Ontario

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

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OSC Unveils "Fair Dealing Model"

The Ontario Securities Commission is considering significant changes to the way it regulates the relationship between the financial services industry and individual investors. OSC staff, in consultation with a group of investment industry leaders, have developed an outline of a new "fair dealing model".

The new framework would, among other things, seek to better define the rights and responsibilities of each party, reduce conflicts of interest in the provision of advice, and ensure greater transparency of adviser services, qualifications, compensation and other fees.

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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

Members Sought for New Continuous Disclosure Advisory Committee

The Ontario Securities Commission is seeking volunteers for an advisory group it plans to establish. The Continuous Disclosure Advisory Committee (CDAC) will advise OSC staff on such matters as the planning, implementation and communication of its continuous disclosure review program, the impact of policy- and rule-making initiatives, emerging issues, and the OSC's procedures.

"The quality of corporate disclosure has become an increasingly significant topic for investors, and we as regulators recognize the importance of receiving regular, informed input from the marketplace," said OSC Manager of Continuous Disclosure John Hughes, who will serve as the initial chair of the CDAC. "We're particularly interested in hearing from the corporate officers who generate the disclosure and the investors who rely on it."

"The quality of corporate disclosure has become an increasingly significant topic for investors."

The CDAC is the latest instance of a committee of stakeholders being established by the OSC to provide input on securities regulation issues. Other groups are already in place to advise staff on compliance issues, the fair dealing model (see Feature, page 1), commodity futures, bond market transparency, institutional equity trading, and reducing the regulatory burden. In addition, the Securities Advisory Committee comments on legal, regulatory and market implications of OSC policies, operations, and administration. The new CDAC will be complementary to established committees, and will focus on continuous disclosure practices and procedures.

The CDAC will be made up of approximately twelve individual members who will serve two-year terms and meet four to six times each year. Members are expected to have extensive knowledge of continuous disclosure issues and a strong interest in securities regulatory policy as it relates to these issues.

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

New Members of the Securities Advisory Committee

In the January 4, 2002 edition of the OSC Bulletin, the OSC invited applications for positions on the Securities Advisory Committee (SAC). The SAC provides advice to the commission and staff on a variety of matters, including legislative and policy initiatives and important capital markets trends. The committee also identifies issues for the attention of the commission and staff.

The commission is pleased to announce new members who will participate on SAC for the next two years. The members are divided into two groups, based on whether they will join the SAC in June or October. The staggered start dates will ensure a smooth transition for the committee.

The new members who will join SAC in June are:
Robert Karp – Torys LLP;
Edwin Maynard – Paul, Weiss, Rifkind, Wharton & Garrison;
Robert Nicholls – Stikeman Elliott;
Dale Ponder – Osler, Hoskin & Harcourt LLP;
Thomas Smee – Davies Ward Phillips & Vineberg LLP; and
Philippe Tardif – Lang Michener

The new members who will join SAC in October are:
Robert Chapman – McCarthy Tétrault LLP (Ottawa);
Helen Daley – Kelly Affleck Greene;
Rosalind Morrow – Borden Ladner Gervais LLP;
Sheila Murray – Blake, Cassels & Graydon LLP;
Jeffrey Roy – Cassels Brock & Blackwell LLP; and
Cathy Singer – Ogilvy Renault

The OSC thanks the current members of SAC, listed below, who have served on the committee with great dedication over the last three years. Their advice and guidance on a range of issues have been very valuable to the commission.

Mark DesLauriers – Osler, Hoskin & Harcourt LLP;
Jeff Kerbel – Blake, Cassels & Graydon LLP;
Jay Lefton – Aird & Berlis LLP;
Neill May – Goodmans LLP;
David McIntyre – Osler, Hoskin & Harcourt LLP;
Paul Mingay – Borden Ladner Gervais LLP;
Patricia Olasker – Davies Ward Phillips & Vineberg LLP;
Simon Romano – Stikeman Elliott;
Constance Sugiyama – Gowling Lafleur Henderson LLP;
Grant Vingoe – Dorsey & Whitney LLP; and
Ava Yaskiel – Ogilvy Renault

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

Five Year Review Committee Draft Report Released

On May 29, 2002, the Five Year Review Committee released a draft report on Ontario's securities legislation. The draft report was the culmination of more than two years of meetings, research and deliberations concerning the current state of securities legislation in Ontario. The report considers events and legislative reform as of March 2002, providing a thorough review of many areas of securities law.

