ONTARIO SECURITIES COMMISSION

PERSPECTIVES

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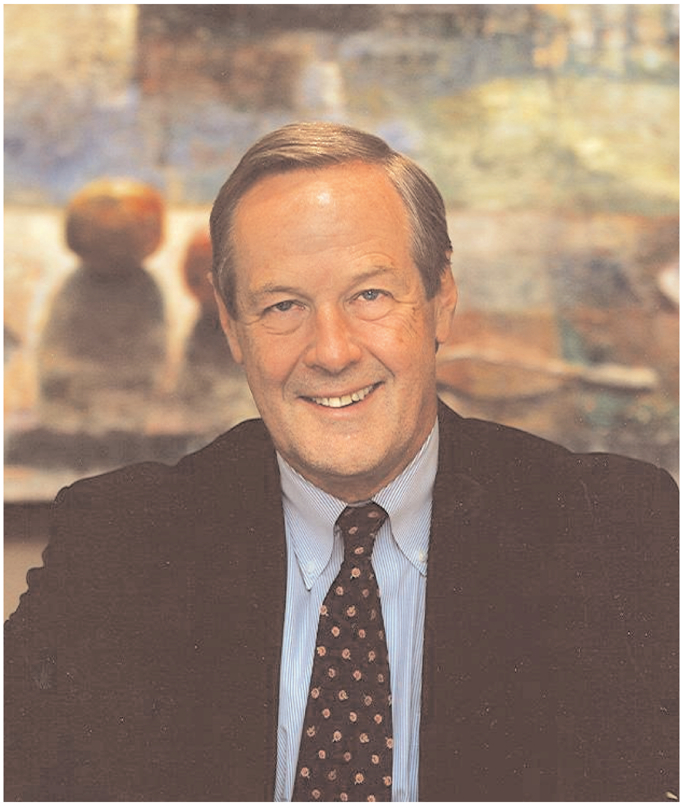


David Wilson

Inside...

Changing of the Guard

David Wilson talks about joining the OSC as its new Chair.

When David Wilson takes the reins as the new OSC Chair on November 1, he'll be faced with key issues like enforcement, hedge funds and regulatory reform. In this issue of *Perspectives*, the veteran investment banker looks forward to his new job and talks about the challenges he sees facing Canada's largest provincial securities regulator.

What aspects of the role as Chair are you looking forward to most?

While I haven't started yet, I can tell you about what made me want to take this job in the first place. I've always believed securities regulation is an extremely important field. I've had experience with regulatory matters through my involvement with the Investment Dealers Association, the Mutual Fund Dealers Association and the provincial Five Year Review Committee. Now, the chance to get involved in public policy in this area is very appealing to me. I think being OSC Chair will be a great opportunity to make a difference in an important role.

You will be the first non-Bay Street lawyer to chair the OSC in a long time. What benefits do you think your background and experience will bring to the OSC?

First off, I think there will be a great blend between my experience in capital markets and the impressive expertise within the OSC. I've been working in the securities industry for more than 30 years so I feel I have an in-depth knowledge of matters such as corporate governance, compliance, corporate finance, mergers, investments and international markets. I understand the issues facing both market participants and investors and I also understand what priorities need regulatory attention.

Do you see enforcement as a main priority for the OSC?

Tough enforcement will indeed continue to be one of the major priorities of the OSC. Capital markets need strong

THOMSON CARSWELL

enforcement initiatives from regulators in order to provide protection to investors and help make sure markets are fair and have integrity. I see the OSC's goal as providing fair, vigorous and timely enforcement, all the while sending a strong signal to the marketplace that anyone who might think about cheating investors, issuers or market intermediaries is taking a big risk. Its enforcement approach has to be tough but fair and its deterrence message has to be clear and direct.

DAVID WILSON

Career highlights:

Early Years

B.Comm. from the University of Toronto; MBA from York University. Worked as a financial analyst at Toronto-Dominion Bank and, later, as an investment research analyst at Dominion Securities.

1971

Joins the corporate finance department at McLeod Young Weir Limited in Toronto.

1979

Moves to McLeod's offices in Vancouver as managing director, corporate finance.

1984

Made managing director for McLeod's corporate finance department back in Toronto.

1993

Appointed president and deputy CEO of ScotiaMcLeod, soon to be Scotia Capital Markets.

1996 - 1997

Becomes Chair of the Investment Dealers Association of Canada (IDA).

