporting requirements are reflected in the CSA's proposed National Instrument on Standards of Disclosure for Exploration, Development and Mining Properties (NI 43-101). The NI was released for comment in draft form in July 1998, and the CSA is currently analyzing the comments received.

The Task Force was established by the Toronto Stock Exchange and the OSC to examine the need to set new standards for mineral exploration and mining companies. The intent of the recommendations is to increase investor confidence in Canadian securities markets and to reinforce Canada's leadership in the global mining industry through increased investor protection.

For more information, please call **Kathy Soden**, (416) 593-8149.

22 OSCB February 5, 1999 page 856

SEDAR Changes

The Canadian Securities Administrators has made a number of changes to SEDAR's operations. Among the key changes:

- As of March 1, 1999, SEDAR increased its filing and service charges in order to fund additions to the system and in particular, the website. The website averages 1.5 million hits a week, sometimes rising to as much as 40,000 hits per hour and 1.8 million hits per week. The CSA examined a number of methods for funding these changes and concluded that the fairest method was an across-the-board increase in filing and service charges.
- Beginning January 4, 1999, all SEDAR reporting issuers must pay their annual continuous disclosure filing service charges electronically using the SEDAR system, at the time of filing their annual financial statements.
- Subscribers to SEDAR's filing service are no longer able to access the SEDAR server for filings or searches on weekends or national holidays. However, they will be able to

search for and download electronic copies of public filings using the SEDAR website at *www.sedar.com*.

- Effective April 30, 1999, Windows 3.1/3.11 will no longer be supported operating systems for the SEDAR Filer Software. It is expected that support for Windows 98 will be implemented in July 1999.

"The website averages 1.5 million hits a week."

- With the introduction of Release 5.0 of the SEDAR Filer Software last fall, subscribers can file with Canadian stock exchanges and the Canadian Dealing Network documents specific to these exchanges.

For more information, please call **Karen Eby,** (416) 593-8242.

21 OSCB Oct. 2, page 6129; Dec. 11, page 7598

Investor Education Week

Along with other securities regulators from North and South America, the OSC will participate in the second annual Investor Education Week from April 25-30, 1999.

The event will focus on two themes: raising awareness of risk factors in securities; and teaching our children prudent practices in saving and investing.

During the week, the CSA will introduce a number of additions to its successful investor education kit: brochures on exempt market securities and mutual funds, a planning worksheet, and a poster outlining the characteristics of various investments.

The OSC and other Canadian regulators will work with other industry and investor associations on Investor Education events.

For more information, please call **Nancy Stow,** (416) 593-8297.

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada.

CSA Quarterly Meeting

The following are highlights from the Winter meeting of the Canadian Securities Administrators, held in January in Vancouver.

- The CSA approved a proposal for the development of an electronic insider reporting system. The system will allow insiders to file their insider reports via the Internet with one regulator, who would then process the filings on behalf of the other regulators. Once processed, the reports would be available for viewing by the public on the Internet. The CSA expects the system to be implemented in the middle of the year 2000.
- The CSA approved in principle the development of a Canadian registration database for the CSA. This will involve the creation of an information technology system that will increase accessibility and completeness of the information available to investors, create a unified regulatory environment for filers, and potentially offer increased efficiency among regulators.
- The Chairs approved a work plan for CSA staff that calls for a draft concept proposal on an integrated disclosure system to be published for industry and public feedback later in 1999.

A group of Chairs met with insurance and pension regulators from several Canadian jurisdictions to discuss the growing integration of the financial services sector. They agreed to establish a joint forum of financial market regulators to work on coordinating and streamlining market regulatory activity.

For more information, please call **Kathleen Finlay**, (416) 593-8125.

