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Get tougher on white-collar crime: Urquhart

By ALEX HUTCHINSON

The call to reform Canada's securities rules now has support from one of the country's fastest-growing and most influential groups, senior citizens.

According to the National Pensioners and Senior Citizens Federation, the retirement security of its members is being threatened by questionable investment products sold on the basis of misleading information targeted at seniors, and the current enforcement rules are failing to provide the needed protection.

This message was presented to Marjorie LeBreton, the government leader in the Senate who was recently appointed as Secretary of State for seniors, in an e-mail sent last month by Diane Urquhart, an independent financial analyst working with the seniors' federation.

As an example of problems that have disproportionately affected seniors, Urquhart cited the marketing of income trusts with misleading yield calculations that include the return of capital, a tactic that has encouraged many seniors to invest their retirement funds in income trusts with disastrous results, she said.

To address the problems, she called on LeBreton to initiate a sweeping set of reforms, ranging from the establishment of a single national securities regulator to the creation of a new national government-based independent accounting standards board. As a first step, though, she emphasized the need for better enforcement of securities rules.

"There is a serious problem of a broken white-collar crime enforcement system in Canada, covering the self-regulatory organizations, the provincial and territorial securities commissions and the Royal Canadian Mounted Police," wrote Urquhart, who led equities research teams for Burns Fry and Scotia Capital Markets in the 1980s and 1990s.

LeBreton's senior policy advisor, James Maunders, confirmed the senator had received Urquhart's submission, and is studying the issue. "I have been speaking with some of (Urquhart's) associates in the last several weeks on the issue of income security for seniors," he told *The Bottom Line*.

Urquhart's emphasis on enforcement as a means of pro-

tecting seniors echoes other advocates of securities reform, including federal Finance Minister Jim Flaherty. "We need to do something on the enforcement side," Flaherty told the *Globe and Mail* during a trip to New York last month. "This will help pensioners. It will help people build for retirement."

The chairman of the Ontario Securities Commission, David Wilson, has also made enforcement one of the commission's four main priorities for 2007. "During the past year, I've come to believe that you can have the best policies and the best regulations in the world, but if you don't enforce them effectively, they don't mean a damn thing," Wilson told a Toronto audience last November.

But according to Urquhart, Wilson is not the best person to bring about the needed changes – even though he is the co-chair of a working group of federal and provincial justice ministers focused on improving enforcement. "He has no record of success (in enforcement)," she told *The Bottom Line*. "No training, no experience, and no record of being effective in taking care of matters that adversely impact the retail investing public."

Part of the problem is that the policing and adjudication functions are united in one structure with no external accountability, she said, giving Wilson unchecked power over enforcement. Al Rosen, a forensic accountant with Accountability Research in Toronto and an outspoken critic of the current securities regime, agreed that this structural problem needs to be addressed in any reforms.

"You can have a national securities regulator, but then you need a national prosecutor," Rosen said. "And if you have them in the same office, there are problems." Aside from questions of inappropriate influence, the role of national prosecutor requires a totally different type of person, he said. "You need someone who is keen on protecting the investor's interests, sort of an Eliot Spitzer type of person (Spitzer is the former New York state attorney-general and now governor)."

According to Rosen, Wilson has so far failed to show these characteristics. "He made all of these promises of enforcement the same way (previous OSC chairman David) Brown had," Rosen said. "And yet when they came out with their proposals for the income trusts, they were just terribly weak."

The creation of a single national securities regulator has long been touted as a way of improving Canada's securities regulation. That goal hit a roadblock in late March when 12 of the 13 provincial and territorial securities commissions published their proposals for a 'passport' system that would create reciprocal recognition of companies registered with other provinces. Ontario, home of the largest securities market, refused to join the passport proposal, calling instead for the creation of a full-

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fledged national regulator.

But Urquhart argues that the creation of a national securities regulator, on its own, would do little to help individual investors if the current issues of independence and transparency are not addressed first.

"I think that the long-term record of weak enforcement amongst the provincial securities commissions was not by incompetence - it was willful design to be ineffective," she said.

"And there's a great deal of concern that (a national securities regulator) will potentially be even worse, if you don't have oversight by the public and you have no mechanism for external audits."

To address these concerns, Urquhart believes that the job of enforcement should be entrusted to police - who need to assert their independence, she said.

"I'd like to see the police move outside of the influence of the financial industry, where the most significant amount of white-collar crime is occurring in my opinion - within the banks, within the accounting industry, and within the securities law industry," she said.

In order to be more effective, the RCMP has called for greater powers to help it investigate securities crimes. At a conference in Toronto last month, the head of the force's securities crime branch, John Sliter, noted that Canada is one of the few Western

countries where police cannot compel potential witnesses to testify in white-collar crime cases.

In Urquhart's view though, most of the tools are already there - and she's calling on LeBreton to make sure they're used effectively for the protection of seniors and other investors. And while she believes the RCMP should take on a greater role, the recent scandal involving alleged pension misappropriations is a reminder that even the RCMP needs careful oversight.

"Once the top officers in the RCMP are (allegedly) covering up white-collar crime in their own midst," she said, "what are we supposed to say as Canadians? Who are we supposed to turn to?"