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Mardi 7 Avril 2009

**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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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

COMITÉ PERMANENT DES ORGANISMES GOUVERNEMENTAUX

Tuesday 7 April 2009

Mardi 7 Avril 2009

The committee met at 0900 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mrs. Julia Munro): Good morning, ladies and gentlemen, and welcome to the Standing Committee on Government Agencies. Our first order of business this morning is the report of the subcommittee on committee business dated Thursday, April 2. Ms. Sandals.

Mrs. Liz Sandals: You're sounding a little better today, Madam Chair.

The Chair (Mrs. Julia Munro): Thank you.

Mrs. Liz Sandals: I move concurrence in the report of the subcommittee dated Thursday, April 2, 2009.

The Chair (Mrs. Julia Munro): Any discussion? Seeing none, all in favour? Opposed? This motion is carried.

AGENCY REVIEW

ONTARIO SECURITIES COMMISSION

The Chair (Mrs. Julia Munro): Our next order of business is the resumption of our agency reviews. We are very pleased this morning to have with us officials of the Ontario Securities Commission. The Ontario Securities Commission has accepted our invitation to respond to stakeholder presentations made to the committee in February.

Mr. Wilson, welcome back. I'd ask you, for the purposes of Hansard, to introduce those others who may also speak. I understand that you have approximately 35 minutes in which to respond to stakeholder issues, and then the remaining period will be divided amongst the three parties for any comments or questions. Please begin.

Mr. David Wilson: Good morning, Madam Chair, members of the standing committee and ladies and gentlemen. Thank you for inviting us back. As you may recall from our previous meetings, my name is David Wilson. I'm chair of the Ontario Securities Commission. As requested by the Chair, I'll introduce the two gentlemen with me, OSC vice-chairs Larry Ritchie and Jim Turner.

We welcome the opportunity to update the committee and respond to important issues raised by stakeholders when we were last here on February 23. We're providing the committee with a fairly extensive written submission, 37 pages long, but are glad to be able to speak to you

directly as well this morning. Some areas that we'll discuss today have been noted before, but they bear repeating.

First, I would like to provide an overview of our response to the stakeholder comments, which we think can be grouped around four key areas: (1) the global financial crisis; (2) the needs of investors, especially retail investors; (3) the enforcement of securities regulation; and (4) the accountability of the OSC.

I realize that we have a lot of ground to cover this morning, so I'll be as concise as possible. Then I'll ask our vice-chairs to address some specific issues in more detail. As Madam Chair said, we plan to speak for approximately 35 minutes and then take your questions.

Let's begin by addressing what remains at the top of everyone's mind: the current financial crisis. This crisis has been years in the making. It emerged very quickly, and it has taken financial experts, economists and governments by surprise. It will take time and effort for the world to extricate itself from its current difficulties.

As this process unfolds, governments and regulatory agencies have had to take steps to calm markets and restore stability, and the OSC has stepped in to do its part. We have responded promptly and prudently. Since the crisis began, we have closely monitored disclosure by public companies, especially companies that are highly leveraged or are in the critical financial services sector; we've undertaken compliance reviews of money market funds and non-conventional investment funds to assess potential exposure to toxic assets; and we've begun conducting compliance reviews of hedge fund managers to assess any unusual risks. In Ontario, portfolio managers of hedge funds must register with the OSC. This is in contrast to the US, where most hedge fund advisers are exempt from registration.

The OSC is participating in domestic and international initiatives on the governance, disclosure and reliability of a variety of entities in the financial markets during this time of crisis. For example, in October 2008 we issued an asset-backed-commercial-paper consultation paper—an ABCP consultation paper—together with other Canadian securities regulators, recommending that credit rating agencies be required to comply with a global code of conduct, a benchmark developed by IOSCO, the International Organization of Securities Commissions. Jim Turner will tell you more about that in just a few moments.

We continue to monitor events and remain alert to developments in the securities markets, watching for signs of improper conduct. At this time, it is especially important to increase our vigilance to fulfill our mandate, which is to provide protection to investors and foster confidence in the integrity of capital markets. And we continue to be confident that Ontario and Canada have a sound financial sector and a sound regulatory framework. That's backed up by a recent review by the International Monetary Fund. The IMF examined our regulatory system and concluded that it is mature, sophisticated and well managed.

The second area I'd like to talk about this morning is investor protection, which is one half of our mandate, so let me turn to that now.

We believe that good regulation protects investors, and we believe that good regulation comes, in part, from listening to investors. We also believe that informed investors are better equipped to protect themselves and to help us protect them.

We recognize that to serve the interests of all investors, large and small, it's important to obtain their input on securities-related matters, and we're taking steps to obtain that input from both institutional and retail investors.

We've hosted different events to solicit the views of investors, such as an investor town hall and an investor forum. We also set up an investor advisory committee with a two-year mandate. And we've worked with our self-regulatory colleagues, the Investment Industry Regulatory Organization of Canada, known as IIROC, and the Mutual Fund Dealers Association, as well as with the Ombudsman for Banking Services and Investments, to coordinate our efforts. Together, we four organizations have created a permanent joint standing committee on retail investor issues.

