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PERSPECTIVES

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Proposed Legislation to Increase OSC Powers

The Ontario Ministry of Finance has proposed a comprehensive legislative package to bolster the protection of Ontario investors.

The proposed measures include:

- Tougher penalties to ensure compliance with Ontario's securities laws. Maximum court fines for general offences would increase to $5 million from $1 million and maximum prison terms would increase to five years less a day from two years;
- New powers that would give the OSC the authority to impose administrative fines of up to $1 million for securities law violations and order that offenders give up the profits they have gained from those violations;
- Stronger powers for the OSC to review the information that public companies disclose to investors;
- Greater clarification of offences such as securities fraud and market manipulation, and making misleading or untrue statements;
- Broader rights for investors to sue if companies make misleading or untrue statements or fail to give full and timely information; and

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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 Chair David Brown Applauds MacKay Report

OSC Chair David Brown expressed support for the report issued November 19, 2002 by Harold MacKay to federal Finance Minister John Manley. The report, which the Finance Minister immediately shared with his provincial counterparts, concludes consultations held across the country on a process to improve Canada's securities regulatory framework.

"Mr. MacKay's recommendations are timely," said Mr. Brown. "They recommend a consensus-based approach to resolve issues and bring national unity to our fragmented securities regulatory system. Mr. MacKay clearly recognizes the need to focus Canadians from all provinces and territories on the importance of building a system that unifies regulation for Canadian investors and issuers."

OSC Launches Investor Guide On Roles, Rights and Responsibilities of Market Participants

A new Investor Guide released by the OSC in September 2002 helps investors understand their rights and responsibilities and clearly outlines the role of the Ontario Securities Commission as the investment industry's watchdog.

Roles, Rights and Responsibilities helps investors understand how the *Securities Act* sets out the rules, policies and procedures that govern the financial markets. It explores the mandate of regulatory bodies that oversee the industry and the responsibilities of companies that issue securities as well as dealers and advisers. It also stresses to investors that while there are rules and oversight of those rules in place to protect them, there are certain steps they should take to protect themselves.

Roles, Rights and Responsibilities is available free of charge as part of the OSC's Investor Education Kit. It is the sixth in the OSC's Guide for Investors series, which includes *An Investor's Guide to OSC Resources and Services, A Step-by-Step Guide to Making a Complaint, Borrowing to Invest: Understanding Leverage, Financial Disclosure: What You Need to Know* and *Dealers and Advisers: With Whom Are You Dealing for Your Investment Services*?

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

OSC Proposes New Relationship Between Investors And Advisers; Launches Web Site for Consultations

Changing market conditions, heightened investor expectations and pressures on the financial services industry are driving the need to change the relationship between investors and their advisers, says the OSC. The new relationship was described in a proposed Fair Dealing Model, released for comment by the OSC in October 2002.

"Investors who count on corporations and the investment industry to protect their retirement savings need to trust the system for a fair deal," said David Brown, OSC Chair. "Securities regulations in Ontario have focused on products and transactions for more than thirty years. We are proposing a new approach, focused on the relationship between investors and their service providers," added Mr. Brown.

The Fair Dealing Model presents three basic relationship models:

The Managed-For-You relationship puts primary responsibility on the adviser.

- Investors surrender control of their accounts to expert managers who do not consult with them trade-by-trade.
- The managers, who have a trustee level of fiduciary duty, are responsible for deep knowledge of their clients and their circumstances.
- The portfolio policy agreed to in the Fair Dealing Document becomes their guidelines.
- Compensation is typically fee-based.

In the Advisory relationship, responsibility is shared between the adviser and investor.

- Both parties must agree to all trades.
- The adviser has a responsibility to educate the client about investment basics, and to learn the client's needs, resources and tolerance for uncertain outcomes.
- The investor has a responsibility to provide adequate information to the adviser.

- There can be a variety of ways the adviser is compensated, subject to mutual agreement.

