Ontario

ONTARIO SECURITIES COMMISSION

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PERSPECTIVES

WINTER 2002

inside...

FEATURE

New Task Force Will Identify Opportunities for Reducing Regulatory Burden

A Task Force group has been established by the Ontario Securities Commission to identify opportunities to reduce regulatory costs for capital market participants. Its mandate is to pinpoint regulatory activities which create efficiency impediments and generate associated cost impacts that can outweigh their public interest benefits.

The Task Force will canvass a wide range of market participants and OSC staff for their ideas on removing any unnecessary complications in the regulatory process.

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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

LEGISLATIVE UPDATE

Technical Amendments to Provincial Securities Legislation Receive Royal Assent

The Ontario Securities Commission announced recently a number of technical amendments to provincial securities legislation. The amendments to the *Securities Act* and the *Commodity Futures Act* were included in the Ontario Government's *Responsible Choices for Growth and Fiscal Responsibility Act*, which received Royal Assent on December 5th, 2001.

These amendments are part of an on-going process of reviewing legislation to ensure that it continues to meet the needs of investors and the securities industry. The changes have been introduced for the following purposes:

- Harmonize Ontario legislation with the requirements of other provinces, by changing the lapse date for a prospectus from 12 months from the date of the final receipt of the prospectus to 12 months from the date of the prospectus;

- Avoid duplicative regulation by removing the requirement for the Director to review escrow or pooling arrangements which are acceptable to a recognized stock exchange;

- Eliminate legislative impediments to the distribution of proxy materials and information circulars by permitting delivery via electronic means rather than by prepaid mail;

- Clarify when the statutory right of action against an issuer or selling security holder for a misrepresentation in an offering memorandum applies; and

- Make a number of other minor clarifications or corrections to ambiguous wording.

The complete text of the amendments can be viewed at the OSC's Website at www.osc.gov.on.ca/en/Regulation/ontario_securities.html.

For more information, please contact **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245 / swolburghjenah@osc.gov.on.ca.

POLICY PROFILE

An overview of securities-related policy initiatives in Ontario.

New OSC Rule Enhances Equity Financing For Small Businesses

On November 30th, 2001, the Ontario Securities Commission introduced a revamped regulatory framework for private placements. **Rule 45-501** *Exempt Distributions* is designed to provide increased access to exempt market capital for small and medium-sized businesses while maintaining the appropriate level of protection for investors.

Rule 45-501 replaces a number of existing prospectus and registration exemptions with two new exemptions: the Closely-held issuer exemption and the Accredited Investor exemption.

The Closely-held issuer exemption exempts issuers from the registration and prospectus requirement where they are raising up to $3 million, from up to 35 investors, without regard to the sophistication or qualifications of those investors.

The new private placement exemptions included in **Rule 45-501** respond to the Report of the *OSC Task Force on Small Business Financing*. The Task Force was established in June of 1994 and its mandate was to review, and make recommendations in respects of, the Ontario legislative and regulatory framework governing the raising of equity capital by Small and Medium Enterprises (SMEs) from sources other than governments and financial institutions. After an initial consultation and deliberation process, the Task Force released proposals for public consideration and comments in June, 1995. Numerous comments from interested parties were considered and incorporated into the Final Report, which was submitted in October, 1996.

The Accredited Investor exemption exempts issuers from the registration and prospectus requirement where they are raising any amount at any time from persons or companies that meet specified criteria. Accredited investors include most financial institutions, governments and agencies, pension funds, charities, individuals meeting minimum net income or net financial asset thresholds, promoters, certain corporations, and certain mutual funds. Accredited investors also include spouses, parents, grandparents and children of officers, directors and promoters.

For more information, please contact **Margo Paul**, Manager, Corporate Finance Branch, (416) 593-8136 /mpaul@osc.gov.on.ca or **Erez Blumberger**, Legal Counsel, Corporate Finance Branch, (416) 593-3662/eblumberger@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

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

OSC Continuous Disclosure Team Releases Results of First Year of Activities

The Ontario Securities Commission's Continuous Disclosure Team recently issued a report summarizing its activities for the year ended March 31, 2001. A dedicated team was established two years ago to initiate the OSC's Continuous Disclosure Review Program. This initiative reflects the OSC's increasing focus on the secondary markets, where the vast majority of securities trading occurs.

When reviewing a reporting issuer's continuous disclosure practices, the Continuous Disclosure Team examines such materials as the company's financial statements, Annual Information Forms, MD&A, material change reports, proxy circulars, information circulars, press releases, and the issuer's Website, as well as media coverage and other external sources of information.

Some of the highlights of the report, which is titled **OSC Staff Notice 51-706**, include the following activities:

- The team was on track to meet its target of reviewing every Ontario-based reporting issuer, on average, once every four years.
- In approximately one third of the CD reviews carried out, the issuer made a commitment to change some aspect of its accounting or disclosure.
- In three cases, staff required that the issuer's historical financial statements be retroactively changed.

The report also described areas of accounting or financial reporting commonly dealt with by staff members and provided commentary on a range of other disclosure matters. These included revenue recognition, restructuring and impairment charges, earnings and cash flow measures differing from GAAP, material change reports, selective disclosure, and financial reporting in an economic downturn. The report identified a number of key issues that reporting issuers may wish to focus on, particularly as many companies are approaching their year-ends.

