Ontario

ONTARIO SECURITIES COMMISSION

Volume 5, Issue 4

PERSPECTIVES

FALL 2002

inside...

FEATURE

OSC Takes Steps to Restore Investor Confidence

In the wake of the financial reporting scandals in the U.S. and the passage of the Sarbanes-Oxley Act (SOX) and other U.S. regulatory changes, the Ontario Securities Commission is working with governments and other agencies and organizations to promote investor confidence in Canada's capital markets.

The OSC has reallocated resources to its Continuous Disclosure Team to conduct disclosure reviews this year of the 100 largest TSX-listed companies headquartered in Ontario (full story page 2).

Canadian securities regulators, the federal government and the Canadian Institute of Chartered Accountants (CICA) have established a new, independent oversight board for auditors (full story page 4).

In an open letter to all market participants, OSC Chair David Brown has outlined the OSC's approach for addressing issues raised by SOX and new exchange listing requirements. Mr. Brown calls for a "made-in-Canada" approach that promotes investor confidence, attracts capital to Canada and preserves Canadian access to U.S. capital markets.

Mr. Brown has also issued a series of letters to the TSX, Canada's ten largest securities dealers, the CICA and the Law Society of Upper Canada seeking their advice and views on crafting a Canadian response to U.S. developments.

The open letter and the four stakeholder letters are all available on the OSC's website www.osc.gov.on.ca.

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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.

OSC Increases Continuous Disclosure Reviews

More Staff, Higher Targets, Deficient Companies to be Named

The OSC is building up its Continuous Disclosure Team to increase the vigilance of reviews of Ontario-based companies that issue securities to the public and to ensure that all of the largest 100 TSX companies that are headquartered in Ontario are reviewed this year, as announced on August 15, 2002.

OSC Reviews of Largest Ontario-Based Companies

Given the magnitude of accounting and auditing problems seen recently in American companies, the OSC is committing additional resources to its Continuous Disclosure Team, on a temporary basis. This will allow the OSC, among other things, to carry out a very thorough and timely review of 44 major companies that have not been reviewed by securities regulators in the normal course of reviews carried out in the past year.

These companies have not been selected for review because of suspicions about their disclosures. Indeed, the commission has no evidence of any problem with any of these companies. "What we are doing is accelerating the pace of the reviews of Ontario's largest and most influential companies because of their importance to our capital markets and their impact on investor confidence," said David Brown, OSC Chair.

"While our target has been to review 25% of reporting companies each year, over a recent 12-month period we reviewed nearly 30% of Ontario-based companies," said Brown, on releasing the 2002 Continuous Disclosure Review Annual Report. "And although we have not found any serious evidence of wrongdoing, we are expanding the scope and number of reviews we undertake. These times require us to be extraordinarily diligent in our reviews of publicly-traded companies' public disclosures," he said.

OSC To Name Deficient Companies

"When it comes to ensuring investor confidence, the quality and timeliness of public information disseminated by a company are crucial," said Brown. "Shareholders of a company need to know that they can trust the information they receive. To that end, we will begin to publicly identify companies when we require them to refile financial information," added Brown.

CD Team Annual Report Results

Under Ontario's existing securities legislation, publicly-traded companies are required to disclose important changes about their business as these changes occur. Historically, U.S. companies have not had a similar obligation. "Prompt disclosure of material changes has been a key component of our system for a number of years and I'm pleased to see the U.S. improving their disclosure standards," said Brown.

Continuous disclosure reviews focus on the information that companies are required to release, including their interim and annual financial statements, as well as the accompanying management discussion and analysis. The reviews have four major outcomes:

- companies reviewed are helped in meeting their disclosure requirements;
- some companies are required to restate corporate information already disclosed;
- other companies are required to make improvements to their future disclosure practices; and
- the OSC identifies serious problems that require new policy direction.

The OSC is applying a risk-based approach to focus reviews on companies that have a large impact on the capital market or on those whose past record suggests attention could be needed. Through ongoing continuous disclosure reviews, the OSC's target is to review each company based in Ontario at least every four years.

The most significant results of 517 reviews of Ontario-based companies conducted between April 1, 2001 and March 31, 2002 and described in OSC Staff Notice 51-703: Implementation of Reporting Issuer Continuous Disclosure Review Program, were:

- 57% of reviews resulted in no significant changes;
- 23% of companies reviewed agreed to enhance their future disclosure practices;
- 4% of companies reviewed developed corporate disclosure policies;
- 3% of companies reviewed made retroactive accounting changes;
- 2% of companies reviewed were placed on a default list;
- 2% of companies ceased to be reporting issuers; and
- 9% of companies made filings that were deficient; these companies were required to refile certain materials, a majority of which were interim financial statements.

The reviews included companies from the following sectors:

- Technology (30%)
- Mining, oil and gas (17%);
- Consumer and industrial products (16%);
- Financial services (12%);
- Health care (5%);
- Communication, media and entertainment (5%); and
- Other (15%).

