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ONTARIO SECURITIES COMMISSION

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PERSPECTIVES

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FEATURE

Fair Dealing Model Concept Paper Fleshes Out Details Of Major OSC Reform Proposal

On January 29, 2004 the Ontario Securities Commission released a concept paper that offers substantive details of its proposal to reform the way the retail investment industry is regulated. The Fair Dealing Model would regulate the industry on the basis of the relationships people and firms form, rather than the products they buy and sell.

"The Fair Dealing Model will benefit both investors and financial services providers," said Paul Bates, who joined the Fair Dealing Model advisory committee while still CEO of Charles Schwab Canada, and has since been appointed an OSC Commissioner. "Investors would receive more robust

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

OSC Vice Chair Appointment: Susan Wolburgh Jenah

On March 8, 2004 David A. Brown, Q.C., Chair of the OSC, announced the appointment of Susan Wolburgh Jenah as Vice Chair effective February 18, 2004. Ms. Jenah's appointment to the Commission is for a five-year term. As part of her new duties, Ms. Jenah will chair Commission panels.

"Susan brings a unique blend of highly specific knowledge of securities law and broad-ranging analytical thinking to the Commission," said Mr. Brown. "As General Counsel, she provided insightful analysis of the Securities Act and of past Commission decisions. We know we can turn to Susan for the final word on the law. As Vice-Chair of the Commission, she will contribute her passionate interest in establishing fairness in Commission policy and in balancing the need for efficient capital markets with providing protection to investors. Her involvement in regulatory reform, both nationally and internationally, will be especially important to the Commission as we continue to work with our colleagues to improve, and hopefully to simplify, the securities regulatory system that serves Canada's capital markets."

Most recently, Ms. Jenah was General Counsel and Director of International Affairs to the OSC. As General Counsel, she provided senior legal advice and assistance on a broad range of operational, transactional and policy projects to the Chairman, the Commission, the Executive Director and Staff. As Director of International Affairs, she was responsible for establishing and maintaining relationships with securities regulators in other jurisdictions and representing the Commission on international committees.

Ms. Jenah recently worked on various legislative initiatives, including Bill 198 and Bill 41, and was a member of the Finance Minister's Five-Year Legislative Review Committee, charged with ensuring that Ontario securities legislation is up-to-date and properly enables the Commission to effectively discharge its mandate, which issued its final report in May 2003. She has also worked on a number of Canadian Securities Administrators (CSA) policy initiatives over the years and recently chaired a CSA Committee to develop a National Policy on selective disclosure and disclosure standards generally.

Ms. Jenah joined the staff of the Commission in August 1983 and has held various positions including: Manager, Market Operations; Deputy Director, Legal and Policy, Corporate Finance; Executive Assistant to the Chairman; and Assistant Deputy Director, Commodity Futures. She has a B.A. from the University of Toronto and an LL.B. from Osgoode Hall Law School and was called to the Bar in Ontario in 1982. Ms. Jenah is a frequent participant at various continuing education conferences in the securities field.

OSC Launches Phase Two In Mutual Fund Trading Practices Probe

On February 11, 2004, the Ontario Securities Commission (OSC) announced that its probe into potential late trading and market timing abuses in mutual funds is moving into its second phase. In the first phase of the probe, the OSC received and reviewed the responses of 105 fund managers. As part of the second phase, the OSC is requesting more detailed information from approximately one third of the fund managers surveyed. These fund managers have been selected based on the information they provided and also include a random sampling of fund managers.

The OSC will undertake a statistical analysis of the data collected in the second phase of its probe, and based on the conclusions reached will execute the third and final phase of its planned probe, which, where appropriate, will involve on-site reviews by OSC staff. The fact that the OSC is now moving to a more focused examination of certain fund managers does not mean that improper trading practices have been uncovered in their funds. In addition, the OSC does not preclude returning later to collect information from fund managers that are not included in this second phase. The OSC is coordinating its probe with related probes launched by other securities regulators and self-regulatory organizations.

IDA Releases Results Of Debt Market Regulation Project

On January 28, 2004 the Investment Dealers Association (IDA) released their final summary report of Stage 2 reviews of member IDA Member firms. The origins of the study date back to 2001, when the Canadian Securities Administrators (CSA) and IDA began a joint review of the over-the-counter debt markets in Canada, designed to determine whether any regulatory initiatives are required in that lightly regulated market. The project was overseen by a Steering Committee with staff of the Ontario Securities Commission (OSC) and Commission des Valeurs Mobilières du Québec (CVMQ) representing the CSA.

The project is proceeding in three stages:
1. A survey of market participants to identify issues;
2. Reviews of the debt market policies, procedures and activities of selected firms in relation to the issues identified in the survey and other issues of concern to the CSA and IDA; and
3. Identification and implementation of remedial measures regarding any problems uncovered in the first two stages. Such remedial measures could, depending on the nature of the identified problems, include rulemaking, more strenuous enforcement of existing rules and/or education of market participants and investors.

