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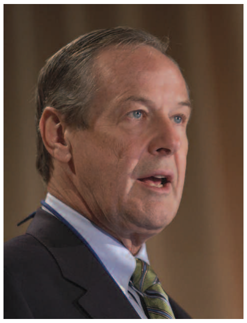
OSC

PERSPECTIVES

Rising to the regulatory challenges

OSC Chair looks ahead at important issues for 2008



OSC Chair David Wilson

The capital markets are adjusting to the re-pricing of risk and the dramatically altered liquidity environment in the wake of the U.S. subprime market crisis.

From a regulatory perspective, the OSC is supporting the International Organization of Securities Commissions (IOSCO) to develop a consistent regulatory response to the crisis in credit markets, including asset-backed commercial paper (ABCP). For example, an IOSCO task force is looking at how local securities regulators can respond. (More on ABCP, page 3.)

"Securities regulators are contributing a consistent regulatory response to today's biggest challenge in the capital markets," says OSC Chair David Wilson. "We support IOSCO's thoughtful action to address the liquidity crisis."

Key policies in 2008

On the regulatory front, Mr. Wilson says OSC staff are working with the Canadian Securities Administrators (CSA) towards publishing rules for a number of key policy initiatives, including registration requirements, executive compensation disclosure and internal controls over financial reporting.

Proposed National Instrument 31-103 *Registration Requirements* is expected to be published for a second comment period in early 2008, while proposals related to executive compensation disclosure are slated for a second comment period in the spring. In addition, the CSA will publish for comment an amended version of its internal controls proposal (MI 52-109) towards a target of having a rule in effect in 2008.

Point-of-sale framework

Staff are also working with securities and insurance regulators on completing the point-of-sale disclosure framework for mutual funds. A key element of the framework is a two-page document called "Fund Facts", which highlights critical information, including performance, risk and cost. The Joint Forum of Financial Market Regulators is reviewing the public comments submitted on the proposed framework.

"The dynamism of our capital markets always creates fresh challenges for the OSC. We look forward to meeting those challenges in our work with other regulators, market participants, investors and government," says Mr. Wilson.

Role of the gatekeepers

Arthur Levitt, former Chairman of the U.S. Securities and Exchange Commission, spoke about the important role of gatekeepers to the capital markets during his speech to an OSC conference. Here is an excerpt from his speech:

"From the current subprime mess to the move toward international accounting standards, what is clear is that independent, effective gatekeepers are critical – not just by laying down and enforcing the rules of the road, but by creating the conditions for trust to develop.

"To be sure, rule-makers and standard-setters do not create trust itself. They cannot mandate ethical behaviour – nor can they prevent scandals. But they can create markets in which all those involved understand that the playing field is level..."

To read Mr. Levitt's full speech, visit www.osc.gov.on.ca.

OSC Calendar

January 30

OSC Vice-Chair Larry Ritchie participates in an Osgoode Hall Law School panel about investor dispute resolution.

February 21

OSC Vice-Chair James Turner will address the Securities Superconference in Toronto.

Boiler Room Unit disrupts frauds and scams

Since its inception in mid-2007, the OSC Boiler Room Unit has secured four interim cease trade orders (CTOs) against 16 firms and 32 individuals accused of violations of the *Securities Act*.

"We have witnessed an increase in the number of individuals reporting potential fraudulent activity to the OSC," said Scott Boyle, OSC assistant manager, investigations.

"The OSC evaluates all information reported to determine the possibility of a fraud or scam. If we see something unusual, the Unit can move forward to disrupt the activity through search warrants, CTOs, or court proceedings," said Mr. Boyle.

A recent CSA Investor Study showed that 40 per cent of Canadians have been approached about some type of an investment fraud.

The OSC Boiler Room Unit works with law enforcement agencies and other regulators in Canada and the United States – including the U.S. Securities and Exchange Commission – to disrupt and prevent scams and illegal distributions before they reach investors. The Unit consists of staff with market, regulatory and law enforcement expertise.