In current market conditions, as investors return to a greater emphasis on fundamentals, high-quality continuous disclosure of a company's activities is increasingly important.

For more information, please contact **John Hughes**, Manager, Continuous Disclosure Team, (416) 593-3695 / jhughes@osc.gov.on.ca

OSC Establishes Risk-Based Approach to Compliance

The Ontario Securities Commission has introduced a plan to improve its approach to monitoring market participants, which are defined as advisers and fund managers. The OSC's Compliance Team has been developing a risk-based model, where a market participant's risk ranking will determine the frequency of its field reviews.

The primary purpose of the risk-based model is to ensure that compliance field reviews are focused on high risk market participants and their activities, resulting in more effective and efficient reviews. This approach is intended to achieve a more consistent and progressive form of regulation.

A questionnaire has been distributed to a limited number of market participants, seeking detailed information about their business operations and risk management practices. A revised questionnaire, incorporating any necessary modifications, will be sent to the remaining market participants in Spring 2002. OSC staff will use the management-certified data to assign risk rankings to each market participant, in accordance with the risk assessment model it has developed.

The implementation of the new approach is expected to begin by mid-2002, and will affect approximately 400 firms which provide advisory/portfolio management and fund management services.

For more information, please contact **Marrianne Bridge**, Manager, Compliance Team, (416) 595-8907 / mbridge@osc.gov.on.ca.

OSC Establishes Internet-based List of Defaulting Reporting Issuers

The Ontario Securities Commission has established an **Internet-based List of Defaulting Reporting Issuers** to facilitate greater transparency and improve access to continuous disclosure information.

As required by Ontario securities law, all reporting issuers are required to file continuous and timely disclosure of material information regarding their activities, including filing documents with securities regulators.

Under new **OSC Policy 51-601**, reporting issuers will be placed on the Default List if they fail to comply with the following requirements of Ontario securities law:

- Failure to file annual financial statements;
- Failure to file interim financial statements;
- Failure to file an Annual Information Form;
- Failure to file MD&A;
- Failure to file proxy material, information circular or Form 28;
- Failure to pay fees;

- Filing continuous disclosure documents that contain a significant deficiency.

The introduction of the Default List is expected to enhance confidence in the OSC's practices and processes to promote continuous disclosure and foster fair and efficient capital markets. This new and effective mechanism will enable investors to make more informed decisions. Public availability of the Default List may also encourage reporting issuers to be more careful to avoid default.

The list of defaulting reporting issuers will be updated on a weekly basis. Although every effort will be made to ensure the list is complete and accurate, users are advised to obtain a Certificate of No-Default under section 72(8) of the *Securities Act* (*Ontario*) if they require a definitive statement as to whether the OSC's records indicate that a reporting issuer is in default.

For more information, please contact **John Hughes**, Manager, Continuous Disclosure Team, (416) 593-3695 / jhughes@osc.gov.on.ca.

"Spot the Bull" Quiz Educates Investors about Investment Fraud

The Ontario Securities Commission's **"Spot the Bull or Bear the Consequences"** quiz helps investors determine if their behaviour makes them susceptible to investment fraud.

The interactive quiz is set to upbeat music and asks 44 questions that assess an investor's investment knowledge and behaviours, their comfort with risk taking and fraud vulnerability. Once the questions are completed, a computer program instantly rates and weights the answers and provides participants with rankings of above-average, average or below-average on the three main areas: investment knowledge and behaviour, risk taking and fraud susceptibility.

Investors can then review online or print their results which include further insights into each question they answered, tips on how to change their behaviour to protect themselves from investment fraud, and educational information of value to all investors.

The quiz is part of a continuing commitment by the OSC to protect investors through investor education initiatives. The OSC offers a complimentary Investor Education Kit which includes our new *Protect Yourself from Investment Fraud Checklist*, brochures on topics such as how to choose financial advisers and Internet investing as well as our popular *Step-by-Step Guide to Making a Complaint*. Kits can be requested through the OSC's Contact Centre at 1-877-785-1555. All the information is also available on the Investor Resources section of the OSC's Website at www.osc.gov.on.ca.

For more information, please contact **Terri Williams**, Manager, Investor Education, (416) 593-2350 / twilliams@osc.gov.on.ca.

Investors Provided with More Complete Information about Dealers and Advisers

As of March 2002, the Ontario Securities Commission will provide investors with access to more complete information about their dealers and advisers. The OSC will begin posting on its Website terms and conditions attached to the registration of individuals and firms licensed to advise or trade in securities in the province of Ontario.

The OSC is making this change to allow the investing public to make a more informed decision when selecting their dealers and advisers. This will be a valuable resource for investors to protect themselves.

Terms and conditions are imposed on a case-specific basis where the OSC determines that an applicant is suitable to be licensed, but only if certain restrictions are added to the registration. For example, an individual adviser might be subject to more stringent supervisory control by his or her employer, while a firm might be required to file specific financial reports with regulators on a more frequent basis than other firms.

While a listing of all registered firms is already available on the OSC Website, currently information on registered individuals can only be obtained by phoning the Commission.

Effective March 29th, 2002, the following information will be available on the OSC Website:

- the names of individuals and firms currently registered in Ontario to advise clients or deal in securities;
- the categories in which they are registered (e.g. mutual fund dealers, investment counsel, etc.); and
- terms and conditions attached to their registration.

