Ontario
ONTARIO SECURITIES COMMISSION
Volume 5, Issue 2

PERSPECTIVES

inside...

SPRING 2002

FEATURE

Securities Regulators Aim to Reshape Mutual Fund Regulation

Securities regulators are proposing to reshape mutual fund regulation in Canada by establishing a flexible and seamless system designed to respond to the needs of the industry and to better protect investors.

Following extensive research and industry consultations, the Canadian Securities Administrators (CSA) have published a concept proposal outlining a comprehensive framework for regulating the mutual fund industry. The proposed framework offers fund managers the flexibility of operating within a broader set of regulatory principles, rather than conforming to detailed, prescriptive rules and wide-ranging prohibitions.

The new framework would address the potential conflict of interest inherent in most mutual fund structures, by shifting the regulatory focus from the fund itself to the mutual fund manager, its relationships and activities.

The centrepiece of the new framework is a requirement for mutual funds to establish a **governance agency** to oversee the actions of the mutual fund manager. Composed of

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THE OSC WEBSITE, WWW.OSC.GOV.ON.CA INCLUDES:
INFORMATION ON THE OSC; INVESTOR INFORMATION; RULES AND REGULATIONS; ENFORCEMENT INFORMATION AND MARKET PARTICIPANTS.

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

ONTARIO SECURITIES COMMISSION REPORTS

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

New Publishing Relationship Established with Carswell

The Ontario Securities Commission is establishing a new business relationship with Carswell, a Thomson business, for publishing OSC information. By teaming up with a publishing partner clearly recognized as a leader in the industry, the OSC intends to provide more accessible and better organized information that supports Canada's diverse financial marketplace.

The weekly ***OSC Bulletin*** will be the initial focus of Carswell's services. The OSC Bulletin is an important part of the OSC's communication strategy that also delivers information through the OSC Website (www.osc.gov.on.ca) and provides assistance through the OSC Contact Centre. The ***OSC Bulletin*** provides a formal record of the OSC's regulatory activities. It will continue to be produced in multiple print and electronic formats to meet consumer needs.

Carswell is Canada's leading provider of specialized information and electronic research solutions to the legal, finance and human resources markets. Since 1864, Carswell has provided integrated information in a range of formats including books, looseleaf services, journals, newsletters, CD-ROMs and online. The Thomson Corporation is a leading provider of integrated information solutions to business and professional markets worldwide.

Current subscribers to the ***OSC Bulletin*** will soon receive detailed subscription information by mail from the OSC and Carswell. Those interested in finding out more about our securities publications and products can contact the OSC's Inquiries & Contact Centre, (416) 593-8314 / 1 (877) 785-1555 (Toll Free) / or Carswell's Customer Relations Department, (416) 609-3800 / 1 (800) 387-5164 (Toll Free).

For more information, please contact **Frank Switzer**, Director of Communications, Ontario Securities Commission, (416) 593-8120 / fswitzer@osc.gov.on.ca or **Lynn Koza**, Manager of Corporation Communications, Carswell, (416) 298-5181 / lynn.koza@carswell.com.

Market Regulation Services Inc. Recognized as a Self-Regulatory Organization

On January 29, 2002, the Ontario Securities Commission recognized Market Regulation Services Inc. (**RS Inc.**) as a self-regulatory organization. **RS Inc.** will operate as a regulation services provider under the Alternative Trading System (ATS) rules and will administer and enforce trading rules for the marketplaces that retain its services.

Alberta, British Columbia, Manitoba and Quebec also recognized **RS Inc**. as a self-regulatory organization.

The **RS Inc.** recognition has three components:

1. **Recognition order with terms and conditions** – The recognizing regulators issued orders recognizing **RS Inc**. The recognition is subject to terms and conditions such as corporate governance, fees, and the capacity to perform regulatory functions.
2. **Rules and Policies** – The recognizing regulators approved the Universal Market Integrity Rules (UMIRs). **RS Inc**. will administer and enforce the UMIRs in the marketplaces for which **RS Inc**. acts as the regulation services provider.
3. **Oversight program** – The recognizing regulators established an oversight program for **RS Inc**. under a memorandum of understanding (MOU). The MOU includes a joint rule protocol for the review and approval of rules, the filing of significant changes to **RS Inc.**'s operations, and the performance of examinations of **RS Inc.**'s regulation services.

TSE Amended Recognition Order

The Toronto Stock Exchange Inc. (TSE) intends to retain **RS Inc**. as a regulation services provider. As a result, the Commission issued an order amending the TSE's recognition as a stock exchange to amend the requirements concerning regulation services.

For more information, please contact **Cindy Petlock**, Manager, Market Regulation, (416) 593-2351/cpetlock@osc.gov.on.ca or **Susan Greenglass,** Legal Counsel, Market Regulation, (416) 593-8140/sgreenglass@osc.gov.on.ca.

OSC Meets Asian and European Securities Officials

Officials from Asia and Europe took part recently in briefing sessions organized at the OSC. A delegation from the **Thailand Securities Institute**, headed by Vice-President Naowarat Bumrunshit, discussed with Capital Markets Branch staff regulatory issues pertaining to the professional conduct of registrants. The Thailand Securities Institute was established in 2000 by the Thailand Stock Exchange as a centre for continuous and innovative education and training programs geared towards securities industry practitioners.

Mr. Christophe Caillot, an Enforcement Officer with the **Commission des Opérations Boursières** (Securities Commission of France), met with staff from the Enforcement Branch to discuss matters arising from financial investigations. Mr. Caillot is Secretary of IOSCO's Standing Committee on Enforcement and the Exchange of Information and of its Special Project Team on Cooperation.

