

Outlook 2021: Securities Regulation Updates and the Impact of COVID-19 in Ontario, British Columbia, and Alberta

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This article provides a progress update on the Ontario Securities Commission's execution of its Statement of Priorities for 2021-2022, the report of the Ontario Capital Markets Modernization Taskforce, the recent amendments to British Columbia's *Securities Act*, the Alberta Securities Commission's strategic pillars, and the impact of COVID-19 on the securities regulatory landscape.

Update on the Ontario Securities Commission's Focus for 2021-2022

On June 29, 2021, the Ontario Securities Commission (OSC) published its 2021-2022 Statement of Priorities (the Statement).¹ This Statement was published following public consultation, through which the OSC received sixteen comment letters. Overall, commentators advised that the goals of investor protection and reducing regulatory burden should remain top priorities for the OSC. In the Statement, the OSC sets out four strategic goals:

- **Promote confidence in Ontario's capital markets:** Including by improving climate-change related disclosures, integrating new mandates for fostering capital formation and competition, and strengthening oversight of crypto asset trading platforms and other dealers.
- **Reduce regulatory burden:** Including by developing an enhanced framework for reducing burden and modernizing regulation and continuing to implement burden-reduction initiatives.
- **Facilitate financial innovation:** Including by cultivating an environment that supports development of innovative financial business models.
- **Strengthen the OSC's organizational foundation:** Including by modernizing the OSC's technology platform, fostering inclusion, equity, and diversity, implementing the structural changes set out in the *Securities Commission Act, 2021*,² and continuing to monitor and adapt to the impacts of COVID-19.

On September 2, 2021, the OSC released its 2021 Annual Report outlining the progress made on these goals.³ This progress includes timely and impactful enforcement action; facilitating financial innovation through the creation of the Office of Economic Growth and Innovation; and strengthening the OSC's organizational foundation through modernizing its technology platform, including its initiative to implement SEDAR+, the Canadian Securities Administrator's national system for all market participants for filing, disclosure, payment, and information searching in Canada's capital markets.⁴

The Ontario Capital Markets Modernization Taskforce & the Capital Markets Act

In early 2021, the Ontario Capital Markets Modernization Taskforce (the Taskforce) released a report in support of regulatory reform.⁵ The Taskforce recommended that a new statute, the *Capital Markets Act*, serve as the legislative vehicle to implement the recommendations, replacing the current *Securities Act* and the *Community Futures Act*.⁶ On October 12, 2021, the Government of Ontario published a draft of the *Capital Markets Act* (the Draft CMA), which is intended to improve regulatory structure, modernize enforcement, and enhance investor protection, with a view to implementing regulation as a competitive advantage. The Draft CMA will remain open for stakeholder consultation and comment until January 21, 2022.⁷ Some of the key Taskforce recommendations incorporated into the CMA include:

- extending civil liability for offering memorandum misrepresentation to parties other than the issuer, this would include directors and promoters of the issuer, experts, influential persons, and every person who has signed the prescribed disclosure document (section 183);⁸
- providing the OSC with broader designation powers and rule-making authority to provide regulatory clarity to businesses with unique offerings, such as crypto-asset trading platforms that are not already securities or derivatives (sections 3 and 127);⁹ and
- creating a prohibition to deter and prosecute misleading or untrue statements about public companies and attempts to make such statements (section 94(2) and (3)).¹⁰

Through the Draft CMA and the *Securities Commission Act, 2021*, the Ontario Government is also introducing legislative amendments to support the following key changes:¹¹

- the OSC mandate will be expanded to include fostering capital formation and competition in the markets to facilitate economic growth;¹²
- the OSC's structure will change, splitting the role of OSC Chair and Chief Executive Officer (CEO) into two distinct and separate positions;¹³ and
- the legislation will separate the OSC's oversight and adjudicative responsibilities - the OSC's Board will continue to provide financial, regulatory, and operational oversight, while a separate Tribunal will be created to oversee adjudicative matters.¹⁴

Update on the British Columbia Securities Act Amendments

Various amendments outlined in British Columbia's *Securities Amendment Act, 2019* (the Amendments) came into force on March 27, 2020. The Amendments provide the British Columbia Securities Commission (BCSC) with new enforcement, compliance, investor protection, and sanction collection tools.¹⁵

Many of the Amendments provide the BCSC with the strongest powers to address misconduct in financial markets among securities regulators in Canada. The BCSC has begun using these powers to support efforts to detect, disrupt, and deter securities misconduct.¹⁶ As of August 2021, the BCSC has commenced almost 300 actions to disrupt misconduct (many of which emerged as a result of the COVID-19 pandemic).¹⁷

Update on the Alberta Securities Commission's Strategic Pillars 2020-2021

To support its mission of fostering a fair and efficient capital market in Alberta and protecting investors, the Alberta Securities Commission (ASC) has presented three strategic pillars:¹⁸