For more information, please contact **Kristin Heins**, Registration Project Officer, (416) 593-8921 / kheins@osc.gov.on.ca.

Upcoming Speaking Engagements by OSC Staff

February 18th, 2002
Securities Superconference (Toronto)
Canadian Institute

Randee Pavalow, Director, Capital Markets Branch
"Traditional Stock Exchanges and Alternative Trading Systems: The Latest Developments and Implications for Stakeholders"

Susan Wolburgh Jenah, General Counsel
"Selective Disclosure: Avoid Liability for Improper Release of Information"

Michael Watson, Director, Enforcement Branch
"Financial Transactions Under Scrutiny: Enforcement and Prosecution in a New Era"

Ralph Shay, Director, Mergers, Acquisitions & Take-over Bids
"Key Issues Raised by the Chapters Takeovers and Other Recent Mergers & Acquisitions"

INVESTOR E·DUCATION FUND REPORT

The Investor e·ducation Fund (IEF), a not-for-profit corporation affiliated with the Ontario Securities Commission, was set up to develop and distribute educational resources that help people learn to make effective use of financial information as well as the services and advice that the industry offers. It also finances educational initiatives by non-profit, community-based and other qualified organizations.

Investor e·ducation Fund Strengthens Knowledge and Abilities of Current and Future Investors

Funding from the Investor e·ducation Fund was recently awarded to two projects. The first underwrites the development of classroom resources intended to help educators teach high school students about how capital markets work.

Built into Ontario's new four-year curriculum are a number of specific securities-related concepts that secondary school teachers must demonstrate to their senior students. The educational tools being developed will fill a gap in the resources available to teachers to help them explain the regulatory framework governing the securities industry.

Among the materials is an examination of the differences between the court system and the administrative tribunal system convened by the Ontario Securities Commission. Another tool will make use of the OSC publication *A Step-by-Step Guide to Making a Complaint* to illustrate dispute resolution for the Grade 11 Law course.

An amount of $68,000 is being flowed to the Canadian Foundation for Economic Education to develop a series of eight tools. This includes, as a starting point, a *Worksheet*, based on a Tour of the regulator's Website that has already been developed. The *Worksheet* will help meet specific teaching requirements in the Grade 9 and 10 Introduction to Business Courses as well as the Grades 11 and 12 Accounting and Economics courses.

Once completed, the new tools will be downloadable from both the Investor e·ducation Fund Website and the OSC Hey Kids! Site.

The second award totalling $12,500 was allocated to enhance the functionality of the Website (www.sipa.to) of the Small Investor Protection Association (SIPA).

SIPA provides a meaningful service to investors by raising awareness of some of the pitfalls of investing. SIPA is a non-profit organization incorporated in 1999 with the objectives of improving public awareness of the investment industry, and educating individuals about recourse should they have a complaint. In addition to a newsletter for its members, SIPA provides Canadians with news, resources and links to investment industry information.

For more information, please contact **Nancy Stow**, Executive Director, Investor e·ducation Fund, (416) 593-8297 / nstow@osc.gov.on.ca.

To apply for funding, please visit the IEF Website at www.investoreducationfund.ca.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

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

Start-up of New Insider Reporting System shifted to January 21st, 2002

The Canadian Securities Administrators ("CSA") have shifted the date for full implementation of the System for Electronic Disclosure by Insiders (SEDI), the web-based insider reporting system, to Monday, January 21, 2002. Beginning on that date, insiders and issuers must file electronically their insider and issuer event reports using SEDI.

SEDI, located at www.sedi.ca, first went live on October 29, 2001 and was scheduled to become fully operational on December 17, 2001. The date has been pushed back to allow system designers to correct a software application error, and to avoid introducing a new mandatory reporting system during a period when many people are on holidays and the typically high volume year-end filings are due.

Until January 21, 2002, the CSA will either, depending on the jurisdiction, refrain from enforcing, vary the time periods of, or issue blanket exemptive relief from, the relevant provisions of **National Instrument 55-102** *System for Electronic Disclosure by Insiders (SEDI)* and related instruments, requiring issuers to file electronically issuer event reports, and insiders to file electronically their insider trade reports. Until January 21, 2002, insiders should continue to file insider reports in paper format in the same manner as they currently file these reports.

In addition, the Canadian Securities Administrators are delaying full public implementation until January 21th, 2002 to avoid introducing a new mandatory reporting system during a period when many people are on holidays and the typically high volume year-end filings are due. Prior to January 21th 2002, insiders are required to continue filing reports under the current paper system.

Once it is fully operational, SEDI will provide greater convenience to market participants and more timely information to investors about insider transactions. SEDI is an initiative of the Canadian Securities Administrators, the umbrella organization representing the 13 provincial and territorial securities commissions.

For more information, please contact **Winnie Sanjoto**, Legal Counsel, Corporate Finance, (416) 593-8119 / wsanjoto@osc.gov.on.ca or **Jean-Paul Bureaud**, Legal Counsel, Corporate Finance, (416) 593-8131 / jbureaud@osc.gov.on.ca.

Securities Regulators Provided Flexibility to Mutual Funds Affected by Closure of U.S. Markets

Following the terrorist attacks of September 11th, 2001, the Canadian Securities Administrators (CSA) issued orders to assist the domestic mutual fund industry in serving its clients' interests in the wake of the continued closure of U.S. securities and derivatives markets. The orders took effect on September 13th, 2001 and were in place until U.S. markets resumed operations on September 17th, 2001.

