

# Goodmans<sup>LLP</sup> Update

## Ontario Securities Commission Issues Guidance for Confidential Prospectus Pre-filings

The Ontario Securities Commission (OSC) recently issued a [news release](#) providing guidance to issuers seeking to confidentially pre-file a prospectus. The option to confidentially pre-file a prospectus was introduced in March, 2020, and has since been a popular option amongst issuers seeking greater flexibility and more certainty in planning their prospectus offerings.

The confidential pre-file review process is available for non-investment fund issuers filing long form prospectuses, short form prospectuses and base shelf prospectuses. It is particularly beneficial to issuers conducting an initial public offering, as a significant portion of the regulatory review can be completed on a confidential basis before publicly filing a preliminary prospectus or commencing marketing for an offering. Since the option was introduced nearly a year ago, 40 issuers have submitted confidential prospectus filings.

### Best Practice Guidance

In response to the increased popularity of confidentially pre-filing a prospectus, the OSC has offered the following guidance:

- All financial and non-financial disclosure that would be included in the actual prospectus filing should be included in the pre-filed prospectus. Missing disclosure can result in delayed reviews.
- The filed cover letter should include a deal timeline to assist OSC staff in understanding when the review should ideally be completed. The OSC expects that the issuer will file a preliminary prospectus shortly after the pre-filed prospectus has been reviewed.
- Any legal or accounting questions requiring OSC staff input should be highlighted with the confidential submission.

Issuers are reminded that the OSC will not review pre-files of prospectuses that solely qualify the issuance of securities on conversion of convertible securities, such as special warrants, nor will the OSC review pre-files of non-offering prospectuses except in connection with cross-border financings or where there is a specific legal or accounting matter requiring OSC input.

The OSC also advised that due to a significant increase in the volume of prospectus filings for the period of October to December 2020, they will be triaging all filings and prioritizing urgent prospectus filings, including bought deals and overnight marketed offerings, over less urgent prospectus filings. As a result, for filings that have a deal timing that is less pressing, review timelines may be extended. OSC staff will promptly notify filers and their counsel where this is the case.

For more information regarding this update, please contact any member of our [Corporate Finance and Securities Group](#).

All Updates are available at [www.goodmans.ca](http://www.goodmans.ca). This Update is intended as a general summary for educational purposes only and should not be relied upon as legal advice with respect to any particular set of circumstances. If you require advice as to your circumstances, please contact any member of our Corporate Finance and Securities Group.

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