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**Tuesday 2 December 2008**

**Journal  
des débats  
(Hansard)**

**Mardi 2 décembre 2008**

**Standing Committee on  
Government Agencies**

Agency review:

Ontario Securities Commission

**Comité permanent des  
organismes gouvernementaux**

Examen des organismes  
gouvernementaux :

Commission des valeurs  
mobilières de l'Ontario

Chair: Julia Munro  
Clerk: Douglas Arnott

Présidente : Julia Munro  
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Hansard Reporting and Interpretation Services  
Room 500, West Wing, Legislative Building  
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## STANDING COMMITTEE ON GOVERNMENT AGENCIES

## COMITÉ PERMANENT DES ORGANISMES GOUVERNEMENTAUX

Tuesday 2 December 2008

Mardi 2 décembre 2008

*The committee met at 0902 in room 151, following a closed session.*

### AGENCY REVIEW

#### ONTARIO SECURITIES COMMISSION

**The Chair (Mrs. Julia Munro):** Good morning, ladies and gentlemen, and welcome to the Standing Committee on Government Agencies. I would like to first of all recognize our guests here, Mr. David Wilson, the chair and CEO, and Ms. Peggy Dowdall-Logie, the executive director, to the witness table. Welcome to the standing committee on agencies. I know that you know you will have 30 minutes in which to make your presentation. For the purposes of Hansard, I would ask you to identify those with you. We are ready if you are ready.

**Mr. David Wilson:** Thank you, Madam Chair and members of the standing committee, ladies and gentlemen. My name is David Wilson and I'm chair of the Ontario Securities Commission. As the Chair mentioned, with me is Peggy Dowdall-Logie, who's the OSC executive director and chief administrative officer. On my right are our vice-chairs, Jim Turner and Larry Ritchie. Also with us in the room today from the OSC are our lead director, David Knight, sitting behind me, the chair of the commission's human resources and compensation committee Margot Howard, and Ken Gibson, director of corporate services.

We welcome the opportunity to appear before the committee and to answer any questions you may have about the OSC, our authority and how we're using it, our responsibilities and how we're meeting them.

With the recent events in the financial markets worldwide, including those in Ontario, our invitation to appear before you is very timely indeed. I will of course talk about the current crisis in the markets, but before I do that, I'll review the mandate of the OSC because the key aspects of our mandate are highlighted by the current situation. I'll touch on two high-profile aspects of securities regulation: enforcement and the potential reform of Canada's securities regulatory structure. Then finally, I'll discuss the OSC's accountability to the Legislature and to the people of Ontario. It's a lot to cover and I respect the committee's time. I hope to finish my remarks in about 25 minutes, so let me begin.

First, the mandate of the Ontario Securities Commission. The task assigned by statute to the OSC is two-

fold: to provide protection to investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in those markets. The commission is responsible for administering and enforcing two main pieces of Ontario legislation: the Securities Act and the Commodity Futures Act. We're fully accountable to the Legislature and responsible to it through the Minister of Finance.

Unlike most government agencies, the OSC is not funded by the taxpayers of Ontario. We're self-funded through fees charged to participants in Ontario's capital markets. That includes anyone who sells securities in Ontario or gives advice about investing in securities as well as companies that issue their securities to the public. As a securities regulator, the commission makes rules that have the force of law and adopts policies that influence the activities of market participants. All rules must be submitted to the minister for his consideration and approval.

We also have oversight of two self-regulatory organizations for the securities industry in Ontario, as well as the Toronto Stock Exchange. The OSC is also an adjudicator of administrative proceedings involving breaches of securities law. In that role, the commissioners act as independent adjudicators on panels. However, there is a strict separation between the adjudicative function and the enforcement activities of the OSC. Commissioners involved in one do not participate in the other. We do not act as both prosecutor and judge.

While the OSC is the largest securities regulator in Canada, we're certainly not alone. As you know, every province and territory in Canada has a parallel agency. Together, the 13 securities regulators make up the Canadian Securities Administrators, which I'll refer to today as the CSA.

Let me now turn to what's uppermost in most people's minds these days: the current crisis in financial markets around the world. There isn't time this morning to give you a full review of the recent events and their ramifications, but I can tell you this: No one anywhere has all the answers to the obvious and fundamental questions, "How did this happen?" and "What should we do about it?" I can, however, identify the root causes of the crisis and tell you what the OSC has done in response.

Although it's clearly being felt in our markets, the crisis did not start here and it did not start in the stock market. It's a crisis caused by excess leverage: too much borrowing and too many people living on credit. In the

past few years, the amount of total debt in the United States has grown to three and a half times its annual gross domestic product. That's up from the norm of about one and a half times that prevailed throughout the period from the 1940s through to the 1990s.

#### 0910

Debt is not always a bad thing in and of itself, but excessive and unsupportable debt certainly is, and that's where things began to go wrong. The catalyst for the crisis can be traced back to the lowering of lending standards in the United States. With increasingly complex debt products and increased connectivity between markets, more and more markets in more places became vulnerable to the collapse of the US housing market. When that bubble burst, the whole house of cards began to fall.

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.

However, we should all understand that, compared with other countries, Canada is relatively better off. A recent assessment by the International Monetary Fund found that our financial system is underpinned by sound macroeconomic policies and strong prudential regulation and supervision. These strengths have not immunized us from what has been called the toxic mortgage contagion, but they have, so far, protected our financial institutions from its worst symptoms.

The fundamental issue here is why a setback in the US housing market should lead to a threatened worldwide recession. The answer is the resulting liquidity crisis, unequalled in almost a century. It was triggered by a global crisis of confidence: Many investors stopped believing that their investments were sound.

As you heard, fostering confidence in capital markets is part of the OSC's mandate. There's an important difference between people's confidence that they will earn a return by investing in the market on the one hand and the confidence of investors in the integrity of that market, that they'll be treated fairly and protected should they decide to invest.

The OSC can't make people want to invest. We can't control what happens to their investments if they do and we can't eliminate investment risks. But we can play our part in fostering confidence in the integrity of our markets, and we have. For example:

—We've just completed targeted continuous disclosure reviews of all public companies in the banking and financial services sector as well as other highly leveraged reporting issuers.

—We've initiated a review of money market funds to assess potential exposure to toxic assets.

—As the crisis reached the equity markets, the US Securities and Exchange Commission and the OSC

temporarily prohibited short selling of certain interlisted financial sector stocks.

—The OSC led the preparation of a CSA consultation paper on non-bank-sponsored, asset-backed commercial paper, ABCP. The paper outlines several regulatory proposals related to the frozen ABCP market. These proposals include measures to restrict the way complex short-term debt products are sold to retail investors, and the need to regulate and oversee credit rating agencies.

A crisis of this scope requires close co-operation with others. Within Canada, we have been intensively co-ordinating our activities with the Bank of Canada the federal Department of Finance, the Ontario Ministry of Finance, the office of the superintendent of financial institutions, and other Canadian securities regulators and the SROs in Canada.

A global crisis requires a considered and coordinated global response, so we're also working with regulators in other countries, particularly the SEC in the US and the International Organization of Securities Commissions, IOSCO.

Against that backdrop, I'd now like to turn to what else the OSC is doing to fulfill its mandate, first in the area of investor protection. This is one of the two main elements of our statutory mandate. In our statement of priorities we say:

“The interests and needs of investors, particularly retail investors, will continue to be strongly reflected in all of the OSC's operations. In addition to our enforcement activities, investor education and awareness and timely access to accurate information are important components of investor protection.”

Investor protection does not mean that we hope to make investing 100% risk-free. Risk is an inherent element of investing and an essential feature of functioning capital markets. It always has been and always will be. Rather, our goal is to minimize practices that are, as our mandate says, “unfair, improper or fraudulent.” It's to create a level playing field for all investors, where potential risks and rewards are clearly disclosed to all, and all at the same time. That's fair.

