

What You Need to Know About the OSC's Business Plan and Changes to the OSC's Governance Structure

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On April 26, 2022, the Ontario Securities Commission (OSC) published a multi-year Business Plan setting out the OSC's priorities and core strategy for the fiscal years ending in 2023-2025.¹ The wide-ranging plan touches on all aspects of the Canadian securities landscape, including mutual funds, cryptocurrencies, and climate-related disclosures. The plan also discusses changes to the OSC's governance structure pursuant to the *Securities Commission Act, 2021*,² which came into force several days later, on April 29, 2022.

Key Takeaways

- **Changes to the governance structure.** Pursuant to the *Securities Commission Act, 2021*, the OSC's governance structure has undergone significant change. The chair and CEO role have been split into two distinct positions. The OSC's oversight and adjudicative responsibilities have been separated between the board of directors on the one hand, and the Capital Markets Tribunal on the other. The board is charged with oversight of the OSC's affairs (including regulatory and governance functions), while the adjudicators of the Capital Markets Tribunal will perform tribunal functions.
- **Streamline regulation without compromising investor protection.** The OSC's Statement of Priorities and Business Plan reflect its top priority to reduce regulatory burden while also: (i) maintaining effective protection for investors from unfair, improper, and fraudulent practices, (ii) fostering fair, efficient, and competitive capital markets as well as confidence in capital markets, (iii) fostering capital formation, and (iv) contributing to enhanced stability of the financial system and the reduction of systemic risk. The OSC has continuously emphasized the importance of protecting senior investors and retail investors.
- **Modernize the regulatory environment and the OSC's technological processes.** The OSC's Statement of Priorities reflects the OSC's need to modernize in a variety of areas. The OSC's action items include efforts to modernize the OSC's regulatory oversight practices, disclosure requirements, delivery options of regulatory and continuous disclosure filings, support for innovative businesses, and cyber security risk mitigation. The OSC has also indicated a general need for improved technological capacity, tools, and processes.
- **Clarify climate change disclosure requirements and continued consideration of EDI initiatives.** The OSC has indicated that it will adopt and expand its disclosure requirements related to diversity on boards and in executive officer positions at TSX-listed companies, particularly with

Cassels

respect to people who self-identify as Black, Indigenous, persons of colour, persons with disabilities, LGBTQ2+, and women. The OSC is following the path taken by most Canadian public companies to expand its commitments to Equity, Diversity, and Inclusion (EDI) initiatives. Furthermore, the OSC is developing a rule governing climate change-related disclosure. The OSC expressed the need for public companies to provide investors with improved access to climate-related information needed to inform investment decisions. The OSC aims to clarify climate-related disclosure requirements for public companies.

Governance Framework

The OSC is responsible for administering and enforcing compliance with Ontario's *Securities Act*,³ the *Commodity Futures Act*,⁴ and the administration of certain provisions of Ontario's *Business Corporations Act*.⁵ The OSC performs three distinct functions in support of its mandate: (i) regulatory (making policies and rules), (ii) governance (serving as the board of directors), and (iii) tribunal (administering and adjudicating proceedings)

Pursuant to the *Securities Commission Act, 2021*, the governance framework of the OSC will change significantly.⁶ The Act separates the OSC's tribunal function from its other two functions, giving the Capital Markets Tribunal exclusive jurisdiction to exercise the powers conferred under the *Securities Act* and the *Commodity Futures Act*. The Capital Markets Tribunal has been established as a division of the OSC⁷ and must be composed of at least nine adjudicators, including a Chief Adjudicator.⁸

The OSC's board of directors is set to be composed of three to twelve members, including both a Chair and CEO.⁹ The CEO is responsible for the management and administration of the OSC, barring matters relating to the adjudicative functions of the Capital Market Tribunal. The Chair's responsibilities may be set forth in the *Securities Act*, the regulations made under the *Securities Act*, the Memorandum of Understanding,¹⁰ By-law No. 1,¹¹ By-law No. 2,¹² and government directives and policies. The Chair also carries out other functions and duties under authority delegated by the Board.