The Five Year Review Committee

Chair
Purdy Crawford, Counsel, Osler, Hoskin & Harcourt LLP

Members
Carol Hansell, Partner, Davies Ward Phillips & Vineberg LLP
William Riedl, President and Chief Executive Officer (Retired), Fairvest Securities Corporation
Helen Sinclair, Chief Executive Officer, BankWorks Trading Inc.
David Wilson, Co-Chairman and Co-Chief Executive Officer, Scotia Capital
Susan Wolburgh Jenah, General Counsel, Ontario Securities Commission

Staff
Anita Anand, Assistant Professor, Faculty of Law, Queen's University
Rossana Di Lieto, Senior Legal Counsel, General Counsel's Office, OSC
Krista Martin Gorelle, Senior Legal Counsel, General Counsel's Office, OSC
Janet Salter, Lawyer, Osler, Hoskin & Harcourt LLP

The following key topics are examined in the report:
1. The need for a single, co-ordinated approach to securities regulation in Canada.
2. The strengthening of the enforcement powers of the commission.
3. How to regulate in an increasingly technological world.
4. The need to introduce civil liability for secondary market disclosure by issuers.
5. The introduction of a system of governance for mutual funds.

The draft report was published in the May 31, 2002 edition of the OSC Bulletin and is also available on the OSC Web site at www.osc.gov.on.ca. Comments on the report should be addressed to:

Five Year Review Committee
c/o Purdy Crawford, Chair
Osler, Hoskin & Harcourt LLP
Barristers & Solicitors
Box 50, 1 First Canadian Place
Toronto, Ontario M5X 1B8
Fax: 416-862-6666
E-mail: pcrawford@osler.com

New Policy Encourages Cooperation With Staff During Investigations

The OSC has announced a "credit for cooperation" policy which allows market participants to benefit from cooperating with OSC staff during an investigation.

"This policy is intended to encourage firms and individuals to work with regulators to resolve compliance-related problems," said OSC Chair David Brown. "It gives us greater flexibility when the party has cooperated fully during the investigation and has self-policed, self-reported, and self-corrected the problems."

The policy enables OSC staff to choose one or more approaches to resolving issues, including:
- narrowing the scope of allegations;
- recommending reduced sanctions;
- submitting settlement agreements for approval by the Executive Director rather than a tribunal of the commission;
- obtaining an undertaking to avoid future violations of Ontario securities law;
- issuing a warning letter; and
- concluding the matter without taking any action.

The credit for cooperation policy was invoked April 9, 2002, when a settlement agreement was approved for the first time by the OSC's Executive Director, saving time and expense for all parties while sending a message of deterrence to the marketplace.

Thomas Vincent Hinke, the President and Chief Executive Officer of Thermal Energy International Inc. (TEI), failed to file insider reports relating to his transactions in TEI shares during the period from December 1996 to December 2000. In addition, some of these transactions constituted a distribution of TEI shares and therefore required either a prospectus to be filed or an exemption to be obtained. Hinke voluntarily disclosed his filing defaults and cooperated with OSC staff throughout its investigation.

In the settlement agreement, Hinke undertook to make all future required regulatory filings regarding his transactions in TEI shares in a timely manner, and made a voluntary contribution of $8,000 to the commission's Investor Education Fund.

"The fact that Mr. Hinke took the initiative in bringing this matter to our attention and cooperated fully with our staff was a key factor in our decision to offer an expedited procedure," said OSC Director of Enforcement Michael Watson.

The full text of the settlement agreement is available in the Enforcement section of the OSC website at www.osc.gov.on.ca. For more information, please contact **Michael Watson**, Director, Enforcement, 416-593-8156, mwatson@osc.gov.on.ca.

OSC Identifies Deficiencies In Quarterly Reporting

A recent review of quarterly, or interim, reports issued by public companies found many instances of non-compliance with basic requirements.

OSC staff reviewed the interim reports of 150 randomly selected issuers for the first quarter of fiscal 2001. Based on their findings, staff raised concerns with 77 of these issuers, with the following results:

- Seventeen companies re-filed their interim financial statements due to non-compliance. Some of these issuers had failed to include such basic components as an interim balance sheet or notes to the interim financial statements.

- Another 40 companies committed to improve disclosure in future filings. A common deficiency among this group was insufficient or poor quality information in the interim report's management discussion and analysis.

This review follows the OSC's recent implementation of rules to improve the historically poor quality of interim financial reporting. These rules require, among other things, that interim statements be reviewed by a company's board of directors or its audit committee before they are issued.

