



Opening remarks to the provincial Standing Committee on Government Agencies

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Good afternoon, Madam Chair, members of the Standing Committee, ladies and gentlemen.

As you may recall from my last appearance before the Committee on December 2nd, I'm David Wilson, Chair of the Ontario Securities Commission.

Thank you for inviting me back to speak with you.

I look forward to continuing our discussion and answering your questions about the OSC's mandate, goals and activities.

With me today are Larry Ritchie, one of the Vice-Chairs of the OSC, and Peggy Dowdall-Logie, the OSC's Executive Director.

Also in the room are the four operational Branch Directors of the OSC:

- Susan Silma of the Compliance & Registrant Regulation Branch;
- Margo Paul of our Corporate Finance Branch;
- Leslie Byberg of the Investment Funds Branch; and
- Brigitte Geisler of our Market Regulation Branch.

The operational Directors are here should you want details about the proactive steps the OSC has taken recently in response to developments in the capital markets.

They'll also provide a more fulsome overview of the OSC's operational Branches.

We hope to have the opportunity to provide such details during the question-and-answer session.

Before I answer your questions, I thought it would be useful to provide you with an update since I was last here.

Although it's been just a few months, the ground beneath the economy and the capital markets has continued to shift, and the OSC has been active on several fronts.

Of course, we all know that – despite our hopes to the contrary – the state of the financial markets remains very challenging.

Stock markets are testing new lows.

Fostering investor confidence is an ongoing challenge in the current environment.

The difficult conditions in the financial markets have had a substantial impact on the real economy.

And we recognize that the response to developments in the markets is a clear priority of both the Ontario government and those of you in the room today.

At the OSC, we're committed to doing our part and we have been responding appropriately.

With the uncertainty in the markets, we're sustaining a level of high alert.

We believe increased vigilance is necessary both to provide protection to investors, and to foster confidence in the integrity of the capital markets.

These are both important parts of the OSC's mandate.

We can't dictate the ups and downs of the capital markets, but we can, and do, work hard to foster fair and efficient markets.

Here are some key parts of our response to recent developments in the capital markets:

- We are more closely monitoring continuous disclosure filings of public companies... especially in the banking and financial services sector, as well as highly leveraged issuers – those with high levels of debt.
- We completed a fact-finding review of money market mutual funds in Ontario.
- We conducted a similar fact-finding review of exchange-traded, closed-end investment funds.
- We recently began a focused review of Ontario-based hedge funds to assess any unusual risks to investors.

These activities are all part of the OSC's compliance oversight that I talked about in December.

We initiated these extraordinary programs to determine whether any additional regulatory responses are necessary as a result of market developments.

We're vigilantly monitoring issuers of securities to check that proper disclosure is being made to investors.

We're doing everything possible to fulfill our mandate in this time of unprecedented economic uncertainty.

During these reviews, we've found reasons to be reassured that meaningful disclosure is being made about the challenges facing public companies and the investment funds industry.

Nevertheless, we remain alert for any signs of improper conduct.

On another front, an agreement has been reached for a settlement of the crisis in the marketplace for non-bank sponsored asset-backed commercial paper – ABCP.

The restructured notes were formally issued in January following a closing of the restructuring on January 21st.

We're pleased that the hard work of the restructuring committee and investors produced a settlement, even though some investors do have concerns about it.

This agreement is the resolution that was carefully developed by the Pan-Canadian Committee following complicated negotiations that lasted more than a year.

The vast majority of the retail investors in non-bank sponsored ABCP have been made whole, with interest, as a result of this agreement and other arrangements.

Other holders of ABCP will receive longer term notes.

That's good news, but it obviously does not address the underlying regulatory concerns with respect to the sale of non-bank sponsored ABCP in the first instance.

We're doing our part in addressing that through our involvement in the Canadian Securities Administrators (CSA) – the umbrella group of securities regulators in this country.

The CSA is moving forward with recommendations from its ABCP Consultation Paper to develop proposals to help prevent a similar crisis from happening again.

Our ABCP recommendations are an appropriate and proportionate response.

They include proposals to constrain the ability of issuers of short-term asset-backed securities to use an exemption that currently allows issuers of short-term debt to avoid having to provide full prospectus-level disclosure to investors.

The proposals also include the establishment of a framework to permit regulatory oversight of credit rating agencies whose role we – and other regulators around the world – see as having contributed to what happened with ABCP.

