

# **Ontario Securities Commission**



## **REPORT ON THE STATEMENT OF PRIORITIES FOR FISCAL 2008-2009**

**The Ontario Securities Commission published four goals in its 2008/2009 Statement of Priorities. The primary objective of the Statement of Priorities was to communicate a series of specific priorities and projects for the OSC to address in fiscal 2008/2009, focused on achieving progress against each of the goals. For each of these goals we identified a series of initiatives, some multi-year, in support of achieving each particular goal. In this progress report on the Statement of Priorities, we present a summary of accomplishments and highlights for each goal. Following each summary narrative, we present in table format, detailed accomplishments and the current status for each of the specific 2008/2009 priorities.**

## **GOAL 1 – Identify the important issues and deal with them in a timely way.**

### **Key Accomplishments and Highlights**

#### **Responding to the market turmoil**

The downturn in the capital markets in 2008-09 represented a significant challenge for investors, capital market participants and securities regulators. The OSC took a number of steps in response to developments in the capital markets:

- compliance reviews of major segments of the investment funds market in Ontario;
- continuous disclosure reviews and monitoring of public disclosure made by investment funds;
- focused reviews of Ontario-based hedge funds to assess any unusual risks to investors;
- reviews of continuous disclosure filings of 100 public companies, especially those in the banking and financial services sector, as well as highly leveraged companies; and
- a temporary prohibition on short selling of certain inter-listed financial sector stocks to prevent regulatory arbitrage. The precautionary ban was imposed following a similar prohibition by the U.S. Securities and Exchange Commission (SEC) to ensure that inter-listed financial sector stocks were not subject to short selling in Canada when this trading was prohibited in the U.S.

#### **ABCP proposals**

The OSC also led the preparation of a regulatory consultation paper on non-bank sponsored asset-backed commercial paper (ABCP). The paper by the CSA outlines several regulatory proposals related to the ABCP market, including:

- measures to restrict the way complex short-term debt products are distributed; and
- the need to regulate and oversee credit rating agencies.

The proposals related to ABCP are intended to provide an appropriate and proportionate response to crisis in the credit markets by securities regulators. These proposals were published for public comment and the CSA is assessing those comments. The CSA will then develop final proposals to present to the public in the coming year.

### **New registrant sweeps**

Since fiscal 2007/2008, the OSC has conducted compliance reviews of a sample of registrants that are newly registered with the OSC, including investment counsel portfolio managers and limited market dealers. The purpose of these new registrant sweeps is to:

- gain a better understanding of the new registrants' business operations;
- assess their compliance with Ontario securities law;
- provide guidance and information to new registrants to assist them in complying with Ontario securities law; and
- confirm whether their current business activities are consistent with the activities described in their registration applications.

Reviews of new registrants now form part of the OSC's compliance field review program.

### **OSC freezes fees**

We are aware of the challenges facing market participants such as public companies, investment dealers and fund managers. As a result, the OSC, in consultation with the Government of Ontario, decided to freeze the activity and participation fees at the levels currently charged to market participants for the 12 months ending March 31, 2010. We will use a portion of our accumulated operating surpluses to ensure that this decision will not constrain the OSC's ability to fulfill its regulatory mandate.

| <b>Goal 1. Identify the important issues and deal with them in a timely way.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <b>Specific initiatives in support of this goal:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>Status</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 1. Work to strengthen the registration regime by harmonizing, streamlining and modernizing current registration requirements, including:<br>i) reviewing and responding to comments on National Instrument 31-103 <i>Registration Requirements</i> and related instruments and preparing to implement the new registration regime;<br>ii) developing interface policies to support passport for registration; and<br>iii) supporting the Ministry in finalizing legislative amendments that would, if approved, support the new registration regime; | <p>The proposed new passport interface policy for registration, amendments to the proposed repeal of the National Registration System, as well as the passport rule and companion policy in jurisdictions outside Ontario, were published in final form in December 2008. Implementation will occur at the same time as proposed NI 31-103.</p> <p>We plan to publish the final version of NI 31-103 in July 2009. Subject to Minister approval the rule is expected to come into force in Fall 2009.</p> <p>Legislative amendments were introduced as part of Bill 162 on March 26 , 2009.</p> |