John Hughes, OSC Manager of Continuous Disclosure, called the results of the review "a concern." He said: "The results suggest a failure by management to maintain a current knowledge of requirements. They also raise questions about how boards of directors and audit committees carry out their responsibility to monitor and challenge management on financial reporting matters." More positively, Hughes noted awareness of the requirements appears to be increasing.

The complete results of the review are in OSC Staff Notice 52-713, available on the OSC's website at www.osc.gov.on.ca.

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

New OSC Commissioners

OSC Chair David Brown has announced two recent appointments to the Commission.

Harold P. Hands was the senior legal officer at Mackenzie Financial Corporation, one of Canada's largest investment fund organizations, from 1987 until his retirement in 2001. He has served as Chair of the Investment Funds Institute of Canada (IFIC), where he was directly involved in the creation of the industry's Code of Ethics for Personal Investing, and the IFIC Sales Practices Code, a predecessor to the CSA Sales Practices Rule 81-105. Mr. Hands was also a member of the OSC Working Committee on Disclosure and Investor Education, which reviewed the recommendations contained in the 1995 Stromberg Report. Prior to 1987, he was an associate and partner with the law firm of Day, Wilson, Campbell for 16 years. His appointment with the OSC expires in April 2005.

Robert L. Shirriff practices business law at Fasken Martineau DuMoulin, specializing in the areas of securities, mergers and acquisitions and mining. He joined Faskens upon being called to the Ontario Bar in 1958, and served as the firm's Chair from 1994 to 2001. He was appointed Queen's Counsel in 1971. Mr. Shirriff is also Chair of the De Beers Group of Companies in Canada, and Chair of Archangel Diamond Corporation. His appointment with the OSC expires in March 2005.

In Memoriam

It is with sorrow that we note the passing of Steve Paddon, one of our commissioners, on June 7, 2002. Mr. Paddon was appointed a Commissioner in January 1998 after a long and successful legal career both in private practice and as General Counsel to Crown Life. He contributed greatly to the life of the commission both in formulating policy and in participating in hearings. His perspective on securities and insurance issues, which he always delivered with a sense of humour, will be missed.

Our thoughts and prayers are with his wife, Deirdre, and family.

– David Brown

CANADIAN SECURITIES ADMINISTRATORS REPORTS

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

Securities Regulators Review Executive Compensation Reporting

The Canadian Securities Administrators (CSA) have launched a review of how well publicly-traded companies comply with their executive compensation disclosure requirements. "Investors are entitled to detailed information about how executive compensation is linked to corporate performance," said Doug Hyndman, CSA Chair. "We are measuring how well that information is revealed. We hope that our findings will result in meaningful guidance for people who disclose information on behalf of companies."

"We are concerned with the narrative discussion of their approach to executive compensation."

The initial step is a review of how 75 Canadian companies comply in their information circulars with reporting requirements. Any company whose disclosure diverges from the requirements will be asked for an explanation. A report will be published later this year.

"Even though the regulations are clear and specific, the quality of executive compensation reports varies among companies," said John Hughes, Chair of the CSA's Continuous Disclosure Committee. "Most companies provide the basic numeric data required, but we are concerned with the narrative discussion of their approach to executive compensation."

Examples of the information that must be disclosed include:

- The specific relationship between corporate performance and executive compensation;
- If an executive is rewarded under a performance-based plan despite failing to meet the stated performance criteria, the reasons for any waiver or adjustment to the compensation formula;
- The basis for the CEO's compensation, including the factors and criteria on which the compensation is based and the relative weight assigned to each factor;
- The competitive rates on which the CEO's compensation is based if it is determined by assessments of competitive rates, as well as information about how the comparative group was selected and at what level in the group the compensation was placed.

In the second phase of the project, regulators will assess whether issuers have followed appropriately the recommendations of the new accounting standard on stock-based compensation and other stock-based payments.

"Some companies use boiler plate language to describe executive compensation," added Hyndman. "Publicly-traded companies across Canada are required to report in detail the framework of executive compensation. Investors should be able to see precisely how the compensation received by executives is derived, and determine if they support the practices given the company's performance."

"We are using a common approach to review compliance with continuous disclosure obligations coast-to-coast," said Hyndman. "The national review of executive compensation disclosure marks another important step toward a harmonized national securities regulatory presence."