The report is available on the IDA's Web site at **www.ida.ca.**

OSC Refuses Exemption Request By Open Access Limited To Join MFDA

Open Access Limited is registered in Ontario as a mutual fund dealer, an investment counsel/portfolio manager and a limited market dealer. Open Access sought an exemption from Rule 31 - 506 which requires Open Access to join the Mutual Fund Dealers Association. That request was denied by a Director of the OSC.

Open Access then brought an application before the Commission seeking to have the decision of the Director set aside. A hearing to consider the application was held on November 13, 2003 and December 9, 2003. On January 21, 2004, the Commission denied Open Access' request for a permanent exemption from the requirement to join the MFDA. The Commission granted Open Access an exemption from MFDA membership until March 31, 2004 in order to permit it to apply for membership in the appropriate self-regulatory organization as required by the Securities Act. Reasons for decision were issued March 4, 2004.

Open Access has filed a Notice of Appeal with the Divisional Court.

Comments Requested On Proposed Corporate Governance Policies

On January 16, 2004, the OSC published proposals that describe best corporate governance practices and require issuers to make disclosures relating to these best practices. The proposals are being considered as well by securities regulators in Saskatchewan, Alberta, Manitoba, Nova Scotia, Newfoundland and Labrador, New Brunswick, Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut.

The best practices include measures related to the composition of the board, its mandate and its committees; director education and assessment; as well as codes of business conduct and ethics.

"We propose to require issuers to disclose the corporate governance practices they adopt," added Mr. Brown. "However, because we appreciate that many smaller issuers may have less formal procedures in place to ensure effective corporate governance, our proposal provides for lesser disclosure for venture issuers."

In order to avoid regulatory duplication and overlap, the TSX intends to revoke its corporate governance guidelines and related disclosure requirements when the proposals become effective.

The commissions request comment by May 31, 2004, on proposed Multilateral Policy 58-201 Effective Corporate Governance and proposed Multilateral Instrument 58-101 Disclosure of Corporate Governance Practices, published in Chapter 6 of the January 16, 2004 OSC Bulletin.

OSC Releases Findings Of MD&A Review

The corporate collapses that have occurred around the world in recent years have highlighted the need for improved disclosure and transparency. In particular, attention worldwide has focused on the importance of greater transparency in disclosure of financial information, including both the financial statements and Management's Discussion and Analysis.

Last March 2003, the Canadian Securities Administrators (the CSA) announced it had launched a review to assess how well publicly-traded companies comply with their management's discussion and analysis (MD&A) disclosure obligations. Under this initiative, a number of CSA jurisdictions reviewed a sample of the MD&A of companies in their local jurisdictions.

Concurrent with the reviews in other jurisdictions, staff of the OSC reviewed the MD&A of forty-seven companies, primarily with head offices in Ontario. In January 2004, OSC staff published a notice outlining its findings and comments arising from these reviews. OSC Staff Notice 51-713 is available on the OSC's web site at www.osc.gov.on.ca.

Be On The Alert For Boiler Room Tactics

If you get an unsolicited telephone call about an investment opportunity, be alert to the signs of fraud, warns the Ontario Securities Commission. You might be a target of a boiler room operation. Boiler room operations wear many disguises, and they are once again rearing their ugly head in Ontario. To gain your trust, the salesperson may boast of a business idea that sounds probable – perhaps a company in the medical industry with a new technological breakthrough for detecting cancer. The pitch is that with your investment, the company could go public on the stock exchange and make you more money.

If the offer is really such a great deal, there should be no need for a broker to cold call strangers to promote it. To avoid becoming a victim of a boiler room, watch out for:

- Unsolicited phone calls.
- High-pressure sales tactics and repeat callers.
- Promises of high returns with no risk.
- Setups. With the first call, the scam artist may only try to gain your trust by offering information about the company and their alleged success. This is a setup for future calls, when you will be pressured to buy.

If you suspect a scam, try to collect as much information as possible about the caller, their name and the company's name, the investment, and the date and time of the call, and contact the OSC at 1-877-785-1555. You can learn more about investment fraud and other investment topics on-line at www.investorED.ca.

INTERNATIONAL REPORTS

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

IOSCO Moves To Strengthen International Capital Markets Against Financial Fraud

At its winter meeting in February, the Technical Committee of IOSCO established a special Chairmen's Task Force to organize and coordinate IOSCO's response to emerging issues relating to securities fraud and market abuse. OSC Chair David Brown is a member of this new Task Force, which is being led by US SEC Commissioner Roel Campos and Dr. Lamberto Cardia, Chairman of the Italian Comissione Nazionale per le Società e la Borsa.

The Task Force has been given a mandate to:

- Identify potential new issues arising from recent events such as the Parmalat matter, including concerns about transparency in bond markets, the role of unregulated entities, the role of complex group structures and appropriate levels of sanctions;
- Review implementation of existing standards, including current mechanisms for international cooperation; and
- Suggest responses aimed at producing appropriate regulatory incentives, such as improving risk identification and assessment by regulators and giving attention to uncooperative and under-regulated jurisdictions.

This project will build on IOSCO's recent work (described in prior editions of *Perspectives*). The Technical Committee also decided to assess progress made on implementing the IOSCO statements of principles relating to auditor independence and oversight, to have its Credit Rating Agencies Task Force develop a code of conduct for CRAs, and to develop standards relating to late trading, market timing and governance in the mutual fund industry.