The Self-Managed relationship puts primary responsibility on the investor.
- Investors take complete responsibility for all trades and the impact on their portfolios.
- The provider has no responsibility to know the client's circumstances or align investment decisions with tolerance for uncertainty.
- But the provider is required to be truthful, to reveal potential biases in the information it provides, to make its compensation structure transparent, and to stand behind the technical reliability of the trading technology and tools it may offer.

Under the Fair Dealing Model, an adviser can only have one type of relationship with a client at one time, but an investor could have relationships with several advisers, to benefit from differing investment strategies. For example, a more conservative investor may entrust the majority of his or her portfolio to an adviser under a "Managed for you" relationship, and also set up a self-managed account with another broker under an "advisory" relationship.

The OSC is consulting on the proposed Fair Dealing Model by issuing a report for comment by industry experts. As well, to solicit feedback from investors and front-line investment industry staff, the OSC unveiled a cutting edge interactive web site that uses the latest animation software to bring client-adviser interactions to "virtual life". Go to http://www.fairdealingmodel.com or http://www.osc.gov.on.ca to bring the Fair Dealing Model to life on your screen.

The Fair Dealing Model requires the adviser or institution to provide educational opportunities to the investor. "We provide generic online documents that investment firms could easily apply as they deploy Fair Dealing principles throughout their client business," said Julia Dublin, Senior Legal Counsel. These include model "Inform Your Client" documents about the basics of equities, mutual funds and bonds as well as the fundamentals of investment risk.

Comments on the Fair Dealing Model are requested by December 31, 2002.

New Brochure Addresses Concerns About RESPs

In response to investor concerns, the OSC recently introduced a new multilingual brochure to help investors understand the risks associated with Registered Education Savings Plans (RESPs), including often-misunderstood Pooled Group Scholarship Trust Plans.

Saving for your child's education: Get the facts about RESPs before you invest discusses Self-Directed RESP accounts, Pooled Individual and Family Scholarship Trust Plans, and Pooled Group Scholarship Trust Plans, in the context of risk and return, costs, and cancellation policies. The OSC's Contact Centre often receives inquiries from investors who do not understand the plans they have signed up for, the fees they could potentially pay if they stop payments and the risks they are taking with their money. This new brochure will raise awareness about these important issues.

"The RESP market has grown quickly over the past few years, and we feel it's important for all investors to have a thorough understanding of what they're getting into," said Terri Williams, Manager, Investor Education at the OSC. The OSC has recognized that misunderstandings are often due to communication breakdown between the scholarship plan dealers the OSC registers and their clients. Therefore, in addition to English and French, the OSC is offering this brochure in Chinese, Russian, Tamil and Polish to help Ontario's growing ethnic communities understand RESP options.

In addition to specific information about the types of RESPs, the brochure also provides general tips and an outline of the Canada Education Savings Grant available to RESP investors. "We hope to raise awareness across Ontario that there are issues investors need to know about with certain types of RESPs," said Williams.

Investors can request a free copy of *Saving for your child's education* by calling 1-877-785-1555 or they can view the material on the OSC web site at www.osc.gov.on.ca. The brochures can be found on the Required Reading page of the Investor Resources section.

Gordon Thiessen to Serve as Founding Chair of the Canadian Public Accountability Board

On October 31, 2002, Gordon G. Thiessen, former Governor of the Bank of Canada, agreed to serve as the founding Chair of the Canadian Public Accountability Board (CPAB), announced David Brown, Chair of the Ontario Securities Commission and the Chair of the Council of Governors of the CPAB. His appointment is for an initial term of three years. Mr. Thiessen will now work with the Council of Governors in completing a search to fill the remaining Board positions.

The mission of the CPAB is to contribute to public confidence in the integrity of financial reporting of Canadian public companies by promoting high quality, independent auditing. The members of the Board of the CPAB will oversee the design, implementation and enforcement of a system of independent inspection of auditors of Canada's public companies. To ensure appropriate transparency, the CPAB will report annually to the public on the conduct of its activities and the results achieved.

