Ontario

ONTARIO SECURITIES COMMISSION

Volume 6, Issue 4

PERSPECTIVES

inside...

FALL 2003

FEATURE

OSC Submission to Federal WPC Committee

Excerpts from the OSC submission to the Wise Persons Committee to review the structure of securities regulation in Canada (July 8, 2003).

The Ontario Securities Commission welcomes the opportunity to comment on the direction of securities regulation in Canada. The Finance Minister of Canada's decision to appoint a Committee of Wise Persons to consider a national approach to securities regulation is a demonstration of the kind of political will needed to reform our regulatory structure and keep up with the changing nature of financial markets.

Over the past few decades, a number of market participants have advocated a level playing field across Canada, with issuers and dealers subject to the same rules and regulations in each province. Many have stressed the need to keep down the costs of review, enforcement and policy development, by taking advantage of economies of scale and scope – economies that can be maximized by dealing with one, rather than multiple, jurisdictions.

A recent study conducted for the Investment Dealers Association of Canada (IDA) found that adopting a single

(continued on page 9)

INDEX

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. Copies of Notices and other documents referenced below are available on the Commission's website at www.osc.gov.on.ca.

Regulator Warns Investors About the Pitfalls of Ponzi Schemes

The OSC issued a warning to investors on September 12, 2003 to steer clear of Ponzi-style investment schemes, noting that many con artists use this process to obtain investors' money.

The first known Ponzi scheme was operated by Carl Ponzi himself. In 1920's Boston, Ponzi collected $9.8 million from 10,550 investors, including 75% of the Boston police force. Ponzi then delivered $7.8 million to his investors as "return" on their investments and spent the rest of the money.

Ponzi's original investors were so pleased with their "returns" that they happily helped him find more investors. The Ponzi scheme thrived until the media took notice; Carl Ponzi was finally arrested and ended up in bankruptcy court. In the end everyone lost money; the bankruptcy trustee sued the individuals who made gains from the Ponzi scheme so Carl Ponzi's debts could be paid to his creditors.

How did Ponzi lure so many people into his scheme? Investors were attracted to Ponzi's plan because he guaranteed high returns over a short period of time - profits of 50% every 45 days. Unfortunately these returns were not from the success of a real investment. Instead, the returns were paid from the investors' own money and the contributions of other investors. The essence of the Ponzi scheme is that money is "borrowed from Peter to pay Paul".

Today's Ponzi schemes can look like real investment opportunities. These schemes work well because:

- Investors receive "interest" cheques (which are really the return of their own money), and they encourage their friends and family to invest;
- Investors may regularly receive account statements that show profits (which are not real);
- Investors rarely research the investment, or check the background of the person offering the investment; and
- The Ponzi operator often convinces investors to put their "profits" back into the scheme; ultimately they lose their original investment plus any profits they may have earned.

Ponzi schemes spread by word of mouth. As more people hear of the apparently profitable investment, more investors want to get in on it. Early investors are paid out of money from new investors, at times for many years until the scheme collapses when the number of new investors inevitably falls. With fewer new investors, there is no new money to pay the returns. If you lose your money to a Ponzi scheme, chances are you will not get your money back.

Although a Ponzi scheme can be difficult to spot, the following tips will help you protect your money from con artists:

- Watch out for investment promotions that offer guaranteed high returns and low risk. If an investment has a high return, you are generally taking a large risk with your money.
- Check the registration of the investment, and the person or company offering it. Many Ponzi operators are not registered to sell securities, nor is the investment itself registered. To check, call the OSC Contact Centre toll-free at 1-877-785-1555.
- Get a second opinion from your financial adviser, lawyer or accountant.

You can learn more about fraud and other investment topics on-line at www.InvestorED.ca.

Notice and Request for Comments: Trading During Distributions, Formal Bids and Share Exchange Transactions

The OSC published for comment on August 29, 2003 the proposed Ontario Securities Commission Rule 48-501 — Trading during Distributions, Formal Bids and Share Exchange Transactions. The proposed rule would impose trading restrictions on dealers and issuers involved in a distribution of securities and certain other transactions.

The proposed rule governs the activities of dealers, issuers and others in connection with a distribution of securities, a securities exchange take-over bid, an issuer bid or an amalgamation, arrangement, capital reorganization or similar transaction. The proposed rule is intended to prescribe what is acceptable and otherwise restricts trading activities to preclude manipulative conduct by persons with an interest in the outcome of a distribution of securities or the other transactions set out above.

The proposed rule imposes a "restricted period" on two different groups: "dealer-restricted persons" and "issuer-restricted persons". Dealer-restricted persons are defined in section 1.1 of the proposed rule as including a dealer, a related entity of a dealer, a partner, director, officer, or employee of a dealer or a related entity of a dealer, a person or company acting jointly or in concert with any of these persons or companies, or an investment fund or account managed by any of these persons or companies. An issuer-restricted person is defined in section 1.1 of the proposed rule as including an issuer, a selling security holder, an affiliated entity, an associated entity, a person or company acting jointly or in concert with any of these persons or companies or an investment fund or account managed by any of these persons or companies.

