



Ontario
Securities
Commission

Commission des
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de l'Ontario

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April, 22, 2005

Mr. Michel Colinet
Secretary, CESR-Fin
11-13 Avenue de Friedland
75008 PARIS – FRANCE

Dear Sir,

I am writing in response to the letter from Mr. John Tiner and Mr. Lars Ostergaard to Ontario Securities Commission Chairman David Brown requesting information about our enforcement mechanisms relating to compliance by reporting issuers with accounting principles accepted for use in Canada's capital markets.

Attached is the OSC staff's response to your questionnaire. While this response is based primarily on the laws and processes in place in Ontario, we have also provided an overview of how we interact with other Canadian provincial securities administrators in enforcing compliance with accounting principles by issuers in Canada's capital markets.

With respect to your request for information about differences between International Financial Reporting Standards and Canadian generally accepted accounting principles (GAAP), we are aware of the information provided to you by Peter Martin, Director, Accounting Standards, at the Canadian Accounting Standards Board. We trust that this information will assist you in fulfilling your mandate to assess equivalence.

We welcome your interest in our GAAP enforcement processes. These processes are an important element of the financial reporting system that contributes to providing investors in our increasingly global capital markets with timely, relevant, and reliable financial information.

If you have any questions regarding our response to the questionnaire, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John A. Carchrae".

John A. Carchrae, CA
Chief Accountant

Questionnaire on Enforcement mechanisms

Background

Canada has thirteen securities regulatory authorities, one located in each province and territory. Securities laws in each of these jurisdictions differ to some degree, as do the processes relating to enforcement of generally accepted accounting principles (GAAP). The responses to this questionnaire reflect the laws and processes that govern the actions of the Ontario Securities Commission (OSC) but are also generally representative of the Canadian Securities Regulatory Authorities ("SRAs") in the largest jurisdictions that account for the vast majority of the market capitalization of reporting issuers in Canada.

Coordination among the 13 regulatory authorities on matters of regulatory policy and process, including enforcement of GAAP, is pursued through the Canadian Securities Administrators (CSA). The CSA is a council of the thirteen provincial and territorial securities regulatory authorities (SRAs) in Canada. The CSA has no statutory regulatory responsibility or authority but has as its objective the improvement, coordination and harmonization of regulation of the Canadian capital markets. The CSA functions through meetings, conference calls and day-to-day cooperation among the SRAs. Funding and support resources are drawn from within Commission operating budgets on a voluntary basis.

In 2003, the CSA established the Policy Coordination Committee (PCC) which is responsible for overseeing and coordinating all CSA projects and facilitating decision-making among jurisdictions. The PCC consists of six member jurisdictions drawn from the CSA each of which serves for a two year term and may be reappointed. The PCC seeks to ensure that new policy initiatives have a common content, understanding and implementation among the jurisdictions.

Also in 2003, the CSA established a permanent Secretariat located in Montreal, Quebec. The Secretariat consists of three full time staff who assist with the coordination and delivery of all CSA projects. The Secretary-General of the secretariat reports to the Chair of the CSA.

In some jurisdictions, SRAs are self-funding agencies or crown corporations. In others, they operate within Ministries of provincial governments. Each SRA: formulates policy; makes rules; sits as an administrative tribunal in hearings on securities-related matters; and hears appeals from decisions made by SRA staff and self-regulatory organizations.

The SRAs share a mandate of providing protection to investors from unfair, improper or fraudulent practices while fostering fair and efficient capital markets and confidence in them. The SRAs accomplish this through activities which include reviewing prospectuses; reviewing continuous disclosure documents; conducting compliance reviews of registrants; granting discretionary exemptions from registration and prospectus requirements; educating industry and investors; investigating possible violations of provincial securities laws; and commencing proceedings before the Commission or applicable Provincial Courts of Justice.

Fundamental regulatory requirements dealing with financial reporting and disclosure are uniform across the SRAs as a result of:

- a single national rule that addresses the accounting and auditing standards required to be applied with respect to the financial statements of an issuer and a single national rule setting out continuous disclosure requirements for both financial and non-financial information, including MD&A; and
- a single national rule dealing with the content of a short form prospectus.

A project is under way currently to complete a single national rule dealing with the content of a long form prospectus. The long form prospectus rule is expected to convert into a national rule the existing Ontario rule which is currently the de facto national standard.

The principles of the regulatory approach to ensuring compliance with disclosure obligations are essentially similar across the different jurisdictions. CSA Staff Notice 51-312 – *Harmonized Continuous Disclosure Review Program*, outlines the key elements of the program for continuous disclosure review agreed upon by the larger jurisdictions. However, some differences in the details of the application of this program remain among the jurisdictions. Ongoing discussion and information sharing, particularly through the medium of the CSA Committee for Continuous Disclosure Review, are designed to promote consistency in key areas.

Generally, public offerings in Canada tend to be made across all jurisdictions. Prior to the completion of an offering, all jurisdictions in which the offering is made must approve the prospectus relating to the offering. Even though all jurisdictions in which the offering is made approve the prospectus, the review of the prospectus document is completed by the principal jurisdiction. This is facilitated by the System for Electronic Document Analysis and Retrieval (SEDAR), an electronic filing system operated by the Canadian Depository for Securities, with the support and direction of the CSA. One aspect of SEDAR is that it allows each SRA to post its correspondence with an issuer during the prospectus approval process. Each of the SRAs has access to this correspondence, thus contributing to improving efficiency and consistency.

Question 1 – Definition and purpose of enforcement

What is the definition and purpose of enforcement of compliance with the relevant GAAP in your country? Where is this defined?

The OSC enforces securities legislation in Ontario as set out in the *Securities Act (Ontario)* (the Act). The purposes of the Act, as defined in section 1.1 are to:

- (a) provide protection to investors from unfair, improper or fraudulent practices; and
- (b) foster fair and efficient capital markets.

In pursuing these purposes, we execute a well developed and extensive review program for reporting issuers in Ontario. This review program includes within its scope documents such as prospectuses and financial statements (see also question 11) and is designed to enforce compliance with GAAP, securities laws and timely disclosure requirements. Enforcement of compliance is achieved by using a range of actions available to the OSC (see also question 6) when infringements are identified. These actions, combined with communication to the market of issues identified and outcomes achieved, as well as the Refilings and Errors list (see also question 12), contribute to maintaining and improving the quality of disclosure and transparency of financial information and help to promote investor confidence.

Question 2 - Responsible enforcement body

Who has (have) the ultimate responsibility for enforcement of compliance with relevant GAAP in your country and what is the legal basis for your framework (eg act, executive order, other)?

Enforcement of compliance with GAAP for companies that are reporting issuers in Ontario is ultimately the responsibility of the OSC. This responsibility derives from the purposes and principles set out in the Act as well as specific provisions (e.g., Section 20.1(1)) providing the Commission or its staff with the authority to review disclosures that have been, or ought to have been, made by a reporting issuer. In this regard, all reporting issuers must file audited annual financial statements, as well as quarterly financial statements, prepared in accordance with a basis of accounting prescribed by rules made under the Act. In general, National Instrument 52-107 – *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* provides that financial statements are to be prepared in accordance with Canadian GAAP, (defined by the Act as the principles recommended in the Handbook of The Canadian Institute of Chartered Accountants). However, in certain limited circumstances, financial statements may be prepared in accordance with US GAAP or International Financial Reporting Standards (IFRS).

