ONTARIO SECURITIES COMMISSION

Spring 2008 Volume **11** Issue **2**

OSC PERSPECTIVES

Protecting investors and market integrity

OSC Chair says Canada's enforcement system must be made more effective

OSC Chair David Wilson

OSC Chair David Wilson says steps can be taken now to strengthen the system of securities law enforcement in Canada.

In a speech to the Economic Club of Toronto on April 16, 2008, Mr. Wilson said recommendations were made in abundant detail in numerous studies and reports, such as the Task Force to Modernize Securities Legislation in Canada.

"We know what the problems are. We know what the solutions are. It's time to act," he told the audience.

Mr. Wilson said the creation of a common securities regulator in Canada and improving the development and sharing of resources among prosecutors across the country are two examples of steps that can be taken to strengthen securities law enforcement. He also said the idea to give investigators the circumscribed power to compel testimony from third-party witnesses deserves careful study.

In his speech, Mr. Wilson explained the complexity of Canada's securities enforcement system and how securities regulators work within that framework to prevent abuse and protect investors, including the vital role of compliance oversight in protecting market integrity. Securities regulators, he said, have been making important headway in the battle against economic crime.

"At the OSC, we've had particular success in our new specialized unit that identifies and shuts down boiler room operations," said Mr. Wilson.

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OSC Vice-Chair James Turner delivered a regulatory perspective on significant disclosure issues in the capital markets during his keynote address to the **Securities Superconference** in Toronto on February 21.

Regarding the crisis affecting the asset-backed commercial paper market, Mr. Turner said the regulators' approach has been one that is measured and considered. He is a member of a task force of the International Organization of Securities Commissions which is looking at the role of credit agencies in the crisis.

Perspectives goes online

Perspectives is moving online in 2008. The OSC is transitioning its quarterly newsletter to a web-based format to improve the way information is delivered to market participants and other interested parties.

To subscribe to the online newsletter, visit www.osc.gov.on.ca/perspectives and fill out the subscriber information form. Print and online versions of *Perspectives* will be produced during the transition through 2008. More details of the transition will be provided in the summer edition.

OSC Calendar

May 14

OSC Vice-Chair Larry Ritchie will deliver the keynote speech at the Twelve-Minute Securities Lawyer conference of the Law Society of Upper Canada in Toronto.

June 16

OSC Vice-Chair Larry Ritchie will discuss capital markets fraud investigations in a breakout session at the Canadian Investor Relations Institute 2008 annual conference in Mont Tremblant, Quebec.

A European regulatory perspective on the credit crisis

OSC Chair David Wilson (right) introduced Hans Hoogervorst, Chairman of the Board of the Netherlands Authority for the Financial Markets, who gave a keynote speech in Toronto on February 28, 2008. In his remarks to a luncheon hosted by the Canadian Netherlands Business and Professional Association, Mr. Hoogervorst discussed how securities regulators, financial institutions and governments can respond to the challenges created by the liquidity crisis in the credit markets.

Here is an excerpt from Chairman Hoogervorst's speech:

"Financial markets don't care about national borders. To understand this increasingly complex world, and to answer our questions, we have to take a global perspective, too. This makes international bodies of regulators, such as [the International Organization of Securities Commissions], ever more important.

"In Europe, regulators are discussing closer co-operation and the handing over of mandates to lead regulators. The prevention of crises like the current one will be an important goal of closer co-operation."

A global financial reporting standard

From the Office of the Chief Accountant of the OSC

As they move away from Canadian generally accepted accounting principles (GAAP) and adopt International Financial Reporting Standards (IFRS) by January 1, 2011, Canadian public companies will be joining the movement towards a common basis of financial reporting in global capital markets. Already, IFRS are the basis for financial reporting right across the capital markets of the European Union, as well as in Australia. Further, the U.S. Securities and Exchange Commission recently dropped its requirement for foreign registrants preparing IFRS financial statements to file a reconciliation to U.S. GAAP and is actively considering permitting U.S. domestic registrants to file IFRS financial statements.

While transitioning to IFRS presents significant short-term challenges for all involved with financial reporting, issuers and investors will benefit from a single set of accounting principles used across the world's capital markets. In the short term, Canadian SEC registrants will avoid the cost of reconciling their financial statements to U.S. GAAP. Longer term, many issuers and investors should benefit from lower financial statement preparation costs and more efficient and lower-cost access to capital.

In February, the Canadian Securities Administrators (CSA) released Concept Paper 52-402 *Possible Changes to Securities Rules Relating to International Financial Reporting Standards*. The paper sought feedback from stakeholders on the tentative views of CSA staff on certain issues relating to the transition to IFRS.

Specifically, the CSA is considering amendments to National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* to substitute IFRS for current references to Canadian GAAP as set out in the CICA Handbook. In addition, the CSA is considering the basis on which it would permit adoption of IFRS prior to 2011 and the extent to which domestic issuers should continue to be allowed to use U.S. GAAP.

Protecting investors and market integrity

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Since July 2007, the Boiler Room Unit of the OSC Enforcement Branch has secured interim cease trade orders against more than 50 firms and individuals for suspected violations of the *Securities Act*. The Unit is comprised of staff with regulatory, market and law enforcement expertise.

"The OSC is preventing abuse and non-compliance and we are protecting investors," said Mr. Wilson. "We are preserving the integrity of the market."

