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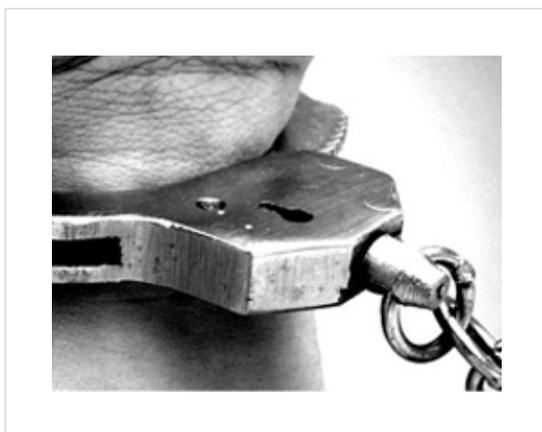
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ONTARIO URGED TO RESTRUCTURE REGULATORY REGIME

Mark Noble / February 24, 2009



The Ontario Securities Commission is no stranger to criticism, counting few friends among either the industry it regulates or the investors it is charged with protecting. So when the Ontario Legislative Assembly's Standing Committee on Government Agencies asks for submissions on how to improve services, the OSC can expect to get an earful.

A common theme was the need to create a better policing framework for securities crime in Canada. One proposal would see the investigation of investor complaints handed over to police forces, rather than regulators.

The current system involves self-regulatory organizations and provincial securities commissions fielding securities complaints, determining fraud and then passing cases on to the RCMP's Integrated Market Enforcement Team, which has had exclusive jurisdiction in criminal investigations into securities fraud since it was created in 2003.

According to independent investor advocate Diane Urquhart, the current system does an inadequate job of deterring and policing fraud. She would like to see the creation of an independent securities crime unit, which would handle complaints and conduct securities fraud investigations, in lieu of self-regulatory organizations and securities commissions.

"The Investment Industry Association of Canada and the Canadian Coalition for Good Governance are proposing a new National Enforcement Agency as a division of the new national securities commission," Urquhart told the committee. "The top priority for structural change is for Ontario to support a new independent Canadian Securities Crime Unit to deter both rogue fraudsters and systemic fraud in the investment industry. The securities crime unit proposal has been developed by Gary Logan, the former detective sergeant of the Toronto Police Services Fraud Squad."

Urquhart believes that the self-regulatory organizations, which are under the purview of the OSC, particularly the IROC and the MFDA, don't do an adequate job of referring criminal fraud to police

or securities commissions. In turn, she says, history has shown the securities commissions forward very few criminal matters to the police to investigate.

The securities crime unit would be the primary feeder of investment fraud complaints and then would assign investigations, based on regional jurisdiction, to municipal, provincial or regional police forces that have experienced fraud investigators. Urquhart believes this would create more fraud investigations and would efficiently use fraud investigators who are not being used by small police forces.

“The RCMP IMET is not utilizing the resources and high-level skills that exist in the fraud squads at the regional, provincial and municipal police forces, outside of the RCMP. The proposal we have for a securities crime unit would be that there would be about 20 fraud experts of substantial experience receiving all intake and making the assessment of files.”

In its submission, Advocis also urged the OSC to scale back its authority, although in a much different fashion. The association believes that regulators have been autocratically creating rules and regulations that unfairly penalize financial advisors.

“At a time when Ontarians need access to the widest choice of options for qualified financial advice, the OSC, along with the MFDA and IIROC, is focusing on regulation — and regulation only — and not addressing the bigger issues of consumer access and diversity of choice,” said Greg Pollock, Advocis’s president and CEO. “The current environment of prescriptive, rules-based regulation favours the larger organizations that have the resources to comply with these regulations. It is the small practitioner that pays an inordinate percentage of these costs.”

A case in point, Advocis said in its submission, was the implementation of the financial planning rule by IIROC.

“We recommend the government impose requirements on the OSC and the SROs to ensure that before implementing any new major regulatory requirement that it develop a clearly articulated statement of the problem that the regulation is meant to address,” Advocis’s submission said. “Failure to identify problems that clearly require intervention, and failure to assess the impact on market participants and consumers in relation to the likely benefits, has led to ill-conceived regulatory initiatives.”

Advocis would also like to see a greater consultation with the advising industry before regulators enact any new rules.

“The proposed IIROC rule is an example of SRO regulation that is skewed in favour of large dealers with an employer–employee business model and is severely prejudicial to smaller, professional financial planners,” the submission said. “This is also an example of an inadequate consultation process. The proposed rule was issued for comment in the summer of 2008 with a very short response turnaround timeline and without prior consultation with financial advisors.”

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