The approach to enforcement of compliance with financial reporting requirements is independent of whether financial statements are prepared in accordance with Canadian GAAP or another acceptable accounting framework such as US GAAP or IFRS. When another acceptable accounting framework is used the OSC takes steps to bring to bear particular expertise by using, for example, accountants who have greater knowledge and experience with that framework. In the case of reporting issuers that use US GAAP and are also SEC registrants, OSC staff are experimenting with conducting joint reviews with SEC staff.

While the OSC has the ultimate responsibility for enforcement of compliance with GAAP, achieving compliance depends on the effective operation of all elements of the financial reporting system, including management, audit committees, boards of directors and independent auditors. Enforcement of compliance with GAAP is also supported by the inspection processes of the Canadian Public Accountability Board, an independent board that oversees the conduct of auditors of public companies. These inspection processes include examination of a sample of individual audit engagements to assess compliance with relevant standards.

The only other regulator that plays a role in enforcing the application of financial reporting standards for external reporting to shareholders is the Office of the Superintendent of Financial Institutions (Canada). The OSFI's primary concern is, however, with prudential regulation and hence its role in enforcement of compliance with financial reporting standards is limited.

Question 3 - Delegation

In case other bodies carry out enforcement on behalf of the body with the ultimate responsibility – what are the names of these 'delegated' bodies, what part of the enforcement has been delegated to them and how is the delegated body supervised?

The OSC does not delegate to other bodies its authority for enforcement of compliance with financial statement reporting requirements for Ontario reporting issuers.

We note, however; that by agreement among the provincial and territorial securities regulators across Canada, the primary enforcement activity with respect to compliance with GAAP is generally performed by the securities regulator in the jurisdiction in which the head office of the reporting issuer is located. This does not involve delegation of the OSC's authority and responsibility but merely provides an efficient means of avoiding duplicative enforcement activities. To provide for an appropriate level of consistency in GAAP enforcement, activities are coordinated through the Canadian Securities Administrators (CSA).

Auditors, who provide the first level of assurance of compliance with GAAP, are overseen by the Canadian Public Accountability Board (CPAB). CPAB provides independent oversight for auditors of Canadian reporting issuers. CPAB is governed by a Council of Governors that appoints the Independent Directors, including the Chair and Vice Chair. The Council also periodically reviews the effectiveness of the system and will make changes as necessary. The Council is composed of the Chair of the Canadian Securities Administrators (CSA - which is the collective group of the 13 provincial and territorial securities regulators in Canada), the Chair of the OSC, the Chair of the Autorite des marches financiers in Quebec, the Federal Superintendent of Financial Institutions Canada and the President and CEO of The Canadian Institute of Chartered Accountants. Through the Council, the OSC and other Canadian securities regulators provide input and direction to the process for overseeing auditors of reporting issuers in Canada. Further information on the activities of CPAB can be found on its website, <http://www.cpab-ccrc.ca>.

Question 4 - Interrelationship

In case there is more than one enforcer with regard to compliance with your GAAP, what agreements have been made concerning the interrelationship between the enforcers?

As noted above, the OSC does not delegate its authority for enforcement of GAAP. To the extent other provincial or territorial securities regulators take on the primary responsibility for GAAP enforcement for Ontario reporting issuers headquartered outside Ontario, activities are coordinated and information is shared through a committee of the Canadian Securities Administrators.

Question 5 - Independence

Is (are) your enforcement body (bodies) designed in a way that ensures an adequate independence from the government? Please provide details of any independence arrangements that are in place.

Is (are) your enforcement body (bodies) designed in a way that ensures an adequate independence from market participants, issuers, auditors and other stakeholders? Please describe how.

The OSC is established by the Act as the body with responsibility for administration and enforcement of securities legislation in the Province of Ontario. The powers and duties of the OSC, which include the ability to hold hearings and impose penalties against market participants, are assigned under the Act. The Commission is accountable under the Act to the assigned minister in the provincial government and the accountability relationship is set out in a memorandum of understanding that is a matter of public record. The OSC's operations are funded from the fees established by the Commission and charged to market participants.

The Commission is made up of at least 9 and not more than 14 members. The Chair, who is also the Chief Executive Officer of the Commission is required to devote his or her full time to the work of the Commission. There are also currently 2 Vice-chairs who serve on a full time basis. The remaining Commissioners are part-time members. Under the Act, the members of the Commission are not its employees.

The Commissioners as a group perform a policy-making function and also serve as the independent Board of Directors responsible for overseeing the management of the financial and other affairs of the Commission. The responsibilities of the Board do not extend, however, to directing the staff in the normal course exercise of their assigned regulatory powers and responsibilities. A strict arm's length separation is maintained between the Commissioners and staff with respect to actions on matters such as restatement of financial statements. This is designed to ensure that a panel of Commissioners who must balance the interests of all affected groups is able to make an objective assessment of staff decisions in, for example, a public hearing in which staff is seeking an order requiring an issuer to restate its financial statements or other disclosure. In such a setting, staff are required to argue their case to the panel of Commissioners and the issuer has a full opportunity to argue its position.

By employing a highly qualified, full-time professional staff with sufficient powers to meet their responsibility to investors and the public in the operation of the securities markets in Ontario, the OSC ensures that it operates independently from market participants, issuers and auditors. Further, rulemaking processes are subject to formal requirements that ensure transparency and the opportunity for broad public input independent of special interest groups.

Commissioners and staff of the OSC are subject to the terms of a code of conduct that requires them to act at all times with honesty, integrity and impartiality. Each Commissioner and employee must confirm annually in writing that they have complied with the code of conduct.

Question 6 - Powers

What powers (investigative powers and powers to take action) does your enforcement system have, and which body (bodies) has (have) these powers? Please describe as far as possible, how and when you use each power. If relevant please also state what powers have been delegated and to whom.

As noted above, the Act gives the OSC the authority to conduct reviews of disclosure documents of reporting issuers in Ontario. If during the course of a review the OSC requests additional information or documents, section 20.1 of the Act requires the reporting issuer to provide such documents or information. In addition, section 11(1) of the Act provides the OSC with broad powers to investigate any matters deemed necessary for the due administration of the Act.

If during the course of a review or investigation, significant deficiencies are noted, the most relevant power available to the Commission is the ability to issue an order requiring a market participant to amend a document (including Financial Statements and Management Discussion & Analysis). Examples of deficiencies would be when the document has not complied with GAAP or any other aspect of Ontario securities law. This power enables the OSC to order a reporting issuer to provide public correction and restatement concurrently through the filing of a press release describing the correction and by filing the document as 'amended'. In practice, achieving correction and refiling of a deficient document is usually achieved through staff discussions with the issuer without the need for recourse to a Commission order. This practice is discussed further in response to question 12.

If a reporting issuer does not comply with an OSC order to amend a document, or contravenes Ontario securities law in any way, section 127(1) of the Act enables the Commission to impose any of the following sanctions:

- cease the trading in securities of a company or by a person;
- forbid a company or person to rely on any exemptions contained in Ontario securities law;
- require a market participant to submit its practices and procedures for review;
- reprimand a person or company;
- require a person to resign from one or more positions as an officer or director of an issuer;
- prohibit a person from becoming or acting as director or officer of any issuer;
- require a person or company who has not complied with Ontario securities law to pay an administrative penalty of not more than \$1 million for each failure to comply;
- require a person or company who has not complied with Ontario securities law to disgorge to the OSC any amounts obtained as a result of the non-compliance.