The orders provided flexibility to funds that have to determine the prices of U.S. securities in order to calculate the funds' net asset values. Specifically, the orders stated that a fund that had a material exposure to U.S. securities that were not trading (defined as five per cent or more of the fund's total value) could choose to be exempted from having to provide a valuation for the fund while the markets remained closed. If a fund chose to use this exemption, it could not redeem, sell or permit switches in the fund.

Funds that chose not to use the exemption, and funds with less than five per cent exposure to U.S. securities, had to calculate their net asset values by estimating the fair value of their U.S. securities. Investors were therefore able to redeem, purchase or switch units in these funds.

This action was taken by Canadian securities regulators to give mutual fund managers flexibility in determining the best course of action for meeting their obligations to properly value funds and to allow investors access to those funds.

For more information, please contact **Paul Dempsey**, Manager, Investment Funds, (416) 593-8091/ pdempsey@osc.gov.on.ca.

Securities Industry Estimates National Registration Database Could Generate $85 Million in Benefits Over 5 Years

The Canadian Securities Administrators (CSA) recently released a study of the economic benefits of the National Registration Database (NRD) to the financial services industry. The NRD is a Web-based system which will permit dealers and advisers to file their registration forms electronically, making the registration process faster and more efficient.

Currently, all registrations are completed on paper-based forms, and the approval process can take up to 4-6 weeks. It is believed that the NRD, by screening out common deficiencies prior to delivery to the regulator and eliminating the movement of paper, will help reduce the time of the approval process. Furthermore, registrants will only need to submit one application to register in multiple jurisdictions, rather than filing separate forms with each province or territory.

The NRD is an initiative of the CSA, which is comprised of the securities regulators of each province and territory. Every CSA member is participating in this project except Quebec. The NRD is expected to be fully operational, and its use will be mandatory, by the Fall of 2002.

Overall Results of the Study

Based on the responses of registrant firms to a survey, the total economic benefits of the NRD for the Canadian financial services industry are anticipated to be $85 million over a five year period.

The graph shown below compares these total benefits to the projected cost of developing and operating the NRD over the same five year period. One of the motivations for commissioning the study was to ensure that the costs of the NRD, which will be recovered over time through user fees, are justified. The CSA is encouraged to learn that, at this early stage, the benefits of this project are expected to far outweigh its costs.

Cost savings and/or efficiency gains are at the root of the individual NRD features expected by survey respondents to deliver the greatest economic benefits. That is, firms anticipate that these features will either reduce their cash expenditures related to the registration process, lower their labour costs, or free up their employees' time for other activities.

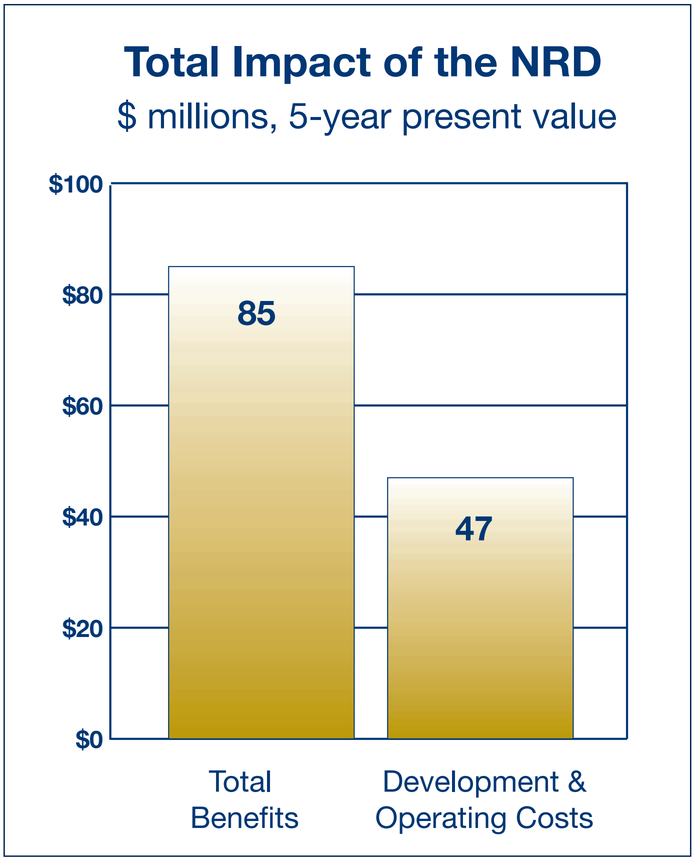
The NRD features valued most highly by firms include:

- the ability to register in multiple jurisdictions with a single submission;
- permanent registration status;
- the ability to print registration applications to support business requirements;
- the retention of certain supporting documents at the firms instead of physical submission to regulators; and
- the use of Electronic Funds Transfer (EFT) for payment of fees.

Results by Size of Firm

Large firms, defined in this study as those with more than 500 registered individuals, expect to realize more than 50% of the $85 million of total benefits. Specifically, large firms anticipate $43 million of benefits, medium firms (defined as those with 51 to 500 registrants) $17 million, and small firms (50 or fewer registrants) $25 million. The sheer volume of registrations filed by some of the larger companies accounts for their substantial share of total benefits.

