Ontario Securities Commission

Volume 4, Issue 3

Perspectives

FEATURE

Seventh Annual *Dialogue with the OSC* to take place on November 19th and 20th, 2001

The Ontario Securities Commission is hosting the seventh ***Dialogue with the OSC* 2001** on November 19th & 20th at the Sheraton Centre Hotel in Toronto. The rapidly changing nature of the financial services industry in Canada and abroad, the global integration of capital markets, increased technological change, greater investor participation, and the redefinition of the roles and responsibilities of financial services regulators are just some of the main topics to be addressed during this key conference for the securities industry.

Dialogue with the OSC 2001 has enhanced its format by adding an extra half day to provide a wider and more in-depth range of plenary and break-out sessions. The nature and scope of the conference program has also been improved to

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Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

POLICY PROFILE

An overview of policy initiatives in Ontario.

OSC Approves Direct Purchase Plans

The OSC has under section 143 of the *Securities Act* made Rule 32-501 Direct Purchase Plans. The Rule was published for comment on November 17, 2000.

A direct purchase plan is defined as an arrangement operated by or on behalf of a reporting issuer under which a person or company is permitted to purchase securities of the reporting issuer's own issue directly from the reporting issuer; or a marketplace through an administrator of the direct purchase plan.

The Rule will establish a regime that will permit reporting issuers to establish direct purchase plans in Ontario under which an issuer may issue securities directly to investors without the need to sell those securities through a registrant. Safeguards around the use of such plans will be established to provide appropriate protection for investors in the administration of the plans and the promotion of securities offered under direct purchase plans. Three conditions to the regulatory relief, namely relief from the registration requirements of section 25 of the *Act*, have been imposed by the OSC.

First, the administrator of the direct purchase plan must comply with a number of operational safeguards designed to ensure the operational integrity of direct purchase plans. The provisions require the segregation of funds used for investment in direct purchase plans, the segregation of securities issued under direct purchase plans, and that the administrators of the plans maintain proper bonding and insurance and record keeping, and provide investors with statements of account, in relation to such plans. These provisions are designed to replicate the requirements of the Regulations that impose similar obligations on registered dealers. Banks and trust corporations, and other entities that are subject to substantially similar obligations under their governing legislation are exempted from the bonding and insurance, record keeping and statement of account requirements.

Second, the issuer or plan administrator must provide to any person or company purchasing securities through a direct purchase plan a free-standing disclosure statement. This disclosure document, together with a prospectus, should provide investors with adequate information about both the issuer and the securities being purchased, and the risks associated with direct purchase plans, to permit them to make informed investment decisions relating to their purchase through such plans. The text of the disclosure statement is designed to emphasize to the investor that no investment advice is being made in connection with any investment under a direct purchase plan and that the investor is responsible for the investment decisions. This statement must be provided before the investor enters into a binding agreement of purchase and sale relating to a plan; this would typically take place when the investor joins the plan and makes an initial subscription.

Third, for a trade of a security from treasury of the issuer, the investor must be provided with a prospectus relating to the plan.

For more information, please contact **Barbara Fydell**, Legal Counsel, Capital Markets Branch, (416) 593-8253.

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets.

2001 Annual Report is Now Available

The OSC's Annual Report for the fiscal year ended March 31, 2001 is now available to the public.

This year's Annual Report highlights the OSC's leading role at the provincial, national and international levels in responding to the challenges posed by rapid technological advances, increasing integration of global capital markets and changes in the nature and delivery of financial products and services. The report details the initiatives we have taken to tackle these challenges as well as meet our responsibility to provide superior service to market participants. Many of the projects identified represent increased efforts to achieve cooperation and harmonization among securities and other financial services regulators across jurisdictions.

The 2001 Annual Report can be ordered by contacting the OSC's Contact Centre at (416) 593-8314 or (877) 785-1555. It can also downloaded from the OSC Web site at www.osc.gov.on.ca.

Acquisition of the Canadian Venture Exchange by the Toronto Stock Exchange Gets Regulatory Approval

On July 31, 2001, the OSC approved The Toronto Stock Exchange Inc. (TSE) acquisition of Canadian Venture Exchange Inc. (CDNX).

With respect to the OSC, the OSC agreed that no changes were necessary to the TSE recognition order. In addition, it approved two by-law amendments pertaining to the corporate governance structure:

- A requirement that the President of CDNX shall be deemed not to be associated with a TSE Participating Organization.

- A requirement that at least 25 per cent of the members of the TSE Board of Directors will have experience in, or an association with, the Canadian public venture capital market and that they shall collectively provide a broad geographic representation within Canada.

With respect to CDNX, the ASC and BCSC granted new recognition orders for CDNX dated July 31, 2001 with terms and conditions. Consequently, on July 31, 2001, the OSC granted an amended order exempting CDNX from recognition as a stock exchange in Ontario.

The ASC and BCSC issued the new recognition orders on the basis of representations contained in CDNX's application for approval of the transaction and after having obtained from the TSE the representations, undertakings and acknowledgements set out in a letter from the TSE to the ASC and BCSC dated July 30, 2001.

The ASC and BCSC have requested to receive certain information about the TSE that may be relevant to their assessment of CDNX's operations and its financial condition. Since the TSE is recognized as a stock exchange in Ontario and is currently required to provide that information to the OSC, it agreed to provide the relevant information.