These are steps in a continuing process of improvement. We recognize that we have more to do, yet we're well on the way to developing better channels of communications with investors.

For example, we're considering the establishment of an investor secretariat within the OSC. It would identify issues of concern to investors and raise awareness of them within the OSC. It would also examine the best way to obtain retail and institutional investor input. Vice-Chair Larry Ritchie will provide more details on these initiatives in just a few moments.

We recognize that the general public needs to be better educated about investing. This has been the case for some time, but has certainly been highlighted by the current crisis. As a result, we continue to make investor education a priority.

We're working with a variety of partners to promote investor education. These include other Canadian regulators, the SROs, the Financial Consumer Agency of Canada and the Ministry of Education here in Ontario. We're also working with other Canadian regulators and SROs to improve, for example, how investor complaints are handled and how disputes are resolved; disclosure to

investors before they buy mutual funds or segregated funds; and registration standards for advisers and investment fund managers.

The first of these three issues has drawn considerable attention. Although significant improvements have been made, investors continue to raise concerns about complaint handling and redress. We're sensitive to these concerns and we continue to explore options to compensate harmed investors.

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I would like now to turn to our third major issue, enforcement. Enforcement is a key in an effective securities regulatory system. As a result, the OSC has always made enforcement a top priority. However, we also acknowledge, and have acknowledged for some time, that enforcement could and should be better in Canada.

We believe the enforcement framework in Canada is not as effective as it could be because we have too many regulatory authorities: The provincial and territorial regulators, law enforcement, and federal and provincial justice departments are all part of the enforcement mosaic. The OSC and the government of Ontario have long been on record as favouring the creation of a single national securities regulator for Canada, which we feel would enhance regulatory and criminal enforcement. As I have said before, a single national securities regulator will not be a silver bullet that will solve every issue commissions now face separately, but there can be no doubt—no doubt at all—that it would be a step in the right direction. We have welcomed the report of the Expert Panel on Securities Regulation in that spirit.

Until such a single regulator is negotiated into existence, we will continue to work within the framework we have to enforce regulation and uphold the integrity of our markets. Indeed, we're working with provincial and federal governments, other securities regulators, the SROs and law enforcement agencies to strengthen enforcement in Canada. The OSC is committed to co-operating effectively within the current enforcement mosaic.

This standing committee and our minister have asked about new tools that we could use to strengthen enforcement. One new enforcement measure was recently enacted, an amendment that enhances our power to reciprocate enforcement orders from other jurisdictions.

We already have an array of enforcement powers and tools. But as technologies improve, investment products become more sophisticated and markets across the globe become more integrated, regulators need to keep up, because those who would abuse investors are also finding new ways to skirt or breach regulations. That's why we frequently evaluate our tools and enforcement powers and make sure they are up to the job. We're looking at new tools that we'll propose to the minister for his consideration.

Some of these will require legislative amendments. They include:

- creating a framework for regulatory oversight of credit rating agencies;

- strengthening our ability to preserve assets during an investigation;
- broadening the definition of illegal insider tipping; and
- clarifying the OSC's jurisdiction over companies in the US over-the-counter market that engage in manipulative or illegal activities aimed at Ontario investors.

We will continue to monitor our enforcement arsenal to make sure that we have the means at our disposal to foster the integrity of our capital markets. Enforcement has improved, and we're committed to making it even better.

Fourth and finally, since this committee is all about accountability, let's review accountability at the OSC. We recognize that we must be accountable to the people of Ontario, and we are: to the Ontario Legislature through the Minister of Finance; through this committee; and through publicly available documents and filings such as the memorandum of understanding with the minister, our annual report, our statement of priorities and our code of conduct for staff and commissioners. This code of conduct was revised in 2008 as part of the process to meet our obligations to comply with the Public Service Act of Ontario.

We're aligned with the government of Ontario's commitment to strengthen accountability and transparency in the public service. Before we propose any new rules for the minister's consideration, we undertake a careful and open process. We invite comment from the public, we include consultation with stakeholders, and we complete a cost-benefit analysis. It's an open and transparent process.

Finally, the OSC has a strong corporate governance charter. The charter outlines the roles and responsibilities of our commissioners, the board of directors and the committees of that board. It also outlines the process for appointing commissioners through the Public Appointments Secretariat.

All these measures ensure that the OSC operates in full view of the public eye. They give the public, the Legislature and stakeholders a clear understanding of the OSC. They ensure that the public can measure the OSC against its mandate: to provide protection for investors and to foster fair and efficient capital markets.

Thank you for your interest and your attention this morning. I promised I would be brief, so I would now like to introduce Vice-Chair Larry Ritchie, who'll talk in more detail about our focus on investors.

Mr. Larry Ritchie: Thank you, David.

I'm here to speak about some of the issues that you have heard about from witnesses and submissions relating to matters that are most relevant to retail investors. The retail investor is the most vulnerable of market participants, and therefore protecting retail investors is and needs to always be in the front and centre of everything that the OSC does. While we are making good progress and have come a long way, we recognize that there is a lot of work that needs to be done to improve the lot of investors in Ontario. More detail about these initiatives

and what we have been doing is in our written submission, but briefly, here are the things that the OSC is doing for the benefit of investors.

