



**“Strong Regulation, Strong Capital Markets”**

**Speech by Howard Wetston**

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**Check against delivery**

Good morning.

Thank you Mark Adler, for that kind introduction.

It's a pleasure to see so many familiar faces here this morning and to be surrounded by professionals who appreciate the importance of Ontario's capital markets.

You understand that both investors and industry benefit from public confidence in the financial system.

Our economy's success relies, to a great extent, on the competitiveness, efficiency and fairness of the capital markets... particularly in a time of accelerating and sweeping change.

I'm back at the OSC after a hiatus of about seven and a half years, and I find it ironic that one of my last duties as an OSC Vice-Chair was to increase the

maximum voting share ownership in the TMX Group from five to 10 percent.

I'll have more to say about the proposed TMX-LSE transaction in just a few minutes.

During my time as a Vice-Chair, securities regulators were responding to Enron and related scandals by shifting their focus to improve corporate governance.

While that's still relevant, much has changed in our capital markets.

Thankfully, one thing has not changed – the quality and dedication of the OSC's professional staff has remained at an exceptionally high level.

I return to the OSC knowing that it is staffed by a group of professionals who care deeply about fulfilling our important objectives.

It is our responsibility to assess how changes in market structure, product innovation and technology are affecting the capital markets and, more particularly, the principles that have traditionally underpinned securities regulation.

We need to be willing to change established paradigms about the role and perimeter of securities regulation if existing concepts and approaches no longer provide adequate protection to investors in these capital markets.

As the OSC adapts its regulatory system to reflect the realities of the global marketplace, our primary focus is on protecting the interests of Ontario's investors and capital markets... whether it's through the regulation of marketplaces and products, the oversight of registrants and issuers, or enforcement.

Ensuring that investors receive the right information to make investment decisions, having fair and well-functioning markets to execute trades, and providing diligent enforcement to protect investors... these are fundamental objectives of the OSC.

Strong and effective regulation fosters investor confidence, which is essential for sustaining strong capital markets that support a vibrant economy.

### Enforcement

Enforcement is the most visible program at the OSC – and often it’s the most criticized program.

One commentator has said that criticism of enforcement is Canada’s second favourite sport after hockey.

Any enforcement regime that seeks to protect the public interest must be vigorous and effective – and must be seen as such.

I will say this – the OSC’s enforcement program is vigorous and effective – and active.

For example, as of January 31, we had 56 open matters in litigation:

- 49 before the Commission and seven before the Ontario Court of Justice.

I am encouraged to see such significant enforcement activity, but let's face it – we can always try to do better in this area.

I have asked our Director of Enforcement, Tom Atkinson, to intensify our enforcement efforts.

We are investigating cases faster and commencing more prosecutions.

This year, we will launch three times the number of cases that were commenced three years ago.

Staff have developed proprietary technology that allows them to better identify possible illegal trading prior to public disclosure of mergers and acquisitions.

They are casting a wider net beyond traditional targets to include professionals and other service providers who are privy to confidential information during corporate transactions.

We have upped our game to shut down boiler rooms.

Over the last 24 months, staff brought record numbers of actions that resulted in record fines and expulsions of individuals from the industry.

We are targeting fraudulent securities offerings with new vigour.

Now that general anti-fraud and anti-misrepresentation provisions have been added to the Securities Act, we have more flexible tools to detect, disrupt and prosecute illegal distributions.

Most of our proceedings involving the illegal sale of securities now include both an allegation of an illegal distribution as well as an allegation of fraud.

These enforcement initiatives are highlighted in the new OSC Enforcement Activity Report, which was released today.

While these results are encouraging, we intend to bring more proceedings before the Ontario Court of Justice — especially those that involve repeat offenders.

We aim to maximize the deterrent effect of court-imposed sanctions, including jail terms, where appropriate.

With respect to enforcement policy, I have asked the Enforcement Branch to examine other ways to increase our effectiveness:

1. By considering a policy with respect to the possible use of immunity agreements;
2. By clarifying the current “credit for co-operation” program;
3. By exploring the possibility of a whistle-blower program, but one that is less complex than, for example, the program introduced under the Dodd-Frank legislation in the U.S.; and



4. By examining the use of settlement agreements that do not include admissions of fact. Such agreements would allow us to aggressively discipline individuals and companies while retaining regulatory neutrality in parallel litigation such as class-action suits. These agreements are widely used in the U.S. to encourage settlements.

Our goal is to bring forward meaningful cases that have a strong deterrent impact in order to protect investors and the markets.

### Proactive Rule-Making

Proactive rule-making also supports the OSC's investor protection mandate.

Ontarians hold approximately \$1.2 trillion in total financial wealth, or about 45 per cent of the Canadian total.

The average Ontario investor has to make sense of capital markets that are recovering from a traumatic global downturn.

Investors have even greater concerns for protection of their savings and investments.

