Ontario

ONTARIO SECURITIES COMMISSION

Volume 3, Issue 2

PERSPECTIVES

inside...

SPRING 2000

FEATURE

OSC, FSCO To Merge

In order to create a more consistent and comprehensive financial regulatory system, the Ontario government plans to merge the Ontario Securities Commission (OSC) and the Financial Services Commission of Ontario (FSCO) into a single organization. The new entity will regulate the capital markets and the financial services industry. The initiative, the first of its kind in North America, will be led by OSC Chairman David Brown.

At present, the OSC oversees the Ontario capital markets and securities industry, while the FSCO regulates the insurance and pension sectors, deposit taking institutions, cooperatives and mortgage brokers. These areas increasingly overlap, with integrated banking, insurance and securities conglomerates offering a broad range of products and services. At the same time, technology and customer demand are spurring the development of new financial products that cross traditional boundaries. Some of these combine characteristics from several popular products, while others involve new and sophisticated trading techniques or strategies.

(continued on page 14)

INDEX

POLICY PROFILES

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

Proposed Rules to Improve Financial Disclosure

The Ontario Securities Commission has published for comment two proposed Rules and Companion Policies designed to improve disclosure of financial information by public companies. The proposals will significantly increase the extent and quality of information provided in quarterly reports.

Investors will gain an understanding of past corporate performance and future prospects on a more timely basis.

Proposed Rule 52-501 Financial Statements, introduces a new requirement for all public companies to include in interim financial statements an income statement and a cash flow statement for the current quarter in addition to the currently required year to date information. Companies will also be required for the first time to provide an interim balance sheet and explanatory notes to the interim financial statements. Under the proposed rule, a company's board of directors and its audit committee will be required to review the interim financial statements before they are filed with the Commission and distributed to shareholders. The proposed Companion Policy urges Boards, in discharging their responsibilities for ensuring the reliability of interim financial statements, to consider retaining external auditors to review the statements.

Proposed Rule 51-501 reformulates existing OSC Policy 5.10 and introduces a new requirement for management to provide a narrative discussion and analysis (MD&A) of interim financial results with the interim financial statements. This will facilitate investors gaining an understanding of past corporate performance and future prospects on a more timely basis. The proposed Rule will replace OSC Policy 5.10 and give the Commission greater ability to enforce compliance with annual and interim MD&A content requirements.

While companies are not required to comply with these new requirements until the proposed Rules come into force, companies are encouraged as a matter of relevant financial disclosure to adopt the proposals as soon as practicable.

The proposed Rules and Companion Policies can be consulted online at *www.osc.gov.on.ca*.

For more information, please call **Heidi Franken**, Manager, Continuous Disclosure, (416) 593-8249, **Lisa Enright**, Senior Accountant, Continuous Disclosure, (416) 593-3686, or **James McVicar**, Legal Counsel, Corporate Finance, (416) 593-8154.

(2000) 23 OSCB Page 1783

Standards of Disclosure for Mineral Projects

The OSC requested comment on proposed National Instrument 43-101, which consolidates and expands on the current disclosure and reporting requirements for mineral projects. The proposed National Instrument is consistent with the recommendations of the Final Report of the TSE-OSC Mining Standards Task Force.

The proposed National Instrument originated with reformulation of National Policy Statements No. 2-A and 22. The new National Instrument sets standards for all oral statements and written disclosure made by an issuer concerning mineral projects, which are likely to be made available to the public. All disclosure concerning mineral projects, including oral statements and written disclosure in news releases, prospectuses and annual reports, is to be based on information prepared by or under the supervision of a qualified person. Disclosure of mineral resources and mineral reserves is to be made in accordance with standard definitions set out in the proposed National Instrument.

All disclosure concerning mineral projects is to be based on information prepared by or under the supervision of a qualified person.

In certain circumstances, the disclosure must be supported by a written technical report prepared and certified by a qualified person in accordance with Form 43-101F and filed by the issuer with the securities regulatory authorities. In specified circumstances, the technical report must be prepared and certified by a qualified person who is independent of the issuer.

It is expected that the proposed Instrument will come into effect on or before December 31, 2000.

For more information, please call **Kathy Soden**, Director, Corporate Finance, (416) 593-8149, or **Deborah McCombe**, Chief Mining Consultant.

(2000) 23 OSCB March 24, Page 2159

SRO Membership for Securities Dealers and Brokers

The Commission has requested comment on proposed Rule 31-507 requiring all securities dealers and brokers to be members of a self-regulatory organization (SRO) recognized by the Commission under section 21.1 of the Act. The proposed Rule is substantially similar in effect on all securities dealers and brokers as National Policy Statement No. 49 was on "national dealers."

At the present time, the Investment Dealers Association of Canada (IDA) is the only SRO recognized by the Commission for member regulation purposes. Membership in the IDA would require all member dealers to make contributions to CIPF. The Commission is expected to consider recognition of the Mutual Fund Dealers Association (MFDA), an SRO for mutual fund dealers, in late 2000 or early 2001.

The Rule is expected to become effective on December 1, 2000. Applicants for registration as a securities dealer or broker after this date will be required to be SRO members three months after this period (March 1, 2002). An existing securities dealer or broker registrant must become a SRO member as of the date of their first renewal of their registration three months after the effective date. An existing securities dealer or brokers registrant must also provide the SRO with notice of its intention to make an application for membership by January 1, 2001.

The OSC advises that registrants begin to plan for the transition under this Rule immediately.

A securities dealer or broker that does not wish to become a member of the IDA as of the applicable date must either surrender its registration or re-register in another category. Those securities dealers, for example, who would prefer to become mutual fund dealers and therefore be subject to Rule 31-506 rather than this Rule, must re-register as mutual fund dealers before their first renewal of registration after March 1, 2001.

The OSC advises that registrants begin to plan for the transition under this Rule immediately. Registrants should be aware that the processing of membership applications at the IDA requires adequate review and may take some time. The Director has the authority to grant exemptions from the Rule and may also consider applications for temporary exemption in certain circumstances.

Changes from previously published Rule

The Rule was originally published for comment on October 3, 1997, and subsequently revised and republished for comment on June 19, 1998. The main change since the 1998 Rule is that the current rule uses the renewal of registration as the trigger date for SRO membership for existing registrants. The Rule has also been changed to add a requirement that securities dealers and brokers intending to become SRO members provide notice of this to the SRO shortly after the Rule becomes effective. As noted above, this date is expected to be January 1, 2001.

For more information, please call **Jennifer Elliott**, Legal Counsel, Market Regulation, (416)593-8109, or **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257.

(2000) 23 OSCB April 14, Page 2755

Prospectus Disclosure in Certain Information Circulars

The OSC has requested comment on proposed Rule 54-501, which would require prospectus disclosure in information circulars for certain transactions.

The proposed Rule requires information circulars sent to holders of voting securities of a reporting issuer in respect of a meeting of security holders for which proxies are being solicited and which is being held to consider certain transactions under which securities are to be issued to contain prospectus disclosure. This includes the financial statement and other disclosure that is required to be included in a prospectus if the transaction results in the acquisition of a business.