"Our Continuous Disclosure Team will continue to examine documents provided by Ontario's publicly-listed companies," said John Hughes, Manager, Continuous Disclosure.

"We review disclosures for compliance with generally accepted accounting principles, for clarity and overall balance, and to target specific, sensitive issues such as revenue recognition and compensation disclosure. We are encouraged with improvements we are seeing in the quality of information disclosed by companies since we launched the Continuous Disclosure Team. Our purpose is to encourage greater discipline in issuers, so that they can consistently provide reliable information that allows shareholders to invest confidently," concluded Hughes.

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

Continuous Disclosure Advisory Committee Membership Announced

The OSC announced on August 15, 2002 the members of the Continuous Disclosure Advisory Committee (CDAC). The 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 CDAC members will serve two-year terms and meet four to six times each year.

The members of the CDAC are:

- Andrew Campbell, Senior Manager, Financial Analysis & Communications, Bank of Montreal
- Elizabeth DelBianco, Vice-President, General Counsel & Corporate Secretary, Celestica Inc.
- Andrew Fleming, Partner, Ogilvy Renault
- Tom Graham, Manager, Corporate Finance, TSX Venture Exchange
- Bill Hewson, Director Accounting and Corporate Reporting, Canadian Pacific Railway
- John Hughes, Manager, Continuous Disclosure, OSC (CDAC Chair)
- Guy Jones, Vice-President, Finance, Decoma International Inc.
- Jennifer Lederman, Financial Services Consultant
- Bill Mackenzie, President, Fairvest Corporation
- Tom Muir, Chief Financial Officer, Maple Leaf Foods Inc.
- William Orr, Partner, Heenan Blaikie LLP
- Philip Speller, Independent Analyst/Consultant
- Bob Tait, Director, Investor Relations, Canadian Tire Corp. Ltd.
- Richard Wertheim, Managing Partner, Wertheim + Company Inc.
- Gil Yaron, Director of Law & Policy, Shareholder Association for Research and Education
- Amelia Young, Senior Director, Investor Relations, Hummingbird Ltd.

"The extensive knowledge of continuous disclosure issues brought by CDAC members will greatly assist us in understanding issues faced by those who generate disclosure and the investors who rely on it," said OSC Manager of Continuous Disclosure John Hughes. "We are fortunate to form a committee that reflects the variety of users and industry sectors involved in continuous disclosure," added Hughes.

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, commodity futures, bond market transparency, institutional equity trading, small business issues and reducing the regulatory burden. 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.

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

OSC Issues Report on Compliance Deficiencies

On September 9, 2002, the OSC issued a report outlining deficiencies identified in field reviews of market participants' compliance practices during the period April 1, 2001 to March 31, 2002. Where problems were found, ten common deficiencies were identified in advisers' practices and seven common deficiencies were identified in fund managers' practices. The report also provides best practice guidelines to assist market participants in improving their compliance environments.

Field reviews completed by the team are comprehensive reviews of market participants' operations. All market participants reviewed were given a report identifying any compliance deficiencies noted. In most cases, market participants had good compliance regimes in place and only relatively minor deficiencies were noted. In some cases, substantial deficiencies were identified. In these cases, customized terms and conditions were imposed on advisers' registration to encourage their greater compliance with securities laws. In fewer cases, advisers were also required to have their registration reviewed and renewed monthly.

The report is available on the OSC web site at www.osc.gov.on.ca under "Rules and Regulations", "Compliance". For more information, please contact **Marrianne Bridge**, Manager, Compliance (416) 595-8907, mbridge@osc.gov.on.ca.

New Independent Public Oversight for Auditors of Public Companies

To strengthen confidence in capital markets and the credibility of financial statements, a new system will oversee the auditors of public companies in Canada.

On July 17, the Canadian Securities Administrators (CSA), the Office of the Superintendent of Financial Institutions (OSFI), and Canada's chartered accountants released details about the new system, which includes:

- more rigorous inspection of auditors of public companies;
- tougher auditor independence rules; and
- new quality control requirements for firms auditing public companies.

The new requirements will apply to auditors of publicly listed companies and will be administered and enforced by the new Canadian Public Accountability Board (CPAB). The creation of the CPAB will ensure the independence and transparency of the new process.

Major firms conducting public company audits will now be reviewed annually and subject to a more comprehensive examination of their quality control polices and procedures. Failure to remedy significant deficiencies identified by the CPAB will result in sanctions and will also be communicated to the appropriate regulators, which may take action.

Canada's major CA firms have voluntarily agreed to implement the new requirements in October 2002, which will coincide with the establishment of the CPAB. The CPAB requirements will apply to all other firms auditing public companies within three years.

"This new oversight body is not controlled by the CA profession," said Ontario Securities Commission Chair David Brown, who will chair the group mandated to appoint the CPAB members. "The new system is based on independent, public oversight, tougher practice inspection and more rigorous quality control mechanisms. We intend to seek public comment on new rules that will require auditors of Canadian publicly listed companies to be members in good standing of the CPAB."