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| 2. Improve accountability and enhance the integrity of financial reporting and implement the revised National Instrument 52-109 <i>Certification of Disclosure in Issuers' Annual and Interim Filings</i> to bring greater transparency to the state of internal control over financial reporting by reporting issuers other than TSX Venture issuers; | The revised National Instrument 52-109 <i>Certification of Disclosure in Issuers' Annual and Interim Filings</i> came into force on December 15, 2008.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 3. Improve disclosure of executive compensation by amending National Instrument 51-102 <i>Continuous Disclosure Obligations</i> ;                                                                                                                                                                                                                      | The amended National Instrument 51-102 <i>Continuous Disclosure Obligations</i> came into force on December 31, 2008.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 4. Address evolving market developments by proposing amendments to the Alternative Trading System (ATS) rules (National Instrument 21-101 <i>Marketplace Operation</i> and National Instrument 23-101 <i>Trading Rules</i> );                                                                                                                          | Published final amendments to National Instrument 21-101 <i>Marketplace Operation</i> and National 23-101 <i>Trading Rules</i> related to best execution effective September 12, 2008.<br><br>Proposed amendments to the ATS rules were published for comment on October 17, 2008. The key part of the proposed amendments deals with trade-through protection. The comment period ended on January 30, 2009.                                                                                                                                                                                                                            |
| 5. Complete an assessment of the policy and operating implications of adopting International Financial Reporting Standards (IFRS) as the basis for financial reporting by reporting issuers and take appropriate steps to facilitate an effective transition, including proposing necessary changes to our rules, policies and notices;                | The OSC's IFRS Working Group and the CSA IFRS Policy Committee have reviewed key strategic issues, such as what should be required to be filed by reporting issuers for the first quarter in 2011, and how to best draft our rules to require IFRS to be adopted while still permitting a reference to Canadian generally accepted accounting principles. OSC operating branches have identified key areas of our rules, policies and notices that may be affected by adoption of IFRS, and have made recommendations to change specific items of terminology to IFRS compliant terms. Drafting of specific rule amendments is underway. |
| 6. Publish final amendments to National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> to provide guidance on fair-value principles;                                                                                                                                                                                                   | OSC staff published final amendments to National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> on June 20, 2008 which came into force effective September 8, 2008. These amendments require portfolio investments to be valued using certain valuation principles.                                                                                                                                                                                                                                                                                                                                                      |
| 7. Play a leading role with the CSA to review issues and develop a response to the Asset-backed commercial paper (ABCP)/credit issues falling within the jurisdiction of securities                                                                                                                                                                    | In October 2008 the CSA ABCP committee published a consultation paper entitled " <i>Securities Regulatory Proposals in Response to the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada</i> ". The paper contained several proposals for regulatory reform relating to: credit rating                                                                                                                                                                                                                                                                                                                           |

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| <p>regulators. The OSC's participation on the International Organization of Securities Commissions (IOSCO) Task Force on Credit Rating Agencies and the IOSCO Subprime Task Force complements and provides insight in support of the work undertaken by the CSA;</p>                                                     | <p>agencies, the short-term debt exemption, the role of intermediaries in the distribution of ABCP (including conflicts of interest), and issues relating to investment funds holding ABCP. The ABCP committee is currently reviewing the comments and considering regulatory options.</p> <p>In addition to above, the Canadian Securities Administrators (CSA) took the following actions in response to the credit crisis, including:</p> <ul style="list-style-type: none"> <li>• conducting continuous disclosure reviews of reporting issuers that held material amounts of non-bank sponsored ABCP</li> <li>• participating in various international initiatives, including the International Organization of Securities Commissions' (IOSCO) task forces on credit rating agencies and the subprime crisis</li> <li>• conducting compliance reviews of certain portfolio managers and surveys of certain investment fund managers regarding investments in ABCP, and</li> <li>• monitoring developments on the reorganization of the frozen non-bank sponsored ABCP market.</li> </ul> <p>The OSC participates on the IOSCO Task Forces on credit rating agencies, short selling and unregulated financial entities. The Task Forces are moving forward on their workplans, and published reports in March 2009.</p> |
| <p>8. Participate actively as an observer on the committee that will be appointed to review the <i>Securities Act</i>;</p>                                                                                                                                                                                               | <p>No action was taken as the Committee has not been announced.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>9. Work with CSA jurisdictions and the U.S. Securities and Exchange Commission (SEC) to develop a proposed framework for discussions on mutual recognition that would exempt Canadian exchanges and possibly dealers from registration in the U.S. by complying with Canadian securities regulatory requirements;</p> | <p>The OSC and the Autorité des marchés financiers (AMF) share responsibility to coordinate and manage mutual recognition with the SEC. A joint SEC-CSA press release was issued on May 29 announcing a schedule for completing a process agreement that would open the way for discussions of a US-Canada mutual recognition arrangement. A CSA-SEC process arrangement document was finalized, comments relating to draft MOU's regarding co-operation in enforcement and supervision of market participants were sent to the SEC, and an explanation of how the CSA gives effect to a number of principles for securities regulation was also sent to the SEC.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>10. Support the government's work to modernize</p>                                                                                                                                                                                                                                                                    | <p>The Final Report of the Ontario Commodity Futures Act Advisory Committee</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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| the <i>Commodity Futures Act</i> ;                                                                                                                                                                                                                                                                            | was tabled with the Standing Committee on Finance and Economic Affairs in 2007. We do not have any further information as to when the Standing Committee may initiate its review or make recommendations to the Minister. In the interim, the OSC is working with the CSA to develop a harmonized regulatory framework across jurisdictions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 11. Chair the IOSCO Task Force on Corporate Governance that is examining the protection of minority shareholders in listed issuers. The Task Force is surveying IOSCO members to compile information about rules and practices in other jurisdictions. A report of the findings will be published in 2008-09; | OSC staff completed drafting the final report and the compilation of responses. The final report and compilation are being presented to the IOSCO Technical Committee for approval in June 2009. The report will be published soon thereafter.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 12. Complete a review of the regulation of non-conventional investment funds and begin to develop proposals for a framework for the regulation of all investment funds; specifically, we plan to begin by codifying frequently-granted relief given under National Instrument 81-102 <i>Mutual Funds</i> ;    | OSC staff began drafting amendments to NI 81-102 to codify the relief that is frequently granted to mutual funds under that rule. We expect to publish amendments for first comment by Fall 2009.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 13. Ensure OSC priorities are communicated in a timely and effective manner across all communications vehicles, including executive speeches, publications, media releases, website content and investor-related materials; and                                                                               | <p>The OSC used a range of vehicles to report on its plans and achievements this year. Key publications included the 2008 Annual Report and the 2008-2009 Statement of Priorities. Key speeches included two appearances by members of the OSC Executive Management Committee to give presentations and answer questions about the OSC's activities and priorities before the provincial Standing Committee on Government Agencies, as part of its agency review. Also, Chair David Wilson participated in a CSA Chairs Panel on a Single Securities Regulator, organized by the Toronto CFA Society in March 2009, to communicate the OSC's position about the proposal to create a common securities regulator.</p> <p>Throughout the year, news releases were issued to highlight current market issues (e.g. short selling, executive compensation etc.), notable enforcement-related matters (e.g. Landen's insider trading conviction, RIM settlement agreement etc.) and key OSC decisions including the move to freeze fees at current levels for a year due to market conditions.</p> |