For more information, please call **Cynthia Rogers**, Senior Legal Counsel, Corporate Finance, (416) 593-8261.

(2000) 23 OSCB March 17 page1979

OSC REPORTS

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

OSC Publishes Statement of Priorities

The Commission has published its draft annual statement of priorities for the fiscal year ending March 31, 2001. The key priorities include the following:

- **Redefine approaches to the financial regulatory framework.** This involves issues such as: redefining the mandates and activities of all Canadian regulators of financial service providers and harmonizing regulation across Canada; completing reformulation of major OSC rules and policies; participating in the Five Year Legislative Review process; reviewing regulatory models governing the provision of financial advice; streamlining registration processes including the development of a National Registration Database; and recognition/exemption processes for restructured Canadian exchanges.
- **Strengthen the Compliance – Enforcement Continuum.** The Commission will increase its effectiveness through the following compliance monitoring and enforcement activities: strengthening protocols for SRO oversight; performing more compliance examinations and inspections; completing the development of the Market Integrity Computer Analysis (MICA) system; completing examinations of the TSE and IDA; working with policing authorities to establish a Securities Fraud Task Force.
- **Strengthen Secondary Market Regulation and Enhance the Quality of Continuous Disclosure by Reporting**

Issuers. Key initiatives will include: comprehensive programs for review of continuous disclosure documents; finalizing an Alternative Trading Systems (ATS) rule and implementing the data consolidator; emphasizing the review of financial statements; finalize drafting of legislation related to statutory civil liability for continuous disclosure and implementing a national electronic insider trade reporting system.

- **Enhance Investor Protection Through Education**. This will include establishing an investor learning and education foundation.
- **Implement Fee Reduction Strategy**. The Commission will implement a more streamlined fee structure which aligns revenues more closely to costs.
- **Foster Development of an Improved Mutual Fund Governance Framework**.
- **Strengthening the Role of the OSC as a Key Member of the International Securities Regulatory Community**.
- **Continue to Develop and Implement Accountability Mechanisms**, including completing a survey of key constituents to obtain feedback on the OSC's performance and identifying opportunities for improvement.
- **Foster the Continued Development of the OSC as an "Employer of Choice."**

For more information, please call **Robert Day**, Manager, Business Planning, (416) 593-8179.

(2000) 23 OSCB March 31 Page 2363

Five Year Review of Securities Legislation

The Securities Review Advisory Committee, appointed by the Ontario Minister of Finance to review the OSC's legislation, regulation and rules, is seeking input from market participants and any interested persons. To encourage comment, the Committee published an Issues List in the April 28, 2000 edition of the OSC Bulletin, which also can be accessed at the OSC's web site *www.osc.gov.on.ca*.

The key topics covered by the Issues List include:

- Principles underlying securities legislation, including fundamental principles and the closed system;
- Focus and scope of legislation. This area includes topics such as regulation of registrants, self-regulatory organizations and other market intermediaries, tiered holding system, continuous disclosure obligations, mutual funds, shareholder communications and take-over bids, and enforcement;
- Impact of regulatory harmonization and globalization trends;
- Impact of technology; and
- Mandate and role of the Commission.

The Committee will prepare a draft report outlining the results of its consultation process and its recommendations. The Committee may address other matters raised by commenters in addition to the topics on the Issues List.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245.

(2000) 23 OSCB April 28 Page 3034

OSC Names Chief Mining Consultant

The Ontario Securities Commission has hired **Deborah McCombe**, B.Sc. P. Geo. to the newly created position of Chief Mining Consultant, in the Corporate Finance Branch, effective May 23, 2000.

Ms. McCombe will work along with other OSC and CSA staff on the reformulation of National Policies 2A and 22 into National Instrument 43-101, Standards of Disclosure for Mineral Projects. The proposed instrument implements the disclosure related recommendations of the TSE/OSC Mining Standards Task Force.

Ms. McCombe will also work with the Continuous Disclosure Team in the Corporate Finance branch to examine the technical information associated with natural resource issuers' continuous disclosure filings.

OSC Proposes Reduction in Fees

The Ontario Government Budget 2000, released May 2, announced a proposed further 10 percent across-the-board reduction in the fees charged by the OSC. This fee reduction will take effect on June 26, 2000. The OSC is continuing the comprehensive review of its fee structure with a view to realigning its revenue with regulatory expenses. The new fee schedule is expected to be in place by July 2001.

Re-regulation of Advice Project

The OSC has initiated a Re-regulation of Advice Project that takes a fresh look at the current regulatory model governing "advice" – the products and services delivered to customers – in view of the retail securities industry's shift in focus from stock trading to financial advice and asset management.

"As regulators, we are concerned that the reliance invited by the securities industry when it holds itself out as primarily an advice provider be matched by a appropriate level of accountability and responsibility," says Julia Dublin, Project Manager. The project will review the current regulatory model and its ability to protect consumers and ensure their confidence, especially given industry and technological change. Some of the questions it will address are: Does our trading-based and disclosure-based model of securities regulation ensure that the new market for advisory services will be one in which the average investor can participate as an informed and confident consumer? Do our assumptions about investor behaviour and access to information still hold up where most investors are using their PCs at least in some form for their finances? How easily does a sales driven business culture adapt to offering disinterested advice?

To assist in the project, the Commission has assembled an advisory committee of individuals drawn from a cross-section of the financial services industry.

The Members of the Committee are:

Philip Armstrong - Managing Director, Altamira Investment Services Inc.

Paul K.Bates - President & C.E.O., Charles Schwab Canada

Paul Bourbonniere - Polson Bourbonniere Financial

Christine Butchart - Registered Financial Planner, C.M. Oliver Financial Corporation

Warren V.Collier - Counsel, Barclays Global Investors Canada Ltd.

Anthony R.Davidson - Investment Dispute Representation

Philip Gallo - Vice President and Associate General Counsel, Goldman Sachs & Co.

Ann Marshall - President, James P. Marshall Inc.

Colman O'Brien - President, BayStreet Direct.com Inc.

Colleen Parrish - Plan Manager, OPSEU Pension Trust

Brian Peters - Vice President and Director, RBC Dominion Securities

Rene R.Sorell - McCarthy Tétrault

Michael J.Trebilcock - Faculty of Law, University of Toronto

F. Michael Walsh

At present the group is embarked on the assessment phase of the project, including:

- Identifying sources and quality of financial advice and information available to consumers;
- Gathering data regarding market failure for retail level advice, and distortions due to conflicts of interest;
- Identifying industry marketing trends and the impact of technology driven phenomena – low cost of stock trades, mass availability of information, potential for direct access to trading systems – on democratization of traditional securities markets, convergence of providers structurally and geographically;
- Assessing the relationship between the nature and quality of advice and commercial goals of salespersons, advisers, and their employers, and the effect of institutional and individual conflicts of interest;
- Assessing any perceptual mismatch between investors' and regulators' expectations of the industry and the regulatory regime;
- Identifying and analyzing current legal and ethical rules governing advice and client- salesperson/advisor relationship; and
- Identifying and assessing present investor protection objectives and regulatory concerns and identify any weaknesses in current model, determine appropriate role for regulators.