There are different restricted periods applicable to dealers and issuers. As a starting point, during the applicable restricted period, dealer-restricted persons and issuer-restricted persons are not permitted to bid for or purchase a restricted security. A restricted security is defined as:

- an offered security (which includes a security of the same class of security that is the subject of a distribution, a security offered in a securities exchange take-over bid or an issuer bid, a security issuable pursuant to an amalgamation, arrangement, capital reorganization or similar transaction), or
- a connected security (which includes a security into which the offered security is immediately convertible, exchangeable or exercisable).

A number of exemptions apply to the general trading restrictions in the proposed rule. In particular, the proposed rule provides an exemption to a dealer appointed to act as an underwriter, permitting the dealer to bid for or purchase a restricted security for market stabilization purposes. The price at which the bid or purchase can be made is the lesser of the maximum permitted stabilization price or the highest independent bid at the time.

Comments on this proposed policy are requested in writing on or before November 27, 2003.

Mutual Fund Dealers Association of Canada Corporate Governance By-Law Amendments

The MFDA Terms and Conditions of Recognition as a self-regulatory organization require that the MFDA develop and implement a corporate governance review by no later than the third annual meeting of MFDA Members, scheduled for December 2003. The MFDA Terms and Conditions include a requirement that the composition of the MFDA Board of Directors should cease to include nominees of each of the Investment Dealers Associations of Canada and the Investment Funds Institute of Canada.

The MFDA Board of Directors established a Corporate Governance Committee to consider and make recommendations relating to the corporate governance structure at the MFDA. The Corporate Governance Committee filed its Report with the securities regulatory authorities in the recognizing jurisdictions in February 2003. The Report included recommendations respecting the size, composition and operations of the MFDA Board of Directors and particulars respecting MFDA Regional Councils and disciplinary matters.

The By-law Amendments reflect strong public participation in MFDA corporate governance processes. In particular:

- The MFDA Board will comprise an equal number of public and industry directors. Public directors will have no association to any MFDA Member.
- MFDA Members will participate in the process to nominate directors.
- A Governance Committee chaired by a public director will recommend all nominees for election to the MFDA Board. Two of the four representatives on the Governance Committee will be public directors.
- A public director will chair the MFDA Audit Committee and two of the three directors on the Audit Committee will be public directors.
- A public director will participate in the appointment of all public representatives and additional industry representatives to sit on Regional Councils.
- The Chair of each Hearing Panel created to preside over MFDA disciplinary proceedings will be a public representative of a Regional Council with legal training.

A copy of the Report of the Corporate Governance Committee is available on request and is also posted on the MFDA website: www.mfda.ca.

Audit Oversight Board Proposes Registration Process for Auditors of Public Companies

On September 11, 2003, the Canadian Public Accountability Board (CPAB) released a proposed registration process for auditors of reporting issuers. The draft is available on its new website for a 60-day comment period at www.cpab-ccrc.ca. Gordon Thiessen, the Chair of CPAB, is encouraging audit firms and other interested parties to submit comment.

A new rule proposed by the Canadian Securities Administrators (CSA) on June 27, 2003 (Multilateral Instrument 52-108, *Auditor Oversight*) will require auditors of reporting issuers to be participants in good standing with the CPAB when they issue an auditor's report with respect to their clients' financial statements. The CSA rule, which is open to comment until September 25, is expected to take effect in the new year. The registration deadline proposed by the CPAB is February 29, 2004.

"This is a very important milestone for the CPAB," said Thiessen. "With the appointment of our CEO and the launch of the registration process, the CPAB is in a good position for us to begin our oversight role this year. I encourage both auditors and those who use audit services to carefully examine the process we are proposing and provide us with comments to ensure that we have captured a process that is fair and transparent."

The CPAB was created in 2002 by Canada's financial and securities regulatory authorities as part of a series of initiatives to restore investor confidence. Its mandate is to promote high quality, independent auditing of public companies in Canada.

Canadian Public Accountability Board Appoints CEO

The Board of Directors of the Canadian Public Accountability Board (CPAB) announced on August 26, 2003 that David Scott has accepted the position of Chief Executive Officer effective October 1, 2003. David Scott is a senior partner with PricewaterhouseCoopers (PwC) which he joined in 1970.

"We are delighted to have found a person with such an outstanding background to head up the CPAB," said Gordon Thiessen, Chair of the CPAB. "With his work on audit quality and risk management and his international experience, David Scott is uniquely suited to lead this important initiative. He will have the full support of the Board of Directors of the CPAB as he takes on the challenge of ensuring a high quality standard of auditing of public companies in Canada."

INTERNATIONAL REPORTS

An overview of OSC activities with international organizations to improve the regulation of financial services throughout the world.

