

Corporate Securities Law

October 31, 2012

Ontario Securities Commission to Target “Gatekeepers” of Emerging Market Issuers Listed on Canadian Exchanges

On October 30, 2012, Ontario Securities Commission Enforcement Director Tim Atkinson affirmed Staff’s previous commitment to crack down on emerging market issuers who fail to abide by Canadian business standards and securities laws.

Targeted Review of Emerging Market Issuers

Earlier this year, the OSC published Staff Notice 51-719 – *Emerging Markets Issuer Review*, reporting the results of its targeted review of “emerging market issuers” that began back in July 2011 (see our March 2012 Update - “*OSC Staff Reports on Concerns Identified in Review of “Emerging Market Issuers”*”). The review focused on Ontario reporting issuers that were listed on Canadian exchanges and had significant business operations in emerging market jurisdictions. In its March Report, Staff identified a number of areas of concern with respect to emerging market issuers, many of which involved the role of market “gatekeepers” including auditors, corporate officers and directors, and underwriters who help companies list on Canadian exchanges.

In a panel discussion on enforcement initiatives at the Commission’s annual “dialogue” conference, Atkinson revealed that, moving forward, the Commission’s enforcement division plans to address the concerns identified in the Report by focusing on these gatekeepers in situations where emerging market issuers are

accused of wrongdoing. In particular, the Commission will look at whether gatekeepers have properly performed their role in protecting investors, and where they have not, they will be held accountable.

Focusing on the Role of Gatekeepers

The rationale behind holding gatekeepers accountable in cases where emerging market issuers are found to have violated Canadian securities laws is that these parties are uniquely situated to verify information about an issuer, its operations and management. Particularly where an issuer has significant business operations in foreign jurisdictions, investors rely on these gatekeepers to undertake the appropriate due diligence and certify that the information released to the market constitutes full, true and plain disclosure of all material facts relating to the securities being offered.

The Commission’s focus on emerging market issuers stems from the recent collapse of a number of foreign-based companies listed on North American exchanges, most notably the collapse of Chinese forestry company Sino-Forest Corp.

It has been suggested that the risks identified for emerging market issuers are greater where a company becomes a reporting issuer in Ontario by way of a reverse take-over or back door listing (as was the case in Sino-Forest). However, the OSC Report does not identify any particular method of accessing the market as being specifically problematic. Accordingly, the OSC, together with the Canadian Public Accountability Board (CPAB), will continue to monitor the activities of all emerging market issuers and the activities of those who assist these companies access Canadian markets.

Please contact any member of Goodmans’ Corporate Securities Group to discuss the Commission’s latest comments and their implications.