

OSC publishes ambitious plan to reduce capital markets regulatory burden

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The OSC has published an ambitious plan to reform Ontario’s securities regulatory regime. The potential reforms, announced on November 19 in the report “[Reducing Regulatory Burden in Ontario’s Capital Markets](#)”, could affect nearly every market participant operating in Ontario’s capital markets—companies, investment funds, dealers and other registered firms, derivatives participants and others.

What you need to know

- The OSC’s objective is to implement or take significant steps towards implementing many of the reforms within the next 24 months.
- The list of possible reforms is highly diverse—ranging from updating the OSC website to tackling fundamental issues like whether securities regulation should be more principles-based.
- In considering changes to the prospectus offering rules, the OSC plans to prioritize not disrupting bought deals or other well-established market practices.

The burden reduction task force

The OSC established a [burden reduction task force](#) one year ago in support of the Ontario government’s Open for Business Action Plan. The task force’s mandate is to streamline regulation to make it easier to do business in Ontario, while maintaining investor protection and the integrity of Ontario’s capital markets. To gather input on how best to reduce regulatory burdens, the OSC invited market participants to submit written suggestions (69 comment letters were received); hosted public roundtable discussions (764 people attended in person, plus webcast participants); and held 30 consultations with industry associations and independent advisory groups.

Capital raising reforms

The OSC will aim to reduce the regulatory burdens associated with raising capital by:

- developing a process for confidential staff reviews of prospectuses prior to public announcement;

- publishing guidance on matters that staff may raise during prospectus reviews; for example, the structure of an offering, the required financial statements or the interpretation of regulatory requirements;
- harmonizing the requirements for financial statements in long-form prospectuses for issuers' primary businesses; and
- harmonizing the crowdfunding rules across Canada and potentially increasing the permitted dollar amounts.

The OSC will also be considering the feasibility of additional changes to improve the prospectus offering system without disrupting bought deal practices and other well-established market practices. Some of the possibilities that the OSC plans to assess include:

- expanding the testing-the-waters rules to better harmonize with the [recently liberalized U.S. testing-the-waters rules](#);
- streamlining the prospectus disclosure requirements, including requiring only two years of financial statements for IPOs;
- eliminating the requirement to send a preliminary prospectus;
- shortening investors' withdrawal rights to one business day;
- extending the term of shelf prospectuses to three years;
- introducing automatic shelf prospectuses (with no regulatory review) for seasoned issuers, similar to the U.S. rules for well-known, seasoned issuers; and
- for mining issuers, allowing a qualified person other than the one who prepared the technical report to approve the prospectus disclosure.

The OSC's rule-making procedures include conducting a cost-benefit analysis, publishing a proposal and then considering the feedback received from market participants before finalizing the rule. Although the OSC is committed to proceeding expeditiously, none of the above rule changes can be expected to be implemented for at least six months to two years.

Reforms affecting all market participants

Procedural improvements

The OSC plans to:

- implement and publish service standards for its interactions with market participants;
- redevelop its website, including posting updated consolidated rules;
- increase its focus on materiality in compliance reviews;
- conduct deeper and more comprehensive cost-benefit analyses when proposing new rules; and
- publish a consultation paper on modernizing document delivery methods.

Blanket orders

The OSC is advocating for an amendment to the *Securities Act* to give the OSC the authority to issue exemptive relief orders covering multiple market participants (blanket orders). This would be more efficient and less costly than multiple parties having to file separate exemptive relief applications. The Ontario government recently announced its intention to proceed with this initiative.

Fundamentals requiring further consultation with stakeholders

The OSC plans to consult with market participants on:

- the appropriate balance between prescriptive versus principles-based rules; and
- the extent to which staff guidance is being applied too strictly, analogous to mandatory rules.

To drive continued engagement with stakeholders on burden reduction, the OSC has established an Office of Economic Growth and Innovation.

Related reforms

Canada's securities regulators collectively began a burden reduction initiative in 2017, before Ontario's task force was established. The national [initiatives](#) that are already underway include:

- relaxing the financial tests for determining whether an acquisition is significant enough to require a business acquisition report; and
- streamlining at-the-market offerings.

In addition, to increase deal certainty for mining issuers, the OSC recently began permitting them to request confidential reviews of their technical reports in advance of launching a public offering.

Changes that are not presently being considered

Several regulatory reforms requested by market participants are not going to be pursued under the OSC's burden reduction program at this time. Various reasons were provided by the OSC; for example, because a reform raises significant investor protection concerns, or has already been the subject of a recent rule change or guidance, or is considered low-priority based on the relative costs and benefits.

Capital raising

The OSC does not plan to:

- amend the prospectus marketing rules (other than possibly the testing-the-waters rules as noted above);
- reconsider the impact of an issuer's financial condition on its ability to use the shelf prospectus system (instead, this matter will continue to be considered on a case-by-case basis);
- reduce the amount of information required in reports of exempt distribution or keep more of the information confidential (however, individual issuers facing unusual circumstances that would result in prejudice if the report were disclosed may apply for confidentiality);
- eliminate risk acknowledgement forms;
- eliminate the requirement to deliver offering memoranda to the OSC;
- permit the \$150,000 prospectus exemption to apply to offerings to individuals;
- allow issuers to solicit private placement investors on an unrestricted website or through social media, or
- remove resale restrictions from exempt market securities held by retail investors (however, the OSC will consider case-by-case exemptive relief and, more generally, the OSC encourages fintech and other innovation firms to consult with the OSC Launchpad).

Ongoing obligations of issuers and insiders

The OSC does not plan to:

- add new disclosure requirements on environmental, social and governance issues;
- modify the information circular requirements, including executive compensation disclosure;
- amend the rules on insider reports or trading by insiders;
- permit venture issuers not to file material change reports;
- amend any rules based on the existence of overlapping stock exchange requirements; and
- amend the multijurisdictional disclosure system.

Constraints on the OSC's burden reduction mandate

The OSC's burden reduction efforts, together with its commitment to greater transparency and target timelines, have the potential to significantly streamline various aspects of capital markets regulation. But it is important to remember that the OSC is subject to both practical and legal constraints on its ability to transform the regulatory system.

Many significant rule changes require the OSC to cooperate with other Canadian securities regulators, otherwise a lack of national harmonization will undermine any progress in Ontario. Additionally, to make significant regulatory changes in a short time frame requires a commitment of staffing, budget and technological resources; the OSC is sensitive to the importance of prioritizing the most impactful changes because these resources are not unlimited.

The OSC is mindful that any changes to regulations have the potential to create uncertainty among market participants and interrupt deal flow, even when those changes are meant to simplify and streamline. The costs and benefits of every proposed regulatory change will have to be considered in this light.

The report was silent as to how the burden reduction reforms might interact with the planned Cooperative Capital Markets Regulatory System. These two major initiatives appear to be proceeding on separate tracks and timelines. Nonetheless, in assessing the costs and benefits of rule changes, the OSC will likely take into account the potential impact in terms of further regulatory reforms that may be necessary if the CCMRS proceeds.

Most fundamentally, all OSC initiatives must fall within the parameters of its statutory mandate—to protect investors, foster fair and efficient capital markets, and contribute to the stability of the financial system and the reduction of systemic risk.

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