1997 - 1998

Serves as a founding director of the Mutual Fund Dealers Association of Canada (MFDA), a self-regulatory organization for the mutual fund industry.

1998

Appointed Chair and CEO of Scotia Capital Markets.

1999

Becomes co-Chair and co-CEO for the Bank of Nova Scotia's corporate and investment banking business, Scotia Capital.

2000

Joins the Five Year Review Committee reviewing the Ontario Securities Act, which publishes recommendations that include a national securities regulator.

2002

Appointed Vice-Chair, Bank of Nova Scotia; Chair and CEO, Scotia Capital. Advises the Ontario government on the issue of a single securities regulator.

2005

Appointed OSC Chair, effective November 1, 2005.

What are your views on the issue of a single securities regulator for Canada?

I believe a common regulator would bring significant benefits to both investors and business because a fragmented system of regulation undermines our ability to attract investment capital. I participated on the advisory committee that provided support for Minister Gerry Phillip's proposal for a common securities regulator for Canada. The Ontario government has taken a commendable leadership role in this area and I look forward to working with and supporting the Minister on this file, and to seeing progress on this important initiative. In the meantime, the OSC must keep working with other securities regulators to continue to harmonize and streamline the current system to make it as efficient and effective as possible.

Hedge funds have been in the spotlight a lot lately—what are your views on the issues facing the regulation of these alternative investments?

Working in the securities industry, I can definitely attest to the increased prominence of hedge funds. They're very sophisticated vehicles and Ontarians need to understand them before they invest. Hedge funds are an important area for the OSC because people have invested a considerable amount of money in them. I understand that the OSC has formed an internal task force to examine hedge fund issues, such as their risks and suitability for unsophisticated investors. I look forward to getting involved in this group.

Speaking of investors, what approach do you see yourself taking on the various retail investor initiatives?

I'm familiar with the Investor Town Hall report and know that retail investors expressed a desire for more consultation with regulators. Many of those investors made it clear that they want a different relationship with the OSC and other regulators. They want a dialogue and they want to be heard. When I start the job, I look forward to advancing that dialogue and learning more about the concerns and needs of all investors.

Looking ahead, what do you think the OSC will look like, say, five years down the road?

I think the OSC will be an even stronger enforcer of provincial securities laws, providing stronger protection for investors. In five years, the OSC will have bolstered confidence in our capital markets, making them even more attractive to investors and public companies across Canada and around the world. The province's capital markets will be more efficient and fair, contributing to a stronger overall economy. At that point, I think that the leadership of the OSC will have played an important role in harmonizing, streamlining and simplifying the system of regulating securities in this province and in this country.

Assuring a Smooth Transition

Acting Chair Susan Wolburgh Jenah looks at key OSC highlights during the transition period.

When David Brown stepped down as OSC Chair on June 30, he left behind a legacy of positive change for the Commission and our capital markets. Pending the arrival of our new Chair David Wilson on November 1, I'm pleased to say that we continue to make progress on many important initiatives.

In particular, I'd like to take this opportunity to tell you about one of those initiatives – civil liability for secondary market disclosure. On August 2, 2005, Gerry Phillips, Minister of Government Services, announced that the new civil liability provisions will take effect on December 31, 2005. This initiative was reviewed by the Ontario Legislature's Standing Committee on Finance and Economic Affairs, which unanimously supported the recommendation of the Five Year Review Committee that the Government adopt this legislation.

We expect the new legislation will serve as an effective deterrent against public companies disclosing incomplete and inaccurate information. The legislation will also facilitate the ability of investors to take action and hold companies accountable if their information is misleading, false or untimely. Indeed, we expect that this new legislation will help to focus issuers on the overall quality of continuous disclosure information available in the marketplace. This will benefit both issuers and investors. The legislation strikes an appropriate balance as a deterrent as opposed to a compensatory regime. This should enhance confidence in our capital markets without undermining efficiency.

Susan Wolburgh Jenah

Ontario is the first province to update its securities legislation in order to implement civil liability for secondary market disclosure, based on extensive public consultation. I am pleased that the Government of Ontario has decided to proceed with this important piece of legislation.

I have enjoyed the challenge of serving as Acting Chair of the OSC during this transition time. We look forward to welcoming David Wilson to the Commission. In the meantime, we will ensure that the OSC continues to operate efficiently and effectively on behalf of all of our stakeholders. I am grateful to my fellow Commissioners, Vice-Chair Paul Moore and Executive Director Charlie Macfarlane for their support and to the entire OSC staff for their hard work in making this transition smooth and productive.

