Legislative Assembly of Ontario

Assemblée législative de l'Ontario

STANDING COMMITTEE ON GOVERNMENT AGENCIES

REPORT ON AGENCIES, BOARDS AND COMMISSIONS

ONTARIO SECURITIES COMMISSION

2nd Session, 39th Parliament
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Legislative Assembly of Ontario

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The Honourable Steve Peters, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Government Agencies has the honour to present its Report and commends it to the House.

Ernie Hardeman, MPP
Chair of the Committee

Queen's Park
March 2010

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2nd Session, 39th Parliament
(as of March 9, 2010)

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KEVIN DANIEL FLYNN was replaced by LOU RINALDI on February 19, 2009.

RANDY HILLIER was replaced by GERRY MARTINIUK on March 2, 2009.

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INTRODUCTION

One manifestation of the global financial crisis was the loss of investor confidence in the stock markets, here in Ontario and around the world. As a result, markets plunged, and many people witnessed the erosion of their life savings and pensions.

In Ontario, primary responsibility for the oversight of capital markets rests with the Ontario Securities Commission. While it is not within the power of the Commission to take the risk out of investing, or to restore share values to their pre-recession levels, the Commission plays an important role in protecting investors and promoting confidence in the integrity of the markets. These aspects of the Commission's mandate take on added importance in times of economic uncertainty.

With this in mind, the Standing Committee on Government Agencies selected the Ontario Securities Commission for review in the fall of 2008. Under the Legislative Assembly's Standing Order 108(f), the Committee has a mandate to review the operation of all agencies, boards and commissions (ABCs) to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations to which the Crown in right of Ontario is a majority shareholder. The Committee may make recommendations on such matters as the redundancy of ABCs, their accountability, whether they should be sunsetted and whether their mandate and roles should be revised.

In accordance with its terms of reference, the Committee received testimony from the Commission on December 2, 2008 and February 23, 2009. Commission officials returned on April 7, 2009 to respond to stakeholder presentations.

Appearing before the Committee from the Ontario Securities Commission were the Chair and CEO, David Wilson, Executive Director and Chief Administrative Officer, Peggy Dowdall-Logie, and Vice-Chairs Jim Turner and Larry Ritchie.

Stakeholders who made oral presentations to the Committee on February 23, 2009 included investor protection advocates, legal scholars, a corporate governance organization, and a financial advisors association. The Committee also received written submissions from three stakeholders.

The Committee wishes to express its appreciation to all the witnesses who appeared before it during its public hearings or who made written submissions. In particular, the Committee would like to commend the officials and staff of the Ontario Securities Commission for the professionalism with which they approached this review. A list of witnesses and a glossary of key terms appears at the back of this report.

This report presents the Committee's findings on the Ontario Securities Commission. We urge the Minister responsible for the Commission to give serious and thoughtful consideration to our comments.

OVERVIEW OF THE ONTARIO SECURITIES COMMISSION

The Ontario Securities Commission (the Commission) is a regulatory agency constituted under the authority of the *Securities Act* (the Act). Reporting to the Minister of Finance, the Commission is responsible for overseeing the securities and commodity futures marketplaces in Ontario. Its mandate is to

- provide protection to investors from unfair, improper or fraudulent practices; and
- foster fair and efficient capital markets and confidence in capital markets.

Created in the early 1930s, the Ontario Securities Commission oversees Canada's largest capital market. In essence, the agency's role is to ensure that companies that raise money from the public provide sufficient information about their activities, so that investors can make informed investment decisions. The Commission also registers dealers and investment advisors who work with the public in Ontario.

The Act authorizes the Commission to grant official recognition to Self-Regulatory Organizations (SROs), which perform regulatory duties under the Commission's oversight. The Commission has recognized two SROs: the Investment Industry Regulatory Organization of Canada (formerly the Investment Dealers Association of Canada), and the Mutual Fund Dealers Association of Canada. SROs impose financial and trading rules on their members that are enforced through independent audit and compliance checks. The Commission reviews those rules and hears appeals from decisions of the SROs.

Most of the Commission's day-to-day operations relate to the administration and enforcement of the *Securities Act* and the *Commodity Futures Act*. In 1994, the Commission was given the power to issue rules having the binding force of regulations in certain policy areas.

The principal activities of the Commission may be summarized as follows:

- Registration (i.e., licensing) of persons and firms trading in securities: The Commission requires competency and integrity of registrants. It is also concerned that firms are financially stable and supervise their employees appropriately.
- Review of prospectuses and other disclosure documents: As a general rule, no person may sell new securities to the public unless a prospectus containing full, true and plain disclosure is filed with the Commission and provided to purchasers.
- Enforcement of the *Securities Act* and *Commodity Futures Act*: Commission staff investigate suspected violations of the legislation and in appropriate cases recommend either proceedings before the Commission or prosecution before the courts. Staff also review the filing of financial statements, insider trading reports and other disclosure material.

Compliance and enforcement is an important part of the Commission's mandate. A breach of securities law may result in enforcement action through one or more of the following enforcement mechanisms:

- prosecution under the federal *Criminal Code* (the *Code* creates several securities-related offences);
- prosecution under the *Securities Act* (the Act creates provincial or "quasi-criminal" offences);
- administrative enforcement action (the Commission may make orders in the public interest under s. 127 of the Act); and
- sanctions imposed by SROs.

In addition, civil remedies are available to individuals who believe they have suffered a loss as a result of a breach of Ontario securities law.

Administrative enforcement is the only mechanism that involves a hearing before the Commission. However, Commission staff act as prosecutors in quasi-criminal proceedings under the *Securities Act*, and the Commission may play an important supportive role in the prosecution of *Criminal Code* offences.

The Commission has extensive powers to make orders in the public interest under s. 127 of the Act. These include the power to make an order

- suspending the registration of a person or company;
- stopping the trading in any securities;
- prohibiting a person from becoming or acting as a director or officer of a company;
- imposing an administrative penalty of up to $1 million on a person or company that has not complied with Ontario securities law; and
- requiring a person or company to disgorge to the Commission any amounts obtained as a result of non-compliance with securities law.

In addition, the Commission has the power under s. 126 of the Act to issue a freeze order to protect investor assets pending the outcome of an investigation.

Major changes to the organization of the Commission were effected in 1997, including its establishment as a self-financing corporation without share capital, composed entirely of members appointed by the Lieutenant Governor in Council (the Cabinet). The Commission is composed of at least nine and not more than 14 Members, who constitute the Board of Directors. The Chair is designated by Cabinet and acts as the Commission's Chief Executive Officer. Currently, there are 13 Members of the Commission.

THE GLOBAL FINANCIAL CRISIS

Background

In his opening remarks to the Standing Committee, Commission Chair David Wilson observed that the global financial crisis is the issue "at the top of everyone's mind." This crisis, we were told, did not start in the stock market; rather, its roots can be traced to the collapse of the housing market in the United States, and to the increased use of leveraging and complex securities linked to U.S. real estate.

As noted by the Chair:

> This isn't just a problem for Wall Street or Bay Street; it has erased billions of dollars of market value and affected the pensions and savings of millions of people. It has, and will, cost jobs for people who have never heard of a credit default swap, the derivative instrument that was very much a part of the current crisis. It's already affecting governments and their programs, including, of course, here in Ontario.

Although Canada has not been immune to world events, Mr. Wilson stressed that we are relatively better off than many other jurisdictions. One of the reasons for this is the stability of our financial institutions, a fact recently confirmed by the International Monetary Fund. According to Mr. Wilson, the IMF report concluded that Canada's financial system is "underpinned by sound macroeconomic policies and strong, prudential regulation and supervision."

Despite our relatively strong position, however, we heard that the Commission has had to respond to a number of significant developments associated with the global financial crisis in order to restore stability to the capital markets.

The Commission's Response to the Global Financial Crisis

The Commission testified that it has taken several steps to foster investor confidence in the face of market turmoil. These steps include

- issuing a temporary ban on the short selling of certain financial sector stocks, a practice that was linked to the sudden decline in the prices of securities of financial institutions;

- completing a review of compliance with continuous disclosure requirements in the banking and financial services sector, and in other highly leveraged companies that issue securities;

- conducting compliance reviews of money market funds and non-conventional investment funds to assess their potential exposure to toxic assets;

- taking the lead in a Canadian Securities Administrators' study of the seizure of the non-bank asset-backed commercial paper market that contained several proposals for regulatory reform (see "The ABCP Crisis" below); and

- initiating compliance reviews of hedge fund managers to assess the presence of unusual risks.

These reviews were undertaken to assess the need for further regulation in light of recent events and, according to the Commission, will provide "reasons to be reassured that meaningful disclosure is being made about the challenges facing public companies and funds in the investment fund industry."

The Commission also said it continues to work with domestic and international regulators to develop appropriate responses to issues related to the ongoing crisis. For instance, in 2008, the Commission collaborated with other Canadian regulators to develop a proposal to regulate credit rating agencies – the financial entities linked to the seizure of the market for asset-backed commercial paper.

We also heard that the Commission has participated on a task force established by the International Organization of Securities Commissions (IOSCO), which resulted in a consultation paper containing proposals for regulating hedge funds and their managers. In this connection, it was noted that recent amendments to Ontario securities legislation, contained in the 2009 budget bill, will allow the Commission to implement registration requirements for investment fund managers, including hedge fund managers.

The ABCP Crisis

Background

One of the major regulatory issues that emerged from the global financial crisis is the role played by complex securities such as derivatives and asset-backed commercial paper (ABCP). As noted by the Commission in its overview of the global financial crisis, it was the link between these securities and the U.S. housing market that touched off the current financial crisis.