The CPAB will be made up of 11 individuals, including seven from outside the CA profession, and is expected to hold its first meeting in mid-October. The CPAB requirements will ensure that Canadian CA firms in the course of auditing public companies will:

- undergo more frequent and rigorous inspections, which will be conducted by a new national inspection body and will include public, annual reporting of results;
- accelerate the adoption of more stringent standards on auditor independence, including limits on the types of consulting services that can be provided to audit clients;
- rotate the lead partner on an audit on a regular basis;
- have a second partner review every audit; and
- have resources and procedures in place to ensure consultation takes place on difficult, sensitive or contentious issues.

"The fact that the CA firms that audit large companies have already agreed to implement these changes means we can proceed without delay to get the improvements in place," said Canadian Institute of Chartered Accountants (CICA) President and CEO David Smith, adding that the changes will become part of the profession's mandatory rules once they go through the various consultation and approval processes.

It is estimated that the new quality control system will cost at least $6 million annually, which is double the amount currently spent on practice inspection by the CA profession through provincial CA Institutes/Ordre.

Additional information is available at www.osc.gov.on.ca and at http://www.cpab-ccrc.ca/-/index.html regarding:

- Canadian Public Accountability Board
- Requirements for CA Firms that Audit Public Companies
- Sanctions for Auditors

For more information, please contact **John Carchrae**, Chief Accountant, OSC, (416) 593-8221, jcarchrae@osc.gov.on.ca.

Canadian Trading and Quotation System Application for Recognition

Canadian Trading and Quotation System (CNQ) has applied to the Commission for recognition as a quotation and trade reporting system under section 21.2.1 of the Ontario Securities Act.

The Commission has published for comment the following documents in Chapter 13 of the July 26, 2002 edition of the OSC Bulletin:

1. Notice and request for comment
2. CNQ's application
3. CNQ Policies
4. CNQ Rules
5. Draft recognition order

For more information, please contact **Susan Greenglass**, Legal Counsel, (416) 593-8140, sgreenglass@osc.gov.on.ca, or **Barbara Fydell**, Legal Counsel, (416) 593-8253, bfydell@osc.gov.on.ca.

TSX Inc. Reorganization and IPO

TSX Inc. (formerly The Toronto Stock Exchange Inc.) has applied to the Commission for an amended and restated recognition order to reflect a reorganization prior to the initial public offering of TSX Group Inc., a new holding company for TSX Inc., as well as the name change of The Toronto Stock Exchange Inc. to TSX Inc. In addition, the Canadian Venture Exchange Inc. (CDNX) has applied to amend its exemption from recognition order to reflect the reorganization of TSX Inc. and the name change of CDNX to TSX Venture Exchange Inc.

The Commission has published for comment the following documents in Chapter 13 of the July 26, 2002 edition of the OSC Bulletin:

1. Notice and Request for Comment
2. TSX Inc.'s application
3. Schedules to TSX Inc.'s application
   a. Draft order under subsection 21.11(4) of the Securities Act
   b. Draft regulation under subsection 21.11(5) of the Securities Act
   c. Amended and restated recognition order for TSX Inc.
   d. Amended exemption from recognition order for TSX Venture Exchange Inc.

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

OSC Small Business Advisory Committee Established

The Ontario Securities Commission has established a Small Business Advisory Committee (SBAC) to advise on securities regulatory issues facing small and medium-sized businesses in Ontario. In particular, the SBAC will advise staff on any issues arising from the implementation of the recently-revised Exempt Distributions rule. It will also serve as a forum for continuing communication between the Commission and small business.

The SBAC will be chaired initially by Margo Paul, Manager, Corporate Finance, OSC, who will serve a two-year term. The SBAC will be composed of approximately ten individual volunteers, meeting approximately four times a year.

Applications from interested parties were received up to August 31, 2002.

Background

In June 1994, the Commission established an industry task force, known as the Task Force on Small Business Financing, to make recommendations about the Ontario legislative and regulatory framework governing the raising of capital by small and medium-sized enterprises. The Task Force issued its final report in October 1996.

On November 30, 2001, revised OSC Rule 45-501 Exempt Distributions came into force. This rule implements many of the recommendations of the Task Force relating to the regulation of private placement financing.

Recognizing the critical role played by the Task Force's industry participants in the development of the new exempt market regime, the Commission is establishing the SBAC to provide ongoing advice to the Commission and its staff.

For more information, please contact **Margo Paul**, Manager, Corporate Finance, (416) 593-8136, mpaul@osc.gov.on.ca.

OSC Announces Credit for Cooperation Guidelines

It is part of the Commission's compliance policy that market participants should have an incentive to self-police, self-report, and self-correct matters that may involve breaches of Ontario securities law or activities that would be considered contrary to the public interest.

Cooperation in accordance with new guidelines may lead to recommendations which narrow the scope of the allegations, a reduction in the sanctions proposed, and, in some cases, a decision not to name a market participant in the Notice of Hearing.

OSC Staff Notice 15-702 is intended to formalize Staff's position on what cooperation means and how cooperation can be translated into a form of credit during the investigative and litigation process.