For more information, please contact **Susan Greenglass**, Legal Counsel, Capital Markets Branch, (416) 593-8140.

Commission Appointment

H. Lorne Morphy Q.C. was appointed Commissioner of the OSC, effective July 4th, 2001. Mr. Morphy is currently counsel with the Toronto office of Torys. Mr. Morphy is a leading litigation counsel with an outstanding trial and appellate practice. Mr. Morphy has extensive experience in all aspects of litigation, arbitration and mediation and has also participated both as a speaker and a faculty in numerous legal education and training programs. A graduate of Osgoode Hall Law School, Mr. Morphy was appointed Queen's Counsel in 1974 and is a member of the Ontario and North West Territories Bars. He was appointed a Fellow of the American College of Trial Lawyers in 1982.

Staff Appointments

Randee Pavalow was appointed Director of the Capital Markets Branch. A nine-year veteran of the OSC, Randee will provide leadership and co-ordination on policy and operational matters pertaining to the regulation of registrants, investment products, capital markets and clearing and settlement systems. She will oversee numerous key initiatives including the development of policy regarding use of the Internet and rules for Alternative Trading Systems; relief from suitability; the acceleration of the securities clearing and settlement process (T+1); the streamlining of registration categories; transparency for government bond markets; direct purchase plans; risk based approach to compliance and the Investment Funds strategic plan. Randee previously served as Deputy Director of the Capital Markets Branch, Manager of the Market Regulation Team and Chair of the CSA Staff Committee on Y2K. Randee obtained her J.D. from the Temple University School of Law, her B.A. and M.A. (International Relations) from the University of Pennsylvania, Philadelphia. She is a member of the Ontario Bar.

Marrianne Bridge was appointed Manager of Compliance, Capital Markets Branch. Marrianne rejoined the OSC approximately two years ago as a Senior Accountant in Advisory Services in the Corporate Finance branch. In that role, Marrianne worked primarily on project and policy work including the project to harmonize continuous disclosure requirements across Canada for non-mutual fund issuers, SEDAR, an audit of the prospectus review guidelines and screening criteria used by the Corporate Finance branch, screening of prospectuses and the project to revise and rationalize the OSC's fee schedule. Prior to rejoining the OSC, Marrianne worked for over 11 years with the Toronto law firm of Davies, Ward & Beck in the securities practice area. Marrianne obtained her CA designation in 1982 after graduating from the University of Waterloo with a B.Math. She is involved in a committee of the Institute of Chartered Accountants of Ontario and in the work of two Ontario charities.

Cindy Petlock was appointed Manager of Market Regulation, Capital Markets Branch. Cindy recently joined the OSC as a legal counsel in the Capital Markets Branch. In that capacity, she was involved in the development of the TSE and CDNX's Universal Market Integrity Rules, the recognition of the TSE's and the IDA's new SRO regulation services provider, the Securities Industry Committee on Analyst Standards, the first Web site registration exemption application and the CSA staff committee on the acceleration of the securities clearing and settlement process (T+1). Prior to joining the OSC, Cindy worked as a legal counsel for CIBC and as a compliance officer and regulatory counsel for CIBC World Markets. Cindy obtained her B.Math. from the University of Waterloo and her LL.B. from Queen's University. She is a member of the Ontario Bar.

Melissa Kennedy was appointed Manager of Litigation, Enforcement Branch. Melissa recently joined the OSC as a Senior Litigation Counsel in the Enforcement Branch. In that role, she was extensively involved in a widely publicised case of suspected insider trading and appeared in the Superior Court of Justice Commercial Court on a number of occasions. Prior to joining the OSC, Melissa was a partner with the law firm of Kelly Affleck Greene, a litigation law firm in Toronto. In private practice, Melissa conducted a broad range of civil, administrative and criminal advocacy, with a focus primarily on commercial litigation. Melissa obtained her B.A. (Economics) from Carleton University and her LL.B. from the University of Toronto, and was called to the Bar of Ontario in 1989. Melissa is also involved in volunteer and community work. She has been a member of the Board of Directors of TVOntario since 1996, General Counsel to the Ontario Association of Crime Stoppers since 1991, and teaches "Advanced Civil Procedure" at the University of Toronto law school with Mr. Justice Morden of the Ontario Court of Appeal.

Upcoming Speaking Engagements by OSC Commissioners and Staff

SEPTEMBER 20th, 2001
Third Annual Conference
Canadian Society of Corporate Secretaries

Paul Moore, Q.C., Vice-Chair
"Corporate Governance and the Saucier Report: What Regulatory Response is Appropriate?"

OCTOBER 2nd, 2001
Transitioning Towards T+1: Increasing Operations Efficiencies and Minimizing The Risk of Post Trade Transactions (Toronto)
Institute for International Research

Howard Wetston, Q.C., Vice-Chair
"Complying with Regulatory Changes in a T+1 Environment"

OCTOBER 1st & 2nd, 2001
Compliance Audit-Readiness Strategies (Toronto)
Strategy Institute

Antoinette Leung, Senior Accountant, Capital Markets Branch
"Nation-wide Compliance Update: Hear What's New Directly from the Regulators"
Julia Dublin, Senior Legal Counsel, Corporate Finance Branch
"Financial Planning Rule 33-107: Proficiency Requirements"

OCTOBER 11th, 2001
Securities Compliance Conference (Toronto)
Federated Press

Jean-Paul Bureaud, Legal Counsel, Corporate Finance Branch
"Disclosure Standards - Understanding and Guarding Against Selective Disclosure"

OCTOBER 15th, 2001
10th Annual Mutual Funds Symposium (Toronto)
The Canadian Institute

Rebecca Cowdery, Manager, Investment Funds Regulatory Reform
"New CSA Proposals on Mutual Fund Governance: What the New Regime Will Look Like and How Roles and Obligations Will Change"
Anne Ramsay, Senior Accountant, Capital Markets Branch
"Mutual Fund Disclosure: How Are the New Rules Working? What Does the Future Hold?"