Alternatively, the OSC may also refer matters to the Provincial Court where, if convicted, a person or company may be liable for a fine of not more than \$5 million or imprisonment for a term of five years less a day, or both.

Most provincial and territorial securities commissions across Canada have a broadly comparable range of powers.

Question 7 - Organisation

What are the number of issuers and number of staff working with enforcement in your country and how do you ensure that sufficient resources are granted to your enforcement bodies?

Ontario has approximately 5,300 reporting issuers of which we are the principal jurisdiction for approximately 1650. All entities with securities listed on the TSX or TSX Venture Exchange (TSX-V) are reporting issuers. In addition, a substantial number of entities that do not have listed securities are reporting issuers by virtue of having filed a prospectus and obtained a receipt. Further details on the number of reporting issuers, as well as their market capitalization, are set out in the following table:

Province	TSX listed issuers			Approximate total number of issuers	Approximate % of total issuers	Approximate % of market capitalization
	Approximate number of TSX listed issuers	Approximate % of TSX listed issuers	Approximate number of other issuers*			
Ontario	650	49	1000	1650	31	45
Alberta	260	20	1000	1260	23	23
Quebec	170	13	400	570	11	17
British Columbia	180	14	1500	1680	32	6
Other	60	4	100	160	3	9
Totals	1320		4000	5320		

* This column includes approximately 2150 issuers that are listed on the TSX-V representing <1% of the total market capitalization of companies listed in Canada. The remaining issuers include, for example, debt only issuers that have no listed equity securities as well as others that may no longer be active and hence are of little or no significance.

Approximately 44 professional staff (lawyers, accountants, etc.) work in the OSC's Corporate Finance Branch, the branch having primary responsibility for review of prospectuses and continuous disclosure documents for issuers other than investment funds. Staff at the OSC is experienced in the application and enforcement of securities law and the application of accounting principles. A majority of the staff working with enforcement have a professional designation in their respective field. In addition, the OSC has an Enforcement Branch that investigates and prosecutes breaches of the Act of all types, including in appropriate circumstances matters relating to failure to comply with GAAP.

The OSC assesses the resources required to meet its objectives through a business planning process that identifies the number of issuers expected to be reviewed, the nature of those reviews and the number of staff and balance of skills required. Further, through an ongoing evaluation of resources and the use of our risk-based approach (see question 10 below) we are able to prioritize among many possible activities and ensure resources are most effectively employed and objectives are achieved.

Question 8 - The scope of enforcement (documents and issuers)

What kind of financial information is subject to enforcement in your country? (annual and interim financial statements, individual and consolidated accounts, prospectuses¹, other)

What kind of issuers are subject to enforcement in your country? (eg listed issuers, issuers applying for admission to trading of their securities on a regulated market, other)

OSC reviews include an examination of financial and non-financial information made available in the public domain. This information may be reviewed in the context of prospectuses, annual reports, annual financial statements, quarterly financial statements, annual information forms, information circulars, press releases, material change reports and other continuous disclosure documents. In many cases, the financial information included in these documents has been audited or reviewed.

All entities that are reporting issuers in Ontario, (which include those listed on the Toronto Stock Exchange and the TSX Venture Exchange), are subject to the requirements of the Act and are therefore subject to review. A company conducting an initial public offering of securities is also subject to review before it is permitted to offer its securities to the market.

The financial information prepared and presented by a reporting issuer is normally presented on a consolidated basis only. There is no requirement under GAAP or the Act to present separate unconsolidated financial statements for a parent company.

Question 9 - Methods of enforcement : Ex-ante or ex-post approach

Is the normal procedure of enforcement of compliance with relevant GAAP ex-ante (before statement is published) or ex-post (after statement has been published) or both? Please state if you use different approaches for different types of financial information (e.g. annual statements vs. prospectuses).

In general, reviews of financial statements for compliance with GAAP are conducted after those statements have been filed with the OSC and made available on the public record. In the case of a prospectus, the approach differs slightly. In almost all cases, a preliminary version of a prospectus (including the financial statements) is made available in the public domain prior to regulatory review. The OSC always conducts and completes a review of a prospectus, however, before issuing a final receipt and permitting sales to the public to proceed. In addition, the OSC may reopen or conduct a separate review of that prospectus while sales are being made or after sales have been made.

¹ Prospectus approval concerning financial information and not ongoing information.

Please also state if your enforcement body offer issuers a possibility to obtain a pre-clearance, as to whether a certain treatment complies with your GAAP or not. To what extent is this facility used by issuers?

The OSC encourages issuers to seek pre-clearance of the accounting treatment proposed for a specific transaction where there are unique or complex issues involved. This practice is not used extensively.

Question 10 - Selection

How does your enforcement body select the issuers, whose documents containing financial information, are to be examined (risk based, random, rotation basis or other)? In case you make use of a risk based approach, please give a short description of the types of risks you include in your assessment and the inputs/criteria that you take into consideration.

The OSC utilizes a risk-based approach to selecting reporting issuers for review. This approach is discussed in *OSC Staff Notice 11-719 – A Risk-based Approach to More Effective Regulation*. The approach enables us to target those activities and market participants where we believe problems are more likely to arise. The types of risk that we attempt to mitigate through this focused approach include the risk that the issuer's regulatory filings and other public disclosure do not comply with applicable requirements and the risk that market participants will materially breach securities laws.

To determine which activities and market participants are considered 'high risk', OSC staff has developed detailed sets of criteria through previous experience, data analysis and awareness of best practices. Each criterion carries a weighting reflecting its overall importance in determining the risk rating.

If an initial assessment of an issuer identifies sufficient indicators of risk, the matter is selected for further review or investigation. Our initial risk review is not determinative of the final outcome, however, as staff will neither initiate nor avoid regulatory action based solely on the results obtained through the initial application of the risk criteria. Further, we also do not disclose why we selected a particular market participant or activity for detailed review.

Although we believe our risk-based approach is an effective tool for selection, there are situations where we select activities or market participants for detailed review that may not meet the published criteria. For example, some reviews are undertaken on a random basis, partially to assist us in assessing the effectiveness of our selection criteria and also to ensure that all market participants are subject to some regulatory review at least once every four years. Further, some reviews are undertaken based upon our own discretion or judgement or as a result of a complaint.

Question 11 - Spectrum of checking procedures

How does your review process work? What kind of checking procedures does your enforcement body use (formal checks, in-depth substantive in-nature checking etc.) and in which situations do you use which procedures?

The review process, as formally documented in a number of OSC Staff Notices, and most recently in *OSC Staff Notice 51-715 Corporate Finance review Program Report – October 2004*, consists of routine formal checks for the general completeness and timeliness of filings for all issuers as well as more in-depth review for specific issuers as selected through the risk-based approach documented in question 10.

In applying the risk-based approach, an initial risk assessment is completed through a basic review, and the results are used to determine the level (or intensity) of further review that will be applied to the issuer. Typically, issuers with more risks or a higher risk profile are selected for full review while those with lower or less risk(s) are not reviewed further or are selected for issue-oriented review.

A basic review consists of an evaluation of areas of obvious concern in significant documents such as the annual financial statements and annual management's discussion and analysis. A full review consists of a detailed investigation of the issuer's full disclosure record. In general, at least a basic review is completed for all prospectuses filed by entities for which Ontario is the principal regulator. Also, a basic review of continuous disclosure documents is completed for all reporting issuers at least once during a four year period.

