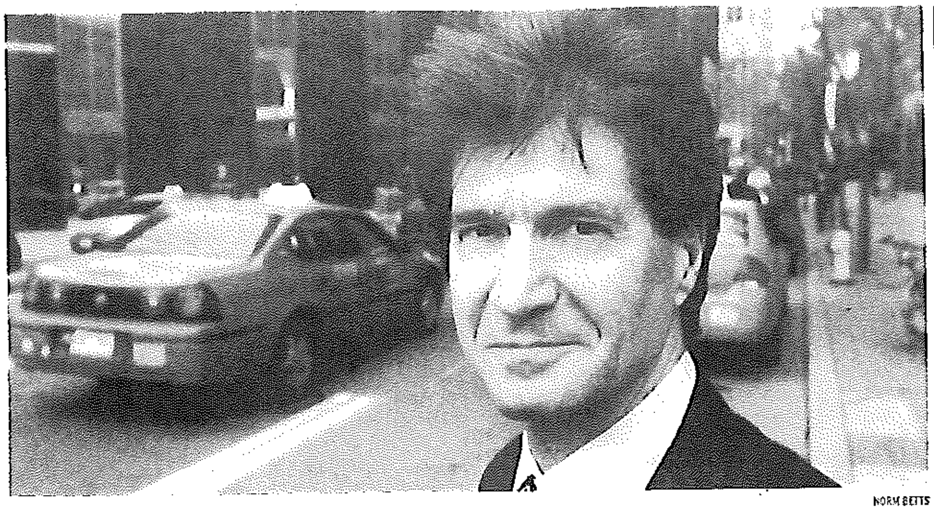

NORM BETTS

Ermanno Pascutto, executive director of FAIR Canada, says the organization has two overriding goals: to advocate for more investor representation with the regulators and to find ways of providing compensation and redress to victims of financial misconduct.

Investor protection is Priority No. 1

The head of FAIR Canada says the new investor rights advocacy group is filling a necessary role

BY RUDY MEZZETTA

NEWSMAKER

ERMANNO PASCUTTO TENDS TO BE blunt when talking about Canada's regulatory regime, especially when it comes to effecting change to protect individual investors and shareholders.

"Glaciers move faster than the pace of reform [in Canada]," says the executive director of the Canadian Foundation for Advancement of Investor Rights, a Toronto-based investor and shareholder rights advocacy group launched last year.

As an example, Pascutto cites the efforts taken by regulators and investor advocates to get the financial services industry to adopt point-of-sale disclosure for mutual funds and segregated funds. "To produce a two-page fund disclosure document has taken a decade," Pascutto says. "Is that reform?"

Pascutto wants FAIR Canada to grab the financial services industry's attention and to help regulators shake off what he feels is complacency when it comes to protecting small investors. He is specifically critical of the Ontario Securities Commission.

"The people who run the OSC are all from the financial markets, which is not to say that they're not well intentioned — I'm sure they're trying to do a good job — but they don't have a passion for protecting investors," Pascutto says. "I think [the OSC] has ceased to be the investors' advocate, and because it seems to have given up a lot of that role, I thought that created a gap that needed to be filled."

But in testimony before the Ontario government's standing committee on government agencies in February, OSC chairman David Wilson defended the OSC: "Everything we do at the OSC has, at its core, investor protection of one sort or another; not necessarily just retail investors [but] all investors — institutional investors, global investors and small individual investors. They all form the universe of investors. We think that our commissioners and our goals are all focused in the right direction."

In responding to stakeholder presentations made to the standing committee, the OSC said it would be establishing an investor secretariat, a body within the OSC, to "better identify and address issues of concern to investors."

Pascutto says he welcomes the OSC's initiative and is pleased the OSC continues to engage in dialogue regarding retail investor issues. That said, the OSC is one of the regulatory bodies that has become a target for FAIR Canada's criticism as the advocacy group tries to establish itself as a legitimate and effective voice for investor and shareholder rights.

FAIR Canada is very much a product of Pascutto's efforts, an advocacy group he first envisioned while he was serving as an independent director with Market Regulation Services Inc., which later merged with the regulatory arm of the Investment Dealers Association of Canada to create the Investment Industry Regulatory Organization of Canada. Pascutto received a one-time, $3.25-million grant from IIROC, taken from the money collected in fines, to fund the new organization.

Pascutto is a lawyer and a veteran in the world of financial services regulation. After starting his career with Toronto law firm Osler Hoskin & Harcourt LLP, he joined the Toronto Stock Exchange in 1981, at which he served as director of market policy. He moved to the OSC in 1984, as executive director and head of staff. In 1989, he moved to Hong Kong to become the vice chairman of the securities and futures commission there, and, in the mid-1990s, he joined the Hong Kong office of Toronto-based law firm Goodman Phillips & Vineberg LLP before returning to Toronto in 1998. Prior to taking on the role at FAIR Canada, Pascutto worked as a senior advisor, first for Montreal-based Stikeman Elliott LLP and, most recently, with U.S.-based law firm Troutman Sanders LLP.

In the 16 months since FAIR Canada launched, it has tackled several shareholder concerns, such as advocating for shareholder approval on major transactions or criticizing TMX Group Inc.'s role as a regulator of listed companies now that TMX is a "for-profit" firm. But, Pascutto says, the bulk of FAIR Canada's work has been on the retail investor side, including pressing for more efforts at boosting financial literacy among Canadians and advocating for POS disclosure materials for funds.