The OSC is committed to improvement of complaint handling and dispute resolution, as David said, both in Ontario and nationally. Through our work with the Joint Forum of Financial Regulators, we're collaborating with OBSI, the Ombudsman for Banking Services and Investments, and others to enhance the dispute resolution process.

As well, we're working with our colleagues at the self-regulatory organizations to better harmonize the complaints process across the country. Both IIROC and the MFDA have proposed policies which impose standards and deadlines on how firms must investigate and deal with client complaints. These proposals have been the subject of lengthy and extensive comment periods. We anticipate that these will be presented to the CSA for approval shortly and will be integrated into the CSA's registration reform project.

On the registration reform project, I should say that that initiative is probably the most ambitious ever undertaken by the OSC and its partners in the CSA. The initiative increases and broadens the oversight of those who deal directly with investors and their money. Among other things, it requires investment fund managers, including those managing hedge funds, to be registered. You've no doubt heard that the G20 leaders committed to enhancing the regulation of hedge fund managers and other market participants who have currently been under-regulated in many markets. Essentially, they're calling for the adoption of the type of requirements that we have long proposed and supported.

Our approach in Ontario places us at the forefront of regulatory reform internationally. We're very proud of the leadership role that we've taken in this area.

Point of sale and mutual fund disclosure: As David mentioned, we're making substantial changes in disclosure for individuals in mutual funds, probably the most accessible investment products available to and marketed directly to individual investors. We've responded to investor feedback seeking simple and clear information about what they're buying, including fund performance, risk factors and costs, by requiring firms to provide investors with a new, two-page plain-language document called Fund Facts. Fund Facts is easy to understand and will be distributed at the point of sale when investors need that information the most, before they make a purchase. The point-of-sale project gives retail investors tools to make proper investment decisions, to make meaningful choices and therefore to be better protected.

The OSC works diligently to investigate and prosecute perpetrators of scams and illegal distributions. The OSC's goal is to take quick and appropriate steps to protect investors before money is lost. In the course of our staff's investigations, if staff become aware of investors who have been victimized, they proactively contact them and alert them to the possibility that they are vulnerable to further scams and further attempts to steal their money.

Through proactive enforcement, we're complementing our oversight function to ensure that investors are protected and that markets remain reliable.

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One of our roles must be to create a more knowledgeable investing public, helping people to protect themselves. We've also been active in reaching out directly to investors, helping them understand the regulatory framework and how to make effective complaints, and helping to increase financial literacy in Ontario and Canada.

Over the past five years, we've spoken directly to almost 83,000 investors at 470 trade shows and community events across this province. We've also distributed over 480,000 investor brochures.

Within the structure of there OSC itself, we've created an investor assistance area in our contact centre to provide investors with access to a team of knowledgeable professionals. This group responds to investor complaints and inquiries and guides them on to how to make an effective complaint.

In 2000, the OSC established the IEF, the investor education fund, with its goal to promote financial literacy in Ontario. Through direct involvement in the school system, as well as with adult learners, they're pursuing that goal. It is funded by fines and settlements from OSC proceedings.

The OSC works closely with the IEF on investor outreach initiatives and in the promotion of financial literacy at all levels of the population. It's also important that we listen to those investors and to seek input to help us do a better job.

As you know and as David mentioned, in 2005, the OSC established an investor advisory committee with a two-year mandate to obtain advice from various parties on issues of importance to retail investors. At the end of the two-year term, the OSC decided that it would not immediately appoint new members to the advisory committee. Instead, we would consider the strengths and shortcomings of the advisory committee forum for retail investor input and investigate a more effective means of obtaining investor input.

In the meantime, as David mentioned, the three regulators, the OSC, IIROC and the MFDA, as well as a fourth party, OBSI, set up the joint standing committee on retail investor issues, a permanent forum to better coordinate and consult on issues most relevant to retail investors. The joint standing committee has sponsored and will continue to sponsor consultation and outreach initiatives to better engage investors on specific issues.

In the fall, we held our first consultation on product suitability issues, and the members have published the results on their websites. We're following up with a subsequent consultation shortly, and the results of that consultation will also be made public.

The establishment of the joint standing committee is one of a number of initiatives through which issues affecting retail investors can be identified and considered and related policy initiatives coordinated and enhanced among the regulators.

We've learned a great deal from the input we received from our town hall and investor forum meetings and our experience with the investor advisory committee, our efforts within the joint standing committee, as well as from a variety of interested persons, including those who testified before you.

We've also been influenced by numerous reports and substantive proposals published on these topics, including most recently in the Hockin commission report.

We're in the midst of working towards realizing three distinct but interrelated initiatives that we believe directly respond to much of what we have heard. Each of these initiatives are at a fairly early stage of development and much work has to be done to pursue them to bring them to operational reality, but raising them with you today should give you a sense of the direction that we're headed.