We believe that good regulation protects investors, and we believe that we have good regulation in Ontario. That regulation sets the standards for Canada and, according to a 2008 report from the World Bank, Canada ranks fifth in the world for investor protection. By way of comparison, the United States ranks seventh.

Here are some examples of steps we've taken to improve investor protection in Ontario:

—The OSC has been working with the other regulators to enhance the disclosure regime for investors before they buy mutual funds or segregated funds.

—We've brought in regulations requiring “fair value accounting” to ensure that issuers' financial statements reflect the true current value of their investments.

—In 2007, the OSC and the CSA imposed a minimum consistent standard of independent oversight of investment fund managers across Canada.

—We encourage the use of plain language in information provided to investors. Disclosure isn't useful if only a securities lawyer can decipher it.

—Similarly, we've worked to improve how investor complaints are handled so that concerns can be resolved as efficiently and effectively as possible.

Fundamentally, we believe that knowledge gained through the disclosure of information is the best protection for investors. The bedrock of our regulatory system is full, fair and timely disclosure of all information that could be expected to influence investment decisions.

As former US Supreme Court Justice Louis Brandeis famously said, "Sunlight is the best disinfectant." We believe that disclosure is that sunlight. We constantly monitor activities in the markets to ensure that there's compliance with this fundamental principle.

The logic is pretty simple: Knowledge protects investors. That protection fosters confidence in market integrity. Confidence makes for an efficient market. An efficient market fuels the economy, and a stronger economy is good for citizens and businesses.

Fostering fair and efficient capital markets is the other half of our statutory mandate. We strive to find the right balance when it comes to regulation. We clearly cannot have markets that have little or no regulation. Even the US seems to be coming around to the idea that deregulation there went too far, in retrospect.

On the other hand, we shouldn't overregulate. Weighing down the markets with too much regulation in an effort to reduce investor risk simply creates a market that's inefficient and not competitive with other capital markets around the world.

We need to remember that Ontario is in competition with other markets and that competition is based on the efficiency, as well as the safety and integrity, of our markets for investors. If Ontario is too burdensome, too slow, too bureaucratic, then issuers—businesses that need capital—will simply go elsewhere. Ontario's financial services industry would then suffer, and this is a very important business for all of us.

The financial services industry that we help regulate is essential to Ontario's economy. First, the investment industry has the vital function of efficiently allocating capital—people's savings—to businesses that can use it to grow and foster economic development. That's the alchemy of turning savings into jobs.

On its own, the financial services industry employs some 350,000 people in Ontario, jobs that are part of the knowledge economy. And it's estimated that the financial sector indirectly supports at least an equal number of jobs outside the sector. In the Toronto area alone, the financial services industry pays out more than \$10 billion annually in wages.

The financial services industry paid \$2.6 billion in net provincial corporate tax last year, not including provincial sales tax, GST and other personal income taxes paid by its employees.

A key priority for us is to make sure Ontario has the right regulatory framework, one that's stable enough to

be seen as reliable by all market participants but also to be able to evolve and keep pace with one of the most innovative and dynamic industries in the world.

For example, one of the important issues we have to look at is the regulation of derivatives, like the credit default swaps that, as I mentioned earlier, played a role in the current financial crisis. These instruments were unheard of when the Commodity Futures Act was introduced in Ontario in 1979.

By striking the right balance and keeping our securities markets both safe and competitive, the OSC contributes to the economy.

#### 0920

Central to confidence in the OSC's role is enforcement. Market participants and in fact all the people of Ontario need to know that our rules will be enforced and that wrongdoers will be punished.

The OSC, while a leader in securities regulation, is just one part of what has become known as the Canadian securities enforcement mosaic. The mosaic is a complex arrangement that includes 13 provincial and territorial securities commissions, two self-regulatory organizations and national, provincial and, sometimes, local police services, and that's only for investigations. For prosecution and adjudication of enforcement matters, we add 13 provinces and territories, with their own crown prosecutors and various courts, as well as federal prosecutors.

Our job at the OSC is to enforce compliance with Ontario's Securities Act. The act gives us certain powers to enforce regulatory law, but not criminal law. Our staff can investigate many types of breaches of regulations and policies and usually bring enforcement proceedings before the commission's administrative tribunals, which have a protective, public interest jurisdiction.

The powers granted under the act can be effective at promptly stopping improper activities as well as deterring improper conduct. We can also stop people from participating in our markets. We can ban them from working in a public company as an officer or director. We can impose administrative penalties on them. We can order them to disgorge ill-gotten profits, and we can seek freeze orders to protect investor assets.

The act also gives the OSC the power to bring quasi-criminal charges against alleged wrongdoers in the lower Divisional Court in Ontario. But there, our ability to seek jail terms is limited. Under current legislation, the power to prosecute alleged criminal wrongdoing lies with the criminal justice system, typically through prosecutions by the provincial or federal Attorneys General.

Enforcement is probably the area where the OSC comes in for the most criticism, but much of it is based on the belief that the OSC, and the OSC alone, is responsible for all securities enforcement in all of Canada. The mosaic I described, and the differentiation between regulatory and criminal law enforcement, means that is just not true.

We're often compared with the SEC. The SEC operates through the entire US under a very different structure and is often credited with enforcement that's actually

performed by criminal authorities in the US: the Justice Department or a particular state's Attorney General. So it's difficult to directly compare the US and Canadian systems.

Within the system we have, the OSC has a number of notable successes in enforcement; for example, last year, we created a special boiler-room unit to find and close improper sales operations targeting unsophisticated retail investors. The unit has so far secured cease-trade orders, essentially shutdowns, against 22 firms and 48 individuals. Last year, the enforcement branch went to the Superior Courts in Ontario to obtain freeze orders totalling more than \$16 million to prevent the dissipation of investors' funds by fraudulent means.

Can we do a better job in enforcement? Yes, and we will. We have initiatives under way aimed at enhancing market surveillance and the detection of insider trading. Right now, we're reviewing every aspect of our enforcement activities, and you can expect to see some changes for the better.

I would now like to turn to another of the high-profile issues in securities regulation: the possible reform of the very structure of regulation.

The arguments for and against the development of a common securities regulator have been made over the last 40 years; I won't belabour them here. But I want to remind you where the OSC stands. The OSC fully supports the government of Ontario, which favours a common securities regulator. The federal government also supports that change. From the public discussion, Canada's business community appears to support the improved oversight that would result from a common regulator.

The fact is that Canada is the only industrialized country in the world that doesn't have a national securities regulator. The need for international co-operation to respond to the global crisis highlights the need for Canada to speak with one voice internationally. However, until there is structural change mandated by the various governments, the OSC will continue to work within the current regime to the very best of our ability.

Before I conclude, I would like to talk specifically about accountability. That is, after all, why we're here—because we report to the Minister of Finance and we're accountable to the Legislature and, through you, to the people of Ontario.

We see three main features of accountability. The first is how effectively we use the authority we've been granted under the legislation and the funds we collect from market participants. We believe we use both our authority and our revenue efficiently. The OSC currently has 438 dedicated employees and a budget of about \$86 million for this year. With these resources, we regulate the largest capital market in Canada.

We're fully aligned with the efforts of the provincial government to strengthen efficiency and accountability in the public service. Our structures, policies and procedures are also fully aligned with the best corporate governance practices. These are the practices we expect from those we regulate, so we lead by example ourselves.

Our commissioners, currently 13 of them, are the OSC's board of directors. As well as adjudicating at hearings, they meet every two weeks to review policy matters and regularly, as a board would, to oversee the operations of the OSC. Our board has independent committees and an independent lead director, who is here today, David Knight. We have a memorandum of understanding with the minister which describes the roles and responsibilities of the minister and of the chair and the board of the commission. All of our governance practices can be found on our website and all of our regulatory policy reviews have public input. All of our hearings are open to the public and the media.