Staff's expectations of market participants

A market participant that identifies a serious problem in respect of their systems of internal control, the reporting of financial results, misleading disclosure, illegal trading or any other inappropriate activity that has impacted investors or cast doubt on the integrity of Ontario's capital markets, should promptly and fully report to the appropriate regulatory or law enforcement agency.

When a serious matter is reported to staff of the OSC, a market participant should volunteer all the necessary books and records required to assess the matter and any reports or analysis prepared by experts retained by the market participant or its counsel.

The market participant should fully and completely provide restitution, if appropriate, to any investors that have been harmed by inappropriate conduct or by a failure of internal controls.

What is not viewed as cooperation

In general, staff of the OSC will not give credit for cooperation to market participant in situations where, during the course of an investigation, the market participant puts the interest of the firm or its officers, directors or employees ahead of its obligations to clients, shareholders, or the integrity of Ontario's capital markets.

Specifically, no credit for cooperation will be given when market participants:

- fail to promptly and fully report serious breaches of Ontario securities law to staff of the OSC or to another regulator when the facts of the matter are known to them;
- withhold information that in light of the circumstances should be provided to staff of the OSC;
- arrange their affairs in such a manner as to delay reporting a matter that should be reported or to claim a privilege to avoid providing details of potential breaches of Ontario securities law;
- indicate they are prepared to cooperate fully but will only provide information on a compelled basis;
- misrepresent the facts of a situation; or
- destroy documents in an attempt to avoid production of the records.

Credit for cooperation

If potential respondents act in a responsible manner during the course of an investigation and have self-policed, self-reported, and self-corrected the matters under investigation, staff may agree that it may be in the public interest to resolve the outstanding issues by administrative measures.

Greater cooperation during the course of an investigation will lead to reduced costs incurred by Commission staff, and consequently, a reduction of the potential costs that might be assessed under section 127.1 of the Act.

Full text of the Notice is available in the June 28, 2002 edition of the OSC Bulletin.

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

OSC Approval of Amendments To IDA By-law No. 15

Provision of Financial Assistance by the IDA to Industry Organizations and SROs

The OSC approved amendments to Investment Dealers Association of Canada (IDA) By-law No. 15 regarding the provision of financial assistance by the IDA to securities industry organizations and securities regulatory organizations, subject to the following two conditions:

1. Before the proposed amendment becomes effective, the IDA will revise proposed by-law 15.11 by inserting the words "except Member" in order to clarify the IDA's intention. Once it is in effect, the relevant part of the by-law will read as follows:

"... to, of or in respect of any person or organization, except Members, engaged in regulation, education, registration, operations, trading, customer protection or other participation in or in respect of the Canadian capital markets and the business of Members of the Association ..."

2. Thirty days prior to exercising its powers under section 15.11, the IDA must notify the principal regulator that the IDA intends to provide financial support to other securities industry organizations or securities regulatory organizations. The IDA must also include details of the financial support and provide a copy of its most recent interim financial statements. Currently, the principal regulator is the Ontario Securities Commission.

In addition, the Saskatchewan Securities Commission approved, the Alberta Securities Commission did not disapprove and the British Columbia Securities Commission did not object to these amendments, subject to the same two conditions. The amendments will streamline the process for the IDA to provide financial support to securities industry organizations and securities regulatory organizations, while tightening the controls surrounding the authorization of such support. The amendments are housekeeping in nature. A copy of the amendments is published in Chapter 13 of the July 19, 2002 edition of the OSC Bulletin.

For more information, please contact **Cindy Petlock**, Manager, Market Regulation, (416) 593-2351, cpetlock@osc.gov.on.ca.

NRD Launch Deferred To 2003

The launch date of the National Registration Database, the new web-based system for registering dealers and advisers, has been shifted to the first half of 2003. It was previously targeted for November 25, 2002.

Coding of the system has been completed on schedule, but the CSA has decided to be more rigorous in the final testing phase than originally planned, to ensure that NRD can withstand the demands of full scale usage. Previous testing phases have not uncovered any serious problems.

Regulators will announce a definitive NRD launch date by the autumn of 2002, to ensure that registrants have adequate time to complete their preparations. For more information, please visit the NRD information website at www.nrd-info.ca.

OSC 2002 Annual Report Available

The theme of this year's annual report is "Defining the OSC". Through definitions of *confidence, innovate, integrity and simplify*, we describe objectives we are striving for, or working to foster among our market participants.

The OSC 2002 Annual Report is available online at www.osc.gov.on.ca or from the OSC by calling 416-593-8314 or toll-free 1-877-785-1555.

Dialogue with the OSC 2002

"Fostering Capital Markets that are Fair, Efficient and Safe"

Thursday October 10th, 2002

Sheraton Centre Hotel, 123 Queen Street West, Toronto

CONFERENCE PROGRAM

8:45
Introductory Remarks – *Charlie Macfarlane, Executive Director*

9:00
Keynote Address – *David Brown, Chair*

9:30
Panel of CSA Chairs – *David Brown (OSC), Doug Hyndman (BCSC), Steve Sibold (ASC)*

10:30
Break

10:45
Break-out Session #1

- **Significant Legal & Regulatory Developments –** *Chair: Susan Wolburgh Jenah, General Counsel*
  The session will include a discussion of the Five Year Review Committee's Draft Report and comments received in response and National Policy 51-201 Disclosure Standards.