HIGHLIGHTS

Here are a few other highlights from a very busy summer:

<u>Harmonized the Exempt Market: National Instrument 45-106</u>
We replaced most existing prospectus and registration exemptions with a single, consolidated rule providing one-stop shopping for Canadian issuers.

<u>Enhanced Income Trust Guidance: CSA Staff Notice 41-304</u>
We published guidelines ensuring transparency of information pertaining to estimated distributable cash for investors of income trusts.

<u>Improved Continuous Disclosure</u>
The OSC implemented and began enforcing new and improved rules for continuous disclosure, certification of disclosure, and auditor oversight for public companies.

<u>Market Structure Developments and Trade-Through Obligations</u>
We released a CSA discussion paper on the fundamental issues of importance to the structure of capital markets, in particular, the trade-through requirement, and held a public policy forum on October 14th, 2005, to hear the views of our stakeholders on this important market structure issue.

<u>Proposed Changes to Current Fee Structure</u>
We issued for comment a paper outlining proposed modifications to the existing OSC activity and participation fee structure which would result in an overall reduction of 11% for all market participants.

<u>Amendments to MRRS Applications Policy</u>
The CSA have streamlined our mutual reliance review processes to further enhance the efficiency and effectiveness of the securities regulatory system in Canada.

Due Credit

CP Ships: A roadmap of Credit for Cooperation guidelines in action

Other firms have found themselves in the same place before. Faced with failure to disclose a material change to financial statements and simultaneous unrelated trading by company insiders, CP Ships Ltd. could have faced full-on formal proceedings by the OSC. Instead, Credit for Cooperation offered the firm a chance to set things right. It received a warning letter and was able to make positive changes to its internal processes. Michael Watson, Director of the OSC's Enforcement Branch, sees the CP Ships case as a positive roadmap for the future of Credit for Cooperation. How did the firm work within the guidelines to get back on track?

Credit for Cooperation in action

Outlined in Staff Notice 15-702, the Credit for Cooperation guidelines lay out a path for issuers to follow in working with regulators or law enforcement agencies when serious problems or breaches of securities law are identified. Those guidelines helped CP Ships set right a series of problems that began in 2004, when management failed to disclose that financial statements for the years ending December 31, 2002 and 2003, along with financial results for 2004 would have to be restated. In addition, between May 19 and June 2004, company insiders traded in shares of CP Ships while in possession of other non-disclosed information. Ultimately, the OSC estimates that those insiders avoided losses of nearly $1.5 million through their trades.

When CP Ships discovered the problems, management acted quickly to cooperate with OSC staff. "They did everything right in accordance with Credit for Cooperation to assist the Commission in finding out what went wrong and fixing it," says Watson, noting that the guidelines were key to the process.

Making things right

What steps did CP Ships take? To start, the firm immediately set up a Special Committee to investigate the problem and meet with OSC staff. They also made the investigation public along with disclosing that trading by insiders shouldn't have occurred. Throughout, CP Ships provided all documents to the OSC and offered full cooperation from everyone involved. In addition they made the four insiders involved in the trades disgorge the losses they avoided. And they undertook a voluntary review and revision of their insider trading and corporate disclosure policies to help prevent this from happening again.

"Self-identification, self-reporting, self-correction – these are key to Credit for Cooperation," says Watson, pointing out that, from the get-go, CP Ships proactively cooperated with the Commission to set things right. "This case has provided us with an example of how well the Credit for Cooperation guidelines can work to improve Canadian capital markets – without having to always take formal action," he notes. By cooperating fully with the Commission, the situation resulted in an efficient resolution of the circumstances that worked out to the benefit of both the firm and the market.

Casebook

The following summaries represent settlement agreements reached during recent enforcement proceedings and hearings before the Ontario Securities Commission.

Issue: Illegal Distribution of Securities
Background: Allan Eizenga agreed he controlled and made all key business decisions relating to The Saxton Group, a group of companies which raised approximately $37 million from Ontario investors in an illegal distribution of securities.
Sanctions include:

- Prohibited for 25 years from acting as officer or director of any issuer in Ontario;
- Required to cease trading in securities for a period of 22 years (with some exceptions).