The project hopes to have an issues paper for the Five Year Review Committee this fall. For more information, please call **Julia Dublin**, Legal Counsel, General Counsel's Office (416) 593-8103.

OSC Takes Part in International Internet Surf Day

The Ontario Securities Commission, in conjunction with other members of the International Organization of Securities Commissions (IOSCO), took part in an International Internet Surf Day on March 28, 2000. This event aimed at increasing investor protection and confidence in the integrity of capital markets.

The OSC was one of twenty-one securities regulators from eighteen countries around the world who co-ordinated their efforts to identify securities and futures fraud and abuse on the Internet. Regulators concentrated on fraudulent solicitation of investors, manipulation, the circulation of false or misleading information and insider trading.

During the surf day, over 220 staff members from the 21 participating authorities visited over 10,000 sites totalling nearly 1,000 hours of global participation. Of these sites, approximately 1,000 were identified for follow-up review, 400 sites involving cross border activity. The review is now underway and could result in enforcement action.

The OSC's enforcement branch indicated that 5 staff members surveyed a total of 257 web sites. From this, they identified a number of web sites dealing primarily with possible unauthorized offerings of securities, several in connection with offshore banking and investment services. The majority of offerings appeared to overstate the potential earnings while giving little or no mention of risk or suitability.

For more information please contact, **Colin McCann**, Investigator, Enforcement Branch, (416) 593-8285

Investor Education Week

Securities administrators and industry organizations across Canada marked the 3rd Annual Investor Education Week Campaign from April 10-14th. The campaign theme was "Markets in the 21st Century".

The campaign's initiatives included the following :

- The CSA sponsored a three week campaign promoting awareness among young people about investments and savings on MuchMusic/MusiquePlus. Viewers were encouraged to learn more by visiting *www.muchmusic.com* and linking with *www.osc.gov.on.ca*
- The April issue of Fifty-plus Magazine (CARPNews) carried a feature, "Technology and the Capital Markets". The advertorial will be serialized on *www.fiftyplus.net*
- The April 10th edition of Macleans Magazine featured a supplement sponsored by the members of the Investment Funds Institute of Canada. An article on Investor Education Week was the lead.

- Public Seminars addressed topical issues such as market access in the 21st century; suitability; and investment scams and frauds;
- The OSC's virtual town hall meeting will be broadcast on cable television, reaching a potential 1.5 million households;
- The Investment Funds Institute of Canada hosted an event with David Brown, OSC Chair as Keynote Speaker on April 10th.; and
- The Toronto Stock Exchange held its second annual Investor Forum at Stock Market Place. Exhibits were sponsored by the Canadian Bankers Association, The Institute of Canadian Bankers, Investment Dealers Association, The Investment Funds Institute of Canada, The Investor Learning Centre and the OSC.

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

OSC To Create Investor Education Foundation

The OSC is creating the Investor Education Foundation funded by monies collected in OSC enforcement settlements. The Foundation, expected to be in place later this year, will support initiatives designed to deepen the knowledge and sophistication of Ontario's investing public.

The Foundation will work to raise the level of investment awareness through educational products and support, industry and community partnerships, and research. It will be managed by a Board composed of representatives from the OSC, the financial sector, and educational experts.

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

(2000) 23 OSCB April 14 Page 2682

OSC Provides Relief from Suitability Requirements

In order to meet the needs of investors who use "discount" or "electronic" trading, the Canadian Securities Administrators will grant relief from suitability obligations on an application basis to dealers who only provide trade execution services for their clients.

In order to protect investors, the CSA will impose several conditions on these dealers. These include:

- The dealer must operate as a legal entity or business unit that limits activities so that it does not provide advice or recommendations on the purchase or sale of securities;
- The dealer must not compensate individuals on the basis of transactional values; and
- The dealer must receive from the client a written informed acknowledgment that no advice or recommendation will be given and that no determination of suitability will be made.

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

(2000) 23 OSCB April 14 Page 2683

OSC Finalizes Conditions for TSE's Demutualization

The OSC has signed the Recognition Order establishing the terms and conditions for the operation of The Toronto Stock Exchange Inc. (TSE Inc.).

As part of its demutualization process, on April 3, 2000, TSE Inc. became a for-profit corporation under the Business Corporations Act, having received all regulatory and governmental consents. The OSC's Recognition Order, developed in consultation with TSE Inc., sets out the terms and conditions for TSE Inc. and was published on April 7th.

The Recognition Order includes annual independent reviews of the TSE's computer systems operations.

The Recognition Order includes annual independent reviews of the TSE's computer systems operations. The TSE is commencing the first annual review immediately and it will be completed in late spring. The review will ensure TSE Inc. has in place and is following appropriate documented processes for the operation of its key trading related systems.

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

(2000) 23 OSCB April 7 Page 2491

Defaults in Complying with Financial Statement Filing

The OSC has published for comment OSC Policy 57-603, Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements. The proposed Policy outlines the Commission's revised approach to issuers who are in default of the requirements of the Act to file annual and interim financial statements.

The fundamental change in practice encompassed by the Policy is that in circumstances where a Defaulting Reporting Issuer provides alternate information to the marketplace as described in the Policy, the Commission will, for a period not exceeding two months, generally not impose a cease trade order on all trading in the issuer's securities (referred to as an Issuer Cease Trade Order in the Policy). Instead, a cease trade order will be imposed on trading in the issuer's securities by its officers, directors, and insiders (referred to as a Management and Insider Cease Trade order in the Policy). The Policy provides that the two month period may be extended in certain circumstances where a Defaulting Reporting Issuer is the subject of insolvency proceedings.

The Commission's views as to the content and filing of certain documents and disclosure which should generally be filed by any issuer subject to a Management and Insider Cease Trade Order are set out in the Policy.

Where a Defaulting Reporting Issuer provides alternate information to the marketplace as described in the Policy, the Commission will impose a cease trade order on trading in the issuer's securities by its officers, directors, and insiders.

Sections 3.1 and 3.5 deal with an announcement of a default and an announcement that the default has been corrected. A default announcement is issued at the time the issuer goes into default, and a default correction announcement is issued at such time as the issuer remedies the default. Furthermore, default status reports which are dealt with in section 3.2, communicate ongoing developments in the affairs of the Defaulting Reporting Issuer. These reports would generally be issued at least every two weeks during the period of default. In order to facilitate the issuance of a Management and Insider Cease Trade Order, section 3.1 deals with keeping the Commission informed regarding the reporting issuer's officers and directors and those persons who served as such during the period covered by the financial statements which are the subject of the default, as well as those insiders who are known to the issuer. The Commission's view that an insolvent issuer should provide the Commission and the market with information it is required to provide to its creditors under the applicable insolvency legislation is set out in section 3.3. Finally, section 3.4 deals with any unaudited financial information which may be issued by a Defaulting Reporting Issuer during the period of default.

The Policy notes that the Commission will post on its web site, and periodically publish in the Bulletin a list of Defaulting Reporting Issuers prefaced by an investor alert related to the implications of a reporting issuer being in default.