- **Fair Dealing Model –** *Co-Chairs: Julia Dublin, Senior Legal Counsel, Capital Markets Branch, and Randall Powley, Chief Economist*
  Members of the Fair Dealing Advisory Group will describe the OSC's new proposals for regulating the relationship between the financial services industry and individual investors.

- **Continuous Disclosure Update –** *Chair: John Hughes, Manager, Continuous Disclosure*
  The session will provide an update on the current focus and scope of the OSC's CD review program, including its review of executive compensation disclosures, and the CSA's CD harmonization initiative.

12:00
Luncheon Address – *Randall Powley, Chief Economist*

1:30
Panel of OSC Vice-Chairs – *Paul Moore & Howard Wetston*

2:45
Break-out Session #2

- **Recent Developments in Enforcement –** *Chair: Michael Watson, Director, Enforcement*
  Topics discussed in the session will include the joint RCMP/OSC Securities Fraud Unit, disclosure issues and financial misrepresentations, temporary orders and current litigation issues, and staff's credit for cooperation policy.

- **Building Investor Confidence in Financial Reporting –** *Chair: John Carchrae, Chief Accountant*
  The session will address the OSC's views on recent regulatory developments affecting financial reporting, and its priorities for continuing reform.

- **New Proposals for Investment Funds –** *Co-Chairs: Rebecca Cowdery, Manager, Investment Funds Regulatory Reform, and Paul Dempsey, Manager, Investment Funds*
  The discussion will include recent proposals regarding investment fund continuous disclosure, fund of funds, point of sale disclosure, and fund governance.

3:45
Break

4:00
Break-out Session #3

- **Corporate Finance, Mergers & Acquisitions –** *Chair: Ralph Shay, Director, Take-over Bids, Mergers & Acquisitions and Acting Director, Corporate Finance*
  The session will address current issues such as financing using equity lines, income trusts, reporting of equity monetization transactions, and implications of developments regarding poison pills and voting support agreements.

- **Risk-based Approach to Capital Markets Regulation –** *Chair: Randee Pavalow, Director, Capital Markets*
  Staff from the Registration, Compliance and Market Regulation teams will discuss their evolving approaches for more effectively enhancing regulatory compliance among market participants.

- **Sarbanes-Oxley Act in a Canadian Context –** *Chair: Susan Wolburgh Jenah, General Counsel*
  The discussion of the recent US legislation will include a comparison to existing Canadian laws, and staff's views on an appropriate Canadian regulatory response.

5:15
Reception

REGISTER NOW

- Register online at www.osc.gov.on.ca/dialogue
- Or call the Dialogue with the OSC 2002 Hotline at (416) 593-7352 or (800) 360-0493

Registration Fee: $395
The registration fee includes conference materials, luncheon, refreshments and evening reception. GST is included.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

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

CSA Proposes Opening Funds of Funds Regime

The Commission has published for comment proposed amendments that would open up the current regulatory framework for fund of funds structures contained in National Instrument 81-102 Mutual Funds and its Companion Policy 81-102CP. These proposals would also impose certain disclosure requirements specific to fund of funds structures through amendments to National Policy 81-101 Mutual Fund Prospectus Disclosure and its related Forms 81-101F1 Contents of Simplified Prospectus and 81-101F2 Contents of Annual Information Form.

In addition to the fund of funds amendments, the Commission is also proposing to make a number of miscellaneous amendments that are described in the notice of the proposed amendments.

The documents are published in the July 19, 2002 edition of the OSC Bulletin.

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

CSA Adopts New Policy on Disclosure Standards

Canadian securities regulators have adopted a policy statement that provides guidance and best practices on corporate disclosure and assists public companies in avoiding selective disclosure.

"It is fundamental that everyone investing in securities should have equal and timely access to information that may affect their investment decisions," said Doug Hyndman, CSA Chair. "The law has required this for many years but we are giving companies fresh guidance to help them avoid selectively disclosing material information to analysts, institutional investors, investment dealers and market professionals."

Selective disclosure occurs when a company discloses material non-public information to one or more individuals or companies and not broadly to the investing public. Selective disclosure can create opportunities for insider trading and also undermines retail investors' confidence in the marketplace.

National Policy 51-201 Disclosure Standards provides guidance on best disclosure practices in a difficult area. "We need to strike the right balance between business pressures and the need for information to be broadly available to all investors," added Hyndman. "Our recommendations are not intended to be prescriptive. We encourage companies to adopt the suggested measures, but flexibly and sensibly to fit their particular situation."

Securities legislation prohibits tipping and insider trading. Tipping occurs when someone provides information about a material fact or a material change (privileged information under Québec legislation) before that information has been generally disclosed. Insider trading involves someone buying or selling securities with knowledge of a material fact or material change about the issuer that has not been generally disclosed. The policy includes best practices to help issuers and their insiders avoid situations that could lead to tipping or insider trading.

