



“The Right Regulation for Ontario’s Investors and Capital Markets”

Maureen Jensen

Executive Director

Ontario Securities Commission

Laurentian University: Goodman School of Mines

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Good evening. Thank you, Bruce Jago for that kind introduction. It's my pleasure to be back here in Sudbury.

I also want to thank Bruce and the Goodman School of Mines for inviting me to Laurentian University today. The Goodman School of Mines brings together the programs, faculty, advisers and knowledge across the mining-related disciplines at Laurentian, which is famous for its mining research and education.

I'm a professional geoscientist and spent many years working in the mining sector. I have held both executive and technical management positions with several resource companies, and remain a proud member of the Association of Professional Geoscientists of Ontario (APGO). So it's exciting for me to see how the Goodman School will play a pivotal role in educating and preparing the future leaders and innovators in mining and mineral exploration in Canada.

Earlier today, it was my privilege to meet with students from the Earth Sciences, Engineering and Commerce programs. We had a great discussion. One of my key messages to the students was that they have an opportunity

to serve the public interest, both professionally and personally. They have an opportunity to contribute to the mining and minerals exploration industry, which is an important sector of Ontario's economy and, therefore, an important sector to the OSC.

The mining and minerals sector needs robust regulation to protect investors, facilitate capital formation for miners and exploration firms, and foster fair and efficient markets. The current regulatory regime for the mining sector is an excellent example of the "right regulation" for the investors and capital markets of Ontario.

The focus of my remarks will be on three areas where the OSC delivers robust and effective regulation:

1. Investor protection;
2. Vigorous enforcement; and
3. Leadership in mining regulation and also in addressing issues of access to capital for small and medium-sized businesses.

After my remarks, I would be happy to take your questions.

Investor Protection

The OSC is the regulatory body responsible for overseeing the capital markets in Ontario. Our statutory mandate under the *Securities Act* is:

- To provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

What does this mean?

It means delivering strong investor protection, which is at the core of everything we do.

It also means providing the right regulation to support investor confidence and encourage investment, innovation and economic growth in Ontario and across Canada.

Ontario's *Securities Act* was written to protect investors and that imperative guides our organization. We provide protection to investors in several ways: through market oversight, compliance reviews of registrants, policy development, investor warnings and, of course, enforcement. We're also engaging investors more effectively to better understand their concerns and

then incorporate them into policy and operational activities, particularly through our Office of the Investor.

One of our newest initiatives reflects a priority to meet more with investors and other stakeholders – in person – across the province. OSC staff visited Thunder Bay and Kingston last month as we launched “OSC in the Community”.

Staff from four Branches – Enforcement, Investment Funds, Communications and the Office of the Investor – met with investors, police and business and community leaders in both cities. They made presentations on fraud awareness and improving your financial literacy. Our goal was to give the audience ideas and resources to help them become more informed and protected investors. We also heard their investment stories and concerns.

We also used the visits to make important contacts in the community. For example, in Thunder Bay, our Enforcement representative met with the RCMP, OPP and city police. In Kingston, our Investment Funds Director met with the head of the Chamber of Commerce.

The two events reinforced the value of talking to people face-to-face. The success of Thunder Bay and Kingston was encouraging, and we have scheduled more “OSC in the Community” events, including a visit to London on Wednesday. And yes, we do plan to visit you here in Sudbury, though a date has not been confirmed. Stay tuned...

Vigorous Enforcement

Without a doubt, our enforcement program is the most visible way that the OSC protects the interests of investors and capital markets. We enforce the rules and regulations governing the markets. We monitor market activity and investigate possible breaches of Ontario securities law, like fraud, illegal distributions and misleading disclosure. This includes reviewing complaints, tips and leads from the public. We also have strong partnerships with police services and the provincial Ministry of the Attorney General in areas of shared enforcement interest, and work closely with other regulatory agencies across Canada and abroad.

The globalization of the financial markets underscores the importance of international enforcement co-operation. An increasing number of our investigations and actions involve activity beyond our borders. The Sino-Forest investigation is one example of a cross-border enforcement matter.

The OSC is committed to collaborating with international regulators because Ontario's investors and markets benefit from our efforts to share information and provide assistance on a timely basis.

Targeting fraud is a top enforcement priority. Fraud is one of the most serious and harmful types of misconduct. It hits investors closest to home.

In 2012, Enforcement staff commenced a total of 30 proceedings before the Commission's adjudicative tribunals involving 71 individuals and 36 companies – just over half of them involved fraud allegations. We also concluded proceedings against a total of 63 individuals and 37 companies – half of them faced fraud allegations.

And we're bringing cases, especially proceedings involving fraud allegations and recidivists, before the Ontario Court of Justice, which can hand out jail sentences. In 2012, two defendants received jail sentences totalling 21 months for breaches of the Act and Commission orders. At Dec. 31st, 2012, there were seven matters in litigation before the court – six of them involved allegations of fraud. On March 14, the court handed down a sentence in one of those cases. An individual was sentenced to two years in jail after pleading guilty to three counts of fraud under the *Securities Act*.

