

## Ontario Capital Markets Modernization Taskforce Consultation Report proposals

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In early 2020, the Government of Ontario established the Capital Markets Modernization Taskforce (the Taskforce) to help transform the regulatory landscape for the capital markets sector and advise the Minister of Finance on how to improve the innovation and competitiveness of the province's capital markets and best help build Ontario's economy. More recently, on July 9, 2020, after consulting with various stakeholders, the Taskforce published its initial Consultation Report which includes 47 policy proposals to modernize the province's capital markets regulations. The full Consultation Report can be accessed [here](#). The Taskforce is seeking written submissions on the proposals contained in the Consultation Report and asks that any comments be submitted by email on or before September 7, 2020 in accordance with the procedure outlined on the Government of Ontario's [webpage](#). The Taskforce's final report and recommendations are expected to be delivered to the Ontario Minister of Finance by the end of 2020.

The Consultation Report offers a smorgasbord of proposals for consideration. It does not provide a great deal of analysis or discussion as to the rationale or impact of the proposals, nor does it provide a cost/benefit analysis of each proposal or the impact on the regulatory burden of the changes, the analysis of which are mandated in any rule changes by the Ontario Securities Commission (the OSC). Certain of the proposals are currently being, or have previously been, considered by various securities regulatory authorities in Canada. While the Consultation Report notes in passing the need for continued harmonization of securities regulation across the country, how the adoption of many of these proposals will be made with this in mind is not addressed. Hopefully the comments that will be provided in submissions on the proposals set forth in the Consultation Report and the resulting further deliberations of the Taskforce will address these issues.

### Summary of the proposed changes

The review and consultation resulted in a number of high-impact policy proposals which broadly fall into the following five categories:

- Fostering innovation in capital markets by improving regulatory structure;
- Structural and governance changes of regulators;
- Reducing duplicative regulatory burden;
- Building a competitive economy for Ontarians by ensuring a level playing field between large and small market players; and
- Improving investor protection.

The Taskforce set out numerous proposals with these goals in mind, certain of which are highlighted below.

#### *Fostering innovation in capital markets by improving regulatory structure*

Certain of the proposals seek to modify the rules regarding how companies raise capital. The Taskforce has suggested that the Government of Ontario introduce a new public offering model as an alternative to the current prospectus requirements. This model would allow issuers who have been reporting for a minimum period of time to offer freely tradeable securities of a listed class through a

streamlined disclosure document, subject to particular restrictions. The Taskforce claims this would reduce the burden of the high costs associated with preparing and filing a prospectus, which currently can prove to be a barrier to capital raising for smaller issuers.

Additionally, the Taskforce suggested that some of the capital-raising models and regimes currently permitted in the United States should be implemented into Ontario's regulatory regime, such as implementing a well-known seasoned issuer model and more liberalized testing-the-waters rules.

Of specific note, the Taskforce has asked for feedback on proposals that issuers listed on the Toronto Stock Exchange should: (i) be required to provide enhanced disclosure of environmental, social and governance information, which would be required to be compliant with either the taskforce on Climate-Related Financial Disclosures recommendations and/or the Sustainability Accounting Standards Board framework; (ii) be required to set targets and annually provide data in relation to their representation of women, black people, indigenous people and people of colour on their boards and in executive officer positions; and (iii) have a set 10-year maximum tenure limit for directors with an allowance that 10% of the board can exceed the maximum for up to two years.

#### *Structural and governance changes of regulators*

The Taskforce suggests that the mandate of the OSC be expanded to include responsibilities related to fostering capital formation and competition in the markets. The Taskforce also proposed that the regulatory and adjudicative functions of the OSC be separated in order to improve commission governance to ensure independence and objectivity in OSC decisions, as well as to consider the consolidation of the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada into one organization that would regulate all advisory and dealer firms.

#### *Reducing duplicative regulatory burden*

Additional suggestions surround reducing regulatory burden for issuers, including moving to semi-annual reporting rather than quarterly reporting, expediting the consolidation of the Canadian Securities Administrator's (the CSA) national databases (i.e. SEDAR, SEDI, NRD etc.) into one CSA IT system, adopting electronic delivery in relation to documents mandated under securities law requirements, consolidating and reducing reporting and regulatory requirements, among many others.

#### *Building a competitive economy for Ontarians by ensuring a level playing field between large and small market players*

These proposals relate to creating a more competitive advantage in Ontario, such as eliminating the four-month restricted hold period for securities that are sold to accredited investors given the sophistication and knowledge of the investors that qualify for such exemption, as well as expanding the definition of the accredited investor exemption to include investors that qualify for a certain level of proficiency (i.e. investors who have obtained their Chartered Financial Analyst Charter or completed the Canadian Securities Course Exam). The Taskforce has suggested creating a prohibition on registrants being able to benefit from creating exclusivity arrangements for the provision of capital markets services with issuers in certain circumstances or where such registrant provides commercial lending services to that issuer.

The Taskforce has also proposed that a regulatory framework be developed for proxy advisory firms to allow issuers a right to rebut reports produced by such firms and to restrict such firms from providing consulting services to issuers where the proxy advisory firm also provides clients with voting recommendations.

It has been suggested that early warning reporting thresholds be decreased from 10% to 5% given the current era of increased shareholder activism, which would provide issuers with more advance notice to proactively engage with their shareholder base and to also provide more transparency to shareholders with respect to the shareholder base composition. Consideration has also been asked with respect to whether institutional investors should be required to disclose their holdings on a quarterly basis. Each of these suggestions is similar to the reporting requirements currently in place in the United States and certain other global jurisdictions.

*Improving investor protection*

Finally, the Taskforce has proposed certain enforcement-related reforms to enhance investor protection and modernize enforcement, including a proposal for the strengthening of the OSC's investigative tools while according greater statutory rights for persons or companies directly affected by an OSC investigation or examination. These increased rights would allow such persons or companies to apply to an OSC adjudicator for clarification of orders relating to investigation or examinations and possibly summonses. The Taskforce has also proposed creating a new and specific prohibition on making misleading or untrue statements about public issuers to make it easier for the OSC to deter and enforce abusive trading practices.

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