Anti-Money-Laundering and Combating the Financing of Terrorism

A. Revised Anti-Money-Laundering Recommendations

In June 2003, the Financial Action Task Force (FATF) published revisions to its *Forty Recommendations* for combating money laundering. The FATF is an intergovernmental body that reviews money laundering techniques, develops and promotes the implementation of anti-money-laundering (AML) measures globally, monitors members' progress in implementing AML measures and collaborates with other international bodies involved in combating money laundering. Canada is a member of the FATF.

The revised *Forty Recommendations*, available on the FATF's website at www.fatf-gafi.org, are the product of an extensive review and consultation process carried out during the past two years. Major changes to the standards include the following:

- The *Forty Recommendations* specify a list of crimes that must underpin a money laundering offence.
- The customer due diligence process for financial institutions has been expanded.
- Enhanced measures have been introduced for higher risk customers and transactions, including correspondent banking and politically exposed persons.
- AML measures have been extended to certain designated non-financial businesses and professions (including casinos, real estate agents, dealers in precious metals and stones, accountants and lawyers).
- Key institutional measures (*e.g.* relating to international cooperation) have been added.
- Transparency requirements (*e.g.* regarding the provision of adequate and timely information about the beneficial ownership of legal persons such as corporations) have been enhanced.
- Many AML measures have been extended to cover terrorist financing.

B. International Joint Forum Publishes Report on AML/CFT Initiatives

In June 2003, the International Joint Forum (IJF) published a report summarizing AML and combating the financing of terrorism (CFT) initiatives in the banking, insurance and securities sectors.

The report describes the AML/CFT standards that are common to all three sectors. In addition, the report describes for each sector:

- the nature of customer relationships and the specific activities in the sector that pose a relatively higher risk for money-laundering or terrorist financing;
- guidance and recommendations from the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors and the International Organization of Securities Commissions (IOSCO) to address these risks; and
- ongoing and future work by these organizations in the area of AML/CFT issues.

The report also discusses some of the challenges that arise concerning the application of AML/CFT processes in large financial groups.

The report concludes that there do not appear to be any serious gaps or inconsistencies in the approach to AML/CFT in the banking, insurance and securities sectors. The report can be downloaded from the library on the IOSCO website at www.iosco.org.

CPSS-IOSCO Task Force Continues Work on Securities Settlement Systems

Securities settlement systems are an increasingly important component of the global financial system. For this reason, the G10 Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of IOSCO established a special Task Force in 1999 to develop recommendations for the safety and soundness of securities settlement systems.

The Task Force published its *Recommendations for Securities Settlement Systems* in November 2001 and an *Assessment Methodology* for its recommendations in November 2002. The Methodology can be used by regulators for self-assessments or by third parties (*e.g.* the International Monetary Fund) involved in reviewing a country's financial system as part of the Financial Sector Assessment Program. The *Recommendations* and *Assessment Methodology* can be found on the Bank for International Settlements website at www.bis.org/cpss.

One of the Task Force's recommendations concerns central counterparties (CCPs). A CCP interposes itself between a buyer and seller in a transaction, becoming the buyer to every seller and the seller to every buyer. In principle, the establishment of a CCP in a market can reduce liquidity risks and transaction costs because the CCP nets its obligations in respect of each of its participants and thereby indirectly achieves multilateral netting among all participants. This reduces the number and value of deliveries and payments needed to settle a given set of trades.

In addition, if a CCP manages its risks effectively, its probability of default may be less than that of all or most other market participants. If, however, a CCP does not manage risk well, it could increase risks to market participants and adversely affect the financial system as a whole. Thus, a CCP's ability to monitor and control the various risks it incurs and to absorb losses is essential to the sound functioning of the markets it serves.

In light of the increasing importance of CCPs in the global financial system, CPSS and IOSCO have asked the Task Force to carry out further work in this area and develop additional principles regarding CCPs. This work is expected to continue through 2003 into 2004 and to involve a public consultation process.

IJF Reports on Risk Management Practices

In August 2003, the International Joint Forum published two reports, *Trends in Risk Integration and Aggregation* and *Operational Risk Transfer across Financial Sectors*.

Trends in Risk Integration and Aggregation summarizes the results of an IJF survey regarding trends in management policies and procedures designed to ensure awareness of and accountability for risks taken by financial firms, methods and techniques for risk control (risk integration), and the efforts by firms to develop quantitative risks measures that incorporate multiple types or sources of risk (risk aggregation). The purpose of the report is to stimulate dialogue among financial services regulators and regulated firms about these issues.

The second report, *Operational Risk Transfer across Financial Sectors*, focuses on risk transfer within financial conglomerates and between firms, for example between banks and insurance companies. The report is based on studies and interviews with financial services firms and discusses issues such as:

- current and emerging industry practices relating to operational risk and loss events;
- factors that drive operational risk management, such as regulatory requirements;
- instruments for transferring operational risks, especially insurance coverage; and
- the importance of mitigating the impact of low frequency, high severity loss events.

These reports can be downloaded from the library on the IOSCO website at www.iosco.org.

