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August 15, 2002

Mr. Purdy Crawford, Chair
Five-Year Review Committee
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Subject: Five-Year Committee Draft Report

Dear Mr. Crawford,

The following is my submission for your consideration. I have approached the following issues as a systems engineer, investor advocate, Six- Sigma black-belt, personal investor and as a CEO with many years experience.

"Regulated entities can never be too well supervised"
Steve M. Cutler, Director, Division of Enforcement, U.S. S.E.C.

Canada is both over and under regulated. The lack of a national regulatory agency causes an administrative nightmare for potential investors, investors, and those who are currently under regulation. We are simultaneously under regulated in that our investor protection system is not much better than that found in a Third World country. A clear example is that fact that South Africa has legislated financial redress for abused investors. Civil action can help under certain conditions - if there is a lot of money on the table and you have the resources to go after it. Otherwise, you fall between stools - a court system which is too slow and expensive and ombudsmen, mediation and arbitration which are usually ineffective.

There has never been a successful financial services industry class action in Canada. There won't be any time soon because of our regulatory framework. Dramatic swift change is required.

Canadian Securities Administrators (CSA): The CSA is an association of securities regulators from the ten provinces and 3 territories. The regulators share a common mandate for investor protection. Securities authorities oversee Canada's stock exchanges, self-regulatory organizations and industry practitioners, such as mutual fund dealers or financial advisers. There is no federal securities regulatory

authority in Canada, unlike other developed countries, thus reducing new policy planning and introduction to a glacial speed and creating a quagmire of jurisdictional disputes.

Ontario Securities Commission (OSC): The OSC is a self-funded, arms length Crown corporation which reports to the Ontario Legislature through the Minister of Finance. (In the U.S., the SEC reports to the President). The OSC is the regulatory body mandated and responsible for overseeing the securities industry, which includes mutual funds in Ontario. The goals of the Commission are to foster a fair, efficient capital market and to protect investors from unfair or improper practices. There are approximately 380 employees at the OSC. The 12 member governing body also serves as the Board of Directors for the Commission. This board's responsibilities involve approving policy, making recommendations for legislative changes to the Minister Of Finance, serving on Commission Tribunals and overseeing the operating and financial affairs of the Commission. The Lieutenant Governor in Council appoints commissioners for a term in office not exceeding 5 years. The Lieutenant Governor also designates a member of the Commission as Chair and may designate one or two members as vice Chairs.

The delegation/offloading by the OSC of their regulatory obligations to SRO's is a mystery to, by now increasingly cynical, citizens. (the physical manifestation of the " public interest ").

"The Osler Inc., collapse has highlighted the need for a thorough review of the commission's enforcement and audit procedures. Moreover, since some of this work is delegated to the self-regulating Toronto Stock Exchange and the Investment Dealers Association (Ontario), the commission will have to review its relationship with these organizations. "

Recommendation 2, pg 23

"The committee believes the commission should learn from these events, and be in a stronger regulatory position in the future, particularly with respect to how well the commission itself functions.

Consequently, the committee believes that the provincial auditor could make a contribution in strengthening the commission by undertaking an efficiency audit of the commission. He should have access to any consultant's reports that have or will be undertaken while he conducts his audit. "

Recommendation 6, pg 26

Source: Legislature's Standing Committee on Government Agencies, Recommendation No. 6, page 26, **circa 1988**, referring to the 1987 stock market crash

The tangled mess of regulation in Ontario needs to be re-engineered, clarified and the results communicated. Acting on past recommendations is appropriate; there is no need to completely reinvent the wheel.

Corporate Governance:

Due to Nortel, Livent, Bre-X, Philips and others, the issue of corporate governance is an area of significant public concern. My understanding is that this area is to be resolved by the Joint Committee

on Corporate Governance established by the Toronto Stock Exchange ("TSE"), the Canadian Venture Exchange ("CDNX"), and the Canadian Institute of Chartered Accountants ("CICA"). No investor advocates or focus groups are part of the " dialogue". This committee includes Mr. John A. Roth, former CEO and President of Nortel Networks. Please note that Nortel and Mr. Roth are the subject of a number of class action suits alleging misleading guidance, fraud and insider trading. The Milberg Weiss case seems particularly strong. The public perception of this Committee is clearly jeopardized by his participation. As a NT investor participating in the class action I certainly feel very uncomfortable with him and the process that believed he was a valued committee member representing investors' interests and Best Governance Practices.

