



## Investors at mercy of flimsy regulatory regimes

Never has the warning 'investor beware' been more serious or inadequate

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EDMONTON - Another lost court case by the Ontario Securities Commission plus some finger wagging by the Alberta Securities Commission at the Investment Dealers Association of Canada continue to paint a picture of Canadian securities enforcement run amuck.

Never has the warning "Investor Beware" been more serious, and inadequate.

The acquittal of former Bre-X Minerals vice-chairman John Felderhof on various charges including insider trading means that nobody has ever been held responsible for the fraudulent salting of gold mining samples that cost investors some \$6 billion.

The fact that the Royal Canadian Mounted Police washed their hands of the Bre-X matter and dumped it in the lap of a securities commission with insufficient resources for investigation and powers of prosecution is particularly irksome.

The OSC defeat came on the heels of another embarrassment, namely the fact Canadian media mogul Conrad Black was convicted of obstruction of justice and other charges in a Chicago court, after Canadian regulators took to the sidelines.

And it took a private investigator working for Black's former company, Hollinger Inc., to ferret out the information that, in addition to assets currently being frozen as part of his bond, Black allegedly has another \$60 million squirrelled away in offshore bank accounts.

The OSC had earlier lost a case of insider trading against K.Y. Ho of ATI Technologies Inc., and had the conviction of RBC Dominion Securities investor banker Andrew Rankin on charges of tipping a friend on pending takeover deals overturned, which means he gets a new trial next year. Meanwhile, the Alberta Securities Commission released its review of prairie operations of the IDA, the self-regulatory association that fines, suspends and sometimes bans investment dealers and institutions.

During the past 12 months, the IDA has been involved in 46 rulings nationally, issuing 28 fines ranging from \$15,000 to \$750,000, plus 14 suspensions or permanent bans.

But in its review, the ASC said the IDA prairies operation had 13 areas with "significant deficiencies," primarily a lack of staff and lack of available hearing panels. It cited cases being transferred from one department to another and results not being sent to the ASC, plus some rulings that were inconsistent and inadequate.

Diane Urquhart, an Ontario independent analyst, noted that the ASC essentially said "the IDA Prairie Region's Enforcement Division has the same serious deficiencies as Alberta Auditor General Fred Dunn found at the ASC itself."

Back in 2005, Dunn reported that the ASC's enforcement system needed more discipline, having been in conflict of interest, and more consistency in processes.

Of course, cries keep growing for a single securities regulator, rather than the current hodgepodge of 13 separate commissions, to share costs and open up resources for heightened enforcement. But the concept has continually been fought by the individual regulators, who don't want to give up their lucrative fiefdoms.

To make Canada a place where people can invest their hard-earned cash secure in the knowledge that unscrupulous corporate executives and investment dealers will be hunted down and prosecuted with force, three changes need to be made.

First, politicians need to step outside their business and professional backgrounds and create laws that no longer allow corporate executives who bilk shareholders of millions of dollars to be untouchable compared to your neighbourhood mugger who pilfers \$25 from a purse.

Second, not only should we have a single securities regulator, but it should be tied to the RCMP, which badly needs to repair its recent culture of pension mismanagement, management bullying and disinterest in corporate crime.

Third, the Bre-X debacle once more shows that money can buy freedom. Joe Groia was the director of enforcement at the OSC before turning to private practice and becoming the leading securities lawyer in the nation, now adding the Felderhof case to his list of successes. Government needs to pay enough money to hire top legal beagles who can build strong enough cases to win convictions against top defence lawyers.

In the end, there must be a clear distinction between investors who lose money on companies that suffer due to fundamental business and economic reasons, and investors who are duped by corporate fraud or inappropriate financial advice.

Little compassion is expected for those who bought Ballard Power at \$127 in early 2000, and now look at a \$4 stock. But government should feel some responsibility for Jack Kindermann of St. Paul, Alta., who at age 74 still has to work running his electrical consulting business because of Bre-X fraud.

Of course, politicians might care, if only investors were as livid about corporate corruption and shoddy investment advice as they were with last Halloween's government announcement that it will start taxing income trusts in 2011.

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