For more information about these and other international initiatives, please contact **Susan Wolburgh Jenah**, General Counsel and Director, International Affairs, (416) 593-8245, swolburghjenah@osc.gov.on.ca, or **Janet Holmes**, Senior Legal Counsel, International Affairs, (416) 593-8282, jholmes@osc.gov.on.ca

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The CSA, a council of the 13 securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets.

Canadian Securities Administrators Restructure

The CSA announced on September 4, 2003 fundamental changes to its organizational structure that will see it become a more formal and structured organization comprising Canada's 13 provincial and territorial securities regulators.

"As an informal organization, the CSA has been very successful in coordinating and harmonizing securities regulation in Canada – but it's time to take our efforts to the next level," said CSA Chair Stephen Sibold. "Restructuring the CSA is an important step in making capital markets in Canada more effective globally."

To improve upon the existing cooperation and coordination between jurisdictions, the CSA has further developed and formalized its policy and practices, including:

- creation of a Policy Coordination Committee (PCC) to oversee the implementation of the strategic plan and ongoing policy and rule development. Consisting of six members appointed for two-year terms, the first PCC members include the chairs of the securities commissions in British Columbia, Alberta, Manitoba, Ontario, Quebec and Nova Scotia. David Brown, Chair of the OSC, has been elected to serve as Chair of the PCC for an initial one-year term.
- establishment of a permanent secretariat to provide the organizational stability necessary for the effective functioning of a multi-jurisdictional organization. The secretariat will be located in Montréal and will be staffed initially by an executive director, policy coordinator and support staff.
- formalization of a governance structure. The positions of the CSA Chair and Vice-Chair will be elected by the members for a two-year period.

"With a formal governance structure and dedicated resources, we will be able to more effectively achieve our strategic objectives to harmonize legislation across our jurisdictions while maintaining decision-making authority within each province or territory," said Sibold.

CSA Responds to Comments Received on Concept Proposal, Blueprint for Uniform Securities Laws for Canada

The CSA released on July 31, 2003 its responses to the comments received on the Concept Proposal, Blueprint for Uniform Securities Laws for Canada (USL Concept Proposal).

There was a significant response to the USL Concept Proposal with approximately 90 comment letters received from market participants, industry associations and law firms. "These comments will be very useful in assisting the CSA in drafting uniform securities legislation for consideration by each of the provincial and territorial governments of Canada," said Stephen Sibold, Chair of the CSA and Chair of the Steering Committee that is heading up the USL project. "We are on target to publish a consultation draft of the Uniform Securities Act in Fall 2003. Uniform securities legislation will complement the Ministers' initiative to implement a passport system."

However, the specific situation of Québec, the only Canadian jurisdiction based on the Civil Code (as opposed to the common law system used in the other jurisdictions), will require special adjustments. "The goal is for the legislative and regulatory texts to produce similar results," noted Pierre Godin, Chair of the Commission des valeurs mobilières du Québec. "Thus, we might be asked to draft legal texts in Québec which comply with Québec law and the Civil Code, which will lead to harmonization rather than strict uniformity. What is important is that we arrive at a result which is as compatible as possible."

The vast majority of the commenters are supportive of the USL initiative. Most industry participants applauded efforts to implement:

- uniform securities legislation for registration, prospectuses and exemptions;
- passport or one-stop shopping for issuers and registrants; and
- delegation of decision making powers from one securities regulatory authority to another.

A number of commenters expressed concern about the ability to maintain uniformity. In response, the CSA plans to enter into protocols to ensure that regulators co-ordinate changes to securities law. The CSA also intends to propose to governments that they consider adopting an inter-governmental protocol to co-ordinate securities legislation.

A detailed summary of all comments received and the CSA responses as well as the full text of the comment letters can be viewed on the Alberta Securities Commission website at www.albertasecurities.com/policies/comment.html.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission. Copies of Notices of Hearing, Statements of Allegations, Reasons for Decisions and Orders referenced below are available on the Commission's website at www.osc.gov.on.ca.

OSC Sets Date for ATI Hearing

The OSC set the matter of ATI Technologies Inc., K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, Alan Rae and Sally Daub for hearing scheduled to begin on Thursday, February 19, 2004 at 2:00 p.m. and continue until Wednesday, March 10, 2004, at 4:30 p.m.

ATI is alleged to have failed to disclose material information on a timely basis and to have made a misleading statement to Staff.

K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, and Alan Rae are alleged to have committed insider trading. Sally Daub is alleged to have made a misleading statement to Staff.

Funds Sent To Receiver in the Matter of Secure Investments, Daniel Shuttleworth and Andrew Keith Lech

On August 11, 2003, the Ontario Superior Court of Justice ordered that the contents of seven bank accounts held in the name of Andrew Keith Lech, Dennis Yacknowiec and G.N.A. Holdings be sent to KPMG Inc., a court-appointed Receiver and Guardian. A motion to transfer the contents of four bank accounts held in the name of Daniel Shuttleworth to KPMG has been adjourned to a future date. The contents of all of these bank accounts had originally been frozen by the OSC on the grounds that they contained investor funds solicited as part of an illegal securities investment scheme.