The Council of Governors also includes the Chair of the Canadian Securities Administrators, Douglas Hyndman; the former Chair of the Commission des valeurs mobilières du Québec, Carmen Crépin; the federal Superintendent of Financial Institutions, Nick Le Pan; and the President and CEO of the Canadian Institute of Chartered Accountants, David W. Smith, FCA.

Mr. Thiessen's 35 years of service at the Bank of Canada culminated in a seven-year term as its Governor from 1994 to 2001. Originally from Saskatchewan, Mr. Thiessen holds a PhD in Economics from the London School of Economics and has been awarded honorary doctorates from the University of Saskatchewan and the University of Ottawa. He serves on a number of corporate and other boards, including the Board of Governors of the University of Saskatchewan, where he lectured in economics in 1962, following his undergraduate and graduate studies in economics at that institution. He is the recipient of the government of Sweden's Order of the Polar Star in recognition of the assistance provided by the Bank of Canada to the Swedish central bank. During his tenure as Governor, Mr. Thiessen was recognized as contributing greatly to a more transparent and open Bank of Canada, a record that positions him very well for his new role at the CPAB.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

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

Regulators Require Companies To Improve Executive Compensation Disclosure

On November 5, 2002, securities regulators revealed the results of a review of how well publicly-traded companies comply with executive compensation disclosure requirements. The Canadian Securities Administrators (CSA) found that 95 per cent of companies studied tended to discuss executive compensation in very general terms, without explaining specifically how compensation was determined or how it related to the companies' performance.

"The compensation committee reports need improvement by the vast majority of companies we examined," said Doug Hyndman, Chair of the CSA. "We issued comment letters to these companies and received commitments from them to improve their disclosure, including explaining clearly their reasons for the salaries and bonuses paid, the options granted and the other compensation awarded to their executive officers. I trust that all issuers will note our findings and raise the bar on their compensation disclosures."

Boilerplate language used in company reports

For example, the following two extracts from different reports do not give a reader much insight into how the issuers determine compensation. The use of generalities and the absence of specific required compensation information significantly decrease the value of these disclosures:

Example 1

"The Board of Directors is of the view that the Executive Compensation Plan is appropriate for the Company in that it provides an adequate level of motivation for the executive officers."

Example 2

"Base salary levels for all executive officers (including the Executive Chair and CEO) are based upon performance and in relation to comparable positions within the industry and in the markets in which the Corporation operates..."

Other deficiencies (% of companies) noted in the study concerned the following areas:

- 7% required to correct the summary compensation table;
- 5% required to correct the information on options or stock appreciation rights (SARs);
- 5% required to correct the pension plan information; and
- missing disclosure of details of employment contracts or termination agreements, using an incorrect measurement point in the presentation of multi-year performance data, or missing cross-references to information presented elsewhere in the reports.

Examples of the types of information that the study examined 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; and
- 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.

"Recent scandals in the United States have given prominence to the gap between the level of information companies provide on executive compensation and the level that investors require," said Hyndman. "Our coast-to-coast review of executive compensation disclosure revealed areas where Canadian companies can improve their disclosure practices. We will monitor compensation disclosures to ensure they meet the requirements."

The CSA Staff Notice 51-304 "Report on Staff's Review of Executive Compensation Disclosure" (in PDF) is available from the OSC website (www.osc.gov.on.ca).

CSA Publishes New Rules On Investment Fund Continuous Disclosure

The CSA published for comment a draft Rule on investment fund continuous disclosure. The proposed regime is aimed at providing investors and their advisers with timely and useful information to better assess an investment fund's performance, position and future prospects, by presenting financial and non-financial information for all types of investment funds in the same format. The new regime also harmonizes the reporting requirements for investment funds across jurisdictions.