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| 14. Continue to re-assess the effectiveness of National Instrument 54-101 <i>Communication with Beneficial Owners of Securities of a Reporting Issuer</i> and propose amendments to the rule as appropriate. | The OSC plans to publish for comment amendments to National Instrument 54-101 <i>Communication with Beneficial Owners of Securities of a Reporting Issuer</i> by December 31, 2009. |
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## **GOAL 2 – Deliver fair, vigorous and timely enforcement and compliance programs.**

### **Key Accomplishments and Highlights**

The effective enforcement of securities laws provides protection to investors and fosters fair and efficient capital markets. The OSC deploys its broad investigative and enforcement powers in response to allegations of non-compliance and other misconduct in the capital markets. The OSC's compliance and enforcement functions complement each other in a continuum of oversight.

#### **Regulatory enforcement**

The 2008-09 fiscal year featured an increase in the enforcement activity by the OSC with respect to the number of investigations, proceedings commenced and the use of interim measures such as temporary cease trade orders. In 2008-09, the OSC Enforcement Branch assessed a total of 446 cases for evidence of potential breaches of Ontario securities law of which 49 were identified for further investigation by OSC personnel. In some of the other cases, alternative approaches, such as the issuance of warning letters, undertakings to change practices or referrals to an SRO or a criminal law enforcement agency were used by the OSC. In 2008-09, adjudicative panels of the Commission issued 18 initial temporary cease trade orders against a total of 139 respondents. In addition, the OSC obtained from the courts 16 freeze orders, freezing approximately \$22 million. The OSC completed 59 investigations in the fiscal year, which included some investigations initiated in the 2007-08 fiscal year. A total of 18 files were transferred from the investigations stage for litigation by the OSC. The OSC formally commenced 23 enforcement proceedings in 2008-09, involving a total of 125 individuals and corporations. Twenty-one of the proceedings (related to 120 respondents to the proceedings) were commenced before an adjudicative panel of the Commission while two proceedings (relating to five defendants) were commenced before the Ontario Court of Justice. The number of proceedings commenced increased by 11 from a total of 12 in 2007-08. In 2008-09, the Commission concluded a total of 21 proceedings commenced by the Enforcement Branch, in relation to the actions of 46 respondents. The sanctions imposed in the concluded proceedings included the imposition of orders totalling some \$20.8 million in administrative penalties, disgorgement, settlement amounts and costs.

Two prosecutions before the Ontario Court of Justice were concluded in 2008-09, including the conviction of Barry Landen who was sentenced to a 45-day term of imprisonment and ordered to pay a fine of \$200,000 for illegal insider trading. In the other case, Howard

Rash pleaded guilty to trading in securities contrary to a registration requirement and to illegally distributing securities under the Securities Act. In August 2008, Mr. Rash received a suspended sentence and a two-year term of probation during which he is banned from working in the securities industry in Ontario.

### **Reciprocal orders**

In 2008, an amendment to the Securities Act authorized the OSC to make orders based on orders made by securities regulators in other jurisdictions. These “reciprocal orders” can be used by the OSC to prevent individuals and companies who have been sanctioned in another jurisdiction from engaging in similar misconduct in Ontario. Reciprocal orders are another measure that can enable the OSC to respond to protect investors and prevent wrongdoing. In 2008-09, four proceedings affecting five respondents were initiated under this provision. Several other jurisdictions of the Canadian Securities Administrators (CSA) have similar statutory powers to authorize the use of reciprocal orders. The use of reciprocal orders by CSA jurisdictions demonstrates the commitment of securities regulators to strengthen enforcement coordination across Canada.

### **International co-operation**

Misconduct in the global capital markets transcends international borders. Securities regulators and law enforcement agencies deal with this borderless phenomenon by co-operating and sharing information. Securities regulators and law enforcement agencies work together to identify and close gaps in regulatory effectiveness between jurisdictions and to conduct vigorous and timely international investigations. In 2008-09, the OSC responded to some 500 enforcement-related assistance and information requests from international regulators and agencies. When appropriate, the OSC assists foreign securities regulators, including the U.S. Securities and Exchange Commission (SEC), with investigations. For example, in 2008, the OSC provided assistance to an SEC initiative to protect investors from potentially fraudulent spam e-mails that promoted stock investments. The SEC campaign resulted in the suspension of trading in the securities of 35 companies. The OSC and SEC have also co-operated on a number of investigations, resulting in the commencement of proceedings in both Ontario and the U.S.