The second area of accountability is how well we serve market participants. We meet their needs by fostering fair, open and efficient markets and by being responsive to changes in those markets. Open communications with the stakeholders who are affected by our actions is an essential part of our regulatory process. Market participants are all encouraged to give us their feedback on proposed rules and policies during formal comment periods. We're also committed to delivering dependable and prompt services to market participants. Staff have service standards to meet in areas such as turnaround times on prospectus reviews, registration applications and other filings and contacts.

The third area of accountability that we strive to meet is less specific but of paramount importance. It's that we recognize every day our need to demonstrate our public value. Each year, we publish our key organizational priorities and report on our progress in achieving them. We require that OSC commissioners and employees maintain the highest standards of personal integrity and deal openly and fairly with all of our stakeholders.

In 2007, the OSC submitted to a detailed assessment by the International Monetary Fund as part of the review of the soundness and stability of Canada's financial sector. The review concluded that Canada has a robust regulatory framework for issuers, market intermediaries, secondary markets and self-regulatory organizations.

Our role in protecting Ontario investors and supporting the economy of Ontario has never been more important than it is today. Our ability to fulfill our role has probably never been tested as it's being tested today. The global crisis has illuminated the strengths and weaknesses of regulators around the world. Under that scrutiny, the OSC compares well.

The commissioners and staff of the OSC have the expertise, professionalism and dedication to meet the current challenges. We're conscious that we must be an organization in which investors and market participants can place their confidence, and be an organization in which the people of Ontario can take pride.

**The Chair (Mrs. Julia Munro):** We'll begin our rotation this morning with Mr. Prue.

**Mr. Michael Prue:** Given the OSC's legislative mandate to protect investors, why didn't it launch an investigation into its sellers and manufacturers of toxic asset-backed commercial paper? Wouldn't this have been

more appropriate than letting IIROC conduct the investigation?

**Mr. David Wilson:** There has been, as your question implies, Mr. Prue, an investigation into the manufacturers and distributors of asset-backed commercial paper. IIROC, whom you mentioned—the SRO—has published a report of its compliance sweep. However, I can tell you that the OSC, our counterpart in Quebec—the AMF—and IIROC have been working very closely together for the last 10 or 11 months doing intensive investigations of the conduct of manufacturers and distributors of non-bank-supported asset-backed commercial paper to both retail investors and to institutional investors.

Those investigations are under way right now. They're all very high priority. The three organizations that I mentioned are coordinating very closely together. I can't forecast when any enforcement actions will be announced or commence, but the work is happening right now and is very intensively being undertaken by the three organizations in co-operation.

0930

**Mr. Michael Prue:** What is the part the OSC's playing? A third of it, a quarter of it, half of it?

**Mr. David Wilson:** Registrants and issuers that are based in Ontario, our enforcement people are talking to them, reviewing the activity and conduct of those people. IIROC is doing the same thing for their members in Ontario. The same activity is happening in Quebec, where the AMF, the Quebec securities regulator, and IIROC's Quebec branch are co-operating and working doing the same sort of investigative activity.

**Mr. Michael Prue:** Mr. Turner, you are quoted in May's Globe and Mail as saying, in part, "We didn't feel we had to jump in to protect investors," after the ABCP market froze. You went on to talk about the ABCP situation, and it was like a wait-and-see approach. Would better disclosure or regulation in Ontario have prevented the ABCP disaster in this province?

**Mr. James Turner:** I think that there are a number of questions embedded in what you just said. Let me talk about the first issue, and that was really a timing issue. What we were saying was that the asset-backed commercial paper market had frozen, and therefore, as a result, it was not operating. We did not have to jump in to protect additional investors, because the market was shut down. So what I was saying in that quote was, given the timing, we did not have to exercise our jurisdiction to restrain activity in the market because that activity was not going on.

Having said that, I can assure you we are very sensitive to the position that retail investors have found themselves in with the asset-backed commercial paper circumstances. It causes us great concern. Having said that, I think we're optimistic that there is a private sector solution likely that is going to see most of those investors appropriately compensated.

**Mr. Michael Prue:** Over what period of time?

**Mr. James Turner:** Well, I'm referring to the Montreal accord. I think, as you know, it's been over a

year coming, but our expectation is that they are going to complete it within this month. That's what we're being advised by those directly involved.

**Mr. Michael Prue:** And the compensation to take place over what period of time?

**Mr. James Turner:** I really can't comment on that. That's—

**Mr. David Wilson:** I believe, Mr. Prue, that once the restructuring plan is completed and announced and effectively closed, a number of the distributors who distributed asset-backed commercial paper to their retail clients will, at that point, return to them 100% of their money to retail investors, including interest, but the restructuring has to be implemented and closed first. I believe that's the trigger point.

**Mr. Michael Prue:** The next question: The relatively unregulated credit rating industry has played a key role in furthering this financial crisis in Canada. What measures is the OSC considering in tightening regulations on behalf of the credit rating industry? My understanding is that they are exempted from liability in both the IPO and secondary trading class action suits.

**Mr. David Wilson:** Why don't I begin answering that question, and my colleague Jim Turner, who's an expert in this area, can add some answer to it?

The Canadian Securities Administrators, of which the OSC is the largest, published a paper for comment in September about the asset-backed commercial paper crisis. In that paper were proposals for much greater oversight and regulation of credit rating agencies operating in Canada. In effect, the proposal is to require them to comply with an international code of conduct for rating agencies, and to give us regulators in Canada the ability to go in and assure compliance, to check compliance. That's the proposal that's out there, to change the way credit rating agencies, who did make major mistakes in this crisis—to change the way they operate in our country.

As to the question that you raised, the expert, Mr. Turner, could probably answer that.

**Mr. James Turner:** Let me just say that as part of the working group, we felt it very important to be plugged in and taking account of what was happening around the world with respect to this issue.

On your technical question, Mr. Prue, our existing rule, as you suggested, with respect to liability under a prospectus does not impose liability on credit rating agencies. So when we came along to imposing civil liability in the market, it would have been inconsistent with our prospectus regime to have imposed liability in the secondary market. But more than that, under both regimes an expert is only liable if they consent to the use of their opinion. So the concern was that the credit rating agencies would not consent to the use of their credit ratings because of this potential liability. The consequence of that would be Canadian issuers would find it much more difficult to obtain ratings, and those ratings, obviously, can be important to those participants in the market.

**Mr. Michael Prue:** The next group of questions: Sadly, retail investors, not just large institutions with deep pockets, owned asset-backed commercial paper.

In 2005, Ontario joined other provinces to remove a provision that required a minimum ABCP purchase of \$50,000. Effectively, this allowed everyday investors to become involved whether or not they knew it. Many of these investors were sold asset-backed commercial paper as a safe, stable, GIC-like product. Trying to recover their money, these investors are now trapped in many, many legal messes.

My question: Will the OSC conduct an investigation into whether securities dealers who sold ABCPs to retail investors broke securities law, mainly the know-your-client provisions in OSC rule 31-505?

**Mr. David Wilson:** The short answer to your question is yes. The answer I gave to an earlier question of yours, Mr. Prue, I think is responsive.

Yes, the OSC, in co-operation with IIROC, is investigating exactly those activities you have described to see whether there was breach of Ontario Securities Commission rules or IIROC bylaws in the distribution of the paper and the suitability, know-your-client aspects of IIROC's rules. That's happening in Ontario and, as I mentioned earlier, a parallel process of investigation is happening in Quebec.

**Mr. Michael Prue:** And is it your intention to seek—and I use your own word—“disgorgement” of the monies back to people who have not been properly advised?