A vigorous and visible enforcement presence benefits Ontario's investors, markets, businesses and economy. We understand this and that's why the OSC continues to intensify its enforcement program.

OSC Leadership: Mining Regulation and Access to Capital

When we get right down to it, the capital markets are essentially about savers finding opportunities to invest and issuers raising capital from investors – it boils down to fair and efficient markets and investor protection.

As I said at the opening, mining plays a significant role in both the capital markets and wider economy of Ontario. Our Mining Rule is a good example of regulatory policy that promotes investor confidence in the mining industry while fostering fair and efficient markets for companies to raise capital for projects and operations. The rule's formal name is National Instrument 43-101 *Standards of Disclosure for Mineral Projects*. Some of you are likely familiar with its requirements.

As residents of the Sudbury area, you know that mining is an inherently risky and cyclical business. I'm sure that most, if not all, of you have seen

the ups and downs in mining. The chances of finding and developing a profitable mine are low. Exploration and development require access to large amounts of risk capital over long periods of time. Projects can be at risk of failing at any stage, which could wipe out millions of dollars of investor equity. Therefore, the OSC must protect investors in the mining sector and maintain their confidence. We all know that confident investors drive economic growth and create opportunities across the economy.

The foundation of our securities regulatory system is full, fair and timely disclosure of all information that could be expected to influence investment decisions. We want all potential risks and rewards to be clearly disclosed to investors and market participants at the same time.

NI 43-101 sets the rules for raising capital for mining and mineral projects in Canada. It also dictates how mining companies report geological results to the public. One of the rule's main objectives is to prevent misleading information from entering the marketplace. If you're an investor, you want full, fair and timely disclosure of all information that could influence your decision to invest with confidence in a specific miner.

Now, disclosure requirements alone cannot prevent all scandals and fraud, but they create a level playing field in the markets which is understood by investors and market participants. NI 43-101 creates that level playing field, and it lets industry know what we expect. The Mining Rule is a robust and transparent framework to support Ontario as a quality market to attract capital from Canadian and international investors. It's a model of what I mean by "right regulation".

Specific regulation applies to other sectors – not just mining. For example, the oil and gas industry and investment funds. In our view, securities regulators and the private sector, including the mining industry, have a mutual interest in sustaining a fair, robust and efficient equity market.

The OSC pushed for NI 43-101 in the wake of the Bre-X Minerals scandal. The Mining Rule is the culmination of a research and review report by the Mining Standards Task Force, which the OSC and TSE established in 1997 in response to the Bre-X controversy.

The Task Force's mandate was straightforward: to improve the disclosure framework for reporting results from an issuer's mineral projects. But the higher objective was more challenging. In the wake of the Bre-X failure, the

OSC wanted to develop ways to enhance the integrity of the industry and restore investor confidence.

The Task Force made 66 recommendations. Sixty-four were adopted, requiring mining companies to improve corporate governance standards and follow disclosure requirements that promoted consistency in reporting. The centrepiece was the introduction of the “qualified person” concept. The qualified person effectively acts as a gatekeeper. It’s the individual responsible for overseeing the preparation and approval of all technical disclosure relating to an issuer’s mineral projects.

At the same time, the OSC pushed for a standalone licensing body for geoscientists. In 2000, the Association of Professional Geoscientists of Ontario was created to govern the practice of professional geoscience in the public interest. Currently, there are more than 1,900 practicing members, with over 200 additional geologists in training to become professional geoscientists in Ontario. As a former president of APGO, I'm delighted to see the great work done by the Association.

All of this work came together in 2001, when the Mining Rule took effect. At the heart of the rule are the principles of transparency, materiality and

competence. Let me cite some of the provisions that help in achieving these principles:

- The requirement for a qualified person who's a geoscientist or engineer with at least five years of relevant experience and a member of a professional association who prepares or approves all technical disclosure;
- Mineral resource and mineral reserve disclosure standards and definitions established by the Canadian Institute on Mining, Metallurgy and Petroleum (CIM);
- Best practice guidelines for exploration, development and mining activities;
- Disclosure of legal, environmental, social and political issues affecting a mineral property; and
- Technical report by a qualified person to support an issuer's disclosure of key milestones and material events.

Since the Rule became part of securities law, it has allowed for more timely intervention by securities regulators, with more significant consequences, when non-compliant and misleading disclosure is identified. Ultimately, this protects investors and the integrity of our markets.

Moreover, NI 43-101 introduced standardized terms and definitions for disclosing information about mineral projects, which made it easier for investors to compare projects and assess the investment risk. This has helped give investors more meaningful information, and confidence in that information, in order to more accurately assess companies listed on the TSX and TSX Venture Exchange.

Under NI 43-101, Ontario has the most transparent and comprehensive mining disclosure regime in the world. The TMX Group is the dominate stock exchange globally for mining companies to list and raise capital. Toronto is the international capital of mining finance. This is the right environment for domestic and international investors to find opportunities for their capital and for mining and mineral companies to attract that capital, all of which contributes to economic growth in this province.