By order of the Ontario Superior Court of Justice, KPMG Inc. is the Receiver and Guardian of the assets provided to Andrew Keith Lech by persons who invested money with him. Investors or any persons with a potential claim on the transferred funds should contact Szemenyei Kirwin MacKenzie LLP, counsel to the Receiver and Guardian. Szemenyei Kirwin MacKenzie can be reached by telephone, toll-free, at 1-866-433-8155 or at www.skmlawyers.com.

Executive Director Settlement Reached with Dundee Securities Corporation

Staff of the OSC and Dundee Securities Corporation entered into a settlement agreement which was approved on August 8, 2003 by Charlie Macfarlane, Executive Director.

From August 1999 to May 2000, a registered representative with Dundee assisted clients in purchasing shares of various companies using funds located in their locked-in RRSPs. Concurrently, the clients obtained a loan, at times with the assistance of the registered representative, from the scheme's promoters representing a portion of the purchase price of the shares, varying from approximately 60% to 80%. Dundee had no knowledge of the loans.

Dundee agreed that they failed to adequately supervise these accounts and the registered representative's actions in relation to these accounts, contrary to the public interest and contrary to section 3.1 of OSC Rule 31-505, which requires a dealer to supervise each of its registered salespersons in accordance with Ontario securities law.

Dundee undertakes to review its current compliance function in respect of the issues identified in the Settlement Agreement, and implement any required policies and procedures, and to pay to the Commission the sum of $150,000 in respect of the costs of the investigation with respect to Dundee.

OSC Continues Cease Trade Order Against Mark Edward Valentine

On July 28, 2003, the OSC extended its temporary order against Mark Edward Valentine until at least January 31, 2004. The temporary order continues to suspend Valentine's registration under Ontario securities law and prohibits him from trading in securities, with certain specified exemptions.

Ruling that the terms of the order are "reasonable and fair" to Valentine, the Commission panel, chaired by Commissioner Robert Shirriff Q.C., granted Staff's request for a six month extension. Valentine is also required to demonstrate that he has complied with the Commission's previous order to provide copies of his monthly brokerage account statements.

Settlement Agreement Reached with Robert Davies in the Saxton Matter

The OSC approved a settlement July 21, 2003 between Staff of the Commission and the respondent Robert Davies.

Between October 1996 and December 1997, Davies was a chartered accountant and Saxton Investment Ltd.'s controller. Davies has never been registered with the Commission.

Pursuant to the Settlement Agreement's agreed facts, among other things, Davies failed to keep and maintain the proper books and records and ensure that basic accounting controls were in place. Further, Saxton investors received quarterly account statements that reflected a market value increase in their investment. Davies knew that: (i) these statements were unsubstantiated by any accounting or financial data in Saxton's possession; (ii) there was no record of any revenue generation by the Saxton operations and thus no ability for Saxton to establish the net results of the operation; and (iii) since there was no market for the securities, no market value ought to have been attributed to the securities. By virtue of this knowledge, Davies was aware that the quarterly account statements misrepresented the value of shareholders' investments and were misleading to investors and the Saxton salespeople. Davies did not personally benefit from his misconduct.

In approving the settlement agreement, panel Chair Lorne Morphy said that, as a professional, Mr. Davies' conduct fell far below the level expected of him. Pursuant to the terms of the settlement agreement, the Commission ordered that Davies be prohibited from becoming an officer or director of an issuer for 10 years, imposed a 10 year cease trade order (except trading for Davies' personal accounts after 3 years), reprimanded Davies and ordered costs in the amount of $2,000. Davies agreed to certain continuing education and provided a written undertaking that he will not participate directly in any filings with the Commission for 10 years.

Executive Director Settlement with Barry Magrill

Staff of the OSC and Barry Magrill entered into a settlement agreement which was approved July 9, 2003 by Charlie Macfarlane, Executive Director.

Barry Magrill was the former President of Barnett Magrill Investments Ltd. (BMI). BMI was a registered dealer and for the period 1995 to 2000, almost all of its income was derived from the proceeds of principal trading. Barry Magrill agreed that, as president of BMI, he authorized, permitted or acquiesced in BMI's failure to act in the best interests of its clients and thereby acted contrary to the public interest.

Among other undertakings, Barry Magrill agreed not to apply for registration in any capacity for a period of two years, and to not act as an officer and director of a registrant or issuer in Ontario, with an interest in a registrant, for a period of five years.

Discovery Biotech Inc. and Graycliff Resources Inc. Cease Trade Order Continued

On June 26, 2003, the OSC continued the temporary cease trade order against Discovery Biotech Inc. and Graycliff Resources Inc. until further order of the Commission.

YBM Decision: Disclosure Documents Did Not Contain Full, True and Plain Disclosure of Material Facts

The OSC issued its decision in the matter of YBM Magnex International Inc. on July 2, 2003.

