

Goodmans^{LLP} Update

OSC Announces Additional Burden Reduction Initiatives

The Ontario Securities Commission (OSC) recently released its much anticipated [report](#) about how the OSC plans to reduce regulatory burden in Ontario's capital markets and make it easier to do business in Ontario. The report contains a broad and ambitious range of initiatives that will impact companies, investment funds, dealers and other registrants. In particular, many of the initiatives are intended to facilitate more efficient capital raising by companies in Ontario.

Background

As part of the Ontario Government's five-point plan for creating confidence in Ontario's capital markets, in November 2018 the OSC established a Burden Reduction Task Force to identify ways to enhance competitiveness for Ontario businesses through more efficient regulation. In discharging its mandate, the OSC conducted a broad stakeholder consultation that included 69 comment letters received, 30 consultations with industry participants and three public roundtables. Through that process, the OSC received 199 suggestions for improvement that run the gambit of the Ontario securities regulatory landscape.

The OSC Task Force follows a related initiative launched in 2017 by the Canadian Securities Administrators (CSA), the umbrella group that represents each of Canada's provincial and territorial securities regulatory authorities, to explore ways to reduce regulatory burden for non-investment fund issuers in Canada (see our March 2018 Update, [Canadian Securities Regulators Announce Upcoming Policy Projects Aimed to Reduce Regulatory Burden on Canadian Public Companies](#) and our April 2017 Update, [Canadian Securities Regulators Considering How To Reduce Regulatory Burden on Canadian Public Companies](#)). The OSC's report addresses a number of initiatives that are also part of the CSA's review.

Highlights of the OSC Report

In its report, the OSC outlines 107 distinct decisions and recommendations intended to address 34 underlying concerns expressed by market participants in the consultation process. Some involve specific changes to rules or processes, while others involve a more general commitment to explore ways to address stakeholder concerns and/or evaluate the impact of potential changes. Key highlights include:

- *Confidential pre-filing prospectus reviews.* The OSC is implementing a general program to allow for confidential review of prospectuses before an offering, to provide issuers and dealers with greater certainty about the timing of an offering. Historically, the OSC only permitted confidential prospectus filings in the context of certain cross-border offerings where the related U.S. registration statement was permitted to be filed confidentially in the U.S. This initiative also builds on the OSC's program for confidential pre-filing review of mining companies' technical reports and related disclosure that was announced in June 2019 (see our June 7 Update, [OSC Launches Pre-Filing Review of Mining Technical Disclosure in Short Form Prospectus Offerings](#)).
- *Harmonization of "primary business" financial statement prospectus disclosure.* The OSC will work to harmonize the financial statements required to be included in a long form prospectus related to an issuer's primary business. This initiative, which will require cooperation of the other CSA members, has the potential to simplify the process of preparing long-form prospectuses by eliminating (or at least

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minimizing) the need for pre-filing discussions with regulators and/or exemptive relief as a result of diverging approaches among Canadian securities regulators.

- *Review other prospectus requirements and publish additional guidance.* While no specific changes have been proposed at this time, the OSC indicated it will consider other potential changes to prospectus offering requirements, such as streamlining disclosure, introducing an automatic shelf prospectus procedure (similar to the “well-known seasoned issuer” concept in the U.S.) and expanding the “testing the waters” exemption for prospectus offerings. In this context, the OSC has signalled it will consider the potential impact of any changes on current market practices, particularly as it relates to “bought deal” financings. The OSC also indicated an intention to publish additional guidance about issues that may be raised in connection with prospectus reviews that may impact the structure of offerings.
- *Codify rules for at-the-market offerings.* The report reiterates the OSC’s support for the CSA’s proposal to amend the prospectus rules to streamline “at-the-market” offerings (those involving the issuance of prospectus-qualified shares through stock exchange facilities). Such offerings, which are relatively common in Canada, currently require issuers to incur time and expense obtaining relatively routine exemptive relief.
- *Authorize blanket relief orders.* In November, the Ontario Government announced its intention to amend the Securities Act (Ontario) to allow the OSC to issue blanket orders to facilitate routine, industry-wide exemptive relief that would otherwise have to be granted on a case-by-case basis or implemented through the more time-intensive rulemaking process. The OSC believes this proposal would reduce costs for market participants and allow the OSC to be more responsive without adversely impacting investor protection.
- *Streamline AIF and MD&A disclosure requirements.* The OSC confirms it continues to work with other CSA members to streamline the disclosure required in annual information forms and management discussion and analysis to avoid duplicative or unnecessary disclosure, which the CSA is reviewing as part of its burden reduction mandate. In light of that initiative, the OSC is not evaluating amendments to other continuous disclosure documents, such as information circulars, at this time.
- *Increase thresholds for business acquisition reports.* The report highlights the CSA’s recently announced proposal to amend the triggers for filing business acquisition reports (see our September 2019 Update, [Canadian Securities Administrators Propose Amendments to Business Acquisition Report Requirements](#)). Under the proposed amendments, the significance threshold would be increased from 20% to 30%, and two out of three (rather than any one) of the significance tests would need to be satisfied. These amendments should help reduce the risk that issuers are required to incur significant time and expense to prepare a business acquisition report and/or obtain exemptive relief for acquisitions that are not sufficiently material to justify their cost.
- *Improve crowdfunding opportunities.* The OSC committed to attempt to harmonize the crowdfunding rules across Canada. The OSC will also seek comment on whether to increase the issuer and investor investment limits to make crowdfunding more attractive.
- *Facilitate electronic document delivery.* The report highlights the OSC’s ongoing work, as part of the CSA’s burden reduction initiative, to modernize delivery methods for continuous disclosure documents, including electronic delivery and “access equals delivery” models. The CSA is expected to publish a consultation paper on this initiative in 2020. On a related note, the OSC is confident its revamped website and implementation of a new national electronic filing system (SEDAR +), both of which are in progress, will provide market participants with better access to information.

The OSC indicated it intends to take significant steps toward implementing many of the reforms within the next 24 months, though some initiatives require cooperation from other CSA members so the timeline for those is uncertain.

Going forward, the OSC has committed to enhance its policymaking process through more thorough regulatory impact analyses (including targeted consultations with market participants), improved clarity and consistency in drafting, and an increased focus on the appropriate balance of prescriptive and principles-based rules. The report expresses a renewed focus on ensuring the costs of regulation are proportionate to the benefits sought to be achieved (so-called “proportionate regulation”).

Cooperative Capital Markets System

In its Fall Economic Statement, the Ontario government indicated it continues to work collaboratively with other participating jurisdictions on the Cooperative Capital Markets Regulatory System (CCMR). The CCMR is intended to streamline Canada's capital markets regulatory framework by establishing uniform securities regulation across the participating jurisdictions. While the OSC's report does not mention the CCMR or discuss how the initiatives in the OSC's report relate to the CCMR process, presumably, the OSC will advocate for the positions expressed in its report as part of the CCMR.

To discuss any aspect of the OSC's report, please contact any member of our [Corporate Finance and Securities Group](#).