Issue: Failure to Properly Disclose Information/Failure to Properly Supervise
Background: F.G. Lee Simpson, while employed as President, CEO and CFO of Thomson Kernaghan & Co. Ltd, failed to ensure the terms of a loan guaranteed by the firm were properly disclosed to IDA. He also failed to properly supervise the actions of Mark Edward Valentine, former firm Chairman, in a number of specified transactions.
Sanctions include:

- Permanent ban on being registered under Ontario *Securities Act* and acting as an officer or director of any Ontario registrant;
- Prohibited from acting as Director or CFO of a reporting issuer for five years;
- Ordered to pay $50,000 toward joint costs of investigation.

Copies of Notices of Hearings, Statements of Allegations, Reasons for Decisions, Orders and other details can be found on the Enforcement Proceedings page of the OSC's website: **www.osc.gov.on.ca**.

Lower Fees Ahead

Commission Proposes Changes to its Fee Schedules

The OSC has published for comment proposed changes to its fee schedules which would incorporate overall reductions of 11.0% for market participants. These reductions are the result of modifications to fees to reflect the costs of providing services and the return of a $35.9-million surplus over a three-year period. These proposed changes are in addition to the rebate to market participants of nearly $15 million made last March, which represented a portion of the regulatory fees they had paid during the previous two years.

"The proposed fees are the result of rigorous calculations and research, well informed by the experience we have gained since we adopted a new fee structure in 2003," said Charlie Macfarlane, Executive Director of the OSC. "Like many other organizations in the financial services industry, our costs have risen, but as we were conservative in our forecasts in earlier years, we are able to apply an accumulated surplus to actually reduce fees overall in the next cycle."

We have heard concerns about the levels of fees, especially for smaller market participants, and of the administrative burdens imposed by some of our requirements, which we specifically set out to reduce with these proposals.

"The adjustments we propose are designed to reduce or eliminate any surplus generated as we prepare for our second three-year cycle under the new fee model."

The OSC fee model is intended to recover the cost of its operations. The current fee model came into effect in 2003 and the OSC has committed to re-evaluate its fees every three years and that any accumulated surplus will be returned to the industry. The total amount of revenue required for the next three-year period has been reduced by an amount equal to the total forecast surplus at the end of fiscal 2006 ($35.9 million). The OSC has committed to implement revised fees by April 2006.

"We have heard concerns about the levels of fees, especially for smaller market participants, and of the administrative burdens imposed by some of our requirements, which we specifically set out to reduce with these proposals," said Macfarlane. "For example, we have incorporated an additional fee tier at a lower revenue range to reduce fees for smaller registrants. We also eliminated the requirement to file certain forms when revenue estimates remain unchanged."

As a result of the modifications, participation fees for 81% of registrants, those with annual revenues below $3 million, will decrease by between 10% and 38%.

"This is significant since participation fees make up the greater portion of fees paid by registrants," Macfarlane said. "As well, all issuers will see reductions in their participation fees. We're asking market participants to comment on these proposed revisions to our fee schedule as part of our ongoing stakeholder consultations."

The proposed fee schedule, published for a 90-day comment period on August 12, 2005, is included in Rule 13-502 Fees and Rule 13-503 (Commodity Futures Act) Fees, available on the OSC's web site (***www.osc.gov.on.ca***). Comments are requested by November 10, 2005.

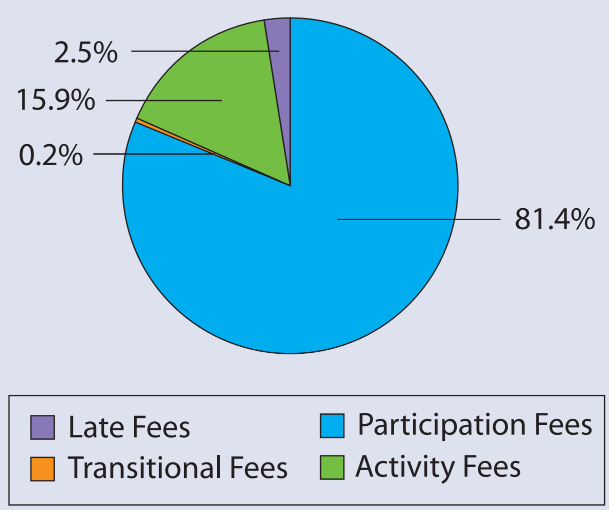
BACKGROUND

The current OSC fee rule requires the payment of "participation fees" and "activity fees".