In Canada, the connection between the securities market and the U.S. housing collapse became apparent during the recent ABCP crisis. Until the summer of 2007, "non-bank ABCP" (ABCP that is not sponsored by the banks) was generally treated as equivalent to traditional commercial paper. In fact, it was promoted and sold as such to investors. However, as the U.S. housing crisis unfolded, concern spread that non-bank ABCP might have exposure to American subprime mortgages. As a result, the $35 billion market for non-bank ABCP in Canada froze in August 2007. While most of the debt was held by pension funds and large institutional investors, about $372 million of the total non-bank ABCP market was owned by approximately 2,500 retail (i.e., non-corporate) investors.

In September 2007, a group of ABCP investors formed the Pan-Canadian Investors Committee, headed by corporate lawyer Purdy Crawford, to come up with a restructuring plan for the ABCP market. Seventeen months after the market seized up, an Ontario court approved a restructuring plan under which small retail investors who purchased less than $1 million of ABCP received full compensation from the brokerages that sold the paper. Retail investors who owned more than $1 million of the paper (36 families that collectively owned about $200 million), as well as large institutional investors, received restructured long-term notes.

Investor protection groups allege that the retail investors who purchased ABCP were misled about the nature of the securities they were buying, and were the victims of both lax oversight and a weak response by regulators. For their part, the regulators pointed out that investigations are ongoing, and that they have responded to the ABCP crisis with proposals that are "appropriate and proportionate."

The IIROC Review

In 2008, the Investment Industry Regulatory Organization of Canada (IIROC), the self-regulatory organization with immediate oversight of investment dealers and advisors, conducted a compliance review of member firms that sold non-bank ABCP. IIROC released its report in October 2008.[1]

The key finding of the compliance review was that investment dealers and advisors did not comply with industry standards when they sold ABCP to their clients. Of particular concern was the fact that, not only did retail investors not understand the nature of the securities they were buying, but the dealers themselves did not understand what it was they were selling.

IIROC's specific findings included:

- 76% of the assets underlying non-bank ABCP were high-risk financial derivatives; some had exposure to subprime mortgages.
- None of the 21 Canadian brokerage firms that sold non-bank ABCP had reviewed the product through their internal due diligence programs to determine whether it was a suitable form of security to sell to clients.
- Brokerage firms did not do due diligence because they had relied on the high credit ratings given to non-bank ABCP by one credit rating service; in some cases, it was simply assumed that non-bank ABCP was a typical low-risk money market instrument.
- Investment dealers and advisors may not have satisfied their "know-your-client" rules.

The IIROC report contains 13 recommendations to address the responsibility of dealer members in the manufacture and distribution of investment products, including complex securities such as ABCP.

The CSA Review

Also in 2008, the Commission led a review of the ABCP crisis by the Canadian Securities Administrators (CSA). A discussion paper containing several proposals for regulatory reform was released in October of that year.[2] The key

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[1] Investment Industry Regulatory Organization of Canada, *Regulatory Study, Review and Recommendations concerning the manufacture and distribution by IIROC member firms of Third-Part Asset-Backed Commercial paper in Canada*, October 2008.

[2] Canadian Securities Administrators, *Securities Regulatory Proposals Stemming from the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada: Consultation Paper of the Canadian Securities Administrators*, October 2008.

proposals, as highlighted to the Committee by Commission officials, are noted below.

Regulation of Credit Rating Agencies

According to the CSA review, regulators here and in other jurisdictions are agreed that one of the factors that contributed to the recent market turmoil was the ratings issued by credit rating agencies (CRAs). In particular, many investors relied on the high ratings CRAs assigned to asset-backed securities when making their investment decisions. In Canada, the only CRA that was willing to rate ABCP was heavily criticized for its failure to assess the true risk underlying these securities.

The CSA review identified several deficiencies in the practices and regulation of CRAs that contributed to the ABCP crisis. One problem was that CRAs may have relied on flawed rating methodologies when rating asset-backed securities. Another was the potential for conflict of interest that arises because CRAs are paid by the issuers of the securities they rate.

It was also observed that, unlike in the United States, CRAs in Canada are largely unregulated. Although the CSA was of the view that greater regulation would likely not have prevented the credit crisis, it was their conclusion that the absence of any real regulation of CRAs in Canada is an issue that should be addressed.

The CSA, therefore, proposed a regulatory framework that would

- require public disclosure of all relevant information used by CRAs in preparing a rating on a security;
- require that CRAs comply with a code of conduct prepared by the International Organization of Securities Commissions (IOSCO); and
- give Canadian securities regulators the tools needed to actively regulate CRAs.

Commission officials cautioned that the regulation of CRAs is both a domestic and an international issue, and that Ontario and other Canadian jurisdictions should not “go it alone.” In this connection, it was noted that the CSA is working closely with IOSCO in the development of an international regulatory template that could eventually be implemented here in Canada.

Other CSA Proposals

In addition to regulating CRAs, the CSA consultation paper proposed

- amending the short-term debt exemption rule (originally intended to allow traditional commercial paper to be sold without a prospectus) to make the exemption unavailable to the sale of asset-backed instruments, such as ABCP;
- improving disclosure with respect to ABCP;

- addressing the way in which ABCP was sold to investors by investment dealers and advisors; and

- reviewing whether there should be restrictions on mutual fund investments in ABCP.

Role of the Regulators

Investor rights groups that made submissions to the Committee were highly critical of the role played by securities regulators in the ABCP crisis. Their criticisms fall generally into two categories: regulatory decisions that contributed to the crisis, and the failure to respond once the crisis struck.

Decisions Alleged to have Facilitated the ABCP Crisis

It is alleged that the Commission facilitated the ABCP crisis through a series of decisions and omissions in the years leading up to the crisis. These include

- removing the minimum purchase requirement of $50,000, effectively allowing the sale of non-bank ABCP to small retail investors;

- exempting credit rating agencies (CRAs) from civil liability for misrepresentation in the secondary trading market;[3]

- allowing banks to sell ABCP, even though only one CRA was willing to give the securities the required rating;

- failing to supervise the CRAs that rated these securities; and

- failing to oversee securities dealers who misrepresented the true nature of ABCP to retail investors and/or broke industry "know-your-client" rules.

In its defence, the Commission pointed out that neither it (nor any other Canadian regulator) currently has any regulatory authority over CRAs. The Commission reiterated that it has, through its membership in the CSA, developed proposals for regulating the credit rating industry.

The exemption of CRAs from civil liability, the Commission explained, is necessary to ensure that CRAs will continue to consent to the use of their credit ratings. In the absence of the exemption, Canadian issuers would not be able to obtain the ratings that are essential to marketing their securities.

The Commission also noted that the CSA and IIROC reviews of the ABCP crisis contain proposals for ensuring that complex securities such as ABCP are not distributed without due diligence and suitability assessments by dealers/advisors, or without full disclosure of the nature of these products.

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[3] In fact, this is a statutory exemption − it was not granted by the Commission. Under Part XXIII.1 of the Act (Civil Liability for Secondary Market Disclosure), certain "experts" are liable for misrepresentations contained in reports, statements or opinions they make in connection with an issuer's securities. Credit rating agencies are exempt from civil liability by virtue of the definition of "expert" in s. 138.1 of the Act, which excludes "an entity that is an approved rating organization for the purposes of National Instrument 44-101 of the Canadian Securities Administrators."

Weak Response of Regulators

Another criticism levelled at the Commission is that it did not play a more active role in protecting the public interest once the ABCP crisis began. We drew the Commission's attention to one media report in particular, in which a Commissioner was quoted as saying, "we didn't feel we had to jump in to protect investors."

Commission officials explained that, once the market for ABCP shut down in August 2007, there was no need for the Commission to "jump in" to protect investors – the damage had been done, and there was no danger of additional investors buying ABCP. Moreover, the Commission did not want to interfere with the private sector solution that was being pursued by the Pan-Canadian Investors Committee.

When asked why a delegated authority was the first to respond to the crisis, the Commission said it was appropriate for IIROC to conduct initial investigations, since it is the SRO with primary oversight of investment dealers – the people who sold ABCP. The Commission emphasized, however, that it continues to work with its counterpart in Quebec and with IIROC to review the conduct of registrants and issuers involved in the ABCP crisis. In his December 2008 testimony, Commission Chair David Wilson said, "there is a reasonable probability that [these investigations] will lead to some enforcement cases."

Finally, in response to criticism that it did not intervene in the ABCP negotiations to protect the interests of retail investors, the Commission indicated that, given the complexity of the issues involved, it is satisfied with the fact that the vast majority of retail investors will be fully compensated for their loss.

Committee Discussion and Recommendations

The Ontario Securities Commission has responded to the global financial crisis through a variety of measures intended to foster confidence in the integrity of Ontario's capital markets. As outlined above, the Commission has issued orders and conducted or participated in a series of compliance reviews and investigations. In addition, it continues to work with the provincial and federal governments, and with other domestic and foreign regulators to develop a coordinated response to this global problem.

According to the Commission, these actions have helped to stabilize the markets, and have identified regulatory gaps that need to be filled in order to prevent, or at least more effectively address, similar crises in the future.

