ONTARIO SECURITIES COMMISSION

Perspectives

Spring 2009

09

Making progress on major initiatives

Six key areas of regulatory focus in 2009

OSC Chair David Wilson

The OSC is focussed on advancing a number of significant securities regulatory initiatives in 2009, says OSC Chair David Wilson.

In this edition of *Perspectives*, the OSC is providing an update for market participants on six of the many important regulatory undertakings in which we are engaged:

- Regulatory proposals related to non-bank sponsored ABCP;
- Compliance reviews of hedge funds;
- Issuer compliance with disclosure obligations in current market conditions;
- The Point of Sale framework for mutual funds;
- Trade-through protection; and
- The Registration Reform Project.

Each one of these initiatives affects various market participants, including exchanges, reporting issuers and firms and individuals who sell securities, offer investment advice or manage investment funds. It is important for market participants to be kept informed of the progress of major regulatory policy initiatives, whether they are new national rules or policies, amendments or guidance from the Canadian Securities Administrators (CSA). The OSC believes that effective communication with the various stakeholders who are affected by its actions is an essential part of the overall regulatory process.

The initiatives featured in this edition are key examples of the work that the OSC is doing this year, including CSA initiatives, to provide protection to investors and to foster fair and efficient capital markets.

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OSC Enforcement Director Tom Atkinson

Tom Atkinson joined the OSC on Feb. 9, 2009, as the new Director of Enforcement. Mr. Atkinson has had an extensive career in securities regulation, enforcement and litigation.

Mr. Atkinson was the founding President and CEO of Market Regulation Services Inc. (RS). Prior to joining RS, he held progressively senior positions at the Toronto Stock Exchange, including Vice-President, Regulation Services and Director, Investigations and Enforcement Division. From 1993 to 1996, Mr. Atkinson was an Assistant Crown Attorney in Ontario.

Perspectives has moved online!

The OSC has transitioned *Perspectives* to a web-based format to improve the way information is delivered to market participants and other interested parties.

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OSC Calendar

April 20
Deadline to submit comments on the proposed amendments to the corporate governance and audit committee regimes of the Canadian Securities Administrators.

Important stories in Canadian capital markets news

- Restructuring plan of the Pan-Canadian Investors Committee for Third-Party Structured Asset-Backed Commercial Paper
- Final report of the Expert Panel on Securities Legislation
- 2009 federal budget of the Conservative government
- MFDA and IIROC propose changes to handling investor complaints
- Ontario budget

OSC freezes fee levels for period of one year

In light of the current economic climate, the OSC will not be increasing participation and activity fees from the levels currently charged to market participants for the 12 months ending March 31, 2010.

"We understand the challenges faced by market participants in Ontario and recognize that now is not the time for a fee increase," says OSC Chair David Wilson, speaking for the Commission. "Maintaining the current fee levels for the next year will not impact our ability to provide protection to investors from unfair, improper or fraudulent practices and foster fair and efficient capital markets. We have refocused our resources in order to meet changing market conditions."

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ABCP consultation paper recommendations

The Canadian Securities Administrators (CSA) are moving forward in 2009 with recommendations from its consultation paper on non-bank sponsored asset-backed commercial paper (ABCP). The consultation paper recommended the development of securities regulatory proposals to help prevent a similar crisis involving the non-bank sponsored ABCP marketplace from happening again.

The consultation paper was published on October 6, 2008, and is entitled *Securities Regulatory Proposals Stemming from the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada.* The paper's recommendations include proposals to restrict the way complex, short-term debt products are sold to retail investors and the need to regulate and oversee credit rating agencies in Canada.

The proposals to establish regulatory oversight of credit rating agencies would include a requirement for the public disclosure of all relevant information used in preparing a rating on a security. This would complement the CSA's proposed requirement that rating agencies comply with a code of conduct prepared by the International Organization of Securities Commissions (IOSCO).

The CSA is currently reviewing the public comments submitted about the ABCP consultation paper and will then develop its final proposals.

Hedge fund reviews

The OSC is also conducting a focussed review of hedge funds based in Ontario in 2009. The review is part of the OSC's ongoing responses to current market conditions, which includes earlier reviews of money market funds and exchange traded funds.

In early February, the OSC contacted 120 hedge fund managers and asked each of them to complete a questionnaire related to their hedge funds. The OSC questionnaire covers a number of broad topics, including portfolio holdings, valuation of portfolio securities, fund performance and service providers. The hedge fund managers were asked to respond by February 20.

The OSC's intent is to determine and assess whether any of the hedge funds in Ontario poses a risk to investors. The OSC will review and carefully assess the responses it receives. OSC staff will risk-rank the responses and make a determination on whether any of these hedge fund managers warrant an on-site review.

(Major initiatives continued on page 3)

Preventing economic crime

OSC Chair David Wilson discussed the role of securities regulation in the fight against economic crime in his keynote speech at the McMaster World Congress in Hamilton on Jan. 14, 2009. In his remarks, Mr. Wilson talked about what the OSC and other securities regulators in Canada have been doing to prevent misconduct in the capital markets. Here is an excerpt from the speech:

"To stop the criminals and to protect the investing public, we must communicate, coordinate and collaborate with our partners here in Canada, and around the world. And we must move to new structures and adopt new tools.