IOSCO Seeks Comment On Proposed Standards For Central Counterparties And Investment Funds

In the Fall 2003 edition of *Perspectives*, we reported that a Task Force established by IOSCO's Technical Committee and the G10 Committee on Payment and Settlement Systems (CPSS) was developing risk management standards for central counterparties (CCPs). In March 2004, the Task Force published for comment fourteen recommendations for CCPs, addressing matters such as the types of risks that CCPs face, governance arrangements for CCPs, transparency of their systems and processes, efficiency of their operations, and oversight of CCPs. The discussion paper, *Recommendations for Central Counterparties*, is available in IOSCO's on-line library at **www.iosco.org** (document #165). The comment period closes on June 9, 2004.

The Technical Committee of IOSCO is also seeking comment on proposed best practice standards regarding the regulation of fees and expenses charged by investment funds. This discussion paper, *Elements of international regulatory standards on fees and expenses of investment funds*, is available in IOSCO's on-line library at www.iosco.org (document #164). The comment period closes on May 30, 2004.

In addition, the following recent reports are also available in IOSCO's on-line library:

- SRO Consultative Committee, *Survey on regulatory standards regarding the compliance function* (December 2003, document #160)
- Technical Committee, *Stock repurchase programs* (February 2004, document #161)
- Technical Committee, *Regulation of remote cross-border financial intermediaries* (February 2004, document #162)
- Technical Committee, *Index funds and the use of indices by the asset management industry* (February 2004, document #163)

International Joint Forum Pursues Mandate On Credit Risk Transfer

Techniques for transferring credit risk, such as financial guarantees and credit insurance, have been a long-standing feature of financial markets. In the past few years, however, the range of credit risk transfer (CRT) instruments and the circumstances in which they are used have widened considerably. While banks and insurance firms are some of the most active participants in CRT activities, securities firms also often play an important role in CRT activities, acting as intermediaries between institutions that wish to transfer credit risk (often called "risk shedders") and institutions that wish to take on risk (often called "risk buyers").

Responding to a request from the Financial Stability Forum (FSF) in 2003, the International Joint Forum has been conducting an extensive study of CRT activities. The FSF's mandate is to promote international financial stability through information exchange and international cooperation in financial supervision and surveillance. The FSF brings together on a regular basis national authorities responsible for financial stability in significant international financial centres (including the Bank of Canada, the federal Department of Finance and the Office of the Superintendent of Financial Institutions), international financial institutions, sector-specific international associations of regulators (including IOSCO) and supervisors and committees of central bank experts.

The purpose of the International Joint Forum (IJF) study on CRT activities is to gain a better understanding of:

- The principal participants involved in the CRT market;
- How typical transactions are structured and used; and
- The main risks incurred by these participants and the risk management techniques they employ.

The IJF is also reviewing the existing supervisory rules and disclosure/reporting requirements for CRT activities and considering whether CRT activity raises any concerns from a financial stability perspective (e.g. whether CRT activity is leading to undue concentrations of risk inside or outside the regulated financial services sector).

IJF members (including the OSC) received a progress report on this mandate at the IJF winter meeting in February 2004. It is expected that the study will be completed later in 2004.

COSRA Project On Facilitating SME's Access To Capital

The OSC is a member of the Council of Securities Regulators of the Americas (COSRA). Like IOSCO, COSRA's objectives include matters such as investor protection, the maintenance of market integrity, regulatory cooperation and information-sharing. Because COSRA brings together in a regional forum regulators from developed and developing countries, COSRA also has a particular interest in:

- Proposing and implementing reforms that facilitate broad-based participation in securities markets;
- Identifying and, where appropriate, removing, barriers that have no regulatory purpose and impede cross-border investment opportunities and securities market development in the Americas;
- Creating market incentives to stimulate investment in the Americas; and
- Establishing linkages among markets to provide liquidity and enhance investor access to securities markets across the Americas.

Recently, OSC staff have been participating in a COSRA project focusing on the roles that securities markets and securities regulators can play in increasing capital access for small and medium-sized enterprises (SMEs) in the Americas while promoting high standards of investor protection. The project team expects to produce a paper later in 2004 for discussion within COSRA and externally with stakeholders, such as SMEs and potential investors in SMEs in the region.

For more information about these and other international initiatives, please contact **Janet Holmes**, Manager, 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.

New National Disclosure Rules Come Into Force

On March 30, 2004, National Instrument 51-102 Continuous Disclosure Obligations, came into force. NI 51-102 affects a wide range of continuous disclosure requirements, including new filing deadlines and delivery requirements, the content of some disclosure documents, and new continuous disclosure reporting requirements.

Generally, NI 51-102 applies to every reporting issuer in Canada, other than investment funds. In some cases, the requirements differ depending on what marketplace the issuer's securities are listed on. Foreign issuers benefit from new exemptions under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

Regulators are striving to meet two major goals:

- **One set of rules across Canada**. Historically, issuers reporting in more than one province have faced a different set of disclosure rules in each jurisdiction. NI 51-102 will benefit issuers by harmonizing the continuous disclosure requirements across Canada.