OCTOBER 25th, 2001
Financial Statement Analysis (Toronto)
The Canadian Institute

Rose Fergusson, Senior Accountant, Corporate Finance Branch & Viraf Nania, Accountant, Corporate Finance Branch
"Current Issues of Concern in Financial Reporting"

OCTOBER 29th, 2001
New Standards for Corporate Disclosure – Guidance for a Tighter Regulatory Landscape (Toronto)
Infonex

Susan Wolburgh-Jenah, General Counsel
"Selective Disclosure: Examining the Tipping and Trading Prohibitions"

OCTOBER 30th, 2001
Securities Litigation Conference (Toronto)
The Canadian Institute

Joanna Superina, Senior Legal Counsel, Enforcement Branch
"Regulatory Update: The Latest Decisions, Legislative Changes and Expanding Vigilance – What Litigators Need to Know"

NOVEMBER 14th, 2001
4th Annual Canadian Mutual Fund Summit Bullseye 2001 (Toronto)
Institute for International Research
Rebecca Cowdery, Manager, Investment Funds Regulatory Reform
"Update on Regulatory Issues Facing the Mutual Fund Industry"

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The Canadian Securities Administrators (CSA) is the national organization representing the 13 provincial and territorial securities commissions.

Insider Reports Will be Publicly Available on a More Timely Basis Through New Online System

Later this fall, the CSA will be implementing National Instrument 55-102 -The System for Electronic Disclosure by Insiders (SEDI). Under the National Instrument, issuers and insiders will be able to register on SEDI beginning October 29th, 2001 and insiders will be required to file insider reports electronically beginning November 13th, 2001. SEDI is a new, secure Internet-based system that will provide greater convenience to market participants and more timely information to investors about insider transactions.

Insiders of SEDI issuers – essentially all Canadian public companies – will be able to file their reports on the SEDI Web site (www.sedi.ca) 24 hours a day, seven days a week, subject to maintenance requirements. (A SEDI issuer is any reporting issuer, other than a mutual fund, that files disclosure documents electronically through SEDAR, the System for Electronic Document Analysis and Retrieval.)

SEDI was developed for the CSA at a cost of $12.2 million by CDS INC. (a subsidiary of the Canadian Depository for Securities. Ltd.), which also developed and operates SEDAR. Development costs and on-going operational costs will be recouped by an increase to the existing continuous disclosure fee applied to all reporting issuers that are required to file through SEDAR.

Commencing November 13th, 2001, all insiders of SEDI issuers will be required to file their insider reports on SEDI. The reports that must be filed online are substantially the same as the current paper reports. By filing through SEDI, an insider will satisfy the securities legislation of all CSA jurisdictions that have insider reporting requirements. Filing deadlines will be harmonized in all jurisdictions and all insiders will be required to report trades within 10 days of the transaction. Insiders will not be required to pay any filing fees.

An information session will be held on October 15th, 2001 at the Design Exchange (234 Bay Street, Toronto) to help issuers and insiders understand and comply with their new electronic filing requirements. To register for the session or to obtain more information, please phone the OSC Contact Centre at (416) 593-8314 or visit the OSC Web site at www.osc.gov.on.ca.

For more information, please contact, **Ritu Kalra**, Senior Accountant, Corporate Finance Branch, (416) 593-8063 or **Iva Vranic**, Manager, Corporate Finance Branch, (416) 593-8115.

Alternative Trading Systems Will Introduce More Choice for Investors and a More Efficient Marketplace

Provincial and territorial securities regulators have given a boost to domestic capital markets by approving the introduction of Alternative Trading Systems (ATSs), effective December 1st, 2001. ATSs are automated matching systems that bring together orders from buyers and sellers using predetermined, established methods or rules under which the orders interact.

This initiative is designed to increase competition, improve the efficiency of trades and increase liquidity in Canadian capital markets. Regulators have already received expressions of interest from several domestic and foreign-based firms that are interested in establishing ATSs in Canada.

As a result of extensive comments and discussions with market participants, the CSA has distinguished between the equity and fixed income markets for purposes of price transparency and market regulation. These changes have been made to better reflect the historical differences between the fixed-income and equity markets.

To ensure transparency in the equity market, ATSs will be required to provide pricing information to an information vendor for two years. During that period, regulators will request that marketplaces and other industry participants develop and submit to the CSA a plan to consolidate order and trade information for the equity market.

Following extensive discussions with debt market participants, the Bank of Canada, the provinces and the federal Department of Finance, a consensus has been reached to improve the level of transparency for the government and corporate debt market. The CSA has refined the requirements applicable to marketplaces, inter-dealer bond brokers and dealers.