The first involves, as David mentioned, the setting up of an investor secretariat within the OSC. The secretariat will be like a hub, interacting with the operating branches of the OSC to help them better identify issues of interest to retail investors and to identify and assess the impact of OSC projects on retail investors. The secretariat intends to publish those assessments and encourage responses from the investing public. Overall, the secretariat will sharpen the focus on investor issues at the OSC.

The second initiative is to support and work with the IEF to expand the IEF's outreach initiatives. We support the IEF's leadership role in providing research and related information and tools to the broadest range of consumers and would-be investors. A strengthened IEF will emphasize that it is not only the promoter of effective investor education, but also a retail investor support resource.

The third prong of this three-prong initiative refers us back to our efforts to establish a more effective means through which to receive input from retail investors. We've heard comments from stakeholders on this issue and, in principle, the OSC supports the concept of a funded, independent voice for retail investors. But we also recognize that the UK consumer panel model, which deals at a national level and on all financial matters which are much broader than the OSC's limited jurisdiction, does not fit neatly into our regulatory framework. However, some appropriate structure should and will be found. We're currently in the process of reaching out to third party organizations and universities to assist us with this initiative.

We have greatly enhanced investor protection through good regulation, co-operation with many other regulators in Canada, better enforcement and more expansive resources for retail investors, but there is more work to do, and we are committed to hearing directly from retail investors to find more and better ways to serve and protect investors.

Now I'll turn it over to my colleague, Vice-Chair Jim Turner.

Mr. Jim Turner: Thank you, Larry.

Good morning, Madam Chair and members of the committee. My name is Jim Turner and, as Larry indicated, I'm the other vice-chair at the commission. I will be very brief in my remarks. I wanted to focus on two areas that David touched on briefly in his remarks: first, the regulatory proposals related to non-bank-sponsored asset-backed commercial paper, referred to as ABCP; and then secondly, the OSC's initiatives in the area of corporate governance.

With respect to asset-backed commercial paper, I wanted to talk briefly about the restructuring, which was led by the Pan-Canadian Investors Committee in respect of the non-bank-sponsored ABCP. As you know, that restructuring was completed earlier this year. Secondly, I'd like to talk about the Canadian Securities Administrators' regulatory proposals with respect to non-bank-sponsored ABCP.

With respect to the restructuring, the OSC is pleased that an agreement was reached in January for a private sector—or a mostly private sector—restructuring of the non-bank-sponsored ABCP market. The Pan-Canadian Investors Committee completed the restructuring after complex negotiations that lasted more than a year. Most retail investors in non-bank-sponsored ABCP have been made whole with respect to their principal investment and with respect to interest. Some other investors, a relatively small number and primarily those holding more than \$1 million in asset-backed commercial paper, received restructured longer-term notes on the same basis of other corporate entities and institutions under the restructuring.

The OSC is continuing to review the activities and conduct of manufacturers and distributors of asset-backed commercial paper, and in doing that we're working closely in co-operation with IIROC, the Investment Industry Regulatory Organization of Canada, and with the Quebec AMF. It's not appropriate for us to speculate at this time whether there was a breach of securities laws in connection with the distribution of the ABCP or whether there may have been breaches of other laws.

Let me turn to the CSA/ABCP consultation paper that David mentioned. We are working with our colleagues in the Canadian Securities Administrators to develop proposals to respond to regulatory issues identified as a result of the credit crisis and what happened to asset-backed commercial paper. We issued a discussion or working paper in October of last year requesting comment on a number of regulatory changes. We're currently in the process of reviewing public comment with respect to the proposals we suggested.

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Let me just address, at a very high level, the key proposals from the working paper. First, as I think you know, asset-backed commercial paper is issued pursuant to the commercial paper or short-term-debt exemption. As a result of that, both the issuance and trading of asset-backed commercial paper is not directly regulated by us. In our working paper, we proposed excluding all asset-backed commercial paper from the short-term-debt exemption. In

our view, structured finance products are generally too complex to be issued under that exemption. We do, in conducting our review, however, recognize the importance of the short-term-debt market generally with respect to the raising of capital, and whatever proposals we proceed with, we do not want to interfere with that market any more than absolutely necessary.

With respect to the question of disclosure and access to information, we were concerned, in connection with the asset-backed commercial paper market freezing, that there was insufficient information available to investors with respect to asset-backed commercial paper. Investors in ABCP had trouble getting detailed information with respect to the assets they held. We are proposing to make proposals creating greater transparency for asset-backed commercial paper.

David mentioned credit rating agencies. Credit rating agencies are not currently regulated in Canada. There is legislation in the US that regulates them and there will soon be European legislation doing the same thing. We believe that it's appropriate to impose some level of regulation on credit rating agencies, but we also believe that this regulation should be consistent with the standards being established internationally. So we have proposed a framework for regulating credit rating agencies that essentially requires disclosure and compliance with the IOSCO code for credit rating agencies, IOSCO being the International Organization of Securities Commissions. We are currently participating on an IOSCO taskforce, coordinating internationally compliance by credit rating agencies with regulatory requirements. I might just add that there is only one Canadian-domiciled credit rating agency, and that's DBRS. DBRS is also currently subject to regulation with the SEC.

