

Corporate Securities Law

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OSC Publishes Statement of Priorities for 2017-2018

The Ontario Securities Commission (OSC) recently published its Statement of Priorities for 2017-2018, which is intended to identify priority areas on which the OSC will focus during the current fiscal year (April 1 – March 31). In that context, the Statement of Priorities may offer stakeholders some insight into areas – new and continuing from past years – of particular current interest to the OSC. This year's Statement of Priorities confirms that the OSC is continuing to pursue a number of initiatives that have to date received mixed reaction from various market participants.

Priorities for 2017-2018

The specific priorities for 2017-2018 are influenced by a number of broader issues identified by the OSC as impacting capital markets, including changing investor demographics, the growing importance of investor education given the increasingly complex and diverse investment product mix, increasing globalization of capital markets and the effect of recent geopolitical events, the impact and risks associated with technological innovation and the need to preserve financial stability and improve market resilience to global systemic risks.

The 2017-2018 Statement of Priorities carries forward nine initiatives from the 2016-2017 Statement of Priorities and adds five new initiatives identified as priorities by the OSC. Some of the notable priorities and discussion points for 2017-2018 include:

Transition to Capital Markets Regulatory Authority

The OSC intends to continue to support the Capital Markets Regulatory Authority (CMRA), along with the securities regulatory authorities of British Columbia,

Saskatchewan, New Brunswick, Prince Edward Island and the Yukon, and is working to transition into the new CMRA organization as soon as possible. Under the cooperative system, participating provincial and territorial jurisdictions would enact uniform legislation addressing all matters in respect of the regulation of capital markets within their jurisdictions. Federal legislation would address criminal matters and systemic risk across the country in respect of national capital markets and data collection. The CMRA would administer provincial and federal legislation under authority delegated by the participating jurisdictions. The OSC has acknowledged that some market participants have questioned the extent to which the CMRA will achieve harmonization of Canadian securities laws, as well as the effectiveness of the CMRA for Ontario investors and capital markets specifically.

Reducing Regulatory Burden

The OSC intends to continue to work with the Canadian Securities Administrators (CSA) on their ongoing review of opportunities to reduce the regulatory burden on non-investment fund reporting issuers that was outlined in CSA Consultation Paper 51-404 – *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*, as well as its consideration of options to reduce the regulatory burden in other areas of securities legislation (including disclosure obligations for investment funds).

Initiatives to Improve Advisor/Client Relationships

The Statement of Priorities confirms that the OSC intends to continue to pursue the implementation of a “best interest standard” (whereby registrants would be mandated to act in their clients’ best interests in discharging their client-related obligations), as well as other targeted regulatory reforms to enhance the

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advisor/client relationship. These initiatives are discussed in detail in Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients of the Canadian Securities Administrators*. While the CSA are supportive of certain of the targeted reforms being pursued by the OSC, most Canadian securities regulators abandoned the concept of a statutory best interest standard in response to criticism from numerous industry participants (as discussed in CSA Staff Notice 33-319 – *Status Report on CSA Consultation Paper 33-404 Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients*, issued earlier this year), the Statement of Priorities indicates that the OSC intends to move forward with this initiative and intends to publish a proposed regulatory instrument to introduce a best interest standard during the ensuing fiscal year.

Support for Innovation

The OSC is continuing to prioritize a number of initiatives that are intended to support innovation and ensure that Ontario securities regulation keeps pace with technological innovation. The OSC will continue to support its and the CSA's recent initiatives in this area, including (i) the OSC's LaunchPad program, which provides support to the fintech community in navigating regulatory requirements, (ii) the OSC's Fintech Advisory Committee, which advises the LaunchPad team on developments in the Fintech industry and challenges faced by Fintech businesses in navigating the securities regulatory environment, and (iii) participating in the CSA Regulatory Sandbox that is designed to allow issuers to test novel products and services without full regulatory approval, subject to certain parameters intended to ensure investor protection.

Embedded Compensation Arrangements

The OSC will seek to advance the CSA initiative – set forth in CSA Consultation Paper 81-408 – *Consultation on the Option of Discontinuing Embedded Commissions* – to replace the existing practice of compensating dealers (and their representatives) for mutual fund sales through embedded commissions paid by investment fund managers with direct fee-based arrangements between

investors and their dealing representatives. Among other things, the OSC has indicated that it will conduct a stakeholder roundtable to examine the potential impacts of discontinuing embedded commissions in Canada and identifying appropriate transition measures.

Monitoring Recent Regulatory Initiatives

As part of the OSC's monitoring and assessment of recent regulatory initiatives, the OSC intends to conduct another targeted review of issuers' disclosure relating to women on boards and in executive positions, and will publish a Staff Notice setting out the results of its review and an update on possible further disclosure requirements (the CSA previously published a review of compliance with gender diversity disclosure in September of 2015). The Staff Notice indicates that the OSC also intends to publish a Staff Notice summarizing capital raising by issuers using the prospectus exemptions that the OSC (and other CSA members) have recently introduced.

Cybersecurity Measures

Both as a result of recent CSA initiatives and the recent proliferation of high profile cyber-attacks, the OSC has prioritized the promotion of efforts by market participants to maintain and improve their cybersecurity defences and resilience to cyber-attacks. However, other than following up on recommendations from the CSA's recent cybersecurity roundtable (the results of which are summarized in CSA Staff Notice 11-336 – *Summary of CSA Roundtable on Response to Cyber Security Incidents*) and reviewing the results of its recent registrant cybersecurity survey, no specific initiatives are discussed.

Enforcement Initiatives

In recent years, the OSC has shown a strong commitment to improving the efficiency and effectiveness of its compliance and enforcement process, and this continues to be a priority for 2017-2018. In particular, the OSC intends to increase awareness of its whistleblower Program and to use the

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recently introduced no-contest settlements to obtain swifter enforcement actions in areas that are otherwise difficult to detect.

Although shareholder democracy issues, such as “say on pay”, majority/empty voting and proxy voting are not specifically included as priorities this year, the OSC has noted in response to comments received on its draft Statement of Priorities that it will continue to monitor developments in this area and intends to address these issues through work that is underway as part of its business plans.

The full Statement of Priorities is available on the OSC's website. To view the statement, [click here](#).

For further information on the Statement of Priorities or to discuss any of the specific initiatives, please contact any member of our Corporate Securities Group.