Some stakeholders, however, were critical of the Commission's response to one symptom of the recent turmoil – the ABCP crisis. They say Commission decisions and policies contributed to the onset of the crisis, and that its response once it materialized was inadequate. They were also sceptical that the entities that sold ABCP to retail investors will be disciplined.[4]

[4] In December 2009, the OSC, IIROC and Quebec's securities regulator, the *Autorité des marchés financiers* (AMF), announced settlements with seven institutions in connection with the sale of ABCP. The settlements provide for the payment of $138.8 million in administrative penalties and investigation costs. It was also announced that the OSC and IIROC have instituted

In considering this very complex issue, it is obviously not the role of this Committee to second-guess decisions relating to the technical aspects of securities regulation. This is particularly the case when decisions were made in the context of unprecedented market conditions that were not fully understood by regulators here or in other jurisdictions. Nor would it be appropriate for us to comment on the possible outcome of ongoing investigations into potential breaches of securities law and rules.

More generally, however, we believe it is appropriate to comment on the Commission's general mandate to protect the public interest. In particular, we believe it is important that the agency charged with protecting the public interest be seen to be taking a leadership role when there is a major disturbance in the markets that threatens the interests of retail investors. In this respect, we have some concern that the Commission may have adopted a narrow interpretation of its public interest jurisdiction in responding to the ABCP crisis.

In less uncertain times, it might well have been appropriate for the SRO with immediate oversight of investment dealers to conduct initial investigations into how high-risk securities could have been sold as safe investments to retail investors. Given the magnitude of the ABCP crisis, however, and the fact that it occurred in the midst of great uncertainty in domestic and world markets, it has been suggested that the Commission, rather than a delegated authority, should have been the most visible representative of the public interest.

Some have also questioned why the Commission did not intervene in the ABCP negotiations to ensure that all retail investors received full compensation. In distancing itself from this process, the Commission left itself open to allegations that it is willing to protect some, but not all investors.

In the minds of most Ontarians, the Commission is the public's guardian in the capital markets. Therefore, in light of recent events, we believe it would be useful for the Commission to reassess the way in which it exercises its public interest jurisdiction.

1. The Ontario Securities Commission is the administrative body with primary accountability for investor protection. The Committee, therefore, recommends that the Commission reassess the way in which it exercises its public interest jurisdiction, with a view to improving the Commission's effectiveness and accountability.

The testimony we received also identified several regulatory issues arising out of the ABCP crisis that will need to be addressed. These issues concern the Commission's statutory authority to intervene in the public interest when retail investors are at risk, the role played by complex securities such as ABCP, the

disciplinary proceedings against two other entities involved in the ABCP crisis. See Ontario Securities Commission, "ABCP Settlements Reached Following a Joint Investigation," *News Release*, December 21, 2009, Internet site at http://www.osc.gov.on.ca/en/NewsEvents_nr_20091221_hsbc-cibc.htm.

way in which these securities were sold to the public, and the role of the credit rating agencies that rated these products.

2. The Committee recommends that the Ministry of Finance

- **review the statutory scope of the Commission's public interest jurisdiction; and**
- **introduce legislation to establish a regulatory framework for credit rating agencies that meets international standards.**

3. The Committee recommends that the Commission address the following regulatory issues:

- **amending the short-term debt exemption rule to make the exemption unavailable for the sale of asset-backed short-term debt, such as ABCP, so that issuers who sell such products must do so by way of a prospectus;**
- **improving disclosure with respect to ABCP;**
- **placing restrictions on the way in which complex debt products are sold to retail investors;**
- **addressing the role played by dealers and advisors with respect to ABCP; and**
- **reviewing the issues related to mutual fund investments in ABCP.**

ENFORCEMENT

Background

The Chair of the Ontario Securities Commission acknowledged that securities law enforcement is the aspect of his agency's mandate that receives the most criticism. Indeed, we heard from a number of stakeholders who reiterated longstanding complaints relating to enforcement. They claim the Commission does not vigorously enforce securities law, and that when cases are pursued, they often bog down in lengthy investigations and procedural delays. Weak enforcement, it is said, has fostered a perception that Ontario (and Canada) is soft on white collar crime, and has tarnished our international reputation.

Other presenters, however, emphasized that securities law enforcement is a complex area that involves cooperation among many players, including other securities regulators, self-regulatory organizations, police forces, and provincial

and federal attorneys general. In short, the Commission is only one part of the so-called "enforcement mosaic."

Legal experts pointed out that there is both a criminal and a regulatory aspect to securities law enforcement, and that the Commission is responsible only for the latter; the police and the provincial Ministry of the Attorney General are responsible for the investigation and prosecution of criminal activity in the capital markets. Despite this clear division of responsibilities, however, we heard that a perception has developed that the Ontario Securities Commission is responsible for both aspects of securities law enforcement.

Another important point to note in this discussion is the fact that both the Commission and those responsible for criminal law enforcement must work within the limits of the Canadian Constitution. For example, as a regulator, the Commission has authority to compel testimony when conducting investigations into potential regulatory breaches. Constitutional limitations, however, prevent those responsible for criminal law enforcement from compelling witnesses to testify in a criminal investigation or proceeding. Constitutional constraints also preclude the Commission from sharing the information it collects in the course of its regulatory investigations with criminal enforcement authorities. These constraints present challenges to the Commission when working with the police and prosecutors in the enforcement of securities-related criminal law.

In considering this issue, therefore, we were advised to keep in mind the complexity of the existing enforcement mosaic, as well as the Constitutional challenges facing those responsible for criminal law enforcement.

Criminal Enforcement

The federal *Criminal Code* establishes several offences related to misconduct in the capital markets, including fraud and insider trading. A conviction under these provisions may result in a significant prison term. As noted, although Commission staff often cooperate in criminal investigations, ultimate responsibility for criminal law enforcement lies with the police and the provincial attorney general.

Almost every submission we received commented on the apparent lack of enforcement in the area of securities fraud. According to securities law expert Anita Anand, such prosecutions "are virtually non-existent."

We also heard that the failure to aggressively investigate and prosecute criminal activity in the capital markets has contributed to a perception that Canada does not take seriously white-collar crime. More importantly, witnesses told us that this failure has real consequences. As described by the Commission's Chair,

> there should be recognition . . . of the harm done by white collar crime to people's health, their lifestyle, their mental health, their physical health. The impacts of white collar crime can be just as severe on citizens as violent crime, but traditionally the criminal justice system hasn't imposed the same kind of resourcing and sanctions on that kind of conduct.

Stakeholders were generally agreed that the solution is not to enact more legislation; rather, those responsible for criminal enforcement should be given the resources they need to enforce existing criminal law. Professor Michael Code, for example, said that

> our regulatory system is picking up the slack from the criminal law side of enforcement and being forced to treat . . . straight-ahead frauds as if they were regulatory problems. So the OSC is being cast in a role that's not appropriate for it, as are the other regulators across the country. We need to reinvigorate the criminal side of the enforcement business.

Witnesses who commented on the criminal law enforcement issue generally supported the concept of a dedicated, capital markets crime unit that has the resources necessary to hire and retain a multi-disciplinary staff. Some believe this should be implemented at the national level, possibly as part of a move to a national securities regulator. Reference was made, for instance, to the model recommended for further study by the Expert Panel on Securities Regulation. Under that model, a national regulator would have an enforcement division that has both criminal and regulatory powers.

Dianne Urquhart, an independent financial analyst, and Gary Logan, a former member of the City of Toronto Police Force's fraud squad, say it is essential that any such body be independent of all regulators − national or provincial. They propose the creation of a national securities crime unit that would receive and assess securities crime complaints, and then assign the files to the appropriate federal, provincial or municipal authorities for investigation and prosecution. The rationale underlying this model is to prevent the RCMP and other police forces from delegating securities crime enforcement to securities regulators.

Another option brought to our attention is for the province to introduce a capital markets crime program, similar to the "guns and gangs" initiative announced by the Attorney General in 2007. Under the anti-gang initiative, Crown prosecutors, police and other criminal justice personnel work together under one roof in a focused effort to tackle gang-related crime. To deal with capital markets crime, it was suggested that the province could recruit a team of prosecutors with expertise in capital markets crime to prosecute cases in a specialized capital markets court. The court would be presided over by judges who have been trained to hear complex securities cases.

Commenting on this issue, the Commission noted that, although its mandate is restricted to that of a regulator, it does assist domestic and international enforcement bodies in the investigation of economic crime. For example, it works with the RCMP's Integrated Market Enforcement Teams (IMETs), and is home to the Joint Securities and Intelligence Unit that includes staff from the Commission, the RCMP and IIROC. This unit tracks unusual trading patterns in the market in order to detect early signs of economic crime. Recently, the Commission participated in a federal/provincial/territorial initiative to enhance the enforcement of securities fraud and related offences. This included the Commission's Chair acting as co-chair of the Securities Fraud Working Group, which issued recommendations for improving the investigation and prosecution of securities fraud cases.

On the specific issue of enhanced enforcement, the Commission indicated that it fully supports any reasonable measures that will deter and punish criminal activity in the capital markets. In this regard, the Commission noted that one of the reasons it is supporting the creation of a national securities regulator is the potential for improved enforcement.

Committee Discussion and Recommendations

Both the Commission and stakeholders were agreed on the need to improve enforcement of securities-related criminal law. It was also agreed that the best way to do this is not to enact more legislation, but rather to devote more energy to the enforcement of existing laws.

There was also consensus that the move to a national securities regulator should provide a real opportunity to improve criminal law enforcement. As discussed later in this report, we are urging the province and the Commission to continue its work in support of a national regulator.