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

CSA STAFF NOTICE 44-301

New Prospectus Rules: Frequently Asked Questions

OSC staff recently compiled a list of frequently asked questions (and answers to those questions) about the new prospectus rules issued by the CSA to address inquiries about the rules' application and operation. Issuers, their auditors and their counsel can turn to this resource for information that could assist them in complying with the new prospectus regime. The responses represent the views of staff and are intended as general guidance only. Staff will periodically republish this staff notice as new questions arise, or to reflect changes in staff's views.

In 2002, staff will assess the first year's experience with the new prospectus rules and consider whether changes, in addition to those suggested in the staff notice, would be appropriate.

The staff notice is available on the Ontario Securities Commission website (www.osc.gov.on.ca).

CSA STAFF NOTICE 55-306

Applications For Relief From Insider Reporting Requirements By Certain Vice-Presidents

This notice outlines the circumstances in which staff will support applications for relief from the requirements under Canadian securities legislation to file insider reports by persons who are technically insiders by virtue of holding the title of "vice-president" but who do not have access to confidential inside information.

The trading activities of "true" insiders may be hidden by the large volume of insider reports filed by nominal vice-presidents.

Canadian securities legislation requires insiders of a reporting issuer to disclose ownership of and trading in securities of that reporting issuer. The insider reporting requirements serve a number of functions, including deterring illegal insider trading and increasing market efficiency by providing investors with information concerning the trading activities of insiders of the issuer, and, by inference, the insiders' views of their issuer's prospects.

The Canadian Securities Administrators' staff recognize that requiring all vice-presidents to file insider reports may impose significant regulatory costs on some individuals and their issuers for little or no corresponding benefit. It has been suggested that the current requirements may actually serve to undermine the policy objectives underlying the insider reporting requirements, since the trading activities of "true" insiders may be hidden by the large volume of insider reports filed by nominal vice-presidents. Consequently, as a result of changes in industry practice, we believe that it is no longer appropriate to require all persons who are "vice-presidents" to file insider reports.

The full notice is posted on the OSC web site (www.osc.gov.on.ca). For more information, please contact **Paul Hayward,** Legal Counsel, Corporate Finance, (416) 593-3657, phayward@osc.gov.on.ca.

CSA STAFF NOTICE 55-307

Reminders To File Paper Insider Reports Using The Correct Codes

The purpose of this notice is to provide guidance to insiders who are filing paper insider reports.

All insiders who file paper insider reports must use Form 55-102F6, a new form that contains and requires the use of new nature of transaction codes, and new nature of ownership codes. For example, Form 55-102F6 prescribes nature of transaction code 50 for a "Grant of options" transaction, and nature of ownership code 1 for "Direct ownership". Please refer to the instructions page of Form 55-102F6 for a full list of these codes.

The new codes in Form 55-102F6 are significantly different from the codes in the previous paper form. For example, nature of transaction code 50 in the previous paper form refers to an "Acquisition or disposition by gift", instead of a "Grant of options". The CSA have received a number of paper reports that continue to use the old codes. The continued use of these old codes creates uncertainty as to what transaction is being reported, and may result in dissemination of misleading insider reporting information to the marketplace.

As a result, CSA staff will not accept any reports that use the old codes. CSA staff will return these reports, and require that insiders refile their reports on Form 55-102F6 using the correct codes. CSA staff recognize that prior to Form 55-102F6 coming into effect, a number of reporting issuers prepared customized insider report forms for their insiders. CSA staff will accept an insider report filed on a customized form, if it contains the information required and uses the codes prescribed by Form 55-102F6.

Please write "Form 55-102F6" on the customized form. PDF and/or Word versions of Form 55-102F6 can be downloaded from the OSC web site (www.osc.gov.on.ca).

For more information, please contact **Kelly Gorman**, Senior Accountant, Corporate Finance, (416) 593-8251, kgorman@osc.gov.on.ca

Investor Education Month

In conjunction with other regulators across Canada, the OSC expanded its fifth annual investor education campaign to make April National Investor Education Month. Focusing on the theme "Protect Yourself from Investment Fraud," Canada's securities regulators launched countrywide campaigns to help Canadians — in particular, youth and seniors — become more careful investors. The OSC Investor Education Month initiatives directly reached more than 600 investors, and distributed more than 400 investor education kits as a result.

The OSC participated in three major national initiatives with the Canadian Securities Administrators for Investor Education Month:

- The CSA launched the new Scouts Canada Investing Crest. To earn the Investing Crest, Canada's 43,000 Girl and Boy Scouts and Venturers will have to complete one of five financial activities, including: tracking a stock, interviewing a financial planner, explaining compound interest, reviewing financial internet sites for kids, and researching a type of investment.

