

**Presentation to the Ontario Standing Committee on Government Agencies**  
**Diane A. Urquhart, Independent Financial Analyst**  
**Monday, February 23, 2009, 5:30 P.M.**

**Opening Statement**

Ontario Members of Parliament have to fulfil the government's public safety mandate, which is to protect life and the money needed to live.

As MP's you serve the people of Ontario under this public safety mandate. Given the evidence that the OSC and the investment industry SRO's have been facilitating systemic misconduct in the investment industry, you need to restructure both securities regulation enforcement and securities crime policing.

The world and Canada is suffering the worst economic crisis since the Depression as a consequence of a financial crisis created by abuses in the credit derivatives and mortgage markets. A few people in the banking and investment industries have made millions of dollars for themselves in schemes that have mauled investors. The schemes have put the financial industry itself in peril. The world economies are being brought down by the financial industry's negligence, failure to meet its duties to customers and even widespread systemic securities fraud.

The Canadian investment industry, the Ontario Government and the OSC are telling the public we have the best investor protection in the world and that all is well. Everyone knows this is not the case. There is widespread fear amongst Ontarians about their pension fund deficits, depleted personal retirement savings and whether their jobs are safe. The Ontario Pension Benefits Guarantee Fund and the Ontario Government will be asked to fund billions of dollars of pension fund deficits, at companies in trouble, like Nortel and Air Canada. Nortel is not even paying the severances of its terminated employees. These employees, without work and without severance to pay their families' bills while looking for new jobs, are treated as unsecured creditors in CCAA proceedings. CCAA proceedings are forums for protracted negotiations between senior management and large creditors, and a precarious place for retired workers and terminated employees to have their fate determined.

President Barack Obama says "There needs to be a shift in ethics on Wall Street, "[We need a] crack down on the culture of greed and scheming." Paul Volcker, the former Federal Reserve Chief, says "the financial system we have known will never return. Too many weaknesses and flaws have been exposed." German Chancellor Angela Merkel says before the Berlin European Union Summit on Sunday, February 22nd: "No financial market, no financial market product, no financial market stake holder can be without regulation, without oversight,"

Canada has had two of its own alleged systemic securities frauds - income trusts and non bank asset backed commercial paper . These two toxic income products have combined losses of over \$58 billion. There have been no sanctions by the OSC or the SRO's for the systemic misconduct in either income trusts and non bank ABCP. No retail owners of these toxic income products have received any OSC or SRO's facilitation of compensation for their damages due to breaches of securities rules and regulations.

We remain optimistic, however, that the outcome of current investigations by IIROC, the OSC and L'Autorité des Marchés Financiers will be the laying of allegations of breaches of securities rules and regulations and the facilitation of a full cash settlement for the 36 Canadian families owning more than \$1 million of ABCP. These families have lost their right to sue for remedy of their damages under the ABCP CCAA Plan, despite acknowledged breaches of securities rules and regulations in the ABCP fiasco. These families have lost large portions of their lifesavings for the Plan's purpose of ensuring the country's financial stability, and for the apparent bragging rights of Canadian banks being well-regulated and having strong balance sheets.

The U.S. FBI has 1,800 mortgage fraud and 38 securities fraud investigations going on directly related to the current financial crisis. Canadian police are not conducting investigations of alleged frauds directly related to the current financial crisis.

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. Mr. Logan developed a similar system for mortgage fraud in Ontario. Our work on improving Canada's securities crime system is supported by the National Pensioners and Senior Citizens Federation and the United Senior Citizens of Ontario.

The Investment Industry Association of Canada and the Canadian Coalition for Good Governance is proposing a new National Enforcement Agency as a division of the new national securities commission. We are at the crossroads where Ontario MP's can accept the investment industry's proposal to move to full control over securities crime policing in this Province and throughout Canada. Or, Ontario MP's can choose to meet their public safety mandate to protect the money Ontarians need to live.

Ontario cannot afford to choose the investment industry's path this time - even the investment industry cannot afford to take its own proposed path. Confidence in the investment industry and the road to economic recovery, compels us to choose the road of an independent securities crime policing system. The Canadian securities regulators and SRO's did not protect pensions and personal retirement savings in this financial crisis, so how can you trust them to do so now. The past practices of the investment industry and its regulators have undermined the fabric of our society.

### **Backgrounder**

#### **Income Trusts - Prospectuses Approved Despite US Criminal Prosecution and OSC Senior Corporate Finance Staff With Concerns About Cash Yield Deception**

- OSC stamped hundreds of income trust prospectuses in the 2000's decade, despite the 1994 U.S. Department of Justice criminal prosecution of Prudential Securities for deceptive cash yields and an OSC Senior Corporate Lawyer publishing the same concern.
- 50% of all income trusts with public offerings during 2001-2006 have slashed their distributions.
- The average distribution cut is -67% and the prospects for distribution and price recovery post recession are poor.