OSC interfaces with passport jurisdictions

Ensuring Ontario market participants have access to markets in passport jurisdictions

OSC Senior Legal Counsel Michael Balter

The Canadian Securities Administrators (CSA) implemented Multilateral Instrument 11-102 *Passport System* (MI 11-102) for prospectus reviews and exemptive relief applications on March 17, 2008. Since Ontario is not adopting MI 11-102, the passport jurisdictions, along with the OSC, implemented National Policies 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* and 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* on March 17, 2008. Michael Balter, OSC Senior Legal Counsel, explains how these interface policies will impact Ontario market participants:

Q: What are the interface policies and why were they put into place?

MB: The interface policies set out the processes for the filing and review of prospectuses and exemptive relief applications. These policies build on and replace the current mutual reliance review system (MRRS) procedures. They were put into place to ensure an easy transition for Ontario market participants with the introduction of MI 11-102.

Q: How do the passport system and the interface policies affect Ontario market participants?

MB: Since the OSC can be a principal regulator (PR) under MI 11-102, Ontario market participants will have direct access to markets in the passport jurisdictions. A decision by the OSC, as PR, to issue a prospectus receipt or grant an exemption will apply automatically in the other jurisdictions where the same decision is sought.

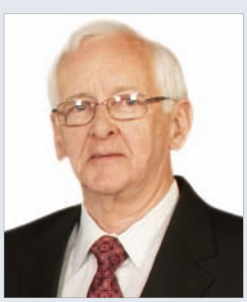
Q: How would the filing process change for filing prospectuses and exemptive relief applications?

MB: Market participants will continue to file prospectuses in, and pay fees to, all jurisdictions where they sell securities. For most exemptive relief applications, Ontario-based market participants will only be required to file with, and pay fees to, the OSC. Where Ontario is not the PR, the application is filed with, and fees are paid to, the PR *and* the OSC. With certain exceptions, a prospectus or application will be reviewed only by the OSC (as PR) or by the PR and the OSC. As under MRRS, the filer will generally deal only with its PR.

Q: Where can readers find more information on the interface policies?

MB: These policies, as well as the passport rule, are available on the OSC's website at **www.osc.gov.on.ca** under "Rules, Policies & Notices" under category 1.

OSC Board appoints new Lead Director



OSC Lead Director David Knight

The OSC Board of Directors has named Commissioner David Knight as the new Lead Director for the Ontario Securities Commission. The mandate of the Lead Director is to assist the Members of the Commission in fulfilling their governance responsibilities and to oversee the exercise of the governance obligations of the Board and its committees. Commissioner Knight has served as a Member since 2004 and was chair of the Commission's Audit and Finance Committee since 2005.

"The Lead Director role reflects the determination of the OSC to comply with best governance practices at the Board level," says OSC Chair David Wilson. "We are pleased that Commissioner Knight has accepted this important leadership position."

Commissioner Knight replaces former Lead Director Robert Shirriff, whose term of office as a Commissioner expired on March 20, 2008.

OSC Online

General prospectus requirements

In March, the CSA implemented National Instrument 41-101 *General Prospectus Requirements* and related amendments. The rule creates a comprehensive and transparent set of national prospectus requirements for all issuers including certain investment funds. The rule and related amendments are available in the "Rules, Policies & Notices" section under category 4.

Enhancements to registration regime

The CSA is seeking comments on a revised draft of proposed National Instrument 31-103 *Registration Requirements* and related documents. The amendments to the proposed rule reflect responses to specific questions posed by the CSA in its 2007 proposal, and address many of the issues raised by stakeholders. The comment period is open until May 29, 2008. The rule and related documents are available in the "Rules, Policies & Notices" section under category 3.

Environmental reporting

OSC staff issued Notice 51-716 *Environmental Reporting* which summarizes key findings from a targeted review of compliance with environmental reporting requirements by reporting issuers. The notice also provides guidance to reporting issuers when discussing environmental matters in their continuous disclosure documents. The notice is available in the "Rules, Policies & Notices" section under category 5.

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Regulatory Perspectives

"I said at the outset that it is no longer possible for the SEC to do its work in the United States without a truly global strategy because, in large measure, due to today's instant communications and technology, what goes on in other markets and jurisdictions is now intimately bound up with what happens here."

U.S. Securities and Exchange Commission Chairman Christopher Cox, in his address to the SEC Speaks conference in Washington, D.C., on February 8, 2008.

Regulatory Policy Calendar

Canadian regulators are presently working on several major projects:

Rules and policies currently out for comment:

- CSA National Instrument 31-103 *Registration Requirements* (including consequential amendments)
- CSA National Instrument 31-102 *National Registration Database*
- CSA National Instrument 45-106 *Prospectus and Registration Exemptions*
- CSA National Instrument 51-102 *Continuous Disclosure Obligations*
- National Policy 12-203 *Issuance of a Cease Trade Order in Response to Certain Continuous Disclosure Defaults*

Rules and policies expected to be published for comment in the spring or summer of 2008:

- CSA National Instrument 55-101 *Exemptions from Certain Insider Reporting Requirements*
- CSA National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

Policies expected to be delivered for ministerial review in the spring of 2008:

- CSA National Instrument 81-106 *Investment Fund Continuous Disclosure*
- CSA National Instrument 55-102 *System for Electronic Disclosure for Insiders (SEDI)*
- CSA National Instrument 51-102 *Continuous Disclosure Obligations*

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.