The Canadian Securities Administrators are developing a similar National Policy. If and when adopted, the National Policy would replace the Policy.

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

(2000) 23 OSCB March 31 Page 2368

Supreme Court Decision Prompts Amendments

A number of amendments to the *Securities Act*, the Regulation under the *Securities Act*, and the Regulation under the Commodity Futures Act came into effect on March 1, 2000. These amendments stemmed from the Supreme Court of Canada decision in M. v. H. in 1999.

On May 20, 1999, the Supreme Court of Canada decided in M. v. H. that the exclusion of same-sex partners violates the Canadian Charter of Rights and Freedoms. The Court noted that its decision "may well affect numerous other statutes." Amendments to the *Securities Act* received royal assent on October 28, 1999 as part of Bill 5, *Amendments Because of the Supreme Court of Canada Decision in M. v. H. Act, 1999*.

The amendments to the Securities Act are to the definition of "associate."

Bill 5 amended the Family Law Act so that its provisions governing support obligations apply in the same way to same-sex partners as they do the opposite-sex partners. It also amended many other statutes. The amendments to the *Securities Act* are to the definition of "associate" and to the seed capital exemption from the Act's registration and prospectus exemptions.

The definition of "associate" contained in the Regulation under the Commodity Futures Act was amended to have same definition of "associate" in the *Securities Act*, which also applies to the use of that term where used in the Regulation under the *Securities Act*. In addition, Item 5(a) of the Uniform Application for Registration/Approval, Form 4 under the *Securities Act* and Form 7 under the Commodity Futures Act, was amended to require disclosure of the name and the nature of employment of any individual with whom an applicant for registration lives in a conjugal relationship.

For the time being, the Registration section of the OSC will continue to use and accept printed Form 4's and Form 7's that do not reflect this revision. Applicants for registration are nonetheless required to disclose the name and nature of employment of individuals with whom they live in a conjugal relationship in completing those forms.

For more information, please call **Ralph Lindzon**, Senior Legal Counsel, Office of the General Counsel, (416) 593-8207.

22 OSCB December 24, 1999 Page 8283

Registrant Regulatory Filings

Staff of the Ontario Securities Commission remind registrants of the regulatory filing requirements imposed on them pursuant to both the *Securities Act* and the Regulation made under the Act. For example, pursuant to section 21.10 of the Act and section 139 of the regulation, most non-SRO members must file annual audited financial statements and other regulatory filings prescribed by the regulations within ninety days after the end of their financial year. Most registrants must also maintain certain minimum capital and other regulatory requirements, as prescribed by sections 107 to 112 of the Regulation.

Staff stress the importance of non-SRO registrants meeting their regulatory filing requirements on a timely and complete basis. Staff are treating regulatory filing deficiencies as a significant issue to be addressed as part of the Commission's objective to strengthen the Compliance-Enforcement continuum.

Consequences of deficient regulatory filings could include the imposition of terms and conditions on a non-SRO registrant or the suspension of registration.

For further information, please contact: **Christina Forster**, Senior Accountant,Compliance, (416) 593-8061, **Elle Koor,** Senior Accountant, Compliance, (416) 593-8077, **Felicia Tedesco,** Senior Accountant, Compliance, (416) 593-8273, **Barbara Fydell,** Legal Counsel, Market Regulation, (416) 593-8253.

Public Filings and Takeover Notices in OSCB

As of Volume 23, Issue 18, the OSC Bulletin will no longer include chapters for Public Filings and Takeover Notices, (Chapters 10 and 14) respectively. This step was taken in order to control the size of the OSC Bulletin. Most of the documents listed in Chapter 10 may be obtained on the SEDAR site, www.sedar.com. Historical document filings, including certain documents filed only in hardcopy to the OSC are obtainable at Micromedia's Document Delivery Centre at (416) 362-5211 ext. 2599 or 1 (800) 387-2689 ext. 2599. For those subscribers who wish to continue receiving Public Filings in the OSC format, Chapter 10 will still be made available on Micromedia's OSC Web (via internet) and OSC Bulletin Plus (CD-Rom). Both of these products are published by Micromedia, a division of IHS Canada under authority of the Ontario Securities Commission.

For more information, please call **Barb Waddell**, Micromedia, 416) 362-5211 ext 2577.

Proficiency Requirements

On May 9, 2000 the Commission approved amendments to IDA Policy 6, Part I Proficiency Requirements. The amendments shorten the training period for Investment Representatives from 90 to 30 days. Investment Representatives are registered salespersons that do not provide advice to clients. The Commission approved implementation of the amendments on an emergency basis. A copy and description of the amendment and the Commission's approval of implementation was published on April 7, 2000.

No comments were received.

Dialogue with the OSC

The Ontario Securities Commission will host **Dialogue with the OSC 2000** on October 31st at the Toronto Sheraton Centre. This annual industry-wide event focuses on the OSC Statement of Priorities as well as major Commission initiatives. The topics will include Redefining Approaches to the Financial Regulatory Framework, Enforcement Issues, Mutual Fund Governance and Accounting Issues.

This year for the first time, a modified version of the Toronto program is being offered in locations across Ontario, including London, Ottawa and Sudbury. Each of the locations will provide an interactive satellite link to Toronto as well as the other sites. Delegates will be able to take advantage of the core program and ask questions of the panelists in Toronto.

A member of the staff of the Commission will also be at each location to conduct an in-person presentation.

The program includes lunch. For more information, contact **Ellis Riley** at (416) 593-7352.

Congratulations

Commissioner Kerry Adams has been elected a Fellow of the Institute of Chartered Accountants of Ontario (F.C.A.). Election to Fellowship, the highest designation that the ICAO confers, recognizing outstanding career achievements and leadership contributions to the community and the profession.

Kelly Yeo has earned the Award of Excellence for outstanding academic achievement in the CSA Course. Her grade placed her in the top one percent among students in Canada, the U.S., England, India and other countries who completed the course in 1999.

Darren McKall has been awarded the Bronze Award from the Canadian Securities Institute in the Conduct and Practices Handbook Course (CPH) for the third highest final grade in the 1999 calendar year.

ACCOUNTING ISSUES

Recent accounting issues relevant to the securities industry.

SEC and Canadian GAAP

In late 1999, staff of the Securities and Exchange Commission in the United States issued two new Staff Accounting Bulletins (SABs), providing guidance on the appropriate application of US GAAP. SAB No. 100 addresses the accounting for and disclosure of certain expenses and liabilities commonly reported in connection with restructuring activities and business combinations, as well as the recognition and disclosure of asset impairment charges. SAB No. 101 addresses the recognition, presentation and disclosure of revenue.

The issues the SABs address also arise frequently in applying Canadian GAAP. Consequently, two questions have been raised with staff in the Office of the Chief Accountant:

Will compliance with the SABs ensure compliance with Canadian GAAP?

Are interpretations other than those provided in the SABs appropriate under Canadian GAAP?

This article briefly discusses these questions.