The new policy indicates that selective disclosure violations can occur in a variety of settings, including one-on-one discussions, such as analyst meetings, in industry conferences and other types of private meetings. "Companies should be very sensitive to the risks involved in private meetings with analysts," said Hyndman.

The timely disclosure requirements and prohibitions against selective disclosure are substantially similar everywhere in Canada, but there are differences among the provinces and territories. Companies should carefully review the legislation which is applicable to them for the details.

The policy is available on CSA members' web sites, including www.osc.gov.on.ca. For more information, please contact **Rossana Di Lieto**, Senior Legal Counsel, General Counsel's Office, (416) 593-8106, rdilieto@osc.gov.on.ca.

CSA Rule on Commodity Pools

Multilateral Instrument 81-104 and Companion Policy 81-104CP

The OSC has, under section 143 of the Securities Act (the Act), made Multilateral Instrument 81-104 Commodity Pools (the Instrument) a rule under the Act. The OSC also adopted Companion Policy 81-104CP (the Companion Policy) as a policy under the Act.

The Instrument and the material required by the Act were delivered to the Minister of Finance on August 7, 2002. The Minister may approve or reject the Instrument or she may return it to the OSC for further consideration. The Act gives the Minister until October 7, 2002 to do one of these things. If she approves the Instrument or takes no further action by that date, the Instrument will come into force in Ontario under section 11.1 of the Instrument on November 1, 2002. The Companion Policy will come into force on the date that the Instrument comes into force.

The Instrument and Companion Policy are initiatives of the Canadian Securities Administrators (the CSA). The Instrument has been, or is expected to be, adopted as a rule or regulation in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Newfoundland and Nova Scotia and as a policy in all other jurisdictions represented by the CSA, other than Québec. All of the jurisdictions represented by the CSA, other than Québec, have adopted or expect to adopt the Companion Policy as their policy. The Commission des valeurs mobilières du Québec (the "CVMQ") participated closely in the development of the Instrument and the Companion Policy, but has not yet decided to adopt the instruments. Interested parties may contact staff at the CVMQ if they have any questions on the status of the Instrument and the Companion Policy in Québec.

The British Columbia Securities Commission did not adopt some sections of the Instrument. These sections deal with the rules for establishing new commodity pools, the proficiency requirements that apply to dealers in British Columbia selling securities of commodity pools in that province, and certain of the commodity pool prospectus and continuous disclosure requirements.

Revocation of OSC Policy Statement

The OSC has revoked OSC Policy Statement 11.4 Commodity Pool Programs (OSC Policy 11.4) effective the date that the Instrument comes into force. Pending the Instrument and Companion Policy coming into force, OSC Policy 11.4 will continue to operate as a guideline for commodity pools in Ontario.

For more information, please contact **Rebecca Cowdery**, Manager, Investment Funds Regulatory Reform, (416) 593-8129, rcowdery@osc.gov.on.ca

Securities Regulators Propose National Disclosure Rule

Public companies will have to abide by only a single set of securities requirements in filing their financial statements and other continuous disclosure documents, under a new national rule proposed by the Canadian Securities Administrators. "This single rule would make filing continuous disclosure documents simpler and less costly for companies that are reporting issuers in more than one jurisdiction," said CSA Chair Doug Hyndman.

The proposed rule — National Instrument 51-102 Continuous Disclosure Obligations — would end the situation in which companies must meet different disclosure requirements in multiple jurisdictions in which they report. The continuous disclosure documents that most companies must currently file include financial statements, annual information forms, management discussion and analysis (MD&A), material change reports and executive compensation statements.

Under the new rule, some continuous disclosure requirements would change significantly for companies. These changes include:

- Meeting shorter filing deadlines for annual and interim financial statements;
- Permitting companies that file with the U.S. Securities and Exchange Commission to file financial statements prepared in accordance with U.S. generally accepted accounting principles;
- Requiring new disclosure of significant business acquisitions; and
- Disclosing certain incorporating documents that affect the rights of shareholders.

"This rule would improve the consistency of disclosure in the securities markets," said Hyndman. "Having one set of continuous disclosure requirements is also a necessary first step to achieving an integrated disclosure system across Canada that would facilitate capital-raising."

The rule does not apply to investment funds and their continuous disclosure obligations, for which the CSA plans to issue a separate rule.

The CSA also published for comment a national rule – National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers — that would allow certain foreign issuers to satisfy Canadian continuous disclosure requirements by filing similar foreign documents. Regulators believe that a single set of exemptions would ease the compliance burden for foreign issuers and increase the investment opportunities available to Canadians.

The public comment period ends Sept. 19, 2002. The proposed rules may be viewed at the commission websites, including www.osc.gov.on.ca. For more information, please contact **Irene Tsatsos**, Senior Accountant, (416) 593-8223, itsatsos@osc.gov.on.ca or **Joanne Peters**, Senior Legal Counsel, (416) 593-8134, jpeters@osc.gov.on.ca.