- **Improved disclosure standards**. Investors will receive higher quality information, on a timelier basis.

There are other rules that took effect on March 30, 2004 that may affect a firm's continuous disclosure obligations:

- National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*
- National Instrument 52-108 *Auditor Oversight*
- Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*
- Multilateral Instrument 52-110 *Audit Committees*

Ann Leduc Appointed CSA Secretary General

On March 16, 2004, Stephen Sibold, Chair of the CSA, announced the appointment of Ann Leduc as Secretary General of the CSA, effective immediately. The creation of this important position and the establishment of a permanent Secretariat in Montreal were announced last fall. As Secretary General, Ms. Leduc will be responsible for the general management and supervision of CSA Secretariat operations and for coordinating the execution of the CSA strategic plan and objectives.

"Establishment of the permanent Secretariat, and the opening of its offices in Montreal, are key elements in the CSA's ongoing leadership efforts to improve the Canadian securities regulatory regime," said Mr. Sibold, who is also Chair of the Alberta Securities Commission. "With the appointment of the new Secretary General and the establishment of a more formal governance structure, the CSA will be better able to effectively harmonize legislation across all Canadian jurisdictions while maintaining decision-making authority within each province or territory."

In providing organizational stability as chief operating officer, Ms. Leduc will coordinate the development and implementation of CSA projects and policy initiatives. With the assistance of a policy coordinator and an administrative staff person, she will also coordinate all CSA activities.

Ms. Leduc was most recently Manager, Regulation for Quebec 's Autorité des marchés financiers (formerly Commission des valeurs mobilières du Québec (CVMQ)) and has extensive background in the securities industry and in the Canadian securities regulatory regime, in particular.

Regulators Extend Comment Period For Consultation Drafts Of Securities Acts

On December 16, 2003, the Canadian Securities Administrators published for comment drafts of the Uniform Securities Act (USA) and the Model Securities Administration Act developed under the Uniform Securities Legislation Project. On December 19, 2003, the Commission des valeurs mobilières du Québec (now the Autorité des marchés financiers) published a civil law adaptation of the USA. These documents, referred to collectively as the "Consultation Drafts", were published under cover of CSA Notice and Request for Comment 11-404, which invited written submissions until March 16, 2004.

Securities regulators are accepting written submissions on the Consultation Drafts for a further 60 days, until May 17, 2004 for the following reasons:

1. The detailed nature of the Consultation Drafts;
2. The number of other CSA initiatives requiring stakeholder attention in an overlapping time frame; and
3. The March deadline coinciding with the year-end reporting obligations of many reporting issuers and their advisers.

Joint Forum Publishes Responses To Its Consultation Package On Sales Principles And Practices

On February 13, 2004, the Joint Forum of Financial Market Regulators released a summary of comments and responses on its consultation package entitled Principles and Practices for the Sale of Products and Services in the Financial Sector. The Canadian Securities Administrators are a constituent member of the Joint Forum together with the Canadian Council of Insurance Regulators and the Canadian Association of Pension Supervisory Authorities.

The Joint Forum released the consultation package on March 6, 2003. The comment period closed on May 29, 2003 and 17 submissions were received. The full text of all the comment letters can be viewed on the following web sites:

- Ontario Securities Commission – www.osc.gov.on.ca
- Canadian Council of Insurance Regulators – www.ccir-ccra.org.

The Joint Forum's objective in undertaking this project was to develop standards of professionalism and fair conduct that Canadian consumers should be able to expect in their financial transactions, regardless of the product or service being sold, or the regulatory regime that applies. The Joint Forum hopes to obtain the endorsement of these principles and practices by key industry participants across the financial services sector.

The proposed practice standards will be introduced as voluntary guidelines, not legal requirements. However, we expect most industry associations and individual firms to adopt the guidelines. This will benefit consumers of financial products and services by setting a minimum standard of conduct that they can expect from all participating firms, without imposing burdensome requirements on the industry.

Regulators Report On Staff's Continuous Disclosure Review Of Income Trust Issuers

On February 13, 2004, CSA staff issued a notice outlining the findings and comments of staff of the British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and Commission des valeurs mobilières du Québec arising from a review of the continuous disclosure records of 40 income trust issuers.

The income trust structure has become a popular vehicle for public offerings. In an effort to further understand and evaluate the financial disclosure practices of income trusts, staff conducted a coordinated project to review the continuous disclosure records of 40 income trusts. The income trusts were in various industries and eleven of the 40 trusts had existed for more than one year when we began our review.

Reviews took place between early 2003 and September 2003. The findings suggest that many income trust issuers need to improve the quality of their disclosure. Key findings included the following:

- Twenty-nine of the income trusts committed to change disclosure in future Management Discussion & Analysis (MD&A) filings, annual and interim financial statements and press releases.
- Two of the income trusts were required to re-file their disclosure documents as a result of our review.
- Nine of the income trusts reviewed were not required to change their previously filed disclosure documents or to commit to prospective changes.