### **Compliance**

In the fall of 2008, the OSC implemented a phased response to the market crisis involving a number of compliance reviews. The OSC conducted compliance reviews of major segments of the investment funds market in Ontario. In September 2008, OSC staff sent a questionnaire to the 50 largest Ontario money market fund managers covering a number of key areas including portfolio holdings, valuation of portfolio securities (with a focus on illiquid securities) and sales and redemption levels. Another questionnaire tailored to non-conventional funds listed on the Toronto Stock Exchange was also sent to 27 fund managers. These non-conventional funds, including closed-end funds and exchange-traded funds, usually invest in a broader array of asset classes and employ higher risk investment strategies than conventional mutual funds. The objectives were to review and assess whether there were any risks relating to redemption, concentration, counterparty exposure and valuation of securities in these investment funds.

Based on the responses to the questionnaires, staff selected a sample of fund managers for on-site visits. These on-site visits were conducted by the Compliance & Registrant Regulation Branch and the Investment Funds Branch.

In February 2009, the Compliance & Registrant Regulation Branch commenced a focused review of Ontario-based hedge funds to assess whether there were any additional risks to investors, given market conditions. The OSC asked 90 fund managers to provide information for each of their hedge funds on a range of broad topics. These topics included facts about the funds themselves (number of unit holders, total assets, legal structure), their service providers, type of portfolio securities and valuation of portfolio securities. The OSC is assessing the responses it received. Staff risk-ranked the responses and made a determination as to which hedge fund managers warrant an on-site review. These reviews commenced in the spring of 2009.

The reviews were undertaken to determine whether any additional regulatory responses, including possible enforcement action, will be necessary as a result of market events. OSC staff remain alert for any signs of possible misconduct.

| <b>Goal 2. Deliver fair, vigorous and timely enforcement and compliance programs.</b>                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <b>Specific initiatives in support of this goal:</b>                                                                                                                                     | <b>Status</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 1. Continue to articulate and promote a coherent statement of compliance and enforcement priorities;                                                                                     | The OSC continued to articulate and promote a coherent statement of compliance and enforcement priorities through various speeches, panel discussions, conferences and standing committee appearances throughout the year. Notable examples include the OSC's two appearances before the provincial Standing Committee on Government Agencies in 2008-09, a speech to the Economic Club of Toronto by Chair David Wilson in April 2008, and Mr. Wilson's participation in a CSA Chairs Panel on a Single Securities Regulator, organized by the Toronto CFA Society in March 2009. |
| 2. Work to better identify those activities seen as posing greatest risk to our investors and their confidence in the capital markets, and focus enforcement resources on those matters; | Enforcement's business plan for 2009-2010 was presented to the Commission as part of the overall OSC business planning for 2009-2010.                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 3. Continue to increase use of coordinated inter-Branch compliance field reviews of market participants;                                                                                 | A team of Compliance and Investment Funds staff completed a sweep of 26 investment fund managers focused on fund expenses and valuation of securities. Letters were sent detailing the deficiencies noted. OSC Staff Notice 11-763 - <i>A focused review of the securities valuation and expense allocation practices of fund managers</i> was published in July 2008.                                                                                                                                                                                                             |