One of the other issues that is important in this context is the role of intermediaries in connection with the sale of asset-backed commercial paper to retail investors. IIROC, the Investment Industry Regulatory Organization of Canada, regulates investment dealers and intermediaries. We, of course, have supervisory authority over IIROC as a self-regulatory organization. There are existing know-your-client and suitability requirements imposed on IIROC members. In order to comply with those suitability and know-your-client obligations, intermediaries must understand the nature of the products they sell. IIROC concluded, in a report last fall, that some intermediaries failed to comply with that obligation in recommending and selling ABCP to investors. IIROC is currently taking steps to ensure that intermediaries understand their obligations and that appropriate new product review occurs. These matters are also the subject of a current IIROC investigatory review.

With respect to corporate governance, the CSA has proposed new rules with respect to corporate governance; they're out for comment. We are proposing a much more principled-based approach that permits issuers to adopt governance practices relevant to their circumstances. We will also, as part of this initiative, require a higher degree of disclosure with respect to their governance practices.

We will be considering this proposal in the context of the current credit crisis and the comments we have received, so we want to be sure that we understand what is happening around the world in terms of the development of governance principles.

With respect to issues related to shareholder democracy, I think a number of issues were raised with this committee by Stephen Griggs of the Canadian Coalition for Good Governance. The OSC is currently in the process of a significant policy review of a number of issues related to corporate governance. We have received a submission from the Canadian Coalition for Good Governance regarding its recommendations about shareholder democracy and corporate governance. We are considering the CCGG proposals in the context of our broader review. We would point out, however, that a number of the issues raised by Mr. Griggs involve changes to corporate rather than securities laws. In any event, the OSC, in taking this initiative forward, has to consider the interests and views of all stakeholders involved in the process.

That concludes my remarks about ABCP and corporate governance. I'm obviously happy to answer questions. David, I'll turn it over to you.

Mr. David Wilson: Madam Chair, I'll turn it back to you for your questions.

The Chair (Mrs. Julia Munro): Yes, thank you very much. We'll begin with the NDP and Mr. Prue.

Mrs. Liz Sandals: On a point of order, Madam Chair: How long does each party have?

The Chair (Mrs. Julia Munro): We have about eight minutes each.

Mrs. Liz Sandals: Okay. Thank you.

Mr. Michael Prue: Mr. Ritchie spoke about reaching out to the retail investors, but he also made a puzzling statement to me: that the independent advisory committee, along the lines of the United Kingdom—I believe the words were, “wouldn't work here because the structures are different.” How are they that different that it couldn't work here?

Mr. Larry Ritchie: I'm not sure I said—

Mr. Michael Prue: I'm not sure; I didn't write it down. There was a lot of information. I was trying to get it all.

Mr. Larry Ritchie: I appreciate that.

The only point I was trying to make was that in the United Kingdom there is an integrated financial regulator that looks after not just securities issues across the country but also banking issues and other financial issues. The consumer panel, which is their independent form of input—at least, one of them—consists of investor and consumer interests across that broad spectrum and across that national border. Because the Ontario Securities Commission only deals with securities regulation and only deals with securities regulation within the jurisdiction of Ontario, the concept of a consumer panel which is a legislative body with requirements for input doesn't fit neatly—and I think that's the expression I used—into our regulatory framework. We have to find a way to take the

best of those systems and adapt them to the Ontario model. That's the only point that I was making.

Mr. Michael Prue: How long would that take, though? This has been a long advocacy; people have been talking about this for some time, and you're suggesting today it can be done. How long will it take?

Mr. Larry Ritchie: I would say that we're involved in the process now. We're talking to third parties. We're talking to academics and third party bodies that represent investor interests. We hope to be in a position to make significant progress within a matter of months, as opposed to years.

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Mr. Michael Prue: There were statements also made that the advisory committee—let me start again. How, precisely, do you see this being restructured? How do you see this working? If it's ready in a couple of months, how do you see it unfolding?

Mr. Larry Ritchie: Well, that's one of the things that we're exploring.

Mr. Michael Prue: Of course.

Mr. Larry Ritchie: But what we hope to do is to have, unlike a traditional advisory committee—as we mentioned before, the OSC has, I believe, 13 or so advisory committees. The advisory committee structure is set up in a way that provides a forum for specific members of the advisory committee to meet with representatives of the OSC periodically for an hour and a half or two hours on a fixed agenda. In the case of the investor advisory committee experience, we found that a number of the members felt frustrated by the fact that the forum was so limited. So one of the things that we're looking at is broadening that forum, allowing it to be more of a third party, more independent from the Ontario Securities Commission, to provide an opportunity for that group of people to control an agenda, provide an opportunity for them to have direct input on and comment on specific initiatives that the OSC is proposing, with a much broader mandate and broader representation.