In the interim, however, we believe the province should take steps within its jurisdiction to signal to the public that capital markets crime is being taken seriously. One way to do this would be to introduce a dedicated capital markets crime unit that has the resources and expertise to deal with the complexities of modern-day securities fraud and related criminal activity. Such a program would have a number of beneficial effects, including

- clarifying the confusion over who has responsibility for the enforcement of securities-related criminal law;
- improving investor confidence in the integrity of Ontario's capital markets;
- sending a message that there is a new approach toward economic crime; and
- establishing a template for criminal law enforcement at the national level.

4. The Committee recommends that the province establish a dedicated capital markets crime unit with sufficient resources to hire and retain specialized staff to investigate and prosecute the criminal law as it applies to misconduct in the capital markets.

Regulatory Enforcement

Distinct from criminal enforcement is regulatory enforcement, the responsibility for which has been assigned to the Ontario Securities Commission. As described earlier, the *Securities Act* gives the Commission broad administrative enforcement powers that include the power to make cease-trade orders and to ban individuals from acting as directors or officers of a company. The Commission may also impose administrative fines of up to $1 million and order that ill-gotten gains be forfeited.

Although most witnesses focused on criminal enforcement, the general message we received is that all aspects of securities law enforcement need to be improved. ADVOCIS, for example, said, "we believe the Commission should place more emphasis on investigation and enforcement of regulatory policies and rules and on punishing bad behaviour."

In each of its presentations to the Committee, the Commission emphasized that "enforcement is a priority." In particular, we heard that the Commission is "focused on strengthening the compliance-enforcement continuum and increasing the use of coordinated inter-Branch compliance reviews to identify and prevent violations of Ontario securities law before they occur." In addition, the Commission said that efforts are being made to reduce the time it takes to complete investigations and to initiate proceedings.

In terms of specific enforcement activities, the Commission reported that its "boiler room" unit has been successful in shutting down sales operations that target unsophisticated retail investors, that it has obtained major freeze orders to preserve investor assets, and that it will be enhancing market surveillance in order to detect insider trading. A strategic review of the agency's enforcement activities is also underway.

We also heard that, in recent months, the Commission has

- concluded a settlement agreement regarding the backdating of stock options at Research in Motion;
- obtained the conviction of a mining company executive for insider trading; and
- hired a new Director of Enforcement, whom the Commission believes will bring the "vision and leadership" necessary to improve investor protection and market integrity.

Agency officials expressed general satisfaction with the range of regulatory tools available to the Commission, but said they continue to assess the Commission's regulatory needs in light of continuing market volatility. We were told, for example, that legislative amendments may be required to

- implement a regulatory framework for credit rating agencies;
- enhance the Commission's power to preserve assets during an investigation;
- expand the definition of illegal insider tipping; and
- clarify the Commission's jurisdiction over companies operating in the United States that are involved in the fraudulent promotion of stocks traded outside of major exchanges.

The Commission also said it is reviewing the question of how best to regulate complex securities, such as credit default swaps, which contributed to the onset of the current financial crisis.

Committee Discussion and Recommendations

Commission officials emphasized that regulatory enforcement is now a top priority at the Commission, and expressed their belief that recent enforcement actions will send a strong message of deterrence with respect to abusive conduct in the capital markets. We were also assured that a strategic review of the Commission's enforcement activities, combined with the hiring of a new Director of Enforcement, will enhance the Commission's ability to fulfil its enforcement mandate.

To ensure that the Commission continues to have the regulatory tools it needs, we recommend that priority be given to the legislative amendments identified by the Commission during our hearings. (We reiterate our earlier recommendation with respect to the regulation of credit rating agencies.)

5. The Committee recommends that the Ministry of Finance give priority to the legislative amendments necessary to

- **implement a regulatory framework for credit rating agencies;**
- **enhance the Commission's power to preserve assets during an investigation;**
- **expand the definition of illegal insider tipping;**
- **clarify the Commission's jurisdiction over companies operating in the United States in the over-the-counter market that engage in manipulative or illegal activities aimed at Ontario investors; and**
- **regulate complex investment products, as they are introduced into the marketplace.**

INVESTOR PROTECTION

Background

Protecting retail investors was a major theme of our hearings. Indeed, we heard that this is an issue that will only grow in importance as more and more people rely on the capital markets for their retirement savings. On the other hand, ensuring that small investors continue to have the confidence to participate in those markets will be a major challenge for the Commission as markets change, and as increasingly complex investment products are added to the mix of securities available to ordinary investors.

As described below, investor protection takes many forms. Investors are protected if they receive advice from qualified professionals, have the information to make informed decisions, have access to effective complaint handling and

dispute resolution mechanisms, are able to raise investor issues with regulators, and are educated about investing. Our comments and recommendations for improving investor protection begin on page 24.

The Investor/Advisor Relationship

An important part of the Commission's investor protection role is the registration and oversight of securities dealers and advisors. In this connection, we heard that ordinary investors are becoming increasingly dependent on registered professionals when making their investment decisions. For many retail investors, therefore, securities regulation means oversight of the investor/advisor relationship. As put by one Committee member, this is "where the rubber hits the road" for most investors.

We therefore asked the Commission how investors can be confident that they are receiving the best advice with respect to investing their savings. In particular, we asked whether there is any guarantee that advisors are putting the interests of their clients ahead of their personal interests.

Commission officials outlined the existing regulatory framework, which includes minimum proficiency standards for financial advisors (they must pass courses and refresher courses on a cyclical basis), and registration requirements, which means the Commission has authority to ban individuals from giving advice if they fall below industry standards. With respect to the potential for conflict of interest, the Commission said there is an expectation flowing from the "know-your-client" rules that an advisor's first obligation is to his/her client. The Commission's Chair acknowledged that rules will not always be followed, but said he is confident that they are, "99 per cent" of the time.

Our attention was also directed to two major initiatives the Commission believes will enhance the investor/advisor relationship:

- *Point of sale disclosure for mutual funds and segregated funds*: This proposal, developed by the Joint Forum of Financial Market regulators, is intended to give investors meaningful information before they decide to buy a fund. The proposed point of sale disclosure system includes a new mandatory fund summary document called Fund Facts, which investors would receive before they buy into a fund, and a revised "cooling off" right, which would allow an investor to cancel a purchase.

- *Registration reform project*: Described as the largest single project the CSA has ever undertaken, this initiative is intended to "harmonize, streamline and modernize the registration regime across the country." According to the Commission, the project will benefit investors by bringing registration requirements for investment advisors up to international standards of investor protection, and by capturing for the first time investment fund managers who manage mutual funds and similar retail products.

Complaint Handling/Dispute Resolution

Complaint Handling

Stakeholders asked the Committee to consider the recommendations of the Expert Panel on Securities Regulation on how to better serve investors (made in the context of the Panel's principal recommendation that there should be a national securities regulator), as well as proposals to reform IIROC's dispute resolution mechanism.

The Expert Panel recommended that

- there be a dedicated service to address the lack of information, guidance, and support for investors in the area of complaint-handling and redress; and
- that registrants be required to participate in the dispute resolution process of a legislatively designated dispute resolution body.[5]

In its response to stakeholder presentations, the Commission acknowledged that, despite recent efforts to improve complaint handling, investors continue to have concerns about the process. To address this issue, the Commission says it has been working with other Canadian regulators and SROs to improve complaint handling mechanisms. For example, they have developed a user-friendly, two-page guide to assist investors who wish to make a complaint. The guide is available online. In addition, the Commission has created an Investment Assistance area at its Contact Centre, which is intended to give investors access to professionals who can advise them on the complaints process.

It was also noted that IIROC recently sent to its members a proposal to establish standards and timelines for acknowledging, investigating and responding to complaints about the handling of client accounts. Under the proposed rule, dealer members would be required to advise clients of all options in the event they are not satisfied with the dealer's response. The Mutual Fund Dealers Association (MFDA) is proposing similar changes.

Dispute Resolution

The Commission said it supports the Expert Panel's suggestion that registrants (dealers/advisors registered under the *Securities Act*) be required to participate in the dispute resolution process of a legislatively designated body, and noted that a proposed CSA rule would require registrants to participate in independent dispute resolution services.

With respect to IIROC's arbitration program, the Commission explained that clients of IIROC members have access to the program, and that IIROC and MFDA members are also required to participate in the non-binding dispute resolution program offered by the Ombudsman for Banking Services and Investments (OBSI). In comparison with the IIROC program, the OBSI process is less formal and less costly. In addition, the OBSI allows claims of up to

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[5] Expert Panel on Securities Regulation, *Creating an Advantage in Global Capital Markets: Final Report and Recommendations*, January 2009, pp. 33-35. The report is available online at http://www.expertpanel.ca/eng/index.html.

$350,000, whereas IIROC's limit is $100,000. According to the Commission, investors prefer the OBSI program.

The Canadian Foundation for Advancement of Investor Rights (FAIR), and other investor rights groups, would like to see the IIROC process streamlined and made less costly. They also recommend that the maximum claim amount be raised from $100,000 to $350,000 (or higher).

We were informed that IIROC has announced a review of its arbitration program that will include an assessment of the monetary threshold.

Restitution

In its 2009 report, the Expert Panel on Securities Regulation recommended that

- the proposed national securities regulator have the power to order compensation where there has been a violation of securities law so that investors do not have to resort to the courts; and

- that an investor compensation fund be established, funded by the industry, to allow the securities regulator to provide direct compensation to wronged investors.

Currently, the Ontario Securities Commission has power under the *Securities Act* to apply to the courts for a compensation order in favour of wronged investors, but does not have the power to order compensation directly.