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| 4. Focus compliance efforts on new and high-risk market participants;                                                                                                                                                                                            | Staff reviewed the risk rankings resulting from completed risk assessment questionnaires which included 15 investment fund managers and 29 portfolio managers in a sweep which began in June 2008. In late September 2008, staff started a sweep of 30 new portfolio managers. In Spring 2009, staff started a sweep of 32 new limited market dealers.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 5. Continue to enhance our risk-based approach to compliance oversight to make it more effective and efficient;                                                                                                                                                  | <p>Corporate Finance staff enhanced their risk-based approach in response to the credit crisis. Most of the reviews occurred during the year were focused on the issuers directly impacted by the market turmoil. The other credit crisis reviews consisted of an ongoing review of the four banks for which we are principal regulator and 96 issuers who have defined benefit pension plans. For the pension review, we assessed the sufficiency of issuers' disclosures around their plans and, in light of current market conditions and reminded them of the importance of transparent disclosure in their annual filings.</p> <p>In January 2009, we issued CSA Staff Notice 51-328 <i>Continuous Disclosure Considerations Related to Current Economic Conditions</i>. This Notice, in the form of a sample letter to the CFO, highlighted specific areas of particularly material disclosure during economic downturns.</p> <p>Compliance staff finalized an enhanced risk based approach to compliance oversight of market participants.</p> |
| 6. Continue to improve the integration of our investigation and litigation processes;                                                                                                                                                                            | File assignments continue to be made taking into account the early placement of litigation counsel on all matters where litigation is expected.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 7. Assess all enforcement investigations at the outset and on an ongoing basis to determine whether seeking interim relief (such as a temporary cease trade order, freeze order, etc.) is in the public interest;                                                | The number of temporary cease trade orders and freeze orders increased year over year. For the fiscal year ending March 31, 2009, the Commission issued 18 temporary cease trade orders affecting 139 respondents and 15 directions freezing in excess of \$22 million. For the same period last year, the Commission issued 11 temporary cease trade orders affecting 117 respondents.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 8. Continue to increase the number of enforcement proceedings commenced within four months of the date of the recommendation to commence litigation, where there have not been settlement discussions, and increase the overall number of proceedings commenced; | The OSC commenced formal proceedings in 93% of our cases (target 75%) within four months and in 100% of our cases (target 90%) within six months.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 9. Expand our specialized multi-disciplinary unit                                                                                                                                                                                                                | The Boiler Room expansion was completed in April 2008. As at March 31,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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| dedicated to investigating fraudulent securities transactions such as illegal distributions and unregistered trading in securities in order to increase the effectiveness of the protection provided to investors against frauds and scams by increasing the number of investigations and early interventions. Give specific priority to illegal distributions and other scams which target seniors; | 2009, it had a number of active investigation files. In the course of conducting investigations, staff have seized lists of investors who have been targeted by these unregistered individuals. In the interest of investor education and fraud prevention, staff have begun contacting Ontario investors on these lists to make them aware that they might have been the victims of a fraud and to provide details on where they might obtain information or file a complaint.                                                                                                                                                                        |
| 10. Continue to work with the IOSCO and other international bodies to enhance global co-operation in enforcement matters;                                                                                                                                                                                                                                                                            | OSC Enforcement Branch is an active participant on the IOSCO Enforcement Committee, Standing Committee 4 (SC4), and the related Multilateral Memorandum of Understanding (MMOU) Screening Group. The mandate of SC4 focuses on facilitating processes for investigations and prosecution in the enforcement process in the context of global cooperation. The MMOU is designed to ensure commitments to the highest standards of information sharing in enforcement investigations among signatories. The OSC is very closely involved in the work being done vis-à-vis non-cooperative jurisdictions, and the effort to bring them to MMOU standards. |
| 11. Develop a new approach to insider trading investigations, including tools aimed at allowing us to target “recidivist” insider traders who have organized their affairs to improperly use undisclosed material information;                                                                                                                                                                       | Enforcement Branch successfully completed the first investigation/litigation action where our new analysis tool was used. There are a number of active investigations where the technology is being utilized.                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 12. Implement further improvements to the electronic processing and storage of documentary evidence to permit more efficient and effective access by investigators and counsel and to provide enhanced disclosure of documents by creating a document control unit for the processing and storage of electronic documentary evidence; and                                                            | A consultant recommended process improvements and recently completed an audit of our implementation of the updated process. The OSC implemented a new version of the Investigation and Litigation support application (Summation). Approximately three quarters of staff in the Litigation and Investigations units have been trained along with staff from the Surveillance Unit.                                                                                                                                                                                                                                                                     |
| 13. Work with the CSA Enforcement Committee in communicating enforcement and compliance initiatives through the redevelopment of the CSA Enforcement Report.                                                                                                                                                                                                                                         | The OSC continued work with the CSA Enforcement Committee. The CSA Enforcement Report 2008 was released on January 27, 2009 with a corresponding news release and is available online.                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

## **GOAL 3 – Champion investor protection, especially for retail investors.**

### **Key Accomplishments and Highlights**

#### **Investor protection initiatives**

Investor protection is one half of the OSC's dual mandate. As a regulatory agency, the OSC strives to provide protection to investors by administering and enforcing the Securities Act and the Commodity Futures Act. Increasingly, Canadians are responsible for planning for their own retirements. The retirement savings of Canadians – including RRSPs and pension plans – are tied to the capital markets. As a result, investors have a greater awareness of and sensitivity to the effects of the current market downturn. In tandem, their expectations for financial market regulators to protect their interests have increased. The OSC has also played a leading role in several regulatory initiatives with important investor-protection objectives:

- **Point-of-sale disclosure proposals:** In October 2008 the OSC, working with the CSA and insurance regulators as members of the Joint Forum of Financial Market Regulators, published a final framework for a new disclosure regime for mutual funds and segregated funds that would provide investors with more meaningful information before they make their decision to invest. Central to the proposal is a new two-page document called Fund Facts, which highlights key information for investors, including fund performance, risks and costs in a simple, accessible and comparable format. In June, 2009 the CSA will be publishing rule amendments implementing the proposals and seeking input from all stakeholders.
- **Registration reform:** In 2009-10, securities regulators in Canada plan to propose the implementation of significant reforms to the registration requirements for firms and individuals who sell securities, offer investment advice or manage investment funds. The reforms aim to improve investor protection by encouraging registrants to foster a culture of compliance, and also by giving regulators additional compliance oversight tools.
- **Trade-through protection:** The OSC is collaborating with the CSA to propose a framework that would ensure all better-priced orders for a security to be filled first, regardless of the marketplace where the order is entered. As market structures become more complex, the proposed trade-through protection obligations are intended to maintain investor confidence and fairness in the market.
- **Financial reporting:** Canadian securities regulators introduced reforms to improve the transparency, quality and reliability of financial reporting by publicly-traded companies. An important objective of these internal control requirements is to have public companies provide greater transparency to investors in their financial reporting.

#### **Handling complaints**

It is important for retail investors to know where to turn when they have a concern or complaint related to their experience investing in the capital markets. The OSC has worked to improve how complaints from investors are handled so that concerns can be resolved

more efficiently and effectively. Inquiries and complaints received by the OSC are handled with urgency, diligence and care. The OSC's Inquiries & Contact Centre operates an Investor Assistance function that has a particular focus on helping investors understand the securities regulatory system and the role of the OSC. Staff also assist investors to understand how to make a complaint to a securities regulator, self-regulatory organization (SRO) or other agency.