In its decision, the independent panel of OSC Commissioners stated: "This case raises serious questions with respect to the meaning of materiality in the prospectus and timely disclosure provisions of the Securities Act. A basic tenet of securities law is that disclosure is generally limited to material matters. Confronted by the dilemma of what should be disclosed to the public, the respondents relied on the concept of materiality as the cornerstone for disclosure. YBM's key disclosure documents did not, we find, contain full, true and plain disclosure of all material facts. YBM also failed to disclose a material change in its affairs forthwith. While disclosing good news with little hesitation, its practice was to restrict the disclosure of bad news."

"YBM's disclosure leads the reader to believe that the risks faced by YBM were no greater than the inherent risks faced by any company operating in Eastern Europe at that time. We find this to be incorrect. YBM was subject to company-specific risks. An investor in YBM's securities had the right to know what specific risks were presently threatening the issuer. Disclosure continues as the main principle for protecting investors, ensuring fairness in the trading markets and enhancing investor trust."

"Despite a hearing which took over 124 hearing days to complete, this case is not about organized crime, money laundering or whether the respondents believed YBM was not a real company. It is about the disclosure of risk. Materiality is reinforced as the standard for such disclosure in securities markets by taking into account the considerations associated with the exercise of judgement and reasonable diligence."

Staff is of the view that the decision clarifies standards for directors and officers and will help prevent another situation like YBM from occurring in the future. It is clear that information about risks, even if they can not be proven to be accurate, must be disclosed to investors. As well, issuers must disclose material changes in their affairs, such as notification by the issuer's auditor that it would not perform any further services, including rendering an audit opinion with respect to financial statements. The panel also found that underwriters must ensure that key personnel do not have conflicts of interest.

The panel of the Commission made the following orders:

- YBM Magnex International Inc.: trading in any securities of YBM Magnex International Inc. cease permanently;
- Jacob G. Bogatin: be permanently prohibited from becoming or acting as a director or officer of any issuer;
- Igor Fisherman: be permanently prohibited from becoming or acting as a director or officer of any issuer;
- R. Owen Mitchell:
  - resign any positions that he holds as a director or officer of a reporting issuer;
  - be prohibited from becoming or acting as a director or officer of any reporting issuer for five years from the date this order takes effect; and
  - pay investigation and hearing costs in the amount of $250,000;
- Kenneth E. Davies:
  - resign any positions that he holds as a director or officer of a reporting issuer;
  - be prohibited from becoming or acting as a director or officer of any reporting issuer for three years from the date this order takes effect; and
  - pay investigation and hearing costs in the amount of $75,000;
- Harry W. Antes:
  - resign any positions that he holds as a director or officer of a reporting issuer;
  - be prohibited from becoming or acting as a director or officer of any reporting issuer for three years from the date this order takes effect; and
  - pay investigation and hearing costs in the amount of $75,000;
- National Bank Financial Corp.: pay investigation and hearings costs in the amount of $400,000; and
- Griffiths McBurney & Partners:
  - submit to a review of its practices and procedures as an underwriter by an independent person approved by staff of the Commission and institute any changes recommended by that person; and
  - pay investigation and hearing costs in the amount of $400,000.

Reasons for Decision in the Matter of Jack Banks a.k.a. Jacques Benquesus

The OSC released on June 27, 2003 reasons relating to its decision, dated April 23, 2003, wherein the Commission held that Bank's conduct was contrary to the public interest. The Commission also imposed sanctions. As stated by the Commission, "it now appears that there was a misunderstanding."

Following the release of the decision on April 23, counsel for Mr. Banks advised Staff counsel that he understood that he would have an opportunity to make submissions on sanctions if the Commission decided to make a section 127 order. Subsequently, the Executive Director of the Commission made an application under section 144 of the Act. Section 144 gives the Commission the power to revoke or vary a decision. On the return of the application, Staff counsel urged the Commission to proceed with the application. Staff agreed with the sanctions imposed by the Commission, but wanted the opportunity to make submissions as to why the sanctions imposed were in the public interest. However, Mr. Banks insisted he had the option of proceeding by way of appeal or section 144 and that he had chosen the former.

As a result, Commissioners M. Theresa McLeod and H. Lorne Morphy and Vice-Chair Paul M. Moore dismissed the application. Vice-Chair Moore issued separate reasons.

Notice of Hearing and Statement of Allegations Against Robert Walter Harris

The OSC issued a Notice of Hearing and a Statement of Allegations against Robert Walter Harris on June 25, 2003.

The Statement of Allegations states that it appears that Mr. Harris sold shares of Clavos Enterprises with knowledge of material facts with respect to Clavos Enterprises that had not been generally disclosed, contrary to section 76 of the Securities Act. The Statement of Allegations further alleges that Mr. Harris failed to file insider reports as required by the Securities Act.

(OSC Submission to Federal WPC Committee) continued from page 1

national securities regulator would save the brokerage industry, issuers and investors $73 million a year directly, not including intangibles and potential indirect costs.

Market participants have emphasized the need to ensure efficiency and reduce costs for issuers, costs that ultimately flow through to investors.