- **Intelligent regulation aimed at fostering a thriving capital market:** To achieve this goal, the ASC has supported the Government of Alberta's *Red Tape Reduction Implementation Act, 2021*.¹⁹ This legislation includes amendments to the *Securities Act* (Alberta) and the *Business Corporations Act* (Alberta) that enable companies to raise capital more efficiently in Alberta and allows for the continued modernization of Alberta's securities law.²⁰
- **Proactive and comprehensive compliance oversight, enforcement and education:** To achieve this goal, the ASC expanded its enforcement tools through its participation in programs with other regulators, such as the CSA's Market Analysis Program, which is a data repository and analytics system aimed at identifying and analyzing market misconduct.²¹
- **Fostering a culture of engagement:** To achieve this goal, the ASC pivoted to virtual presentations and webinars to provide stakeholders with relevant and timely information, engage investors and empower staff.²²

COVID-19 Impact to the Securities Landscape

The CSA continues to monitor the capital markets to assess the impact of COVID-19 on market participants. On February 25, 2021, the CSA undertook a review of issuers' disclosure during the COVID-19 pandemic and published a guide to pandemic-related disclosure. The CSA noted that boilerplate disclosure is not sufficient. Issuers are required to not only report that their business has or may be impacted by COVID-19, but also to specify *how* COVID-19 has or may impact their business. Issuers must also outline the methodology used to determine that COVID-19 – as opposed to some other market factor – impacted (or may impact) their business.²³

Looking Forward

Cassels

The OSC, ASC, and BCSC have focused their efforts on developing more efficient regulation that balances easing the regulatory burden with investor protection. The impact of COVID-19 is still reverberating in the capital markets and has led to greater efficiencies in how parties are required to prepare, process, and provide information. We expect a forward momentum which encourages these efficiencies and creates a market that fosters innovation.

¹ "OSC Notice 11-792 – Notice Statement of Priorities for Financial Year to end March 31, 2022," *Ontario Securities Commission*, June 29, 2021, online: <https://www.osc.ca/sites/default/files/2021-06/sn_20210629_11-792_sop-end-2022.pdf>.

² *Securities Commission Act, 2021*, SO 2021, c 8, sched 9.

³ "Annual Report 2021 Promoting Confidence, Fostering Innovation," *Ontario Securities Commission*, September 2, 2021, online: <https://www.osc.ca/sites/default/files/2021-09/Publications_rpt_2021_osc-annual-rpt.pdf> (*OSC Annual Report*).

⁴ *Ibid* at p. 50.

⁵ "2021 Ontario Budget: Protecting Our Economy," *Government of Ontario*, online: <<https://budget.ontario.ca/2021/economy.html>> (*2021 Ontario Budget*).

⁶ "Capital Markets Modernization Taskforce: Final Report January 2021," *Government of Ontario*, online: <<https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021/part-2-key-recommendations>>; *OSC Annual Report*, *supra* note 3 at pp. 69-70.

⁷ "Capital Markets Act – Consultation Commentary," *Government of Ontario*, October 2021, at p. 2, online: <<https://www.ontariocanada.com/registry/view.do?postingId=38527&language=en>>.

⁸ *Ibid* at p. 23.

⁹ *Ibid* at p. 25.

¹⁰ *Ibid* at p. 27.

¹¹ *2021 Ontario Budget*, *supra* note 5.

¹² "Capital Markets Act – Consultation Draft," *Ontario's Regulatory Registry*, October 12, 2021, s. 1, online: <<https://www.ontariocanada.com/registry/view.do?postingId=38527&language=en>>.

¹³ *Securities Commission Act, 2021*, SO 2021, c 8, sched 9, sections 8 and 11.

¹⁴ *Ibid* at s. 25-31.

¹⁵ BC Reg 45/2020.

¹⁶ "2020/21 Annual Service Plan Report," *British Columbia Securities Commission*, August 2021, at p. 5, online: <<https://www.bcsc.bc.ca/-/media/PWS/New-Resources/About/Reports-and-Publications/BCSC-2020-2021-Annual-Report.pdf>>.

¹⁷ *Ibid*.

¹⁸ "2021 Annual Report," *Alberta Securities Commission*, August 12, 2021, at p. 4, online: <https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Publications/ASC_Annual_Report_2021.ashx>.

¹⁹ *Ibid* at p. 8.

²⁰ *Ibid*.

²¹ *Ibid* at p. 13.

²² *Ibid* at p. 16.

²³ CSA Staff Notice 51-362, "Staff Review of COVID-19 Disclosures and Guide for Disclosure Improvements," February 25, 2021, online: <<https://www.osc.ca/en/securities-law/instruments-rules-policies/5/51-362/csa-staff-notice-51-362-staff-review-covid-19-disclosures-and-guide-disclosure-improvements>>.