Conflict of interest: This refers to a conflict of interest between conflicting goals. Conflicts of interest may be potential, perceived or real.

> "If you think mutual fund advisers always vote the best interests of their shareholders, think again. Many of them have conflicts of interest because they are seeking to manage the pension assets of the very company whose proxy they are voting, and they don't want to lose their business."
>
> **Mercer Bullard, founder of Fund Democracy**

Potential and actual conflicts exist for a bank-owned fund company for example in selecting its advisers, custodial and trust services, and brokerage providers or how it votes it shares. The wrong choice can mean higher fund expenses for unit holders, lower returns if the fund inappropriately supports say the parent bank's initiative on a merger involving one of its clients or how the fund compromises itself as part of the fund companies growth initiative in managing corporate pension assets/ savings plans or other initiatives.

The infamous 1996 Veronika Hirsch case embarrassed the Canadian fund industry and cast a cold light on the often-cozy relationships between fund managers and brokers. Companies tightened up on personal trading and agreed to an industry code of ethics. Not withstanding the lessons learned, in early 2000, Royal Bank of Canada parted company with several managers of pension fund money and other institutional accounts at its RT Capital unit after they turned out to be manipulating stock prices to make their performance appear better.

In 1997 and 1999 independent fund analyst Duff Young questioned AIC's heavy weight in wealth management companies and the trouble it might have liquidating its thinly traded holdings without setting off alarms on Bay Street. Young says AIC reps began trashing him in front of financial advisers. The pressure forced him to quit the analyst business.

> "I got out of independent research because these guys ruined my professional life." says Young.
>
> **Source: Canadian Business, March 4, 2002, pg.56.**

" … One reason for the lousy performance (of Caldwell funds): lots of trading activity. Five of his funds had portfolio turnover of at least 75 percent last year, three of them more than 100 percent. In total, the

funds paid $800,000 in brokerage commissions-almost one percent of assets at year-end. And where did those commissions go? Primarily to Caldwell Securities Ltd. according to Caldwell's regulatory filings…."

Source: Derek DeCloet, " Volatile funds scorch Caldwell", FP, Aug. 9, 2002 pg. FP1

There is clearly no reason to believe things have improved in the intervening years.

Ethics: A term used to describe proper, honest behavior in a society. An ethical fund company would for example avoid conflicts of interest, make unit holder value creation job #1, avoid dubious sales practices, and openly disclose material information in a clear and timely manner. Some mutual fund companies do have ethics policies but they are not generally available to unitholders for review. Why not? Instead of asking, where are the directors we should be asking **where are the regulators**?

Governance: This is the process of overseeing mutual fund operations to ensure laws are obeyed, proper business practices employed and unitholder interest are protected.

> " Investors are going to favor companies that have more enlightened practices in terms of self-disclosure & self-Governance because the consequences when they fail are becoming so horrific"
>
> **J.Robert Finlay, Centre for Corporate & Public Governance**

Canadian investors are showing an increasing interest in how funds deal with false or misleading guidance provided by companies, corporate option plans, break fees, share voting policies, repricing of stock options and off balance sheet accounting. All of these have the potential to reduce the value of the fund's holdings.

Fund governance in Canada is at the embryonic stage with legislation finally underway to mandate boards, something the U.S. has had in place for a decade. A mutual fund governance mechanism could provide the following benefits:

a) investors would be provided an opportunity to question management- in public or otherwise (typical issues –fees, loads, voting, timely disclosure and service quality)
b) a system to deal with fund management problems/issues
c) for investor protection
d) to instill public confidence
e) to deal with conflicts of interest and related party transactions
f) to deal with accounting issues such as the propriety of allocation of overhead cost to funds, fair pricing of securities, and the responsibility for pricing and other errors.
g) investors would be better able to request fund manager action e.g.: protection of fund assets via pro-active litigation against corporations acting in an investor-unfriendly manner, diluting investors via rich stock options, providing misleading/false guidance, violating insider trading rules or perpetrating fraud.

As the YBM, Nortel and Corel cases illustrate, the OSC (and Canadian mutual and pension funds) have been notoriously reluctant to challenge corporate managements in a timely pro-active and determined manner. Even when there are cases, the investing public is not kept informed (and can not contribute) until the case is fait d'accompli.