Activity fees *are charged to market participants only when OSC staff is required to undertake certain activities, such as reviewing a prospectus, evaluating an application for discretionary relief, or processing registration documents.*

Participation fees *are charged annually based on a measure of the market participant's size - a proxy for the benefit it derives from participating in Ontario's capital markets.*

Figure 1 – OSC Fees by Type



2005 Annual Report

Continuous Evolution

The OSC's proactive approach to continuous disclosure reviews

In 1999, the OSC's Corporate Finance Branch established a team dedicated to reviewing continuous disclosure documents and, in turn, fostering greater awareness of the related regulatory requirements. Over the next few years, the team grew from just three people in 1999 to 25 in 2003. By 2003, staff in all three Corporate Finance teams were performing "CD reviews" and the operational philosophy of the Branch to continuous disclosure, which had previously taken a back seat to transaction work, had evolved permanently.

"Continuous disclosure reviews are a critical element of our regulatory approach," says Director Margo Paul, who points out that, last year, the number of continuous disclosure reviews conducted by staff surpassed that of prospectuses, 381 versus 181.

Corporate Finance staff have also worked to find ways to best use their resources to target areas of greatest need. Importantly, it has developed an approach that involves focusing resources on areas of greatest risk. While the Branch commits to review Ontario-based issuers once every four years on average, various risk-based methods are used to determine the level and depth of review applied to each issuer.

Continuous disclosure reviews are a critical element of our regulatory approach.

So far, Corporate Finance's efforts are paying off. As Cameron McInnis, a Corporate Finance manager, notes "the refilings and errors list for reporting issuers currently cites some 100 companies where the Branch has caught problems." At the same time, the team works proactively to communicate examples of areas where market participants could be doing a better job with their disclosure documents. "Over the last few years, we have issued far more guidance-type documents than ever before," says manager John Hughes.

The Corporate Finance Branch continues to constantly reassess its CD review program, to learn from experience, to enhance its risk-based selection procedures, and to respond to developments in the marketplace. Over time, the program is evolving from a primary focus on reviewing documents, to encompass a greater engagement with corporate governance and other factors impacting on the quality of disclosure. For example, now that Multilateral Instrument 52-110 *Audit Committees* is effective for all issuers, Corporate Finance is reviewing some of the initial corporate disclosures made under the rule, and following up on apparent areas of non-compliance.

Margo Paul (centre), Director, Corporate Finance, and Managers and Accountants

Investor Education Month

October is Investor Education Month — a perfect time for Canadians to take advantage of reliable tools and resources readily available to help them manage their personal finances.

Industry groups and regulators are encouraging the public to play a more active role in their financial affairs. The OSC is pleased to participate in the eighth annual campaign as part of the Council for Investor Education, a forum of industry organizations and securities regulators interested in empowering Canadians with the knowledge to make informed financial decisions.

Council members will be promoting their programs and resources throughout the month through media campaigns and website resource launches, as well as public seminars and events.

Visit the Council's 2005 Investor Education Month calendar at ***http://www.cfp-ca.org/iem_eng/index.asp*** *for more information.*

Talking Trade-Through

Securities regulators seek comments on market structures

A new discussion paper published by the Canadian Securities Administrators (CSA) on July 22 aims to discuss evolving market developments and the consequent implications for the Canadian capital market, in particular the obligation to avoid trade-throughs. The issue stems from the 1990s, when burgeoning interest in new kinds of securities marketplaces in Canada—particularly alternative trading systems—prompted a review of market structures and policy responses to deal with the changing market environment. The role of the trade-through obligation was part of this review.

A full trade-through obligation requires that an entity ensures its orders do not bypass better-priced orders already in the book.

A trade-through occurs when an order placed at a better price is by-passed and a trade is executed at an inferior price. A trade-through obligation ensures that better-priced orders on any marketplace are executed prior to, simultaneously with or immediately after the execution of a trade. In other words, a full trade-through obligation requires that an entity ensures its orders do not by-pass better-priced orders already in the book.

We want to hear broadly from market participants about these issues that are fundamental to the structure of our capital markets.

The introduction of new kinds of marketplaces with different types of trade execution methodologies has raised many issues for regulators in Canada and around the world. The CSA wants input from the industry into the role of the trade-through obligation and has scheduled a public forum for all interested parties to participate in the discussion.