For more information, contact **Jean-Pierre Maisonneuve,** Corporate Communications Officer, (416) 595-8913 / jmaisonneuve@osc.gov.on.ca.

Staff Appointment

David Gilkes was appointed **Manager of Registrant Regulation**, **Capital Markets Branch**. Prior to joining the OSC, David was a Senior Manager in the Investigative and Forensic Accounting Group of the Deloitte & Touche office in Toronto. David worked on a wide variety of assignments in numerous industries including the financial services industry. Before joining Deloitte & Touche, David had a 15-year career with the Competition Bureau of the Government of Canada. David has extensive experience in managing projects and teams, conducting investigations, and performing economic and competitive analyses in a broad cross section of industries. David obtained his B.A. (Honours), Economics from McMaster University and his M.A., Economics from Carleton University. His areas of specialization are investigative financial and economic analysis, industrial organization and regulated industries. David is a member of the Association of Certified Fraud Examiners.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

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

Securities Regulators Address Concerns About Non-GAAP Earnings Measures

The CSA recently issued guidance to reporting issuers who publish earnings measures other than those prescribed by Generally Accepted Accounting Principles ("GAAP"). **Staff Notice 52-303: Non-GAAP Earnings Measures** was published on January 7, 2002 to address concerns about companies' widespread use of unconventional earnings measures. It sets out CSA staff's expectations of issuers who choose to publish measures of earnings other than those prescribed by GAAP ("non-GAAP earnings measures").

Earnings Measures Issues

Over the past year, CSA staff noticed an increasing number of issuers publishing non-GAAP earnings measures. Issuers commonly include such measures in press releases but may also include them in Management's Discussion and Analysis ("MD&A"), prospectus filings and occasionally financial statements. Most non-GAAP earnings measures start with GAAP net income, and by removing selected items, present a more positive picture of financial performance. Examples of non-GAAP earnings measures used by issuers include "pro forma earnings", "operating earnings", "cash earnings", and "earnings before one-time charges" to name a few. These terms lack standard, agreed upon meanings and may be used differently by different companies and even by the same company from period to period.

CSA staff are concerned that investors may be confused or even misled by non-GAAP earnings measures, particularly when they are not accompanied by adequate disclosure.

CSA Staff's Expectations

The CSA Staff Notice reminds issuers of their responsibility to ensure that information they provide to the public is not misleading. Selective editing of financial information may be misleading if it results in the omission of material information. **Issuers are cautioned that regulatory action may be taken if issuers disclose information in a manner considered misleading and therefore potentially harmful to the public interest.**

CSA staff expect issuers who choose to publish non-GAAP earnings measures to define the measures clearly, to demonstrate their relevance and to ensure that they do not have the potential to mislead investors. Specifically, issuers should:

- state explicitly that the non-GAAP earnings measures do not have any standardized meaning prescribed by GAAP and are therefore unlikely to be comparable to similar measures presented by other issuers;
- present the GAAP results **prominently**;
- describe the objectives of the non-GAAP earnings measures and discuss the reasons for excluding individual items;
- provide a clear quantitative reconciliation from the non-GAAP earnings measures to the GAAP financial statements;
- limit the number of non-GAAP earnings measures provided;
- present the non-GAAP earnings measures on a consistent basis from period to period.

CSA staff consider that it is not appropriate to present non-GAAP earnings measures in the GAAP financial statements.

Since the Staff Notice was published, staff have noticed a general improvement in the quality of disclosures by companies that publish non-GAAP earnings measures. Some issuers, while addressing most of the points listed in the Staff Notice, are not sufficiently describing the "objective" of the non-GAAP earnings measures being used. Issuers should be able to communicate the purpose of the non-GAAP earnings measures used and what it is suppose to represent, in order to demonstrate its relevance to an investor. Part of explaining this objective is providing the investor with the reasons for excluding the individual income or expense items from the GAAP results in arriving at the non-GAAP earnings measures.

CSA staff encourage issuers to review the Staff Notice in its entirety.

For more information, please contact **Cameron McInnis**, Senior Accountant, Chief Accountant's Office, (416) 593-3675 / cmcinnis@osc.gov.on.ca.

New Oil and Natural Gas Disclosure Regime Set Out in Proposed National Instrument 51-101

New standards of disclosure for oil and natural gas issuers were recently published for comment by the Canadian Securities Administrators. The new regime, set out in proposed **National Instrument 51-101**, is intended to improve the quality, consistency and comparability (among issuers, and over time) of public disclosure by reporting issuers in the "upstream" oil and gas sector (as distinct from "downstream" refining and marketing activities).

Background

The new standards were developed by the **Alberta Securities Commission** (ASC). In June 1998, the ASC established an **Oil and Gas Taskforce** (**Taskforce**) to make recommendations for disclosure requirements for public oil and natural gas issuers. Taskforce members were drawn from a variety of industry and professional sectors including small and large oil and gas producers, reserves evaluators, investment dealers, accounting and legal advisers and regulatory staff.

The **Oil and Gas Taskforce** issued its recommendations in January 2001. The **Taskforce** recommended the use of reserve terminology estimation procedures developed by the **Canadian Institute of Mining, Metallurgy and Petroleum** (CIM), and applied reserves evaluation standards that are being developed by Canadian members of the **Society of Petroleum Evaluation Engineers** (SPEE).

Overview

The proposed National Instrument would establish a new continuous disclosure regime, akin to the standards required for financial reporting and centered on mandatory annual disclosure. Under the proposed standards, public oil and gas companies would engage independent reserves evaluators to report on their oil and gas reserves and related future net revenue estimates.