**Mr. David Wilson:** The investigations aren't completed yet. What sanctions we impose on any of those who misbehave, whether it's fines, disgorgements, penalties or bans, it's premature for me to speculate. But the investigations are under way, and there is a reasonable probability that they will lead to some enforcement cases.

**Mr. Michael Prue:** You said that you have launched an investigation with two other groups, Quebec and IIROC—

**Mr. David Wilson:** Correct.

**Mr. Michael Prue:** —but you have not launched one independently yourself. Can you tell me why you didn't do one independently yourself?

**Mr. David Wilson:** We work very closely with IIROC, the self-regulatory organization. IIROC really exists because we delegate some functions to them, and then we oversee their execution of those functions. So it is not unusual for the statutory regulator, the OSC, to work closely with our fellow self-regulatory body, to whom we have delegated powers, on investigation matters. It's not unusual, and it's quite a constructive way to get the facts out before deciding what enforcement actions might be appropriate.

**Mr. Michael Prue:** I have had a few meetings with representatives of the ABCP retail note-holders. They've lost their life's savings because securities dealers did not do their due diligence. Are you prepared to meet with the representatives to discuss needed regulatory remedies

that they believe are necessary or are you going to go it alone?

**Mr. David Wilson:** Our contact centre has contact with many, many investors. We probably have had communication with some of the people you're referring to, Mr. Prue, already. We do listen to stakeholders, harmed investors, and try to help them and direct them to places where they can get help with their issues. So if there are particular investors you wish us to meet with, we would be happy to arrange to have them appropriately contact our people.

**Mr. Michael Prue:** All right; I'll do that.

**The Chair (Mrs. Julia Munro):** I'd like to move on. Thank you very much. Mr. Flynn.

**Mr. Kevin Daniel Flynn:** Thank you, Mr. Wilson, for your presentation. Given the current market crisis—you could say that this is a political question; it could be an academic question. I'm sure there were a lot of MBAs watching your presentation this morning for posterity. But where the rubber hits the road for the average investor in Canada, it's probably the relationship that they have with their own financial adviser. That's probably what they see this is all about. How do you ensure, as you say on page 10, that the interests and the needs of investors, particularly retail investors, will continue to be strongly reflected in all of the OSC's operations? How do you ensure that a retail investor has the confidence that they're receiving the best advice from the person they've contracted to handle their investments? Is there any evidence that a financial adviser, for example, would treat their own investments any differently than they would treat their client's? Is the adviser's first loyalty to the market or to the client?

**0940**

**Mr. David Wilson:** There are quite a number of questions there, Mr. Flynn. Let me try to respond to some of them. I'd ask Peggy Logie, who is our executive director, but in her previous life has a lot of experience with retail investor oversight, to add to my answer.

I think part of your question, sir, was how do we assure that financial advisers, who have a critical role for retail investors and the investment of their savings, are qualified and giving proper and good advice? There are minimum proficiency standards for every financial adviser. They have to pass certain courses and have refresher courses on a cycled basis. That's one of the things. Financial advisers are all registered, so we have the ability to ban people from participating and giving advice if there's evidence that they haven't been proficient or they've misbehaved in the past. So there are a number of gates that a financial adviser has to get through so he can sit down with a retail investor and give his honest advice about the best way to manage their savings as they go forward. Those are some of the protections we've put before anyone can sit down with someone and their hard-earned savings.

Peggy, there are parts of Mr. Flynn's question having to do with conflicts that retail brokers have with their clients' money and how they handle those conflicts. Could you elaborate an answer on that one for us?



**Mr. Kevin Daniel Flynn:** I guess to make it very short and very simple for the average person who is watching today, would it be safe to assume, or would it be maybe wrong to assume, that the advisers themselves have suffered the same losses personally as their clients have?

**Ms. Peggy Dowdall-Logie:** I guess my response to that would maybe start in a different way. Just to identify myself, I am Peggy Dowdall-Logie, the executive director of the Ontario Securities Commission.

An investment adviser's first obligation is to their client. We have a series of rules within our act that focus on the know-your-client requirements of investment advisers. Starting from that premise, then, if you are an investment adviser and your first—primary—obligation is to your client, then the expectation is that your own personal interests are secondary to those of your client.

With respect to the question as to whether the investment adviser would find themselves in the same financial straits or financial situation as their client, I would like to assume that they are focused on their client book. That would be the first priority. Their own personal interests should be secondary.

Have I answered your question?

**Mr. Kevin Daniel Flynn:** Well, I think you've probably painted the world as we would like to see it. I guess the question I'm asking you is, would you have any knowledge that the actual reality of the situation is any different in that financial advisers treat their own small fortunes any differently than they would treat their client's?

There are a lot of angry people out there right now whose lives have been changed substantially by what's happened in the market. They're looking for some confidence that they should continue to invest in that market. They're starting to see, in Canada—I think some of the evidence that Mr. Wilson has given would instill that confidence that we've fared better than a lot of other nations. But I think there's also a nagging suspicion that when advice should have been given, perhaps it wasn't always given, or the right advice wasn't always given, or the advisers themselves may have taken different action than they advised their clients to take.

**Mr. David Wilson:** As Mr. Flynn said, we've painted a picture of the world as we would like to see it. My guess is that the world, in 99% of the cases, does function that way—with proper compliance and oversight of registered sales people in the various institutions.

As I say, Peggy, in her previous life, had a compliance role with a large Canadian financial institution. Is that a fair approximation? It's never perfect, but the vast, vast majority of financial advisers put their clients' interests before their own interests.

**Ms. Peggy Dowdall-Logie:** Certainly from a compliance perspective, those are the programs that you put in place when you're accountable for that oversight activity in a regulated investment dealer. You focus on the customer interests first. Certainly—I can speak from my previous life—one of the things that in the com-

pliance area we looked very closely at was the trading of the investment advisers, looking at things such as whose trade is going first? Is it the investment adviser's trade or the customer's trade? So you attempt to build processes within an organization to ensure that it's the customers' trades that are going through the trade desk prior to an investment adviser's trades.

**Mr. Kevin Daniel Flynn:** I think that probably most of us in this room caught the CBC interview with you, Mr. Wilson. You handled some pretty tough questions pretty well, and perhaps some questions you weren't anticipating came up during the interview. As much as it would be appropriate, one of the questions that came up was about the compensation structure for the OSC, and you answered that it's quite different from what we see at the SEC. I'm wondering, now that you have a little bit of time and you're not under the same microscope as an interview might place you under, if you'd care to expand on what some of those differences are and maybe what the public should know about those differences.

**Mr. David Wilson:** Sure, I'm happy to. I'll give an answer, and if you want more detail, we do have with us Margot Howard, the head of the HR committee of our board, as I mentioned earlier.

My compensation and the compensation of other order-in-council appointees—the vice-chairs—was established, in my case, when I joined the OSC three years ago. It's in a contract that was signed at the time and approved by the board of directors. The board of directors and its compensation committee have a process for assessing compensation of the government-appointed members of the board. There's an external advisory committee of two that was appointed by the minister some time ago, to which the HR committee of the OSC's board refers to get expert advice on the fairness and appropriateness of our compensation. The picture I'm painting is that there's a very thorough board oversight process establishing compensation for the government appointees. It's quite rigorous.

As I said, the head of our HR committee is here. If you'd like any more detail on it, Margot Howard could describe it for you in some detail if you wish.

**Mr. Kevin Daniel Flynn:** I think the big point that came out of the interview, and perhaps wasn't expanded on, is the difference between your own salary, with bonuses and performance clauses, and that of the head of the SEC. There's quite a dramatic difference, but I don't think the reason for that was ever properly explained. I wonder if somebody from your organization, without passing comment on it, would just explain what that difference might be.