### **Joint Standing Committee on Retail Investor Issues**

The OSC was one of four co-founding organizations of the Joint Standing Committee on Retail Investor Issues (JSC) in 2008. The other JSC partners are the Investment Industry Regulatory Organization of Canada (IIROC), the Mutual Fund Dealers Association of Canada (MFDA) and the Ombudsman for Banking Services and Investments (OBSI). The purpose of the JSC is to provide an effective forum for executives of the four organizations to discuss and consider retail investor issues. The JSC works to coordinate ways to address emerging issues that affect retail investors. The JSC will also seek opportunities to co-operate with the new OSC Investor Secretariat. In 2008-09, the initial consultative projects of the JSC involved seeking public feedback on questions related to investment product suitability and a study about the information needs of Canadian investors who work with investment advisers. Both projects were funded by the OSC and its JSC partners. A summary report about the consultation on investment product suitability is available on the OSC website.

### **Investor Secretariat**

In order to serve the interests of all investors, especially retail investors, the OSC understands how important it is to solicit and obtain their input and understand their concerns about regulatory matters. The OSC is developing better channels of communications with investors by building on the experience of earlier initiatives related to investor outreach and consultations. As well, the OSC is implementing more effective processes to better identify, articulate and expand on initiatives that both provide protection to, and inform, investors. In Spring 2009, the OSC announced its plans to establish the OSC Investor Secretariat. It is anticipated that the Investor Secretariat will function as a hub within the OSC to better coordinate its policy efforts and assist with identifying and addressing issues of interest and concern to investors, especially retail investors. The Investor Secretariat will also assist OSC staff to better understand the impact that OSC initiatives may have on investors. Furthermore, the Investor Secretariat will identify ways to ensure that the retail investor perspective continues to be included in the development of all rules and policies.

| <b>Goal 3. Champion Investor protection, especially for retail investors.</b>                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <b>Specific initiatives in support of this goal:</b>                                                                                                                                                                                                            | <b>Status</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 1. Work with the Joint Forum of Financial Market Regulators to publish a final framework for point-of-sale disclosure that would require clear, concise and plain-language product and sales fee disclosure for investors in mutual funds and segregated funds; | Framework 81-406 <i>Point of sale disclosure for mutual funds and segregated funds</i> was published by the Joint Forum on October 24, 2008. Concurrently with the publication of the Framework the CSA published CSA Notice 81-318 seeking feedback from all stakeholders on issues related to implementation of the Framework and its principles in advance of publishing proposed changes to existing securities rules. The comment period expired in December 2008, with the CSA receiving 46 comment letters. OSC staff summarized the comments and have been leading the CSA's efforts in making the necessary changes to securities rules to implement the key concepts and principles set out in the Framework. In June, 2009 the CSA will be publishing proposed rule amendments for a first comment period that implements the Framework. |
| 2. Continue to work with the Joint Forum of Financial Market Regulators to enhance the effectiveness of the Financial Services OmbudsNetwork to improve resolution of customer complaints;                                                                      | OSC staff participated in the Joint Forum initiative to develop an enhanced framework for the handling of investor complaints by various OmbudsServices.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 3. Monitor compliance issues with the new investment funds long form prospectus 41-101 General Prospectus Requirements, adjust prospectus review procedures, and compile issues for possible one-year amendments;                                               | NI 41-101 introduced a new prospectus form for certain investment funds. Staff reviewed prospectus disclosure of investment funds using the new form to assess compliance with the form. Staff considered applications and responded to inquiries regarding exemptive relief from certain provisions of NI 41-101. Staff also began to compile a list of issues for possible one-year amendments to NI 41-101 based on reviews and inquiries received.                                                                                                                                                                                                                                                                                                                                                                                              |
| 4. Develop proposals to modernize securities regulation of scholarship plans;                                                                                                                                                                                   | OSC staff continued to lead the CSA policy initiative to modernize scholarship plan regulation. Staff continued work on the development of a new prospectus disclosure form tailored to scholarship plans, including a new plan summary form that would briefly highlight for investors the key risks and costs of a scholarship plan in a format and language they can easily understand. Concurrently, OSC staff continued to work with the CSA in updating the operational rules governing scholarship plans. The CSA plans to publish for comment the proposed new disclosure form by December, 2009.                                                                                                                                                                                                                                           |
| 5. Establish a standing committee with the SROs and OBSI to discuss and coordinate work on                                                                                                                                                                      | The Joint Standing Committee (JSC) on Retail Investor Issues launched an investor consultation in September that focused on product suitability and was                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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| investor initiatives and engage retail investors in the regulatory process;                                                                                                    | designed to elicit feedback from retail investors. Targeted outreach to investor advocates, investor groups (Small Investor Protection Association, Canadian Association of Retired Persons, Consumer's Council, Canadian Shareholders' Association, Fund for Action on Investment Responsibility) and the media was undertaken in order to encourage meaningful feedback.                                                                                                                                                                                                                                                                                                                                   |
| 6. Work with the CSA Investor Education Committee to produce brochures, web materials and other information for investors that are consistent, accurate and timely:            | The CSA Investor Education committee profiled new CSA fraud prevention resources, including a Boiler Room Factsheet, fraud awareness quiz, and new website content in an online advertising campaign as part of Fraud Prevention Month. The CSA Financial Fitness Challenge ran in February 2009. This online initiative was designed to teach youth the importance of saving and investing money for their future. Over the duration of the contest, there were 37,970 website visits and 13,702 students registered. Nearly half of the registrations were from Ontario.                                                                                                                                   |
| 7. Maximize the use of communications channels, including the web and partnerships with community organizations, to effectively reach targeted investor groups across Ontario; | <p>The OSC conducted an integrated media and outreach campaign around Fraud Prevention Month in March 2009. On-line advertising efforts during Fraud Prevention Month resulted in a click-through rate of 21% to OSC investor information (vs. industry average of 6%). Traffic to the OSC Consumer section was up 58% over the same period last year.</p> <p>In March 2009, the OSC launched a new publication, <i>OSC investor news</i>, focused on regulatory developments that affect investors and investor resources and initiatives. The newsletter currently has the second highest download rate among investor publications on the OSC website, based on web traffic numbers since its launch.</p> |
| 8. Implement a focussed Investor Assistance section within the Inquiries & Contact Centre to continue to increase our responsiveness to retail investor needs; and             | <p>The Investor Assistance team responded to 5,080 contacts from retail investors. Customized training was provided to staff focused on specific techniques including effectively communicating difficult messages, and managing conversations where callers have strong emotions.</p> <p>The average time to review an investor complaint and provide a final response (including regulatory referral) improved over the previous fiscal year by nearly 40% to 7 days. The improvement was due in large part to efforts by the team to increase efficiencies with complaint tracking and response generation.</p>                                                                                           |