ATSs operating in the equity market will be regulated by a regulation services provider. ATSs trading fixed income securities, inter-dealer bond brokers and dealers will be regulated by the Investment Dealers Association of Canada's (IDA) Policy no. 5, while CSA staff work with the IDA to develop an appropriate long-term regulatory structure.

The ATS rules have been approved by all CSA members and require government approval in some jurisdictions.

For more information, please contact **Tracey Stern**, Legal Counsel, Market Regulation, (416) 593-8167.

NORTH AMERICAN SECURITIES ADMINISTRATORS REPORT

The North American Securities Administrators Association (NASAA) was established in 1919 and is a volunteer organization whose membership consists of 66 state, provincial, and territorial securities regulators in Canada, the United States, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

NASAA Poised to Develop a Comprehensive Investor Education Guide

NASAA's Investor Education Co-ordination Project Group met in Toronto on August 3rd and 4th, 2001. Representatives from the Province of Ontario, the District of Columbia and the States of Idaho, New York and Ohio reviewed various initiatives pertaining to consumer, economic and personal finance education conducted across Canada for Canadian Investor Education Week and in the United States for American Facts on Investing and Savings Month.

The Group also planned the development, production and distribution of a comprehensive guide for jurisdictions that may not be currently providing investor education services but that may wish to in the future. This turn-key guide will provide advice on a wide range of issues including job descriptions and interview questions, media relations tips, funding requirements, content suggestions for outreach material and partnership possibilities.

For more information, please contact **Terri Williams**, Manager, Investor Education, (416) 593-2350.

INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS REPORT

The International Organization of Securities Commissions (IOSCO) was created in 1974 and is comprised of 170 agencies and affiliate SROs who cooperate to promote high standards of regulation in order to maintain just, efficient and sound capital markets.

International Initiative Targets Internet-based Securities Fraud

For a second year in a row, staff members of the OSC's Enforcement Branch took part in the *International Internet Surf Day* coordinated by IOSCO. This multinational effort was conducted on April 23rd, 2001 by securities regulators from around the world to increase investor protection and foster capital market confidence.

The *Surf Day* initiative mobilized the efforts of 41 securities and futures regulators from 35 countries. Internet monitoring by regulators targeted fraudulent solicitation of investors, stock manipulation, circulation of false or misleading financial information and insider trading. During the *Surf Day*, approximately 300 individuals from the 41 participating authorities visited more than 27,000 Web sites, totalling approximately 1,200 hours of global participation. Of these sites, more than 2,400 were identified for follow-up review, including approximately 300 sites that involved cross-border activity. That review is now underway and could result in further investigation and possible enforcement action.

The 21 regulators that participated in last year's *Surf Day* took specific steps to deter future abuse, including investigating and taking action against Internet fraudsters and educating investors about illegal activity via the Internet.

Investigators from the OSC's Enforcement Branch reviewed 447 sites, of which they identified 43 as being of a suspicious nature. Three themes were identified among the sites deemed suspicious: High yield/low risk investment programs; individuals marketing their expertise as professional securities analysts and promoting penny stocks; and individuals offering various offshore/secretive financial services. This second Internet monitoring initiative clearly underscored the OSC Enforcement staff's increasing level of proficiency at utilizing Internet search engines and discussion groups to identify securities-related scams.

IOSCO is continuing its co-operative enforcement efforts to combat the use of the Internet as a means to defraud potentially millions of people. The *Surf Day* is proving to be a creative and effective technique for jointly monitoring and detecting illegal activities on the Internet. This year's significant increase in the number of regulators participating in the *Surf Day* underscores the international regulatory community's commitment to collaborate to address the challenges posed by the Internet.

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

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission.

Air Canada

On July 27th, 2001, the Ontario Securities Commission approved a settlement agreement reached between staff of the OSC and Air Canada. The Commission des valeurs mobilières du Québec also approved a separate settlement agreement reached between staff of the Québec Commission and Air Canada.

In the agreements, Air Canada admits that on October 5, 2000, it disclosed certain material facts to industry analysts and did not disclose those same material facts generally. Air Canada further admits that on the following day, October 6th, 2000, there was a significant decline in the price of Air Canada common shares. The Toronto Stock Exchange contacted Air Canada shortly after the market opened on October 6th, to enquire into an overnight drop in the share price of Air Canada common shares and to confirm the veracity of certain media accounts. Air Canada issued a press release at 3:57 p.m. referencing this event, but did not disclose the same information it had the evening before to the analysts. Air Canada admitted that the press release did not contain the same information that had been disclosed to analysts the previous day.

OSC staff alleged and Air Canada admitted that the disclosure by Air Canada was selective and contrary to the public interest. OSC staff also alleged, and Air Canada admitted, that the selective disclosure by Air Canada was contrary to Air

Canada's own disclosure policy and was in breach of its listing agreement with the TSE, and was therefore contrary to the public interest.

Air Canada has agreed to a total payment of $1,000,000, $500,000 to be payable in each province. Further to the Ontario settlement agreement, Air Canada will submit to a review by its auditors for each of the next four quarters to ensure compliance with applicable securities law, the TSE Company Manual and Air Canada's own disclosure policy, as each relates to selective disclosure. These reviews will be provided to Air Canada and the OSC and thereafter publicly disclosed. The OSC also reprimanded Air Canada.

In addition to the total $1,000,000 payment, Air Canada agreed to pay $80,000 to the OSC for costs of investigating this matter.