While large firms foresee greater total benefits, the smaller firms predicted significantly higher benefits when expressed on a "per registrant" basis. For example, according to the survey results, a typical small firm with 10 registrants might expect to realize $22,000 of benefits over five years as a result of the NRD (or $2,200 per registrant). A national firm with 1,000 registrants might realize $264,000 of benefits – a larger total, though significantly lower on an individual basis, at only



$264 per registrant. A typical medium-sized firm can anticipate $634 of benefits per registrant.

The disparity can be explained by economies of scale. Large firms are spreading any company-wide benefits over a vastly greater number of registrants, compared with the small or medium-sized firms. Furthermore, larger firms tend to delegate compliance-related tasks to dedicated teams of employees, who become efficient in their performance. Smaller firms, which may lack the resources to employ specialized staff, often assign registration duties to revenue-generating personnel or even the owner; such firms stand to gain the most from any improvements that make the regulatory process more efficient.

Methodology

In the study, survey respondents were asked to determine the economic benefits of a number of NRD features, by estimating each feature's impact on the entire firm's performance, in comparison to the present registration process. The responses were aggregated to enable a meaningful discussion of the benefits of each feature, and of the NRD as a whole.

Over 700 registrant firms were contacted using registration information from several provinces. A total of 131 firms responded, representing over 47,000 registrants, or nearly half the registrant population of Canada (excluding Quebec). A sample this comprehensive should have an error rate of less than 1%.

For more information, please contact **Randall Powley**, Chief Economist, (416) 593-8072 / rpowley@osc.gov.on.ca.

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.

2nd Annual NASAA Conference held in Toronto on November 5th and 6th 2001

The Compliance Team of the OSC hosted the second annual North American Securities Administrators Association (NASAA) conference on November 5th and 6th, 2001 at the Toronto Marriott Hotel. The conference was attended by regulators from provincial securities commissions which collectively make up the Canadian zone of the NASAA Investment Adviser Zone Project Group.

The NASAA Zone Project Groups have made positive progress in the United States through continuous communication for the purposes of information sharing and the resolution of current issues. Beginning in 2000, the Canadian jurisdictions began organizing their own conference to discuss issues that are more relevant to Canada and its regulatory environment.

Activities at the 2001 Conference included briefings on the *Proceeds of Crime (Money Laundering) Act*, the Draft Report of the Securities Industry Committee on Analyst Standards and the Association for Investment Management and Research's Performance Presentation Standards; workshops on useful guidelines for the detection of illicit activities and on Internet fraud; and presentations on new initiatives such as the OSC's Risk Assessment Model for Advisers and on proficiency requirements and registerable activities for advisers.

Speakers included OSC staff as well as industry representatives and staff from the other Commissions. The conference proved itself as an effective tool in enhancing examination practices through the exchange of ideas, raising the awareness level of regulation issues and improving the communications network among the jurisdictions.

For more information, please contact **Marrianne Bridge**, Manager, Compliance Team, (416) 595-8907 / mbridge@osc.gov.on.ca.

INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS REPORT

The International Organization of Securities Commission (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.

IOSCO Creates a Special Project Team on Co-ordination and Information Sharing

During a regular meeting of the Technical Committee of the International Organization of Securities Commissions (IOSCO) held on October 11th and 12th, 2001 in Rome, a special Project Team was struck to address issues brought to prominence in light of the events of September 11th, 2001 and their aftermath. The team will be led by Michel Prada, President of the French Commission des Opérations de Bourse (COB).

The discussions surrounding this special initiative underscored the quick and well co-ordinated response of financial authorities, markets and market participants to the events of September 11, 2001 and emphasized the importance of sound contingency planning and co-operation among industry and regulators.

IOSCO members also discussed their respective regulatory reactions to the September 11th, 2001 events. They also discussed their co-operation on related enforcement matters. As part of these discussions, IOSCO identified two areas for further inquiry by the Project Team: extended co-operation for information-sharing and client identification.

The cross-border effects of September 11th, 2001 highlighted the need for co-operation and information sharing in order to investigate financial crime. Information sharing should encompass securities regulators from all jurisdictions, as well as law enforcement and other authorities. The Project Team will examine the capacity and willingness of securities regulators to implement high quality standards on information sharing and the expansion of the existing IOSCO standards to include other financial regulators and law enforcement authorities.

Client identification by securities firms is critical to the ability to combat financial crime. The Project Team will explore the components of a robust identification regime, taking into account practical implications for the industry.

Using its existing network of contacts and building on its experiences, IOSCO is ensuring the preparedness of the securities community and the ability of regulators to combat financial crime involving securities markets.

For more information, please contact **Tanis MacLaren**, Head of International Affairs, (416) 593-8259 / tmaclaren@osc.gov.on.ca.

ENFORCEMENT REPORTS

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

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.
The hearing before the Ontario Securities Commission, in respect of 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., is scheduled for April 15, 16, 17, 18 and 19, 2002 commencing at 10:00 a.m.