Mr. Michael Prue: The OSC may have already filled several positions—I'm not sure what's happened here—on its board with people with good experience, Bay Street experience, but we continue to agree with FAIR Canada's call for a retail investor on the board. I note from pages 8 and 9 of the submission to the Standing Committee on Government Agencies, the rather lengthy document, that that's not part of what you're doing. Can you tell us why?

Mr. David Wilson: I'll answer that, Mr. Prue. We, of course, have discussed this at the last session when we were here, and we saw FAIR's written submission on the subject. The chair of our governance committee and the whole governance committee are aware of the views expressed.

We are in the process of recruiting three new commissioners. The positions were posted on the Public Appointments Secretariat website. The postings expired at the end of February, so we're in the process of going through the candidates. We're assessing all the candi-

dates. There were quite a few candidates, I think over 80 people whose names were submitted, and we're assessing those who have the best qualities to balance the multiple needs of a commissioner to do both adjudicative work and policy work and act as the director of the corporation.

As I think I said last time when you raised this, Mr. Prue, our governance committee does not believe that our commission, which has multiple roles and requires skills in those areas, should be representative of specific industry or interest groups; there shouldn't be quotas for those on the commission. What should be weighed are people with the skills to do the job, and some of those people with the skills to do the job might have particular expertise or knowledge of the issues important to retail investors, so they would be qualified for sure. So there's no prohibition, but there's no quota or attempt to seek a specific person for that purpose. That's what we've attempted to say on pages 8 and 9 of the response in our written submission.

Mr. Michael Prue: I grant that, but most government boards and agencies reach out to make sure they are broadly reflective of the public at large. I understand that this is a complex board with complex issues, but there is nobody there specifically with that kind of training, knowledge and expertise around investor issues.

You have said on page 9 that Vice-Chair Lawrence Ritchie has some of these attributes. What is wrong with having more people with these attributes on the board?

Mr. David Wilson: I think page 8 says that Lawrence Ritchie is the executive sponsor and a strong advocate for retail investor issues at the commission; that's a role that he's assumed, and you heard him speak about that role today. A number of our commissioners have involvement with investor issues in their past. Some of the candidates we're looking at for the three open positions will have experience with investor issues in their past life, so they are knowledgeable and cognizant of investor issues.

I don't think it's accurate, Mr. Prue, to say that none of our commissioners have any experience or knowledge of retail investor issues. That's too sweeping a statement.

Mr. Michael Prue: I don't think I said they have no knowledge, but that's not their focus. The problem we have as a government body looking at this, or at least the problem that I have individually looking at this, is that we have people who come here from FAIR, we have people who come here from Advocis and others who talk about having smaller investors listened to, and I don't think they're going away. I think they will continue to advocate for something which to the general public and certainly to me seems more than reasonable. I don't know your reluctance in not accommodating them.

Mr. David Wilson: We agree with you. You say that there are people who are not going to go away, who want a voice and want input. Commissioner Ritchie here spent seven or eight minutes of his speaking time this morning describing our appetite for having investor input, both institutional investor and retail investor input, and mechanisms we're developing to make sure we get that input

in a constructive way that's well-researched, thoughtful input that can help decide the direction of policy. So there's no objection to your point about making sure we listen to these people who do appear here and talk to this committee. We're more than open and anxious to do that, and we're working on specific things to do it better.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on. Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you for being here again this morning to address some of those issues. I know you spoke about this to some extent, but I'm just wondering if we could go back and focus a little bit more on how you respond to witnesses who suggest that the commission does not provide adequate opportunities to investors in the shaping of policy.

Mr. Larry Ritchie: First, I should say at the outset, as I said in my remarks, that we acknowledge that we have to find a better way, a more effective way, an easier way for investors to have input into policy and the things we do at the OSC. As I said earlier, that's one of the things that we're putting a significant amount of resource towards working on.

In the process of policy formulation, one of the major ways to get input is through our public comment period. One of the things that we are trying to do is to facilitate the gathering of the disparate views of retail investors in a sort of funnel so that there can be a way to gather and channel retail investor perspectives to comment directly and specifically on all of our policy initiatives. That really is the core of that third prong and that really is the core of what we're working on, that there can be a facility so that we can encourage the retail investors and their advocates to comment constructively on policy initiatives. That is certainly one of the ways that we're doing it.

Mr. Lou Rinaldi: Just to follow up on that a little bit, you're in the consultation process and you're looking for input. Can you give us some sense of what's next, or the process, I guess? When are we going to get somewhere?

Mr. David Wilson: Larry, why don't you use the point-of-sale project as an example to answer Mr. Rinaldi's query?

Mr. Larry Ritchie: In the point-of-sale project, the initial stages involved a broad consultation with retail investors, with investors who are users or purchasers of mutual funds, to understand what information they need and what information is lacking in our current system. From there, there was a full policy review of the type of disclosure that's available in that area. So at that stage, the Fund Facts document was put together, and then focus groups were set up with retail investors to assess the effectiveness of what was being proposed.

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From that program, our group used that information, formulated the policy, and went out with public comment on a framework which was started through the joint forum of financial regulators: a discussion paper with public comment, small group meetings and more consultation. The next stage will be the publication of a draft rule

which will, again, go out for public comment. The information is assessed, the comments are summarized and published, and the information is assimilated.