When it considered this issue in 2004, the Legislature's Standing Committee on Finance and Economic Affairs observed that regulatory agencies such as the Ontario Securities Commission typically do not have the power to make restitution orders, since the purpose of regulatory bodies is protective, rather than remedial. The Finance Committee recommended that the province and the Commission develop a "workable mechanism that would allow investors to pursue restitution in a timely and affordable manner . . . ."

Given the uncertainty that surrounds the establishment of a national securities regulator in Canada, investor rights groups recommended that the Expert Panel's recommendations on investor restitution be implemented in Ontario – today. When asked whether these proposals represent best practices, the investor rights group FAIR observed that "these are things happening around the world. They're not . . . earth-shattering ideas." Even other provinces, it was pointed out, have moved on these issues. For example, some provincial regulators have the power to order restitution.

In its response to presenters, the Commission states: "We agree that ways to compensate investors more quickly and with less cost should be explored." The creation of an industry-funded compensation fund, the Commission says, "merits consideration," but in the context of a move to a national regulator.

An Investor Advisory Body

In 2006, the Commission formed the Investor Advisory Committee (IAC) as one of its consultative committees. The Commission's Chair made the following statement when the IAC's membership was announced:

> We believe that direct investor input is critical to the health of Ontario's capital markets and we are looking to the IAC to play a key role in our efforts to address issues of importance to retail investors.

The testimony we received from stakeholders and Commission officials revealed differing expectations with respect to the mandate of this consultative body.

Commission officials maintain that the IAC was established with a two-year mandate, and that a decision was made at the end of the two years that there should be a "pause" to determine whether there is a better way to receive the concerns of retail investors. We heard that, in the spring of 2008, the Joint Standing Committee on Retail Investor Issues was formed to consider matters relating to retail investors. The Joint Standing Committee consists of senior executives from the Commission, IIROC, the MFDA and the Ombudsman for Banking Services and Investments, and is considering the concept of a reconstituted consumer panel. In the Commission's view, the Joint Standing Committee is well-positioned to consider investor issues because the process includes the SROs – the people who directly oversee investment dealers/advisors.

The Commission's testimony stands in contrast to the presentation we received from Pamela Reeve, a member of the Small Investor Protection Association and a former member of the IAC. Ms Reeve told us that she and other former members of the IAC feel they were misled about the advisory body's mandate. It was their understanding that initial appointments were to be for two-year terms, but that the IAC itself would continue to function beyond that time. Ms Reeve said that she and other members learned only indirectly that the IAC's mandate would not be extended. She disputes the Commission's claim that the Joint Standing Committee will have better insight into investor issues because SROs are at the table; consultation with SROs, she said, had been a feature of the IAC process. In any event, small investors are not represented on the Joint Standing Committee.

More generally, Ms Reeve and other investor rights advocates say it is critical to both investor confidence and investor protection that there be a formal mechanism by which the views of ordinary investors can be presented to industry regulators. In this regard, we were specifically asked to consider the model that has been adopted in the United Kingdom, where the financial services consumer panel operates with a research budget and issues reports. Members of the UK panel receive compensation.

In its response to presenters, the Commission emphasized that its "mandate, operations and initiatives reflect the importance of investors to the Commission's work." In addition to the Joint Standing Committee, the Commission referred to its other investor-related initiatives, such as proposals to reform the complaint handling and dispute resolution process, the point-of-sale disclosure document

and the registration reform project. The Commission also says it will be establishing an Investor Secretariat, which will "better identify and address issues of concern to investors."

Investor Representation at the Commission

A recent advertisement posted by the Ontario government's Public Appointments Secretariat invited applications for three part-time commissioner positions at the Commission. The advertisement stated the Commission was looking for individuals with management or leadership experience with a corporate issuer or an investment dealer, or significant experience in securities litigation or adjudication.

According to stakeholders, these job criteria reflect a narrow view of the securities world. ADVOCIS, for example, described the Commission as "issuer/dealer centric," in both its composition and in its regulatory philosophy. Others observed that there is "no shortage" of investment bankers and Bay Street lawyers at the Commission. These presenters recommended that at least one position on the Commission's board be reserved for an individual who could bring a retail investor perspective to the agency's deliberations.

The Commission's official position on this issue was stated in its response to stakeholder presentations:

> The Commission's Governance and Nominating Committee seeks to find individuals who, in the aggregate, have expertise in retail and institutional investment as well as a number of areas, including accounting/auditing, finance, investment management, investment banking, banking or insurance, and legal and adjudication.
>
> All Commissioners are sensitive to investor issues. It is inconsistent with our statute and our corporate charter to allocate Commission positions to particular representation.

This response prompted stakeholders to issue the following clarification of their proposal:

- The concept of an investor representative is no different from reserving a position on the Commission's board for an individual from a listed company.
- An investor representative would be expected to perform the same duties as other commissioners. Therefore, the appointment of an investor representative would not conflict with the *Securities Act* or the Commission's corporate charter.

Financial Literacy

Although there was consensus that financial literacy is an important component of investor protection, and will become even more so as a broader cross-section of Ontarians participate in the capital markets, some stakeholders maintain that the securities industry has made only token efforts to better educate retail

investors. It was suggested, for example, that posting financial education material on a regulator's website is simply a way of shifting responsibility for investor protection back on to investors.

Investor rights groups, therefore, are urging the federal and provincial governments to show leadership on this issue by developing and implementing financial literacy strategies. The Ontario government was specifically encouraged to introduce financial literacy courses into the province's high school curriculum.

In its response to presenters, the Commission expressed general support for these proposals, and outlined a number of measures it has taken to improve overall financial literacy. These measures include:

- In 2000, the Commission established the Investor Education Fund (IEF). In addition to hosting a comprehensive website, the IEF promotes financial literacy in the school system by training teachers to teach financial literacy in the classroom, and by making presentations to students. The IEF also has a community-based adult financial literacy program.

- The Commission has indicated its support for and willingness to work with a federal task force that will be making recommendations on a national financial literacy strategy. It also participates in numerous national investor education and financial literacy initiatives sponsored by the CSA and other national organizations.

- The Commission is currently involved in discussions with Ontario's Ministry of Education regarding the introduction of financial literacy courses into Ontario high schools.

We also received two recommendations to amend regulatory provisions relating to investor literacy. The first concerns the "accredited investor" exemption, which allows individuals who meet certain financial criteria to buy securities that have been issued without a prospectus (it is assumed that such people are financially literate, or can afford to retain people who are). FAIR says the effect of the exemption is to allow investment advisors to abdicate their responsibility for ensuring that investors are, in fact, sophisticated. The group recommends that the Commission review the accredited investor exemption and that investors be required to produce objective evidence of financial literacy. This, it is argued, would shift responsibility for investor protection back on to the experts in the industry.

In response to this proposal, the Commission noted that while such exemptions are under constant review, the current financial crisis has prompted the CSA to begin a policy review to assess the eligibility criteria with respect to the accredited investor exemption.

FAIR also recommended that investment advisors be made responsible for ensuring that consumers fully understand the products they are buying. In response, the Commission said it is working to improve product disclosure to retail investors through such initiatives as the point-of-sale disclosure project, which will provide investors with plain language information about mutual funds, including information on performance, risk and costs, before the investor makes

the decision to purchase. Such initiatives, it was noted, are in addition to "know-your-client" and "product suitability" rules that apply to advisors.

Committee Discussion and Recommendations

The evidence presented to us indicates that the Commission and SROs are moving to address many of the consumer protection issues of concern to retail investors. For instance, the measures that have been taken by the Commission and IIROC to improve investor complaint handling should make that system both easier to negotiate and more responsive. As noted, IIROC is conducting a review of its dispute resolution mechanism that will include a reassessment of its monetary threshold.

Similarly, we heard that the Commission has undertaken a wide range of investor literacy initiatives that includes discussions with the Ministry of Education regarding the introduction of financial literacy courses into Ontario high schools.

However, while regulators are to be commended for these initiatives, we also believe there are further investor protection measures that should be implemented.

Restitution

Retail investor groups have long advocated for a restitution mechanism that would allow wronged investors to avoid having to use the courts to recover their losses. The Commission agrees there is a need for a better way to provide investor restitution, but does not endorse proposals that would give it the power to make restitution orders. Similarly, the Commission supports the concept of an industry-funded compensation fund, but believes this makes more sense at the national level.

As we note in our discussion of a national regulator, we believe Ontario should be setting investor protection standards that can eventually be incorporated at the national level. Accordingly, it is our view that enhanced investor restitution measures should not be contingent on the implementation of a national regulator.

6. The Committee recommends that the Ministry of Finance take the steps necessary to

- **give the Commission power to make restitution orders when there has been a violation of securities law; and**
- **establish an industry-funded compensation fund.**

Consulting Investors

Investor protection groups expressed a clear sense of exclusion as a result of the demise of the Commission's Investor Advisory Committee. In their opinion, it is critical to investor confidence and investor protection that the Commission have a formal mechanism for receiving the views of ordinary investors.

We received a mixed message from the Commission on this issue. On the one hand, it supports the notion of an investor advisory panel; on the other, it appears to be lukewarm to the idea of a reconstituted consultative body at the provincial level. In response to our questions on this issue, the Commission said it is exploring the idea of whether a consumer panel can work as an "Ontario-only initiative," as a "securities-only initiative," or whether it would be better to consult consumers of all financial products.

It is unclear to us why the concept of an investor advisory panel is considered to be a good idea as part of a national regulatory scheme, or in the broader context of all financial products, but is considered to be less workable at the country's largest securities regulator. We agree with stakeholders that there should be an enhanced investor advisory body at the Commission.