Arlington Securities Inc. and Samuel Arthur Brian Milne
At a hearing before the Ontario Securities Commission (the "Commission") on November 12, 2001, the proceeding commenced by Notice of Hearing dated October 11, 2001, in respect of Arlington Securities Inc. ("Arlington") and Samuel Arthur Brian Milne ("Milne"), was adjourned to be heard on February 4, 6, 13, 14, and 15, 2002 commencing at 9:30 a.m. The Commission previously made an Order on October 24, 2001 extending a Temporary Order imposing certain terms and conditions on the registration of Arlington and Milne, the sole registered officer of Arlington, pending the conclusion of the hearing.

Arlington's anniversary date for renewal of registration was November 13, 2001. Pursuant to Commission Rule 31-507 Arlington was required to be a member of an SRO recognized by the Commission by its anniversary date. Arlington's registration has not been renewed, and consequently, the registration of Arlington and its salespersons, partners and officers has been suspended since November 13, 2001.

The Commission has also directed a freeze of all assets of Arlington under the control of Arlington and certain financial institutions. The Commission's application to the Superior Court of Justice for an Order to continue the freeze is scheduled to be heard on November 16, 2001. Staff of the Commission continues to review this situation.

Allegations Related to Principal Trading by Arlington with its Clients at Excessive Mark-Ups.
The allegations relate to Arlington's conduct during the period from 1996 to 2000 in relation to its acquisition of stock for its own account in eight issuers (the "Eight Issuers") trading on the Canadian Dealing Network Inc. (the "CDN"), and after October 2, 2000, through the Canadian Venture Exchange ("CDNX"), and the re-sale of that same stock to its clients (referred to as "principal trading") at excessive mark-ups. Staff of the Commission allege that during the material times, in excess of 90% of Arlington's revenue was earned from principal trading and derived from trading stock of the Eight Issuers. Staff allege that in the case of the Eight Issuers, Arlington either held stock in its inventory or held options to acquire the stock in the issuer immediately prior

to the commencement of principal trading in the stock with its clients. Staff further allege that Arlington acquired stock in the Eight Issuers at prices significantly lower than the selling price to its clients. It is alleged that Arlington re-sold this stock to its own clients at mark-ups above acquisition costs ranging from approximately 146% to approximately 337%, which mark-ups were excessive.

Staff further allege that during the four year period 1996 to 2000, gross profit (i.e. sale price less direct cost of sales) earned from principal trading in stock of the Eight Issuers was approximately $13.8 million.

Particulars of the principal trading are set out in the Statement of Allegations.

Staff allege that in engaging in this conduct Arlington and Milne failed to deal fairly, honestly and in good faith with their clients and have not acted in the best interest of their clients and otherwise acted contrary to the public interest.

Michael Goselin, Irvine Dyck, Donald McCrory and Roger Chiasson

On November 9, 2001, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Statement of Allegations of Staff of the Commission against Michael Goselin ("Goselin"), Irvine Dyck ("Dyck"), Donald McCrory ("McCrory") and Roger Chiasson ("Chiasson").

Staff of the Commission allege that Goselin, Dyck, McCrory and Chiasson participated in illegal distributions of securities, namely units in several North George Limited Partnerships and promissory notes in Lionaird Capital Corp., and acted contrary to the public interest by, among other things:

a. selling a security for which no preliminary prospectus or prospectus was filed with the Commission and no prospectus exemption was available;
b. failing to provide their clients' access to substantially the same information that a prospectus filed under the Act would provide;
c. misrepresenting to their clients, the nature and quality of, and the return to be realized on, the investments;
d. recommending and selling speculative investments unsuitable for their clients; and
e. engaging in high pressure sales tactics including advising investors to borrow funds or redeem mutual funds to invest.

The first appearance in this matter is scheduled for January 30th, 2002, 9:00 a.m., at the Commission, Main Hearing Room, 20 Queen Street West, 17th Floor, Toronto.

Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.

The Ontario Securities Commission (the "OSC") has issued a Notice of Hearing and related Statement of Allegations against Teodosio Vincent Pangia ("Pangia"), Agostino Capista ("Capista") and Dallas/North Group Inc. ("Dallas North").

The allegations made by the Staff of the OSC include the following:

- During the period between March 1995 and February 1996, Pangia, Capista and/or Dallas North sold shares of E.P.A. Enterprises Inc. ("EPA") to members of the public. In total, at least 452,000 EPA shares were sold to about 90 members of the public. The proceeds of these sales exceeded 1.38 million dollars.
- Pangia was the President, Chairman and Chief Executive Officer of EPA, and the President and a director of Dallas North. Capista was the Secretary, Treasurer and/or a director of Dallas North.
- At all material times, neither Pangia nor Capista were registered to trade in securities as required by section 25 of the Securities Act (Ontario)(the "Act").
- The trades in EPA shares were effected with the assistance of three employees of TD Evergreen. The trades were "off book"; they were not recorded on the books and records of TD Evergreen.
- The purchasers of EPA shares were directed to make cheques payable to Dallas North or a company by the name of Envirovision International Inc.
- Pangia and Capista operated and controlled Dallas North by virtue of their positions with that company.
- In at least fifteen of the EPA sales transactions between June and August, 1995, Pangia traded in EPA shares contrary to section 53 of the Act. The trading was a distribution for which a preliminary prospectus and prospectus should have been filed, and receipts obtained from the Director of the OSC. No preliminary prospectus or prospectus were filed, and no receipts obtained.

The OSC has ordered that a prehearing be held on Tuesday, April 30th, 2002, and that counsel attend before the Commission on Monday, May 6, 2002 to set a date for the hearing of this matter.