Mr. Lou Rinaldi: Thank you. I think my colleague—

The Chair (Mrs. Julia Munro): Mrs. Sandals.

Mrs. Liz Sandals: You had mentioned in your remarks support for a single securities regulator, and I wonder if you could expand a bit on the advantages of a single securities regulator nationally as opposed to the patchwork that we've got today. Maybe you could specifically talk about how the single securities regulator would improve enforcement, but also how it would improve and facilitate the investment climate for the capital markets in Canada.

Mr. David Wilson: Okay, there are several questions there. The question of Canada's need for a single regulator has been debated for 40 years, maybe longer; it's a long debate—

Mrs. Liz Sandals: And we're finally getting somewhere?

Mr. David Wilson: I'm hopeful. There have been many studies done, and the reasons why it's a good idea have been analyzed in great detail. So the first part of your question is a tall order. I'll try to give you the essence of the core reason I believe that Canada needs a national regulator for securities more than ever before.

The truth is that capital markets are not provincial; capital markets are national, and in fact, they have become, as we all have learned, international. So every country in the world except for one, Canada, has a national securities regulator because every country in the world has a national capital market. So in brief form, that's the core reason why Canada should move to a national securities regulator.

I think the second part of your question was, how would such a regulator improve enforcement? I spoke a little bit about that in my formal remarks this morning. The phrase I used in my formal remarks was that while it will undoubtedly improve enforcement, it's not a "silver bullet" and that all the issues about the complexity of enforcement of this country will go away. It would be a good step in the right direction, mainly because you would have a unified enforcement function for the whole country. For example, the resources that would be available in this national enforcement branch of a national regulator would be deployable across the country in all areas, wherever the need was needed for those particular skills, whether it's forensic accounting skills or litigation skills.

So you'd have a depth of resources available to serve the whole country, but there would still be very much local enforcement. A breach of securities law is, in many cases, a local issue, especially when retail investors are involved. I would envisage in a national regulator a very strong local enforcement presence and an overarching, broad capability to cover major, complex cases out of the enforcement branch. So it would be a step in the right direction. Would it solve all of the issues about the complexity of enforcement in Canada? No.

Mrs. Liz Sandals: Does it simplify slightly—because my sense is that one of the issues is the tension between what's securities regulation and what's criminal. Rather than having one intersect, rather than 10 intersects between criminal law and regulation, does that help at all?

Mr. David Wilson: There would be a unified non-criminal body, then, in administrative or securities regulatory authority for enforcement, but there still would be, as you point out, the multiple provincial and federal responsibilities for criminal justice administration. So it would be, as I say, a step in the right direction to simplify the system.

On the securities enforcement side, going from 13 to one would be a simplification, but there still would be the province's criminal enforcement capabilities. However, if you can shrink the number of bodies that are involved from 25 or 30 to 10 or 12, that's a simplification that should make the system easier to coordinate, operate and function.

The Chair (Mrs. Julia Munro): Thank you very much, and we'll move to Ms. MacLeod.

Ms. Lisa MacLeod: I want to welcome you back to committee. It's been a real pleasure. We've come a long way since December, and I want to personally commend you for doing such due diligence on all of the questions that we've asked. By far, and I'd like this noted in our committee report, of all the agencies that we've called, with the exception of one, you've gone above and beyond and I want to thank you for that, particularly during these difficult economic challenges that our province and our country are facing right now.

I have a few questions based on today's presentation and a few that were based on last month's. The first one is—and I guess it interlopes from our last meeting. Mr. Wilson, you suggested that this crisis has been years in the making, which I agree with, but it emerged very quickly and it has taken financial experts, economists and governments by surprise. Wouldn't the definition of a recession be two back-to-back quarters of negative growth?

Mr. David Wilson: I believe that is the classic economist's definition of a recession, yes.

Ms. Lisa MacLeod: I say this because for the last year and a half, our previous leader, John Tory, consistently warned this current government that we were on the verge if not in a recession several times based on that classical definition. So as a result of that—I know in our last meeting when I asked this question you had spoken with the Minister of Finance—I'm wondering, during that period of time, when we started to see Ontario enter into these continuous periods of negative growth about a year ago, were you on the phone weekly with the Minister of Finance?

Mr. David Wilson: No, I was not on the phone weekly with him on the subjects that you talked about. Our mandate is narrower than I think you're describing, Ms. MacLeod. As I said in my remarks, it's protection of investors and integrity of Ontario capital markets. So

those are the matters within that mandate that I discuss with the minister.

Ms. Lisa MacLeod: And a fair point. That said, at that time I also remember the ABCP issue coming to the Legislature during question period, because that's when concerns started to arise. I think when you're looking at a dip in the economy, investor confidence started to go down not only in this province, of course, but across the world. That's why I'm wondering, with the current economic context—and the previous economic context I don't think was much of a surprise to anybody—if you were having those discussions.

But I just would like to move on. The last meeting that we had, you had spoken with the Minister of Finance. Have you yet briefed cabinet on the economic circumstances and how they are impacting the investor climate in the province?

