

COMMENT

*OSC no deterrent to scam artists*

Our markets are like casinos with no rules

AL ROSEN

A surreal view into the disturbing world that is the Ontario Securities Commission comes to us via its own strangely titled publication, *Perspectives*. The recent Spring edition quotes commission chair David Wilson as saying, "Regulators must try to improve a public perception that misconduct is not being addressed." Surely, Mr. Wilson can't be suggesting that the public has incorrect "perceptions" of the OSC's abysmal enforcement record, can he?

Let's be clear: The OSC's enforcement actions against serious financial reporting manipulations are, shall we say, invisible. Likewise, insider trading convictions pale in comparison to the depth of illegal activity in our markets. Adding to the pain, we routinely turn a blind eye to executives who feather their nests with inappropriate insider deals.

So why does the OSC seem more focused on creating perceptions of safety, rather than taking serious actions to create the reality of safety? Sadly, it's because the commission bows to a master far more powerful than mere public investors.

Without a public market for securities, there would be little need for the OSC. Thus, the commission bends to the will of companies that want less regulation, and a general veil of confidence in the market. When confidence does not naturally exist, "perceptions" of confidence are created by sweeping problems under the rug.

Canada is in competition with foreign markets to attract public companies to list here. As such, we offer looser regulations, and stick our heads in the sand all in the name of "confidence," or at least the perception of it, that is.

It's that false sense of security that is so bothersome, rather

than the real risks of the market (the latter being essential to our economy). Without real security, our markets have turned into mere casinos in many ways, with one clear exception: casinos are more honest and straight-forward in their objectives.

The clear and stated purpose of casinos is to separate you from your money. In games of chance like roulette, craps and slots, the house always wins in the end. If you cared to know ahead of time, you could research how long it would take to lose your money based on your initial stake, game of choice, and betting strategy.

In games of greater skill like poker and blackjack, the house still takes its cut, but you're mostly trying to win money from other patrons. This is where the playing field is more level than our markets. Nowadays, it's almost impossible for players to cheat one another at a casino. Sadly, the same can't be said when buying or selling stocks.

Consider the following multiple and redundant casino protections, some of which are required by law and are monitored by outside regulators. First, identification can be required even for entry to the casino. Second, casinos have hundreds of video cameras with facial-recognition software watching for known scam artists. Security personnel who monitor the cameras direct floor personnel to suspicious areas. Indeed, enforcement personnel are so well trained they can spot many cheaters before they even cheat. Third, in the event these measures fail, the camera tapes are kept for several

**THE OSC IS NOT INVESTING ENOUGH IN ENFORCEMENT**

days, in case investigation is required. Last, and most importantly, these preventative measures are real to this world.

There are no phony policemen or fake cameras aimed at bending people's "perceptions" of the security level. Why have a fake camera when your budget can afford a real one? Without investing in real security, you can't create a level of actual deterrence. This is what our securities commissions have gotten completely backwards.

The OSC is simply not investing enough in enforcement initiatives to create a real level of deterrence for scam artists. While nobody will cheat you at a casino, it has become abundantly clear that you can be robbed blind investing in Canada.

Executive self-dealing is still alive and well in Canada, including inappropriate sales of services by executive-owned entities to TSX-listed companies. Similarly, controlling shareholders have much too easy a time pawning off underperforming assets onto minority shareholders, with the help of so-called fairness opinions from conflicted parties. These unsavoury related-party dealings come in addition to the regular financial reporting and insider trading scams that go largely unpunished in our market.

The full extent of self-dealing transactions only comes out through litigation, which is a costly way for investors to take on a public company. Unfortunately, the lack of publicized disputes allows our regulators to conveniently pronounce that there aren't any problems.

Perhaps our current predicament is not all that surprising. The former OSC chair had a similar attitude. In May, 2006, he said: "We don't seem to have seen here in Canada the high-profile failures that they have in the U.S." Yes, it's certainly amazing what you don't find when you don't look.

In the end, any relief for investors will need to see the OSC relieved of its duplicitous mandate of supposedly protecting investors, while at the same time, making things as easy as possible for listed companies. It never seems to fall that the so-called balancing act continually falls in favour of corporate lobbying powers. Unfortunately, this fundamental conflict seems to be clouding some people's perceptions of reality.

*Financial Post*

Al Rosen is a forensic accountant at Accountability Research Corporation, an independent equity research firm. [alrosen@accountabilityresearch.com](mailto:alrosen@accountabilityresearch.com)