ONTARIO SECURITIES COMMISSION
Winter 2006 Volume 9 Issue 1

OSC PERSPECTIVES

Making a Difference

New OSC Chair says regulators must work to maintain trust in the markets

Securities regulators can inspire trust and confidence in our capital markets by providing fair, efficient and balanced regulation, said OSC Chair David Wilson, in the keynote speech at Dialogue with the OSC on November 17, 2005.

"We must ensure that regulation protects the market from the dishonest few. At the same time, we don't want to stifle the unfettered creativity of the private sector to generate wealth," said Mr. Wilson. "We must build trust – without adding undue burden."

The prosperity of our society has hinged upon the ability of individuals to trust strangers with their hard-earned savings, said Mr. Wilson, and one of the best indicators of an economy's ability to generate prosperity is how much trust people have in capital markets and financial institutions.

Appearing at his first public OSC event since beginning his term as Chair on November 1st, Mr. Wilson said regulators can make a difference by strengthening corporate governance, protecting the mutual fund market, determining appropriate regulatory approaches to hedge funds, and providing vigorous and timely enforcement. Continued on page 2

"We must prevent, detect – and deter. Deterrence is achieved when everyone knows with certainty that the enforcement of regulations will be impartial, swift and uncompromising."

OSC Chair David Wilson, speaking at Dialogue with the OSC 2005

From Internal Controls to Hedge Funds

Dialogue with the OSC featured two engaging plenary panel discussions on the timely subjects of hedge funds and internal financial controls. OSC Vice-Chair Susan Wolburgh Jenah moderated a panel that debated various regulatory and industry perspectives on internal control reporting requirements for issuers. The second panel, moderated by OSC Vice-Chair Paul Moore, featured a lively exchange on possible regulatory approaches for hedge funds.

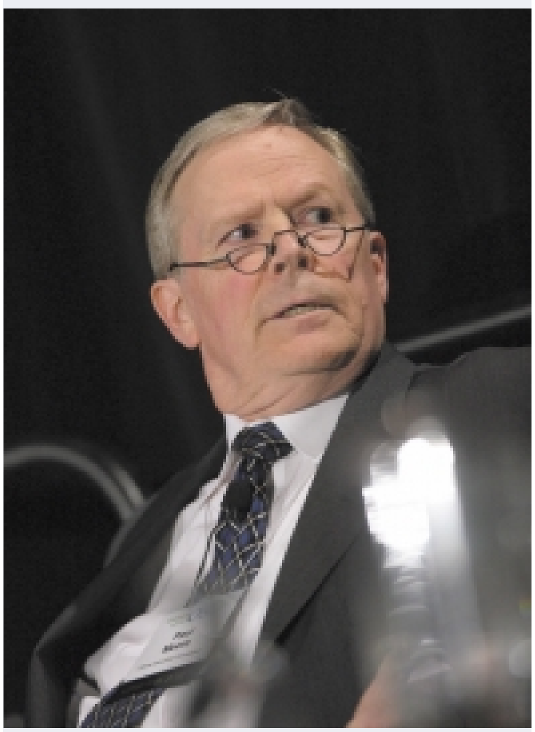
A session on internal controls for public companies was included because the U.S. requirements (SOX 404) and the proposed Multilateral Instrument 52-111 *Reporting on Internal Control over Financial Reporting* of the Canadian Securities Administrators have generated vigorous debate within capital markets. "Internationally, many have been discussing the issue of SOX 404 and what the right approach is for their own particular jurisdictions," said Ms. Wolburgh Jenah. Continued on page 2

Consequences of Reform

Attitudes toward corporate governance are undergoing a "sea change," said governance expert Carol Hansell during her luncheon address at Dialogue with the OSC 2005.

To read an excerpt from Carol's speech, see page 3

OSC Vice-Chair Susan Wolburgh Jenah



OSC Vice-Chair Paul Moore

Photography: Geoff George Photography

Making a Difference (continued)

He said the OSC must devote energy to maintaining the equilibrium of the relationships among issuers, investors and intermediaries – an equilibrium that sustains the marketplace. Creating the highest quality harmonized regulation in Canada is one crucial way of supporting this equilibrium.

In that regard, he congratulated Gerry Phillips, Minister of Government Services and the provincial minister responsible for securities regulation, for promoting a harmonized and simplified securities regime for Canada.

"We need a common securities regulator in Canada to improve both the efficiency and attractiveness of our capital market," said Mr. Wilson, adding that reform must take into account the unique concerns of Canada's regions.

Distinct domestic interests also need to be reflected in a strengthened system of corporate governance. "While our regulation must be as robust as that of our American neighbours, it need not be identical," Mr. Wilson told the audience of about 360. "It must accommodate the requirements of Canadian corporate law and the realities of the Canadian markets. We must seek Canadian solutions to global issues."

With respect to investment funds, Mr. Wilson said regulators must do everything they can to protect the mutual fund market. The OSC's commitment to investor confidence was demonstrated by the settlement agreements entered into with five mutual fund managers following a probe into market timing. And the Canadian Securities Administrators, including the OSC, are considering various policy alternatives, such as mandated compliance programs, to provide protection to mutual fund investors.

On hedge funds, Mr. Wilson said the OSC must consider measures designed to ensure that hedge fund managers improve their transparency and provide full, accurate and timely information to investors.

The final way that regulators can make a difference in promoting trust is by providing fair, vigorous and timely enforcement to protect against abuses including fraud and insider trading.