Buckingham Securities Corporation

On July 26th, 2001, the OSC made an application to the Ontario Superior Court of Justice for the appointment of BDO Dunwoody Limited as Receiver and Manager of Buckingham Securities Corporation. Following the hearing, the Court appointed BDO Dunwoody as Receiver and Manager of Buckingham.

At a hearing before the Commission on July 20th, 2001, the OSC extended the Temporary Order made on July 6th, suspending the registration of Buckingham and prohibiting trading in any securities by Buckingham, Lloyd Bruce, the President and compliance officer of Buckingham, David Bromberg, a salesperson and a director of Buckingham and Harold Seidel.

As stated in the Temporary Order issued on July 6th, Buckingham has a capital deficiency of at least $1 million as at May 31st, and Buckingham has failed to segregate securities held for its clients as required under Ontario securities law.

The Temporary Order further states that securities owned by clients of Buckingham are held in an account or accounts in the name of Buckingham with the following brokers: Rampart Securities Inc., W.D. Latimer Co. Limited, Canaccord Capital Corporation, BMO Nesbitt Burns Inc., Bear, Stearns & Co. Inc., Dundee Securities Corporation and Laurentian Bank Securities Inc. (collectively referred to as the "Brokers.") Buckingham has liabilities in relation to some of the accounts and it appears that securities owned by clients are being used as security for such liabilities. The Commission also extended the Temporary Order that trading by the Brokers cease, on the term that trading cease by the Brokers only in respect of securities held in an account or accounts in the name of Buckingham with each of the Brokers.

The hearing of the matter before the Commission has been adjourned.

Sohan Singh Koonar, Sports & Injury Rehab Clinics Inc., Select Rehab Inc., Shakti Rehab Centre Inc., Niagara Falls Injury Rehab Centre Inc., 962268 Ontario Inc., Apna Health Corporation and Apna Care Inc.

The Ontario Securities Commission has issued a Notice of Hearing and related Statement of Allegations against Sohan Singh Koonar, Sports & Injury Rehab Clinics Inc., Select Rehab Inc., Shakti Rehab Centre Inc., Niagara Falls Injury Rehab Centre Inc., 962268 Ontario Inc., Apna Health Corporation and Apna Care Inc. (collectively referred to as the "Companies"). The allegations made by the Staff of the Commission against the Respondents include the following:

During the period from August 1995 to May 1998, Koonar and the Companies traded in securities contrary to the prospectus requirement contained in section 53(1) of the *Securities Act (Ontario)* and contrary to the registration requirement contained in section 25(1) of the *Act*. As a result of certain illegal distributions, an amount in excess of $1,000,000 was raised from over three hundred investors during the material time.

Koonar and the Companies have failed to account for the funds in excess of the $1,000,000 raised from investors from any of the distributions of securities by Koonar and the Companies. In relation to the funds raised, Koonar and his wife, N.K., directly received proceeds of at least $137,900 from investors. Koonar has failed to provide to Staff an accounting for the use of these funds.

Koonar and the Companies failed to maintain books and records necessary to record properly the business transactions and financial affairs of the Companies.

Further, Koonar made representations to certain shareholders in April, 1998, relating to the future value or price of Apna Care securities for the purpose of effecting further sales of Apna Care securities to investors. At the time Koonar solicited investors for additional funds, Koonar was aware that Staff was reviewing whether Koonar and one or more of the Companies had breached the registration and prospectus requirements of Ontario securities law.

At a hearing on July 13th, 2001 before the Commission, the proceedings against Sohan Singh Koonar, Sports & Injury Rehab Clinics Inc., Selectrehab Inc., Shakti Rehab Centre Inc., Niagara Falls Injury Rehab Centre Inc., 962268 Ontario Inc., Apna Health Corporation and Apna Care Inc. was adjourned to October 24th, 2001, or as soon thereafter as a panel may be constituted.

Arnold Guettler, Neo-Form Corporation and Neo-Form North America Corp.

On July 9th, 2001, the Honourable Mr. Justice Babe of the Ontario Court of Justice sentenced Arnold Guettler to 5 months in jail on each of three convictions under the *Securities Act*. The sentences are to be served concurrently. Neo-Form Corporation and Neo-Form North America Corp. were fined $5,000 in respect of each of three convictions under the *Securities Act* for a total fine of $15,000 against each company.

On February 5th, 2001, the Honourable Mr. Justice Babe of the Ontario Court of Justice found Arnold Guettler, Neo-Form Corporation and Neo-Form North America Corp. (the Defendants) guilty of: (1) trading in securities, namely shares and promissory notes issued by the Defendants, without being registered to trade in such securities contrary to section 25(1) of the *Securities Act*; (2) trading in such securities without having filed a prospectus contrary to section 53(1) of the *Securities Act*; and (3) making representations that the shares of Neo-Form Corporation and Neo-Form North America Corp. would be listed on a stock exchange with the intention of effecting trades in such securities contrary to section 38(3) of the *Securities Act*. The Defendants were found not guilty of giving undertakings as to the future value of the shares of Neo-Form Corporation and Neo-Form North America Corp. to potential investors with the intention of effecting trades in such securities contrary to section 38(2) of the *Securities Act*.

Between October 15, 1994 and January 10, 1997, the Defendants raised in excess of $2 million dollars from the sale of shares and promissory notes to approximately 140 investors by means which the Court found contrary to the *Securities Act*.

