"Striving for Stronger Outcomes in Investor Protection"

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Vice-Chair, Ontario Securities Commission

Public & Private Securities Enforcement:

Improving Recovery for Harmed Investors

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Check against delivery

Good morning everyone. Thank you, Neil, for your kind introduction and for inviting me to be here today.

I would like to commend FAIR for bringing together this group of experts to tackle a complex and challenging issue: how do we improve recovery for harmed investors?

We all know the reality: it is very difficult for investors to get their money back. There is no one organization or one solution that can make every harmed investor whole.

We must continue to strive for more effective solutions to this challenge. It requires commitment to a common purpose, co-operation and action. It's the reason we are here today.

We all have a role to play.

As a securities regulator, the OSC is responsible for making rules regarding investor protection and fair and efficient markets, overseeing compliance with the rules, monitoring risk and deterring misconduct through robust regulatory enforcement. We have limited powers with respect to investor recovery, but we are working to do our utmost to recover what money we can and protect investors within our mandate and regulatory framework.

Our resources are finite. We have to find new ways to increase our reach and effectiveness. Our focus is on expanding investigative and enforcement tools, continuing to build our domestic and international partnerships, and enhancing our regulatory framework to meet the challenges of today and tomorrow.

Let me give you a few examples.

Expanding our powers – freeze orders

The single most important tool available to the OSC to facilitate recovery for victims of fraud is the freeze order power.

The simple truth is that people who perpetrate fraud don't pay monetary fines. Recovering stolen investor funds is virtually impossible after the fact. By the time a person has been caught and sanctioned, the money is long gone – it has been spent or hidden, and the likelihood of finding it is extremely low.

The ability to freeze funds at an early stage of an investigation prevents assets from being liquidated or transferred out of our jurisdiction. And that means investors have a better chance of getting their money back.

The Commission has had the power to issue freeze orders since 1994. Freeze orders are temporary and require a court order to be continued. Until 2014, the courts had been holding the OSC to a very high burden of proof in the case against the respondent in order to continue the order.

In 2014, the *Securities Act* was amended to expand the types of freeze directions that the OSC may make and to add a statutory test for the court to apply in continuing a freeze order. Specifically, the new test introduced a public interest consideration, which is intended to facilitate our ability to obtain continuances while staff's investigation and prosecution proceeds.

In the last fiscal year (ending March 31, 2015), the OSC issued 26 freeze orders involving a total of $9 million in assets. This compares to eight freeze orders and $1.3 million in assets for the previous fiscal year.

Distributions to investors

If we are successful in bringing a case against the respondent and there is a disgorgement order or sanctions order, the money that is frozen or the sanctions that are collected can be paid to investors through various mechanisms: a court-appointed receiver, a third-party claims manager, a direct allocation by the Commission or a distribution through the Civil Remedies for Illicit Activities Office or CRIA.

For example, the largest distribution so far was effected in the Portus case. KPMG was appointed Receiver in 2005 and by 2009, investors had received approximately 95% of the approximately $730 million invested.

An example at the modest end of the spectrum is the Nest Acquisitions case. It involved a fraudulent distribution where staff froze approximately $72,000 in funds, which were later disgorged to the Commission. Through banking records, staff were able to identify a small number of harmed investors (approx. 33). After the matter was concluded in 2013, we were able to locate two-thirds of the investors and pay back a total of $56,000. Although the money disgorged was only about 7.5% of the losses suffered by investors, this is an example of a step in the right direction.

Civil Remedies for Illicit Activities Office (CRIA)

In 2011, the OSC added a fourth mechanism through an information sharing memorandum of understanding (MOU) with the Civil Remedies for Illicit Activities Office (CRIA).

Under Ontario's civil forfeiture law, CRIA can, with a court order, take possession of property that is determined to be a proceed of unlawful activity, search for people who have suffered losses as a result of that activity and use the property to compensate them.

Our partnership with CRIA allows us to leverage their capacity to advertise for harmed investors, process and adjudicate claims for lost money, and make large scale distributions – all under the auspices of the Office of the Attorney General of Ontario.

Example – Al-Tar Energy Corp.

The first file we referred to CRIA was a fraudulent distribution by Al-Tar Energy that raised approximately $650,000 from about 120 investors.

During the OSC's investigation, staff obtained freeze orders for close to $200,000 held in accounts controlled by the respondents (about 30% of money raised). A distribution of the frozen funds was made to investors through CRIA.

We are currently working with CRIA on two other files. In each case, funds frozen by OSC staff (approximately $580,000 in one case, and $240,000 in the other) represent about 35% of investor losses. Staff are in the process of referring a third case, which we expect will result the largest distribution to date through CRIA.

New tools

We are also making better use of our resources by introducing new tools and enforcement policies.

One of our most important responsibilities – especially from the perspective of confidence and trust in the markets – is enforcement. A robust, visible enforcement program is essential to protecting investors from future harm and sending a clear, strong message of deterrence to wrongdoers.

We have enhanced our credit for co-operation and no-enforcement action programs, implemented no contest settlements and published proposals for a whistleblower program.