The draft Rule applies to all types of investment funds, including but not limited to, mutual funds, exchange traded funds, split share corporations, labour sponsored investment funds, closed end funds and scholarship plans. Some key measures detailed in the draft Rule include:

- The introduction of narrative annual and quarterly management reports of fund performance.
- The elimination of mandatory delivery of financial statements.
- The right of investors to choose whether to receive financial statements and management reports of fund performance.
- The reduction of filing times to 90 days for annual and 45 days for interim financial statements, which delays will be the same for filing of management reports of fund performance.
- The removal of sometimes outdated performance information and financial highlights from mutual fund simplified prospectuses.

Proposed National Instrument 81-106, Form 81-106F1 on the contents of annual and quarterly management reports of fund performance and Companion Policy 81-106, were published on September 20 for public comment by December 19, 2002. The proposed rules may be viewed at the OSC website (www.osc.gov.on.ca).

Securities Regulators Reward Young Canadians for Investment Savvy

Canada's securities regulators are raising the awareness of investing concepts among young Canadians with *the Test your Financial I.Q. Contest* launched October 28, 2002.

The contest's goal is to encourage Canadians from 14 to 18 years of age to learn more about investing. Sponsored by the CSA, the contest runs until Jan. 31, 2003. To participate, young people must submit, in English or French, a 500- to 750-word essay answering the following contest question:

Q. If you win the contest prize of $2,500 and decide to invest, which financial products might interest you most and why?

Please consider:
- What is your financial goal?
- How much time do you have to meet this financial goal?
- What type of risk are you willing to take?
- Have you diversified your investments?
- What is your desired return?

Contestants are also asked to give their views on whether it is important for young Canadians to learn about investing at an early age. A total of 13 provincial prizes of $750 each and a national grand prize of $2,500 will be awarded next April during Investor Education Month.

"The CSA's theme for all investor education initiatives is 'investigate before you invest,'" says CSA Chair Doug Hyndman. "This contest encourages young Canadians to start the investigation process."

The contest rules and the entry form can be found in the Investor section of provincial securities commission websites or on the CSA website at www.csa-acvm.ca.

ENFORCEMENT REPORTS

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

OSC Appeal in the Matter of Regina v. John Bernard Felderhof

The OSC filed a Notice of Appeal with the Court of Appeal for Ontario with respect to this matter on November 28, 2002. The appeal is in response to a decision by Justice Archie Campbell not to remove the provincial court judge now presiding over the long-standing case involving John Felderhof, former chief geologist for Bre-X Minerals Ltd.

Copies of the Notice of Appeal are available from the Court of Appeal office at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

OSC Order in the Matter of Lydia Diamond Exploration of Canada Ltd., Jurgen Von Anhalt and Emilia Von Anhalt

The OSC issued an order on November 19, 2002 in the matter of Lydia Diamond Exploration of Canada Ltd., Jurgen Von Anhalt and Emilia Von Anhalt.

The order cease trades securities of Lydia Diamond Exploration by Lydia for three years except as specifically permitted in the order. The order cease trades the von Anhalts for 12 years except as specifically permitted in the order. The von Anhalts are ordered to resign all positions as an officer or director of any issuer. They are further prohibited from becoming an officer or director of any issuer for 15 years. Lydia and the von Anhalts are reprimanded and ordered to make a total payment of $225,000 in costs.

Copies of the Order and the Statement of Allegations are available at www.osc.gov.on.ca or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

OSC Proceedings in Respect of Livent Inc. et al

Following a hearing before the OSC in respect of Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol, the Commission ordered on November 15, 2002 that the proceeding before the Commission is adjourned sine die, pending the conclusion of the trial of the Criminal Code charges in respect of Drabinsky, Gottlieb, Eckstein and Topol.

Copies of the Notice of Hearing issued on July 3, 2001 and Statement of Allegations, and the Order of the Commission made on November 15, 2002, are available at www.osc.gov.on.ca or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

OSC Approves Settlements between Staff and John Douglas Kirby, Michael Kennelly, Allan Dorsey and David Bending

The OSC approved four settlements on October 10, 2002 reached by staff of the Commission and the respondents John Douglas Kirby, Michael Kennelly, Allan Dorsey and David Bending. All these respondents were registered with the Commission to trade securities during the material time. Currently, only Allan Dorsey and David Bending are registered with the Commission.

