Goodmans LLP Update

OSC Publishes Statement of Priorities for 2018-2019

The Ontario Securities Commission (OSC) recently published its Statement of Priorities for 2018-2019, 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 the OSC is continuing to pursue a number of initiatives that have received mixed reaction from various market participants.

Priorities for 2018-2019

The specific priorities for 2018-2019 are influenced by a number of broader issues identified by the OSC as impacting capital markets, including (i) changing investor demographics, (ii) the growing importance of investor education given the increasingly complex and diverse investment product mix, (iii) increasing globalization of capital markets and the effect of recent geopolitical events, (iv) the impact and risks associated with technological innovation and increased dependence on digital connectivity, and (v) the need to preserve financial stability and improve market resilience to global systemic risks.

The 2018-2019 Statement of Priorities carries forward thirteen initiatives from the 2017-2018 Statement of Priorities and adds two new initiatives identified as priorities by the OSC. Some of the notable priorities and discussion points for 2018-2019 are set out below.

New Priorities for 2018-2019

- ***Disclosure Requirements Regarding Women on Boards and in Executive Officer Positions***. The OSC intends to review the effectiveness of the disclosure requirements regarding women on boards and in executive officer positions set out in NI 58-101 *Disclosure of Corporate Governance Practices* (the "**Gender Disclosure Requirements**") to determine if there is further action needed to bolster female representation in senior corporate positions. A recent review by the Canadian Securities Administrators (CSA) of responsive disclosure to the Gender Disclosure Requirements found 61% of issuers had at least one woman on their board and the overall percentage of board seats occupied by women was 14%. Given the underrepresentation of women on boards and in executive officer positions (and the widespread support to rectify the issue), the OSC and the CSA are assessing the effectiveness of the Gender Disclosure Requirements and if changes are required to obtain greater gender balance in the board room.

- ***Develop and Implement a Strategic OSC Workforce Plan***. The Statement of Priorities confirms the OSC acknowledges that market participants expect the OSC to use its resources efficiently, which requires it to invest in its employees and focus on skill recruitment and development to strengthen its current and long term capabilities. To stay agile and be proactive in an ever-changing securities regulatory environment, the OSC will seek to recruit staff across a wide range of disciplines, develop the skills of existing staff and continue to strengthen and build on succession planning and talent mapping practices to ensure a robust talent pipeline for critical roles across the OSC.

Ongoing Priorities

- ***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 CMRA 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 in the past 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 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, but not limited to, potential rule amendments relating to disclosure obligations for investment funds and the requirements which mandate the filing of a business acquisition report).

- ***Initiatives to Improve Advisor/Client Relationships***. The Statement of Priorities confirms the OSC intends to continue to pursue the implementation of regulatory reforms that promote 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 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 last year). Notwithstanding the criticisms received by the OSC regarding the proposed regulatory reforms, the Statement of Priorities indicates 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 intended to support innovation and ensure Ontario securities regulation keeps pace with technological innovation (such as cryptocurrencies, initial coin offerings and other blockchain developments). The OSC will continue to support its and the CSA's recent initiatives in this area, including through (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, (iii) its participation in the CSA Regulatory Sandbox designed to allow issuers to test novel products and services without full regulatory approval, subject to certain parameters intended to ensure investor protection, and (iv) its work with the Financial Services Regulatory Authority of Ontario to develop eligibility criteria and success measures for the Ministry of Finance SuperSandbox (which would exempt certain companies from some regulatory requirements to facilitate experimentation with new business models and products).

- ***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 (which can create a conflict of interest that could incentivize dealers to recommend funds that benefit the dealer ahead of the investor) with direct fee-based arrangements between investors and their dealing representatives.

- ***Cybersecurity Measures.*** The Statement of Priorities confirms the OSC believes that cyber risk constitutes a growing and significant threat to the integrity, efficiency and soundness of our capital markets. As a result of recent CSA initiatives, increased dependence on digital connectivity (such as online banking and mobile payment systems) and the recent proliferation of high profile and sophisticated cyber-attacks, the OSC continues to prioritize the promotion of efforts by market participants to maintain and improve their cybersecurity defences and resilience to respond to cyber-attacks. The OSC intends to promote cyber reliance through greater collaboration with market participants and regulators on risk preparedness and responsiveness.

- ***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 2018-2019. The OSC intends to, among other things, increase awareness of its Whistleblower Program and to use the 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" and proxy voting are not specifically included as priorities this year, the OSC noted in response to comments received on its draft Statement of Priorities that it will continue to monitor developments in this area to determine whether there is a need for further actions.

The full Statement of Priorities is available on the OSC's website.

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.

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