**Mr. David Wilson:** The US system for government appointees is very different than in Canada. My understanding—I'm not an expert, by any means—is that the heads of US government agencies are not, under practice or law, I'm not sure which, able to earn more than the President or the Vice-President of the United States. That's a practice that has developed down there, and I gather that has influenced the compensation of the head of the SEC.

We are aware, because the SEC's compensation data is public, that there are 800 people who work at the SEC who earn more than their chairman.

**Mr. Kevin Daniel Flynn:** This may be a question for the HR folks, Mr. Wilson, or perhaps you can answer it: Would the method you have in place for determining that compensation be considered a performance appraisal system or a performance management system?

**Mr. David Wilson:** I would characterize it as a performance appraisal system. Margot Howard is here. Margot, would you like to comment briefly?

**The Chair (Mrs. Julia Munro):** Could I ask you to give your name for the purposes of Hansard?

**Ms. Margot Howard:** Hi. My name is Margot Howard, and I'm chair of the HRCC committee at the OSC.

If you are interested in the structure of the compensation, the chair's contract is an annual salary; it is an annual performance bonus. There is no long-term compensation that would be similar to what you would see in a public company that would be related to stock or long-term incentives. The history of where that came from is that the original contracts were negotiated with the minister at the time the OSC became an independent entity. Since that time, when the contracts have been renewed, the HRCC committee would have surveyed the external market—I would say that would be the private sector, be it private practice or public companies and private companies—as well as the public sector for similar agencies across Canada and also within Ontario. The assessment would be that it would not be appropriate that the chair of the OSC, or the other contract positions, would earn what they would earn either in private practice or at public companies outside, but what was comparable to similar agencies and reasonable, given the size of the OSC, was the conclusion that was reached by the committees at that time, and it has been reviewed since then.

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The bulk of the compensation is salary, but there is a performance element, and it is consistent as a percentage of salary with what senior management at the OSC get. So what they get, as far as a performance element, is the same as other senior management. At the beginning of the year, after the statement of priorities has been determined, the goals and objectives, save for the chair, would be set with the HRCC and approved by the board. At the end of the year, there would be a review process that would take place—and interim steps throughout the year, because you wouldn't want to get to the end and get your report card. At that time, when a conclusion has been reached by the HRCC committee, it is taken to the external compensation committee, of which I am a member, and there are two outside members who have quite extensive human resources experience—they are appointed by the minister—and then it's brought back to the board for discussion and approval. That is the process that takes place. It is a combination of those components.

**Mr. Kevin Daniel Flynn:** I have one very small question, and then I think I want to save some time for my colleagues.

Many people would understand a sales bonus: Let's say if you sell 20 cars, you would get a bonus for doing that. How would you apply a measurable to the compensation structure at the OSC? What do you use as the determinants that a bonus or premium should be applied?

**Ms. Margot Howard:** You're right: It's not as easy as something that has a quantitative aspect like cars, but still there are management objectives that the board has set, there are areas where we're looking for strategic development; for example, succession planning objectives that the board may have, how the relationship is managed with other agencies we have to work closely with. Those are the sorts of things that would be in the goals and objectives, and those would be reviewed. And you're right: There would be a qualitative element to that. But that is the reality of senior management.

**The Chair (Mrs. Julia Munro):** We'll move on to Ms. MacLeod.

**Ms. Lisa MacLeod:** I'll be splitting my time with Tim Hudak, our MPP for Niagara West–Glanbrook. I'd like to welcome Mr. Wilson and all of his colleagues here today. I appreciate your coming; obviously this is very timely.

You went through a lot. You acknowledged at the very beginning of your speech that you would be covering a lot of ground, and I think you talked about seven very substantive issues in your 25-minute presentation. So I'm hoping, if we do not cover all the ground as a committee today, that your organization would be willing to come back, as we've had other agencies we've reviewed come back two or three times, as this economic crisis, which is worldwide but is certainly hitting Ontario, deepens. I would hope that if we don't cover that ground today, you would be willing to come before us again.

**Mr. David Wilson:** We will do whatever our minister advises us we should do. If he advises us to come back, I'm sure we would do so.

**Ms. Lisa MacLeod:** Okay. I guess I will request that.

You recognized in your presentation that your role is to protect the integrity of the markets and to protect investors. You mentioned specifically in your remarks that Ontario competitiveness is based on the safety and integrity of our markets for investors. Notwithstanding the IMF's review that suggested Canada has a robust regulatory framework, there's an American academic from Indiana, Utpal Bhattacharya, who, when comparing the enforcement records in the US and of the OSC, says he found enforcement in Ontario was pathetic. He went on to say that Canada is a First World country with a Second World capital market and Third World enforcement. Compare that with Barbara Stymiest, the chief operating officer for the Royal Bank of Canada and former CEO of the Toronto Stock Exchange, who called Canada's securities enforcement an international embarrassment.

Your role in the OSC is to protect investors; it's to protect the integrity of the market.

As a legislator, I receive complaints from my constituents and, actually, people from across Canada about the OSC. I have a few questions, then, on their behalf, and I'm going to ask them all at once because I want to

give my colleague, who's our finance critic in the opposition, the opportunity to make remarks: How many people have you banned from participating in the markets in Ontario? Can you provide statistics on your enforcement activities? Are you actively reviewing your enforcement activities? And, do you require greater enforcement power?

**Mr. David Wilson:** I got three questions there. Just to review them, you asked for some statistics, you asked about our plans to change our enforcement activities, and—excuse me. What was the third one?

**Ms. Lisa MacLeod:** Essentially, there were four. How many people have you banned from participating in the markets? Can we get the statistics on your enforcement activities? Are you actively reviewing your enforcement activities? And finally, do you need greater enforcement power?

**Mr. David Wilson:** We can talk about how many people we've banned and other statistics in a moment. I'll answer the third and fourth questions first, and I'll ask my colleague Peggy Dowdall-Logie—we did bring some statistics with us today anticipating the sorts of questions you've asked, but we can provide more later.

Let me answer your third question first, which was, are we planning to make changes in our enforcement activities? The answer is, at the OSC, which, as I described in my opening remarks, is a part of the enforcement mosaic in Canada—there's the criminal part and the regulatory part; we are the regulatory part in the largest province in the country—yes, we are planning on making changes in our enforcement activities in our own backyard, so to speak. We are currently searching for a new head of our enforcement branch. That search has been ongoing since September. So there will be new leadership in that branch. We're doing a strategic review now—and when the new leader arrives, with the new leader—of the priorities that we've set in our enforcement branch. It's a refresh of the function that we perform. So, yes, we are making changes that we are able to make within the confines of our own organization.

We are also actively talking to other members in the enforcement mosaic. Proposing reforms would make the functioning of all parts, the criminal and regulatory parts, work more effectively. A year ago, I co-chaired a task force created by the Attorneys General across Canada called the Securities Fraud Enforcement Working Group. I co-chaired it with the Deputy Attorney General in Quebec. We came out with six recommendations. The Attorney General's ministry in Ontario has our recommendations. Those recommendations are all being worked on.

So my answer really has two parts. We are working in our own domain at the OSC to make some changes and bring in some fresh leadership, and we're also working in the broader mosaic. My colleague Larry Ritchie is working with me on a number of these proposals. They're not just securities regulatory proposals; they're proposals that would change, for example, the ability of investigators to get information from witnesses, to compel testimony in

certain confined circumstances. Quite a number of things are being considered. So it's a long answer.

There's a lot of activity to try to improve the effectiveness of enforcement in Canada. I don't buy the rhetoric of the quote you use, but there's always room for improvement. I fully accept that. So we're working very hard on that.

Peggy, are you ready to give some statistics to Ms. MacLeod? We can provide more later, if she would like more.

**Ms. Peggy Dowdall-Logie:** Yes. I don't know if these statistics are actually going to be on track with respect to the specific questions you asked—for example, how many people have we banned from the markets? What I can do is attempt to get at the question by giving you other information, and then if at the end of my response you believe that I really haven't gotten to the core of your question, I'm certainly happy to provide more data at a later date.