"If we manage to prevent, detect and deter such abuses, we will encourage the development of a market that fosters equal opportunity, social mobility and economic fairness – all of which cultivate the confidence and trust necessary to attract domestic and foreign capital flows," said Mr. Wilson. [1]

From Internal Controls to Hedge Funds (continued)

The discussion involved OSC Chief Accountant John Carchrae, former Auditor General of Canada Denis Desautels, Brian Gibson, Senior Vice-President, Public Equities, of the Ontario Teachers' Pension Plan; Jim Goodfellow, Vice Chairman of Deloitte & Touche LLP; Jonathan Lampe, a Partner with Goodmans LLP; and TSX Group Chief Executive Officer Richard Nesbitt. They fielded several key questions, including:

- Should Canada take a different approach to internal controls from the U.S.?
- What can we learn from the experience with SOX 404?
- Should Canadian regulators eliminate the proposed requirement for auditor reporting on internal controls?

Hedge Funds

The focus of the hedge funds session was on issues related to transparency, suitability and proficiency, as well as possible regulatory approaches. An OSC steering committee, headed by Paul Moore, is currently studying hedge funds. Joining the hedge fund panel were Paul Bourque, Senior Vice-President, Member Regulation, Investment Dealers Association of Canada; Mark Gordon, Executive Vice-President, Mutual Fund Dealers Association of Canada, consultant David Jarvis, and Daniel Laurion, Securities Markets Superintendent with the Autorité des marchés financiers.

Panellists examined the fees, pricing and risks associated with hedge funds, particularly principal protected notes. There was also a high-level discussion on questions about possible regulatory approaches, such as:

- Should regulators prohibit access to hedge funds by retail investors?
- Should there be a separate product regime for hedge funds?

"Before we make a rule change, of course, there will be public discussion and public debate," said Mr. Moore. WWW [2]

Unintended Consequences of Governance Reform

Carol Hansell assesses the outcomes of corporate governance reforms

In her luncheon speech at Dialogue with the OSC 2005, lawyer and corporate governance expert Carol Hansell, a partner with Davies Ward Phillips & Vineberg LLP in Toronto, analyzed various unintended consequences of corporate governance reform. In this excerpt, she discusses one consequence of the focus on the independence of boards:

"The courts have made it clear that independence and a focus on the best interests of the corporation are critical to an assessment that directors have discharged their responsibilities appropriately. An unintended consequence of our litigation environment is that the prospect of litigation is often used as an intimidation tactic.

"Directors need not be wrong in order to be sued – they are very conscious of that. Even directors who are confident about the decisions they are making would be foolish not to be aware that when there are significant dollars at stake, lawsuits are always possible. Does this influence the decisions that directors make? It is hard to imagine that it would not, in some circumstances.

"This is not to suggest that directors do not act in accordance with their fiduciary duty – even when they are threatened with litigation by outside parties. However, the threat of litigation may introduce a level of caution in board deliberations that may constrain the efficiency and creativity of the process." WWW [3]

"It is not the regulators who are forcing continued evolution in governance practices – it is institutional shareholders, ratings organizations and the press."

Carol Hansell, Davies Ward Phillips & Vineberg LLP

OSC Online

What's new on our site

The OSC website is a valuable resource for investors, issuers and registrants with information about rules, regulations, enforcement matters and OSC communications.

Publications

- Webcast on Prospectus and Registration Exemptions: www.osc.gov.on.ca/Regulation/Rulemaking/Current/rrn_part4_index.jsp#rrn45106
- Short Form Prospectuses: www.osc.gov.on.ca/Regulation/Rulemaking/Current/rrn_part4_index.jsp (download National Instrument 44-101)
- OSC Annual Report: www.osc.gov.on.ca/About/AnnualRpt/rpt_index.jsp

Where to find the footnotes

[1] Read the full transcript of the David Wilson speech: www.osc.gov.on.ca/About/Speeches/sp_index.jsp#2005

[2] Find audio files of both plenary sessions: www.osc.gov.on.ca/About/Dialogue/dwo_index.jsp

[3] Carol Hansell is a partner with Davies Ward Phillips & Vineberg LLP in Toronto. Read a full transcript of the November 17 speech: www.osc.gov.on.ca/About/Speeches/sp_index.jsp#2005

[4] Find information about the Investor Advisory Committee and a full IAC Membership: www.osc.gov.on.ca/About/Governance/Committees/ga_consultative_committees.jsp#18

www.osc.gov.on.ca

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Dialogue

OSC announces Investor Advisory Committee


E. Kirzner

The Ontario Securities Commission's new Investor Advisory Committee (IAC) will provide a strong advisory function to the OSC, says IAC Chair Eric Kirzner.

The IAC was established to offer advice and guidance on aspects of the OSC that have an impact on investors. The committee consists of 11 members drawn from a variety of backgrounds including law, academia and the media, as well as private investors and representatives of consumer organizations.

Eric Kirzner is a Professor of Finance and the John H. Watson Chair in Value Investing at the Rotman School of Management, University of Toronto. Professor Kirzner is currently the Vice-Chair of the Board of Directors of Market Regulation Services Inc. (RS) and has chaired regulatory advisory bodies in the past, specifically the Toronto Stock Exchange's Issuers and Investor Advisory Committee.

"I am pleased to have the opportunity to chair the IAC. There are many issues of concern to retail investors, and the IAC will provide a useful forum for their voices to be heard. The members represent a broad spectrum of experienced and knowledgeable investors," he said.

Each committee member will serve for a two-year term. [4]

The Investor Advisory Committee was established in response to the commitments made by the OSC following its Investor Town Hall in Toronto in May 2005.

Ontario

As the regulatory body responsible for overseeing the securities industry in Ontario, the Ontario Securities Commission administers and enforces the provincial *Securities Act* and administers the provincial *Commodity Futures Act* and certain provisions of the *Business Corporations Act*. The OSC is a self-funded Crown Corporation accountable to the Ontario Legislature through the Minister responsible for securities regulation.