7. The Committee recommends that the Commission establish an investor advisory body, based on the financial services consumer panel in the United Kingdom.

Investor Representation at the Commission

We were urged by investor protection groups to recommend the creation of a designated investor representative position on the Commission's board of commissioners. The Commission, however, clearly has reservations about this proposal. During the hearings, the Commission's main concern appeared to be that it is being asked to recruit an individual who would not have the expertise traditionally required of commissioners. In its formal response to presenters, the Commission states that the concept of an investor representative is inconsistent with the requirements of the Act and the agency's corporate charter.

In a clarification of this proposal, stakeholders explain that they were not contemplating the appointment of a lay person; rather, the investor representative would be expected to perform the duties normally required of a commissioner, while at the same time bring an investor perspective to the Commission's policy deliberations.

We believe it is important, especially in the aftermath of the ABCP crisis, for retail investors to know that a member of the board is specifically responsible for representing their interests at the Commission. Therefore, we are endorsing the proposal for an investor representative at the Ontario Securities Commission.

8. The Committee recommends that the Ministry of Finance take the steps necessary to create an investor representative on the Commission's board of directors.

Self-Regulation

Finally, we recognize that there are some groups and individuals who will not be satisfied with the investor protection measures discussed in this report. For these stakeholders, the system of self-regulation will never be fully responsive to the concerns and needs of retail investors.

While we did not receive sufficient evidence to make recommendations for overhauling the system of self-regulation in this province, we believe the observations of Ermanno Pascutto (FAIR) are worth noting:

> Everyone seems to want to criticize the self-regulatory system that we have in this country. I have seen self-regulation work in London, I've seen self-regulation work in Hong Kong, and it can be made effective. I saw self-regulation operate in Ontario in the 1980s and it was completely hopeless. It was nothing more than an advocacy body for the industry. Times have changed. It has evolved. IIROC is a very different organization than the IDA was a few years ago. We have a self-regulatory system in place. Rather than constantly kicking it all the time, why don't we . . . make it work more effectively? IIROC doesn't have powers of investigation like the securities commission has. Why don't we give it better powers of investigation? IIROC doesn't have the ability to collect fines. Members simply drop their memberships and walk away. Why don't we give them the power to collect fines? Why don't we help them become more effective? As long as we have a self-regulatory system in place, let's make it work better.

ACCOUNTABILITY AT THE COMMISSION

Part of the mandate of the Standing Committee on Government Agencies is to consider ways for improving accountability at the agencies it reviews. In this regard, we heard from two witnesses who reminded us that, five years ago, another legislative committee made a recommendation to improve oversight of the Ontario Securities Commission that has never been fully implemented.

In 2004, the Standing Committee on Finance and Economic Affairs reviewed the Five-Year Review Committee's report on Ontario securities legislation. During its hearings, the Finance Committee heard that, in comparison with the SEC in the United States, there was little legislative oversight of its Ontario counterpart.

In particular, it was pointed out that the SEC was subject to extensive congressional oversight, and had its own internal inspector general. Based on that information, the Finance Committee recommended that the Commission's annual reports be referred to a committee of the Legislature, and that the committee have the power to summon witnesses to answer questions about progress in implementing recommendations approved by the Legislature.

An amendment to the *Securities Act* in 2005 appears to be the legislative response to the Finance Committee's recommendation. Specifically, s. 3.10 of the Act provides:

> 3.10(1) Within six months after the end of each fiscal year, the Commission shall deliver to the Minister an annual report, including the Commission's audited financial statements, on the affairs of the Commission for that fiscal year.
>
> (2) Within one month after receiving the Commission's annual report, the Minister shall lay the report before the Assembly by delivering the report to the Clerk.
>
> (3) After the annual report is laid before the Assembly, a standing or select committee of the Assembly shall be empowered to review the report and to report the committee's opinions and recommendations to the Assembly.

We note that the Standing Committee on Finance and Economic Affairs has been deemed to be the legislative committee to receive the Commission's annual reports and to conduct reviews of those reports. To date, the Finance Committee has not met for the purpose of s. 3.10 of the *Securities Act*.

The investor protection group FAIR also recommended that the committee designated to review the Commission's annual reports should have the ability to retain securities regulation experts who could perform audits of the Commission. These audits would be available to the committee when it conducts its annual reviews.

In its response to presenters, the Commission states that it is already subject to a "robust accountability framework" that includes

- a Memorandum of Understanding that sets out the accountability relationship between the Commission and the Minister of Finance;
- a requirement to provide the Minister with business plans, operational budgets and plans for significant changes in operations/activities at the Commission;
- a requirement to deliver an annual report and audited financial statements to the Minister for tabling in the Legislature;
- publication of an annual Statement of Priorities for public comment and delivery to the Minister; and
- publication of policies and rules for public comment and consideration by the Minister.

In addition, the Commission is subject to significant oversight by the Ontario Legislature. The Legislature's oversight powers include the Standing Committee on Government Agencies, which has authority to review and report to the House its observations, opinions and recommendations on the operations of government agencies, and the appointment of a standing or select committee to review the Commission's annual reports under s. 3.10 of the Act.

With respect to the proposal for additional regulatory audits (as part of a legislative committee review under s. 3.10 of the Act), the Commission states:

> We don't believe that an additional regulatory audit is necessary or would provide any improvement in existing oversight.

Committee Discussion and Recommendation

The Commission currently operates within an extensive accountability framework; however, we believe the Legislature should be fully exercising its oversight powers with respect to the Commission.

9. The Committee recommends that the Standing Committee on Finance and Economic Affairs exercise its power to review the annual reports of the Ontario Securities Commission.

A NATIONAL SECURITIES REGULATOR

Economists, market participants and industry observers have long argued that the current system of 13 sets of securities laws and 13 regulators increases the costs of doing business in Canada. They say a national securities regime would make Canadian capital markets more efficient and more competitive.

More recently, it has been emphasized that we need a single regulator to respond to rapid developments in national and global markets and to represent Canada's interests on the international stage.

In its January 2009 report, the Expert Panel on Securities Regulation recommended "the establishment of the Canadian Securities Commission to administer a single securities act for Canada." This was followed by the 2009 federal budget, which announced the creation of an office to manage the transition to a national regulator.

Our hearings also revealed widespread support for this initiative. Commission Chair David Wilson told the Committee that his agency fully supports the Expert Panel's recommendation and "is prepared to make that goal a reality." He also succinctly stated the case for a national regulator:

> Capital markets are not provincial; capital markets are national, and in fact, they have become, as we all have learned, international.

Most stakeholders were agreed that a national regulator would be a more efficient model, especially from an enforcement perspective. The Canadian Coalition for Good Governance said it would like to see a more integrated model, under which the securities, banking and insurance industries, as well as anyone else involved in the capital markets, would be subject to the same regulator.

Finally, we note that Ontario, the Canadian jurisdiction with the largest capital market and the most influential securities regulator, has long supported the

concept of a national regulator. The province's position was stated most recently in the 2009 budget speech:

> Ontario has long advocated for a common regulator, and is pleased to see the [Expert] Panel's recommendations endorse the government's position. . . . The government will work in the coming year with federal, provincial and territorial governments to make this initiative a reality.

Committee Discussion and Recommendation

In our view, the evidence in favour of a national securities regulator is overwhelming, particularly in light of the growing need for regulators to be able to respond to rapid changes in global markets.

Our support for a national regulator, however, should not be interpreted to mean that we attach less importance to the issues identified in our other recommendations. As the province with the largest securities regulator, we believe Ontario should be setting standards that can eventually be adopted at the national level.

10. The Committee recommends that the Commission and the province continue to work with the federal, provincial and territorial governments, as well as with other regulators and stakeholders, toward the development and implementation of a national securities regulator.

OTHER REGULATORY ISSUES

Corporate Governance

Background

Corporate governance can be defined as

> the relationship between all the stakeholders in a company. This includes the shareholders, directors, and management of a company, as defined by the corporate charter, bylaws, formal policy and rule of law. Ethical companies are said to have excellent corporate governance.[6]

Improved corporate governance was the theme of a presentation we received from the Canadian Coalition for Good Governance. The Coalition says the need for reform in this area is highlighted by the corporate decision-making that

[6] Investopedia online dictionary at http://www.investopedia.com/terms/c/corporategovernance.asp.

produced the current economic recession. According to the Coalition, the key to better corporate governance is "shareholder democracy."

In Ontario, the substance of corporate governance is regulated by business corporations statutes. Specifically, Ontario's *Business Corporations Act* (OBCA) governs such matters as shareholder meetings, the corporate election process and other corporate governance practices. The corresponding statute at the federal level is the *Canada Business Corporations Act*.

Corporate governance is not, however, exclusively a matter of corporate law. Securities regulators also have authority to make rules and policies relating to corporate governance practices when those practices have an impact on investor protection or investor confidence.

For instance, in Ontario, the primary rules governing the proxy voting process, including the content of management proxy circulars delivered to shareholders,[7] are prescribed under the OBCA. However, because management proxy circulars contain information that is important to investors when making a decision to buy or sell a company's securities, the content of circulars is also considered to be an investor protection issue. Accordingly, the Ontario Securities Commission's continuous disclosure rules require that companies provide information in management proxy circulars that is in addition to corporate law requirements.