Investment Dealers Association of Canada (IDA): The Canadian securities industry's national trade association and self-regulatory organization. It represents approximately 190 member firms and more than 36,000 employees across Canada.

Quebec has it's own regulatory regime for securities regulation within the Province.

From www.ida.ca, the official web-site of the Investment Dealers Association of Canada:

"Our Mission Statement

The IDA's role is to foster fair, competitive and efficient capital markets by encouraging participation in the savings and investment process and by ensuring the integrity of the marketplace. As a non-profit organization, the IDA is dedicated to ensuring that Canadian capital markets reflect the very highest standards of integrity, efficiency and participation."

Also "…. There are significant advantages to a self-regulatory model which accounts for its long and effective history in North America and elsewhere. Self-regulation brings industry expertise and practical experience to a rapidly changing industry confronting accelerating technological development and globalization. Under supervision of securities commissions, it aims at a balanced approach to regulation taking into account the often complementary, but occasionally conflicting, goals of investor protection, efficiency and competitiveness. And it achieves its objectives, in *the public interest*, at *no cost* to the investing public…"

"…Staff in the IDA offices across the country work with industry committees to develop public and regulatory policy positions, under the direction of the Board of Directors. Up to six Board members are non-industry directors, representing the public interest . . .. "

This organization has not listened to the very investors it has been sub-delegated to protect. Despite the IDA's assertions on their web site, not one board member is independent of the industry and it is not clear how those representing the "public interest " would obtain a board seat. There are a growing number of securities related cases and issues that are not being resolved to international or citizen's satisfaction. It would be interesting to receive a copy of any "Customer " satisfaction surveys or external assessments reports on the IDA, but I do not believe any are available to the public.

Investment Funds Standards Committee (IFSC): The IFSC (www.cifsc.com) was formed in January 1998 by Canada's major mutual fund database and research firms with a self-imposed mandate to standardize the classifications of Canadian-domiciled mutual funds. This site outlines the goals and findings of the committee. The categories are in a constant state of review and as such the committee extends an invitation for comments from all Canadian mutual fund industry participants. The primary purpose of the committee is to provide investors with a consistent set of mutual fund categories. The proliferation of mutual fund listings and analysis services has created confusion in the absence of industry-standardized fund categories. These categories have proven confusing and misleading to mutual fund unitholders.

Investor Education: It's not clear really who, if anyone, is responsible for investor education in Ontario or Canada. IFIC and the OSC have some basic materials but they are minimal and tardy in their availability (many bad things happened, especially to seniors, before the Guide on leveraging was issued earlier this year; see attachment I –The David Meal case). Furthermore, the IFIC materials have been criticized as being too pro-industry and insufficiently objective.

A 1997 Scudder fund study showed that more than 50 percent of Canadian mutual fund investors aren't aware that they pay any annual fees. A April 1999 Angus Reid survey of 1500 Canadians, commissioned by the Canadian Securities Administrators found that 41 percent of investors have a poor understanding of MER's and 29 percent had a poor understanding of sales charges. The survey also determined that a large number of Canadians remain uncertain about the Commissions role in fraud compensation. Under Investor Rights. the report suggested that there is a opportunity to educate the 25% of Canadians who are unaware of their right to sue for false information.

The Government should consider introducing High School course content on modern day financial decisions required by citizens-stock investing, mortgages, mutual funds, house purchases, leases, insurance etc.

Need I say more? Opportunities for improvement abound.

Mutual Fund Dealers Association of Canada (MFDA): The Mutual Fund Dealers Association of Canada is a not-for-profit federal corporation incorporated in June of 1998. The MFDA is the mutual fund industry's self-regulatory organization ("SRO") for the distribution side of the industry. The MFDA is responsible for regulating all sales of mutual funds by its members in Canada. The MFDA does not regulate the funds or fund manufacturers. Specifically the MFDA does not regulate how mutual funds are established, operated and managed nor how the securities of these funds are offered to the public. This responsibility has remained with the securities commissions. See http://www.mfda.ca

MFDA Mission

> "We will be seeking a balance as we move forward. We need continuing and enhanced protection for Canadian investors, which is our first concern. But we also intend to function with a high degree of sensitivity to our Members. We will strive for the appropriate balance between investor protection and the business realities of the distribution business."