The findings are available on the CSA website at www.csa-acvm.ca.

Choose Your Financial Adviser Wisely

Securities regulators are advising Canadians to slow down when choosing a financial adviser. The Canadian Securities Administrators (CSA) warn investors that the best investment decision they may ever make is to take enough time to find a dependable financial adviser.

"A financial adviser can give you sound, objective advice, but it's important that you invest the time to find someone you can openly discuss your investing goals with," says Stephen Sibold, Chair of the CSA. "Just as choosing a good doctor is vital to your physical health, so is selecting a good financial adviser for your financial well-being."

The CSA reminds Canadians that their adviser must work for them. If the adviser is not doing a good job or meeting agreed expectations, there are always other advisers out there. A copy of the CSA brochure, "Choosing Your Advisers", is available on the CSA website at www.csa-acvm.ca or by contacting your provincial securities regulator.

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.

In The Matter Of Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited And Pierrepont Trading Inc.

In the Matter of Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited and Pierrepont Trading Inc., on January 20, 2004, the Panel requested that counsel re-attend to make submissions on the following issues:

1. In the Amended Statement of Allegations, it is alleged that the Respondents, Patrick Lett and his companies, traded in securities without being registered contrary to section 25(1)(a) of the Securities Act. What are the "securities" Staff alleges were being traded? and
2. Having regard to submissions made in response to the first question above, was the "trading" by the Respondents and was such trading in Ontario?

In the Reasons issued March 22, 2004, the panel said that the sole issue was whether the Respondents were trading in securities without registration contrary to s.25(1) of the Act. The Respondents, none of whom were registered under the Act, offered a high yield program that had such characteristics sufficient to constitute an "investment contract" and, as such, a "security" as per the definitions contained within the Act. By accepting funds from investors, by attempting to forward the funds to purchase a bank guarantee, or debenture in order to gain access to the high yield program and by repeatedly providing proof of funds letters to third parties, it was found that the Respondents' actions constituted acts in furtherance of a trade. On the issue as to whether the Respondents were exempted from the requirement to be registered, the Respondents were all based in the Toronto area, had bank accounts in the Toronto area and carried on business in the Toronto area. The trading occurred in Ontario. A substantial part of the Respondents' time during the relevant period was involvement or attempted involvement in the high yield program. This, together with a finding that the investors deposited monies with the Respondents in Toronto and the monies were accepted by the Respondents for the purpose of acquiring high yield programs resulted in a finding that the Respondents were market intermediaries and were not exempted from the requirement of s.25 of the Act to be registered.

OSC Investigation In Royal Group Technologies Inc.

On February 24, 2004, Enforcement staff of the OSC announced that they are conducting an investigation into the disclosure records, financial affairs and trading in the shares of Royal Group Technologies Ltd. The OSC also confirmed that it has referred information more appropriately dealt with by criminal law authorities to the RCMP's new Integrated Market Enforcement Team (IMET).

OSC Confirms Biovail Corp. Investigation

On February 20, 2004, OSC staff confirmed that they are investigating suspicious trading activity, as well as conducting a full review of disclosure records, at Biovail Corp., a Mississauga, Ontario-based pharmaceutical company. The confirmation clarified a report in which a Biovail spokesperson dismissed talk of an OSC probe and stated that no investigation is underway.

"The company is aware of our concerns about trading in the shares of Biovail – enforcement staff has had ongoing discussions with the company since November, 2003," said Michael Watson, the OSC's Director of Enforcement. "It's imperative that we clarify the record and disclose our investigation because we don't want investors to be misled in any way."

Watson said the OSC is prepared to move swiftly if it becomes apparent that action is required to protect investors and maintain the integrity of Ontario's capital markets. He said investigators have gathered extensive information and exchanged correspondence with people related to the matter.

OSC Appeals Divisional Court Decision In Donnini Matter

On February 3, 2004, the Ontario Court of Appeal granted to the OSC leave to appeal two aspects (sanctions and costs) of the decision of the Ontario Divisional Court in respect of Piergiorgio Donnini. The Commission filed its Notice of Appeal to the Ontario Court of Appeal.

OSC Decides Not To Seek Leave To Appeal In The Matter Of John Bernard Felderhof

On February 9, 2004, the OSC announced that it would not seek leave to appeal the decision of the Court of Appeal for Ontario in the matter of John Bernard Felderhof. Consequently, staff of the OSC requested that dates be scheduled for a resumption of its action in the Ontario Court of Justice.

Proceedings Commenced Against Andrew Rankin And Daniel Duic

On February 4, 2004, OSC Enforcement Staff announced that proceedings have been commenced against Andrew Rankin. Mr. Rankin was Managing Director of the Mergers and Acquisitions group at RBC Dominion Securities in the period 1999 to 2001. He has been charged with 10 counts of insider trading, together with Daniel Duic, and 10 counts of 'tipping' contrary to sections 76(1) and 76(2) of the Securities Act. The trial will proceed under s.122 of the Act in Provincial Court at Old City Hall on a date yet to be set.