SAB No. 100

SAB No. 100's guidance on restructuring charges is based predominantly on the criteria contained in FASB Emerging Issues Task Force Issue No. 94-3. These criteria are substantially the same as those contained in Emerging Issues Committee Abstract No. 60, Liability Recognition for Costs to Exit an Activity (Including Certain Costs Incurred in a Restructuring). Accordingly, applying those aspects of the guidance in the SAB that can be related directly to the criteria in EIC No. 60 will generally result in compliance with Canadian GAAP. Indeed, in most cases, when the criteria in EIC No. 60 are applied with due regard to the underlying fundamental accounting principles, it would be difficult to contemplate a reasonable interpretation other than that set forth in SAB No. 100.

In some respects, however, SAB No. 100 introduces new criteria or rules that would not necessarily represent the only reasonable application of EIC-60. For example, the rebuttable presumption that an exit plan should be concluded within one year from the commitment date, while a reasonable application of the principles, is not a constraint that must be met under Canadian GAAP. The specific financial statement disclosures set out in SAB No. 100, while not identified individually in Canadian authoritative literature, may provide useful clarification or further explanation of items in the financial statements and contribute to fair presentation of financial position, results of operations or cash flows. Similarly, inclusion in MD&A of information akin to that described in SAB No. 100 would contribute to providing an understanding of the issuer's performance. Issuers and their auditors are encouraged to consider these aspects of SAB 100 in assessing how to apply EIC No. 60 and the nature and extent of disclosure that is appropriate.

SAB No. 100's guidance on impairment is based for the most part on FAS 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of. There is no direct Canadian counterpart to this standard, although CICA 3060, Capital Assets, contains some guidance on write-downs of capital assets. Some of section SAB No. 100 deals with the appropriate application of FAS 121. In other respects, however, it discusses matters that are clearly relevant to Canadian circumstances and it provides a useful perspective for Canadian GAAP purposes. For example, the guidance related to methods for assessing impairment of enterprise-level goodwill and for estimating future cash flows can be applied in addressing similar issues within the framework of Canadian GAAP.

SAB No. 100's discussion relating to liabilities assumed in a purchase business combination is founded on fundamental accounting concepts that are as applicable under Canadian as under US GAAP.

SAB No. 101

US GAAP contains numerous authoritative pronouncements on specific aspects of revenue recognition that have no direct counterpart in Canada. These pronouncements in many areas, extend the broad principles set out in CICA 3400, Revenue. Canadian accounting practices on specific aspects of revenue recognition have evolved to some degree on an industry-specific basis.

Nevertheless, the fundamental accounting concepts pertaining to revenue recognition are similar under both US and Canadian GAAP. Accordingly, Canadian issuers and their auditors should consider carefully the basis in Canadian authoritative literature for all revenue recognition policies that differ from the interpretations set out in SAB No. 101. Where a policy adopted under Canadian GAAP differs from the requirements of SAB No. 101, and the difference cannot be justified with specific reference to underlying authoritative literature, or to clearly established practice that is consistent with fundamental accounting concepts, staff will be likely to take the view that the policy is not in accordance with Canadian GAAP.

For example, SAB No. 101 addresses certain circumstances in which a company seeks to recognize revenue even though all significant acts have not been completed under the sale transaction. In such cases, revenue recognition would normally be inappropriate under Canadian GAAP.

Canadian issuers that reconcile their financial statements to US GAAP should expect that staff will likely question reconciling items arising from revenue recognition policies.

Staff also notes that the Emerging Issues Committee is currently considering whether to add certain issues arising from SAB No. 101 to its current agenda.

For more information call **John Hughes**, Senior Accountant, Office of the Chief Accountant, at 416-593-3695.

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.

Volunteers Wanted for Financial Planning Proficiency Pilot Test

Four hundred volunteers will write the pilot test for the new Financial Planning Proficiency Examination on October 2nd., 2000.

The pilot test will help regulators "test" the questions for the new examination for individuals offering financial planning advice. The exam will be the cornerstone of the proposed new proficiency standards. Volunteers for the one-day pilot test will receive complimentary lunch, feedback indicating areas of possible weakness, and, subject to approval by the relevant industry organization, continuing education credit. Particularly desired for writing the pilot test are individuals who have recently completed or are near completion of a financial planning course. Many people currently working in the financial services industry will not have to pass the exam, as the proposed standards will include a grandfathering clause for individuals who have completed various programs that test financial planning expertise.

To volunteer for the pilot test or for more information on it, please call **Shelly Starr**, Pilot Test Co-ordinator, (416) 593-8209

System for Electronic Data on Insiders (SEDI)

The Canadian Securities Administrators ("CSA") are currently developing a system to mandate the use of a System for Electronic Data on Insiders (SEDI) which will be implemented by a rule to be adopted as a national instrument by all members of the CSA. The projected launch date for the system is anticipated to be early December 2000. The proposed rule will set out the main requirements and procedures relating to electronic filing of insider trade reports. It will require insiders of all Canadian reporting issuers, and all foreign issuers who have opted in to SEDAR, to file their insider reports using the system. The requirement for insiders to file using SEDI is necessary in order to ensure the viability of SEDI, to promote the efficient handling of insider report filings by the CSA and to ensure that SEDI provides a comprehensive base of information available for access by the CSA, insiders, the general public and other stakeholders.

SEDI will benefit insiders and the market by:

- Permitting an insider to securely file insider trading reports in electronic format over the Internet using commonly available web browsers;
- Permitting an insider to satisfy the legislative requirements of all CSA jurisdictions by filing its report once on the system; and
- Improving public access to insider reports by making such reports available on a web site shortly after they are filed.

The proposed national instrument was published in June 2000 for a 90 day initial comment period.

For more information, please call **Cynthia Rogers**, Senior Legal Counsel, Corporate Finance, (416) 593-8261 or **Ritu Kalra**, Accountant, Corporate Finance, (416) 593-8063.

Uniform Terms of Escrow for IPOs

The Canadian Securities Administrators have developed a revised proposal for uniform terms of escrow that would apply to initial public distributions of securities by prospectus (IPOs). CSA Notice 46-301, published in the March 17 OSC Bulletin, summarizes key elements of the Proposal and highlights changes from an earlier proposal published for comment in 1998.

The CSA will develop and publish for comment a national instrument based on the Proposal. Until a national instrument is implemented as a rule or policy in a local jurisdiction, the current escrow policies in the jurisdiction will remain operative. However, securities regulatory staff will be guided by the Proposal in connection with IPOs for which a preliminary prospectus is filed after the date of the Notice in exercising their discretion to accept escrow arrangements consistent with the Proposal in lieu of escrow arrangements under existing policies. No provision is being made at this time for conversion of the terms of escrow arrangements that predate the Notice.

Much of the framework of the Proposal is derived from the 1998 proposal. Significant changes from the 1998 proposal include:

- Shorter escrow periods and faster escrow releases;
- Simpler escrow classifications for issuers that are based on listing categories of Canadian exchanges;
- An expanded exempt category;
- Changes to the category of "principals" whose securities are subject to escrow;
- Permitted sales to the public by secondary distribution at the time of an issuer's IPO, of securities held by a securityholder that is or would otherwise be a principal, on conditions designed to couple flexibility for principals with full disclosure and fairness to IPO investors; and
- Changes to permitted transfers within escrow.