Is this mission statement supposed to comfort Canadian Investors? Why is the OSC allowing such a foggy statement to be utilized? It should be clear - they are to enforce the applicable laws of the OSA delegated to them with the necessary level of transparency and timely disclosure.

Regulation: Canada's regulatory agencies lack determination and focus. SRO's try to do a good job but clearly need more monitoring and supervision/oversight. Self-Regulation is a term used to describe an industry association such as the MFDA or IDA authorized to regulate its members within certain government constraints. Self-regulation has often been termed an oxymoron by objective critics because of the dubious track record of the practice especially in Canada.

Actual securities legislation falls under provincial jurisdiction, leaving Canadians with 13 regulatory bodies-the Government of Nunavut among them. The U.S. has the potent Federal Securities and Exchange Commission (SEC) established in 1934.Many commentators have pointed out that Canada is a prime target for criminals, fraudsters, exploitive albeit legitimate brokers/mutual funds, organized crime and terrorist organizations because provincial regulators are un-coordinated on a national level and there is a lack of enforcement action. Some basic laws don't even exist to protect mutual fund unitholders so there is little scandal since the laws are lax or non-existent.

The recent Bonham & Co. case (Attachment II) poignantly illustrates the lack of investigative potency of the OSC, a lack of standards and the verrrry slow speed of justice. Even more importantly is the relatively light sentence, amounting to little more than a wrist-slap and the fact that the case was hidden from investors for a number of years. (Livent is still being investigated after more than 2 years). The fund industry SRO is nowhere mentioned in the account.

In a mid 90's article in the Globe and Mail, Wendy Brodkin of Towers Perrin raised eyebrows in the investment community, by suggesting that ethics issues were rampant in the industry.

"It's been going on forever and may continue to go on forever given the current standards. The investment industry is fraught with questionable practices and even more questionable ethics…. A lot of people are getting away with a lot of things".

Among other things, Brodkin mentioned front-running (buying a stock for your account, and later for the fund), questionable priority of transactions and allocation of securities and unauthorized trading and allocation of securities after price changes. She warned investors to be alert.

"You might think the MER gives the full cost of running the fund, it doesn't, and to my mind, regulators have abetted the mutual fund industry in this misleading practice. In fact, the MER doesn't tell the whole story. Trading costs (the commissions the fund must pay to the brokerage houses for transacting trades) aren't included in the MER calculation. This means your actual costs of holding a fund are always going to be higher than the posted MER and will adversely affect the fund's net return in extreme cases, trading costs have been known to be double the funds MER."

Source: **Howard Atkinson, the new investment Frontier, Insomniac Press, 2001**

Numerous complaints by investor advocates, SIPA and others remain unresolved with each party in the chain waiting for the other to make the first bold move.

Self-Regulatory Organization (SRO): Under the Securities Act in Ontario, the commission may recognize an SRO if it is satisfied that doing so would be in the *public interest*. (here we go again). This term is never defined and accordingly has been applied in an inconsistent manner. This allows the SRO to regulate the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations and policies. This effectively shields the IDA and the MFDA from administrative and legal obligations, e.g. Access to Information Act, Privacy Laws and negates the citizen complaint mechanism via his/her elected MPP.

Stromberg Reports: Ms. Glorianne Stromberg, a lawyer by profession, has issued two Key reports relevant to the mutual fund industry in Canada.

With the release in 1995 of "Regulatory strategies for the Mid 90's": Recommendations for regulating investment funds in Canada", Ontario Securities Commission member Glorianne Stromberg dissected and analyzed the mutual fund industry. Ms. Stromberg embarked upon a comprehensive review of every aspect of the industry and boldly proclaimed the need for significant change. In response to the rather scathing observations of the Stromberg report in the area of sales practices and incentives, on May 1st 1998 a new national instrument titled "Mutual fund sales practices" came into force. Under NI 81 - 105, the interests of investors are paramount and conflicts between the commercial goals of fund companies and the best interests of investors must be minimized. NI 81 - 105 restricts certain sales practices between fund management companies and distributors, prohibiting the payment of money and the provision of non-monetary benefits except as specifically permitted. It requires that fund companies deal with and compensate distributor firms rather than sales representatives directly, and prescribes parameters for the payment of sales commissions, including trailing commissions. It also requires prospectus disclosure of commissions paid and the incentives provided to distributors, and to ownership relationships between a member of the mutual fund organization and a participating distributor.