In addition, the Office of the Secretary to the Commission issued a Notice of Hearing along with a Statement of Allegations of Staff against Daniel Duic. Allegations are made that Mr. Duic committed insider trading contrary to s.76(1) of the Act based on material information received from Mr. Rankin that had not been publicly disclosed.

At a hearing on March 3, 2004, a panel of the Commission determined that it is in the public interest for the Commission to approve a settlement agreement entered into by Enforcement Staff and Mr. Duic. The Commission ordered the following sanctions with a reprimand: permanent cease-trade order; permanent prohibition from all exemptions offered by Ontario securities law; permanent prohibition from becoming or acting as a director or officer of a public company; voluntary order to pay profits of illegal trades in the amount of $1.9 million; payment of costs in the matter in the amount of $25 thousand; and continued co-operation with pending investigation and trial.

The charges against Mr. Rankin and the Settlement Agreement reached between Staff and Mr. Duic are available at **www.osc.gov.on.ca**. The investigation into these matters was commenced as a result of a referral from Market Regulation Services Inc.

OSC Releases Decision Regarding First Federal Capital (Canada) Corporation And Monte Morris Friesner

On February 4, 2004, OSC Enforcement Staff reported the release of the Commission's decision in the matter of First Federal Capital (Canada) Corporation and Monte Morris Friesner. In this case, the Commission examined the contents of a website operated by First Federal, as well as written materials sent to potential investors. The materials contained references to a number of financial products, including "Asset Securitization Management Portfolios" and "prime bank guarantees", referred to collectively as "Trading Programs".

The Commission concluded that the materials contained "misleading representations and exorbitant investment promises". They went on to find that First Federal and Friesner had engaged in illegal trading and advising in securities by operating the website and distributing the materials.

In determining the appropriate sanctions in this case, the Commission reviewed evidence of Friesner's criminal record, including previous convictions on fraud-related charges in both Ontario and the United States. They characterized the conduct of the respondents as "reprehensible". As a result, they ordered that First Federal and Friesner must both cease trading in securities permanently, and banned Friesner from ever acting as corporate officer or director. In addition, both First Federal and Friesner must pay the costs of Enforcement Staff's investigation into and prosecution of this case. The final amount of costs will be determined at a hearing to be scheduled by the Commission's Secretary.

A copy of the Commission's reasons for decision in this case is available online at www.osc.gov.on.ca.

In The Matter Of Mark Edward Valentine

Following the hearing in this matter on February 2, 2004, the Commission issued an order extending the temporary order of the Commission dated July 28, 2003. The extended temporary order is on the same terms and conditions as the July 28, 2003 order and is effective until the earlier of July 31, 2004 and the commencement of the hearing of the matter on the merits. The Reasons of the Panel were released on March 4, 2004.

OSC Investigation In Hollinger Matter

On January 22, 2004, the OSC confirmed that it has an investigation underway into matters relating to Hollinger Inc. and related companies. The investigation, underway for some time now, is primarily focused on the companies for which the OSC has lead jurisdiction, while regulators in the United States are primarily focused on the companies over which they have lead jurisdiction. The regulators are each interested in one another's investigations and are sharing information on a regular and on-going basis.

In its investigation, the OSC has gathered a substantial amount of information from a variety of sources, and is interviewing people related to the matter. As in any OSC investigation, any violations of securities law unveiled could lead to disciplinary action and sanctions. As well, the OSC will move swiftly if it becomes apparent that action is required to protect investors.

While the OSC does not usually disclose ongoing investigations, the regulator does, in limited circumstances, disclose investigations when public confirmation is needed to reassure the public and to maintain the integrity of Ontario's capital markets.

OSC Commissioners Issue Decision In The Matter Of M.C.J.C. Holdings Inc. And Michael Cowpland

On December 12, 2004, an independent panel of the Ontario Securities Commission issued its decision in the matter of M.C.J.C. Holdings Inc. and Michael Cowpland. After lengthy and difficult deliberations and in view of all the circumstances, the panel accepted the joint recommendations of counsel as in the public interest, which were as follows:

- The respondents paid $500,000 to the Investor Education Fund.
- Michael Cowpland was prohibited from becoming or acting as a Director of a reporting issuer for two years from December 12, 2004.
- M.C.J.C. Holdings Inc. and Michael Cowpland were hereby reprimanded.
- M.C.J.C. Holdings Inc. was ordered to pay $75,000 to the Commission in respect of a portion of the Commission's costs with respect to this matter.

RECENT SPEECH

Excerpts from an address by David Brown, Q.C., Chair of the Ontario Securities Commission, to the Investment Funds Institute of Canada, April 5, 2004.

I am honored to participate in this official launch of the annual Investor Education Month public awareness campaign. Occasions such as these … when regulators, industry groups and self-regulatory organizations come together in common cause … demonstrate just how much we can achieve when we all work together for the public good. Occasions such as these should also serve to remind us exactly who matters most when it comes to mutual funds. It's not me, as a regulator, and it's not those of you who represent a specific fund company or the industry as a whole. No, the people who matter most are not even here in the room this morning … of course I'm referring to the millions of investors who own units in your funds or shares in your companies.