Changes to Shareholder Identification and Communications

At present, an issuer generally cannot obtain the names of shareholders who hold its securities through a broker or other intermediary. National Instrument 54-101 (Communication with beneficial owners of securities of a reporting issuer) permits issuers, as of September 2002, to obtain from brokers the names of their shareholders who have not objected to being identified. In addition, it allows issuers holding shareholder meetings on or after September 1, 2004, to send meeting materials directly to these non-objecting shareholders. National Instrument 54-102 (Interim financial statement and report exemption) establishes procedures that will allow issuers to send interim financial statements and reports only to shareholders who specifically request the documents.

"These measures will allow issuers to determine who their shareholders are and to choose how to communicate with them," said Doug Hyndman, CSA Chair. "Shareholders can still remain anonymous but it will be their choice, and not the choice of their brokers."

The rules came into effect on July 1, 2002. As Quebec is still awaiting regulatory approval of the rules, it has enacted temporary exemptions to allow Quebec issuers to benefit from the harmonized standards.

The rules may be viewed at the commission websites, including www.osc.gov.on.ca. For more information, please contact **Winnie Sanjoto**, Legal Counsel, (416) 593-8119, wsanjoto@osc.gov.on.ca.

ENFORCEMENT REPORTS

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

Ontario Securities Commission Approves Settlement in the Matter of Mark Bonham and Bonham & Company Ltd.

The Ontario Securities Commission approved a settlement agreement reached between staff of the Commission and the Respondents Bonham and Bonham & Company Inc.

Bonham and Bonham & Co. were registered with the Commission as Investment Counsel/Portfolio Managers. Bonham acted as the Portfolio Manager of several mutual funds managed by Bonham & Co. and SVC O'Donnell Fund Management Inc. During the period July 31, 1997 to June 30, 1998, Bonham manually priced certain shares held by three mutual funds, namely, the Strategic Value Fund, The Canadian Equity Value Fund and the Dividend Fund.

SVC O'Donnell (now StrategicNova Funds Management Inc.) entered into a settlement agreement with Staff of the Commission in November of 2000 regarding its role in supervising the Respondents' actions.

In the Settlement Agreement, the respondents admitted they breached Ontario securities laws, and specifically s. 116 of the Securities Act. In particular, Bonham admitted that he failed to act in good faith and in the best interest of the mutual funds, failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and Bonham & Co. admitted that it failed to properly supervise Bonham's actions. The respondents also admitted that they did not apply a specific, consistent or appropriate methodology in manually pricing the shares held by the funds, and that they did not maintain proper records of the methods used to manually price the shares.

The respondents' manual pricing resulted in the funds being materially overvalued by approximately $377,652.70. Full restitution of this amount was paid by StragicNova into the funds in late 2000, and investors have been fully compensated for any potential losses.

In its Order, the Commission approved the following sanctions:

- The respondents were reprimanded;
- The respondents have surrendered their registrations with the Commission as Investment Counsel/Portfolio Managers for a period of 3 years;
- The respondents have undertaken that they will not be involved, directly or indirectly, in the pricing or valuation of a mutual fund for a period of 3 years;
- If during the three year sanction period, either of the respondents are involved in initiating a mutual fund, they must disclose this settlement agreement in any public disclosure document or enabling instrument;
- Mark Bonham must cease trading in securities, except on his own account, for a period of 3 years;
- Mark Bonham cannot act as a Director or Officer of a registrant for a period of 3 years;
- The respondents have undertaken that, if at the end of the 3 year period, they are ever involved in the pricing or valuation of a mutual fund, they will be subject to appropriate supervision by another registrant of such valuation;
- Both respondents agreed to pay the sum of $150,000 to the Commission in respect of the costs of investigating this matter; and
- Both respondents agreed to make a voluntary payment in the amount of $50,000 to the Commission, to be allocated to purposes that will benefit investors in Ontario.

Speaking on behalf of the settlement panel, Vice-Chairman Paul Moore stated that while the manual pricing of securities held in mutual funds may be appropriate in limited circumstances, to do so without proper supervision, documentation or a consistent methodology poses a risk to the investing public.

Noting that this was a case of first impression before the Commission, or any other Canadian securities commission, Vice-Chair Moore stated that the settlement was in the public interest and sends an appropriate message to the mutual fund industry. This settlement, in the Commission's view, will "highlight the need to apply a specific and consistent methodology when pricing securities held in a mutual fund, as well as the need to maintain adequate records with respect to the determination of such prices."

Vice-Chair Moore also praised the settlement in that significant steps have already been taken by the respondents to eliminate any risk to the public, and the respondents' additional undertakings will help protect the investing public both during the duration of the present sanctions and well into the future.

Copies of the settlement agreement and final order are available on the Commission's website, www.osc.gov.on.ca, or from the Commission's offices at 20 Queen Street West, 19th Floor, Toronto.