In October 1998 a second report entitled "Investment funds in Canada and Consumer Protection: Strategies for the Millennium" was prepared for the Office of Consumer Affairs, Industry Canada. This report (ISBN-0-662-27425-3/code 52487E) examined the requirements for the reasonable protection of investors and made recommendations to enhance consumerism about investors. It is available from the OSC (http://www.osc.on.ca) and Industry Canada Web sites (http://strategis.ic.gc.ca).

These two classic reports are the foundation upon which improvements in regulation, fund governance, sales practices and the role of financial planners should be based.

Trailer fees: This kind of fee is sometimes called, perhaps sincerely, a *service fee*. This is a fee the mutual fund manager pays to the individual or organization that sold the fund for providing services such as investment advice, tax guidance and financial statements to investors. . Service fees are usually in the range of 0.25 percent to 0.50 percent per annum and are paid out of the manager's management fee. Their disclosure to clients is far from clear. Proponents of trailer fees argue that the ongoing services are valuable benefits to investors and salespeople must be compensated for their work. Cynical critics believe that such charges have the potential to produce a conflict of interest for the salespeople who could encourage investors to stay in the fund even when market conditions might indicate that they should redeem their units. Critics of the ongoing trailer fees also argue that investors who hold funds for the long-term end up paying higher overall fees than they would if they had paid a onetime front or back end load. The most outspoken of the critics label the trailer fee as a kickback, inducement or more politely as a" facilitating payment". If there ever was a case of deceptive tied selling, this is it. There has been little OSC action in this area despite widespread press coverage.

Mutual Fund Co. Investor Insurance: The fund industry has no current equivalent of CDIC insurance or CIPF. If a mutual fund company becomes insolvent due to gross negligence or fraud. Funds are supposed to place holdings in trust, but….. The MFDA, the "self-regulator" of mutual fund distribution in Canada (except for Quebec), is working on the investor protection issue but no one expects anything

significant any time soon. A OSC examination of a 20 % sample of mutual fund dealers found deficiencies in trust accounts, books & records, minimum capital, referral arrangements, sales practices, compliance function, advertising and internal control procedures among others – not very reassuring. For eligible deposits with banks, CDIC insures investors up to $60,000-currently about $340 B in certain GIC's and bank savings accounts is fully protected.

Mutual fund Regulation: There is loose regulation of the powerful and influential high growth $450B Canadian mutual fund industry [in excess of 3500 funds! – by contrast the TSE has 1320 listed companies, the CDNX 2400] by under-resourced Provincial regulators (there is no real equivalent of the SEC in Canada) does not offer any comfort re: inadequate fund governance, selective disclosure, hype/promotion/ misleading advertising, poor reporting /disclosure [timely, relevant, useful/understandable, complete, specific, responsible], inadequate prospectus quality, or conflicts of interest such as is possible especially in Bank owned funds where synergistic units of banking, financing, brokerage, trust services and wealth management all have vested financial interests. So-called "Chinese walls" have become very suspect in recent years For example, the wall that once divided a brokerage firm's analysts from its investment bankers came crashing down during the 1990's bull market. Despite a number of recommendations for regulatory improvement, progress has been glacially slow and primarily limited to sales practices. See the Jan. 1999 OSC report
"Mutual Fund Dealer Compliance Issues" for a thought provoking tabulation of deficiencies.

Glorianne Stromberg a semi-retired lawyer with extensive experience in the financial services industry and a former OSC Commissioner pointed out in a paper delivered at the Strategy Institute's Fund World 2000 Conference "It is not a credit to Canada that when the IMF reviewed the state of Canada's compliance with international agreed –upon principles of fund governance, it found them wanting-although the IMF phrased this somewhat more diplomatically". She has also published a number of important publicly available reports critical of the Canadian investment funds industry and the glacial speed of reform. Also be on the lookout for "trailer fees" which is a quarterly payment (buried within the MER) that dealers receive from fund companies for 'servicing " investors. A number of observers have noted that high trailer fees can motivate sales representatives to be unduly attracted to a particular fund and/or not recommending a choice of fund that would be more beneficial to the investor. Critics of the ongoing trailer fees also argue that investors who hold funds for the long term end up paying higher overall fees than they would if they had paid a one-time front or back-end load. Be sure to know whether your sales rep/advisor receives such; let's be frank, incentive awards/kickbacks.

