ONTARIO SECURITIES COMMISSION

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OSC

PERSPECTIVES

Responding to Concerns About Options Backdating

In wake of U.S. investigations, CSA issues staff notice on backdating of options

The Canadian Securities Administrators (CSA) say different regulatory requirements in this country may reduce the opportunity for companies to backdate or time stock option grants, a practice currently being investigated by regulators in the United States. Several U.S. companies are being investigated for allegedly backdating options granted to senior executives. On September 8, the OSC and other CSA members issued Staff Notice 51-320 *Options Backdating* to communicate their understanding of the issue in the Canadian context.

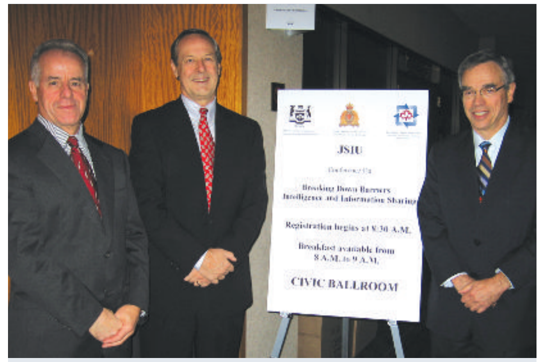
The Notice explains some of the different requirements imposed by the TSX, TSX Venture Exchange and securities legislation which limit backdating opportunities. To further assist board directors, the CSA published guidance that, if followed, may reduce concerns about the timing of options grants and the risks of non-compliance with securities legislation:

- establish a compensation committee that follows the guidance contained in National Policy 58-201 *Corporate Governance Guidelines*;
- consider the guidance in National Policy 51-201 *Disclosure Standards*, including adopting a corporate disclosure policy and insider trading policy, and establishing "black out" periods around earning announcements; and
- ensure the issuer, following a grant of options, provides insiders with details on their grants so they can comply with their legal obligation to file insider reports on SEDI within 10 days.

CSA staff recommend that all issuers assess current policies, procedures and controls for options grants and equity-based awards to ensure they comply with relevant stock exchange rules and securities legislation. If securities regulators are made aware of a situation where these requirements are abused, they may take enforcement action.

CSA Staff Notice 51-320 is available on the OSC website in the "Policy & Regulation" section under Category 5 in Rules, Policies & Notices.

Register Now for Dialogue with the OSC 2006 by visiting our website at www.osc.gov.on.ca/dialogue. See also page 3 of this edition of *Perspectives* for more details on the conference.



The heads of the partner organizations in the Joint Securities Intelligence Unit, (from left) RCMP Commissioner Giuliano Zaccardelli, OSC Chair David Wilson and Investment Dealers Association President Joe Oliver, were the opening speakers at the JSIU's conference in Toronto on September 25. All three speakers said cooperation among regulators and law enforcement agencies is vital in the fight against economic crime. See page 2 for an excerpt from Mr. Wilson's speech.

OSC Calendar

October 12

Vice-Chair Susan Wolburgh Jenah to speak at the Securities Law Practitioners' Conference in Mont Tremblant, Quebec

November 7

Vice-Chair Paul Moore to present at the World Hedge Funds Summit in Vaughan, Ontario

OSC Manager of Surveillance, George Gunn (from left), introduced panellists OSC Chair David Wilson, RCMP Commissioner Giuliano Zaccardelli and IDA President Joe Oliver to an audience of 140 delegates representing 14 countries at the Joint Securities Intelligence Unit conference on September 25.

Working Together to Fight Economic Crime

In a speech at the Joint Securities Intelligence Unit conference, OSC Chair David Wilson emphasized the importance of cooperation in fighting economic crime in Canada. His speech is available on the OSC website. Below is an excerpt:

"More than anything else, we have to cooperate. It's all about the C-word – cooperation. Regulators, enforcement agencies, and provincial attorneys-general have to form a common line against economic crime. As the Governor of the Bank of Canada, David Dodge, has pointed out: 'No one policing agency can fight alone against … financial market fraud.'

"In my first year as Chair of the OSC, this truism, perhaps more than any other, has come through loud and clear to me. And we have to get the word throughout our organizations – all the way down the line – we're at war with criminals, not each other.