The respondents sold Saxton securities to Ontario investors. None of these sales were booked through their respective sponsor firms. These respondents participated in illegal distributions of securities and engaged in other conduct contrary to Ontario securities law and the public interest.

Among other things, John Douglas Kirby engaged in an advertising campaign directed at seniors. In so doing, Mr. Kirby misrepresented to prospective clients the nature of the Saxton investment product. Mr. Kirby is prohibited from trading in any securities for twelve years except that after three years he may trade securities in his personal account. Mr. Kirby also is prohibited from becoming or acting as an officer or director of an issuer for twelve years. Mr. Kirby gave a written undertaking to the Commission that he will not apply for registration in any capacity for twelve years.

Among other things, Michael Kennelly actively solicited clients to move money out of secure investments to purchase the Saxton securities. Mr. Kennelly is prohibited from trading in any securities for eight years except that after two years he may trade securities in his RRSP account. Mr. Kennelly also is prohibited from becoming or acting as an officer or director of an issuer for eight years. Mr. Kennelly will pay $2,500 in costs and gave a written undertaking to the Commission that he will not apply for registration in any capacity for eight years.

The Commission reprimanded Allan Dorsey and ordered that his registration be suspended for ten months. Mr. Dorsey must successfully complete the Canadian Securities Course before his registration will be reinstated. Mr. Dorsey was reprimanded and paid costs in the amount of $1,500.

The Commission reprimanded David Bending and ordered that his registration be suspended for eight months. Mr. Bending must successfully complete the Canadian Securities Course before his registration will be reinstated. Mr. Bending was reprimanded and paid costs in the amount of $2,000.

The settlement hearing respecting the respondent Douglas Cross was adjourned to a date to be fixed.

Copies of the Notice of Hearing, Statement of Allegations of Staff of the Commission and Settlement Agreements are available on the Commission's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, 19th Floor, Toronto.

OSC Approves Settlement in the Matter of BMO Nesbitt Burns Inc.

On September 23, 2002, the OSC approved the settlement agreement reached between staff of the Commission and BMO Nesbitt Burns Inc. The agreement follows an enforcement action initiated Wednesday, September 18, 2002, in which OSC staff alleged that the respondent acted contrary to the public interest and contrary to Ontario securities law.

BMO Nesbitt Burns Inc. failed to adequately supervise the Lett accounts and Dunn's actions in relation to the Lett accounts, contrary to the public interest and contrary to sections 1.2, 1.5 (a) and 3.1 of Ontario Securities Commission Rule 31-505. Robert W. Davis, Chair of the OSC panel that approved the settlement, told the hearing that "it was in the public interest" to approve the settlement agreement.

BMO Nesbitt Burns Inc. has agreed to the following sanctions:

- Nesbitt will make a voluntary payment to the Commission in the amount of $100,000;
- Nesbitt is reprimanded by the Commission;
- Nesbitt will identify and implement new policies with respect to internal compliance reviews and non-trading activities in clients' accounts to address concerns identified by Staff. Nesbitt will report to staff within six months of the date of the order of the Commission approving this settlement agreement identifying the policies and procedures that have been implemented;
- Nesbitt will pay $45,000 in respect of the costs of the investigation.

Copies of the Notice of Hearing issued by the Ontario Securities Commission, 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 Panel Suspends Donnini for 15 Years

An OSC panel suspended for 15 years the registration of Piergiorgio Donnini, a former head trader at Yorkton Securities Inc. on September 12, 2002. The tribunal had found on June 11, 2002 that Donnini acted in contravention 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.