One of the painful lessons from the crisis was that securities markets can be a mechanism by which risk is transferred within our financial markets.

We learned the hard way that financial stability depends on both effective prudential regulation and effective market regulation.

Regulators need to look at the financial system as a whole, not in pieces, and co-operate more effectively.

In the wake of the crisis, the International Organization of Securities Commissions (IOSCO) has increased its focus on mitigating systemic risk.

IOSCO recently adopted a new systemic risk principle for securities regulators to contribute to regulatory processes to manage such risks.

The G20 also made commitments to improve market integrity and mitigate systemic risk to the financial system.

The result has been the emergence of an important reform agenda in securities regulation to protect investors and the stability of today's global, interconnected capital markets.

OSC staff, together with the CSA, are contributing to this reform agenda by working to modernize and strengthen our regulatory regime and fill gaps that may exist between our regime and other jurisdictions.

Here are a few examples of important investor protection initiatives within this reform agenda:

- The CSA is considering regulatory proposals for the distribution of all securitized products, both under a prospectus and in the exempt market. Our goal is to enhance the level of transparency available to investors and the market.
- The CSA is playing a leadership role in developing Canada's regulatory regime for the oversight of over the counter derivatives, which can pose risks to the financial system.

- And the CSA is refining proposals to create a formal oversight regime for credit rating organizations.

These types of regulatory initiatives help fill gaps and address weaknesses in support of efforts to mitigate systemic risk.

### Evolving Market Structures

Market structure has become a broad and important topic not just in the equity markets but also as it affects market infrastructure in general.

New marketplaces have emerged to compete with traditional exchanges.

Sophisticated trading technology has increased the speed and complexity of orders and trading functions.

In this environment, we are re-examining how marketplaces are regulated and whether changes are necessary to the existing framework.

For instance, the OSC is a leader in:

- Reviewing the regulatory issues associated with dark pools; and
- Addressing risks associated with electronic trading, including direct market access and some aspects of high frequency trading.

We are pushing ahead with an ambitious policy agenda in market regulation.

However, everything intensified on February 9<sup>th</sup> when the TMX and LSE announced their transaction.

The OSC has a key role to play in reviewing the transaction in our capacity as the lead regulator of the TSX and the TMX Group.

What does that mean?

Essentially, the OSC oversees the operations of an exchange in this province.

The OSC recognizes and oversees both TMX Group and the TSX as exchanges in Ontario.

The TSX and TMX Group operate under a recognition order granted by the OSC.

The recognition order establishes the principles under which the TSX and TMX Group must operate, and addresses matters such as the corporate governance model, how the exchange will conduct regulation of its market, and rule-making.

The Commission has broad public interest jurisdiction for the oversight of the TSX and TMX Group.

Moreover, the OSC's approval is required for any party to acquire more than 10 per cent ownership of the voting shares of the TMX Group.

This share restriction will be considered in the OSC's review of the transaction.

The TSX plays an important role in our markets as a market infrastructure entity.

Not only does it provide a trading facility, but it has a listed-issuer regulation function and contributes to capital raising.

The TMX-LSE transaction will require the Commission to review a number of significant regulatory issues.

We will publish the TMX-LSE application and a Notice for a public comment period, and encourage submissions from all interested parties.

We will also hold a public hearing in order to receive submissions from interested parties.

The Ontario Government announced yesterday that it is forming an all-party committee of MPPs to consult the people of Ontario on the transaction.

The consultations will include public hearings and the committee is expected to release a report by April 7<sup>th</sup>.

Fundamentally, the transaction raises important policy issues for the Commission.

Depending on the focus of the Legislative committee, its report may inform the Commission's deliberations with respect to the issues it needs to consider during its review.

We hope to receive an application from the TMX soon.

Our comment period and public process will commence soon afterward.



During our review process, we will coordinate to the extent possible with other CSA jurisdictions that are reviewing the transaction.

Also, we will have discussions with Britain's Financial Services Authority about the proposed oversight model and co-operation.

Let me make it clear that we will review all aspects of the transaction – including the proposed structure – to ensure that we are satisfied that any changes are in the public interest.

### Conclusion

In conclusion, I would like to re-affirm the OSC's support for the creation of a national securities regulator for Canada.

In my opinion, the acceptance of a national regulator will depend on its capacity to be innovative, flexible and reflective of local concerns and expertise.

I believe that the model proposed by the Canadian Securities Transition Office does take these objectives into account.

While the CSA has done a good job to harmonize and develop policies across Canada, the range of issues confronting regulators today suggests an accountability framework that can only be effectively accomplished by a Canadian Securities Commission.

Finally, I would like to emphasize the importance of the OSC being accessible and keeping the lines of communication open with the public.

We are committed to a dialogue with investors and the industry.

I look forward to consulting with you to ensure that our capital markets continue to meet the needs of investors, market participants and the economy as a whole.

Thank you.