When an issuer's prospectus is selected for full review, OSC staff will perform a complete review of the document itself and documents incorporated by reference. When an issuer is selected for full review of continuous disclosure documents, OSC staff will complete a detailed review of the issuer's disclosure record for at least the past year, which will include regulatory filings, trading activity, industry data and analyst reports.

An issue-oriented review will be completed when the level of risk assessed does not warrant full review but a specific legal or accounting issue(s) is identified that warrants further detailed consideration. In this case, the review will focus primarily on the issue identified.

When an issuer is identified as higher-risk, either as a result of an initial risk review or a subsequent full review, OSC staff may undertake a "real-time" review of the reporting issuers disclosure documents. A real-time review is a continuous monitoring of an issuer's regulatory filings as and when they are made, as well as media coverage, trading patterns and other ongoing disclosure documents. This approach is designed to facilitate prompt identification and resolution of issues.

In all cases, where problems are identified as a result of any particular form of review, staff will communicate with the issuer and both parties work to resolve the issues promptly.

Question 12 - Actions

What actions can your enforcement body take, in order to make sure that the market gets timely relevant and reliable information, when misstatements have been discovered (e.g. require supplementary information, public correction, reconciliation or corrective note, restatement, suspension from trading, delisting)? Please also state if the actions available differ depending on materiality of the misstatement, the frequency at which a certain issuer publishes misstatements or on other elements.

If certain actions can be taken only in case of material misstatements, please state your definition of materiality with regard to the financial information examined.

Please also state how many cases of enforcement you have conducted in the last two years and which actions have been used in these cases.

Our objective during our reviews is to identify and correct material misstatements, or material non-compliance with GAAP, in the disclosure documents of reporting issuers. For this purpose, an item would be considered material if its omission or correction could change the decision of a user of financial statements or other financial information.

When a potential material misstatement is identified in a disclosure document such as the financial statements, staff will investigate the matter to determine whether there is in fact a misstatement and whether it is material. If staff establish that there is in fact a material misstatement, staff will request that the issuer amend and refile the document (see also question 6). If a resolution between staff and the issuer cannot be achieved, then staff will seek an order from the Commission requiring the issuer to amend and refile the document. If staff establish that there is a misstatement but conclude that it is not material, staff may agree to allow correction of the error on a prospective basis. In these circumstances, the issuer would not necessarily be required to explain the correction. It is however, common practice for an issuer to provide some discussion of the nature of the change in order to provide an accurate reflection of its substance.

By amending and refileing the document, the issuer is acknowledging that the original filing was not prepared in accordance with the *Securities Act* (Ontario), and this material event is required to be clearly and broadly disclosed to the market in a timely manner. As outlined in *OSC Staff Notice 51-711- List of Refilings and Corrections of Errors as a Result of Regulatory Reviews*, we believe that this disclosure should be in the form of a publicly disseminated news release that clearly describes the changes and the reasons for them. A copy of the news release is required to be provided to the OSC and is placed on the Refilings and Errors list and maintained on the OSC web site (www.osc.gov.on.ca) for a period of three years from the date of refileing. The Refilings and Errors list provides transparency to the disclosure process and helps to maintain investor confidence.

In addition to the Refilings and Errors list, the OSC also maintains on its website a list of defaulting issuers. These are issuers that are in default of their obligations under the Act. An issuer may be considered in default if, for example, it is found to have filed and not corrected financial statements that are determined to be materially non-compliant with GAAP. Once the deficiency is corrected, the issuer's name will be removed from the list. This list provides further transparency

to the disclosure process.

As set out in *OSC Staff Notices 51-715 and 51-712 – Corporate Finance Review Program Report*, October 2004 and August 2003, we have completed the following reviews in corporate finance in the past two years:

	April 1, 2003 to March 31, 2004	April 1, 2002 to March 31, 2003
Prospectuses, rights-offering documents	274	217
Continuous Disclosure reviews	361	194
	<u>635</u>	<u>411</u>

The increase in the number of reviews between the two periods is primarily a result of refinements in the risk based selection criteria resulting in an improvement in the selection process and hence a more efficient allocation of resources to specific, identified problem areas, primarily through basic reviews.

These reviews resulted in a number of outcomes such as disclosure enhancements, changes in the offering structure, additional legal requirements, refiling of a document (see below), placement on the default list (see below) or referral for a more detailed investigation that may result in penalties. Outcomes for the past two years are as follows:

	April 1, 2003 to March 31, 2004	April 1, 2002 to March 31, 2003
Refilings, Retroactive Accounting Changes	75	82
Disclosure Enhancements	285	201
Placed on the default list	15	24
Additional legal requirements or change in the structure of the offering	14	26
	<u>389</u>	<u>333</u>

The outcomes relate to both financial and non-financial information in both prospectus and continuous disclosure documents. The majority of refilings relate to financial information issues in continuous disclosure documents.

In addition to the actions described above that are intended to correct deficiencies in financial statements or other disclosure on a prompt and transparent basis, the OSC also has the power to take actions such as imposing a cease trade order. For example, in cases of failure to make timely filings of financial statements, it is staff's practice to seek from the Commission a management and insider cease trade order that will continue for the period until filings are brought up to date. In addition, while the cease trade order is in place, the issuer is required to provide

regular bi-weekly updates to the market on current developments and progress in preparing the filings that are in arrears.

Question 13 - Consistent decisions and actions

How do you ensure a consistent application of the standards (are decisions submitted to a (central) database)? What is the extent of any relationship between the enforcement body and the standard setter? Does the enforcement body issue interpretation guidance - what is its status?

If you have different enforcement bodies please also describe how you ensure coordination between them.

What does your enforcement body do to secure consistency with regard to the actions taken? (similar actions to similar infringements even if different enforcement bodies are involved)?

Consistent decisions on the application of GAAP are achieved internally through the review of controversial issues by branch level management and the Office of the Chief Accountant. Consistency in the actions taken and outcomes achieved is facilitated through collective decision-making, with significant input from both groups. The review of prospectus and continuous disclosure documents is carried out by staff of the Corporate Finance Branch. The Branch is headed by the Corporate Finance Director who reports to the Executive Director of the OSC. Within the Corporate Finance Branch, there are 3 teams comprised of primarily lawyers and accountants. Each of these teams is led by a Manager and an Assistant Manager. Issues identified by reviewers on individual files are escalated within the Branch and to the Office of the Chief Accountant depending on their seriousness, level of complexity, need for specialized expertise and whether they are novel or unusual.

Coordination among the thirteen provincial and territorial securities regulators in Canada is achieved through the cooperation of the SRA's in the Canadian Securities Administrators. Consistency in decisions on the application of GAAP and in actions taken in response to infringements is promoted through joint projects, joint reviews and round table discussions at all levels of management and staff.

As set out in section 143(1) of the Act, the OSC has the ability to issue guidance that defines the "accounting principles and auditing standards acceptable to the [OSC]". The OSC has generally not relied on this power, but instead relied on the Accounting Standards Board and the Auditing and Assurance Standards Board of the Canadian Institute of Chartered Accountants (CICA) to set the accounting and auditing standards in Canada. However, in limited circumstances, when it is determined that timely guidance is needed, the OSC will issue staff notices, setting out staff's view on the appropriate application of accounting principles. Such staff guidance does not have legal force but has significant persuasive impact.