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| 9. Continue to explore opportunities for enabling investors to receive, compare and analyze financial information through eXtensible Business Reporting Language (XBRL). | <p>OSC staff continue to lead the CSA's XBRL project. In December 2008, the SEC approved a rule phasing in a requirement for their issuers to furnish financial statements in XBRL format. The rule's first phase will require the 500 largest issuers to provide XBRL financial statements for fiscal periods ending on or after June 15, 2009. Following the adoption of IFRS in 2011, all Canadian issuers that are SEC registrants will provide XBRL financial statements to the SEC.</p> <p>OSC staff are drafting a CSA concept paper on XBRL to discuss background information on XBRL and its potential costs and benefits to the Canadian market place and provide recommendations on whether our issuers should be required to file XBRL financial statements.</p> |
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## **GOAL 4 – Support and promote a more flexible, efficient and accountable organization.**

### **Key Accomplishments and Highlights**

In 2008-09, the OSC continued to make the best use of our resources throughout the organization:

- We improved our annual business planning process in order to contribute to overall organizational efficiency;
- Staff better aligned the various business planning initiatives with the OSC's mandate and strategic goals,
- We advanced our performance measurement programs; and
- We are committed to continue attracting, retaining and motivating staff with the necessary skills.

| <b>Goal 4. Support and promote a more flexible, efficient and accountable organization.</b>                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Specific initiatives in support of this goal:</b>                                                                                                                                                                                                                                                                                                                                                        | <b>Status</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 1. Develop and adopt an updated conflict of interest policy (Code of Conduct) that would appropriately strengthen the Commission's standards of ethics, integrity and accountability consistent with the new Public Service of Ontario Act, 2006. Submit the policy to the Conflict of Interest Commissioner for approval; Implement policies and procedures for oversight of the Code of Conduct, employee | <p>The Conflict of Interest Commissioner approved the Commission's conflict related rules on July 11, 2008. The Commission approved the new Code of Conduct on July 22, 2008. The new Code (including an ethics reporting policy) came into effect on August 20, 2008 at which time By-Law No.2 was revoked.</p> <p>In support of the Code of Conduct program, we launched an external third party service where employees can anonymously report violations of the Code and other matters. In addition, we finalized the personal trading application, launched the staff training program and recruited a Compliance Officer who is</p> |

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| trading procedures and to manage staff complaints and issues;                                                                                                                                                                                | actively managing this new program in terms of ensuring complete participation and streamlining processes related to personal trading.                                                                                                                                                                                                                                                                                                                                                                                 |
| 2. Implement improved internal knowledge-management initiatives across the OSC that will enable us to respond to issues and make decisions that are consistent and reflect current technologies and practices;                               | The OSC started to implement the improved internal knowledge-management initiative. Phase I, which includes a pilot implementation, building the system architecture, creating profiles and establishing the security around access to content, is expected to be completed by the end of fiscal 2009-2010.                                                                                                                                                                                                            |
| 3. Enhance our service and operational efficiency by increasing and improving the self-service options provided through our website and telephone technology;                                                                                | The process for submitting an online complaint, tip, or inquiry to the Commission was improved. The interface was completely redesigned to make it more user-friendly with interactive forms and helpful links to our <i>Frequently Asked Questions</i> and investor resources. Further enhancements are expected to be implemented in conjunction with the launch of the new OSC website.                                                                                                                             |
| 4. Continue to improve the efficiency and effectiveness of our Inquiries & Contact Centre operations by streamlining the inquiries and complaints-handling processes and providing specialized assistance for people contacting the OSC; and | <p>Caller information is now retained in a centralized database. This allows for a more complete caller history and streamlined the process for handling inquiries and complaints.</p> <p>The Market Participant Support team responded to 23,757 contacts from registrants, issuers and others. The team helps registrants and issuers in understanding their compliance obligations by providing informed responses on relevant securities law or, when appropriate, by referring them elsewhere within the OSC.</p> |
| 5. Complete a redevelopment of the OSC website to better respond to the needs of our stakeholders and contribute positively to effectiveness, responsiveness, transparency and accountability.                                               | The OSC will launch an updated version of the website in fiscal 2009/10.                                                                                                                                                                                                                                                                                                                                                                                                                                               |

## Comments on the 2008-2009 Financial Outlook

The OSC's fee structure is designed to generate fees that reflect its cost of providing services to market participants. The OSC's fee rates were last set in April 2006. At that time the OSC projected revenues of \$181.4 million for the three fiscal years ending March 31, 2009. Actual revenues for the three fiscal years were \$217.8 million, \$36.4 million or 20.1% above those forecast in 2006. This variance was due to higher than anticipated growth in the financial markets. The OSC's fees are difficult to predict because its revenues fluctuate in proportion to market activity. The variance between actual and projected costs across the three-year period was

only 0.2%. Therefore, higher than expected revenues have been the reason for the OSC's surplus. The OSC's surplus as at March 31, 2009 was \$46.8 million.