From 2003 to 2008, the staff of the OSC have initiated approximately 431 actions against individuals and corporations. During that period, a total of three individuals were not convicted in provincial court, and there are two commission proceedings where allegations were not proven during that period as well. That's the number of actions that have been brought forward by staff of the commission from 2003 to 2008.

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Let me now narrow in with respect to where we are in 2008 with ongoing matters. I can't speak specifically about individual instances, but I can give you a flavour of the kinds of matters that are open in the enforcement branch.

With respect to fraud and insider trading, matters that staff of the branch are currently looking at, we have the following: We have one in the area of abusive sales practices; 22 in the area of abusive trading practices; 17 suspected—and I say “suspected”—fraud cases; 89 suspected illegal insider trading cases; 11 suspected non-compliance with a commission order; 23 suspected non-disclosure or misleading disclosure files; seven suspected sales of unregistered securities; and 87 suspected trading without registration or prospectus, for a total of 257 open files.

Am I getting anywhere in the range of what you're looking for?

**Ms. Lisa MacLeod:** That's helpful. The information we received from research and information services here at the Legislature gave us percentages, so at least we're getting to raw numbers. Might I suggest, then, that it might be best for you to get back to this committee with some of the direct questions that I've asked; if you could table those with the clerk.

**Ms. Peggy Dowdall-Logie:** Sure.

**Ms. Lisa MacLeod:** I'm glad you brought up insider trading, because that seems to be very much a concern in Ontario. Obviously it's a concern in the United States, and I don't think, from my research, anyway, that we have done enough; that is a whole discussion in and of itself.

Just one follow-up question with respect to human resources that you mentioned: You are without a head of enforcement and you have been without a head of enforcement since September?

**Mr. David Wilson:** That's correct.

**Ms. Lisa MacLeod:** Could you enlighten this committee as to why the province of Ontario and the Ontario Securities Commission does not have a head of enforcement, when it seems to be one of the biggest criticisms levelled against this organization? If you could just bring us up to speed.

**Mr. David Wilson:** Yes, sure, of course. The former head of enforcement, Michael Watson, was seconded to the IMETs unit, which, as many of you know, is the RCMP's securities fraud and enforcement specialist group. I guess he left the commission physically—

**Ms. Peggy Dowdall-Logie:** September 15.

**Mr. David Wilson:**—on September 15, and as often happens when there's an open position at the commission, we put in place interim arrangements so that the machine keeps functioning. Since September 15, Peggy Logie, the executive director, has been overseer of the enforcement branch. Peggy, why don't you give Ms. MacLeod kind of the operational approach you took to keep the machine of our enforcement branch running well as we search for a new leader?

**Ms. Peggy Dowdall-Logie:** One of the areas that we focused on in the past couple of years is succession planning, of course. We have what I believe and what we all believe is a very strong, capable senior management team in the enforcement area.

I rely on the senior management team on a daily basis, and we have created an operating committee which meets daily to deal with any open matters and any urgent issues that are coming forward to us. But we have an enforcement branch that is structured around intake, investigations and litigation, and we have key leaders in each of those three areas. What is happening currently is that those three areas report to me, and cooperatively we work together to manage the enforcement branch during the interim period.

**Ms. Lisa MacLeod:** Thank you.

**Ms. Peggy Dowdall-Logie:** You're welcome.

**Ms. Lisa MacLeod:** Mr. Hudak—

**The Chair (Mrs. Julia Munro):** I was going to say that I'd like to move on, but if you wish to take a minute or two—

**Mr. Tim Hudak:** No. Do you know what? I'll do it as a block. Thank you, Chair.

**The Chair (Mrs. Julia Munro):** Okay. Thank you. We'll go on to Mr. Prue, then.

**Mr. Michael Prue:** How much time do I have left?

**The Chair (Mrs. Julia Munro):** You have 10 minutes.

**Mr. Michael Prue:** Ten minutes; perfect.

In the US, the SEC is investigating capital market manipulation in the 2007-08 period by hedge funds and other relatively unregulated players. We all know that Canada and the United States are facing different secur-

ities issues, but is the OSC conducting any similar investigations?

**Mr. David Wilson:** The OSC pursues every indication of unusual market activity, so that's a generic answer. In the statistics that Peggy Logie just gave you, we have 89 insider-trading files currently open. Mr. Prue, I don't know exactly how many of those relate to potential market abuse, insider trading during the crisis, but 89 open insider-trading files is a goodly number of open cases for insider trading.

**Mr. Michael Prue:** It seems to me that, with 287 outstanding cases, there's an awful lot of wrongdoing going on down there at the OSC—not at the OSC; on the trading floor.

**Mr. David Wilson:** That wouldn't be a good thing in a regulator.

**Mr. Michael Prue:** Sorry—on the trading floor. Those are the ones you're catching. That seems to me to be quite huge.

**Mr. David Wilson:** I really haven't got a relative comparator for how many open files there are in Quebec or BC or the SEC for you, Mr. Prue.

Peggy, you're looking expectant. Do you have anything to add on putting things in some context?

**Ms. Peggy Dowdall-Logie:** Yes. As David said, the 89 is a raw number. So those would be matters that would come to us from IIROC. IIROC has a daily practice of monitoring markets, and if they see anything that looks like suspicious activity they send it to us, and then we run it through a program—I don't want to get into a lot of the details. That 89 would then turn into a different number at a certain point, as we walk our way through the investigations. I think what the 89 is indicating is a level of sensitivity in the programming that both IIROC has with respect to their market monitoring, and then with respect to the programming that we use to, in fact, come out to the results of an investigation.

**Mr. David Wilson:** On a generics basis, I'd say that we are not unhappy to have 250 open investigation files. It proves, in numerical terms, that we are very active and busy. One of the quotes that Ms. MacLeod had in her earlier question was that the OSC doesn't do enough. Well, we're doing plenty, and those numbers demonstrate it.

**Mr. Michael Prue:** But you don't have a plan, like the United States, that you're actively going out looking at this. You're doing it on an individual basis.

**Mr. David Wilson:** We're doing it as the possible unusual market activity comes through, but we have created within the enforcement branch a specialized insider-trading unit that takes the information from IIROC, analyzes it, decides how to best gather the information with the quest for proving wrongdoing, if it in fact occurred. So there is a specialized insider-trading unit, just as the SEC has, I believe, and certainly as the comparable regulator in the UK, the FSA, has a specialized insider-trading unit.

**Mr. Michael Prue:** Okay. To go on in the same vein, Utpal Bhattacharya, a professor of finance at Indiana

University, conducted a study as part of the Task Force to Modernize Securities Legislation in Canada in 2006. He compared securities enforcement by OSC and the SEC. Here's one of his conclusions, and it's troubling to me: "The SEC prosecutes 10 times more cases for all securities laws violations, and 20 times more insider-trading violations than the OSC prosecutes...." And "the SEC ... fines 17 times more per insider-trading case than the OSC does." Why is this?

**Mr. David Wilson:** Well, those are pretty dramatic numbers. Of course, I'll make the obvious first comment. The SEC is the regulator for a country of 300 million people; the OSC is the regulator for a province that has 13 million people. So just on the arithmetic of population—I don't know if he has adjusted for population in those numbers, but it's—

**Mr. Michael Prue:** I believe so.

**Mr. David Wilson:** I'll just ask—he did adjust for population? Okay. I just wanted to clarify that.

**Mr. Michael Prue:** Yes. So why is it that they prosecute 10 times more cases? Why is it that they have 20 times more insider-trading violations than the OSC prosecutes? Why is it that the SEC fines 17 times more per insider-trading case? That's the nub of what everybody wants to know: Why is it that they do all of this and we appear not to?