We are making progress:

- *Through our own enforcement improvements, such as the boiler-room and insider trading units;*
- *Through enhanced coordination with our partners in the Canadian Securities Administrators and the self-regulatory organizations;*
- *Through our work with criminal law enforcement agencies and prosecutors;*
- *Through enhanced disclosure requirements that protect the public;*
- *Through recommendations for legislative changes that would give us new and better tools;*
- *And through co-operation with our international counterparts such as the SEC.*

At no time before in our history have the economies of the world been so closely linked – as the current global economic crisis has clearly demonstrated. At no time before has the criminal element been so global. And at no time before in our history has it been so critical to pull together to maintain the integrity of the capital markets and maintain the trust of investors, large and small."

(Continued from page 2)

Compliance with disclosure obligations

Today's economic conditions present more than normal challenges for many reporting issuers in preparing their financial statements and Management's Discussion and Analysis (MD&A). As a result, the CSA has issued guidance to assist reporting issuers in preparing their financial statements and MD&A in the current financial market environment.

CSA Staff Notice 51-328 cites examples of the accounting and disclosure areas that the CSA is focusing on when reviewing the continuous disclosure filings of issuers in 2009. The areas for consideration include financial instruments, impairment of goodwill, long-lived assets and additional topics related to junior resource companies. The areas discussed in the notice are not new requirements.

The current developments in the global economy make it especially important for an issuer to clearly disclose the present and anticipated impacts of market conditions on its operations, financial condition, liquidity and future prospects. Such disclosure can help investors understand the risks and circumstances facing the issuer.

Point of sale framework

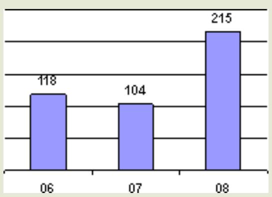
Securities regulators are working toward implementing a new point of sale disclosure regime for mutual funds in 2009. The regime's objective is to provide investors with meaningful disclosure when they need it most – before they decide to purchase a fund.

In October, 2008, the Joint Forum of Financial Market Regulators, which includes the Canadian Council of Insurance Regulators (CCIR) and the Canadian Securities Administrators (CSA), published Framework 81-406 *Point of sale disclosure for mutual funds and segregated funds*. Under the proposed framework, investors would receive key information about the potential benefits, risks and costs of a mutual fund before they make a decision to buy. The framework has been turned over to the CSA and CCIR to begin making the necessary changes to legislation and securities rules for mutual funds and to legislation and insurance guidelines for segregated funds, respectively.

When the framework was published, the CSA sought further feedback from stakeholders about issues related to implementation. That feedback will help inform the CSA in advance of it publishing proposed changes to existing rules for first comment. Securities regulators will follow their rule-making process to seek input from, and work collaboratively with, all stakeholders.

(Major initiatives continued on page 4)

Proceedings commenced increased in 2008



Source: Canadian Securities Administrators 2008 Enforcement Report

CSA releases 2008 Enforcement Report

The Canadian Securities Administrators' annual report on enforcement activities for 2008 highlights enforcement activities across the CSA and provides statistical data and case summaries that illustrate the enforcement work conducted by CSA members. The report is available on the CSA website at www.csa-acvm.ca as well as the OSC website.

An important indicator of the level of securities enforcement activity in Canada is the number of proceedings commenced by the CSA members, as shown in the chart on the left. Proceedings commenced are cases in which a Commission staff's allegations have been filed or, in the case of a quasi-criminal proceeding, an information sworn before the courts, both of which allege wrongdoing. Many of the proceedings commenced in 2008 were still underway at the end of the year. In such cases, there has been no finding of wrongdoing.

Regulatory policy calendar

The following is an overview of OSC rule-making and policy activity.

Rules and/or policies currently out for comment:

- 52-110 Audit Committees – Amendments
- 58-101 Disclosure of Corporate Governance Practices – Amendments
- 58-201 Effective Corporate Governance – Amendments

Rules and/or policies proposed to be published for comment in the spring or summer of 2009:

- Mutual Fund Prospectus Disclosure – Amendment to 81-101F2
- General Prospectus Requirements – Amendment to 41-101F2

Public comment period closed – comments under review:

- 13-502 Fees
- 13-503 Fees (under the Commodity Futures Act)
- 21-101 Marketplace Operations
- 23-101 Trading Rules

Trade-through protection

The OSC and its counterparts in the CSA are also making progress towards a final rule that would address issues raised by trading on multiple marketplaces, specifically issues related to trade-through protection for investors.

Last October, the CSA published amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules* for public comment. These amendments would introduce a trade-through protection rule and the CSA is now reviewing the comments received.

The proposed framework would require all better-priced limit orders to be filled first, regardless of the marketplace where the order is entered. The amendments would also include proposals relating to technology requirements for marketplaces and best execution reporting requirements. The CSA says trade-through obligations could help encourage more liquidity in the market as well as foster a more efficient price-discovery process for investors.

Currently in Canada, trade-through protection is addressed under the best-price obligation imposed by the Investment Industry Regulatory Organization of Canada; however, this does not apply to non-dealer trading. The OSC considers trade-through protection to be important for maintaining the confidence of investors in the fairness and efficiency of the capital markets of Canada. The CSA is establishing an industry committee to discuss the implementation issues relating to the proposed introduction of the trade-through protection rule.

Registration Reform Project

The OSC continues to lead the work on the Registration Reform Project, one of the largest rule-making initiatives ever undertaken by the CSA. The proposed rule would harmonize, simplify and modernize the registration requirements across the country for firms and individuals who sell securities, offer investment advice or manage investment funds.

National Instrument 31-103 *Registration Requirements* would reduce the regulatory burden for about 2,000 companies and 130,000 individuals currently registered across Canada under securities legislation (about 1,700 and 70,000 of them, respectively, in Ontario). It would improve investor protection by increasing the focus on registrants having a culture of compliance and also by giving securities regulators additional compliance oversight tools.

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