"It is easy to see why different agencies have difficulty working together. Different people in different organizations have different bosses to report to, different constituencies to please, different priorities to satisfy. Each piece of the mosaic has its own focus. But we must bring it all together. And that starts at the top. Senior people have to set the tone. We have to work together – and keep building the commitment to cooperation into the culture of our respective organizations."

Improving the Information Exchange

Securities regulators study value of XBRL

To improve how information is collected and provided to investors, the Canadian Securities Administrators (CSA) conducted a survey (closed September 30) on the familiarity and effectiveness of eXtensible Business Reporting Language (XBRL). The intention of the survey was to measure the level of awareness the capital market had of XBRL and the value it provided, and to obtain feedback on how the CSA should proceed.

XBRL is a new interactive data reporting language that enables the exchange of financial information easily within an organization and/or on the Internet by adding standardized electronic "tags" to specific items in disclosure documents, such as revenue or cost of sales. Basically, XBRL has the potential to make it easier and faster for investors to analyze and compare information.

XBRL is becoming the international standard for communicating business and financial data. The U.S. Securities and Exchange Commission has put together an XBRL interactive-data test group. About 40 companies, representing more than US$1 trillion of market value, have agreed to voluntarily submit their annual, quarterly and other reports with interactive data for a period of one year.

For more information refer to CSA Staff Notice 52-314 on the OSC website.

Corporate Governance: Finding the Right Balance

Vice-Chair Susan Wolburgh Jenah discussed corporate governance challenges in her address to a conference of the Canadian Society of Corporate Secretaries on September 11 in Kelowna, B.C. Her speech is available on the OSC website. Below is an excerpt:

"The question 'Has the pendulum swung too far?' can perhaps best be answered with other questions: 'What are the governance risks that require attention, who is best positioned to address them (the marketplace, regulators or a combination of both) and, if regulatory intervention is appropriate and necessary, how far does it need to go?'

"Issuers should not be unnecessarily restricted or burdened in conducting their business. Investors should not be prejudiced by a lack of will on the part of regulators; nor should they be subjected to costs resulting from unnecessary, burdensome regulation.

"We have come a long way since the scandals at Enron and WorldCom. Corporate governance is not a fad. It's firmly implanted in the conscience of the public, academia, the media, market participants and regulators as never before. As regulators, the goal is to find the right balance to ensure best practices flourish while avoiding unnecessary intervention."

Seeking "Soft Dollar" Comments

CSA proposal addresses use of client brokerage commissions

The Canadian Securities Administrators (CSA) are currently seeking comments on proposed National Instrument 23-102 *Use of Client Brokerage Commissions as Payments for Order Execution Services or Research ("Soft Dollar" Arrangements)* and Companion Policy 23-102. The proposed Instrument and Policy outline the acceptable use of client brokerage commissions and set out disclosure requirements.

Soft dollar arrangements, an adviser's use of brokerage commission dollars to pay for trading-related goods or services, may result in conflicts of interest and obscure the adviser's and its clients' ability to determine execution quality. With the goal of mitigating any negative effects of these arrangements, the CSA published the proposed Rule and Policy for comment.

The Notice, proposed Instrument and Companion Policy are available on the OSC website in Category 2 of the Rules, Policies & Notices section under "Policy & Regulation." The comment period ends October 19, 2006.

Dialogue with the OSC: Issues in Focus

Dialogue with the OSC is the opportunity for you to stay informed about the key issues and developments facing capital markets. The conference will be held on Friday, November 10, 2006, at the Metro Toronto Convention Centre. Some of this year's topics include:

- the fight against economic crime in Canada;
- the changing SRO landscape;
- regulation of small and medium-sized enterprises; and
- mergers and acquisitions.

To register or get more details, please visit our website in the "About the OSC" section under Dialogue with the OSC.

Regulators Develop Fund Governance Regime

Putting the focus on investment fund governance

To improve investment fund governance for all publicly offered investment funds, the Canadian Securities Administrators (CSA) developed National Instrument 81-107 *Independent Review Committee for Investment Funds*. The Rule, published by the CSA this summer, requires all investment funds that are reporting issuers to establish a fully independent body, called an Independent Review Committee (IRC), to oversee all decisions involving actual or perceived conflicts of interest faced by a fund manager.