Successful Mutual Reliance Training Sessions

About 140 delegates from regulators across Canada, including the Chairs of many Commissions, attended the Canadian Securities Administrators' training sessions on the Mutual Reliance Review System in November. The sessions were designed to:

- Describe the philosophical and procedural aspects of the mutual reliance systems for applications and prospectuses and enable participants to gain confidence in their ability to work within the systems; and
- Provide a forum for discussion of new policy developments in securities regulation and issues of common concern.

"The second national training session is set to take place in Montreal."

Another important goal of national training was to enable regulatory staff from across the country to meet face to face in order to foster the cooperative environment needed to implement the mutual reliance systems. The second national training session is set to take place in Montreal.

For more information, please call **Rose Fergusson**, (416) 593-8116.

The Chairs of the CSA have decided on a name to properly describe the system of harmonized securities administration in Canada. It is the Canadian Securities Regulatory System (CSRS). The CSRS includes mutual reliance review.

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information please call the OSC at (416) 593-8314.

David Singh, Jeffrey Lipton, Infinity Investment Counsel Ltd. and Fortune Financial Corporation - *Conflict of Interest*

On March 2, 1999, David Singh and Infinity Investment Counsel Ltd. admitted to conduct that was contrary to the public interest. Singh and Infinity permitted publication of an advertisement which was misleading, contained statements inconsistent with a previous settlement agreement (**See details below**) and contravened the prohibition against misleading sales communications as set out in section 126, the section governing advertising, of National Policy 39, the instrument governing Mutual Funds.

As part of the settlement, Singh agreed to withdraw his current application for registration as a salesperson with Fortune Financial Corporation and further agreed not to reapply for registration with the Commission in any capacity for a period of three months from the date of the Commission's Order.

The Commission ordered the following sanctions against Singh and Infinity:

(a) Singh had his registration in respect of Fortune Investment Corporation suspended for a period of three months from the date of the Order and

(b) Infinity was reprimanded by the Commission.

The hearing in respect of Mr. Lipton was adjourned to April 26, 1999 at 10:00 a.m.

On January 19, 1999, the Commission approved a settlement agreement reached between Staff and David Singh ("Singh"), Jeffrey Lipton ("Lipton"), Infinity Investment Counsel Ltd. ("Infinity Investment Counsel") and Fortune Financial Corporation ("Fortune").

The agreed statement of facts in the settlement agreement states that, during the relevant period, Singh was an indirect controlling shareholder and a director of Infinity Investment Counsel and Fortune. Lipton was a director, the president and chief executive officer of Infinity Investment Counsel. Infinity Income Trust (the "Trust") was established on February 5, 1998 to finance debt obligations incurred for the payment of sales commissions paid on the sales of Infinity mutual funds. The Trust offering had an initial closing date of February 27, 1998 with a minimum aggregate subscription amount of $15 million. The closing date was subsequently extended to April 17, 1998.

On April 15, 1998, subscriptions for the Trust totalled less than $9 million. On or about that date, Infinity Investment Counsel sought to purchase 250,000 units of the Trust totalling $2.5 million. After discussions among the selling group, Infinity Investment Counsel and their advisors, two of the Infinity mutual funds decided to purchase 150,000 units of the Trust for $1.5 million. On April 17, 1998 the Trust offering closed with total subscriptions of $15,170,570.

Infinity Investment Counsel agreed that its interest in the Trust offering closing put it in a position of conflict which potentially compromised its ability to act in the best interest of the Infinity Funds in purchasing Trust units.

Lipton agreed that he caused the Infinity Funds to purchase Trust units and Singh agreed that he permitted that purchase to proceed. By receiving a commission of 6% while others in the selling group received only 5%, Fortune, unbeknown to it, came under the definition of underwriter as defined in Ontario securities law. In this role, the conduct of Fortune in selling 83.4% of the Trust units when the Trust was managed by an entity that had one or more directors in common with Fortune was contrary to the public interest.