Mr. David Wilson: No, we have not been invited to address cabinet. We have very frequent discussions with the officials in the Ministry of Finance and I speak to the minister regularly. I had a meeting with him last week.

Ms. Lisa MacLeod: Okay, thank you. That actually is a nice gateway into what I'd like to talk about next, and it's the legislative amendments. When we started this process in December, we were asking for specifics from you. So today I'm very pleased that you have outlined four possible legislative amendments that you would like to see included. I'm wondering when you expect these tools to be brought forward to the Minister of Finance, or have you already been in consultation with the minister to bring forward these legislative amendments to better protect Ontario's investors?

Mr. David Wilson: The four areas that we cited in the paper that I think you're referring to, Ms. MacLeod, are on page 21. So let me answer your question on timing, because they aren't all in exactly the same state of evolution and preparedness for discussion with the minister.

The first one has to do with regulatory oversight of credit rating agencies; Jim Turner spoke about that. When do you think there will be something sufficiently developed to talk to the Ministry of Finance about in terms of legislation there, Jim?

Mr. Jim Turner: We are talking about putting that on a faster time frame, because I think it's less controversial. But I will say, part of the timing is looking around the world and seeing what's happening in this area. So while we want to move quickly, we don't want to move so quickly that we don't understand or can't reflect the thinking in Europe or Australia, for instance.

Ms. Lisa MacLeod: So you think in the next 12 months?

Mr. Jim Turner: Yes.

Ms. Lisa MacLeod: Okay. And what about the ability to preserve assets during an investigation?

Mr. David Wilson: The next two would be the next 12 months. I'm just looking at the bullet points on the bottom of page 21. "Preserve assets" and "broaden the definition of insider tipping" would be in the next 12 months for sure.

The last bullet on that page for possible legislative amendments is an adoption across Canada of a new policy that's been introduced in British Columbia having to do with the use of the US bulletin board for fraudulent purposes, mainly focused on naive retail investors. BC is bringing in this new policy, where a lot of this activity was originating. We're beginning to see evidence of some of the promoters of these types of schemes moving to other provinces, including Ontario. So that will be coming in the next 12 months as well.

Ms. Lisa MacLeod: So within the next year you're expecting legislation through this chamber that would greatly enhance investor protection in Ontario?

Mr. David Wilson: Yes. These are the four areas that we've identified so far that would enhance investor protection and the integrity of the markets.

Ms. Lisa MacLeod: Now, may I just move forward? With the passage of the federal budget—and I was actually there the day that Minister Flaherty read the budget to the House of Commons. They indicated that they would be moving forward with a national securities regulator. I just received a PIN from the parliamentary secretary to the Prime Minister to say that they are moving forward. When we met last, you had indicated that obviously they would be moving forward, but you didn't have a lot of details. Has that changed now with the passage of the federal budget?

Mr. David Wilson: There have been no details made public. The next event I believe that will be important in the development of a national regulator will be the announcement of a transition office, which is provided for in the federal budget, and the staffing of that office and the beginning of its operations. So I would expect that's the next development and announcement that you should anticipate in the evolution of that national regulator process.

Ms. Lisa MacLeod: Are you aware of a timeline?

Mr. David Wilson: No, I'm not.

Ms. Lisa MacLeod: So you're not. Okay. I have several questions here now.

The Chair (Mrs. Julia Munro): You have time for one more.

Ms. Lisa MacLeod: One more? I have to pick just one more? Okay. How about one that relates to this committee? There are three postings. I guess you're looking at candidates to come before this committee.

Mr. David Wilson: Yes.

Ms. Lisa MacLeod: When do you expect those three vacancies to come before this committee?

Mr. David Wilson: We're in the process of interviewing. We expect to go to the minister with recommendations some time around the end of this month, and then after that, it's up to the minister to decide which of our recommended nominees he brings forward to cabinet and to this committee. That's the month of May.

Ms. Lisa MacLeod: Okay. And then just finally, has your MOU been updated?

Mr. David Wilson: It hasn't been finalized or signed yet. It's pretty much agreed, as I think we said last time,

but it hasn't gone before the—I think it goes before a committee of government. I forget which one.

Ms. Lisa MacLeod: Okay.

Interjection: Management Board.

Mr. David Wilson: Management Board. That's the phrase I'm groping for, yes. Management Board hasn't reviewed it yet, is the answer.

Ms. Lisa MacLeod: Okay. Mr. Wilson, Mr. Ritchie and Mr. Turner, I appreciate you coming back here again. I wish you well, and thanks for answering our questions. I look forward to working with my colleagues on producing a very good report for the people of this province. Thanks.

Mr. David Wilson: Thank you.

The Chair (Mrs. Julia Munro): That concludes the opportunity we have this morning. We really appreciate that you're here again today. Certainly, as Ms. MacLeod has said, we've got lots to work with. So thank you very much.

This concludes the public part of our meeting, and I'd ask members to remain. We have a few minutes in which to make some recommendations that we want to move forward with.

The committee continued in closed session at 1004.

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