The proposed framework would require public disclosure of all relevant information used in preparing a rating on a security.

This complements our proposed requirement that rating agencies comply with a code of conduct prepared by the International Organization of Securities Commissions (IOSCO).

The OSC provided substantive input into IOSCO's code of conduct for rating agencies.

Recognizing the dynamic nature of the industry, we have also recommended that we securities regulators be given the tools to actively regulate, and impose requirements on, credit rating agencies in the future.

These and other changes would provide more disclosure, making such complex investments more transparent to investors and market participants.

Disclosure and transparency are fundamental to the OSC's approach to regulation.

The public comment period on our ABCP proposals ended last week.

We will be assessing those comments shortly and will then develop our final proposals.

Another positive development in the past few weeks has been the report of the Expert Panel on Securities Regulation in Canada.

On January 12th, the Panel delivered its final report as well as a draft Securities Act to the federal Minister of Finance.

The Panel's central recommendation is the establishment of a single, national securities regulator.

As you know, I am on record as fully supporting the position of the Ontario government and our Minister regarding a common securities regulator.

So, not surprisingly, the OSC welcomes any step that takes Canada closer to the goal of establishing a single regulator enforcing a single securities act and charging a single schedule of fees.

The federal government has funded a transition office that's now preparing the groundwork for a Canadian Securities Commission.

The Chair of the Panel, Tom Hockin, wrote in the report that Canada's current regulatory structure is costly, slow, and confusing.

Importantly, he notes that:

“... in today's increasingly interconnected economy, how Canada organizes its own capital markets matters not only to Canadians – but to the world... investors will not tolerate outdated, cumbersome, or duplicative systems. If Canada is to realize its potential in the global economy, the regulation of its financial markets must be among the world's best.”

The OSC agrees completely and is prepared to assist in making that goal a reality.

I can also report some important developments from the OSC's enforcement and adjudication activities.

One example is the Research in Motion settlement agreement regarding the backdating of stock options.

The focus in this settlement was on ensuring that the company is and remains compliant with Ontario securities law.

We also wanted the company – and its shareholders – to be made financially whole.

The settlement also required that RIM submit to an independent review of its corporate governance practices and procedures.

The OSC tribunal stated that it hopes that RIM, and indeed all public companies, understand the importance of strong corporate governance.

We believe that, in the RIM case, the OSC applied balanced sanctions where they were most appropriate.

What the tribunal did by approving the settlement was send a strong message that abusive conduct will not be tolerated.

Another recent and high-profile enforcement action was the sentencing of Barry Landen.

In October 2008, following an OSC investigation, Mr. Landen, a former senior executive of a mining company, was found guilty of insider trading.

In January of this year, the Ontario Court of Justice sentenced him to a 45-day jail term and a fine of \$200,000.

This is a significant verdict.

It sends a strong message of deterrence against insider trading.

A third example is the decision of an OSC tribunal in relation to the treatment of shareholders of HudBay Minerals in connection with a contested proposed takeover.

In January, the OSC tribunal reviewed a decision of the TSX, and required that HudBay hold a shareholders meeting to vote on its takeover bid for Lundin Mining Corporation.

At the time of issuing its order, the panel commented that fair treatment of HudBay shareholders must take priority... and that permitting the transaction to proceed without shareholder approval would adversely affect the quality of the marketplace and be contrary to the public interest.

I can also tell you that we have recently appointed a new Director of Enforcement at the OSC.

Tom Atkinson has extensive experience in securities regulation, enforcement and litigation.

We selected Tom after a comprehensive search for a candidate who could bring not only the relevant litigation tools to the OSC, but also vision and leadership.

We're very pleased to have him join our team at the OSC.

Tom is respected for the commitment he brings to providing protection to investors and fostering market integrity.

In each case, the OSC has sent a clear and unmistakable signal to investors and capital market participants.

We will work relentlessly to provide protection to investors from unfair, improper, or fraudulent practices.

We will foster fair and efficient capital markets.

And if a company or an individual acts contrary to Ontario's securities legislation, we will take action.

As you've heard, we have taken action. And we intend to keep making progress to make securities regulation in Ontario even better.

We can't make the markets or the broader economy recover. But we can foster the fairness and efficiency of the capital markets and foster public confidence in those markets.

Thank you for your attention. And now, we would be pleased to take any questions you may have.