Other jurisdictions consider 43-101 to be strong, effective regulation and look to it as a model regime for protecting investors while fostering market integrity and efficiency. But we're not resting on our laurels.

The OSC and other securities regulators in Canada are paying more attention to how mining companies use 43-101 to make their disclosures to

the markets. We're taking a more substantive approach in reviewing disclosure because the OSC is committed to maintaining world-class regulatory standards and to meeting the changing disclosure needs of the mining industry and the investors who provide it with capital.

Access to Capital

Earlier this month, the Prospectors and Developers Association of Canada (PDAC) held its annual convention in Toronto. As you know, it's a huge conference. About 30,000 people from more than 100 countries attended: investors, analysts, mining executives, geologists, government officials and international delegations.

The general mood at the conference was surprisingly upbeat but there's no doubt that a major theme is the challenge of junior miners and other firms to access capital to fund exploration and operations. This leads me to my last topic: What the OSC is doing to assist small and medium businesses with market access and capital-raising.

Small and medium-sized enterprises (SMEs) are innovative, they create jobs and they generate growth. Access to capital is a significant challenge for

many smaller issuers – we hear that in our consultations and outreach, at PDAC and at “OSC in the Community”.

Many SMEs raise capital in the exempt market, where issuers can raise capital and distribute securities without a prospectus. The exempt market is a non-public securities market, whereas the TSX represents the public market. Issuers in the exempt market are still subject to tailored regulation, including registration and compliance requirements.

The exempt market is a significant market in Ontario. Approximately \$86.5 billion of the \$143 billion raised through exempt distributions reported to the OSC in 2011 was raised here in Ontario. Given the size and importance of exempt market, OSC is focused on considering alternate capital-raising exemptions and improving our understanding of how and why individual investors participate in this non-public securities market.

In December, we published for comment four new ideas for capital-raising in Ontario, including crowdfunding that would be subject to limits for issuers and retail investors. Crowdfunding is a method of raising small amounts of money from large numbers of people over online channels such as social

media. There are different models of crowdfunding and some countries – such as the U.K. – already allow it.

Crowdfunding has many supporters and it gets a lot of attention in the media. Many market participants in this province support greater access to the exempt market for both issuers and investors. “Interactive Ontario” is the latest industry group to urge us to allow crowdfunding.

We’ve heard from supporters at many of the consultation sessions on our proposals. Some market participants want the OSC to move quickly on crowdfunding – before the U.S. – to give companies here a competitive advantage. In all of our considerations, the goal is to foster easier access to capital for smaller issuers, while adequately protecting the needs of investors.

The comment period on our four proposals ended this month. We received about 100 comments, which is a terrific response. As we review the comments, staff are also researching and analysing the capital-raising regimes in other jurisdictions. For instance, we're watching developments under the U.S. JOBS Act related to promoting capital formation and access to public markets by emerging growth companies.

At the same time, the OSC is also working with the Canadian Securities Administrators (CSA) on developing tailored regulation for venture issuers and ways to assist them with capital-raising while maintaining appropriate safeguards for investors.

Facilitating effective capital-raising in Ontario must be addressed in the context of both the exempt and public markets. Issuers like junior miners and exploration firms here in Northern Ontario need access to capital to compete in the global economy.

As we work on possible regulatory actions related to capital formation, we also follow mining-related developments outside our jurisdiction, such as the new Ontario *Mining Act*. The new Act will come fully into force on April 1st. The last time the legislation had a major overhaul was in 1906. For more than 100 years, the Act was largely a static document and the mining industry in Ontario did very well under the “free entry” system, in which staking a claim was relatively direct, fast and cheap. For most of those years, there was no requirement for the provincial government, or mining companies, to consult with stakeholders, including First Nations.

The impetus for "modernizing" the Ontario *Mining Act* came out of the 2004 Haida decision by the Supreme Court of Canada, which made it clear that governments have a duty to consult with, and accommodate, Aboriginal groups. Through the new Act, the provincial government aims to delegate the duty to consult to exploration companies. While the new Act will provide for greater transparency and participation by all stakeholders, it will be interesting to see how mining companies adapt to the new reality of exploration in Ontario.

Conclusion

As I conclude my remarks, I want to emphasize how much the investors, businesses and economy of Ontario depend on the integrity of our capital markets. Fair and efficient markets generate confidence and that confidence creates opportunities for investors and companies to create wealth and economic growth. Despite our varying perspectives, all of us share a common interest in sustaining competitive capital markets in this province.

As Ontario's securities regulator, the OSC is mindful of the priority to strike a balance between protecting investors and fostering robust, efficient markets, which is consistent with our mandate. I want to assure you that the OSC is determined to deliver the right regulatory framework to protect investors,

facilitate capital formation and foster the confidence of investors from across Canada and around the world.

Thank you.