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**Mr. David Wilson:** Well, we have, as I said in answer to your previous question, and as Peggy said, a lot of open files—89 open files right now on insider trading, so we're very active in the area.

I don't have an explanation about the difference in the numbers in that study that was done. The markets are different. There may be different conduct. It's very hard to compare market to market.

We can get you some numbers, if you wish, on activity in the United Kingdom, because we're aware that in the UK, there's a lot of criticism that the FSA doesn't prosecute insider trading as much as the SEC either. Different legal systems make comparisons quite difficult.

Insider trading is a criminal offence in certain cases, and the OSC doesn't pursue criminal activity, as I mentioned in my opening remarks. So it's very hard to get an apples-to-apples comparison that's valid. That's the best answer I can give you, Mr. Prue.

**Mr. Michael Prue:** Okay. On the same enforcement, we have information that's been provided by research: "Enforcement: Concluded settlement and contested hearings before the commission." It shows that the number of proceedings continues to decline.

On individual respondents: 2005-06 was 36; 2006-07, it went down to 26; and in 2007-08, down to 12.

Corporate respondents, the same thing: 16 in the first year, then down to five, and this year, down to four.

Sanctions: Cease-trade orders went from 17 the first year, 2005-06, up to 18—it actually went up one—in 2006-07, but down to 10 the last fiscal year.

Exemptions removed: 11 the first year; slightly up, to 14; but now down again this year to seven.

Director and officer bans: 21 in 2005-06, down to 12 in 2006-07, and down to eight in 2007-08.

Registration restrictions: 11 in 2005-06, down the next year to five, and then down this year to four.

All of the statistics are going down and down and down in what you're doing. Now you tell me—I just asked you about the States, and you're telling me that everything seems to be fine.

**Mr. David Wilson:** The numbers that you've read out, I believe, are from our annual report.

**Mr. Michael Prue:** Yes.

**Mr. David Wilson:** We have those numbers in front of us here today. We also have numbers which are not published yet, which will be in our annual report when we produce it. We have numbers for the first six months of 2008-09 in those same categories that you cited.

**Mr. Michael Prue:** And what do they show? That your numbers are starting to go back up?

**Mr. David Wilson:** I can walk through those seven numbers, if you like, or we can provide them to the committee offline.

**Mr. Michael Prue:** Sure, okay. For the first six months of this year, what are they?

**Mr. David Wilson:** The number of proceedings is 10. Individual respondents is 13. Corporate respondents, the number is two.

This is for six months, so if you simply annualize them, the numbers would double.

Cease-trade orders, the number is 11; exemptions removed, the number is eight; director and officer bans, the number is 11; registration restrictions, the number is three.

These are our six-month numbers so far this year.

**Mr. Michael Prue:** All right, so they seem to be going back up, then. Why is that?

**Mr. David Wilson:** The numbers are not a steady stream every year. Peggy, do you have something to add?

**Ms. Peggy Dowdall-Logie:** In many cases, it depends on the complexity of the files that we're focused on in the enforcement branch. As David says, it's very difficult to come to a conclusion based on a 12-month activity. What we attempt to do here is provide a snapshot, but we recognize that it is not an accurate snapshot necessarily, because of the types of files that we're taking in on a day-to-day basis. So, if we have a particular file that has a number of complex components to it, clearly that is going to take a longer period of time.

Now, one of the things that I would like to add to what David was just talking about: With respect to the registration restrictions, we do have a tool that we do use with respect to registration, which is called terms and conditions. I don't know whether you have that data, but I'll give it to you if you're interested in it.

For the six months up to today's date, we have attached terms and conditions to 742 firms and 1,020 individuals, terms and conditions on registration. That's a fairly proactive and powerful tool that we have and it is something that we will begin to report on in our upcoming annual report.

**The Chair (Mrs. Julia Munro):** Thank you very much. We must move on. Mr. Ramsay?

**Mr. David Ramsay:** Thank you very much for your presentation, Mr. Wilson. I want to return to the area of regulation. You note in your presentation that good regulation protects the investor, and rightfully so. You also mention that one should be careful not to overregulate. I think what we're talking about there is that you want to have an efficient market so that it's free to do its job. I guess what we're talking about is a sense of balance there.

You also note that the World Bank has rated us fifth in the world in regards to regulatory protection—the United States, seventh in the world. Throughout your presentation, you always talk about how we can do better, and, of course, that's why we, as legislators, are here always trying to do better.

I'd be interested to know what other jurisdictions are ranked above us by the World Bank and, in your opinion, if these are efficient markets. Could we still bring in more regulation and still pride ourselves that we would have an efficient market that would function well?

**Mr. David Wilson:** Mr. Ramsay, I'm sorry, I don't have in my head the rankings. I know that Canada ranked fifth in this particular study and the US ranked seventh, but I'd be happy to get you the full list of ranked countries in terms of investor protection, as ranked by the World Bank, after the hearing. I just don't know who the other countries are. I could speculate but I'd want to confirm that they are all developed market countries, countries with fully robust, developed markets; developed in the same sense as the US and Canada, so countries like the UK, France, Hong Kong and Australia. That's a guess, but we can get you the numbers.

**Mr. David Ramsay:** I'd be interested, as the regulator and the enforcer—as a legislator, from my side, are there more tools that we could give you to make your job more effective in what you do day to day?

**Mr. David Wilson:** Thank you for that question. I think that was the unanswered question that Ms. MacLeod had earlier—what other tools would be useful for the OSC to have to do our part of the work in the enforcement mosaic.

We just did receive a new law passed by the Legislature called "reciprocal orders." I just thanked the minister for that when I met with him 10 days ago or so. What a reciprocal order does is it allows us to recognize a judgment in an enforcement matter in another province, like Alberta. We can then impose the same sanction on that person on a reciprocal basis in Ontario. It's a useful power to make a more uniform enforcement landscape in Canada. That's a small example.

In terms of other asks, the minister has asked us that very same question. The reciprocal order was the first thing we asked him to do. Larry Ritchie and I are working on other aspects of the enforcement mosaic outside the powers we have in the statute. I think it's fair to say, Larry, that the powers in the statute, which have been augmented periodically in the last four or five years by

the Legislature for the securities regulatory piece, are ample for the moment. Is that fair to say?

**Mr. Lawrence Ritchie:** That is true, and one of the points that we should emphasize in terms of the work that we are doing really goes back to the comments that David made about the enforcement mosaic and the role that the OSC plays in enforcement with our other partners in the mosaic. That's a very important reality on the ground and it is something that we have to focus on and we are focusing on, in terms of working with our other partners to break down the silos that have traditionally existed between all of the elements in the mosaic, and have a broader understanding of all elements in the mosaic: sharing information, making sure that the appropriate part of the mosaic reacts promptly and most effectively when a matter comes up, greater intake, broader education, sharing of those resources and a greater understanding of what each of us can do in that part. That's sort of outside of squarely the legislative, but it is a constant examination of whether we, as members of the mosaic, have the effective tools and how we can better use the tools that we already have in the Legislature and in other pieces of legislation like the Criminal Code.

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**Mr. David Ramsay:** Good, thank you.

**The Chair (Mrs. Julia Munro):** Thank you very much, and we'll move on, then, to Mr. Hudak.

**Mr. Tim Hudak:** Thank you very much, folks, for coming before the agencies committee today. I want to revisit what my colleague Ms. MacLeod had brought forward, the issue of what is sadly known as the Canadian discount, the notion that there is not trust in the regulator in the province of Ontario or in our system overall, and that means international investors need have an enhancement or a discount on their decisions to make up for lax enforcement. Secondly, a concern that retail investors, average folks, families and seniors here in the province of Ontario put their investments at risk by putting faith in the OSC. Is the Canadian discount fictitious, or are you concerned about it?