Statement of Priorities

The 2022-23 Statement of Priorities sets out four strategic goals that the OSC intends to focus on:

1. Promote Confidence in Ontario's Capital Markets

The OSC is committed to making Ontario's capital markets globally competitive and attractive for investment and business growth. The OSC intends to achieve this objective through several initiatives, including the following:

Cassels

- improving retail investor protection by integrating investor perspectives into policymaking;¹³
- strengthening the OSC's dispute resolution services for investors through policy and oversight activities;¹⁴
- supporting the implementation of rules banning the use of deferred sales charges and trailing commission;¹⁵
- monitoring the listing function of recognized exchanges and identifying areas for improvement for listings and for regulating and enforcing issuer compliance;¹⁶
- enhancing oversight of crypto asset trading platforms and other dealers by working with the Canadian Securities Administrators (CSA) and the Investment Industry Regulatory Organization of Canada (IIROC) to: (i) identify and address non-compliance with securities laws, and (ii) develop capabilities in crypto asset trading platform oversight;¹⁷
- developing a rule governing climate change-related disclosure requirements for public companies to: (i) create a uniform standard of disclosure that levels the playing field for all issuers, and (ii) provide investors with access to climate-related information that can inform investment decisions;¹⁸ and,
- developing requirements for securities registrants to provide periodic reporting to clients on total amount of fees and ongoing costs of investments after an initial sale.¹⁹

2. Modernize the Regulatory Environment

Modern, efficient, and effective regulation enables issuers and other market participants to comply with requirements in a way that reflects current business practices. The OSC seeks to adapt the regulatory framework to better respond to changing market environments and anticipate changing market conditions and investor needs.

The OSC intends to achieve this objective through several initiatives, including through efforts to:

- streamline and reduce redundancies in periodic disclosure requirements for reporting issuers;²⁰
- modernize delivery options of regulatory and continuous disclosure filings for issuers by introducing an access equals delivery model (AED model)²¹ in the Canadian market;²²
- strengthen the framework to identify, assess, and respond to emerging regulatory issues that may impact future regulatory policy, operational activities, resources, and/or other OSC priorities;²³
- continue to enhance the OSC's systemic oversight of financial stability risks, improve market resilience, and reduce potential risks arising from global systemic events;²⁴ and,
- improve regulation of liquidity risk and leverage associated with derivatives, investment funds, and other capital markets, including by finalizing the proposed Derivatives Dealer Business Conduct Rule.²⁵

3. Facilitate Financial Innovation

The OSC seeks to foster new methods of engagement with the innovation community through the OSC

Cassels

Innovation Office. The OSC aims to tailor business support services to align with stakeholder priorities, help support Ontario businesses, and promote competition and consumer choice.²⁶

The OSC intends to achieve this objective by engaging with novel businesses and supporting innovation in Ontario's capital markets.²⁷ The OSC plans to expand programs that help businesses navigate regulatory requirements through granting conditional exemptive relief or limited approvals.²⁸

The OSC also plans to continue building a testing environment in Ontario, known as the OSC TestLab.²⁹ The OSC TestLab enables eligible firms to test novel products, services, and solutions in Ontario's capital markets.³⁰

4. Strengthen the OSC's Organizational Foundation

The OSC regulates and supports an ever-changing and highly competitive financial sector which requires the OSC to have a strong and adaptable organizational foundation. To achieve this goal, the OSC will continue to work with the other CSA jurisdictions towards replacing legacy CSA national systems with SEDAR+.³¹ Once SEDAR+ is launched, it will be the common platform for all filings, disclosures, payments, and information searching for the Canadian capital markets.³²

The OSC also intends to continue enhancing its EDI commitments.³³ The OSC, together with other participating CSA jurisdictions, has committed to further research and consultations in consideration of disclosure requirements regarding broader diversity on boards and in executive roles, including the representation of people who self-identify as Black, Indigenous, persons of colour, persons with disabilities, LGBTQ2+, and/or women.³⁴

Business Plan & Key Risk Mitigation

The Business Plan is aligned with the OSC Statement of Priorities to implement the objectives and planned outcomes. This 68-page plan includes an extensive, all-encompassing overview of the OSC's mission to achieve its goals. The plan discusses the current securities environment in Ontario, the governance of the OSC, and the operational structure and strategic direction of the OSC.

An area of focus in the Business Plan is identifying key risks and mitigation strategies. The OSC manages a wide range of risks arising from the pace of change and the increase in complexity of financial markets in Canada and globally. To support their objectives, the OSC adopted a Risk Management Framework which includes policies and processes to identify, manage, and report risks. Key risks and mitigating controls include:³⁵

- Addressing outdated technology that impedes the effectiveness of the OSC;³⁶

Cassels

- Continuing to build upon Burden Reduction initiatives as identified in the 2019 OSC Burden Reduction Report;³⁷ and,
- Monitoring compliance with rules designed to minimize systemic risks and cooperate with other domestic and international organizations for systemic risk oversight.³⁸

An important consideration for the OSC is cyber security. Information security risks arising from breaches or attacks on OSC information systems that result in the compromising of confidential information would harm the OSC's reputation and operations. To address these risks, the OSC created a dedicated Information Security Office with a multi-year roadmap for information security operations.