- The CSA collaborated with producers of the weekly television program *Street Cents* on a segment warning teenagers about online investment scams.

- Additionally, the CSA produced a comprehensive brochure entitled *Protecting your finances: How to avoid investment frauds and scams*, aimed at identifying and warning about investment scams that frequently target seniors.

Along with the national campaign, the OSC organized investor education events and seminars for Ontario investors:

- Advertising campaigns in Chatelaine Magazine and Ontario university newspapers delivered investor education messages to students and general investors across the province.

- The OSC launched a new investor guide entitled *Financial Disclosure: What you need to know* to help Ontario investors understand the various sources of information available about public companies.

- A seminar entitled "*Protect Yourself from Investment Fraud*" was held in Ajax and Toronto to educate investors about current investment frauds and scams, and how they can protect themselves from investment scam artists. The OSC was joined by representatives from PhoneBusters and the Toronto Police Fraud Squad. These seminars are part of an ongoing partnership with Canada's Association for the Fifty-Plus to educate seniors about frauds and scams.

- As part of Investor Education Month, volunteer staff members from the OSC presented the *Junior Achievement's Personal Economics: Investing in Me* program. OSC professionals shared their knowledge and experience with over 300 seventh grade students from eight different schools located in Toronto and York Region.

The highlight of the month was the OSC Investor Education Conference, which brought together stakeholder groups from industry, investor groups, and education providers to promote collaboration and partnerships in investor education.

OSC Launches Investor Guide On Financial Disclosure

The Ontario Securities Commission has published a new Investor Guide, entitled *Financial Disclosure: What you need to know*, to help Ontario investors understand the sources of information available about public companies.

While there is a great deal of disclosure available to investors on the Internet, in the news media, from companies directly and from analysts, the challenge for investors is to understand the strengths and weaknesses of these sources of information. *Financial Disclosure: What you need to know* puts these disclosure documents into perspective for investors.

The 20-page guide, designed for investors who are ready to do their own research, discusses the types of disclosure available and what they need to know about each type. It also educates investors about the roles of the various parties that prepare these communications, such as the directors and auditors of the company. It outlines what type of information must be disclosed and in what form. The guide also gives useful tips on how investors can understand and analyze the quality of the information they receive. In addition, it explains the OSC's role in enforcing disclosure laws and what can happen if a company doesn't follow the rules.

Financial Disclosure: What you need to know is available free of charge as part of the OSC's investor education kit. It is the fifth in the OSC's *Guide for Investors* series, which also includes *An Investor's Guide to OSC Resources and Services*, *A Step-by-Step Guide to Making a Complaint*, *Dealers and Advisers: With Whom are You Dealing for Your Investment Services?* and *Borrowing to Invest: Understanding Leverage*.

Investors can request a free investor education kit by calling 1-877-785-1555 or they can view the OSC's investor resources, including the new guide, on the web site at www.osc.gov.on.ca. The new guide can be found on the Required Reading page of the Investor Resources section.

ENFORCEMENT REPORTS

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

Settlement Reached in the Matter of Fran Harvie
On June 20, 2002, the OSC approved a settlement reached by staff of the commission and the respondent Fran Harvie.

Harvie illegally distributed shares in Lydia Diamond Explorations of Canada Ltd. She illegally raised over $1 million dollars from Ontario investors. She was paid commissions of $95,000 in cash and shares. The commission reprimanded Harvie and ordered that she be prohibited from trading securities for five years and from acting or becoming an officer or director of an issuer for five years. Copies of the Order and Settlement Agreement are available on the Commission's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, Toronto.

OSC Approves Settlement Between Staff and Mark Kassirer
On June 17, 2002, the OSC approved a settlement reached by staff of the commission and the respondent Mark Kassirer.

Kassirer was the Chair of Phoenix Research and Trading Corporation. He managed Phoenix Canada's equity arbitrage business. Phoenix Canada was registered with the commission as an investment counsel and portfolio manager pursuant to the *Securities Act*.

The Phoenix Fixed Income Arbitrage Limited Partnership (PFIA LP) was a hedge fund managed by Phoenix Canada. PFIA LP collapsed in early January 2000 when Phoenix Canada discovered that one of its fixed income traders had accumulated a $3.3 billion U.S. long position in U.S. 6% treasury notes due August 15, 2009. The UST Notes were not hedged and caused a significant overdraft position at the Bank of New York. PFIA LP was forced to liquidate its assets. As a result, PFIA LP lost in excess of $120 million.