There is a growing recognition of the importance for Canada to speak with a common voice – in international regulatory fora and in providing fair and effective regulation within our country. Many have focused attention on Canada's uniquely disparate structure for securities regulation, and asked whether it makes sense for Canada to remain the only country in the G7 not to have a single national securities regulator.

The Ontario Securities Commission has been an active participant in and enthusiastic supporter of efforts to more effectively pool regulatory authority and deploy resources. We are convinced the market is no longer prepared to bear the cost of a fractured system, and we recognize that a single regulator would lead to better coordination, significant economies, and greater creativity in the regulatory process.

However, we also recognize political reality. Attempts to create a national securities commission have foundered in the past because of resistance to the notion of a federal commission. Such a significant transfer of responsibility from provincial to federal hands may be politically difficult to achieve. For this reason, a national commission does not necessarily have to be a federal commission. It may be more politically feasible to create a Pan-Canadian Commission, one that is created by the provinces and territories with the support, cooperation and some involvement of the federal government.

A Pan-Canadian commission would provide the national focus, coordination and harmonization that is needed - without disturbing the existing constitutional distribution of powers or aggravating regional concerns that have frustrated progress in this area in the past.

Regional offices would improve the Commission's national effectiveness and draw upon existing provincial expertise, such as oil and gas in Alberta and derivatives in Quebec. Such offices would also have an important role to play in compliance and enforcement.

One way or another, because of its impact on spin-off industries, suppliers, customers, or tax revenues, the vitality of an industry in one part of the country is important to all Canadians. A single national securities regulator would be a recognition that we share a national economy and are part of an international one.

Securities Reform: One Step Forward, Two Half-Steps Back

Over the past three decades, there has been considerable activity in the area of securities reform in Canada. Unfortunately, the existence of distinct commissions and separate regulatory structures across the country inevitably causes uniformity to dissolve into multiple sets of rules and regulations administered independently.

More recently, interprovincial and territorial harmonization has been pursued through the Canadian Securities Administrators (CSA), a largely informal and somewhat ad hoc body voluntarily serving as a national council for the 13 provincial and territorial regulators. The CSA has contributed significantly to harmonizing Canada's securities laws, and their administration and enforcement.

CSA policies, systems and programs play an important role in ensuring consistency, efficiency and fairness in the development and enforcement of securities regulation across Canada. The CSA contributes to national debate and discussion of regulatory issues. It facilitates the work of securities commissions. But it cannot substitute for a single national regulator.

Harmonization: Would Uniform Securities Legislation Provide the Cohesion Canada Needs?

In the face of duplication of resources, regulators are in the midst of a major effort to streamline and harmonize securities regulations. The Uniform Securities Legislation (USL) project is aimed at achieving uniformity among the 13 provincial and territorial sets of securities legislation. It has achieved considerable progress, including forging agreement in concept across the jurisdictions on the hundreds of changes necessary to make Canada's securities laws uniform. That includes, for example, a streamlined registration system (passport registration), delegation of decision making, uniform registration and prospectus requirements, and exemptions.

This kind of initiative is valuable, and is a significant improvement toward streamlining and harmonizing our securities legislation. But even if adopted by all provinces and territories, the USL proposal would still leave Canada with a system in which market participants support 13 different securities regulators. It would still leave Canadian market participants with a regulatory structure in which 13 separate regulators have the capacity to apply rules differently in similar situations. Canada would still face a situation where any one jurisdiction can add to the regulatory burden of all participants across the country.

More Than a Collection of Regions

Some express concern that the unique regional and local characteristics of capital markets would be lost under a national securities regulator. But how distinct are market differences among Canada's provinces? And to what extent do they justify regional regulatory fragmentation?

There are, of course, regional economic concerns within Canada, but no longer is anything just a regional concern; no economic sector or issue is the exclusive concern of any province, territory or region. The oil industry is of as much potential interest to investors in Ontario or Quebec as it is in Alberta. The auto parts industry is of as much potential interest to investors in Alberta as it is to investors in Ontario; the biotech industry is as important to investors in Prince Edward Island as to investors in Quebec.

The existence of separate markets with unique characteristics is seen to justify a fractured regulatory system, which fosters fragmentation. The markets are more and more global and our own regulatory issues are increasingly North American, let alone national. In this context, achieving the best regulatory structure for Canada should not be impeded by outdated notions of regional markets and interests.

Facilitating Compliance

The National Compliance Review is an example of how the provincial securities commissions work together to review either a particular registrant or an issue on a national basis. We are able to look at an issue across Canada and determine a consistent approach to dealing with it.

However, compliance efforts are sometimes hobbled – or at least slowed – by political borders. Because each commission has jurisdiction strictly over business activities carried out in its province, the scope of a compliance review is limited. When conducting a compliance review of a company with locations in more than one province, any terms and conditions we apply on the registration of the firm would only apply in Ontario, even though the issues identified may also be present in other provinces.

Registrants with locations in more than one province could be subjected to compliance reviews from more than one jurisdiction. While this ensures that regional differences are accounted for, it is inefficient from the registrants' point of view.