Singh agreed to the removal of his exemptions contained in Ontario securities law for a period of 18 months. In addition, Singh gave an undertaking to the Commission not to engage in certain activities on behalf of any respondent to the proceeding, any registrant related to a respondent or any registrant in which Singh has an interest. Specifically, Singh agreed not to act in a compliance, supervisory and/or underwriting role, and not to be involved in the formulation or implementation of investment decisions on behalf of mutual funds managed by Infinity Investment Counsel or any other portfolio management activities. Singh also agreed not to engage in direct client contact for the purchase or disposition of a specific security. Singh was reprimanded by the Commission and ordered to make a payment of $50,000 to a cause benefiting investor education.

Jeffrey Lipton agreed to the suspension of the registration granted to him under Ontario securities law for a period of 3 months commencing April 1, 1999.

Infinity agreed that a majority of its Board of Directors would be persons independent of Infinity Investment Counsel, Fortune and their related entities and that it would devise and implement a policy regarding conflicts of interest. In addition, Infinity was reprimanded by the Commission.

Fortune was also reprimanded by the Commission.

Commenting on the case, Commission Chairman David A. Brown stated, "this case from its initiation to its disposition has been handled in a very timely way. The OSC is committed to identifying violations, conducting fair and impartial investigations and bringing the cases to disposition in a manner and a time frame which reinforces confidence in the enforcement of Ontario securities laws."

Glen Erikson, Christine Erikson, Kai Hoesslin and Harcourt Wilshire in the matter of Belteco Holdings and Torvalon Corp. - *Sanctions imposed*

In the Fall 1998 edition of Perspectives, the Commission's decision regarding, amongst others, Glen Erikson, Christine Erikson, Kai Hoesslin and Harcourt Wilshire was published. The Commission found that these individuals had knowingly participated in a series of transactions which were manipulative, deceptive and unconsciously abusive of the capital markets.

On December 17, 1998, the Commission issued an order prohibiting Glen Erikson, Christine Erikson, Kai Hoesslin and Harcourt Wilshire from trading in securities indefinitely. Certain limited exemptions would be available to Glen Erikson and Christine Erikson after two years. In addition Peter Arthur Mitchell, a registered salesperson with Levesque Securities be reprimanded for his role in the matter.

In deciding on the sanctions, the Commission considered the seriousness of the allegations, the respondents' experience in the marketplace, whether or not there has been a recognition of the seriousness of the impropriety and whether or not the sanctions imposed might serve as a deterrent to both the respondents and others involved in the capital markets.

A cease trade order effecting Belteco Holdings and Torvalon Corp. remains in effect.

Linden Dornford - *Fitness for registration*

On November 24, 1998, the Commission released its Reasons for Decision following a November 10, 1998 hearing regarding the fitness for registration of Linden Dornford. Mr. Dornford had been an officer, director and sole shareholder of Money Growth Financial Service Inc., a registered mutual fund and limited market dealer.

In an Agreed Statement of Facts, filed with the Commission, thirteen separate instances were identified in which Mr. Dornford authorized or acquiesced to the transfer of funds from Money Growth's clearing accounts to cover overdrafts in its operating account.

The Commission concluded that Mr. Dornford should never again be registered as a dealer or as an officer, director or partner of a dealer, or in any other capacity which involved the handling by him or permitting him to handle, clients' funds or property. The Commission also ordered that Mr. Dornford should not be permitted to be registered as a salesman of a dealer for a period of five years. At the end of the period, Mr. Dornford would be permitted to apply to the Director for registration based upon his ability to prove that he has become a fit and proper person and had completed such courses, including an ethics course, as the Director considers appropriate.

Richard John Smith and Synlan Securities Corporation - *Termination of registrations*

Following a hearing on December 1, 1998 the Commission ordered that the registrations granted to each of Richard John Smith and Synlan Securities Corporation under Ontario securities law be terminated. The Commission also ordered that trading in any securities by Smith or Synlan cease permanently and that any exemptions contained in Ontario securities laws do not apply to each of Smith and Synlan permanently.