"It's a collaborative effort," said Mr. Boyle. "We need everyone onside in order to protect the interests of investors."

Scott Boyle, assistant manager in the OSC's Enforcement Branch, speaks to investors at the 2007 Investor Forum.

CSA enforcement efforts bring results

The Canadian Securities Administrators (CSA) has worked together to complete a total of 58 enforcement cases that resulted in approximately $6.3 million in monetary sanctions, settlements and disgorgements. These cases involved a total of 226 companies and individuals.

The CSA's bi-annual *Report on Enforcement Activities*, released in January 2008, provides the results of the enforcement actions undertaken by CSA members during the six months ended September 30, 2007. During that period, criminal courts in Canada convicted 13 individuals and three companies of violating securities laws as a result of proceedings initiated by CSA members. The majority of these court convictions involved allegations of illegally distributed securities. The convictions resulted in jail sentences for individuals of up to six months and fines and restitution orders totalling $1.6 million.

Furthermore, the CSA initiated proceedings in respect of 56 new enforcement matters. Securities regulators also issued 42 interim orders to freeze assets and/or stop individuals and companies from trading in the Canadian capital markets.

CSA Chair Jean St-Gelais

"The results clearly demonstrate that Canada's regulators take very seriously any risk to investors and the capital markets," says Jean St-Gelais, Chair of the CSA and President and Chief Executive Officer of the Autorité des marchés financiers (Québec).

The CSA enforcement report also provides information related to enforcement activities carried out by self-regulatory organizations.

Working to strengthen enforcement

OSC Chair David Wilson says practical steps can be taken to strengthen the system of fighting fraud in the capital markets. Mr. Wilson co-chaired the Securities Fraud Enforcement Working Group, created by the federal, provincial and territorial ministers responsible for justice. The Working Group has delivered its recommendations for improving the investigation and prosecution of securities fraud to the ministers.

Mr. Wilson addressed possible initiatives, such as streamlining the assessment of cases and clarifying how regulators and police share information, in his speech at "Dialogue with the OSC 2007". He said improved cooperation, coordination and consistency across jurisdictions would strengthen enforcement:

"The Ministers do recognize that securities fraud causes 'serious harm' to victims. They have expressed broad support for our recommendations and have asked that further work be done to examine them for analysis and implementation. There is no good excuse that I can think of for a lack of action."

To read the full text of Mr. Wilson's speech, visit the OSC website at www.osc.gov.on.ca.

CSA reviews target non-bank ABCP holdings

Securities regulators look at disclosures by public companies

The OSC and members of the Canadian Securities Administrators (CSA) are reviewing the continuous disclosure filings of public companies identified as holders of non-bank sponsored asset-backed commercial paper (ABCP).

The reviews are focussing on the reasonableness of assessments of the fair value of ABCP holdings. They will also evaluate the disclosure and presentation of non-bank sponsored ABCP holdings in financial statements and management's discussion and analysis. CSA members, including the OSC, will examine areas such as how reporting issuers are accounting for ABCP investments and whether or not issuers have taken valuation write-downs when required.

"We, as regulators, are carefully reviewing issuers' disclosures," said Jean St-Gelais, Chair of the CSA and President and CEO of the Autorité des marchés financiers (Québec).

Public companies will be expected to restate and refile disclosure documents if the filings are materially deficient or fail to meet relevant accounting and disclosure requirements.

"Rigorous compliance with accounting standards and disclosure requirements is essential to providing investors with the level of transparency they need to make informed investment decisions," said OSC Chair David Wilson.

OSC Vice-Chair serves on IOSCO task force on liquidity issues

IOSCO reviews issues from subprime crisis

OSC Vice-Chair James Turner will represent the Commission on a task force created by the International Organization of Securities Commissions (IOSCO) to respond to global credit liquidity issues in the capital markets.