The Commission imposed the following sanctions:

- Donnini's registration under Ontario securities law is suspended for a period of 15 years;

- Donnini must cease trading in securities for a period of 15 years, except that he is permitted to trade in personal accounts in his name in which he has sole beneficial interest, and in registered retirement savings plans in which he, either alone or with his spouse, has sole beneficial interest;
- Donnini must resign all positions that he holds as a director or officer of an issuer that is a registrant, or that directly or indirectly holds more than a 5% interest in a registrant;
- Donnini is prohibited for 15 years from becoming or acting as a director or officer of any issuer that is a registrant, or that directly or indirectly holds more than a 5% interest in a registrant;
- Donnini must pay costs of the Commission in the amount of $186,052.30 in relation to the investigation and conduct of the hearing in this matter.

In explaining the reasons for the sanctions, Paul Moore, Vice-Chair of the OSC and Chair of the panel, said: "Donnini was an experienced trader. He was the fourth-largest shareholder of Yorkton, the senior liability trader and the senior institutional trader of Yorkton. As we previously stated, he was more a chief lieutenant than a common foot soldier. […] He was trading on a massive scale while in possession of confidential material information."

"Donnini was well positioned to recognize the seriousness of the impropriety of trading KCA shares with material undisclosed information contrary to section 76(1) of the Act," concluded Moore.

Staff of the Commission wish to acknowledge the valuable contribution of staff of Market Regulation Services Inc. in identifying this matter and assisting the OSC in its investigation. The cooperation exhibited in this investigation effectively demonstrates how regulators can work together to resolve complex cases that overlap jurisdiction.

A copy of the Commission's decision and its written reasons (in PDF or in Word) in this matter, the Notice of Hearing and Statement of Allegations and the decision of the Commission of June 11, 2002 in respect of this matter, are available at www.osc.gov.on.ca or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

RECENT SPEECH

Excerpts from remarks by David A. Brown, Chair, Ontario Securities Commission
Standing Senate Committee on Banking, Trade and Commerce (Ottawa, October 30, 2002)

I appreciate this opportunity to discuss with you the need to restore confidence in our capital markets in light of the recent financial scandals in the United States.

The OSC and other regulators are working with governments, industry stakeholders and investors to implement reforms that inspire investor confidence and protect investors. If we are going to attract investors - both foreign and Canadian - they must have confidence in the safety of our markets. At the same time, if we are going to attract issuers, we need a regulatory system that is not too burdensome or costly. That is the balance we must achieve to ensure our markets remain competitive.

The problem is that parts of our regulatory system are flawed — providing incentives that individuals find hard to ignore.

We need to analyze these flaws in the system and correct them. We need to do that with surgical precision. The Sarbanes-Oxley Act has done precisely the same thing – cleaning up the flaws, discrepancies and weaknesses in the U.S. market. We need to determine the exact regulatory remedies that are right for Canadian markets.

It is important of course, that we reassure U.S. regulatory authorities of the integrity of our market. Such confidence is essential to maintaining the Multi-Jurisdictional Disclosure System, under which Canadian-based issuers are able to access U.S. capital markets simply by complying with Canadian listing and disclosure requirements. I am pleased to tell you that the OSC and the SEC are engaged in an active dialogue regarding the cross-border issues raised by Sarbanes-Oxley. The SEC is interested to learn how Canada proposes to deal with the issues addressed by Sarbanes-Oxley, and whether there will be any substantial conflicts between the two regimes. We understand that the SEC is prepared to consider ways to accommodate home country requirements and regulatory approaches where appropriate.

There are six principal areas where significant progress is being made:

- Audit Committee Roles and Composition;
- CEO Certification;
- Public Oversight of Auditors;
- Auditor Independence;
- Broadened Sanctions for Wrongdoing; and
- Civil Liability for Continuous Disclosure.

I'd like to touch on each of those areas, in reverse order.

We are pleased that the Ontario government introduced legislation that empowers consumers, strengthens our enforcement capabilities and gives the Commission additional tools to protect investors and restore confidence. The legislation proposes to amend the *Securities Act* to provide for civil liability for secondary market disclosure. This will provide rights of action to secondary market participants that represent the overwhelming majority of capital market activity.