During the last two or three years individuals saw the value of their portfolios substantially reduced as markets took a tumble from their peaks of March 2000. Of course, such volatility is to be expected. We spend a lot of time telling investors to do their homework, to diversify their holdings, and to stay in for the long haul. There's no question that investors today are far wiser than they ever were before as a result of programs such as Investor Education Month.

So, yes, let's continue to educate investors, but we have another daunting task ahead … one that is even more important … and that task is to regain the full faith and confidence of investors. That is what I want to talk to you about this morning … trust … and what we must do to win back that trust.

We Canadians pride ourselves on our cultural and societal differences from Americans, but when it comes to capital markets, we live and work in the same borderless world. For the most part, this is an advantageous position for us to be in. We can enjoy what we regard as a better life style yet still be players in that larger arena. But such easy access cuts both ways. When criminal charges are laid in the U.S., when executives plea bargain and household names are found guilty … all of those activities have a toxic impact on how Canadian investors feel about their own money and their own money managers as the bad news spills north.

The total amount of fines and fees levied so far is approaching US$2 billion. The names involved are hardly fly-by-night firms that no one has ever heard of before. In March, Bank of America and FleetBoston Financial agreed to pay US$675 million in fines and fees to settle fraud charges related to improper mutual fund trading. In addition, regulators took the unprecedented step of ordering the removal and replacement of eight directors serving on the board of Bank of America's Nations Funds. A further two dozen fund companies and brokerage firms are under investigation with more settlements expected. Trust is the essence of any fiduciary relationship and that trust between the industry and the investor was breached because some simple home truths were recklessly abandoned by too many people at the top. Executive larceny and outright greed replaced best practices and good corporate governance. In such a race to the bottom, investors felt angry and rightly so.

What went wrong was aptly captured in a comment I read a few weeks back by Kathryn McGrath, a lawyer and former fund regulator in the U.S, who said this: "In the scramble to survive and make money, some people in the industry forgot about that fundamental principle: It's the shareholders' money, stupid." Mutual fund companies are getting it from all sides, not just from Eliot Spitzer or the Securities and Exchange Commission. Even the legendary Warren Buffet has taken aim at the industry in his latest letter to shareholders. This marks the second year in a row that the Oracle of Omaha has attacked mutual fund companies, most recently that group he calls "lapdog directors" who are supposed to oversee the selection and performance of fund managers. Instead, as Buffet noted, some of those directors were asleep at the switch, suffering from what he called a "boardroom atmosphere" that "sedates their fiduciary genes." Buffet then posed a pretty basic question, "If you don't know whose side someone is on, he's probably not on yours."

To be sure, the business of money management has hardly been alone in suffering a steep decline in public esteem. Steroids in home-run hitters, violence in hockey, scandals in public spending, fabrication of facts by journalists … there's hardly any segment of society that does not seem to be under siege. The difference is this: We can't do anything about those other problems, but we can tackle the question of integrity in business. Let me turn now to the second part of my speech … the ongoing OSC probe of the mutual fund industry. Last year, when the problems in the U.S. mutual fund industry first surfaced, there were those who demanded we take immediate, parallel action. Others said, don't bother, everything's fine, there's no hanky-panky here.

We followed neither of those suggestions. Instead, our approach was this: Get the facts before we react. That is why last November we sent a questionnaire to 105 managers of publicly offered retail mutual funds that trade in Ontario. We did not do so because we had any hard evidence that Canadian firms were doing anything wrong. No whistleblower had come forward here, as has happened in the U.S. Indeed, our investigation would still welcome any insight that might be garnered from such a knowledgeable source. Openness and honesty is to everybody's benefit.

What we sought to do in that November survey was simply to ask about policies and procedures that each firm had in place to prevent late trading and market timing. We asked if there had been any abuses of those policies in the previous two years. If anything approaching abuse had occurred, we further requested more information about such activity and what steps had been taken to prevent recurrences.

Let me also say that this is not a witch hunt, neither is it a fishing trip. But if there is wrongdoing, this probe will uncover it.

We carefully reviewed the responses we received and found a few areas that looked like they'd benefit from further scrutiny. As a result, in February we launched the second phase of our probe. That phase involved asking about one-third of all respondents … as well as some other firms selected at random … for more detailed information. Submission of that data was timely and our statistical analysis is almost complete. The third and final phase of the probe will soon commence and will include, where appropriate, on-site visits by OSC staff.

Let me say how much we appreciate the co-operation we have received, not just from individual firms but also from the Mutual Fund Dealers Association of Canada and the Investment Dealers Association.

Let me also say that this is not a witch hunt, neither is it a fishing trip. But if there is wrongdoing, this probe will uncover it.

While we do not know yet whether we will find anything like the level of illegal practices that have been uncovered in the U.S., we cannot assume that our mutual fund industry is lily-white. For example, although there are procedures in place through FundServ that mean orders cannot be entered after four p.m., the question that needs to be answered … on behalf of all investors … is this: Were all policies and procedures fully and fairly followed? In many ways, the question we're asking of mutual fund managers is age-old. "Who guards the guardians?"