Staff alleged that Kassirer failed to monitor adequately, and provide appropriate general oversight of, the business of Phoenix Canada including that related to the UST Notes.

The commission reprimanded Kassirer and ordered that Kassirer Asset Management Corporation, a registered investment counsel and portfolio manager of which Kassirer is the sole registered officer, submit to an independent review of its current controls and procedures and rectify any identified deficiencies. Kassirer must also pass the Partners, Directors and Officers examination as a term and condition of his continued registration. As a term of the settlement, Kassirer paid $10,000 in costs to the commission.

Copies of the Order and Settlement Agreement are available on the Commission's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, Toronto.

OSC Commences Proceedings against Phoenix Research and Trading Corporation, Ronald Mock and Stephen Duthie
The OSC has issued a Notice of Hearing and Statement of Allegations against Phoenix Research and Trading Corporation, Ronald Mock and Stephen Duthie.

Phoenix Canada was registered with the commission as an investment counsel and portfolio manager under the *Securities Act*. Mock was the CEO and President of Phoenix Canada. Mock ran the Phoenix Fixed Income Arbitrage Limited Partnership (PFIA LP), a hedge fund. Starting in the fall of 1998, Duthie was responsible for PFIA LP's U.S. dollar portfolio under the direct supervision of Mock. Duthie has never been registered with the commission.

PFIA LP collapsed in early January 2000 when Phoenix Canada discovered that Duthie had accumulated a $3.3 billion U.S. long position in U.S. 6% treasury notes due August 15, 2009. The UST Notes were not hedged and caused a significant overdraft position at the Bank of New York. PFIA LP was forced to liquidate its assets. The resulting loss to PFIA LP exceeded $120 million.

Staff alleges that Duthie:
- engaged in registerable activity for which he was not registered with the commission; and
- acted contrary to the best interests of Phoenix Canada's and his clients.

Further, staff alleges that Mock failed to:

- keep the proper books and records;
- implement and monitor the appropriate controls and procedures; and
- adequately supervise his staff.

It is staff's position that, without these failures, Duthie's activities would have been detected and the collapse of PFIA LP avoided. The Notice of Hearing and Amended Statement of Allegations are available on the commission's web site (www.osc.gov.on.ca).

OSC Proceeding in Respect of Livent Inc. et al Adjourned to October 4, 2002

The hearing before the OSC in respect of Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol scheduled for June 12, 2002, is adjourned to October 4, 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 June 10, 2002.

Copies of the Notice of Hearing issued on July 3, 2001 and Statement of Allegations, and the Order of the Commission made on June 10, 2002, are available at www.osc.gov.on.ca or from the commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

OSC Panel Finds Donnini Actions Contrary to the Public Interest

On June 11, 2002, an OSC panel found that Piergiorgio Donnini, a former head trader at Yorkton Securities Inc., acted in contravention of Section 76(1) of the Ontario *Securities Act* and contrary to the public interest. Specifically, the panel found that in early 2000, Mr. Donnini had knowledge of a potential financing for Kasten Chase Applied Research Limited (KCA) that had not been disclosed to the public. The panel agreed that Mr. Donnini traded in KCA shares while he had this information and as such, he acted contrary to the public interest.

A hearing has been set for July 11, 2002 to hear submissions in respect of sanctions against Mr. Donnini. Reasons for the decision will be issued after appropriate sanctions have been determined. Copies of the Notice of Hearing and Statement of Allegations are available at www.osc.gov.on.ca or from the commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

OSC Approves Settlement In The Matter of Lawrence D. Wilder

On May 28, 2002, the OSC approved a settlement agreement reached between staff of the commission and Lawrence D. Wilder. Copies of the Notice of Hearing issued by the OSC, the Statement of Allegations filed by commission staff, both dated November 1, 1999, as well as the Settlement Agreement and the Order made by the commission, both dated May 28, 2002, are available at www.osc.gov.on.ca.

OSC Approves Settlement in the Matter 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.

On April 9, 2002, the OSC approved a settlement agreement reached between staff of the commission and 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 agreement follows an enforcement action initiated on June 12, 2001 in which the OSC staff alleged that from August 1995 to May 1998 Koonar and the companies traded in securities in violation of the prospectus and registration requirements contained in Ontario securities law, and that as a result of these illegal distributions, an amount in excess of $1,000,000 was raised from over 300 investors.