"We want to hear broadly from market participants about these issues that are fundamental to the structure of our capital markets," says Randee Pavalow, Director, Capital Markets at the Ontario Securities Commission.

Copies of the CSA Discussion Paper 23-403 *Market Structure Developments and Trade-Through Obligations* are available on the OSC website: **www.osc.gov.on.ca.**

One-Stop Shopping

New rule on accessing the exempt market

Canadian issuers now have access to "one-stop shopping" when accessing the exempt market thanks to a new rule published by the Canadian Securities Administrators (CSA) in September 2005. National Instrument 45-106, which came into force on September 14, 2005, harmonizes, consolidates and streamlines most prospectus and registration exemptions across Canada, making access to capital markets more efficient for issuers.

NI 45-106

Prior to the new rule, carrying out an exempt distribution across Canada required familiarity with a number of different rules. NI 45-106 not only harmonizes and consolidates these disparate rules, it also updates them by adopting new exemptions, broadening existing ones and removing or revoking some local exemptions in cases where they were no longer appropriate or relevant.

A full copy of NI 45-106 and its accompanying forms and companion policy can be found at **www.osc.gov.on.ca** and at the websites of other Canadian securities regulators.

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

Perspectives
Communications Branch
Ontario Securities Commission
20 Queen Street West, Suite 1903
Toronto, ON M5H 3S8
perspectives@osc.gov.on.ca

Town Hall Update

Investors express confusion over where to turn with complaints

Investors don't always know where to turn when they have a complaint, according to a report on the OSC Investor Town Hall held in Toronto earlier this year. The report lists concerns raised by many financial services consumers and outlines approaches that could be taken to deal with these issues.

> *Investors in attendance also made it very clear that they value accountability, transparency, fairness and effectiveness in the regulatory system.*

The Town Hall event brought together the OSC with other regulatory bodies, such as the Investment Dealers Association of Canada and the Mutual Fund Dealers Association of Canada, and the Ombudsman for Banking Services and Investments, to discuss the current state of the complaint and arbitration system. Investors who attended the Town Hall expressed some dissatisfaction with the way complaints have been dealt with in the past. Investors in attendance also made it very clear that they value accountability, transparency, fairness and effectiveness in the regulatory system.

Based on what the OSC heard during the discussion, the attention of investors was focused on four main issues:

- The challenges in navigating the complaint process;
- A desire for a timely and accessible means of pursuing restitution for investor losses;
- Concern that the limitation period for beginning civil actions might be too short for aggrieved investors; and
- The need for more consultation with investors by the OSC.

A full report on the event, outlining the regulatory response to these issues, is available in the 'Investor Town Hall' section of the OSC's website, **www.osc.gov.on.ca**. Included in this section are answers to the questions asked by investors as well as a full audio webcast.

Register for 'Dialogue with the OSC 2005'

When: Thursday, November 17th, 2005
Where: Metro Toronto Convention Centre

Capital markets around the world are undergoing enormous change, requiring regulators and market participants alike to be innovative and resilient. Dialogue with the OSC is your best opportunity to learn about the latest key developments in securities regulation. Join senior OSC staff members and industry leaders for in-depth discussions on the major regulatory and capital markets issues of the day. Be part of the dialogue as we exchange ideas and insights about the issues that face regulators and market participants.

Dialogue with the OSC 2005 will be a premier opportunity to hear from the new OSC Chair, David Wilson, who is the keynote speaker for this year's event.

Agenda highlights

The conference theme is "Setting the Standard" and discussion topics will include:

- Striking the Right Balance in Regulation: A Focus on Internal Controls
- Hedge Funds: What Regulatory Changes Can We Expect?
- Preparing for Civil Liability for Secondary Market Disclosure
- Responding to the Changing Landscape for Investment Funds
- Better Disclosures, Investor Confidence and Efficient Markets
- Cooperative Approaches to Enforcement Domestically and Abroad
- Adopting a Streamlined and Harmonized Approach to Registration
- New Issues and Innovative Solutions in Capital Markets

Carol Hansell, Partner, Davies Ward Phillips & Vineberg LLP, will present this year's luncheon address.

NOTE: Dialogue with the OSC is also eligible for up to 6.0 hours of IDA Continuing Education Credits.

For registration and agenda details, visit www.osc.gov.on.ca/dialogue or call 1.800.465.9670.