1. No-contest settlements

The OSC introduced no-contest settlements in 2014 after a lengthy consultation process with stakeholders. We are the only securities regulator in Canada with no-contest settlements.

No-contest settlements will be used only for cases that meet strict eligibility requirements. For example, respondents must demonstrate that they accept responsibility through specific and concrete action, including investor compensation.

Criminal and other serious forms of misconduct are not eligible. In fact, no-contest settlements are intended to help free up resources to pursue more criminal and quasi-criminal cases.

Settlement agreements are one of the most effective ways to get money back to harmed investors because respondents are in the best position to know what they need to do to compensate investors, and they carry out the compensation program under regulatory oversight as part of the settlement agreement at no cost to the investors.

Example

In November 2014, the OSC approved a no-contest settlement with TD Waterhouse Private Investment Counsel Inc., TD Waterhouse Canada Inc. and TD Investment Services relating to alleged inadequacies in their systems of controls and supervision, which resulted in investors paying excess fees. The respondents agreed to pay compensation of more than $13.5 million to all harmed investors, including compensation for foregone opportunity costs.

2. Whistleblower program

In February, we released a Staff Consultation Paper, which proposed a whistleblower program to encourage the reporting of serious misconduct of Ontario securities law to the OSC.

Our whistleblower program would be another first for securities regulators in Canada. We think it would result in real-time tips, giving us access to information relating to accounting and disclosure violations, insider trading, registrant misconduct and other complex matters that may be otherwise difficult for us to detect. And it might facilitate settlements like the one with TD where the respondent pays compensation to harmed investors.

Under our program, a whistleblower could be awarded a financial incentive of up to $1.5 million, and possibly more, upon the final resolution of an administrative enforcement matter. We plan to publish a proposed whistleblower policy for public comment on Wednesday and are aiming to launch the program in the spring.

Domestic partnerships

To be truly effective in deterring investor harm, a securities enforcement program needs to cover the full spectrum of financial misconduct, including criminal conduct – those individuals who have no respect for the law, who prey on investors, who repeatedly defy the rules. That's what the public expects and frankly, deserves.

So, as a regulatory agency, how do we do it?

By looking beyond jurisdictional boundaries to work with the right officials, with the right mindset and a similar vision, we can address financial crime in ways we haven't been able to previously.

1. JSOT

In 2013, we established a Joint Serious Offences Team – or JSOT – as an enforcement partnership between the OSC, the RCMP Financial Crime program and the Ontario Provincial Police's Anti-Rackets Branch.

This was a significant step forward in our ability to investigate and prosecute financial crime.

The team combines police resources and Criminal Code tools – such as the ability to issue search warrants, do undercover work and have the power to arrest – with the OSC's specialized expertise, including litigators, forensic accountants and a team of computer forensic experts.

We're seeing results.

In just over two and a half years, JSOT:

- Has executed over 119 search warrants
- Has 10 matters in investigation
- Has 14 matters before the courts

2. RCMP co-location

We are building on the success of JSOT and our partnership with the RCMP. The RCMP recently moved its financial crime unit of 30 people to be co-located with the OSC at our offices. We now have the capacity to take on more complex cases and the impact will be intensified.

International partnerships

Today, it is rare for an investigation to occur within one jurisdiction. Companies, investors and trading can all take place or be located in different jurisdictions – which makes investigating and prosecuting matters increasingly complex.

Much of the cross-border investigative work is done through the International Organization of Securities Commissions (IOSCO) under its Multilateral Memorandum of Understanding (MMOU).

Currently, there are 105 signatories.

Canada and the U.S., in particular, do a lot of work together. In the OSC's last fiscal year, we received 38 requests for assistance from U.S. regulators and agencies, and made 19 requests.

But we can't stop there. More always needs to be done to stay ahead of increasingly sophisticated and global operators who defy the law.

Investor Office

In addition to the regulatory tools that are available to us, we are committed to advancing investor protection and support for retail investors by expanding the OSC's investor engagement, education and outreach.

In the spring, a major step was taken to further this objective when the Investor Education Fund was integrated into the OSC and combined with the Office of the Investor.

The new Investor Office leads the OSC's efforts to identify and understand investor issues and concerns through investor engagement and research. The Office is also the voice of the investor internally at the OSC, championing investor protection and ensuring investors perspectives are considered and addressed in policy and operational activities.

A new Director, Tyler Fleming – who is in the audience today – was brought in to lead the new Investor Office, coming to us from the Ombudsman for Banking Services and Investments. Very shortly, Tyler and his team will be re-introducing the new Office to investors and other stakeholders.

Putting investors first

We are also committed to advancing investor protection and support for retail investors by continuing to examine the appropriate standard of advisor conduct – is the present definition of the standard of care and suitability robust enough? Or, can outcomes be enhanced in clients' interests through additional guidance or the introduction of a best interest standard for advisor conduct?

We are working on developing and evaluating regulatory reform proposals to address concerns in the advisor-investor relationship and look forward to further engaging with you on these issues as this policy development continues.

Conclusion

These are just a few of the ways the OSC is striving for stronger outcomes in investor protection. I look forward to the panel discussions today and hearing your thoughts and insights on how we can all work together to improve investor recovery. Thank you.

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