Use of Shills: Shills are articulate usually well-known personalities used by fund companies to pitch the positive aspects of fund investing. Some may be unlicensed or unregistered. A polite word for hawker or showman. It took years of investor complaints before the OSC took action limiting their actions. A belated action is currently underway re Brian Costello regarding conflict of interest. The general question of training and licensing of industry participants, especially advisers, is increasingly important as investment product complexity increases, demographics evidences itself and tax/estate issues become more top of mind with increased investor education.

Fund Governance: Fund governance is an essential process made up of a set of integrated systems, policies, procedures and controls that answers the questions of how things are done, who does what and

how the repetitive players are accountable for their actions. Deficiencies in fund governance matters can have very practical adverse consequences for investment funds, investor returns and for the sponsors of the funds. Fund governance is more than just the need for independent boards. Governance involves adherence to fiduciary standards that are optimum not just better than good enough, including oversight mechanisms, operating procedures, policies, proper business practices/ethics, compliance, communications etc.

It involves:
Setting investment policy that defines a fund's risk-reward character, benchmark and clearly spells out whether the" fund" mandate is to strive for absolute total return objectives (ideal for tax sheltered accounts) versus tax efficiency creation of wealth objectives (ideal for taxable accounts)

1. Evaluating overall performance, operational processes and unitholder service /communications /disclosure practices

2. Preventing, assessing and resolving conflicts of interest

3. Monitoring congruence between the portfolio characteristics and stated mandate

4. Assuring regulatory/legal compliance

5. Evaluating the performance and behaviors of the individuals investing unitholders money

We can always hope to see this introduced by 2004 at the earliest.

Investment Funds Institute of Canada (IFIC): The Investment funds Institute of Canada (www.ific.ca) is the Member association of the investment funds industry in Canada. Established in 1962 the institute membership is currently made up of 82 fund management companies. IFIC's responsibilities include broadening the awareness of mutual funds, administering education courses, providing certain voluntary guideline documents, compiling fund statistics and of course lobbying Government for laws and regulations that enhance the industry's profitability, competitiveness and long term interests. Continued industry consolidation is making a few fund companies very dominant, many bank-owned. Increased surveillance of this powerful organization is warranted, especially its lobbying and investor education activities.

The YBM case: YBM Magnex Int'l is an especially interesting case because the TSE had been forewarned about its criminal background before it was listed. Nevertheless it was listed and was made part of the TSE 300 Index - Canadian Investors lost a bundle. Interestingly, despite the warnings the TSE approved the IPO. Several Canadian mutual funds including Sceptre funds (who had a significant investment) were adversely impacted in 1998 when TSE listed (!) YBM Magnex International Inc. went under after a FBI raid revealed a money-laundering scheme by Russian mobsters - unitholders had to bite the bullet. An individual, shareholder advocate, Wes Voorheis took up the case and succeeded in giving shareholders control of YBM, preserving its far flung assets and paving the way for a court-appointed receiver to guard the assets. In the end, $120 million will be dispersed to shareholders but neither the passive OSC or the mutual fund industry claim any credit. This is only one glaring example of what's going on in Canada every day to varying degrees.

Outsourcing: This is a general term, where one-party subcontracts with another to provide a task or service normally accomplished in-house. Also referred to as subcontracting. Magna for example, provides parts of assemblies for the auto companies that they previously made themselves. Similarly, Celestica builds assemblies & final units for electronics manufacturers. These specialized firms have the expertise, scale and advanced facilities and systems to do the job better, faster and cheaper. However, the subcontracts contain detailed Terms and Conditions including but not limited to prices, volume, quality levels and Quality systems, cycle time/delivery, changes, service, communication /reporting, audit rights, warranty, scheduling and termination. The subcontracts are managed by highly trained professionals backed up with a strong infrastructure. In a sense, the OSC is doing the same thing -- outsourcing (subcontracting) the regulation of various elements of the OSA. Regrettably, the OSC does not appear to have the time, resources, procedures/ business processes and/or inclination to manage/monitor its SRO's which are in effect outsourced subcontracts for services. For these reasons, a systemic improvement in securities regulation and funding is required.