Arnold Guettler, Neo-Form Corporation and Neo-Form North America Corp. have served a notice of appeal in respect of these convictions. No date for the hearing of the appeal has been scheduled.

Livent Inc.

On July 3rd, 2001, the Commission issued a Notice of Hearing and related Statement of Allegations against Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol.

At a hearing on September 11th, 2001 before the Commission, the proceeding in respect of Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol was adjourned to December 5th, 2001.

James Frederick Pincock

The Ontario Securities Commission has issued a Notice of Hearing and related Statement of Allegations against James Frederick Pincock. The allegations made by the Staff of the Commission against Pincock include the following:

- During the period from May 1995 to May 1999 (the "Material Time"), James Frederick Pincock ("Pincock") traded in securities, contrary to the prospectus requirement contained in section 53(1) of the *Securities Act* (*Ontario*) (the "*Act*") and contrary to the registration requirement contained in section 25(1) of the *Act*. During the Material Time, Pincock was the President of Britwirth Investment Company, Ltd., and an officer or director of Fulton Park Limited and Wifsta Ltd.. Pincock, Britwirth, Fulton Park and Wifsta have not been registered in any capacity under the Act.
- Pincock received funds in the amount of at least CAD 1.7 million and at least USD 500,000 from approximately 170 investors in Ontario and elsewhere to purchase securities in at least six companies, including, Royal Laser Tech Corporation, Champion Communication Services Inc., Leisure Canada Inc., Indocan Resources Inc., International Menu Solutions Corporation, Pacific Concorde Capital Inc. and Luxell Technologies Inc. (collectively, referred to as the "Companies"). Pincock arranged for the investors to purchase securities in the Companies through a series of pooling or subscription agreements entered into between investors and Britwirth, Fulton Park or Wifsta.
- Subsequent to receiving funds from investors for the purchase of securities in the Companies, Britwirth, Fulton Park and Wifsta, at the direction of Pincock, purchased securities in the Companies. Britwirth, Fulton Park and Wifsta, at the direction of Pincock, then distributed securities in the Companies to the investors who had purchased securities through the Agreements.
- Further, during the Material Time, Pincock, on his own behalf or in his capacity as President of Britwirth, acted as an adviser to investors, or as portfolio manager for the purpose of managing investments on behalf of clients. As stated above, Pincock and Britwirth were not registered in any capacity under the *Act*.

At a hearing on August 22, 2001 before the Commission, the proceeding against James Frederick Pincock was adjourned to December 17, 2001.

Rampart Securities Inc.

By temporary Order dated August 14th, 2001, the Ontario Securities Commission suspended Rampart Securities Inc.'s registration under the *Securities Act*, (the "*Act*") and ordered that Rampart Securities Inc. ("Rampart") immediately cease trading in any securities (the "Temporary Order"). A Notice of Hearing was issued on August 14, 2001 for a hearing commencing on August 29th, 2001 at 10:00 a.m. to consider whether it is in the public interest for the Commission to make an order, *inter alia*, extending the Temporary Order until the hearing is completed, terminating, suspending or restricting Rampart's registration under the *Act* and requiring Rampart to cease trading in securities permanently or for such time as the Commission may direct.

The hearing scheduled for August 29th, 2001 has been adjourned to October 3rd, 2001, and the Temporary Order has been extended to October 3rd, 2001, unless further extended by the Commission. It is further ordered that the following terms and conditions be imposed on Rampart's registration under the Act:

(i) Rampart shall keep in place the monitor agreement with PriceWaterhouseCoopers and the Investment Dealers Association of Canada dated August 16th, 2001;

(ii) Rampart and each of its registered partners, officers and directors shall notify the Director of Capital Markets (the "Director") in writing at least 10 business days prior to Rampart or any of its registered partners, officers and directors commencing any proceeding under *the Bankruptcy and Insolvency Act*, the *Companies Creditors Arrangement Act* or *the Winding Up and Restructuring Act*; and

(iii) Rampart and each of its registered partners, officers and directors shall notify the Director immediately on becoming aware of the commencement of a proceeding against Rampart under the *Bankruptcy and Insolvency Act*, the *Companies Creditors Arrangement Act* or *the Winding Up and Restructuring Act* or any action or proceeding which could result in the appointment of a liquidator, monitor, interim receiver, receiver or receiver manager for the assets or the business of Rampart or any of its registered partners, officers and directors.

CCI Capital

On Friday, July 27th, 2001 at a hearing before the Ontario Securities Commission, the proceedings against the principals of CCI Capital, Ricardo Molinari, Thomas Stevenson, Ashley Cooper, Marshall Sone, Fred Elliot, Elliot Management Inc., and Amber Coast Resort Corporation was adjourned sine die.

2001 ANNUAL REPORT

Introductory message from David A. Brown, Q.C., Chair, Ontario Securities Commission

At the OSC, the past two years have also been a time of active change. During this period, we virtually re-invented the Commission, building an infrastructure that is highly relevant to the markets and a team that understands the roles regulators should - and should not - play in delivering our mandate.

Our successes last year - a number of which are highlighted in Charlie Macfarlane's message - are ample demonstration that the OSC has evolved into a well-regarded body that has instilled a compliance culture in Ontario.