The Commission has also developed corporate governance rules to reflect the reforms adopted by the United States Congress and the SEC following the collapse of Enron and other large corporate failures in 2002. These rules deal with company directors, including the composition and responsibilities of audit committees and the requirement to have independent directors. The rules are intended to promote investor confidence in the capital markets and are supplementary to corporate law requirements.

Generally speaking, there are two competing views of corporate governance and the need for reform. On one side are those who believe corporate governance is primarily a matter of corporate law, since the substance of shareholder democracy issues has traditionally been regulated by business corporations statutes. Those in this camp say it is a mistake to equate corporate democracy with political democracy, and generally believe that shareholders receive adequate protection under existing corporate law.

On the other side of this debate are those, such as the Canadian Coalition for Good Governance, who believe that the lack of democracy in the way corporations are run provides shareholders with little protection and ultimately produces bad corporate decision-making. Those in this camp tend to see corporate governance as a securities regulation issue, in part because they believe securities regulators are better positioned to effect change. Specifically, it is said that securities regulators can provide the impetus for reform because they have the specialized knowledge and understanding of capital markets and

[7] According to Investopedia, "the proxy discloses important information about issues to be discussed at an annual meeting, lists the qualifications of management and board members, serves as a ballot for elections to the board of directors, lists the largest shareholders of a company's stock and provides detailed information about executive compensation."

market participants, and are able to respond more quickly to emerging corporate governance issues through their rule-making powers.

Shareholder Democracy

Commission officials testified that the corporate governance issues in Ontario (and Canada) are currently under review. In December 2008, the Canadian Securities Administrators published for comment a proposal to replace the current "comply or explain" corporate disclosure regime with one that is more principles-based. The CSA is also reviewing shareholder democracy issues and will be consulting stakeholders and investors as part of that review. In addition, the Ontario Securities Commission is participating in an international task force that is reviewing the rights of minority shareholders in listed public companies.

In its presentation to the Committee, the Canadian Coalition for Good Governance stated that it is fundamentally opposed to the CSA's proposed corporate governance guidelines. The Coalition's main objection is that the CSA proposals would retain a system in which corporate boards and management determine what level of shareholder democracy is appropriate for each company. According to the Coalition, a meaningful shift toward shareholder democracy will only occur through rules – it will not happen voluntarily.

The Coalition made several recommendations for improving corporate governance. Two of these are briefly discussed below.

Voting for Directors

The Coalition argues that corporate decision-making would improve if shareholders had more oversight of the decision-making process. One way to do this is to give shareholders the right to vote for individual directors. Currently, the usual practice is for the company to nominate a slate of directors, so that a shareholder must either vote for all nominees or abstain from voting. This system, it is argued, limits the ability of shareholders to consider alternative directors and leads to an entrenched board.

The Coalition also supports the adoption of "majority voting," under which shareholders would have the right to cast votes for or against each nominee director. Existing rules provide that a shareholder who does not approve of a director may only withhold its vote.

In its response to presenters, the Commission pointed out that there is no legal prohibition against individual director elections, although the practice at most companies is to elect a slate of directors. Some public companies, it was noted, have voluntarily instituted individual director voting.

A move to majority voting, however, would require amendments to both securities and business corporations statutes. The Commission says it has initiated discussions with federal and Ontario corporate regulators on the merits of majority voting.

Shareholder Approval of Major Transactions

The Coalition (and the investor rights group FAIR) argues that major corporate decisions, such as large share acquisitions or share issuances, should be subject to shareholder approval. The concern here is that "transformational transactions" involving large numbers of shares can affect the voting, distribution and residual rights of shareholders.

The Commission acknowledges that this can be a problem, and noted that the TSX, in consultation with the Commission, has undertaken a public review to assess the value of requiring shareholder approval for decisions that result in significant stock dilution.

Committee Discussion and Recommendations

We heard that democracy in corporate governance is an issue that is coming into prominence, both here in Ontario and in other jurisdictions. Reform in this area, however, is complicated by at least two factors. Changes to the law would require amendments to more than one statute and would involve more than one level of government. In addition, there is an ongoing debate between those who believe corporate governance is a matter that should remain primarily within the realm of corporate law and those who say that securities regulators should provide the impetus for reform.

As noted, the CSA released a draft National Policy in 2008 containing proposed corporate governance principles.[8] The Commission is also involved in reviews and discussions with respect to corporate governance issues. In our view, the province should become actively involved in this emerging issue.

11. The Committee recommends that the province institute a formal review of democracy in corporate governance in Ontario.

Demutualization of the Toronto Stock Exchange

Background

Although not recognized as an SRO by the Ontario Securities Commission, the Toronto Stock Exchange (TSX) plays an important regulatory role within Ontario's system of securities regulation. This point was highlighted in the presentation we received from FAIR, which alleges that the current business structure of the TSX has compromised the Exchange's ability to perform its regulatory duties.

[8] On November 13, 2009, the CSA announced that it "does not intend to implement the Proposal as originally published." See Ontario Securities Commission, "Canadian Securities Regulators to maintain current corporate governance regime," *News Release*, November 13, 2009, Internet site at http://www.osc.gov.on.ca/en/NewsEvents_nr_20091113_csa-58-305-governance-regime.htm.

To put this issue into context, we briefly outline the role of stock exchanges, and the recent trend that saw stock exchanges transformed from mutual organizations into for-profit enterprises.

The Dual Role of Stock Exchanges

Stock exchanges perform both a commercial and a regulatory role. As a commercial entity, an exchange provides trading facilities for the trading of securities that have been accepted for listing on an exchange. Revenues are earned from the fees charged for listings, trading services, membership, market data and other services and information provided by the exchange. Fees are paid directly by the listed companies, brokers and others who use or purchase services and information.

As a regulator, stock exchanges perform a public interest role by regulating trading on the exchange and by monitoring listed companies. Regulation of market conduct (i.e., trading on the exchange) includes monitoring of trading activity and enforcing the rules of trading. Regulation of listed issuers ensures that listed companies meet certain financial, corporate governance and other quality standards established by the exchange.

Demutualization

Traditionally, stock exchanges operated as member-owned, non-profit organizations. Over the last decade, however, major exchanges around the world converted from mutual organizations to for-profit, shareholder-owned companies. This restructuring is known as “demutualization.”

The main factors driving demutualization were technology and competition. To be able to purchase expensive, state-of-the art trading technology, exchanges needed to be able to raise capital. To compete with low-cost alternative trading systems, such as electronic communication networks, traditional exchanges needed to move to a business structure that allowed for more efficient decision-making.

In 2000, the Ontario Securities Commission approved the conversion of the TSX from a mutual organization to a shareholder-owned, for-profit company. At that time, the Exchange created a separate division to perform its regulatory functions. Today, the TSX contracts with IIROC for the performance of market conduct regulation; however, the Exchange continues to perform issuer regulation.

Concerns about Demutualization

Critics of demutualization say that the potential for conflict of interest inherent in the system of self-regulation is magnified when the regulator becomes a for-profit entity. Specifically, it is suggested that for-profit exchanges cannot be trusted to make regulatory decisions in the public interest when their revenues are derived from the companies they are supposed to be regulating.

The investor rights group FAIR told the Committee that demutualization of the TSX has contributed to the deterioration of shareholder rights. It was pointed out, for example, that, since 2000, the Exchange has allowed major transactions to proceed without shareholder approval, even though these transactions have resulted in a “massive” dilution and loss of value for public shareholders. FAIR says these regulatory decisions were based on the need to please the managers of the companies listed on the Exchange, rather than the public interest:

> The Toronto Stock Exchange was allowed to regulate listed companies even after it demutualized and became a listed for-profit company itself. There is inherent conflict in the for-profit status of the Toronto Stock Exchange and its role as a regulator. The Toronto Stock Exchange views listed companies, or more accurately the management of listed companies, as its clients. Shareholders do not have any standing before the Toronto Stock Exchange.

According to FAIR, Ontario has fallen below international standards with respect to matters under the jurisdiction of the TSX. In particular, it is asserted that stock exchanges in other markets where there has been demutualization, such as New York and Hong Kong, have more effectively separated their business and regulatory functions. In the United Kingdom, the securities regulator simply took over the function of issuer regulation.

To address the potential for conflict of interest at the TSX, FAIR recommends that issuer regulation be performed by a separate entity within the Exchange that has its own board of directors. In the alternative, it recommends that the Exchange's regulatory functions operate independently of its business activities, with appropriate Chinese Wall and other checks and balances.

In response to the FAIR submission, the Commission points out that both aspects of the TSX's regulatory functions (the contract with IIROC for market regulation and continued issuer regulation by the Exchange) were made subject to terms and conditions contained in the recognition order issued by the Commission (the order recognizing the new for-profit exchange). These terms and conditions include a requirement that at least 50 percent of the TSX board be composed of independent directors. The recognition order also addresses the potential for conflict arising out of the listing of the TSX Group (the Exchange's for-profit company) on the TSX.

Committee Discussion and Recommendation

Major stock exchanges such as the TSX maintain that demutualization was essential to be able to obtain modern trading technology and to be able to compete with alternative forms of trading. Investor rights groups say that demutualization, as implemented at the TSX, has amplified the potential for conflict of interest inherent in self-regulation.

Our concern is with the perception that the TSX falls below international standards with respect to the separation of its regulatory and commercial activities. Therefore, we are recommending that the Commission revisit this issue to assure investors that, when regulatory decisions are being made at the country's largest securities exchange, the public interest will always take priority.

12. The Committee recommends that the Commission review the potential for conflict of interest between the regulatory and commercial functions of the Toronto Stock Exchange and that it take the steps necessary to address any problems identified.