Facilitating Enforcement

It is important to consider the potential impact of any change in regulatory structure on our ability to enforce securities laws. The enforcement units of the provincial and territorial commissions work together currently, and provide an effective and cooperative system for the investigation and prosecution of breaches of securities laws across Canada. While the differences in the various acts do create some minor hurdles to the process, enforcement units usually manage to overcome them without unnecessary hindrance.

However, the effectiveness of the current structure depends heavily on cooperation of the individuals involved. Should one of the jurisdictions determine that assisting another jurisdiction is no longer a priority, that would cause a significant impediment. Thus, one advantage of a single national securities regulator would be that it would take the cooperative approach currently employed by the enforcement units of the commissions and carve it into stone.

A National Commission: Surpassing the Political Hurdles

Canada's provincial and territorial securities commissions have been working for greater harmonization, both in rules and regulations and in systems and programs. But progress is slow, inefficient and costly, and leaves Canada at a competitive disadvantage.

More than thirty years ago, Australia was in roughly the same position as Canada regarding securities regulation. After a number of failed initiatives aimed at harmonizing securities regulation, the states and territories ultimately agreed to federal legislation dealing with securities law.

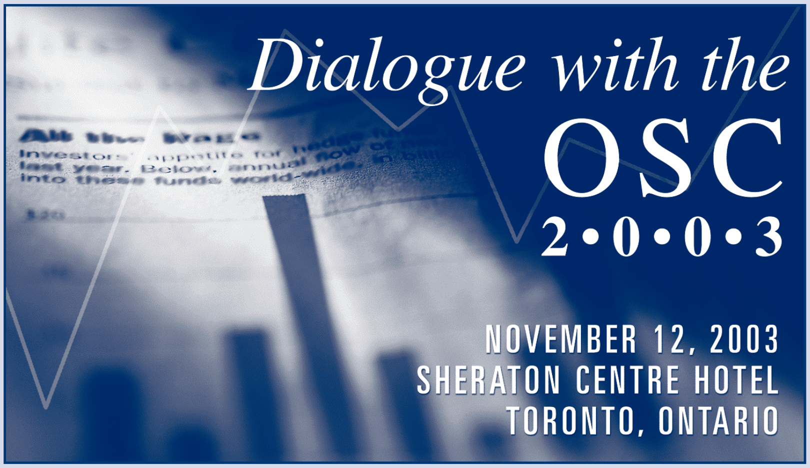
The high cost of fragmentation is a cost Canada can no longer bear; the market no longer finds it acceptable. The emphasis on regional differences over a consistent national approach creates perceptions in the international community of a fragmented capital market and ineffective regulatory structure. Capital markets are international in character and securities regulation in Canada needs to reflect this reality.

It is time for Canada to speak with one voice. It is time to put in place a regulatory structure that will maximize efficiency, take advantage of scale and scope, ensure a level national playing field, and encourage Canadian competitiveness. It is time to move to a national securities regulatory structure.

Thank you for the opportunity to add our voice to the debate on reforming securities regulation in Canada. I would be pleased to further discuss our comments with you.

Sincerely,

David Brown
Chair



- ***Learn about emerging changes in securities regulation – straight from the regulators***
- ***Get practical and authoritative advice on compliance***
- ***Discuss your concerns directly with OSC staff***
- ***Network with your peers in the investment industry***

REGULATING FOR TODAY'S MARKET REALITIES

Effective securities regulation must respond to the major issues and challenges of the day. Due to recent trends and events in our capital markets, this past year has been an especially active one for the OSC. Our annual conference offers the best opportunity for market participants to learn more about the policy developments that affect them directly.

DIALOGUE WITH THE OSC 2003 will focus on key topics like the following:

- **Investor confidence rules** – at a time when issues like corporate governance and CEO certification have risen to prominence
- **Financial disclosure standards** – in an age of continually growing expectations
- **Harmonization efforts** – as we experience both groundbreaking successes, and a vigorous debate on future directions
- **The Fair Dealing Model** – developed to finally recognize the importance of advice in modern retail investment relationships

Hear the keynote address from OSC Chair David Brown, and updates on investment funds, significant legal developments, enforcement issues, and more.

Don't miss the most important securities regulation conference of the year

DIALOGUE WITH THE OSC November 12, 2003!

Our program will once again feature a combination of plenary and breakout sessions, and the Capital Markets Information Fair, which provides an excellent opportunity to network with various industry groups. The registration fee includes conference materials, lunch, refreshments, and a closing reception.

At only $395, still the best value on the street. Register now!

For a full program, or to register, visit **www.osc.gov.on.ca/dialogue** or call the Dialogue with the OSC 2003 hotline at **(416) 593-7352** or **1 (800) 360-0493**.

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:

Perspectives
Communications Branch
Ontario Securities Commission
20 Queen Street West
Toronto, M5H 3S8
perspectives@osc.gov.on.ca
(416) 593-8314.

The OSC Website, www.osc.gov.on.ca includes:
Information on the OSC, Investor Information,
Rules and Regulations, Enforcement Information
and Market Participants.