For more information, please call **Rick Whiler**, Senior Accountant, Corporate Finance, (416) 593-8127.

(2000) 3 OSCB March 17 Page 1936

Disclosure of Changes in Calculating MER

On April 7, 2000 the CSA issued Staff Notice No. 81-306 dealing with Disclosure by Mutual Funds of Changes in Calculation of Management Expense Ratio.

On February 1, 2000, National Instrument 81-102 Mutual Funds came into force across Canada. Section 16.1 changes the method of calculating management expense ratios(MERs) and requires mutual funds to re-calculate MERs for financial periods that ended before the National Instrument came into force. A mutual fund is required to disclose its MER for the last five completed financial years in its financial statements and the simplified prospectus.

Based on comments from The Investment Funds Institute of Canada (IFIC) and fund companies about the difficulty of complying with this, on January 28, 2000, the CSA published for comment amendments to deal with issues concerning MERs.

Via these amendments, the CSA propose to add section 16.3 to the National Instrument, along with a revised section 20.3. Proposed section 16.3 states that the MER calculation in section 16.1 does not apply to the disclosure and calculation of the MER for a financial period that ended before February 1, 2000. Mutual funds will have the option of restating MERs for prior periods in accordance with the National Instrument or disclosing MERs for those periods as calculated in accordance with securities legislation in force as at January 31, 2000.

CSA staff published Notice 81-306 to provide guidance to mutual funds regarding disclosure of the effect of this change to the calculation of MER. CSA staff are of the view that mutual funds must provide consistent disclosure concerning changes in the calculation of MERs in order to assist investors in understanding the change and to assist them in comparing the MERs of different mutual funds. The Notice is published in the April 7 OSC Bulletin.

For more information, please call **Anne Ramsay**, Senior Accountant Investment Funds, Capital Markets, (416) 593-8243.

(2000) 23 OSCB April 7 Page 2476

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.

Amalgamated Income Limited Partnership and 479660 B.C. Ltd.

On April 26, 2000, the Ontario Securities Commission issued a Notice of Hearing and related Statement of Allegations against Amalgamated Income Limited Partnership and 479960 B.C. Ltd. The hearing was held on May 11, 2000 to consider whether to approve a proposed settlement on this matter.

Amalgamated is a limited partnership and reporting issuer in all provinces of Canada. It is engaged in the business of acquiring, holding and trading units of a mutual fund limited partnerships. The general partner of Amalgamated is 479660, a company incorporated under the laws of the Province of British Columbia. 479660 has carried on business as the general partner of Amalgamated since November 18, 1994.

In early 1995, Amalgamated commenced purchasing units in certain limited partnerships. During the material times, Amalgamated breached the requirements of the Ontario *Securities Act* as follows:

- The company failed on several occasions to disclose information with regards to the acquisition of certain Limited Partnerships;
- It failed to file Early Warning Reports, Insider Trading Reports and Annual Filings;
- It failed to honour commitments made to the OSC that would bring its filings up to date; and
- It failed to pay certain filing fees.

On May 11, 2000, the Commission did not approve the proposed settlement, stating that the proposed sanctions were not proportionate to the offences. A further hearing on this matter will be scheduled at a later date.

Norman Maxwell, Antonino Candido and John Dzambazov

On April 14, 2000, the Ontario Securities Commission approved a settlement agreement between Staff and Norman Maxwell, Antonino Candido and John Dzambazov. The settlement agreements relate to a Notice of Hearing and Statement of Allegations which were issued against Maxwell, Candido and Dzambzov on July 4, 1995.

In the Settlement Agreements each of Maxwell, Candido and Dzambazov admitted that the financial statements of Megalode Corporation, a reporting issuer at the material time, for the periods ended May 31, 1993 and February 28, 1994, were untrue in a material respect. All three respondents also admitted that their involvement in the events leading to the preparation of the financial statements as officers and directors of Megalode or related issuers was contrary to the public interest and violated paragraph 122(1)b of the Act.

In addition, Maxwell and Candido admitted that they had engaged in insider trading of the shares of Megalode contrary to subsection 76(1) of the Act.

The Commission imposed sanctions against Messrs. Maxwell, Candido and Dzambazov. Mr. Maxwell is prohibited from trading securities for a period of ten years from the date of the Temporary Order made against him on January 15, 1996 except that he will be permitted to trade for his personal account in mutual fund securities and securities described in clauses 1 and 2 of the subsection of the Act; he is prohibited from becoming or acting as a director of a reporting issuer for a period of ten years from the date of the Temporary Order made against him on January 15, 1996; and was reprimanded.

Mr. Candido is prohibited from trading in securities for a period of eight years from the date of the Temporary Order made against him on January 15, 1996 except that he will be permitted to trade for his personal account in mutual fund securities and securities described in clauses 1 and 2 subsection 35(2) of the Act; he will resign from all positions he currently holds as a director or officer of a reporting issuers; he is prohibited from becoming or acting as a director or officer of a reporting issuer for a period of eight years from the date of this Order; and was reprimanded.

Mr. Dzambazov is prohibited from trading in securities for a period of six years from the date of the Temporary Order made against him on January 15, 1996 except that he will be permitted to trade for his personal account in mutual fund securities and securities described in clauses 1 and 2 of subsection 35(2) of the Act; he will resign from all positions he currently holds as director or officer of a reporting issuers; he is prohibited from becoming or acting as a director or officer of a reporting issuers for a period of six years from the date of this Order; and was reprimanded.

Mikael Prydz

On March 31, 2000, the Ontario Securities Commission set a date for the hearing of the allegations against Mikael Prydz. The hearing was scheduled on April 13, 2000.

On March 22, 2000, the Commission issued a second Notice of Hearing and Statement of Allegations against Mr. Prydz. The proceeding relates to breaches by Mr. Prydz of undertakings he provided to the Commission and of a Commission order approving a settlement agreement dated February 8, 2000.

Staff alleged Mr. Prydz violated the terms of the settlement agreement and the order of the Commission by failing to remove language from the web site of his employer. In addition, he failed to provide staff with a complete list of investors to give effect to his undertaking to send a letter to all investors. He also sent a letter to investors which contradicted his admissions in the settlement agreement. Finally, staff alleged that Mr. Prydz' conduct demonstrated a complete disregard for the Commission's process.

A proceeding against Mikael Prydz was heard on April 13, 2000. In its decision, issued May 10, 2000, the Commission held that Mr. Prydz "knowingly and intentionally failed to honour the Settlement Agreement which he had entered into voluntarily in order to settle the previous proceedings". The Commission also held that Mr. Prydz showed a disregard for the securities laws of this province and disrespect for the Commission.

The Commission made the following orders against Prydz:

1) He is prohibited from trading in securities for a period of ten years from February 8, 2005. This order is in addition to the cease trade order imposed on him by the Commission on February 8, 2000 for a period of five years;
2) He shall resign all positions that he holds as a director or officer of an issuer;
3) He is prohibited from becoming or acting as a director or officer of any issuer during the period from the date of the Commission's decision until February 8, 2015; and
4) He was reprimanded.