Yet, our responsibilities towards all market participants do not end here. Today, there is one marketplace: the world. The pace of technological change and the convergence of global capital markets have created the ability to invest and raise capital wherever one chooses. Robust, low-cost, efficient capital markets with deep liquidity pools will emerge as the markets of choice. If we want individuals and institutions to choose to invest in Canada, domestic issuers to choose to raise capital here, and our financial services providers to remain competitive, we must be active in shaping local, national and global regulation to achieve those ends.

In short, we must continue to provide a framework in which investors are protected and fair and efficient capital markets can flourish - markets in which participants can place their confidence.

The challenges of the coming year have implications locally, nationally and internationally. The initiatives discussed below are high on our priority list, and must be accomplished along with our enforcement, education and continuous disclosure activities. Some of these initiatives are controversial and may appear to conflict with certain industry business models. We're committed to working closely with all market participants to construct viable, working solutions.

An Issue of Global Financial Stability

Across Canada, at the end of each day, the value of outstanding trades can reach $150 billion. Given the current three-day settlement cycle (T+3), up to half a trillion dollars in securities could be sitting in limbo awaiting settlement. This creates major inefficiencies in markets and poses major risks to financial intermediaries and economic stability.

The United States is striving to cut settlement cycles down to one day (T+1) by 2004. Canada must keep pace to maintain our markets' efficiency, competitiveness and security. This represents a huge commitment in resources, and the OSC expects to play a leadership role among Canadian regulators. Securities settlement systems have also been identified by the International Organization of Securities Commissions (IOSCO) as critical to global financial stability.

Interconnected Markets Require Comparable Disclosure

In this global market, financial reporting takes on new importance. Last year, half of debt and equity financing by Canadian companies was raised in foreign markets. To raise capital in another market, issuers' financial statements must meet the standards imposed by that market. Companies participating in Canada's capital markets prepare their financial statements in accordance with Canadian GAAP. But if Canadian companies choose to access US capital markets, they must also reconcile to US GAAP. Does this impose undue costs and inefficiencies on Canadian companies, and create a disincentive to foreign issuers to access Canadian markets?

The CSA is examining the ramifications of permitting Canadian companies to use US accounting standards without the requirement to reconcile to Canadian GAAP. This focus on common standards reflects the work being done internationally: last year IOSCO approved international accounting standards for cross-border offerings. Similar development is now under way on international auditing standards.

Capital flows globally, but our retail investors continue to invest locally. Ontario investors, like investors in many other jurisdictions, are taking on increased responsibility for financing their own retirement. At the same time, the retail side of the securities industry is increasingly shifting its focus from trade execution to an advisory services/wealth management business. In response to these trends, the OSC has given high priority to a project to review how well our securities regulatory model fits with today's financial services business model.

Improving Governance

Improving governance of mutual funds will be another significant initiative. Today, Canadians have more than $400 billion invested in mutual funds, and it is important to ensure independent oversight of the investment decisions made by those funds.

Currently, there is no formal separation between the management of investment decisions made on behalf of unit holders and the management of the marketing side of the mutual fund. We are concerned about the potential for conflict between what's best for mutual fund unit holders and what's best for the stock price of the mutual fund company.

In the coming fiscal year, the CSA will release a concept paper exploring the need for mutual fund governance that is independent of mutual fund managers. A better governance regime will pave the way for easing or eliminating many current regulatory requirements governing mutual funds. For

(continued on page 10)

Statement from the Settlement Hearing in the Matter of Air Canada

The following excerpt is based on the transcript of the oral hearing, including oral reasons delivered at the hearing, in the matter of Air Canada. While this statement has been approved by the Chair of the panel for the purpose of providing notice of the panel's decision in the matter, only the certified transcript should be relied on as a true record of the proceedings.

Mr. Paul Moore, Q.C., Chair of the Panel:

We look upon this kind of activity very seriously. Our law in Ontario has been longstanding in requiring prompt disclosure of any material change in the affairs of an issuer. This is different than the laws in the United States.

We also have had on our statute books for many years laws against tipping, or treating investors unequally: giving selected information to some investors and not to others; and that has been on our books for many years. [...]

It is also interesting to note that at the Ontario Securities Commission, we conducted a survey in October of '99 of several companies, and 170 companies responded, to find out what the practice was with respect to corporate disclosure policies, with respect to one-on-one meetings with analysts, and so forth. We did find at that time that the practice was not happy.

While that survey was going on, the United States Securities and Exchange Commission came out with their fair disclosure guideline, Regulation FD, dealing with communication with analysts. And I think it is important, in looking at Air Canada's activities here, that although there has been heightened awareness of the problems involved in dealing with analysts, and some debate as to what the law should be in the United States, the situation in Canada is relatively clear.

To help clarify the situation, however, as to what practices are good or not good, the CSA, the Securities Commissions across Canada, have put out proposed National Policy 51-201 as to fair disclosure standards. That policy makes it quite clear that no change in the law is suggested. It reiterates what the law in various jurisdictions of Canada is and suggests various practices that could be followed by companies to keep out of trouble.

We note that Air Canada had and does have a corporate disclosure policy. They have and have had policies in place.

It appears that there were serious errors of judgment made by the people involved in the incident at hand. While that cannot be excused, we do take some comfort from what appears to be a culture of compliance at Air Canada. Nevertheless, because of the seriousness of the infraction, because of the prior statements by the Commission as to the seriousness with which we would regard this kind of situation, and in order to give a clarion call to the street that this kind of activity will not be tolerated, we feel that the settlement agreement, with its sanctions, is appropriate in the situation. [...]