Stephen R. B. Bingham, Susan McKenna Grant and William J. McClintock

Staff of the Ontario Securities Commission ("Staff") has requested that the Ontario Securities Commission (the "Commission") withdraw a Notice of Hearing ("Notice of Hearing") dated May 23, 1996, issued pursuant to section 127 of the Securities Act, R.S.O. 1990 c. S.5, as amended (the "Act"), in respect of Stephen R.B. Bingham ("Bingham"), Susan McKenna Grant ("Grant") and William J. McClintock ("McClintock"), having regard to the considerations referred to below.

Prior to the issuance of the Notice of Hearing, a parallel proceeding was commenced by the Securities and Exchange Commission of the United States of America (the "SEC") in respect of a complaint filed on April 16, 1996 in the United States District Court for the District of Massachusetts in respect of Bingham, Grant and McClintock, captioned SEC v. Bingham, et al., No. 96 - 10793EFH (the "SEC Proceeding"). The Notice of Hearing states that particulars of the allegations made by Staff are contained in the Complaint filed in the SEC Proceeding.

On June 25, 1996, Staff and Bingham, Grant and McClintock jointly requested an adjournment of the proceeding before the Commission to await the outcome of SEC Proceeding referred to above. In connection with the adjournment, each of Bingham, Grant and McClintock gave an undertaking to the Commission that, for the duration of the adjournment, they would not apply to become a registrant or an employee of a registrant, nor become an officer, director or insider of a reporting issuer until the conclusion of this proceeding.

In respect of the SEC Proceeding, Bingham and Grant each consented to the entry of the Final Judgment of Permanent Injunction, Disgorgement, and other Equitable Relief against each of them, as more particularly set out in the Orders of the United States District Court for the District of Massachusetts dated March 28, 1999, and McClintock consented to the entry of the Final Judgment of Permanent Injunction, Disgorgement and other Equitable Relief against him, as more particularly set out in the Order of the United States District Court for the District of Massachusetts dated July 4, 2000.

Having regard to the concluded SEC Proceeding as more particularly described above, and the undertaking made by Bingham, Grant and McClintock, as described above, effective since June 25, 1996, Staff of the Commission requested that the Notice of Hearing be withdrawn effective October 2, 2001. In connection with this request, the Commission has withdrawn the Notice of Hearing effective October 2, 2001, and the undertaking given by each of Bingham, Grant and McClintock expires effective October 2, 2001.

Livent Inc. et al

The hearing before the Ontario Securities Commission in respect of Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol,is adjourned from December 5, 2001 to February 15, 2002, commencing at 9:30 a.m.

RECENT SPEECHES

Excerpts from the Keynote Address by David Brown, Q.C., Chair, Ontario Securities Commission, Dialogue with the OSC 2001, November 20th, 2001.

I am delighted to get the chance to speak to so many key participants in the financial sector. This event is an important opportunity for the OSC. Regulators throughout Canada are addressing the need to reflect the changing nature of our financial markets, and you are the people who understand these needs most intimately. […]

It is clear that the nature of regulation is undergoing necessary change – because the nature of financial services is undergoing dramatic change. The current downturn of the industry serves only to underline the need for regulatory reform. It makes it more important than ever to control costs and reduce inefficiencies – and that includes reducing the regulatory burden. […]

Canada's system of provincial and territorial securities regulators has two serious flaws:

- A lack of uniformity, stemming from 13 separate sets of rules.
- And a multitude of decision-makers, in the form of 13 separate sets of securities regulators.

The lack of uniformity makes Canada's regulatory requirements a patchwork quilt. There are wide differences from province to province – making for a system that is more expensive, complicated and inefficient than it needs to be.

The multitude of decision-makers presents problems in the form of costs of dealing with the separate commissions, the costs of supporting them through fees, the need to accommodate potential differences among them, and the lost opportunity costs of dealing with more than one decision-maker.

To address these problems, the Canadian Securities Administrators have launched two projects.

First, we're trying to get uniformity in the 13 sets of securities legislation. This spring, we established a national task force made up of commission chairs, vice-chairs and commissioners to draft a model statute – based on the best-in-class provisions from each of the statutes across the country. Steve Sibold, the Chair of the Alberta Securities Commission, is leading the project. The task will not be simple. There are substantial differences; many provisions are outdated.

Second, we are attempting to address the problems created by having multiple decision-makers. Under our current system of mutual reliance, regulators in the non-principal jurisdictions agree to rely on the advice of the staff of the principal jurisdiction. This has reduced our response time considerably on prospectus filings and applications for exemptive relief. However, because each regulator must still make and publish decisions, we don't achieve the cost savings and efficiencies that would result from having only one decision-maker.

We are exploring asking the legislatures to permit securities regulators to delegate to each other the authority to make specified types of decisions. For example, all non-principal jurisdictions could delegate to the principal jurisdiction the authority to receipt a prospectus on behalf of all. Similar authority could be delegated for granting discretionary relief or other decision-making functions.

These are important initiatives, and we must pursue them. Harmonized securities laws will reduce confusion. Delegation will increase efficiency. Both should produce cost savings.

But in the end we will still be supporting 13 regulators – with the capacity to apply the rules differently to similar situations; with the capacity to make new rules that don't conform; with the capacity to revoke the delegation. In fact, the reason to preserve 13 separate regulators would be to ensure the ability to act separately. If they were all to act as one, then why not have only one?