Principles-Based Regulation

We received a presentation from ADVOCIS, the Financial Advisors Association of Canada, which represents more than 10,000 financial advisors and planners across Canada, including 5,000 in Ontario. Most operate independent, small businesses that provide financial products and services, including comprehensive financial planning and investment advice. The emphasis is on long-term planning. The majority of ADVOCIS members are regulated by provincial securities regulators, such as the Ontario Securities Commission.

The ADVOCIS presentation focused on the impact of securities regulation on consumer access to financial advice. Specifically, ADVOCIS argues that the highly prescriptive, rules-based regulatory framework we have today imposes high compliance costs that fall disproportionately on small financial services businesses. The group further contends that many of the existing regulatory requirements are not justified by the presence of any real risk to consumers. According to ADVOCIS, the ultimate effect of the current regulatory approach will be to concentrate financial services in the hands of a few large financial institutions, which will in turn mean reduced choice for consumers.

To reverse this trend, ADVOCIS recommends that Ontario move to a "principles-based" regulatory system. Principles-based regulation, it is said, offers greater flexibility to deal with changing circumstances and new products because it focuses on results. We were told that principles-based regulation has been successfully implemented in the United Kingdom.

In its response to the ADVOCIS proposal, the Commission argued that effective securities regulation requires a proper balance of rules and principles; that is, striking the right balance between certainty and predictability (rules) and flexibility (principles). Ontario's regulatory system, the Commission suggested, currently reflects this balance. For example, the *Securities Act* enunciates a number of principles in addition to the rules it prescribes:

- The Commission is authorized to make orders in the public interest.
- Market participants are required to act with integrity.
- Registered dealers and advisors are required to deal fairly, honestly and in good faith with their clients.
- Disclosure documents must not be misleading.

It was also pointed out that the rules applicable to members of IIROC and the MFDA are based on clearly articulated principles. An MFDA rule, for example, states that its members must not engage in business conduct that is "unbecoming or detrimental to the public interest."

According to the Commission, principles-based regulation in the United Kingdom (and in other countries) is being re-evaluated in light of the current financial crisis.

Finally, we heard that the Expert Panel on Securities Regulation favours the adoption of a more principles-based approach to securities regulation, but

recommends that this be implemented “with care, particularly with due regard to reducing regulatory uncertainty.”

Committee Discussion

Principles-based regulation is another emerging issue that is the subject of ongoing debate. Some argue that complex, rules-based regulation does not necessarily produce better results. In the context of the financial services sector, we heard from financial advisors that the compliance costs associated with rules-based securities regulation will ultimately mean diminished consumer choice.

Others believe it is important to have prescriptive rules in order to ensure certainty. Those who favour this approach point out that many economists and other expert commentators believe that the current financial crisis has its origins in the deregulation of the financial sector.

On balance, it is the Committee’s conclusion that now is not the time for less securities regulation. Rather, we agree with the position taken by the Commission: “the use of both principles and rules is necessary in the formulation of effective securities regulation.” In the event that a shift toward principles-based regulation is deemed desirable in the future, we endorse the cautious approach recommended by the Expert Panel on Securities Regulation.

GLOSSARY OF TERMS

Asset-Backed Commercial Paper (ABCP) is short-term corporate debt (maturity of less than one year) made up of bundles of loans such as mortgages, credit card receivables and car loans. The debt is packaged and sold as securities to investors. The distribution of ABCP is generally exempt from prospectus requirements.

Canadian Securities Administrators (CSA) is the umbrella organization representing Canada's 13 provincial and territorial securities regulators. Its purpose is to coordinate and harmonize securities regulation in Canada.

Credit default swap (CDS) is a contract designed to provide the buyer of the CDS with credit protection. The seller of the CDS guarantees the credit worthiness of security by paying the buyer a predetermined amount in the event of default.

Expert Panel on Securities Regulation is the advisory panel appointed by the federal Minister of Finance in 2008, chaired by the Honourable Thomas Hockin. The Panel published *Creating an Advantage in Global Capital Markets: Final Report and Recommendations* in January 2009.

Five-Year Review Committee was a panel of securities regulation experts, appointed in 2000 by the Minister of Finance under the provisions of the *Securities Act*, to review securities legislation in Ontario. The Review Committee's Final Report was released in March 2003 and was the subject of hearings and a report by the Legislature's Standing Committee on Finance and Economic Affairs in 2004.

Integrated Market Enforcement Teams (IMETs) are composed of police, lawyers and other investigative experts and are located in Canada's major financial centres. IMETs are jointly managed by the RCMP, the federal justice department and other partner departments and agencies. They work with securities regulators on major securities fraud cases.

Investment Industry Regulatory Organization of Canada (IIROC) is the national self-regulatory organization that oversees investment dealers and trading activity in the capital markets. IIROC was formed in 2008 through the consolidation of the Investment Dealers Association (IDA) and Market Regulations Services Inc.

Investor Advisory Committee (IAC) was a committee of 10 members selected by the Commission to represent the interests of retail investors. The IAC operated as one of several Commission advisory committees from 2006 to 2008.

Joint Forum of Financial Market Regulators consists of representatives from Canadian pension, securities and insurance regulators. The Joint Forum was established to coordinate, harmonize and streamline the regulation of financial products and services.

Joint Standing Committee on Retail Investor Issues was formed in 2008 and consists of representatives from the Commission, IIROC, the MFDA and the

OBSI. The Joint Standing Committee focuses on retail investor issues, including enhanced investor protection.

Mutual Fund Dealers Association of Canada (MFDA) is the self-regulatory organization for the distribution side of the mutual fund industry. The MFDA regulates the operations, standards of practice and business conduct of its members and representatives.

Ombudsman for Banking Services and Investments (OBSI) is an independent dispute resolution service available to customers of participating banking services and investment firms who are not satisfied with the outcome of the participating firm's internal complaint resolution process. The claim limit is $350,000.

Over-the-counter refers to securities traded outside of formal exchanges, for example, through a dealer network.

Retail investors are non-corporate, individual investors who buy and sell securities for their personal account, and not for another company or organization. Retail investors buy in much smaller quantities than larger institutional investors.

Self-Regulatory Organizations (SROs) establish and enforce rules governing the conduct of their members. Two SROs have been recognized in Canada: IIROC and the MFDA.

LIST OF RECOMMENDATIONS

1. The Ontario Securities Commission is the administrative body with primary accountability for investor protection. The Committee, therefore, recommends that the Commission reassess the way in which it exercises its public interest jurisdiction, with a view to improving the Commission's effectiveness and accountability.

2. The Committee recommends that the Ministry of Finance

- **review the statutory scope of the Commission's public interest jurisdiction; and**
- **introduce legislation to establish a regulatory framework for credit rating agencies that meets international standards.**

3. The Committee recommends that the Commission address the following regulatory issues:

- **amending the short-term debt exemption rule to make the exemption unavailable for the sale of asset-backed short-term debt, such as ABCP, so that issuers who sell such products must do so by way of a prospectus;**
- **improving disclosure with respect to ABCP;**
- **placing restrictions on the way in which complex debt products are sold to retail investors;**
- **addressing the role played by dealers and advisors with respect to ABCP; and**
- **reviewing the issues related to mutual fund investments in ABCP.**

4. The Committee recommends that the province establish a dedicated capital markets crime unit with sufficient resources to hire and retain specialized staff to investigate and prosecute the criminal law as it applies to misconduct in the capital markets.

5. The Committee recommends that the Ministry of Finance give priority to the legislative amendments necessary to

- **implement a regulatory framework for credit rating agencies;**
- **enhance the Commission's power to preserve assets during an investigation;**
- **expand the definition of illegal insider tipping;**
- **clarify the Commission's jurisdiction over companies operating in the United States in the over-the-counter market that engage in manipulative or illegal activities aimed at Ontario investors; and**

- **regulate complex investment products, as they are introduced into the marketplace.**

6. The Committee recommends that the Ministry of Finance take the steps necessary to

- **give the Commission power to make restitution orders when there has been a violation of securities law; and**

- **establish an industry-funded compensation fund.**

7. The Committee recommends that the Commission establish an investor advisory body, based on the financial services consumer panel in the United Kingdom.

8. The Committee recommends that the Ministry of Finance take the steps necessary to create an investor representative on the Commission's board of directors.

9. The Committee recommends that the Standing Committee on Finance and Economic Affairs exercise its power to review the annual reports of the Ontario Securities Commission.

10. The Committee recommends that the Commission and the province continue to work with the federal, provincial and territorial governments, as well as with other regulators and stakeholders, toward the development and implementation of a national securities regulator.

11. The Committee recommends that the province institute a formal review of democracy in corporate governance in Ontario.

12. The Committee recommends that the Commission review the potential for conflict of interest between the regulatory and commercial functions of the Toronto Stock Exchange and that it take the steps necessary to address any problems identified.

WITNESS LIST

Organization/Individual	Date of Appearance
ADVOCIS (Financial Advisors Association of Canada)	February 23, 2009
Anita Anand	February 23, 2009
Canadian Coalition for Good Governance	February 23, 2009
Canadian Foundation for Advancement of Investor Rights (FAIR)	February 23, 2009
Michael Code	February 23, 2009
Larry Elford	Written Submission
Ken Kivenko	Written Submission
Ontario Securities Commission	December 2, 2008; February 23 and April 7, 2009
Pamela J. Reeve	February 23, 2009
Small Investor Protection Association	Written Submission
Diane Urquhart	February 23, 2009