Further, the OSC has a number of formal and informal communication channels with the standards-setting committees of the CICA, which is an independent arm's length body. In

addition, the CSA has appointed the Chief Accountant of the OSC to participate as an observer on the Emerging Issues Committee (EIC), a sub-committee of the Accounting Standards Board of the CICA. The EIC provides published guidance on emerging accounting issues that are likely to receive divergent treatment in practice. Through participation on the EIC, the Chief Accountant of the OSC provides direct input into the standards-setting process relating to emerging accounting issues.

Question 14 - Public reporting

Does (do) your enforcement body (bodies) report to the public on its (their) activities. In this case please state what kind of information is reported to the public, how often and whether the information published is in anonymous form with regard to the issuers examined.

The OSC publishes annually a staff notice which summarizes the activity of the corporate finance branch for the year. The most recent publication, *OSC Staff Notice 51-715 – Corporate Finance Review Program Report – October 2004*, covers the fiscal period from April 1, 2003 to March 31, 2004.

The staff notice discusses the type of reviews completed and the outcomes achieved. The staff notice also discusses significant accounting and legal issues noted during the year. Issues identified and the surrounding circumstances are always discussed in an anonymous form.

Appendix 1

Questionnaire on Enforcement mechanisms

Background

Canada has thirteen securities regulatory authorities, one located in each province and territory. Securities laws in each of these jurisdictions differ to some degree, as do the processes relating to enforcement of generally accepted accounting principles (GAAP). The responses to this questionnaire reflect the laws and processes that govern the actions of the Ontario Securities Commission (OSC) but are also generally representative of the Canadian Securities Regulatory Authorities ("SRAs") in the largest jurisdictions that account for the vast majority of the market capitalization of reporting issuers in Canada.

Coordination among the 13 regulatory authorities on matters of regulatory policy and process, including enforcement of GAAP, is pursued through the Canadian Securities Administrators (CSA). The CSA is a council of the thirteen provincial and territorial securities regulatory authorities (SRAs) in Canada. The CSA has no statutory regulatory responsibility or authority but has as its objective the improvement, coordination and harmonization of regulation of the Canadian capital markets. The CSA functions through meetings, conference calls and day-to-day cooperation among the SRAs. Funding and support resources are drawn from within Commission operating budgets on a voluntary basis.

In 2003, the CSA established the Policy Coordination Committee (PCC) which is responsible for overseeing and coordinating all CSA projects and facilitating decision-making among jurisdictions. The PCC consists of six member jurisdictions drawn from the CSA each of which serves for a two year term and may be reappointed. The PCC seeks to ensure that new policy initiatives have a common content, understanding and implementation among the jurisdictions.

Also in 2003, the CSA established a permanent Secretariat located in Montreal, Quebec. The Secretariat consists of three full time staff who assist with the coordination and delivery of all CSA projects. The Secretary-General of the secretariat reports to the Chair of the CSA.

In some jurisdictions, SRAs are self-funding agencies or crown corporations. In others, they operate within Ministries of provincial governments. Each SRA: formulates policy; makes rules; sits as an administrative tribunal in hearings on securities-related matters; and hears appeals from decisions made by SRA staff and self-regulatory organizations.

The SRAs share a mandate of providing protection to investors from unfair, improper or fraudulent practices while fostering fair and efficient capital markets and confidence in them. The SRAs accomplish this through activities which include reviewing prospectuses; reviewing continuous disclosure documents; conducting compliance reviews of registrants; granting discretionary exemptions from registration and prospectus requirements; educating industry and investors; investigating possible violations of provincial securities laws; and commencing proceedings before the Commission or applicable Provincial Courts of Justice.

Fundamental regulatory requirements dealing with financial reporting and disclosure are uniform across the SRAs as a result of:

- a single national rule that addresses the accounting and auditing standards required to be applied with respect to the financial statements of an issuer and a single national rule setting out continuous disclosure requirements for both financial and non-financial information, including MD&A; and
- a single national rule dealing with the content of a short form prospectus.

A project is under way currently to complete a single national rule dealing with the content of a long form prospectus. The long form prospectus rule is expected to convert into a national rule the existing Ontario rule which is currently the de facto national standard.

The principles of the regulatory approach to ensuring compliance with disclosure obligations are essentially similar across the different jurisdictions. CSA Staff Notice 51-312 – *Harmonized Continuous Disclosure Review Program*, outlines the key elements of the program for continuous disclosure review agreed upon by the larger jurisdictions. However, some differences in the details of the application of this program remain among the jurisdictions. Ongoing discussion and information sharing, particularly through the medium of the CSA Committee for Continuous Disclosure Review, are designed to promote consistency in key areas.

Generally, public offerings in Canada tend to be made across all jurisdictions. Prior to the completion of an offering, all jurisdictions in which the offering is made must approve the prospectus relating to the offering. Even though all jurisdictions in which the offering is made approve the prospectus, the review of the prospectus document is completed by the principal jurisdiction. This is facilitated by the System for Electronic Document Analysis and Retrieval (SEDAR), an electronic filing system operated by the Canadian Depository for Securities, with the support and direction of the CSA. One aspect of SEDAR is that it allows each SRA to post its correspondence with an issuer during the prospectus approval process. Each of the SRAs has access to this correspondence, thus contributing to improving efficiency and consistency.

Question 1 – Definition and purpose of enforcement

What is the definition and purpose of enforcement of compliance with the relevant GAAP in your country? Where is this defined?

The OSC enforces securities legislation in Ontario as set out in the *Securities Act (Ontario)* (the Act). The purposes of the Act, as defined in section 1.1 are to:

- (a) provide protection to investors from unfair, improper or fraudulent practices; and
- (b) foster fair and efficient capital markets.

In pursuing these purposes, we execute a well developed and extensive review program for reporting issuers in Ontario. This review program includes within its scope documents such as prospectuses and financial statements (see also question 11) and is designed to enforce compliance with GAAP, securities laws and timely disclosure requirements. Enforcement of compliance is achieved by using a range of actions available to the OSC (see also question 6) when infringements are identified. These actions, combined with communication to the market of issues identified and outcomes achieved, as well as the Refilings and Errors list (see also question 12), contribute to maintaining and improving the quality of disclosure and transparency of financial information and help to promote investor confidence.

Question 2 - Responsible enforcement body

Who has (have) the ultimate responsibility for enforcement of compliance with relevant GAAP in your country and what is the legal basis for your framework (eg act, executive order, other)?

Enforcement of compliance with GAAP for companies that are reporting issuers in Ontario is ultimately the responsibility of the OSC. This responsibility derives from the purposes and principles set out in the Act as well as specific provisions (e.g., Section 20.1(1)) providing the Commission or its staff with the authority to review disclosures that have been, or ought to have been, made by a reporting issuer. In this regard, all reporting issuers must file audited annual financial statements, as well as quarterly financial statements, prepared in accordance with a basis of accounting prescribed by rules made under the Act. In general, National Instrument 52-107 – *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* provides that financial statements are to be prepared in accordance with Canadian GAAP, (defined by the Act as the principles recommended in the Handbook of The Canadian Institute of Chartered Accountants). However, in certain limited circumstances, financial statements may be prepared in accordance with US GAAP or International Financial Reporting Standards (IFRS).

The approach to enforcement of compliance with financial reporting requirements is independent of whether financial statements are prepared in accordance with Canadian GAAP or another acceptable accounting framework such as US GAAP or IFRS. When another acceptable accounting framework is used the OSC takes steps to bring to bear particular expertise by using, for example, accountants who have greater knowledge and experience with that framework. In the case of reporting issuers that use US GAAP and are also SEC registrants, OSC staff are experimenting with conducting joint reviews with SEC staff.