The information to be disclosed each year would include, as part of "reserves data", "proved" reserves and related cash flow estimated using "constant" prices, applying US standards that are very similar to the corresponding standards recommended by the **Taskforce**. The annual reserves data disclosure would also apply made-in-Canada standards for disclosure of "proved" and "probable" reserves (and related cash flow) estimated using "forecast" prices.

The reserves data would be supplemented by annual disclosure of other information relating to the issuer's reserves, production, properties, facilities and related activities.

Continuous Disclosure Standards

Annual Disclosure:
- Provision of independent reserves evaluations;
- Filing of summary of the evaluations and other oil and gas information;
- Filing of independent evaluator's report and management report;
- Provision of additional information when "prospects" are disclosed.

Material change disclosure:
- Discussion of the effect of material changes on information contained in the annual filings.

All Disclosure:
- Requirements and restrictions designed to ensure quality and consistency for all;
- Public disclosure (e.g. consistency with the annual filings and prescribed terminology).

Prospectuses:
- Elimination of current oil and gas disclosure items, substitution of the new annual filings and material change disclosure.

Materiality Standard:
- Disclosure of information that is not material to a reasonable investor's investment decision would not be required.

Directors:
- Explicit responsibilities (e.g. approve reserves disclosure, review other disclosure);
- Encouragement of independent "reserves committees" (similar to audit committees).

Benefits

This proposal is intended to provide significant benefits both to investors and to the oil and natural gas industry. Enhanced and more consistent information about a reporting issuer's oil and gas reserves, properties and facilities should help investors make more informed investment decisions. Better disclosure by public oil and gas companies should improve their capacity to raise capital and bolster confidence in Canada's capital markets.

Public comment on proposed National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities, should be submitted by April 30, 2002.

For more information, please contact **Deborah McCombe**, Chief Mining Consultant, Corporate Finance Branch, (416) 593-8151 / dmccombe@osc.gov.on.ca.

Interim Requirements for Insiders and Issuers Affected By Suspension of SEDI Operation

The Canadian Securities Administrators have asked CDS INC., the developer and operator of ***SEDI*** (***System for Electronic Disclosure by Insiders***), to suspend the operation of the system, due to technical difficulties. This suspension of SEDI will permit the required diagnostic and repair work to be performed. The CSA and CDS INC. will make every effort to remedy the situation as quickly as possible. It is not known at this time when SEDI will be back on-line. The CSA will continue to update issuers and insiders on this matter.

During the period that SEDI's operation is suspended, insiders and issuers (or their agents) will be unable to access SEDI. This notice explains the interim requirements during the suspension for insiders and issuers affected by SEDI's unavailability, as well as certain transitional requirements when SEDI becomes fully operational. The CSA will issue a notice sufficiently in advance of SEDI becoming fully operational to notify insiders and issuers of that date, as well as additional steps they will need to take to resume filing on SEDI.

Insiders

Insider Reports

Insiders are still required to comply with their insider reporting obligations. Insiders of SEDI issuers can file their insider reports in paper using Form 55-102F6, in accordance with Part 3 of National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* ("NI 55-102"). Insiders who do so will not have to refile these reports in SEDI when SEDI becomes fully operational. Please note that Form 55-102F6 has new codes both in respect of nature of transaction and type of ownership.

Insiders of SEDI issuers who filed reports in reliance on the temporary hardship exemption since January 21, 2002, will not have to refile their reports in SEDI when SEDI becomes fully operational.

Insiders of SEDI issuers will resume filing insider reports on SEDI on the date SEDI becomes fully operational.

Amendments to Existing Insider Profiles

Insiders will not have to file amendments to existing insider profiles during the suspension. Insiders will have 10 days from the date SEDI becomes fully operational to file these amendments in SEDI.

Issuers

Amendments to existing issuer profile supplements

SEDI issuers will not have to file amendments to existing issuer profile supplements during the suspension. SEDI issuers must file these amendments as soon as possible after the date SEDI becomes fully operational.

Please note that SEDI issuers should continue to update their SEDAR profiles.

New issuer profile supplements

Issuers who become SEDI issuers during the suspension will not have to file issuer profile supplements during the suspension. These new SEDI issuers will have three days from the date SEDI becomes fully operational to file their issuer profile supplements.

Issuer event reports

SEDI issuers will not have to file issuer event reports for any issuer events that occur during the suspension.

For more information, please contact **Cynthia Rogers**, Senior Legal Counsel, Corporate Finance Branch, (416) 593-8261 / crogers@osc.gov.on.ca or **Winnie Sanjoto**, Legal Counsel, Corporate Finance Branch(416) 593-8119 / wsanjoto@osc.gov.on.ca.

Securities Regulators Survey Investment Dealers' Procedures Relating to Off-Shore Accounts

The results of a national survey conducted by four provincial securities regulators indicates that Canada's investment dealers have been revising their policies and procedures to address regulatory concerns about the use of off-shore accounts to circumvent legislation governing financial transactions.

On October 30, 2001, staff of the British Columbia, Alberta, Quebec and Ontario securities commissions requested information from member firms of the **Investment Dealers Association of Canada** (IDA). The requests dealt with two main issues:

- the number of client accounts held by the member firm which originate from each of the countries or territories identified as current or former non-cooperating jurisdictions by the Organization for Economic Co-operation and Development's **Financial Action Task Force on Money Laundering** (FATF), and
- the member firm's policies and procedures for discharging account opening, "know-your-client" and account supervision obligations for these accounts.