The hearing was prompted by staff allegations that it was not in the public interest to permit Smith and Synlan (of which Smith was the sole officer and director) to continue to trade in the capital markets due to the fact that Smith had been convicted of various criminal offenses involving securities transactions.

Gary George - *Dismissal of Allegations*

In a ruling released January 26, 1999 the Commission dismissed allegations that Gary George had engaged in trading in securities of Solid State Geophysical Inc. while in a special relationship with that company. Specifically, the Commission ruled that it lacked conclusive proof that Mr. George was in possession of undisclosed material information at the time he executed trades in Solid State Geophysical Inc. Mr. George was, at the time of the trades, a director, trading officer and interim branch manager of Marleau Lemire Securities Inc.

While dismissing the allegations against Mr. George, Commissioners commented on the compliance procedures in place at Marleau Lemire Securities Inc. at the time Mr. George made his trades. The Commissioners stated that once Marleau Lemire Securities Inc. accepted that there had been a communication of material information that had not been publicly disclosed, they should have examined all trading by the firm on May 29, 1995 (the date of Mr. George's trade) prior to the trading halt. The Commissioners stated that based on the evidence before them, it seemed unlikely that anything was done.

The Commissioners further commented on the extent to which corporate officers seek to maintain good relations with analysts. It was determined during the hearing that officers at Solid State Geophysical had communicated information pertaining to a significant change in the company's revenue projections to employees at Marleau Lemire Securities Inc. This information, the Commissioners judged, was material and should have been publicly disclosed. The Commissioners stated, "in general, we view one-on-one discussions between an officer of a reporting issuer and an analyst as being fraught with difficulties."

Tactman Investments (Canada) Inc., and Tanrich Investment Consultant (Overseas) Ltd. - *Cease Trade Order continued*

On November 1, 1995, the Commission issued a Cease Trade Order against Tactman Investments (Canada) Inc., and Tanrich Investment Consultant (Overseas) Ltd. The two firms were alleged to have been involved in the sale of spot foreign exchange contracts to the public without registration and without filing a prospectus with the Commission.

On January 26, 1999 the Commission extended the order following a hearing at which neither Tactman nor Tanrich chose to appear or be represented.

(CSA Publishes Concept Paper on Market Regulation)

nature of the financial services providers (FSP) offering the product or service."

The paper advocates functional regulation, which would focus on "activities rather than particular products or the nature of the institutions which carry on those activities. Functionally equivalent or similar products and services would be given similar regulatory treatment, even where they were being provided by very different entities." The benefits would include a coordinated regulatory system that would deal with virtually all market issues; a disclosure regime that would allow comparisons between products; and increased regulatory coherence and supervision for all FSPs.

"Some existing Financial Services Providers, currently subject to little or no regulation, would be brought in to the regulatory net."

Under this model, market regulation for all FSPs would be assumed by the provinces and territories. These regulators would be responsible for oversight of market conduct, integrity of markets and consumer protection. Where necessary, the regulators would be given explicit authority to regulate the market conduct and consumer protection activities of federal FSPs. This could be done without any transfers of constitutional jurisdiction.

The paper notes that the level of market regulation would vary among FSPs, based on the nature of the product and the clients served. Some existing FSPs, currently subject to little or no regulation, "would be brought into the regulatory net if their activities warranted. The framework would also facilitate effective enforcement actions against all of those involved in causing mischief, regardless of what sort of FSP they are."

To resolve disputes between FSPs and their customers that don't involve breaches of laws, the paper suggests the establishment of a "structurally independent financial services ombudsman, perhaps set up as a self-regulatory organization."

The paper notes that the new structure may add some costs as FSPs adjust to more comparable regulation. For example, banks would face new product disclosure requirements and some retail staff may be subject to new proficiency requirements. "Most FSPs would, however, benefit from the cost savings associated with the harmonized regimes and the ability to deal primarily with one regulator to obtain approval from all relevant jurisdictions."

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