

## Regulatory system a “disgrace”

### Damage of recent scandals puts spotlight on flawed rules and procedures

By Glorianne Stromberg

August 2005 will long be remembered for its natural and man-made disasters – disasters that were for the most part made worse by human failure to take timely, remedial action.

For example, the devastation wrought by hurricane Katrina was intensified by the failure of authorities to remedy well-recognized structural shortcomings in the levees protecting New Orleans and by their slowness to respond to the resulting flooding and other emergencies when those levees gave way.

In the securities regulatory world, August saw thousands of Canadian investors hit by devastating financial fiascos. Again, the resulting damage was intensified by the failure of authorities to remedy well-recognized structural shortcomings in Canada's securities regulatory system and by the slowness to respond to well-identified problems. Scarcely a day goes by without new evidence of the shortcomings and absurdities. Here are a few examples.

Alleged defalcations involving two hedge fund complexes (**Norshield Financial Group** and **Portus Alternative Asset Management Inc.**) and one mutual fund complex (**Norbours Asset Management Inc.**) have relieved thousands of retail investors of millions of dollars. In all these cases, attempts apparently were made by members of the financial community to alert securities regulators in several provinces to serious problems. By the time regulators shut down the operations, the money was gone. The emerging facts highlight serious shortcomings in the way these and other investment funds are structured, operated and regulated, as well as in how they found their way into the hands of investors and how intermediaries are compensated. Regulators, who knew about these problems for years, have allowed dust to gather on action plans to implement industry-approved solutions.

Regulators in Alberta, Quebec and Ontario are on the firing line for alleged shortcomings in their enforcement arms. The allegations have been marked by high-profile departures of senior staff. Despite being self-funded public bodies, the regulators have fallen far short of the timely disclosure of material information expected from public companies, leaving investors and other stakeholders unable to determine whether the regulators are carrying out their mandate.

It is no wonder concerned citizens are trying to institute actions calling for these and other regulators to account for their failure to take meaningful action on allegations (with supporting evidence) of serious investor harm.

**OptionsXpress Inc.**, an Internet-based securities firm in Chicago that permitted Canadians to open online trading accounts to trade securities in the U.S., is an example of the absurd. Ten provincial securities regulators alleged this activity contravened their securities legislation and was contrary to the public interest. In jointly approving a settlement agreement with the company, they claimed it demonstrated effective co-operation among provincial regulators that reduced the regulatory burden. The absurdity is they required the company to register with each of the 10 regulators. Why, one might ask, is more than one registration required? So much for the touted passport system that is supposed to allow registrants to deal with only one regulator.

Another absurdity lies in the **Alberta Securities Commission's** decision to adopt a name for its investor education Web site that is almost identical to that of the **Ontario Securities Commission's**. Why would the ASC do this? In fact, why is it even building a separate Web site that in effect duplicates that of the OSC? Why are the two jurisdictions not pooling their resources to build one superb site designed to supplement investor knowledge and awareness? And why would the ASC adopt a dumb-looking donkey or whatever the icon is supposed to be to symbolize investor education. Is this the ultimate cynicism?

The bottom line is that Canada's securities regulatory system is a disgrace. And no one in a position to do something about it is prepared or is willing to call people to account for their failure to act. This is a national shame that needs to be cleaned up without delay. **IE**