Second, the legislation proposes to strengthen the OSC's enforcement capabilities with: new powers to impose a maximum fine of $1 million for violations of the Securities Act; increasing the maximum jail term for insider trading from two years to five years; clarifying offences such as securities fraud, market manipulation, and misleading financial statements; and giving the Commission the authority to order firms to disgorge profits made as the result of illegal activity.

Third, in the area of auditor independence, the Public Interest and Integrity Committee of the Canadian Institute of Chartered Accountants has issued an exposure draft containing proposed new Canadian independence standards for auditors. Although the CICA's independence project began before the string of corporate failures in the US and the passage of Sarbanes-Oxley, its proposals contain many of the new independence requirements now mandated in the U.S. The CICA has undertaken to consider adding additional requirements now set out in Sarbanes-Oxley.

Fourth, in the area of public oversight of auditors, this past summer federal and provincial regulators and the Canadian Institute of Chartered Accountants announced the creation of a Canadian Public Accountability Board to oversee auditors of public companies across Canada. The Board will be responsible for regularly reviewing the audit practices of firms auditing public companies. Where appropriate, the Board will work with provincial institutes and regulators to impose remedial measures and sanctions.

Thus of the six issues I identified, two – civil liability and sanctions for wrongdoing – are now legislative initiatives, two – auditor independence and public oversight — are being addressed on separate tracks. We fully support the Ontario government on the legislative initiatives and we will continue to monitor and support the other two initiatives. Much of our attention is now focused on the remaining two issues - certification and audit committees.

Let me start with the issue of requiring CEOs and CFOs to certify that their company's financial disclosure fairly presents its financial condition.

The U.S. legislation that requires CEO and CFO certification is a first. Up until now, auditors have only vouched for the fact that a company's statements are presented fairly in accordance with Generally Accepted Accounting Principles. U.S. executives must now assure investors that information given to the public is a fair representation of the financial condition of the company. They must also give assurances about the adequacy of the company's internal controls. Canadian investors expect and demand the same qualitative assurances.

The final issue I want to discuss is the role and composition of the audit committee.

Auditors must be responsible to shareholders. Technically, that is how it should work. In reality, shareholders are too widely dispersed to direct the auditors. Management has been taking on that role - but it is management that the auditors are supposed to be scrutinizing.

Led by Sarbanes-Oxley, there is now a move world-wide to transfer this function to a body independent of management. In many countries, this will be the audit committee. In short, the audit committee – independent of management – will be the proxy for the shareholders. The audit committee will become the auditor's client - not management. The audit committee will hire and fire the auditor. It will direct the performance of the audit.

The audit committee must be truly independent of management. It must be able to say no to management.

Investors and issuers need to know that we will be taking pro-active steps to ensure a safe market as well as a dynamic one. A robust economy needs both people who are prepared to invest capital and people who are able to use it to create wealth.

I am pleased to have been invited to brief you on some of the changes that are being implemented and some that are being considered. I look forward to your questions.

(Proposed Legislation to Increase OSC Powers, continued from page 1)

- New rule-making powers for the OSC to hold CEOs and CFOs accountable for the accuracy of their financial statements.

The government announced it would also be consulting on further measures, including:

- Reforms to the regulation of public accounting in Ontario to ensure that standards continue to be internationally respected and reflect the high expectations of businesses and investors; and
- Changes to the Ontario *Business Corporations Act* that are consistent with the Ontario *Securities Act* reforms and that will add strength to the legal rights and remedies of shareholders.

The government will also be moving forward with measures to ensure high accountability standards for the public sector. As well, the government will continue to work with Ottawa and the other provincial governments to examine a national approach to securities regulation to help reduce red tape and provide more uniform securities laws.

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

To be included on the mailing list for *Perspectives*, please contact us at:

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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.