The IOSCO task force will review the issues facing securities regulators. Its review will focus on risk management and prudential supervision, transparency and disclosure of structured finance products, valuation of assets and accounting issues and the role of the credit rating agencies. It plans to issue a report to IOSCO's Technical Committee in May 2008.

Mr. Turner is also a member of two other IOSCO task forces which plan to issue reports in 2008:

OSC Vice-Chair James Turner

- The Task Force on Credit Rating Agencies will issue recommendations after reviewing IOSCO's Code of Conduct Fundamentals for Credit Rating Agencies by July 2008; and
- The Task Force on Corporate Governance will present a report to the Technical Committee in fall 2008 on the protection of minority shareholders in listed issuers.

OSC appoints Director of Market Regulation

OSC Market Regulation Director Brigitte Geisler

Brigitte Geisler has joined the OSC as the Director of the Market Regulation Branch.

The Branch oversees exchanges, other markets, clearing agencies and self-regulatory organizations.

Previously a Senior Vice President of Legal and Compliance at Ameritrade Canada, Ms. Geisler also held senior positions at Canada Trust, Midland Walwyn, Wood Gundy and the Toronto Stock Exchange.

OSC Online

Findings of ICPM marketing practices review

The OSC issued Staff Notice 33-729 *Marketing practices of Investment Counsel/Portfolio Managers* (ICPMs) which summarizes key findings of the review of ICPMs conducted by the OSC. It is available in the "Rules, Policies & Notices" section under Category 3.

OSC Corporate Finance Branch Report 2007

Staff Notice 51-706 *Corporate Finance Branch Report 2007* summarizes the operational activities of the Corporate Finance Branch. The report is available in the "Rules, Policies & Notices" section under Category 5.

2008 outlook on XBRL

The eXtensible Business Reporting Language (XBRL) format for filing financial statements is under review in countries around the world. Cameron McInnis of the OSC Corporate Finance Branch, and Chair of the Canadian Securities Administrators' (CSA) XBRL Working Group, was asked about the outlook for XBRL:

Q: How would you describe the development and adoption of XBRL worldwide?

CM: The move to adopt XBRL globally continues to grow stronger, and Canada is on board with this movement. The CSA established a program where public companies can voluntarily file financial statements in XBRL. We hope this will create greater awareness of this new technology and encourage our marketplace to gain practical knowledge and experience with this filing format.

Q: How is the CSA working with international jurisdictions to move this initiative forward?

CM: The CSA is working with the U.S. Securities and Exchange Commission (SEC) by sharing information on the progress being made in our respective programs. The SEC announced plans to issue a proposed rule for comment in 2008 which would likely include some element of mandatory XBRL filings. The CSA will consider changes to its own rules as a result of international developments.

Q: What are the immediate plans for the CSA in terms of implementing XBRL?

CM: More work is required to educate the business sector on XBRL. The CSA's focus for 2008 is to increase awareness of XBRL and encourage participation in the voluntary program. The market is generally supportive of the steps we've taken.

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Regulatory Policy Calendar

Securities regulators in Canada have several major policy initiatives on the horizon

Rules and policies expected to be published for comment in winter/spring 2008:

- CSA National Instrument 31-103 *Registration Requirements* (including consequential amendments)
- CSA National Instrument 51-102 *Continuous Disclosure Obligations – Executive Compensation*
- CSA National Instrument 45-106 *Prospectus and Registration Exemptions*

These proposed rules, instruments and policies are expected to be implemented in 2008:

- CSA National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*
- CSA National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*
- CSA National Instrument 41-101 *Prospectus Disclosure Requirements*
- Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*
- OSC Rule 61-801 *Implementing* MI 61-101 *Protection of Minority Security Holders in Special Transactions*
- CSA National Instrument 62-103 *The Early Warning System and related Take-over Bid and Insider Reporting Issues*
- Proposed Rule 62-801 *Implementing* NI 62-104 *Take-over Bids and Issuer Bids*
- OSC Rule 62-504 *Take-over Bids and Issuer Bids*