In conclusion, I think it would be fair to say that Ontario investors are not being sufficiently protected, educated or informed and that vast improvements can and should be made. This is why I believe a ISO 9001 and Total Quality initiative based on continuous improvement should be undertaken without undue haste or delay. Current so-called 'Accounting issues", treatment of stock options/approval of option plans and high profile cases of Corporate fraud require dramatically increased vigilance NOW. Even national security would benefit. Our regulatory system is dysfunctional and deserves to be fixed. Legal, financial, structural and operational changes are needed. It will serve all stakeholders well in the long run.

Recommendations:

The OSC has many qualified and dedicated people but due to the reasons stated it's reputation among citizens and other counties borders on regulatory malpractice**.** I applaud the Ontario Securities Commission's new "fair dealing model" proposals aimed at improving information and safeguards for small retail investors. They could form the basis for a much-needed revamping of the framework for dealer-client dealings and could reverse a disturbing erosion of protections for small investors. This is a start.

Consolidation within the already heavily concentrated Canadian securities industry is creating some very powerful, influential and politically- connected players creating the need for a counteracting well-resourced regulatory regime critical. Recent
U. S. securities law changes have impacted Canadian inter-listed Companies-in a sense the SEC has become a Canadian Regulator. Initiatives in Quebec could further confuse an already marginal regulatory framework. I believe the following recommendations will help put us back on track. It will require vision, leadership, hard work, a sense of urgency and guts.

1. Reassign the OSC as a direct report responsible to the Premier

2. Provide adequate resources to the OSC so it can fulfill its legal obligations. Provide a compensation plan that will attract and retain top people.

3. Reexamine the SRO model for effectiveness and compliance with laws, statutes and directives. Benchmark to other countries in the G-7 and to other professional Associations such as the chartered Professional Engineers of Ontario.

.

4. Task the Ontario Auditor General to perform an annual audit of the OSC and its delegate organizations (SRO's). This audit should include can audit of how well the OSC implements the OSA and how well it supervises and monitors "subcontracted" regulatory affairs to SRO's.

5. Deal with the growing number of identified complaints on an expedited basis with the Canadian mutual fund industry; in particular move expeditiously forward with the implementation of governance boards

6. Make the IDA accountable to the public to allow the public to verify that the "public interest" is in fact being served. Require that the term "public interest" be defined in operational terms and that SRO rules, bylaws and procedures/practices be reviewed and approved by the OSC.

7. Strengthen the investigative and prosecution arm of the OSC. Engage the public since it is their interests being protected.

8. Pass enabling legislation to ensure that any SRO is subject to all the same legal and procedural regimes as the OSC e.g. Canadian Charter of Rights and Freedoms

9. Dramatically improve investor education in Canada and enable legislation giving investors more rights and protection. One idea here has been to establish and fund a separate Ontario government unit or investor association comprising only small investors with the task of representing investor rights, pursuing justice and providing independent feedback to Parliament on the effectiveness and fairness of the OSC and its chosen outsourced SRO's.

10. Require an annual review of progress rather than a five-year review; the investment scene is changing far too rapidly to have such a large gap

11. Require the OSC and its SROs to be certified to ISO 9001/2,and to embrace Total Quality /6-Sigma. as well as implement a comprehensive formal ethics program. (published policies, training, performance review, hot lines, annual certifications etc.). The National Quality Institute (www.nqi.ca) could be an invaluable education, training and implementation resource.

12. Establish an annual report card available to the public including qualitative and quantitative performance metrics including specifically " Investor Satisfaction"

13. Permit U.S. mutual funds to be bought through Canadian dealers just like U.S. stocks; this is entirely consistent with NAFTA but appears to have been blocked by Canadian mutual fund companies and the big banks. This will give Canadians a wider choice and lower cost investments for the retirement.

14. Immediately remove Mr. J.Roth and others controversial figures like him from governance or regulatory committees and replace them with respected untainted executives, investor advocates and average Canadian financial consumers .This would restore some level of credibility and visibly signal a commitment to change.

I do hope that these recommendations will be considered ,debated and implemented as appropriate.