A.C. MacPherson & Co. Inc. and Geno Della Rocca

On March 28, 2000, the Commission issued a Notice of Hearing and Statement of Allegations against A.C. MacPherson & Co. Inc. and Geno Della Rocca. The allegations relate to A.C. MacPherson's conduct in selling shares of two issuers to the firm's own clients during 1996 and 1997. A.C. MacPherson is registered as an investment dealer. Mr. Della Rocca is the president and chief executive officer of the firm.

Staff alleged that A.C. MacPherson's business consisted almost exclusively of acquiring stock in a very limited number of companies and then selling that stock to the firm's own clients. Staff alleged that in the case of two companies, A.C. MacPherson acquired the stock at a significant discount to the market price, then imposed excessive markups on those shares before reselling the shares to its own clients. The firm made a profit of several million dollars in each case.

On April 6, 2000, the Commission approved a settlement agreement between staff and A.C. MacPherson & Co. Inc., and Geno Della Rocca. In approving the settlement, the Commission found that A.C. MacPherson stood in a position of trust with its clients, and in selling stock to its own clients it was required to abide by a high standard of conduct. Imposing excessive markups in the manner admitted by A.C. MacPherson led to a substantial risk that there was a fundamental conflict of interest with its clients. The Commission noted A.C. MacPherson's admission that the firm's conduct was contrary to the public interest. The Commission also noted Mr. Della Rocca's admission that by allowing A.C. MacPherson to engage in this conduct, he acted contrary to the public interest. The Commission reprimanded both parties. The Commission ordered the registration of A.C. MacPherson be suspended effective July 5, 2000, and to wind up its business by that time. The Commission also imposed interim terms and conditions on the firm's registration, to ensure that the firm's affairs are wound up in an orderly manner, and in a way that will offer the best possible protection to clients of the firm.

Mr. Della Rocca is prohibited, for a period of fifteen years, from applying for registration in any capacity with the Commission, or for acting as a director or officer of a reporting issuer. He is also prohibited for the rest of his life from being involved directly in the management of a registrant, and is prohibited for the rest of his life from owning, directly or indirectly, more than a 20% interest in any registered firm. The respondents were ordered to pay $25,000 to the Commission in respect of a portion of the Commission's costs of investigating the matter.

Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall

A judicial pre-trial conference was held on March 24, 2000 in the Ontario Court of Justice proceeding against Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall. The trial in respect of this matter is scheduled for four weeks beginning on October 10, 2000. The pre-trial conference in respect of this matter is scheduled to continue on June 6, 2000.

Craig Jaynes

On March 1, 2000, a Director of the Ontario Securities Commission released her reasons for decision in dismissing an application by Craig Jaynes, a former salesperson at Marchment & MacKay Limited, for registration with a new firm.

In her reasons, the Director noted that the registration of Marchment & Mackay had been terminated by the Commission on August 3, 1999, after a lengthy hearing. Mr. Jaynes worked at Marchment from November 1995 until July of 1999.

At the hearing to consider Mr. Jaynes application, he acknowledged he had repeatedly breached his obligations as a registrant during his time at Marchment. He admitted that when engaged in the sale of principal securities promoted by Marchment, he did not act in his clients' best interests. The Director found that Mr. Jaynes' conduct fell short of that expected of a registrant. Instead of acting in his clients' best interests, he acted contrary to their interests and in a manner intended to further his own economic interests." The Director held that to reinstate Mr. Jaynes as a registrant "despite his inappropriate past conduct and serious breaches of his duties as a registrant...would be to send an unequivocal message to the marketplace that such conduct has little consequence. Such a message would be inconsistent with the Director's obligation to act in accordance with the Commission's investor protection mandate. Mr. Jayne's conduct as a registrant had clear consequences for many of his clients at Marchment. That such conduct should have little or no consequences for Mr. Jaynes, or indeed others who would follow his example and breach their obligations in like fashion is inconceivable..."

Jeffrey Robinson, Peter Robinson and Terence Edward Robinson

On March 1, 2000, the Ontario Securities Commission announced that the Superior Court of Justice (Divisional Court) released its decision and reasons, dismissing an appeal brought by Jeffrey Robinson, Peter Robinson and Terence Edward Robinson.

In May of 1996, after one of the longest hearings in OSC history, the Commission found a number of individuals engaged in a deliberate and contrived scheme involving manipulative or deceptive trading activities in relation to the securities of three public companies. The principal respondent was Jeffrey Robinson, a registered broker at the time. In June 1996, the panel ordered that various exemptions contained in Ontario securities law would no longer apply to the individual respondents for periods ranging from seven years.

Robinson's brother and father were among the other respondents. Those three individuals appealed the Commission's decision.

The appellants claimed that the proceeding against them before the Commission should not have continued after the death of one of the three panel members. The appellants also claimed the Commission applied an incorrect standard of proof, that the evidence did not support the conclusions reached, and that the reasons delivered by the Commission were insufficient.

The Divisional Court found no merit in any of the grounds of appeal raised by the appellants.

RECENT SPEECHES

David Brown at the IOSCO Conference, Sydney Australia, May 17, 2000

The fast-paced development of new products is helping to erase the lines used to separate one financial sector from another. In many countries financial service providers were historically segregated by sector. Companies providing financial products fit clearly and neatly into a specific category: they were banks or insurance companies; they were securities firms or fiduciary estate-management institutions. In Canada, we called them the four pillars, and they were just as unmovable. There was very little overlap in products and services. Cross ownership was prohibited, or at least limited.

But the four pillars have melded together. As financial institutions matured, and in some cases demutualized and became listed companies, they found it necessary to branch out into a broader range of products and services in a continuing drive for growth. Increasingly, financial services are being delivered by conglomerates integrated across sectors, and across borders. It is becoming difficult to say what the core business of a given financial service provider really is.

Insurance companies for example, which used to restrict themselves to selling life insurance or annuities, are now selling policies that have the same economic effect as mutual funds. Banks are offering deposit accounts where the return depends on changes in the price of stock indexes or the value of a specified portfolio of assets. How is that different from a mutual fund?

The people selling the products are also becoming harder to distinguish. Roughly 75 per cent of insurance agents in the Province of Ontario also sell mutual funds. Whether or not they are regulated, and by whom, depends upon what they happen to be selling at a given moment. If it's a mutual fund, the securities regulator regulates them. If it's an insurance-based investment fund, they're regulated by an insurance regulator. Jurisdiction could change during the course of a conversation between agent and client.

In Canada, as in other countries, almost everything about the world of financial services seems to be converging – except the institutions that regulate them. The chasm between the regulatory world and the market is widening, creating regulatory overlap and duplication for financial firms, and gaps in the regulatory network for consumers.

Investors have a right to a regulatory regime that recognizes these new economic and demographic realities. How do regulators address this? I believe that we must assess whether we have the jurisdictional structure, the operating structure, the decision-making capacity, the resources, and even the mindset to regulate effectively in the 21st century – and we must go about making the changes that may be required to ensure our ability to do so.

One of the most important questions facing regulators is: Do we have the jurisdictional structure to deal with financial sectors that are converging? When the regulated sectors are becoming increasingly intertwined, how long can regulators remain separated?