Conclusion

The OSC's Business Plan reflects its continued intention to strengthen its support of, and responsiveness to, the dynamic evolution and growth of Ontario's capital markets. Investing in the people and technology that support the OSC's organization and governance structure, cultivating an environment that encourages innovation in the financial markets, and modernizing the regulatory environment all increase investor protection and overall confidence in Ontario's capital markets. We will continue to monitor the progress of these priorities and goals.³⁹

¹ OSC Business Plan for the Fiscal Years Ending 2023-2025, *Ontario Securities Commission*, April 26, 2022 ("OSC Business Plan").

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

³ *Securities Act*, RSO 1990, c. S.5.

⁴ *Commodity Futures Act*, RSO 1990, c. C.20.

⁵ *Business Corporations Act*, RSO 1990, c. B.16.

⁶ *Securities Commission Act, 2021*, SO 2021, c 8, Sch 9.

⁷ OSC Business Plan, page 16; *Securities Commission Act, 2021*, SO 2021, c 8, Sch 9, ss. 8, 11, 25-31.

⁸ *Securities Commission Act, 2021*, SO 2021, c 8, Sch 9, ss. 27, 30.

⁹ Memorandum of Understanding Between Minister of Finance and Ontario Securities Commission 2019 | OSC, *Ontario Securities Commission*, December 31, 2019.

¹⁰ Memorandum of Understanding Between Minister of Finance and Ontario Securities Commission 2019 | OSC, *Ontario Securities Commission*, December 31, 2019.

¹¹ Ontario Securities Commission By-Law No. 1 | OSC, *Ontario Securities Commission*.

¹² Ontario Securities Commission By-Law No. 2 | OSC, *Ontario Securities Commission*.

¹³ OSC Business Plan, page 27.

¹⁴ OSC Business Plan, page 28.

¹⁵ OSC Business Plan, pages 28-29.

¹⁶ OSC Business Plan, pages 31-32.

¹⁷ OSC Business Plan, page 30.

¹⁸ OSC Business Plan, pages 30-31.

Cassels

¹⁹ OSC Business Plan, pages 32-33.

²⁰ OSC Business Plan, page 34.

²¹ On April 7, 2022, the CSA published proposed amendments to implement an AED model in which prospectuses, financial statements, and related MD&A will be deemed to have been provided to investors if: (a) they are filed on SEDAR, and (b) the issuer issues and files a news release informing investors that the document is publicly available on SEDAR. The purpose of this AED model is to facilitate electronic access to documents, and in turn, promote efficient communication between issuers and investors, and reduce regulatory burden for issuers: "Canadian securities regulators seek comment on the implementation of an access equals delivery model for non-investment fund reporting issuers," *Canadian Securities Administrators*, April 7, 2021.

²² OSC Business Plan, pages 34-35.

²³ OSC Business Plan, page 35.

²⁴ OSC Business Plan, pages 35-36.

²⁵ The Derivatives Dealer Business Conduct Rule was developed to protect derivatives market participants by improving transparency, increasing accountability, and promoting responsible business conduct by dealers and advisors in the over-the-counter derivatives market: "Canadian securities regulators seek input on proposed business conduct rules for derivatives dealers and advisers," *Ontario Securities Commission*, January 20, 2022; OSC Business Plan, pages 35-36.

²⁶ OSC Business Plan, page 37.

²⁷ OSC Business Plan, page 37.

²⁸ OSC Business Plan, page 37.

²⁹ OSC Business Plan, page 38.

³⁰ OSC Business Plan, page 38.

³¹ OSC Business Plan, page 39.

³² OSC Business Plan, page 39.

³³ OSC Business Plan, page 31.

³⁴ OSC Business Plan, page 31.

³⁵ OSC Business Plan, pages 42-45.

³⁶ OSC Business Plan, pages 42-45.

³⁷ "Reducing Regulatory Burden in Ontario's Capital Markets," *Ontario Securities Commission*, November 19, 2019.

³⁸ OSC Business Plan, pages 42-45.

³⁹ The OSC's prior Business Plans can be found [here](#).

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.