While the OSC has the ultimate responsibility for enforcement of compliance with GAAP, achieving compliance depends on the effective operation of all elements of the financial reporting system, including management, audit committees, boards of directors and independent auditors. Enforcement of compliance with GAAP is also supported by the inspection processes of the Canadian Public Accountability Board, an independent board that oversees the conduct of auditors of public companies. These inspection processes include examination of a sample of individual audit engagements to assess compliance with relevant standards.

The only other regulator that plays a role in enforcing the application of financial reporting standards for external reporting to shareholders is the Office of the Superintendent of Financial Institutions (Canada). The OSFI's primary concern is, however, with prudential regulation and hence its role in enforcement of compliance with financial reporting standards is limited.

Question 3 - Delegation

In case other bodies carry out enforcement on behalf of the body with the ultimate responsibility – what are the names of these 'delegated' bodies, what part of the enforcement has been delegated to them and how is the delegated body supervised?

The OSC does not delegate to other bodies its authority for enforcement of compliance with financial statement reporting requirements for Ontario reporting issuers.

We note, however; that by agreement among the provincial and territorial securities regulators across Canada, the primary enforcement activity with respect to compliance with GAAP is generally performed by the securities regulator in the jurisdiction in which the head office of the reporting issuer is located. This does not involve delegation of the OSC's authority and responsibility but merely provides an efficient means of avoiding duplicative enforcement activities. To provide for an appropriate level of consistency in GAAP enforcement, activities are coordinated through the Canadian Securities Administrators (CSA).

Auditors, who provide the first level of assurance of compliance with GAAP, are overseen by the Canadian Public Accountability Board (CPAB). CPAB provides independent oversight for auditors of Canadian reporting issuers. CPAB is governed by a Council of Governors that appoints the Independent Directors, including the Chair and Vice Chair. The Council also periodically reviews the effectiveness of the system and will make changes as necessary. The Council is composed of the Chair of the Canadian Securities Administrators (CSA - which is the collective group of the 13 provincial and territorial securities regulators in Canada), the Chair of the OSC, the Chair of the Autorite des marches financiers in Quebec, the Federal Superintendent of Financial Institutions Canada and the President and CEO of The Canadian Institute of Chartered Accountants. Through the Council, the OSC and other Canadian securities regulators provide input and direction to the process for overseeing auditors of reporting issuers in Canada. Further information on the activities of CPAB can be found on its website, <http://www.cpab-ccrc.ca>.

Question 4 - Interrelationship

In case there is more than one enforcer with regard to compliance with your GAAP, what agreements have been made concerning the interrelationship between the enforcers?

As noted above, the OSC does not delegate its authority for enforcement of GAAP. To the extent other provincial or territorial securities regulators take on the primary responsibility for GAAP enforcement for Ontario reporting issuers headquartered outside Ontario, activities are coordinated and information is shared through a committee of the Canadian Securities Administrators.

Question 5 - Independence

Is (are) your enforcement body (bodies) designed in a way that ensures an adequate independence from the government? Please provide details of any independence arrangements that are in place.

Is (are) your enforcement body (bodies) designed in a way that ensures an adequate independence from market participants, issuers, auditors and other stakeholders? Please describe how.

The OSC is established by the Act as the body with responsibility for administration and enforcement of securities legislation in the Province of Ontario. The powers and duties of the OSC, which include the ability to hold hearings and impose penalties against market participants, are assigned under the Act. The Commission is accountable under the Act to the assigned minister in the provincial government and the accountability relationship is set out in a memorandum of understanding that is a matter of public record. The OSC's operations are funded from the fees established by the Commission and charged to market participants.

The Commission is made up of at least 9 and not more than 14 members. The Chair, who is also the Chief Executive Officer of the Commission is required to devote his or her full time to the work of the Commission. There are also currently 2 Vice-chairs who serve on a full time basis. The remaining Commissioners are part-time members. Under the Act, the members of the Commission are not its employees.

The Commissioners as a group perform a policy-making function and also serve as the independent Board of Directors responsible for overseeing the management of the financial and other affairs of the Commission. The responsibilities of the Board do not extend, however, to directing the staff in the normal course exercise of their assigned regulatory powers and responsibilities. A strict arm's length separation is maintained between the Commissioners and staff with respect to actions on matters such as restatement of financial statements. This is designed to ensure that a panel of Commissioners who must balance the interests of all affected groups is able to make an objective assessment of staff decisions in, for example, a public hearing in which staff is seeking an order requiring an issuer to restate its financial statements or other disclosure. In such a setting, staff are required to argue their case to the panel of Commissioners and the issuer has a full opportunity to argue its position.

By employing a highly qualified, full-time professional staff with sufficient powers to meet their responsibility to investors and the public in the operation of the securities markets in Ontario, the OSC ensures that it operates independently from market participants, issuers and auditors. Further, rulemaking processes are subject to formal requirements that ensure transparency and the opportunity for broad public input independent of special interest groups.

Commissioners and staff of the OSC are subject to the terms of a code of conduct that requires them to act at all times with honesty, integrity and impartiality. Each Commissioner and employee must confirm annually in writing that they have complied with the code of conduct.

Question 6 - Powers

What powers (investigative powers and powers to take action) does your enforcement system have, and which body (bodies) has (have) these powers? Please describe as far as possible, how and when you use each power. If relevant please also state what powers have been delegated and to whom.

As noted above, the Act gives the OSC the authority to conduct reviews of disclosure documents of reporting issuers in Ontario. If during the course of a review the OSC requests additional information or documents, section 20.1 of the Act requires the reporting issuer to provide such documents or information. In addition, section 11(1) of the Act provides the OSC with broad powers to investigate any matters deemed necessary for the due administration of the Act.

If during the course of a review or investigation, significant deficiencies are noted, the most relevant power available to the Commission is the ability to issue an order requiring a market participant to amend a document (including Financial Statements and Management Discussion & Analysis). Examples of deficiencies would be when the document has not complied with GAAP or any other aspect of Ontario securities law. This power enables the OSC to order a reporting issuer to provide public correction and restatement concurrently through the filing of a press release describing the correction and by filing the document as 'amended'. In practice, achieving correction and refiling of a deficient document is usually achieved through staff discussions with the issuer without the need for recourse to a Commission order. This practice is discussed further in response to question 12.

If a reporting issuer does not comply with an OSC order to amend a document, or contravenes Ontario securities law in any way, section 127(1) of the Act enables the Commission to impose any of the following sanctions:

- cease the trading in securities of a company or by a person;
- forbid a company or person to rely on any exemptions contained in Ontario securities law;
- require a market participant to submit its practices and procedures for review;
- reprimand a person or company;
- require a person to resign from one or more positions as an officer or director of an issuer;
- prohibit a person from becoming or acting as director or officer of any issuer;
- require a person or company who has not complied with Ontario securities law to pay an administrative penalty of not more than \$1 million for each failure to comply;
- require a person or company who has not complied with Ontario securities law to disgorge to the OSC any amounts obtained as a result of the non-compliance.

Alternatively, the OSC may also refer matters to the Provincial Court where, if convicted, a person or company may be liable for a fine of not more than \$5 million or imprisonment for a term of five years less a day, or both.

Most provincial and territorial securities commissions across Canada have a broadly comparable range of powers.

Question 7 - Organisation

What are the number of issuers and number of staff working with enforcement in your country and how do you ensure that sufficient resources are granted to your enforcement bodies?