During 2009 the OSC reviewed fee approaches used by other regulators. The goal was to review best practices that could be used to improve the predictability of the OSC's revenues and to reduce the likelihood of significant surpluses or deficits in the future. On October 3, 2008, the OSC published proposed fee rules for public comment. After publishing the draft rules, the economic situation in Ontario and around the world worsened. On March 13, 2009, following a careful review of the comments from respondents, and in light of prevailing market conditions, the OSC, in consultation with the Ontario Government, announced its decision to maintain participation fees and activity fees at existing rates until March 31, 2010.

Fee rates are not at levels sufficient to recover the OSC's costs for 2010. The OSC projects a revenue shortfall of \$22 million during 2010. The OSC will use a considerable portion of its surplus to offset this deficit. Future increases to fee rates will need to be sufficient to fully recover the Commission's costs of operations, and market participants should anticipate increases. Over the next year, the OSC will further review its fee model. The OSC's goal is to develop a more predictable fee structure that will allow full recovery of its costs in a way that is fair and transparent to market participants.

Financial oversight and accountability is achieved by:

- Preparing an annual budget, which is reviewed by the Audit and Finance Committee and approved by the Board
- Continually assessing and improving its processes
- Reporting actual versus budget performance and updated full-year forecasts every quarter to the Audit and Finance Committee and the Board
- Requiring Board approval of significant unbudgeted expenses or re-allocations
- Certification of the design and effectiveness of Internal Control over Financial Reporting (ICFR) by the Chair and the Director of Corporate Services

The 2008-2009 budget called for a deficiency of revenue over expenses of \$7.1 million in 2008. The actual result was a deficiency of \$9.7 million.

| (\$Thousands)                        | 2008/2009 |           |
|--------------------------------------|-----------|-----------|
|                                      | Actual    | Budget    |
| Revenues                             | \$ 68,562 | \$ 79,064 |
| Expenses*                            | 78,222    | 86,172    |
| Deficiency of Revenues over Expenses | (9,660)   | (7,108)   |

\* net of recoveries of enforcement costs

Overall, for the fiscal year, we were under budget in revenue by \$10.5M, or 13%. Lower participation fees accounted for \$7.2 million or almost 70% of our variance. Revenues from participation fees were lower than planned due to the impact of market conditions on issuers' market caps and registrants' revenues, on which these fees are based. Lower revenues from activity fees accounted for \$2.4 million or about 20% of our variance. The number of filings by reporting issuers were down in all the major filing categories, including lower than expected volumes for applications for exemptive relief (45% lower), prospectus filings (42% lower), filings for private placements (23% lower), takeover bid circulars (29% lower), and pre-filings (59%) . Lower than expected investment income accounted for \$681,000 or 7% of our variance. The shortfall in investment income was due to lower interest rates and lower cash balances.

Expenses reflected lower than expected spending across all expense categories. Expenses (net of recoveries of enforcement costs) were almost \$8.0 million lower than budget. Spending on salaries and benefits was \$1.7 million less than budgeted accounting for about 21% of this variance. Vacancies, delays in hiring and a reduction in bonuses were the main reasons for the underspending. The OSC had an approved permanent staff at March 31, 2009 of 468. Professional services costs were \$3.2 million under budget accounting for 40% of the variance. Key projects that did not occur included the Four Year Review and Dialogue with the OSC. The biennial OSC stakeholder survey was deferred. Other initiatives where spending was less than planned included: IT strategic plan, including document management; point of sale project; website redevelopment project; web content management and information security; Finance initiatives (ICFR and IFRS); and CSA contingencies.

Other sources of underspending were travel and training. Spending on travel was lower than budget by \$641,000 or 8% mainly because a number of budgeted trips, primarily travel related to IOSCO and other international organizations, were either cancelled or deferred. Lower than estimated spending on Enforcement related travel was the other key source of this variance. Spending on training was \$457,000 or 6% less than budgeted as some planned training did not take place. Savings were also achieved as staff took advantage of in-house corporate training (e.g. IFRS) or training that was offered at little or no cost through our PLI corporate membership.

Settlements and orders often include amounts to recover enforcement related costs. Recovery amounts are very difficult to predict as they vary significantly each year and were significantly higher than expected in 2008/2009. These recoveries explain 24% of the variance above. They have ranged from \$220,000 to over \$2.8 million over the past 5 years, as follows (thousands):

| <u>2009</u> | <u>2008</u> | <u>2007</u> | <u>2006</u> | <u>2005</u> |
|-------------|-------------|-------------|-------------|-------------|
| \$2,831     | \$1,569     | \$220       | \$1,102     | \$744       |

Additional details on our financial performance are discussed in greater detail in the Management Discussion and Analysis section of our 2008/2009 Annual Report, which can be found on the OSC website.