The survey responses indicated that approximately 13,000 accounts located in FATF non-cooperating jurisdictions are serviced by IDA member firms. The vast majority of the firms have less than one per cent of their total client account base located in FATF non-cooperating jurisdictions, but for firms with large retail operations, this percentage may represent several hundred accounts.

Although member firms state that they have adopted policies and procedures to comply with existing rules and regulations governing account opening, "know-your-client" and account supervision obligations, few firms have adopted specific controls on opening accounts from off-shore jurisdictions. In addition, the responses indicated that member firms have adopted disparate practices and procedures to comply with existing regulations. For example, only some firms stated that they make detailed inquiries regarding the source of a client's funds and the identities of persons or companies who may have a financial interest in the client's account.

Almost all member firms said that they have revised or are revising existing policies and procedures in light of such regulatory developments as the *Proceeds of Crime (Money Laundering) Act*, recent Canadian tribunal decisions concerning "know-your-client" obligations, proposed changes to IDA regulations governing account opening and supervision, and changing international standards.

Member firm responses and the findings of the questionnaire will be sent to the appropriate regulators to assist in risk-based oversight and compliance reviews. Regulators will also use the findings for national and international discussions about the level of account opening due diligence needed to mitigate the risks from servicing client accounts, particularly accounts located in FATF non-cooperating jurisdictions.

For more information, please contact **Michael Watson**, Director, Enforcement Branch, (416) 593-8156 / mwatson@osc.gov.on.ca.

JOINT FORUM REPORT

The Joint Forum of Financial Market Regulators is comprised of representatives of the Canadian Association of Pension Supervisory Authorities (CAPSA), the Canadian Council of Insurance Regulators (CCIR), the Canadian Securities Administrators (CSA), the Canadian Insurance Services Regulatory Organizations (CISRO) and the Bureau des services financiers (BSF). The mandate of the Joint Forum is to facilitate and coordinate the development of harmonized cross-sectoral and cross-jurisdictional solutions to financial services regulatory issues.

Joint Forum of Financial Market Regulators Develops Strategic Plan

The **Joint Forum of Financial Market Regulators** has developed a ***Strategic Plan*** for the period 2002 – 2005 to address the transformations that challenge Canada's financial regulatory and supervisory framework. Provincial agencies responsible for the regulation of the securities, pensions and insurance sectors collaborated to identify strategic priorities and specific initiatives designed to protect consumers of financial services and pension plan beneficiaries, and to enhance the financial stability of the Canadian marketplace.

The **Joint Forum** has established the following strategic priorities to facilitate coordination and harmonization among regulators in all three sectors on a national basis: Enhancement and harmonization of product disclosure in regulated sectors; advancement of intermediary proficiency and licensing initiatives; promotion of consumer protection initiatives; and increase in the effectiveness of the **Joint Forum**.

Within the framework of its ***Strategic Plan***, the **Joint Forum** intends to complete the following initiatives:

1. Enhance and harmonize product disclosure in regulated sectors
- Review the product disclosure needs of consumers and identify principles for developing appropriate disclosure rules;
- Develop and coordinate the implementation of regulatory principles for Capital Accumulation Plans;
- Coordinate the implementation of recommendations promoting the regulatory harmonization of individual variable insurance contracts and mutual funds.

2. Advance intermediary proficiency and licensing initiatives
- Develop common proficiency principles for financial planners;
- Develop options for the regulation of managers of pension funds and other pooled funds;
- Develop common competency principles for all financial services intermediaries;
- Develop underlying principles for codes of conduct for all financial services intermediaries;
- Develop a licensing model for multi-licensed financial services intermediaries.

3. Promote consumer protection initiatives
- Identify public education and information needs and develop consumer materials;
- Establish an integrated dispute resolution system for all financial services consumers across Canada;
- Develop harmonized consumer protection principles for electronic commerce across financial services sectors.

4. Increase the effectiveness of the Joint Forum
- Prepare a comparative summary of the financial services regulatory regimes in constituent jurisdictions of the **Joint Forum**;
- Develop processes for monitoring issues and anticipating new developments in the financial services marketplace.

For more information, please contact **Tula Alexopoulos**, Special Advisor, Domestic Affairs, Office of the Chair (416) 593-8084 / talexopoulos@osc.gov.on.ca

ENFORCEMENT REPORTS

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

OSC approved settlement between Staff and Larry Allen Ayres, Ernest Kiss, Arthur Krick, Ron Massachaele and Michael Vaughan

The Ontario Securities Commission (the "Commission") convened a hearing on March 4, 2002 to consider settlements reached by Staff of the Commission ("Staff") and the respondents Larry Allen Ayres, Ernst Kiss, Arthur Krick, Ron Masschaele and Michael Vaughan (collectively, the "Respondents"). The Commission panel, chaired by Paul Moore, approved all five settlements.

The Respondents were not registered with the Commission to trade securities. The Respondents sold Saxton securities to Ontario investors. By so doing, the Respondents participated in an illegal distribution of securities and engaged in conduct contrary to the public interest.

In its oral reasons, the Commission noted, among other things, that although the Respondents sought advice as to the propriety of their proposed conduct, they sought it from persons involved in the scheme, and not from independent legal advisors who were not in a conflict position. In approving the sanctions as in the public interest, the Commission found that each of the Respondents had "learned his lesson". The Commission made Orders prohibiting Messrs. Ayres, Kiss, Krick and Vaughan from trading in any securities for 90 days. Mr. Masschaele is subject to a 6 month trading ban. All the Respondents were reprimanded by the Commission.