- Income trusts were not safer than common equities, which was how they were marketed to seniors.
- Income trusts did not have better investment returns than bonds, which was how they were marketed to seniors.
- **All business income trusts, except for the best five, are down -40% or -\$31 billion since their last public offerings.** They were sold to seniors who asked for capital preservation of their lifesavings

**Non Bank ABCP - Securities Regulators Have Made No Sanctions & No Assistance for Retail ABCP Owners After 17 Months**

- Canadian savings used to buy assets that were pledged as first security to the international banks.
- Canadians unknowingly insured the bad loans of these international banks.
- International banks bought leveraged credit default swap contracts to insure their bad loans, with rights to call margin and force liquidation of the Canadian trusts [tried to extort \$60 billion from owners & Canadian governments in December 2008.]
- ABCP buyers were told the paper was safe with bank guarantees from the same international banks.
- Just one credit rating agency – DBRS gave top ratings, while S & P and Moodys gave ratings below the minimum standard.
- Trust sponsors made unjust enrichment, while the ABCP buyers bore all the risk and received no risk premium.
- JPMorgan invented credit default swaps in 1997, which is the “product from hell” causing the world’s financial crisis, but gets \$100 million advisory fee to restructure the Canadian ABCP Market devastated by its invention.

<b>Damages</b>	<b>Loss %</b>	<b>Loss</b>
<b><u>Secondary Market Trading</u></b>	<b><u>-85%</u></b>	<b><u>-\$27 Billion</u></b>
<b>Accounting Valuation (Caisse &amp; Domtar)</b>	<b>-45%</b>	<b>-\$ 14 Billion</b>

- Under \$1 million retail ABCP holders fought for their own cash settlements without the assistance of the IIROC or OSC. **Over \$1 million retail ABCP holders left out, now need IIROC or OSC actions since CCAA Plan takes away their right to sue for remedy of their damages.**

**Ontario Government and OSC Facilitation of Non Bank ABCP**

- In 2005, allows sale of Non Bank ABCP to retail market buyers under \$50,000, provided credit rating agencies give minimum credit ratings. OSC does not supervise the credit rating agencies despite this delegation of public interest responsibility.
- In 2005, gives DBRS an exemption from civil liability for misrepresentation in the secondary market.
- In 2006, several OSC Commissioners give exemptive relief decisions for BMO, TD and CIBC to sell ABCP with just one DBRS credit rating above its minimum at R1 (high) and S&P and Moody's failing their credit rating tests.
- On Jan. 2, 2009, Purdy Crawford and Goodmans LLP gives late amendment to the ABCP CCAA Plan so that DBRS and its legal counsel get their fees paid during the ABCP Restructuring.
- On Dec. 30, 2008, Huston Loke, President of DBRS, refuses to disclose who has paid DBRS and how much they have been paid during restructuring and for the "A" credit rating on the new notes.

### **Securities Crime Policing Broken**

- RCMP IMET took effective exclusive jurisdiction for securities crime policing in 2003, and other Canadian police forces reduced their resources in this field. The RCMP is the only police force in Canada without a Police Services Board.
- David Wilson, OSC Chairman controls too much of the securities enforcement system. OSC has been captured by the investment industry. The OSC delegates investor protection to the investment industry SRO's - IIROC and MFDA. These investment industry regulatory agencies have spent 6 years building partnership with RCMP IMET.
- Disband the failed RCMP IMET – Securities Commissions – SRO's partnership model and re-engage independent securities crime policing model, involving all Canadian police forces.
  - i. New Canadian Securities Crime Unit for securities crime complaints intake and assessment
  - ii. Use fraud police experts to interview victims and prepare assessment reports
  - iii. Assign investigations by pre-established jurisdiction protocols to RCMP, provincial, regional and municipal police
  - iv. New Securities Crime Unit independent of securities commissions and SRO's -IIROC and MFDA
  - v. Put structures in place to ensure anti-corruption and clear accountability for the public safety of pension funds and personal retirement savings.
- The investment industry's solution of one National Enforcement Branch is an enforcement model designed to fail.

- i. National securities commission goes beyond partnering with securities crime police to fully controlling it.
- ii. Shuts out Canada's other police forces.
- iii. Lacks structure for public accountability.
- iv. No independent securities crime intake and assessment
- v. Contaminated criminal evidence and likely securities criminal case failures