Ontario has approximately 5,300 reporting issuers of which we are the principal jurisdiction for approximately 1650. All entities with securities listed on the TSX or TSX Venture Exchange (TSX-V) are reporting issuers. In addition, a substantial number of entities that do not have listed securities are reporting issuers by virtue of having filed a prospectus and obtained a receipt. Further details on the number of reporting issuers, as well as their market capitalization, are set out in the following table:

Province	TSX listed issuers			Approximate total number of issuers	Approximate % of total issuers	Approximate % of market capitalization
	Approximate number of TSX listed issuers	Approximate % of TSX listed issuers	Approximate number of other issuers*			
Ontario	650	49	1000	1650	31	45
Alberta	260	20	1000	1260	23	23
Quebec	170	13	400	570	11	17
British Columbia	180	14	1500	1680	32	6
Other	60	4	100	160	3	9
Totals	1320		4000	5320		

* This column includes approximately 2150 issuers that are listed on the TSX-V representing <1% of the total market capitalization of companies listed in Canada. The remaining issuers include, for example, debt only issuers that have no listed equity securities as well as others that may no longer be active and hence are of little or no significance.

Approximately 44 professional staff (lawyers, accountants, etc.) work in the OSC's Corporate Finance Branch, the branch having primary responsibility for review of prospectuses and continuous disclosure documents for issuers other than investment funds. Staff at the OSC is experienced in the application and enforcement of securities law and the application of accounting principles. A majority of the staff working with enforcement have a professional designation in their respective field. In addition, the OSC has an Enforcement Branch that investigates and prosecutes breaches of the Act of all types, including in appropriate circumstances matters relating to failure to comply with GAAP.

The OSC assesses the resources required to meet its objectives through a business planning process that identifies the number of issuers expected to be reviewed, the nature of those reviews and the number of staff and balance of skills required. Further, through an ongoing evaluation of resources and the use of our risk-based approach (see question 10 below) we are able to prioritize among many possible activities and ensure resources are most effectively employed and objectives are achieved.

Question 8 - The scope of enforcement (documents and issuers)

What kind of financial information is subject to enforcement in your country? (annual and interim financial statements, individual and consolidated accounts, prospectuses¹, other)

What kind of issuers are subject to enforcement in your country? (eg listed issuers, issuers applying for admission to trading of their securities on a regulated market, other)

OSC reviews include an examination of financial and non-financial information made available in the public domain. This information may be reviewed in the context of prospectuses, annual reports, annual financial statements, quarterly financial statements, annual information forms, information circulars, press releases, material change reports and other continuous disclosure documents. In many cases, the financial information included in these documents has been audited or reviewed.

All entities that are reporting issuers in Ontario, (which include those listed on the Toronto Stock Exchange and the TSX Venture Exchange), are subject to the requirements of the Act and are therefore subject to review. A company conducting an initial public offering of securities is also subject to review before it is permitted to offer its securities to the market.

The financial information prepared and presented by a reporting issuer is normally presented on a consolidated basis only. There is no requirement under GAAP or the Act to present separate unconsolidated financial statements for a parent company.

Question 9 - Methods of enforcement : Ex-ante or ex-post approach

Is the normal procedure of enforcement of compliance with relevant GAAP ex-ante (before statement is published) or ex-post (after statement has been published) or both? Please state if you use different approaches for different types of financial information (e.g. annual statements vs. prospectuses).

In general, reviews of financial statements for compliance with GAAP are conducted after those statements have been filed with the OSC and made available on the public record. In the case of a prospectus, the approach differs slightly. In almost all cases, a preliminary version of a prospectus (including the financial statements) is made available in the public domain prior to regulatory review. The OSC always conducts and completes a review of a prospectus, however, before issuing a final receipt and permitting sales to the public to proceed. In addition, the OSC may reopen or conduct a separate review of that prospectus while sales are being made or after sales have been made.

¹ Prospectus approval concerning financial information and not ongoing information.

Please also state if your enforcement body offer issuers a possibility to obtain a pre-clearance, as to whether a certain treatment complies with your GAAP or not. To what extent is this facility used by issuers?

The OSC encourages issuers to seek pre-clearance of the accounting treatment proposed for a specific transaction where there are unique or complex issues involved. This practice is not used extensively.

Question 10 - Selection

How does your enforcement body select the issuers, whose documents containing financial information, are to be examined (risk based, random, rotation basis or other)? In case you make use of a risk based approach, please give a short description of the types of risks you include in your assessment and the inputs/criteria that you take into consideration.

The OSC utilizes a risk-based approach to selecting reporting issuers for review. This approach is discussed in *OSC Staff Notice 11-719 – A Risk-based Approach to More Effective Regulation*. The approach enables us to target those activities and market participants where we believe problems are more likely to arise. The types of risk that we attempt to mitigate through this focused approach include the risk that the issuer's regulatory filings and other public disclosure do not comply with applicable requirements and the risk that market participants will materially breach securities laws.

To determine which activities and market participants are considered 'high risk', OSC staff has developed detailed sets of criteria through previous experience, data analysis and awareness of best practices. Each criterion carries a weighting reflecting its overall importance in determining the risk rating.

If an initial assessment of an issuer identifies sufficient indicators of risk, the matter is selected for further review or investigation. Our initial risk review is not determinative of the final outcome, however, as staff will neither initiate nor avoid regulatory action based solely on the results obtained through the initial application of the risk criteria. Further, we also do not disclose why we selected a particular market participant or activity for detailed review.

Although we believe our risk-based approach is an effective tool for selection, there are situations where we select activities or market participants for detailed review that may not meet the published criteria. For example, some reviews are undertaken on a random basis, partially to assist us in assessing the effectiveness of our selection criteria and also to ensure that all market participants are subject to some regulatory review at least once every four years. Further, some reviews are undertaken based upon our own discretion or judgement or as a result of a complaint.

Question 11 - Spectrum of checking procedures

How does your review process work? What kind of checking procedures does your enforcement body use (formal checks, in-depth substantive in-nature checking etc.) and in which situations do you use which procedures?

The review process, as formally documented in a number of OSC Staff Notices, and most recently in *OSC Staff Notice 51-715 Corporate Finance review Program Report – October 2004*, consists of routine formal checks for the general completeness and timeliness of filings for all issuers as well as more in-depth review for specific issuers as selected through the risk-based approach documented in question 10.

In applying the risk-based approach, an initial risk assessment is completed through a basic review, and the results are used to determine the level (or intensity) of further review that will be applied to the issuer. Typically, issuers with more risks or a higher risk profile are selected for full review while those with lower or less risk(s) are not reviewed further or are selected for issue-oriented review.

A basic review consists of an evaluation of areas of obvious concern in significant documents such as the annual financial statements and annual management's discussion and analysis. A full review consists of a detailed investigation of the issuer's full disclosure record. In general, at least a basic review is completed for all prospectuses filed by entities for which Ontario is the principal regulator. Also, a basic review of continuous disclosure documents is completed for all reporting issuers at least once during a four year period.

When an issuer's prospectus is selected for full review, OSC staff will perform a complete review of the document itself and documents incorporated by reference. When an issuer is selected for full review of continuous disclosure documents, OSC staff will complete a detailed review of the issuer's disclosure record for at least the past year, which will include regulatory filings, trading activity, industry data and analyst reports.