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

- Koonar must cease trading in securities for a period of 10 years, is required to resign his position as an officer or director of the companies and any other issuer in which he holds the position of officer and/or director, and is prohibited from becoming or acting as an officer or director of any issuer for a period of 15 years.
- Koonar has undertaken not to apply for registration in any capacity under Ontario securities law, and has agreed to make payment to the commission in the amount of $50,000 in respect of a portion of the costs incurred by the commission and staff in relation to this proceeding.
- The companies must cease trading in securities permanently.
- Koonar and the companies are reprimanded by the Ontario Securities Commission.

Copies of the Notice of Hearing issued by the OSC, Statement of Allegations filed by commission staff, the Settlement Agreement and the Order made by the commission are available at www.osc.gov.on.ca.

OSC Website Now Lists Individual Dealers and Advisers

Ontario investors can now use the Internet to access more complete information about their dealers and advisers. The OSC has posted to its website a list of all individuals and firms licensed to advise or trade in securities in the province.

Investors can use the web-based listing to:

- learn whether a particular individual or firm is in fact registered to advise clients or deal in securities;
- identify the categories in which they are registered (for example, mutual fund dealers, investment counsel, etc.); and
- learn whether any terms and conditions are attached to their registration.

Terms and conditions are imposed if 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 was already available on the OSC website, information on registered individuals previously could only be obtained by phoning the commission. The complete registrant list can be found in the "Market Participants" section of the OSC website at www.osc.gov.on.ca.

RECENT SPEECHES

Recent Speech by OSC Chair David Brown

Excerpts from an address by David Brown, Q.C., Chair of the Ontario Securities Commission, to the Investment Funds Institute of Canada, April 2, 2002

A Fair Dealing Model

[…] Competition and technology are driving down the cost of executing a trade in a security, putting a premium on the value of advice. Advice used to be incidental to trading. Now, trading is incidental to advice. At the same time, retail investors are gaining more access to the market, service providers are converging – and of course the mutual fund industry is playing a more important role than ever.

All of these trends have made it critical to shape a model for fair dealing between the financial services industry and retail investors – a model that will serve the interests of investors and the needs of the industry as a whole. We have to ensure that competition flourishes, and regulation is cost-effective. […]

Regulators, the industry, and investors recognize that it is time to re-shape the regulatory model to fit the industry's current business model. That's why we have been working with the industry to re-shape our regulatory approach to the new investor-industry relationship, what I call the "Fair Dealing" model.

The vehicle was the Advisory Group representing all stakeholders. That includes the mutual fund sector. It includes institutional investors and retail investors; small firms and large ones; full-service brokers and discount brokers; portfolio managers and financial planners.

"We're concerned that incentives are inadequate for firms to adequately monitor employees with strong performance records."

The industry recognized the need to ensure fair dealing that properly serves the interests of both investors and the financial services community. Along with investors and other stakeholders, you are rolling up your sleeves and getting to work.

The Advisory Committee's efforts have been a great start to this. Together, we are shaping a consensus around principles of a fair dealing standard that would make the regulatory system work. While the consultation process will be carried forward with industry participants at sessions beginning later this month, I believe several key principles are apparent:

First, responsibility has to be clearly allocated between the firm and the investor, and the firm's representative and the investor. Second, transparency has to be ensured – regarding asset transformation services offered, risks, costs, remuneration, and conflicts of interest. Third, access by retail investors has to be promoted – access to opportunities, self-management of accounts, and the provision of services in a competitive market. Fourth, there must be zero tolerance for self-serving outcomes where the firm or the firm's representative has a conflict of interest.

The Advisory Group helped identify several elements essential to fair dealing between the industry and investors. The regulatory system must aim to reduce disputes between financial service providers and their clients. That demands clarity on the part of both the provider and the client at the outset of their relationship, and basic client awareness about the operation of the market.

The regulatory system should aim to keep the costs of complying with new requirements as low as possible. And costs must be matched by benefits. Regulatory requirements that do not benefit investors should be eliminated. Requirements that have outlived their usefulness should be eliminated or replaced. To the extent possible, financial service providers should be given the flexibility they need to operate in the most efficient manner.

The regulatory system must unduly favor neither large nor small firms. Nor should it provide an incentive for individuals to avoid regulatory compliance by acting as independent contractors or gravitating to smaller firms. The system should be adaptable to other jurisdictions and to all sectors. […]

Are advisors with small accounts getting less access to quality, tailored investment advice? The Forrester Report on Overhauling Financial Advice two years ago found that most consumers get no advice, or advice that is overpriced, product driven, or of low quality. This issue demands that we take a step back and ask ourselves: Will the creation of a fair dealing model exacerbate this problem, limiting access to advice by increasing costs of transparency and compliance? How do we avoid that?