It's quite possible, for example, that trouble could ensue from what might be called systemic issues. After all, mutual fund managers are basically on the "sell" side of the market. Their compensation depends upon generating fees and adding to total assets under management. As a result, selling more fund units is in the best interests of fund managers. But selling more units may not always be in the best interests of the investor who has handed over her retirement savings. We need to ensure that whenever there is even the slightest whiff of a conflict of interest, it must be the investors' long-term interests, not the short-term gain of the fund manager, that is served.

This structural conflict of interest is the focus of the governance proposal from the Canadian Securities Administrators that is currently out for comment. Known officially as Proposed Instrument 81-107, the topic under discussion is an Independent Review Committee for mutual funds. This committee will bring us closer to implementing a mandatory fund governance scheme designed to manage these potential conflicts of interest. Under the Proposed Rule, each mutual fund manager would

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information – at the account opening stage, at the time of transactions, and in their account statements. Advisers would have clearer conduct standards to guide their activities. And ultimately, we should see fewer disputes."

"Ontario does not intend to implement the Fair Dealing Model without the participation of other regulators," said OSC Chair David Brown. "Changes as fundamental as these can best succeed with the cooperation and expertise of the other Canadian securities commissions and self-regulatory organizations. We have been encouraged by their responses to date, and hope they will play an increasing role in the ongoing development of the model."

Copies of the Fair Dealing Model Concept Paper can be ordered through the OSC Contact Centre, or downloaded from www.fairdealingmodel.ca, or the OSC's website at **www.osc.gov.on.ca**.

Comments must be submitted in writing on or before Friday, April 30, 2004.

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be required to establish an Independent Review Committee for its funds. The committee's specific mandate would be to review all matters involving a conflict of interest between the fund's own commercial and business interests on the one hand, and its fiduciary duty on the other.

As a result of public comment previously received, the current Proposed Rule is much narrower than the original concept. I believe this revised approach properly focuses on areas where the Investment Review Committee can add significant value. The Committee is but one step that could take us forward to our goal … restored trust.

We have the Proposed Rule very much in mind as we move into the final phase of our own probe. In so doing, we are carrying out the OSC's two-part mandate, which is worth repeating in this context:

• first, to provide protection to investors from unfair, improper or fraudulent practices;

• and second, to foster fair and efficient capital markets and confidence in their integrity.

As for the OSC probe, obviously I can't say just yet what the precise findings will be because we are not yet finished. When our on-site investigations are complete we will take appropriate action. I can promise you that we will be prudent about what we do. As a regulator, I'm not planning to advocate new rules just for the sake of being busy. Nor am I much interested in what I would call bureaucratic interventionism. In this regard, I take my cue from Mies van der Rohe, the architect of the Toronto-Dominion Centre, whose motto was "Less is more." At the same time, however, I am a realist and an activist. As you are well aware, the OSC has recently taken tough measures on several other fronts that come under our jurisdiction. For example, we have established an enviable record in enforcement. We have obtained jail sentences in four of the most recent five cases where we have sought jail terms. We've cut the average time it takes to complete investigations almost in half, from twenty months to eleven months. As for bringing cases to trial, we've done even better; we've reduced the time involved from fourteen months to six months. In the past few years we've successfully prosecuted more than one hundred separate actions and most of those actions have involved multiple respondents.

We continue to look at ways to improve enforcement, to communicate what we're doing, to achieve tougher sanctions on securities violations and to try to bring together all the different agencies that are involved.

The next step we take will almost certainly involve stewardship. As you know, issues relating to stewardship used to be the purview of the Toronto Stock Exchange but those guidelines are now the responsibility of the OSC. To my mind, the most important aspect of stewardship is the integrity of the CEO and the culture of integrity that is created. The OSC can set the standards and create the environment but it is up to you and other business leaders to establish the appropriate tone at the top. If you fail to follow through with vision, we will act with a vengeance. We have the muscle and manpower as well as the necessary apparatus in the form of continuous disclosure requirements.

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It was Marshall McLuhan who said, "The important thing in business is to know what business you're in." By that definition, I believe that you and I are in the same business, the business of building and maintaining public trust. Our aligned interests include investor confidence, transparency in all dealings, fair and efficient capital markets and … but above all … trust and integrity. Those great goals are all about human values. All we regulators can do is set the standards, promulgate a few rules and punish offenders. But you have a responsibility, too, and that role means that you must pay more heed to your fiduciary duties than you do to sales and marketing. Mutual fund managers and boards of directors must constantly keep in mind the best interests of investors, not your own interests or the benefit of a select few. If you can make investors grow rich, you will also prosper. It's when the order gets reversed or the investor gets forgotten, that the industry falls down. After all, managing other people's money is a public trust, not some private prize.

I'd like to think that markets operate in the best interests of everyone, and for the most part, they do. But I am not so naïve as to believe that we don't need rules and watchdogs. The integrity of our capital markets is too important to be left entirely to self-policing by participants. No one suffers more than you do when there's wrongdoing in your midst.

With your help, we can and we will re-establish public trust in financial markets.

With your help, we can and we will ensure fairness and sound ethical practices.

With your help, we can and we will give investors every reason to believe that they are in good hands again.

Thank you. I look forward to your questions.

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