OSC Issues Reasons For Order Against Mark Valentine

On July 31, 2002, the Ontario Securities Commission released reasons for its order dated July 8, 2002, issued against Mark Edward Valentine. Valentine was the Chairman and largest shareholder of Thomson Kernaghan & Co. Ltd. ("TK"). TK is now in bankruptcy.

On June 17, 2002 the Commission issued a temporary order suspending Valentine's registration as a stockbroker, and requiring him to cease trading in securities for a period of 15 days. On July 2 and July 8, 2002, the Commission convened a hearing to consider whether the temporary order should be extended. At the conclusion of the hearing, the Commission extended the temporary order until at least January 31, 2003, to allow staff to continue their investigation of Valentine's actions.

The order also provides that the exemptions contained in Ontario securities laws do not apply to Valentine for the same period, provided that he may trade in certain securities for his own account, or for the account of his RRSP or RRIF. The order states that, if a hearing before the Commission is not commenced by January 31, 2003, staff of the Commission may apply to have the order further extended.

In its reasons for decision, the Commission reviewed the evidence presented concerning Valentine's role as the Registered Representative for four private funds, namely the Canadian Advantage Limited Partnership, Advantage (Bermuda) Fund Ltd., VC Advantage Fund Limited Partnership and the VC Advantage (Bermuda) Fund Ltd. It also considered evidence concerning Valentine's role in the financing of JAWZ Inc.

The Commission found that it was "satisfied that staff has provided sufficient evidence of conduct that may be harmful to the public interest and, accordingly justifies an extension of the temporary order. There is little doubt that additional time is required to complete the investigation and, unless the temporary order is extended, there is a reasonable likelihood that Valentine's alleged objectionable conduct may continue. Such conduct would present a serious risk to the integrity of Ontario's capital markets as well as to the protection of the public interest".

Copies of the reasons for decision are available on the Commission's website at www.osc.gov.on.ca or from the Commission's offices at 20 Queen Street West, Toronto.

Ontario Division Court Dismisses All Grounds Of Appeal By Marchment & Mackay, Charles Ornstein And Amit Sofer

On July 16, a three member panel of the Ontario Divisional Court released Reasons for Judgment in an Appeal of a Commission decision, Marchment & MacKay v. Ontario Securities Commission. At the hearing held on June 24, 2002, the Divisional Court dismissed all grounds for appeal raised by Marchment & MacKay, Charles Ornstein and Amit Sofer and awarded costs of $20,000 to be paid to the Ontario Securities Commission by July 24, 2002.

"We are not convinced that the appellants have demonstrated that they have been prejudiced at any material way as to how the proceedings were conducted in the circumstances prevailing. The appeal is dismissed."

Oral reasons for judgement, Farley, Then and Linhares de Sousa JJ., Ontario Superior Court of Justice, June 24, 2002.

The Divisional Court considered whether the disclosure made by staff was adequate, and referred to the decision of the Ontario Court of Appeal in Deloitte & Touche v. Ontario Securities Commission (released June 13, 2002). The reasons stated that "even if there was a failure in the disclosure obligation, there was no prejudice to the appellants... The case against the appellants was the testimony of ten witnesses who were strangers to each other and of various backgrounds. In circumstances where no collusion is alleged, these witnesses individually and cumulatively testified to a detailed and extensive pattern of similar conduct in sales practices that in our view constituted an overwhelming case against the appellants."

The appeal was from a decision made August 3, 1999 in which the Commission found, among other things, that Marchment & MacKay, Ornstein, and Sofer had breached the duties owing to their clients and failed to act honestly, in good faith and in the best interests of their clients. The Commission ordered that, among other things:

- Marchment & MacKay's registration be terminated and any exemptions under Ontario securities law were permanently no longer available;
- Ornstein's registration was terminated and any exemptions under Ontario securities law were permanently no longer available, providing that after two years Ornstein could trade on a restricted basis on his own account and in his RRSP; and
- Sofer's registration was suspended and any exemptions under Ontario securities laws were not available for a period of ten years, provided that after one year Sofer could trade on restricted basis on his own account and in his RRSP.

Copies of the reasons for judgment are available on the Commission's website at www.osc.gov.on.ca or from the Commission, 20 Queen Street West, Toronto.

OSC Approves Settlement Between Staff And Blair Taylor

On July 18, 2002, the OSC approved a settlement reached by staff of the Commission and the respondent (John) Blair Taylor.

Taylor agreed that he acted contrary to the public interest by failing to:

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

The Commission reprimanded Taylor and ordered that Taylor be prohibited from becoming or acting as a director or officer of any issuer for two years. As terms of the settlement, Taylor must also pass the Partners, Directors and Officers examination and pay $7,500 in costs to the Commission.

The Commission expressed the view that it was appropriate for staff to bring this proceeding since it is in the public interest that senior management be accountable for investment activities. The settlement approval acknowledges the importance of vigilance in the accurate capture, recording and accounting of trading activities. "It is important that members of senior management, whether registered or acting in a professional capacity, ensure that the firm establishes suitable systems of internal control," said Brian Butler, Manager of Investigations, Enforcement Branch.

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

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