

Jensen named newest, possibly last OSC chair

By JEFF BUCKSTEIN

Maureen Jensen has been chosen the new chair and chief executive officer of the Ontario Securities Commission, succeeding Howard Wetston, who resigned last autumn.

While there is much enthusiasm for the appointment of Jensen, who previously served as the OSC's executive director and chief administrative officer, the question looming over her two-year term is whether Jensen will be the OSC's last leader. Ontario has committed to participate in the new Cooperative Capital Markets Regulatory System (CCMRS), alongside British Columbia, Saskatchewan, New Brunswick, Prince Edward Island, the Yukon and the federal government.

"I thought it was a great appointment. I know Maureen and have incredibly high regard for her. I know she's extremely well respected within the commission," said Patricia Olasker, a senior partner with Davies Ward Phillips & Vineberg LLP in Toronto.

Jensen also had a strong presence in shaping developments at Canada's largest provincial securities regulator, said Olasker.

"From where we are now, I think Maureen is absolutely the right person for the job, because a big part of her job is going to be to steer the commission into the national co-operative regulatory model. Maureen knows the commission's business inside out, and I think is probably the best person to steer this process," said Olasker.

"We were very pleased with that appointment, because Maureen brings broadly based experience not just as a regulator, but also as a businesswoman and a successful one," said Ian Russell, the president and chief executive officer of the Investment Industry Association of Canada in Toronto.

Prior to joining the OSC, Jensen was a senior vice-president with the Investment Industry Regulatory Organization of Canada, and president and chief executive officer with an independent national market regulation services provider for Canadian equity markets. She also held senior positions at the Toronto Stock Exchange and worked for 20 years in the mining sector. Jensen is a professional geoscientist by training.

Russell also praised Jensen's skills as an effective manager, a good communicator and very focused leader. "I think those are qualities that are really needed at this time," he stressed.

Russell believes the No. 1 priority for the OSC over the next year should be the oversight and audit of compliance of the Canadian Securities Administrators' client relationship model (CRM) which is a comprehensive framework of rules that will govern the broker-client relationship.

The CRM expands and clarifies the rules and obligations already in

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place and will also, Russell said, provide greater transparency to the client about the investing process, including fees and charges for different types of products or accounts. The CRM will also red flag potential conflicts of interest and highlight the performance of the client's portfolio.

"In addition those rules are going to apply to market participants where rules haven't really applied before. We have this category, particularly of exempt market dealers. They are able to sell exempt securities to sophisticated retail clients, institutions. They are also going to be subject to CRM," he added.

Olasker said the biggest priority facing Jensen over the next year will be steering the OSC through the process of moving to a co-operative regulator and ensuring that while doing so, Ontario's voice is heard.

"I think over recent years, Ontario's authority within the

CSA has been somewhat diminished or overridden by other members. So she's got an important job to do in ensuring that Ontario's views are heard," Olasker elaborated.

Olasker believes this situation dates back to Ontario's decision not to participate in the passport system [which the OSC announced in March 2007] that the other provinces and territories signed on to. The other Canadian jurisdictions have developed and worked comfortably under the passport system, she said.

The CSA describes the passport as "a regulatory system that gives a market participant automatic access to the capital markets in other jurisdictions by obtaining a decision only from its principal regulator and meeting the requirements of one set of harmonized laws."

"It worked for them. And they made their own decisions collectively about issues where historic-

ally Ontario would have landed the discussion. And so Ontario, I think, found itself cut out of a lot of the debate," Olasker explained.

But Olasker also believes that the OSC remains "highly relevant" even as it prepares to join the larger CCMRS.

"The reality is there's only one capital market in Canada of any importance, and it's here in Ontario. The OSC regulates that market. This is where the knowledge and the expertise reside. That's embodied in the OSC and they're central," she explained.

Alberta and British Columbia, for example, both have capital markets, but those are significantly smaller than Ontario's, she noted.

Russell said Jensen is ideally suited for OSC chair at this time because she had been involved as the provincial regulator's representative in helping to put together the CCMRS. "So she's very knowledgeable about the organizational

structure of this new entity, and is the right person to shepherd the transition, if you will, from the OSC into the new model," Russell said.

He believes the OSC will remain relative during the transition period, because until the new co-operative regulator receives formal recognition, the OSC will continue to have full authority in Ontario for rulemaking, oversight and enforcement of securities rules.

"And those powers will stay in place until there's this formal transfer of authority, so to speak, which is going to be some time," added Russell, who expressed concern about ongoing delays, such as the announcement of a board and executive management.

James Scarlett, a partner with Torys LLP in Toronto, also hailed Jensen's appointment, based on her past senior level experience with the OSC, along with her knowledge of the issues and connections with key people in Ontario and other provinces.

Scarlett also noted that the CCMRS has a way to go, and is by no means yet a certainty.

"This is an endeavour that requires continued co-operation and effort and progress from six different governments," he said. "They're still getting regulations and other legislative documents in place, along with protocols for the provinces and jurisdictions to work with each other."

Scarlett would prefer to see a full national securities regulator to include all provinces and territories.

"It wouldn't be without its challenges. But I do think it would be a better system. I think it would be more efficient. I think it would be more effective. And I think it could be done in a way that takes into account local issues.

"But the reality is that Quebec has always been implacably opposed for issues that I would think are more political than anything else, and I don't think that anyone should expect that to change, nor should anyone disrespect that. Alberta's [also] staunchly opposed," said Scarlett.

But "I do want to be clear I am a big supporter of the [CCMRS] initiative. I think it's very worthwhile doing, and I think it needs somebody with vision to drive it forward," he added.

Russell isn't as concerned about the need for a national regulator. So long as there are seven jurisdictions or more in the CCMRS, the group should have enough critical mass to help propel it forward and be able to deal appropriately with the outside jurisdictions, he said.

"I think we can design it so the capital markets can operate pretty effectively, because there will be close harmonization between the provinces in the co-operative, and those on the outside. And that's the intended objective," Russell added.

Jensen's reaction to appointment

Although Jensen was unavailable for an interview with *The Bottom Line*, she released a media statement which said:

"I am deeply honoured to be selected to lead the OSC on behalf of the people of Ontario. The OSC plays a critical role in the health of Ontario's capital markets and economy, and I look forward to working with market participants and our highly capable staff to achieve stronger outcomes for investors and the capital markets. "This is a crucial time for our

agency as we move forward with efforts to modernize capital markets regulation in Ontario and Canada. The OSC will continue to support the government of Ontario in establishing and developing the Cooperative Capital Markets Regulatory System. At the same time, the OSC will continue to focus on enhancing the retail investor experience, providing greater access to capital for businesses and strengthening our enforcement program through new tools such as no-contest settlements and a whistleblower program."

Ian Russell, the president and chief executive officer of the Investment Industry Association of Canada in Toronto, said the OSC has made a lot of headway in strengthening enforcement through improved co-ordination with other provincial regulators and with the Royal Canadian Mounted Police.

"I think to the commission's credit, that enforcement actions will be perhaps more successful as a consequence," Russell added.

• Jeff Buckstein