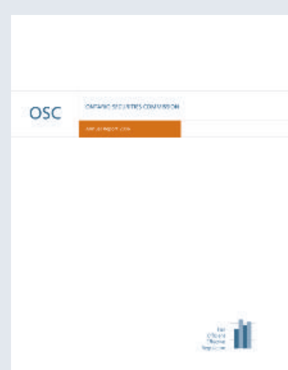
Currently, there is no requirement for investment fund managers or investment funds to have any type of independent oversight of how they manage or monitor conflicts of interest. The Rule requires, for the first time, the fund manager to account for each decision involving a conflict of interest to an independent body considering the decision solely from the perspective of the best interests of the investment fund and its investors. The IRC must consist of at least three people, all of whom are independent of the manager and the investment fund.

The Rule is available on the OSC website in the "Policy & Regulation" section under Rules, Policies, & Notices (Category 8). The Rule could come into effect as early as November 1, 2006.

OSC Publishes its 2006 Annual Report

In July, the OSC released its 2006 Annual Report, highlighting five key organizational goals related to enforcement, retail investors, regulatory harmonization, international regulatory cooperation and organizational accountability. The report, which uses metrics to measure the OSC's performance against these goals, also includes data from the 2006 OSC Stakeholder Satisfaction Survey.

The report also includes Management's Discussion and Analysis and the Commission's financial statements for the fiscal year ended March 31, 2006. The report is available online in PDF format in the "About the OSC" section on the OSC website.



OSC Online

The Charter of Corporate Governance

The Charter sets out the roles and responsibilities of the Ontario Securities Commission, including the role of the members of the Commission, the Commission's governance framework and fundamental principles of regulation. The Charter is available on the OSC website in the "Governance & Accountability" section under The Commission.

Falconbridge Order

The OSC issued an order with respect to the application by Xstrata plc and Xstrata Canada Inc., as well as the application by Falconbridge Limited on June 30. The Order is available on the OSC website in the "Enforcement" section under Enforcement Proceedings.

Sears Canada Order

On August 8, the OSC released its Reasons and Decisions and made an Order in the matter of Sears Canada Inc., Sears Holdings Corporation and SHLD Acquisition Corp., and Hawkeye Capital Management LLC and Knott Partners Management, LLC and Pershing Square Capital Management, L.P. Copies of the Reasons and Decisions and the Order are available in the "Policy & Regulation" section on the OSC website under Orders, Rulings & Decisions.

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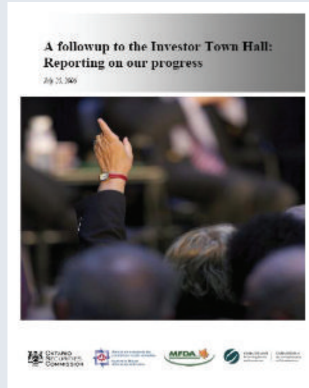
Responding to Investors



The OSC and three other participating organizations have issued a follow-up report to outline the progress to date in addressing the concerns expressed by investors who attended the 2005 Investor Town Hall and to identify other key activities they are working on to respond to the concerns. The joint report was prepared by the OSC, Investment Dealers Association, Ombudsman for Banking Services and Investments, and Mutual Fund Dealers Association.

The report is part of the OSC's priority to move forward on one of its key organizational goals outlined in the 2006-07 Statement of Priorities, to take action to better understand and address the needs of the retail investor.

At the Town Hall, attendees expressed four main areas of concern: navigation of the complaints process; timely and accessible restitution; the limitation period for civil actions by investors; and the desire for improved consultation between regulators and investors.

The OSC has implemented measures to respond to some of these concerns. Specifically, by:

- providing more assistance and continuity for investors who contact the OSC;
- providing more targeted investor communications; and
- establishing the Investor Advisory Committee (IAC) to improve consultations with investors.

The Town Hall Follow-up Report is available on the OSC website in the "For the Consumer" section under Investor Town Hall.

Ontario

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