Our host country of Australia dealt with that question by revising its regulatory structure to address convergence ? shifting from specialized regulation divided by sector to across-the-board regulation based on the actual function the regulators fulfill.

There may be little distinction among financial service providers, but there is a great deal of difference between the functions fulfilled by various forms of regulation. The goals of protecting consumers and maintaining the efficiency and integrity of the marketplace are distinctly different from the goal of prudence – reducing the risk of insolvency among financial institutions. The difference between market conduct regulation and prudential regulation can be felt in terms of the role, culture and mindset of the regulator, and its relationship to the institutions it regulates.

Market conduct regulation is based first and foremost on a commitment to transparency: ensuring that everyone has a fair base of information to allow them to make investment decisions. As securities regulators, transparency is part of our institutional DNA. It governs everything we do – including the way we orient staff, and how we communicate with stakeholders.

Prudential regulation, on the other hand, sometimes dictates non-disclosure – or at least delayed disclosure. In Canada, it is proposed that a bank will not be permitted to make public disclosure of the banking regulator's assessment of its financial viability, even if the banking regulator expresses concern. The goal is to prevent a run on the bank, rather than ensure a continuing flow of information to shareholders.

Faced with similar issues, different kinds of regulators respond with totally dissimilar approaches. A market conduct regulator would require immediate disclosure. A prudential regulator would say "not until after you close your doors – or until after we fix the problem".

It's difficult for a regulator to continually demand transparency in one area, but frequently block it in others.

For that reason – with all due respect to the U.K. Financial Services Authority – I believe that trying to consolidate market regulation with prudential regulation would be like merging fire and water; one would consume the other.

But the notion of providing cross-sector market regulation, as practised in this country, is a natural fit. Ontario moved to adopt this approach earlier this month, when the Minister of Finance announced in his budget that he would create a comprehensive financial services regulator. The new structure will combine the Ontario Securities Commission with the insurance and pension regulator, the Financial Services Commission of Ontario.

The new entity will eliminate the mismatch between regulation and reality. Securities, insurance and pension regulators will no longer travel on different paths, no longer duplicating each other, no longer contradicting each other.

A comprehensive financial services authority can ensure a consistent regulatory approach, eliminate public confusion as to who regulates what, offer one-window service for both consumers and providers, enhance the competitiveness of the financial services sector, and improve the overall investment climate.

We have learned a lesson that I believe applies everywhere: financial service regulation must become as integrated as the financial services industry.

Ladies and gentlemen, with more people investing in increasingly innovative ways, regulators can no more afford to become comfortable than those that we regulate. The continual challenge facing us today is to maintain the traditional principles behind regulation, while applying them to a non-traditional world. We've learned the value of integration; next lesson: innovation.

The marketplace is continually changing; our task is to constantly keep in touch with it. Our rulebook of regulations has become entrenched; our role is to relentlessly question whether the old rules still apply. Our economic world is growing, converging, and accelerating; our challenge is to ensure our continued relevance in it.

Thank you.

Remarks of John A. Geller, Q.C. Vice-Chair, Ontario Securities Commission to the Federated Press Securities Compliance Conference

The principal message which I want to leave with you today is that compliance, even if it costs money and may sometimes be difficult, is not something to be considered as an unnecessary imposition by the regulator. Rather, an effective compliance structure is nothing more or less than good business practice, one of the necessary safeguards which must be put in place for the protection of the market participant itself. Just as an effective internal audit system is a safeguard against fraud and defalcation, and operates to protect the financial assets of the registrant or issuer, so an effective compliance system is a safeguard against improper activities which could get the market participant into serious trouble with the regulator. This could also, in the case of a registrant, cause the participant to lose its credibility with its customers, and in the case of an issuer, with its investors and potential investors. It goes without saying that it is much cheaper in every way, to stay out of trouble than to try to get out of trouble once you are in to it...

Compliance and Enforcement are part of a continuum. However, the object of the Commission's compliance activities is not to provide grist for the Enforcement Branch's mills. Of course, if a compliance review reveals egregious practices by a market participant, these will normally be referred by Compliance to Enforcement. But the principal purpose of a compliance review of a registrant is to help the registrant to understand its regulatory obligations, and to bring its practices into compliance. We are convinced that most dealers and advisors want to comply with regulatory requirements. They recognize that an effective securities regulatory system is in the best interests of all market participants. But often, although it is their obligation to understand the rules, they don't fully do so. We understand that, even though we are spending a great deal of time and effort in making our rules clear and unambiguous, they are nevertheless, of necessity, detailed, voluminous and unfortunately, quite complicated. This is why we are also devoting a good deal of time and effort to helping our registrants to understand the rules.

To the extent that the registrant's own compliance activities are not operating effectively or satisfactorily, our Compliance group will point out the gaps. To the extent that a registrant's activities are not in compliance with the law, the Compliance group will point this out as well. The primary objective is to help registrants to be compliant.

If on a follow-up compliance audit, the problems are found not to have been corrected, the registrant can and should expect a referral to the Enforcement Branch. The Compliance group wants to help those who want to be helped. Those who do not want to be helped, or want to help themselves, are another matter.

I would also like to make it absolutely clear that "but everyone does this the same way, so why pick on us" will not be an acceptable defence to non-compliance. We are trying to make it clear that we expect everyone to be in compliance. We recognize that it will take us a while to get around to auditing all of our direct registrants or reviewing the continuous disclosure files of all issuers. In the meantime however, we are not prepared to permit those who have been audited or reviewed to continue to engage in improper practices. Indeed, we publish lists of the deficiencies we find in our compliance audits. As time goes by, we will become less patient with those who fail to correct the sorts of problems which we advise that we are finding and are concerned with.

Market participants tell us that they want a strong, effective regulator which enacts clear, unambiguous and practical rules. This expressed wish is based on the desire on their part to be compliant and for us to make compliance easier by letting them know clearly what is expected of them.

The Commission is dedicated to making the rules clear and "compliance friendly". We are committing considerable resources to our rule reformulation process and we will continue to focus on the need to have rules that are "real world", or in other words, that are comprehensible and achievable.

(OSC, FSCO To Merge)

In a recent letter to market participants from OSC Chairman David Brown, he noted that these changes have resulted in "unprecedented market innovation," but also have "exposed significant gaps and expensive overlaps in our regulatory system." Mr. Brown said that "a single provincial authority will provide a consistent regulatory approach, eliminate public confusion as to who regulates what, offer one-window service for both consumers and providers, and enhance the competitiveness of the Ontario financial services sector." The OSC will continue to consult with industry participants and communicate developments as the merger progresses.

Mr. Brown said that "a single provincial authority will provide a consistent regulatory approach.

Perspectives is published quarterly by the Corporate Relations Branch of
the Ontario Securities Commission.
Perspectives welcomes letters to the editor.

If you wish to be on the mailing list for
Perspectives, please contact us at:

Perspectives,
Ontario Securities Commission,
Corporate Relations Branch,
20 Queen St. West.
Toronto, M5H 3S8
(416) 593-8117