Earlier this year, FAIR Canada gained much attention when it publicly criticized firms that sold leveraged exchange-traded funds for what FAIR Canada feels is inadequate disclosure given to potential investors about the risks of investing in ETFs. The financial services industry has responded that the charges were unfair, saying that investors were being provided with adequate information about how the underlying portfolios of the ETFs worked and the potential risk and rewards of investing in the product.

Pascutto says that at the moment, FAIR Canada has two overriding goals: to advocate for more investor representation at the various regulators and to find ways of providing compensation and redress to victims of fraud and other forms of financial misconduct.

Pascutto says his organization is in favour of efforts to create a national securities regulator, but believes it would be of benefit to retail investors only if it adopts the investor protection recommendations made in the Expert Panel on Securities Regulation's report, which was released this year. These include the creation of an investor panel at the national regulator and implementing improvements on how investors are compensated in cases of fraud.

FAIR Canada is also concerned about commissions-based advisor compensation, which creates a conflict of interest that doesn't serve investors well, Pascutto says: "The interests of advisors and their clients are generally not aligned. That concerns us. Firms put pressure on advisors to sell products that generate high fees. And, often, that's not in the best interest of the client."

Pascutto says FAIR Canada wants to work with the financial services industry and regulators to look at different ways advisors can be compensated, including examining the ideas of banning commissions, something being considered in Australia and Britain (see story on page 1), and imposing a fiduciary duty on advisors, which is being considered in the U.S. Next spring, FAIR Canada will be participating in a conference to be held at the Toronto-based Hennick Centre for Business and Law, to look at how best to align the interests of advisors and clients.

"There are a lot of advisors out there who would like to sell products that are in their clients' interests," Pascutto says, "because they want to be in the business for the long run. They want to feel good about what they do."

Pascutto has staffed FAIR Canada with two associate directors to assist him in designing policy and making submissions to relevant bodies, a research analyst and an office manager. The original funding for the organization is expected to run out at the end of 2012, but Pascutto hopes FAIR Canada will attract new funding to continue its efforts before then. For now, the top priority is becoming an effective body. "If we can show we're having some impact," he says, "that we're providing bang for the buck, that means next year we'll [be in a good position] to start looking for funding."

Pascutto says he hopes to have FAIR Canada on more established footing, and to prepare a successor to take over from him, by next summer, at which time he hopes take a more limited role: retaining his position on the board and perhaps taking over as chairman. He hopes then to take a breather in order to pursue personal interests. IE

PEOPLE BRIEFS

Hockin to chair PWC

London, Ont.-based Pacific & Western Credit Corp., the holding company for Pacific & Western Bank of Canada, has appointed Tom Hockin as chairman of its board of directors. Because Hockin was already chairman of Pacific & Western Bank, electing him to head the holding company's board was a natural move, says David Taylor, president, founder and CEO of PWC. Hockin replaces Doug Gough, who died suddenly on Oct. 25 of natural causes. Gough had been a member of the board since 1996. Hockin was previously chairman of the Expert Panel on Securities Regulation, the task force that issued a report in mid-January recommending that Canada adopt a national securities regulator. He was also head of the Toronto-based Investment Funds Institute of Canada and the Mississauga, Ont.-based Canadian Institute of Financial Planning from 1994 to 2006.

Butler to leave Northwest

Michael Butler, founder of Northwest Mutual Funds, a division of Northwest & Ethical Investments LP of Toronto, is stepping down as president and chief operating officer of the company, effective Jan. 31, 2010. Butler founded Northwest Mutual Funds in 1997 and helped lead the company through its merger with Vancouver-based Ethical Funds Co., which created the 18th-largest mutual fund company in Canada. After Butler steps down, he plans to continue to serve on the company's investment committee, in addition to volunteering and guest lecturing. John Kearns, CEO of Northwest & Ethical Investments, will take over Butler's responsibilities.

BofC's Jenkins to step down

Paul Jenkins' term as senior deputy governor of the Bank of Canada will end in April 2010, and the search for his replacement has begun, the BofC has announced. Jenkins began his career with the BofC in 1972 in the research department and was appointed to his current role in 2003. To assist with the search and selection of Jenkins' replacement, the BofC has formed a special committee consisting of its independent directors, and consulted executive recruiting firm Odgers Berndtston. Pending approval from the federal cabinet on the selection, the BofC expects to hire a replacement by February 2010.

BMO appoints Leasure

BMO Capital Markets Corp. has appointed Dirk Leasure as managing director of its New York-based financial sponsors group, which specializes in advisory services and acquisition financing for leveraged buyouts. Leasure will be responsible for directing a group of investment bankers in the group's Chicago and New York offices. The company says it expects activity in the area of initial public offerings and leveraged buyouts to pick up in 2010. Prior to joining BMO, Leasure spent eight years with New York-based Goldman Sachs Group Inc.'s leveraged finance group, as well as two years in London, England, assisting the Goldman Sachs' New York group in securing financial sponsors. Prior to Goldman Sachs, Leasure spent five years with the former Kidder Peabody & Co. in its high-yield capital markets, leveraged companies, and mergers and acquisitions groups.

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