OSC proceedings in respect of Livent Inc. et al adjourned to June 12, 2002

The hearing before the Commission in respect of Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol scheduled for February 25, 2002, was adjourned to June 12, 2002 commencing at 9:30 a.m., on the consent of the parties, and in accordance with the terms of the Order of the Commission made February 22, 2002.

M.C.J.C. Holdings found guilty of insider trading

On February 11, 2002, M.C.J.C. Holdings Ltd., the holding company of Michael Cowpland pled guilty in Ontario Court of Justice to one count of insider trading contrary to section 76(1) of the *Securities Act*. Cowpland was the chief executive officer of Corel Corporation, a software manufacturer located in Ottawa. M.C.J.C. was in a special relationship with Corel given Cowpland's position at Corel.

Between August 11, 1997 and August 14, 1997 M.C.J.C. sold 2,431,200 Corel shares for total proceeds of approximately $20.4 million. At the time M.C.J.C. had knowledge of a material fact with respect to Corel which had not been generally disclosed. The material fact was that Corel would fall short of its forecasted sales for Q3, 1997 by a significant margin. Corel had prepared a forecast for analysis that sales for Q3 were expected to be $94 million U.S. On September 10th, 1997 Corel announced losses for Q3 of $32 million U.S. Following the announcement of the Q3 losses, the price of Corel shares on the TSE fell considerably.

His Honour Mr. Justice J.P. Wright imposed a financial penalty totalling $1 million on the company. Charges of permitting the company to insider trade and making a false statement to OSC staff were withdrawn against Cowpland personally.

Judge imposes jail terms and fines for convictions in TAC International case

Six individuals and two corporations have been sentenced in connection with what the presiding Justice of the Peace called a "giant scam" involving more than US$2 million and 800 investors.

His Worship Justice of the Peace McNish issued the following sentences on January 25, 2002:

- Douglas R. Walker, 24 months in jail for nine convictions under the *Securities Act*;
- David C. Drennan, six months in jail for five convictions under the *Securities Act*;
- Steven Peck, 90 days in jail for three convictions under the *Securities Act*;
- Ray Ricks, 90 days in jail for three convictions under the *Securities Act*;
- Gerald McLeod, a $12,000 fine for six convictions under the *Securities Act*;
- Al Johnson, a $10,000 fine for five convictions under the *Securities Act*;
- 1173219 Ontario Limited c.o.b. as TAC (The Alternative Choice), a fine of $1,000,000;
- TAC International Limited, a fine of $1,000,000.

Walker, Drennan, Peck, Ricks, Johnson, McLeod, 1173219 Ontario Limited and TAC International Limited received the sentences after being convicted of a number of offences, including:

- trading in securities, namely shares issued by 1173219 Ontario Limited without being registered to trade in such securities contrary to section 25(1) of the *Securities Act*;
- trading in shares issued by 1173219 without having filed a prospectus contrary to section 53(1) of the *Securities Act*;
- giving undertakings to potential investors that the shares of 1173219 Ontario Limited would have a higher value in the future with the intention of effecting trades in such securities contrary to section 38(2) of the *Securities Act*;
- trading in securities, namely memberships of TAC International Limited, without being registered to trade in such securities contrary to section 25(1) of the *Securities Act*;
- trading in such securities without having filed a prospectus contrary to section 53(1) of the *Securities Act*;
- giving undertakings to potential investors that memberships at TAC International Limited would have a higher value in the future with the intention of effecting trades in such securities contrary to section 38(2) of the *Securities Act*.

Between May 15, 1996 and August 15, 1996, 1173219 Ontario Limited raised US$1,338,322.19 from the sale of shares to approximately 500 investors.

Investors were told that the value of shares of 1173219 Ontario Limited would double every six to eight weeks less a 10 per cent commission. Investors were told that this high rate of return was due to the fact that by pooling their funds in 1173219 Ontario Limited, investors could access high yield roll programs which in the past were only available to large international banks. His Worship Justice of the Peace McNish referred to 1173219 Ontario Limited and TAC International Limited as a "giant scam".

Between August 1, 1996 and August 23, 1997, TAC International Limited raised in excess of US$850,000 from at least 300 investors from the sale of memberships. Again, investors were told that investors in TAC International Limited could access high yield roll programs which the Court found did not exist.

OSC approves settlement in the matter of Robert James Emerson

On February 19, 2002, the Ontario Securities Commission approved a settlement agreement reached between Staff of the Commission and Robert James Emerson ("Emerson"). The agreement follows an enforcement action initiated on February 11, 2002 in which the OSC Staff alleged that from May 1995 to December 1996 Emerson traded in securities contrary to the prospectus requirement contained in the *Securities Act* (*Ontario*), and failed to deal fairly, honestly and in good faith with clients, while Emerson was the President and sole trading officer of IPO Capital Corp., then a securities dealer.

The settlement agreement approved by the Commission includes the following sanctions:

- Emerson is prohibited for a period of five years from becoming or acting as an officer of a reporting issuer in Ontario, director of an issuer in Ontario and an officer or director of a registrant or of any issuer which has an interest directly or indirectly in any registrant, except that Emerson may continue in his position as sole officer and director of Erinlee Holdings Inc., a closely held company.
- Emerson is prohibited from trading in securities for a period of five years, with the exception of his current shares in an Ontario company, which Emerson will make efforts to sell, and which he agrees not to use for the purpose of exercising any influence over that company.
- Emerson is reprimanded by the Ontario Securities Commission.

OSC commences proceedings against Brian K. Costello

On January 10, 2002, the Ontario Securities Commission announced that it has commenced a proceeding against Brian K. Costello ("Costello"), an author, seminar speaker and radio personality on personal finance matters. Costello is not registered with the Commission in any capacity.

