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Canadian seniors group calls for enforcement reform

By David Clarke
March 12, 2007

OTTAWA — It isn't that Canada doesn't have securities laws; it has lots of them. But there seems to be a problem with enforcement.

"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," independent financial analyst Diane Urquhart wrote last Tuesday in an e-mail to Marjory Le Breton, leader of the government in the Senate and secretary of state for seniors.

Ms. Urquhart, a former managing director of equity research and equity strategist for Scotia Capital Markets, a unit of The Bank of Nova Scotia in Toronto, wrote: "The National Pensioners and Senior Citizens Federation is very concerned about pensioners' and senior citizens' suffering billions of dollars of losses in their retirement accounts due to unsuitable investments and questionable investment products being sold to them on the basis of inaccurate or misleading marketing information."

Most agree on the urgency for enforcement reform.

A report issued March 1 by the Provincial-Territorial Council of Ministers of Securities Regulation said: "The council recognizes the current widespread dissatisfaction with enforcement and considers it necessary to take a systematic approach to this complex and important problem," noting that "the council will be represented on the working group established by federal/provincial/territorial Ministers of Justice to consider improvements to enforcement against securities fraud."

Even the Mounties agree that reform is needed.

"We're one of the only Western countries without the authority to compel people to talk," Superintendent John Sliter, director of the RCMP's integrated market enforcement branch, said at a conference last month.

Although provincial securities commissions have the power to require witnesses to provide evidence during investigations, Canada's criminal authorities have no similar powers.

The branch's teams have tackled most of Canada's biggest securities investigations, including those involving Nortel Networks Corp. of Brampton,

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Ontario, Royal Group Technologies Ltd. of Woodridge, Ontario, Portus Alternative Asset Management Inc. of Toronto, and Norbourg Asset Management Inc. and Norshield Asset Management (Canada) Ltd., both of Montreal.

But the RCMP has charged no one in the cases under investigation.

In her e-mail, Ms. Urquhart, who does pro bono work for the National Pensioners and Senior Citizens Federation of Little Britain, Ontario, calls for “complete separation of the RCMP, provincial and municipal police investigations from the enforcement arm investigations of the national securities regulator (and current provincial and territorial securities commissions).”

At least one politician is on board with the idea of a national securities cop.

“I think there needs to be a single body in charge of enforcement, and we need to have harmonized rules,” Alberta Finance Minister Lyle Oberg said in an interview with the Toronto Globe and Mail.

“And if we want to go to one [national] board, for me, that’s neither here nor there,” he said. “I would not stand in the way.”

The council of securities regulators is looking into matters beyond enforcement.

“The council is interested in considering any reform that will improve Canada’s securities regulatory system and the competitiveness of our capital markets,” according to the report of the council (InvestmentNews, Dec. 4), which represents all jurisdictions except Ontario, home of Canada’s senior exchange, the Toronto Stock Exchange.

“Recent recommendations for reform include suggestions for principles-based regulation, the use of cost benefit analyses in assessing proposed new rules, proportionate regulation, the use of plain language in rules and disclosure documents, promoting the financial literacy of Canadians, transferring the adjudicative functions of securities commissions to independent adjudicative tribunals, the formation of a separate capital markets court, and many others,” according to the report. “The council’s intent is to pursue reform on a timely and highly harmonized basis.”

“Without enforcement, these ideas aren’t worth the paper they are written on,” Ms. Urquhart said in an interview.

“The present state of securities regulation in Canada goes beyond incompetence,” she said. “It is a national disgrace.”

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