And 13 separate commissions by definition implies duplication of resources, with the resulting incremental costs and inefficiencies.

But once these two steps are in place – a model statute and delegated decision-making – we would then be positioned to take the issue to the final stage: a single commission administering the rules in a single consistent way. […]

Given Canada's political realities, **a national regulatory body need not be a federal body**. With our constitutional distribution of powers, and regional sensitivities, it would make more sense for the provincial governments to take the lead, with Ottawa's cooperation and participation. The provinces have the expertise and culture to oversee the operation of financial markets.

The logical result would be a Pan-Canadian commission, created by the Provinces and the territories. Responsibility for administering securities laws would be delegated by each to the Pan-Canadian Commission.

Much work needs to be done to craft such a Commission. It is necessary to deal with such issues as addressing unique needs of regions, the composition of the Commission and the appointment process, its physical location or locations, and the ways in which regulations are crafted and passed.

But the result would be national cohesion under provincial and territorial responsibility.

Those provinces who had moved to integrate their regulators into a single entity would contribute an integrated capability to a Pan-Canadian system. This would permit other provinces to delegate not only securities regulation, but also the regulation of insurance, pensions and credit unions. A Pan Canadian market conduct regulator.

This should be our goal. We should accept nothing less. We should tolerate no initiatives inconsistent with this goal.

Summary of Remarks by Sir Howard Davies, Chairman, Financial Services Authority, United Kingdom, Dialogue with the OSC 2001, November 19th, 2001

In almost all developed countries the role of financial regulators has become more prominent and more important in recent years. But does this mean that regulation is becoming more detailed and more intrusive, adding more cost to financial transactions – cost which is ultimately paid by the consumer?

In my view that is not the right way to look at it. What we have seen, over the last two or three decades, is a gradual retreat by governments from direct control of financial markets and a replacement of that direct control by market regulation. So, in the UK, thirty years ago we had controls on the quantity of lending, on individuals' freedom to make their own pension provision. We had an equity queue for issuers, managed by the Bank of England, and a series of rigid controls on the type of business which different financial institutions could undertake.

Almost all of those direct interventions in the market have been abandoned, replaced by a much freer and more flexible market structure, but with a stronger referee, armed with a series of different coloured cards to deal with those who engage in foul play.

The nature of that referee function has also changed in many countries and continues to change. There are three principal drivers of change. First, and often the most important, is 'events'. In other words, scandals and failures which reveal problems in the regulatory system and create the need for change. It is always vital to learn the right lessons from regulatory events; they reveal previously unsuspected flaws. But it is equally crucial not to engage in a knee-jerk response which can bring huge costs for those firms which did not make the same mistakes.

(New Working Group for Reducing Regulatory Burden from page 1)

The Task Force is comprised of three leading experts:

- **Morley P. Carscallen**, F.C.A., is a former senior partner of Coopers & Lybrand (now PricewaterhouseCoopers) and former Vice-Chair of the Ontario Securities Commission.
- **W. Keith Gray** is a retired Chair and CEO of TD Waterhouse and TD Evergreen, and a former Director of the Montreal Stock Exchange and the Canadian Depository for Securities.
- **J. Garnet (Gar) Pink**, Q.C. is a corporate consultant and former senior partner of Tory Tory DesLauriers & Binnington (now Torys), where he practised corporate and securities law.

The Task Force's mandate is to make recommendations which can be implemented solely by the OSC and do not require legislative changes or involve regulators in other jurisdictions. It will communicate its recommendations to the OSC on an ongoing basis, and expects to complete its consultation in 2002.

For more information, please contact **Stephen Paglia**, Law Clerk to the Chair, (416) 593-2316 / spaglia@osc.gov.on.ca or **Nayla Mitha**, Law Clerk to the Chair, (416) 593-2328 / nmitha@osc.gov.on.ca.

The second key driver of change has been a trend away from self-regulation and towards statutory regulation. Some regret this shift, but there is considerable logic in it. Some self-regulatory systems have fallen foul of the competition authorities, for good reasons. And in other cases the essential glue needed for the good system of self-regulation – a strong sentiment of mutual interest among the members of the club – is much less evident today.

And that links to the third driver, which is the gradual, or in some cases dramatic breakdown of the previous barriers between different sub-sectors of the financial industry. There was a time in London when there was, for example, an identifiable club of fund managers, all structured in similar ways, and typically in independent businesses. Now the industry is much more diverse, much of it is owned by large financial groups, and the economic and market interest of those differently shaped groups are very diverse. The same has happened in many other sectors. In these circumstances there are strong arguments for a statutory regulator charged with maintaining a level playing field and ensuring that regulation is undertaken in a way which does the least damage to competition.

Given the overlapping constituencies of the different sub-sectors of the market, there is also a strong general argument for regulatory integration, though the nature of that integration may vary from country to country, in response to differing market structures.

So, in ten days time, the UK will finally have shifted from one of the most complicated systems of financial regulation in the world, with ten overlapping and sometimes competing regulators, to a single Financial Services Authority. We hope that experience, which is being closely watched by other countries, will prove an interesting lesson for those who are contemplating further reform of their own systems.

Perspectives is published quarterly by the Communications Branch of the Ontario Securities Commission.

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