Staff of the Commission allege that Costello acted as an adviser without being registered as required under subsection 25(1)(c) of the *Securities Act* (*Ontario*), by recommending the purchase of specific securities to attendees at his seminars, readers of his newsletter, and listeners of his radio segments, and by offering his opinion on the investment merits of those securities. In addition, Staff allege that Costello engaged in this conduct without disclosing that he held an interest in a company that would benefit financially from the sale of those securities or that he received fees for publishing articles in his newsletter which recommended those securities, contrary to section 40 of the *Act* and the public interest.

Staff also allege that Costello engaged in conduct which constituted trading in securities without being registered as required under subsection 25(1)(a) of the *Act*, by carrying out acts in furtherance of trades of securities by way of his seminars, radio segments, and the articles published in his newsletter.

Ontario Securities Commission approves Yorkton settlement agreements

The Ontario Securities Commission has approved settlement agreements reached between Staff of the Commission and Yorkton Securities Inc. and four of its current and former officers. The agreement follows an enforcement action, in which OSC staff alleged that the respondents acted contrary to the public interest.

Settlement agreements were reached separately with each of the five respondents, and each agreement includes its own list of sanctions.

Yorkton Securities Inc. has agreed to the following sanctions:

- Yorkton will make a voluntary payment to the Commission in the amount of $1,250,000.
- Yorkton is reprimanded by the Commission.
- Yorkton will implement the proposed amendments to an IDA regulation concerning know-your-client obligations.
- Yorkton will ensure that none of its employees own, control or direct any offshore entity.
- Yorkton will retain PricewaterhouseCoopers LLP to conduct an independent review of, and report on proper implementation and compliance with, Yorkton's plan to ensure that the firm and its individual registrants meet industry standards and act in the public interest in their ongoing business activities.
- Yorkton will pay $200,000 in respect of the costs of the investigation.
- Yorkton undertakes to cooperate with the Commission and its Staff with any additional investigations.

G. Scott Paterson, formerly the Chairman and Chief Executive Officer of Yorkton, has agreed to the following sanctions:

- he will make a voluntary payment to the Commission in the amount of $1,000,000;
- his registration will be suspended for a period of two years;
- he will not be an officer or director of a registrant for a period of two years;
- he will not own directly or indirectly any interest in a registrant for a period of two years, with the exception of his current interest in Yorkton, which he will make efforts to sell, and which he agrees not to use for the purpose of exercising any influence over Yorkton;
- he is prohibited from trading in securities for a period of six months, with the exception of any sale of his current interest in Yorkton within the next 45 days;
- he is reprimanded by the Commission; and
- he will make an additional payment of $100,000 towards the costs of the investigation.

Roger Arnold Dent, Yorkton's Vice-Chairman, Executive Vice-President and Director of Research, has agreed to the following sanctions:
- a voluntary payment to the Commission in the amount of $50,000;
- a reprimand by the Commission; and
- an additional payment of $10,000 towards the costs of the investigation.

Nelson Charles Smith, Yorkton's Vice-President and Managing Director, Head of Investment Banking, has agreed to the following sanctions:
- a voluntary payment to the Commission in the amount of $15,000;
- a reprimand by the Commission; and
- an additional payment of $5,000 towards the costs of the investigation.

Alkarim Jivraj, currently Yorkton's Vice-President and Managing Director, Technology Investment, has agreed to the following sanctions:
- a voluntary payment to the Commission in the amount of $10,000;
- a reprimand by the Commission; and
- an additional payment of $5,000 towards the costs of the investigation.

The proceeding in respect of a sixth respondent, Piergiorgio Donnini, a former Head Institutional and Liability Trader with Yorkton, was adjourned for a hearing to be held on May 13, 14, 15, 16 and 17, 2002.

The agreements represent the culmination of an 18-month investigation by the Ontario Securities Commission with considerable assistance from enforcement staff at the British Columbia Securities Commission and the Toronto Stock Exchange.

OSC proceedings in the matter of Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.
On December 5, 2001, the Ontario Securities Commission ordered that a prehearing be held on Tuesday, April 30, 2002, and that counsel attend before the Commission on Monday, May 6, 2002 to set a date for the hearing of this matter.

Reasons for Decisions

Statement from the Settlement Hearing in the Matter of M.C.J.C. Holdings Inc. and Michael Cowpland

The following excerpt is based on the transcript of the oral hearing, including oral reasons delivered at the hearing held on February 12, 2002, in the matter of M.C.J.C. Holdings Inc. and Michael Cowpland. The transcript has been edited, supplemented and approved by the panel for the purpose of providing a public record of the panel's decision in the matter.

Panel: Paul Moore, Vice-Chair (Chair of the Panel); Kerry D. Adams, Commissioner; Mary Theresa McLeod, Commissioner.

Illegal insider trading by its very nature is a cancer that erodes public confidence in the capital markets. It is one of the most serious diseases our capital markets face. If we do not act in the public interest by sending an appropriate message in appropriate circumstances, then we fail in doing our duty. [...]

We cannot approve this settlement agreement based on the admitted facts in the settlement agreement, including an admission of illegal insider trading and knowledge of a material fact, without assurance that the conduct would not reoccur on the part of the respondents. We have a duty to protect the marketplace. But equally, or more, importantly, we want to be sure that the right message is sent so others will be deterred from illegal insider trading. [...]