Now that there is a clarion call to the street to watch what happens, I do not want to predict what might come in the future.

(7th Annual Dialogue with the OSC, continued from page 1)

focus on the significant regulatory issues and events that have emerged over the past year as the move towards an integrated Canadian regulatory framework in the global financial marketplace becomes a reality.

The ***Dialogue with the OSC 2001*** conference program offers reporting issuers, registrants and investors alike a unique opportunity to meet OSC staff and acquire insights into the implementation of ongoing regulatory initiatives pertaining to corporate finance, enforcement, and market regulation. Other topics to be dealt with will include significant legal and legislative developments, financial auditing and reporting, the impact of technology on capital markets, the influence of economic trends on securities regulation, corporate governance considerations, investor education and the acceleration of the securities clearing and settlement process (T+1).

Dialogue with the OSC 2001 will also showcase a Capital Markets Information Fair and feature interactive demonstrations of the System for Electronic Disclosure by Insiders (SEDI) and the National Registration Database (NRD).

The cost to attend this event (which includes meals, refreshment breaks and conference materials) is $450. Registration can be completed online by accessing the OSC's Web site at www.osc.gov.on.ca or by calling (416) 593-7352 or (800) 360-0493.

For more information, please contact **Jean-Pierre Maisonneuve**, Corporate Communications Officer, (416) 595-8913.

(Message from David Brown, continued from page 9)

example, a better governance model would allow regulators to treat mutual fund managers the same as pension fund managers, who are required to exercise fiduciary responsibility but are not tied to many of the specific rules to which mutual funds are subject.

Removing Regulatory Borders

This is a small sample of some very large issues we'll be addressing in the coming year and beyond. A common thread is the need to harmonize our efforts with regulators across the country and around the world, and to regulate across similar products and services rather than by traditional sectors.

In this vein, another key focus this year will be the proposed merger between the OSC and the Financial Services Commission of Ontario (FSCO). This new, single entity will provide a more consistent, one-window regulatory system for Ontario's capital markets and financial services industry, and greater protection for investors.

We welcome this new beginning in what we expect to be another year of change in markets here and around the world. I extend my thanks to OSC employees and Commissioners for rising to the many new and ongoing challenges.

Dialogue with the OSC

Developing an Integrated Canadian Regulatory Framework in the Global Financial Marketplace

November 19th & 20th, 2001
Sheraton Centre Hotel, Toronto

CONFERENCE PROGRAM

DAY ONE ~ MONDAY, NOVEMBER 19TH, 2001

12:00 - 13:45 **Reception & Luncheon Speaker**
Sir Howard Davies
Chair, Financial Services Authority, United Kingdom

13:45 - 14:00 **Refreshment Break**

14:00 - 15:15 **Plenary Panel**
Securities Regulatory Issues in International Context
David Brown, Chair, OSC
Sir Howard Davies, Chair, Financial Services Authority, United Kingdom
Nicholas Le Pan, Superintendent of Financial Institutions, OSFI

15:30 - 16:30 **Break-Out Sessions - 1**
Impact of Technology on Capital Markets
Peggy Dowdall-Logie, Manager, Registrant Regulation, OSC

Enforcement
Michael Watson, Director, Enforcement Branch, OSC

Corporate Finance
Kathy Soden, Director, Corporate Finance Branch, OSC

DAY TWO ~ TUESDAY, NOVEMBER 20TH, 2001

08:30 - 09:00 **Introductory Remarks**
Charles Macfarlane, Executive Director, OSC

09:00 - 09:45 **Keynote Address**
David Brown, Chair, OSC

09:45 - 10:30 **Panel of CSA Chairs**
David Brown, Chair, OSC
Douglas Hyndman, Chair, BCSC
Carmen Crépin, Chair, CVMQ
Stephen Sibbold, Chair, ASC

10:30 - 10:45 **Refreshment Break**

10:45 - 11:45 **Plenary Panel**
Acceleration of Securities Clearing and Settlement Process (T+1)
Howard Wetston, Vice-Chair, OSC

Corporate Governance Considerations
Paul Moore, Vice-Chair, OSC

11:45 - 12:45 **Break Out Sessions - 2**
SRO Oversight
Cindy Petlock, Manager, Market Regulation, OSC

Selective Disclosure
Susan Wolburgh Jenah, General Counsel, OSC

Auditing Issues and Financial Reporting
John Carchrae, Chief Accountant, OSC

12:45 - 14:15 **Luncheon Address**
Impact of Economic Trends on Securities Regulation
Randall Powley, Chief Economist, OSC

14:30 - 15:30 **Break Out Sessions - 3**
Mutual Fund Product and Disclosure Issues
Paul Dempsey, Manager, Investment Funds, OSC

Significant Legislative and Judicial Developments
Susan Wolburgh Jenah, General Counsel, OSC

Investor Education
Terri Williams, Manager, Investor Education, OSC

15:30 - 16:30 **Break Out Sessions - 4**
Mergers & Acquisitions/Takeover Bids
Ralph Shay, Director, Mergers & Acquisitions/Takeover Bids, OSC

Mutual Fund Governance
Rebecca Cowdery, Manager, Investment Funds Regulatory Reform, OSC

Continuous Disclosure
John Hughes, Manager, Continuous Disclosure Team, OSC

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