An issue-oriented review will be completed when the level of risk assessed does not warrant full review but a specific legal or accounting issue(s) is identified that warrants further detailed consideration. In this case, the review will focus primarily on the issue identified.

When an issuer is identified as higher-risk, either as a result of an initial risk review or a subsequent full review, OSC staff may undertake a "real-time" review of the reporting issuers disclosure documents. A real-time review is a continuous monitoring of an issuer's regulatory filings as and when they are made, as well as media coverage, trading patterns and other ongoing disclosure documents. This approach is designed to facilitate prompt identification and resolution of issues.

In all cases, where problems are identified as a result of any particular form of review, staff will communicate with the issuer and both parties work to resolve the issues promptly.

Question 12 - Actions

What actions can your enforcement body take, in order to make sure that the market gets timely relevant and reliable information, when misstatements have been discovered (e.g. require supplementary information, public correction, reconciliation or corrective note, restatement, suspension from trading, delisting)? Please also state if the actions available differ depending on materiality of the misstatement, the frequency at which a certain issuer publishes misstatements or on other elements.

If certain actions can be taken only in case of material misstatements, please state your definition of materiality with regard to the financial information examined.

Please also state how many cases of enforcement you have conducted in the last two years and which actions have been used in these cases.

Our objective during our reviews is to identify and correct material misstatements, or material non-compliance with GAAP, in the disclosure documents of reporting issuers. For this purpose, an item would be considered material if its omission or correction could change the decision of a user of financial statements or other financial information.

When a potential material misstatement is identified in a disclosure document such as the financial statements, staff will investigate the matter to determine whether there is in fact a misstatement and whether it is material. If staff establish that there is in fact a material misstatement, staff will request that the issuer amend and refile the document (see also question 6). If a resolution between staff and the issuer cannot be achieved, then staff will seek an order from the Commission requiring the issuer to amend and refile the document. If staff establish that there is a misstatement but conclude that it is not material, staff may agree to allow correction of the error on a prospective basis. In these circumstances, the issuer would not necessarily be required to explain the correction. It is however, common practice for an issuer to provide some discussion of the nature of the change in order to provide an accurate reflection of its substance.

By amending and refileing the document, the issuer is acknowledging that the original filing was not prepared in accordance with the *Securities Act* (Ontario), and this material event is required to be clearly and broadly disclosed to the market in a timely manner. As outlined in *OSC Staff Notice 51-711- List of Refilings and Corrections of Errors as a Result of Regulatory Reviews*, we believe that this disclosure should be in the form of a publicly disseminated news release that clearly describes the changes and the reasons for them. A copy of the news release is required to be provided to the OSC and is placed on the Refilings and Errors list and maintained on the OSC web site (www.osc.gov.on.ca) for a period of three years from the date of refileing. The Refilings and Errors list provides transparency to the disclosure process and helps to maintain investor confidence.

In addition to the Refilings and Errors list, the OSC also maintains on its website a list of defaulting issuers. These are issuers that are in default of their obligations under the Act. An issuer may be considered in default if, for example, it is found to have filed and not corrected financial statements that are determined to be materially non-compliant with GAAP. Once the deficiency is corrected, the issuer's name will be removed from the list. This list provides further transparency

to the disclosure process.

As set out in *OSC Staff Notices 51-715 and 51-712 – Corporate Finance Review Program Report*, October 2004 and August 2003, we have completed the following reviews in corporate finance in the past two years:

	April 1, 2003 to March 31, 2004	April 1, 2002 to March 31, 2003
Prospectuses, rights-offering documents	274	217
Continuous Disclosure reviews	361	194
	<u>635</u>	<u>411</u>

The increase in the number of reviews between the two periods is primarily a result of refinements in the risk based selection criteria resulting in an improvement in the selection process and hence a more efficient allocation of resources to specific, identified problem areas, primarily through basic reviews.

These reviews resulted in a number of outcomes such as disclosure enhancements, changes in the offering structure, additional legal requirements, refiling of a document (see below), placement on the default list (see below) or referral for a more detailed investigation that may result in penalties. Outcomes for the past two years are as follows:

	April 1, 2003 to March 31, 2004	April 1, 2002 to March 31, 2003
Refilings, Retroactive Accounting Changes	75	82
Disclosure Enhancements	285	201
Placed on the default list	15	24
Additional legal requirements or change in the structure of the offering	14	26
	<u>389</u>	<u>333</u>

The outcomes relate to both financial and non-financial information in both prospectus and continuous disclosure documents. The majority of refilings relate to financial information issues in continuous disclosure documents.

In addition to the actions described above that are intended to correct deficiencies in financial statements or other disclosure on a prompt and transparent basis, the OSC also has the power to take actions such as imposing a cease trade order. For example, in cases of failure to make timely filings of financial statements, it is staff's practice to seek from the Commission a management and insider cease trade order that will continue for the period until filings are brought up to date. In addition, while the cease trade order is in place, the issuer is required to provide

regular bi-weekly updates to the market on current developments and progress in preparing the filings that are in arrears.

Question 13 - Consistent decisions and actions

How do you ensure a consistent application of the standards (are decisions submitted to a (central) database)? What is the extent of any relationship between the enforcement body and the standard setter? Does the enforcement body issue interpretation guidance - what is its status?

If you have different enforcement bodies please also describe how you ensure coordination between them.

What does your enforcement body do to secure consistency with regard to the actions taken? (similar actions to similar infringements even if different enforcement bodies are involved)?

Consistent decisions on the application of GAAP are achieved internally through the review of controversial issues by branch level management and the Office of the Chief Accountant. Consistency in the actions taken and outcomes achieved is facilitated through collective decision-making, with significant input from both groups. The review of prospectus and continuous disclosure documents is carried out by staff of the Corporate Finance Branch. The Branch is headed by the Corporate Finance Director who reports to the Executive Director of the OSC. Within the Corporate Finance Branch, there are 3 teams comprised of primarily lawyers and accountants. Each of these teams is led by a Manager and an Assistant Manager. Issues identified by reviewers on individual files are escalated within the Branch and to the Office of the Chief Accountant depending on their seriousness, level of complexity, need for specialized expertise and whether they are novel or unusual.

Coordination among the thirteen provincial and territorial securities regulators in Canada is achieved through the cooperation of the SRA's in the Canadian Securities Administrators. Consistency in decisions on the application of GAAP and in actions taken in response to infringements is promoted through joint projects, joint reviews and round table discussions at all levels of management and staff.

As set out in section 143(1) of the Act, the OSC has the ability to issue guidance that defines the "accounting principles and auditing standards acceptable to the [OSC]". The OSC has generally not relied on this power, but instead relied on the Accounting Standards Board and the Auditing and Assurance Standards Board of the Canadian Institute of Chartered Accountants (CICA) to set the accounting and auditing standards in Canada. However, in limited circumstances, when it is determined that timely guidance is needed, the OSC will issue staff notices, setting out staff's view on the appropriate application of accounting principles. Such staff guidance does not have legal force but has significant persuasive impact.

Further, the OSC has a number of formal and informal communication channels with the standards-setting committees of the CICA, which is an independent arm's length body. In

addition, the CSA has appointed the Chief Accountant of the OSC to participate as an observer on the Emerging Issues Committee (EIC), a sub-committee of the Accounting Standards Board of the CICA. The EIC provides published guidance on emerging accounting issues that are likely to receive divergent treatment in practice. Through participation on the EIC, the Chief Accountant of the OSC provides direct input into the standards-setting process relating to emerging accounting issues.

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