In doing this, we have to take into account circumstances that are appropriate to the particular respondents. This requires us to be satisfied that proposed sanctions are proportionately appropriate with respect to the circumstances facing the particular respondents. We should not just look at absolute values, e.g. what has been paid voluntarily in other settlements, or what has been found to be appropriate sanctions by way of cease trade orders in other cases. [...]

In determining impact, we need to consider all relevant factors in proportion to circumstances relevant to a respondent to be sure sanctions are proportionately appropriate. Such factors may include in varying importance the following: the size of any profit (or loss avoided) from the illegal conduct; the size of any financial sanction or voluntary payment when considered with other factors; the effect any sanction might have on the livelihood of the respondent; the restraint any sanction may have on the ability of the respondent to participate without check in the capital markets; the respondent's experience in the marketplace; the reputation and prestige of the respondent; the shame, or financial pain, that any sanction would reasonably cause to the respondent; and the remorse of the respondent. These are some of the factors that we believe may be relevant in various degrees. There may be others, and perhaps all of the factors we have mentioned would not be relevant in this or another particular case. [...]

Any sanctions that might be proposed in a new settlement as being in the public interest should result in real consequences to illegal conduct that sends a real message, not only to the respondents, but to others, by having a proportional impact on the respondents. Persons engaging in illegal insider trading should not, after the full impact of sanctions are taken into account, be seen to have benefited from their illegal conduct. [...]

Statement from the Settlement Hearing in the Matter of Yorkton Securities Inc., Gordon Scott Paterson, Piergiorgio Donnini, Roger Arnold Dent, Nelson Charles Smith and Alkarim Jivraj

The following excerpt is based on the transcript of the oral hearing, including oral reasons delivered at the hearing held on December 19, 2001, in the matter of Yorkton Securities Inc., Gordon Scott Paterson, Piergiorgio Donnini, Roger Arnold Dent, Nelson Charles Smith and Alkarim Jivraj. The transcript has been edited, supplemented and approved by the panel for the purpose of providing a public record of the panel's decision in the matter.

Panel: Howard I. Wetston, Vice-Chair (Chair of the Panel); Derek Brown, Commissioner; Mary Theresa McLeod, Commissioner.

The panel has unanimously approved the settlement agreements reached by staff and the respondents. [...] We are of the opinion that the sanctions are sufficient to satisfy the public interest in the confidence and integrity of our capital markets. In our view, the orders serve as a strong deterrent to improper conduct on the part of registrants in the capital markets. [...]

The orders have been issued on the understanding that Yorkton and the respondents have co-operated with staff to arrive at a resolution of this matter in the form of the settlements reached. The respondents have agreed to accept sanctions that satisfy the public interest in the integrity of the capital markets, without the need to resolve disputes regarding the relevant facts. [...]

These orders must be seen to restrain future behaviour that may be contrary to the public interest. In this case, the respondents have shown a pattern of conduct that consistently placed their personal interests or their firm's interests ahead of those of their clients and the investing public. Behaviour such as that of the respondents is a paramount regulatory concern as it undermines confidence in the integrity of the capital markets. We are of the opinion that the remedies will deter registrants and all other participants in our capital markets from engaging in conduct which places senior officers and employees of a registrant in positions of conflict with their clients. [...]

Policies relating to compliance and appropriate supervision should not be seen as regulatory burdens, but rather should be considered in light of their contribution to investor protection, fair and efficient markets and the public interest. Clear internal guidelines must exist with respect to receiving and making use of non-public information. We believe that these regulatory concerns have been addressed by way of the orders issued in this matter.

RECENT SPEECH

Excerpts from an Address by David Brown, Q.C. Chair of the Ontario Securities Commission to the Conference Board of Canada's 2002 Business Outlook Briefings, March 7, 2002.

In thinking about capital markets today, the issue that seems to be at the forefront of everyone's mind is the E-word – "Enron". This massive corporate failure has thrust into the spotlight many elements of the corporate disclosure system that underpin capital markets in Canada and around the world. […]

In nearly every major country, the question being asked is: "Could it happen here?" Canada is no exception.

At least in the short-term, public confidence in financial reporting, auditing and corporate governance structures has been damaged. The key issue now is to determine how to repair the damage – and restore public confidence. If we look to the marketplace, we begin to see the results of a search for solutions. We see the markets beginning to impose discipline in areas where previously many feared to tread. In some companies, management and boards of directors are re-examining the nature of their relationship with their external auditor. Public accounting firms are re-evaluating their business models.

Momentum is building in the marketplace. For regulators, the challenge is to harness this momentum to create positive and sustainable changes for the long-term. We need to move promptly – but not at the expense of a thorough and careful evaluation of the key lessons to be learned.

The Enron failure has focused attention on four of the underpinnings of our capital market structure: Transparency and disclosure standards; our reliance on financial statements; corporate governance practices; and the role of the external auditor. […]

I'll start with the issue of transparency and disclosure. To get a sense of our relative vulnerability in Canada, it's important to recognize some of the significant differences between the U.S. disclosure system and the Canadian disclosure system. First and foremost, in Canada we require continuous disclosure – ongoing public disclosure of material changes that affect a corporation as soon as those changes occur. This promotes a flow of information to the markets that continuously updates the public disclosure record.

By contrast, the U.S. system relies on periodic disclosure at prescribed intervals. There is no general obligation in the United States to disclose all material changes -- only to be accurate about what is disclosed. In response to Enron, we're seeing proposals by the SEC that would move the U.S. system much closer to Canada's. Publicly-traded companies would be required to make immediate disclosure on the occurrence of any one of an expanded list of specifically identified events.

But we cannot allow the fact we may be ahead of the United States in this area to make us complacent. Indeed, I would urge all of you, both reporting issuers and advisors, to place a renewed emphasis on ensuring that you are meeting the goals of the continuous disclosure regime.