**Mr. David Wilson:** I don't want to overcite the World Bank study, but the World Bank study said that Canada ranks fifth in the world in investor protection, so that's a pretty credible source. However, I wouldn't pretend that everything is perfect in enforcement in Ontario. There has been talk in speeches and academic papers about whether there's a Canadian discount, i.e., is the cost of capital higher in Canada because of a perceived weakness in the enforcement structure?

The Allen report, which was the report that the study that was referred to was done as a background paper to, concluded that there was no convincing statistical evidence that could prove that there was a Canadian discount, so it's a very difficult thing to prove.

The previous governor of the Bank of Canada, David Dodge, made some speeches where he said the Bank of Canada's research indicated there might be a higher cost of capital in Canada for whatever reason, and it could be

as much as a quarter of 1%, but I've never seen the detailed study.

So the Canadian discount has been talked about a lot, and we're constantly aware, as I said in my remarks, of the criticism and oversight and comments people make about enforcement in Canada.

**Mr. Tim Hudak:** Do you think it's a fiction or do you think the jury is out?

**Mr. David Wilson:** There's a perception that enforcement in Canada is not as rigorous as it is in the US.

**Mr. Tim Hudak:** Let's look at some recent examples: It is widely believed that the OSC and the Canadian authorities dropped the ball on the Conrad Black situation; Bre-X Minerals, which is now a decade of investigation and courtroom battles, and nobody was found to be accountable for a multibillion-dollar gold fraud; YBM Magnex, the stock market scandal—the FBI believe directors have links to the Russian mob, the OSC set light fines and penalties; Michael Cowpland of the Corel Corp. fined only \$1 million for allegations that he had \$20.4 million sold in advance of bad earnings; Andrew Rankin, in a highly controversial case, got a veritable slap on the wrists of \$250,000. Isn't this an embarrassing record at the OSC?

**Mr. David Wilson:** I could spend a lot of time talking about each of those cases, Mr. Hudak. Why don't I respond, just in part, by talking about a couple of them, as instructive of some of the points I made earlier.

You mentioned the Black case, a very high-profile case in the media. There is, at the moment, and has been for a number of years, an open matter in front of the OSC's tribunal on Black and Radler and Hollinger Inc. That matter has been deferred many times, pending the outcome of criminal prosecution in the US. The reason I raise it is to dramatize the difference I spoke about in my opening remarks. There's constant confusion between regulatory enforcement, which is what we do, and we are pursuing with Black and company, and criminal enforcement, which is done by the criminal authorities. In the United States, it was not the SEC that put Conrad Black in prison; it was the US criminal justice system. So—

**Mr. Tim Hudak:** And that's just a short list, I say with respect. Isn't that a devastating indictment of the OSC and our system, that many high-profile cases have, quite frankly, caused concern about investing in Canadian markets and underlie the thought of the Canadian discount? That's a lot of high-profile cases in a short period of time.

**Mr. David Wilson:** But, as I say, to compare the OSC's role in those cases with the criminal justice system in the US, I believe, is an inappropriate comparison.

I'll comment on one other case you raised, Mr. Hudak: the Andrew Rankin case, which is now a completed case. He was banned for life from ever operating in the business that he had earned his living in in Canada before. He'd made well into seven figures per annum, and he's banned for life from ever earning a living in that business again. That's the sanction that we imposed on him.

**Mr. Tim Hudak:** But with that kind of volume, he gets a \$250,000 slap on the wrist. That's such a light slap, it probably didn't even leave a red mark, in the Rankin case.

**Mr. David Wilson:** Banning him for life from participating in the Ontario capital market is not a minor sanction for someone who has earned their living in that market.

**Mr. Tim Hudak:** A recent Bloomberg news study prepared by Port Hope-based Measuredmarkets Inc. showed that in 33 of 52 large Canadian mergers in 2006, there were signs of aberrant trading just before the mergers were publicly announced. That's a rate of 63%. What kind of red flag did that raise with you and what did you do about it?

**Mr. David Wilson:** Every case of unusual trading before an announcement—Peggy described this a bit earlier—is identified by the surveillance team at IIROC. Every case of unusual activity is shipped over to our insider-trading unit, and if it's an Ontario activity on the Toronto Stock Exchange, we pursue it. We open a file and we see if we can find evidence of improper insider trading. Insider-trading cases are very difficult to prove because there are no eyewitnesses, but we pursue every case of unusual trading that's brought to our attention.

**Mr. Tim Hudak:** According to your annual report, between 2005-06 and 2007-08 the number of staff at the OSC has increased from 378 to 429. That's a 13% increase. The number of staff making \$100,000 per year or more has increased by 29%.

When I look at your enforcement figures from the same annual report in that time frame, they have actually dropped. The number of proceedings, individual respondents, corporate respondents, sanctions, have all dropped.

You had far more staff but far less enforcement. What's going on?

**Mr. David Wilson:** As we've spent a fair bit of time today talking about enforcement with a number of the questioners—we have been putting more resources into what I refer to as the compliance-enforcement continuum. Compliance is oversight before misconduct occurs, and enforcement is pursuit after potential misconduct has occurred. As you point out, human resources have been increasing in the last few years as we have bolstered the capabilities of the OSC in those two critical areas. We've had a lot of criticism about our enforcement activities, some of it justified, some of it not. We are responding by putting resources to work to improve our performance. I don't see anything inappropriate about that. That's the reason for the increase in those numbers.

**Mr. Tim Hudak:** Chair, how much time do I have?

**The Chair (Mrs. Julia Munro):** About 30 seconds.

**Mr. Tim Hudak:** I do feel strongly that 20 minutes per party is quite a small amount of time for the seriousness of the issues that have been raised, I think, by members of all three parties.

I appreciate the chairman's responses. I say, with respect, that it seems like there's a satisfaction with mediocrity at the OSC. I hear generalizations about what

they're doing about it, but I'm not seeing the facts and I'm not seeing the kind of outrage that I think there should be. Actually, I'd rather see the OSC banging on the minister's desk and demanding the right changes, rather than sort of sitting back and accepting this notion of the Canadian discount, as they seem to do far too lightly.

I have some questions around Fund Facts and the paperwork burden, and I'll be quick with this, Chair. I appreciate the document that you're bringing forward to make it much easier for a basic investor to understand mutual funds and other instruments. I do worry about some proposals that would get in the way, between the broker and the individual client: the sign-off provisions. If my broker had recommended a fund to me—not being a particularly sophisticated investor—as an example, is the requirement going to be for me to sign off on that? Isn't that going to cause a lot of delays and be a bit impractical?

**Mr. David Wilson:** We can be very quick, Madam Chair. My colleague Mr. Ritchie focuses a lot of time on exactly what you're asking about, Mr. Hudak. Larry, could you briefly give an answer?

**The Chair (Mrs. Julia Munro):** I'd ask you to be brief.

**Mr. Lawrence Ritchie:** I'll be very brief.

The Fund Facts document and the point-of-sale document and the point-of-sale project really go to the core of some of the questions that were talked about in the first half of the questioning.

It is first and foremost an important investor protection initiative. It is a means of getting meaningful, coherent information to a client, to an investor, prior to making the investment decision. There is no requirement, as proposed, to sign off. It is a way to focus on the adviser relationship, on the information that advisers need to provide to investors prior to making an investment decision. It is an important initiative. I think it's a world-class initiative. It is out for public comment now, as an initiative. It will come back in the form of a rule, which will give rise to further comment. So we're in the consultation stage.

We are committed to seeing this as an important initiative to provide investors with meaningful information at the time that they need it most: before they make an investment decision.

**The Chair (Mrs. Julia Munro):** Thank you very much. This concludes the time we have available. I want to thank all of you for coming here and participating this morning.

*The committee adjourned at 1027.*









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