Should you have any questions or acquire additional information please feel free to contact me.

I respectfully request an acknowledgment of receipt of this document and would love to discuss it with you in more detail

Respectfully,

Ken Kivenko P.Eng.
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Attachments

Attachment I- The David Meal case

> "It's too bad David Meal didn't have the chance to read a primer on the risks of borrowing to invest, released yesterday (Feb. 25,2002) by the Ontario Securities Commission. Meal, a 72-year old retiree, lost more than $100,000 on a 9 to 1 leveraged investment loan on a Nasdaq index fund just before the bubble burst in March 2000.
>
> Terri Williams, an OSC spokesperson, says cases like Meal's are common. "Our contact centre has heard too many stories from seniors who have inappropriately been talked into borrowing to invest. We hope this new Investor Guide will help investors appreciate the risks involved."
>
> Leverage is a two-edged sword that magnifies emotions like fear and greed. In the Meal debacle, greed seemed to trump fear with respect to the untimely loan made by the Georgetown, Ont. branch of the Canadian Imperial Bank of Commerce.
>
> "….. To borrow money not yet earned because some leverage-peddling bank rep or fund salesman needs to generate extra commissions strikes me as financially suicidal."

Jonathan Chevreau, National Post, Feb.26, 2002

Attachment II -The Bonham & Co. case

"

TORONTO -- A Toronto portfolio manager has agreed to pay a total of $200,000 and has been banned from trading for three years after he artificially raised the value of funds he was managing.

Mark Bonham and his company, Bonham & Co. Inc., were also reprimanded by the Ontario Securities Commission in a precedent-setting case that OSC vice-chairman Paul Moore said would act as a warning to the Canadian mutual fund industry.

"This highlights the need to employ a consistent methodology" when manually pricing shares, Mr. Moore said, adding that the settlement would provide guidelines for the rest of the industry.

The penalties were announced by the commission after it approved a settlement with Mr. Bonham that was reached earlier.

The case involved three of the seven funds that Mr. Bonham managed on behalf of SVC O'Donnell Fund Management Inc. in the late 1990s. They included the Strategic Value Fund, Canadian Equity Value Fund and Dividend Fund.

The OSC found that Mr. Bonham used an inappropriate method in manually pricing shares that artificially raised the daily closing prices on these funds consistently over an extended period, thereby overstating their value by $377,652.

One fund was overvalued on 201 of the 231 trading days during the one-year period the OSC investigated. Another fund was overvalued on 123 days and the third on 60 days.

Mr. Bonham raised values by up to 4.2 per cent, the OSC found. It suggested that 0.5 per cent was a more appropriate figure.

Caisse de dépôt et placement du Québec bought the fund management company in June, 2000, after the infractions were committed, and changed its name to StrategicNova Funds Management Inc.

The Caisse made restitution of $377,652 to investors in an agreed settlement in November, 2000. At that time, it also agreed to pay the OSC $10,000 in costs and $50,000 in a special payment.

In comments after the hearing, Mr. Bonham and his lawyer, Nairn Waterman of Lang Michener, insisted that Mr. Bonham had no ulterior motive when he manually priced stocks at the end of the trading day.

"I, in no way, benefited from any of these issues," Mr. Bonham said. "It was a matter of not maintaining adequate records where a computer could not

provide a price. We were not adequately diligent."

He admitted in the settlement that he "failed to act in good faith and in the best interest of the mutual funds and failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise."

Mr. Bonham agreed that he or his company would pay investigative costs of $150,000 to the OSC. He also agreed to pay a total of $50,000 to the OSC for the benefit of investors in Ontario.

Furthermore, Mr. Bonham agreed not to act as an officer or director of a public company, to cease trading in securities other than his own, and not to value a mutual fund. The ban will last for three years.

He is permitted to start another mutual fund within this period, but only if he discloses the terms of the settlement.

"I am very pleased to have this behind me," he said after the hearing, adding that he no longer works as a portfolio manager.

He will continue as CEO and sole owner of Toronto-based Bonham & Co. Inc., but he no longer has any connection with the funds involved in this case.

The OSC began investigating the case in early 2000 when a disgruntled fund employee reported that members of his company were artificially inflating the value of mutual funds through a practice known as high closing."

Source: Oliver Bertin
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