The adequacy of financial statements is the second issue. That has brought accounting standards in the United States under critical examination. Here, too, our situation in Canada is not identical to the United States. The difference I want to highlight is not one of detail but one of overall approach. Over many years, U.S. accounting standards have evolved into a set of detailed and prescriptive rules. […]

Historically, the approach to setting accounting standards in Canada has been different. Our Accounting Standards Board has emphasized the identification of sound principles. Both preparers and auditors of financial statements are required to exercise professional judgement based on those principles to reach sound conclusions as to the appropriate accounting for specific transactions.

I do not suggest that reverting to the principles-based Canadian standards of several years ago is the solution to all ills – it is not. However, I do believe we need to step back and re-evaluate the appropriate balance between principles and rules. And we also have to recognize that, to be effective, a principles-based approach has to be applied by professionals who look to the spirit and objective of the standards. […]

In dealing with this issue, we have to work with our international colleagues. In this regard, I would particularly look for leadership to the newly-established International Accounting Standards Board. Working with national standards setters, the Board has a unique opportunity to shape a body of high-quality accounting standards that will promote relevant and reliable financial reporting in which investors around the globe can have confidence.

As accounting standards-setters in the U.S. and Canada look closely at their standards to identify potential weaknesses exposed by the Enron fiasco, it is essential that they consider carefully what can be learned from their counterparts in other countries. […] Similarly, I have heard it suggested that current International Accounting Standards would require special-purpose entities to be consolidated into the financial statements of their sponsor in a wider range of circumstances than is the case under U.S. GAAP. […]

The Enron case may also cause us to think more carefully about what the audited statements tell us about the financial position of a company. Investors expect, and I believe are entitled to expect, that the totality of the financial disclosure in a set of financial statements fairly represents the company's financial position. Assurances on this score can only come from management or the external auditors or perhaps a combination of both. […]

The third issue in considering Canada's vulnerability to an Enron-like event is the quality of our corporate governance practices. The importance of a healthy governance culture in promoting strong, viable and competitive corporations cannot be over-emphasized. A committed, cohesive and effective board of directors adds value to a company in a number of ways: By assessing and approving strategic direction, ensuring appropriate processes for risk assessment, management and internal control; monitoring performance against agreed benchmarks; and assuring the integrity of financial reports.

One aspect of corporate governance on which I might dwell for a moment is the role of the audit committee. From the perspective of a securities regulator, this role is pivotal. It's the key group within any company's governance structure in promoting the integrity of published financial information and managing the relationship with the external auditors. The joint committee on corporate governance sponsored by the TSE, the CDNX and the Canadian Institute of Chartered Accountants, which completed its work pre-Enron, made some important recommendations for strengthening the audit committee. We are currently working with the TSE to incorporate these recommendations into Canadian practice.

The last issue in considering Canada's vulnerability to an Enron-like event is the effectiveness of the external audit. Many ask the question: Is an auditor's ability to maintain an objective view of a company's financial statements impaired when it also provides to the same company extensive services that are not clearly and closely related to the audit? Can the public have confidence in a company's financial statements if the external auditor is also an outside consultant? This question of public confidence will become even more important if accounting standards are to move away from prescriptive and detailed rules and towards broader principles requiring a greater degree of judgement in their application. […]

If investors are to have confidence that the audit represents an independent review of management's portrayal of the company's financial position, the external auditor must preserve the ability to question independently the accounting and tax treatment of all aspects of the company's business. It's in the long-term interest of both the accounting profession and its audit clients to recognize this need for independence – and implement the measures that will ensure it. […]

I started out asking the question, "Could Enron happen here?" In theory, Enron could happen anywhere. But in my view, it is less likely now that an Enron-type situation could develop in Canada in the immediate future. The Enron story did not begin with its bankruptcy four months ago. That was the culmination of several years of excesses and of human and system failures – bankrolled by the marketplace. I believe that the market has responded by imposing new disciplines and this alone will give us short-term relief. But we must move quickly to make these changes permanent.

Our challenge is to harness all of this new-found energy – and convert it into sustainable improvements in practices that will foster continued confidence in the integrity of our capital markets. Our goal is to make Enron a thing of the past – and justify public confidence as the keynote of the future.

(Securities Regulators Aim to Reshape Mutual Fund Regulation, from page 1)

three or more individuals, a majority of whom are independent of the fund manager, the governance agency would owe its allegiance to investors and would ensure that the fund manager acts in the best interests of investors.

Most Canadian mutual fund investors currently have neither the resources nor the inclination to effectively oversee fund managers. For this reason, the market is increasingly demanding independent oversight. A number of Canadian mutual funds have already instituted fund governance systems, but the practice is voluntary and there are no consistent industry-wide standards. Canada is one of the only developed countries that does not mandate some form of independent mutual fund governance.

The proposed framework also includes the following components:

- Creation of a new registration category for mutual fund managers, with minimum standards imposed through conditions of registration that are tailored to the business of managing mutual funds;
- Streamlining product regulation for mutual funds, with detailed restrictions replaced by broader principles or guidelines, and compliance monitored by the governance agency;
- Review of investor rights, and the continuation of existing disclosure requirements; and
- Enhanced regulatory presence, including increased on-site compliance examinations and desk reviews expanded beyond the prospectus to continuous disclosure and sales communication documents.

The CSA concept proposal, titled ***Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers***, can be found on the Ontario Securities Commission Website at **www.osc.gov.on.ca.** Comments on the proposal can be submitted until June 7, 2002.

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