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Investors slip off the radar screen

Regulators, enforcement authorities leave small investors to fend for themselves

By Glorianne Stromberg

Fragmented, inefficient and confusing: this describes Canada's system of securities regulation and its enforcement. As this new year begins, enforcement of Canada's securities laws and the prosecution of white-collar crime stand as the core unresolved issues undermining Canada's productivity and its credibility, nationally and internationally.

Hardly a day goes by without headlines on the shortcomings in this area. Regulators, self-regulators, the judiciary, police forces and government policy-makers are all on the firing line.

Individual investors increasingly are articulating dissatisfaction with a system that fails to protect them and with capital markets that operate unfairly and undermine their confidence in investing. They question the ability or desire of the authorities to remedy the shortcomings.

The **Public Policy Forum**, an Ottawa-based think-tank, has released a study identifying the need for greater enforcement of regulations governing securities, including effective punishment of white-collar crime, as "one of the most pressing public policy issues in the future."

Recent statements by David Dodge, governor of the **Bank of Canada**, supported by the federal Minister of Finance and the Ontario minister responsible for securities regulation, have emphasized the need for a more efficient system of securities regulation with tougher enforcement of the rules in order for Canada to remain competitive.

In a December speech, Dodge said Canadian securities regulators are not doing enough to counter the view that they are soft on fraud and illegal insider trading. He later was reported to have said that a common refrain Bank of Canada representatives hear when they visit other countries is the perception that we are a "little bit more of a Wild West here, in terms of the degree to which rules and regulations are enforced, and that perception doesn't help us when we try to raise

money in foreign markets.”

This perception harkens to the days when the U.S. Securities and Exchange Commission was reconsidering the desirability of continuing its unique multi-jurisdictional disclosure system agreement with Canada. This may well be back on the Canada/U.S. agenda, given the slowness of Canadian regulators to deal meaningfully with the Nortel Networks Corp. and Hollinger Inc. issues, leaving the SEC and the U.S. courts to take the initiative in doing so. Indeed, this concern may be spurring renewed talk of the need to establish a common regulatory and enforcement regime across Canada.

Help may be on the way, however. The University of Toronto’s Capital Markets Institute is conducting a study, led by Poonam Puri of York University’s Osgoode Hall Law School in Toronto. Its purpose is to determine how market enforcement actually works and how it affects the entire industry.

The CMI held a round-table discussion with senior stakeholder representatives in early December. Many of the participants were the regulators and self-regulators responsible for enforcement activities. As a result, much of the discussion centred around rehashing well-worn attitudes. There were no dealers, financial advisors or senior executives of corporate issuers present. There were, however, two representatives of the Small Investors Protection Association, who spoke of the problems individual investors have had in getting the attention of regulators and law enforcement authorities to address wrongdoing.

Some responses were troubling. It was clear individual investors were not on the radar screens of many in the room. Their focus was strictly on macro issues. Individual investors are on their own and are expected to pursue private remedies.

Regulators and self-regulators also believe the ombudsman process for vetting complaints and the Investment Dealers Association of Canada’s arbitration process satisfies their investor-protection obligations. The prohibitive cost of legal actions and the difficulty small investors have in finding knowledgeable counsel to represent them is not their concern.

Law enforcement authorities and regulators have combined their resources and focus on dealing with the Nortels and Hollingers of this world, leaving them with few resources for or interest in other investigations and proceedings. These attitudes are not conducive to changing the reality and perception of Canada’s system of securities regulation and its enforcement. There’s a need for fresh thinking. IE