The Forrester Report suggested that access to high-quality advice can be enhanced in the future through improved automated advice products. They offer the advantage of greater objectivity, consistency, and a better focus on fundamental financial questions rather than product features.

We also have to look at access to financial information for consumers trading through discount brokers. That could include better availability of basic information about how markets work, implications of various types of orders, plain language explanations of margin trading and its consequences, explanations of securities with unusual characteristics, such as trading in a foreign currency. […]

"Regulatory requirements that do not benefit investors should be eliminated."

[W]e've examined compliance and enforcement. We're concerned that incentives are inadequate for firms to adequately monitor employees with strong performance records. We're concerned about supervisory and compliance mechanisms for mutual fund salespeople with an independent contractor relationship with a firm. And it is too easy for an employee who draws compliance concerns at one firm to move over to another firm. That's like sorting a bad apple out of one barrel and putting it in another. In this area too we will be taking some specific ideas forward for further consultation.

We can place clearer responsibility on firms for improper activities of their officers, employees, and agents. That would include making it clear that a firm is subject to enforcement actions even if it is unaware of its employees' or agents' improper activities, if it did not adequately investigate suspicious activities. That would include unusually high production levels. Firms could also be liable if the wrong type of advice is being provided on a systematic basis. And enforcement action could include liability for losses.

We could require the creation of a new entity within the firm, whose functions would be limited to compliance and back-office operations. Independent contractors could be required to contract that function out if they can't provide it themselves. We could also make the contents of termination notices and other information from registration applications available over the Internet.

And finally, we're going to ask industry participants to look at the ramifications of the changing use of the media as a source of investment advice. We are seeing advisory services or advertising in form and content similar to the websites of respected news services. We also see financial service providers using promotional seminars to attract clients – with a hired speaker represented as an objective source of advice and information.

"Most consumers get no advice, or advice that is overpriced, product driven, or of low quality."

Based on the outcomes of consultations, the OSC will be issuing a concept paper in the near future, putting forward for comment these and other potential regulatory proposals. We have looked at inefficiencies in our regulatory model, and resulting compliance costs.

We've looked at a number of questionable practices, and a number of ways in which investors do not receive the service and advice they require. And we have seen a tremendous commitment from industry leadership to address these shortcomings. The industry as a whole recognizes that it depends on client confidence, a reputation for fairness, and an effective regulatory regime.

What can emerge from a fair dealing model between the financial services industry and retail investors is a stronger industry. We can achieve enhanced competition around quality of advice. We can ensure clarity in provider-client relationships. And we can cut unnecessary compliance costs, ensuring that providers and investors receive maximum regulatory value for every dollar spent.

For providers and clients, it can be win-win. In this first decade of the 21st century, the investing environment is undergoing a dramatic overhaul. The regulatory environment must keep pace.

(OSC Unveils "Fair Dealing Model"** from page 1**)

"A fair dealing model can result in a stronger financial services industry, enhanced competition around quality of advice, and clarity in provider-client relationships," OSC Chair David Brown said in a recent speech to kick off Investor Education Month last April (see article on page 6). "And it would cut unnecessary compliance costs, ensuring that providers and investors receive maximum regulatory value for every dollar spent."

The OSC and its advisory group have studied business models in the financial services industry and recognized that the current regulatory model has become outdated. For example, securities regulations assume that advisers are compensated based on trading activity, yet most firms now take a wealth management approach where trading and advising are no longer viewed as separate activities. The proposed regulatory model is more flexible and would better reflect market realities.

The following changes are being considered:

- more complete information on how service providers are compensated would be required, including clear disclosure of whether they receive payments or incentives from product issuers;
- new account opening documentation would clarify the nature of the provider-client relationship and potentially improve clients' understanding and acceptance of investment risk;
- responsibility would be placed clearly on firms for any improper activities of their officers, employees and agents, including liability for losses;
- current registration categories would be replaced with a single service provider license which would make no distinction between trading and advising; and
- certain regulatory requirements would be reduced to improve small investors' access to a variety of investment opportunities and increase market access for new types of service providers.

Staff plan to expose the new fair dealing model to a wider group of stakeholders and publish detailed proposals by the summer. For more information, please contact **Julia Dublin**, Senior Legal Counsel, Capital Markets Branch, 416-593-8103, jdublin@osc.gov.on.ca.

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