

**1.1.6 OSC Notice 11-765 – 2011-2012 Statement of Priorities – Request for Comments Regarding Statement of Priorities for Fiscal Year Ending March 31, 2012**

**ONTARIO SECURITIES COMMISSION  
NOTICE 11-765 – 2011-2012 STATEMENT OF PRIORITIES**

**REQUEST FOR COMMENTS  
REGARDING STATEMENT OF PRIORITIES  
FOR FISCAL YEAR ENDING MARCH 31, 2012**

The *Securities Act* requires the Commission to deliver to the Minister and publish in its Bulletin each year a statement of the Chairman setting out the proposed priorities of the Commission for its current fiscal year in connection with the administration of the Act, the regulations and rules, together with a summary of the reasons for the adoption of the priorities.

In an effort to obtain feedback and specific advice on our proposed objectives and initiatives, the Commission is publishing a draft Statement of Priorities which follows this Request for Comments. The Commission will consider the feedback, and make any necessary revisions prior to finalizing and publishing its 2011/2012 Statement of Priorities. The Statement of Priorities, once approved by the Minister, will serve as the guide for the Commission's ongoing operations. Shortly after the conclusion of our 2010/2011 fiscal year we will publish a report on our progress against our 2010/2011 priorities on our website.

**Comments**

Interested parties are invited to make written submissions by April 27, 2011 to:

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**February 25, 2011**

**ONTARIO SECURITIES COMMISSION  
NOTICE 11-765 – 2011-2012 STATEMENT OF PRIORITIES**

***DRAFT FOR COMMENT***

**Introduction**

The *Securities Act* (Ontario) requires the Ontario Securities Commission (OSC) to publish in its Bulletin and to deliver to the Minister by June 30 of each year a statement by the Chair setting out the proposed priorities for the Commission for the current financial year.

This Statement of Priorities sets out the OSC's strategic goals and specific initiatives that will be pursued in support of each of these goals in the fiscal year commencing April 1, 2011. It also discusses the environmental factors that the OSC considered in setting these goals.

The OSC fully supports the policy of the government of Ontario with respect to the establishment of a single national securities regulator for Canada. However, pending the establishment of a single national regulator, the OSC remains committed to delivering its regulatory services with effectiveness and accountability. Consequently, the OSC will continue to work closely with its colleagues within the Canadian Securities Administrators (CSA) and with market participants to ensure that the regulatory system continues to function efficiently and remains responsive to changing market circumstances.

**Our Vision**

To be an effective and responsive securities regulator – fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

**Our Mandate**

The OSC's mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. The mandate is established by statute.

**Our Environment**

Each year, the OSC develops its business plan and sets goals and priorities to promote the achievement of its vision and its mandate. The OSC does this against a backdrop of current and forecast economic conditions, evolving market practices, developing trends and issues, as well as changes in public expectations. The main factors influencing this year's planning are:

- *Developments in the overall investment marketplace:* This includes changes in products and market structures, and issues related to transactions and the activities of market intermediaries.
- *Developments in the domestic and international regulatory arena:* As the globalization of economies and capital markets continues to evolve, so has the need to consider changes to the way many aspects of financial services are regulated.
- *Developments in stakeholder perceptions of regulatory effectiveness:* Notwithstanding the extensive efforts of regulators, there is a clear need to properly assess and better demonstrate the effectiveness of regulatory programs in achieving regulatory objectives.

*Market Developments/Evolution*

The rapid pace of product and market innovation has led to the proliferation of complex exchange-traded funds (ETFs) and structured products, dark pools and algorithmic trading, portfolio account services that provide retail investors with access to the exempt market, greater importance of new trading platforms, developments in new order types, and evolving regulatory requirements for the clearing and reporting of over-the-counter (OTC) trades in derivatives.

The OSC must assess the full impact of these developments on market transparency, stability, and investor access and fairness in order to determine what changes need to be made to the regulatory framework. The OSC does this by constantly reviewing the regulatory capabilities and approaches used to assess the impacts and risks emerging in the areas it regulates. In some cases, existing tools may be insufficient to monitor and respond to new developments within the limits of current regulation, and the OSC must find new ways to respond effectively. Skilled staff, including specialists in market and product research and analysis, have become increasingly important resources that the OSC must consider using in these circumstances. In addition, developments in areas beyond the OSC's current regulatory reach may require an extension of the OSC's authority.

### *Evolving Global Regulatory Landscape*

Recognizing the interconnectedness of Canadian financial markets domestically and internationally, and the importance of securities markets to broader financial activities, is fundamental to effective securities regulation. Increasingly, it is clear that the appropriate regulatory response to market developments must ensure that opportunities for regulatory arbitrage are minimized and that local investors and market participants are protected.

Securities regulators, with their traditional focus on transparency and business conduct oversight, have an important role to play in promoting Canada's financial stability. However, addressing systemic risk is a shared responsibility and securities regulators must partner with other Canadian organizations, including the Office of the Superintendent of Financial Institutions Canada (OSFI), the Bank of Canada, and the federal and provincial Finance Ministries.

The recent financial crisis has resulted in the development of recommendations and principles internationally relating to the conduct and reporting of short selling activities, approaches to the regulation of OTC derivatives trading and the role of securities regulators with respect to systemic risk in the capital markets. Keeping pace with these developments, while paying close attention to issues that matter to Ontario's investors and markets, is an ongoing challenge.

The OSC will also need to consider G20 commitments, initiatives by other North American regulatory agencies, such as the U.S. Securities and Exchange Commission (SEC) and the U.S. Commodity Futures Trading Commission (CFTC), and developments at the International Organization of Securities Commission (IOSCO).

### *Expectations of Regulatory Effectiveness*

Confidence in capital markets is predicated on meeting public expectations of regulatory effectiveness. Public expectations are affected by personal financial losses (and associated public perceptions), the overall level of stability of the markets, the visibility of appropriate and timely enforcement actions, and perceptions of fairness and access to the markets by investors. A regulatory focus on the "technical" correctness of a product must always be balanced against public interest considerations.

Significant structural changes in the markets have occurred over the last few years. Some of the challenges emerging as markets and products evolve, include the rise of alternative trading systems and new transaction types, increasingly complex financial engineering of new products, greater reliance on the exempt market for distribution, issues related to potential intermediary conflicts of interest in the distribution of products and differing rules for similar products.

Significant changes in products and market structures have raised questions regarding the adequacy of traditional securities regulation approaches to protect investors. The OSC must be sensitive to the elements of market activity that have more impact on investors rather than those that relate mostly to business activities such as high frequency or algorithmic trading. More effort is required to encourage input from investors, particularly retail investors, so that their views are represented as much as those of more formally organized market participants.

Traditional approaches to investor protection alone, such as setting disclosure requirements and business conduct rules, as well as enforcement, are not sufficient to achieve the desired outcomes. Another important aspect of investor protection is the development of an educated and informed investing public.

Disciplined approaches to collecting and analysing feedback and concerns from retail investors are needed to ensure the voice of the retail investor is heard. The OSC needs to examine alternative ways to reach retail investors through its investor communications, including a greater use of social media. The OSC will build on the facilities such as the Investor Education Fund and the recently established OSC Investor Advisory Panel to improve the awareness and financial literacy of Ontario investors and ensure that their views and concerns are considered effectively.

Though the OSC's compliance and enforcement regime is vigorous and active, it must be more visible and better understood by market participants and the public in order to provide a more effective deterrent to illegal or undesirable conduct. This may also require assuming a stronger investor education role.

### **Key Regulatory Priorities for 2011-12**

In light of the environmental factors outlined above, the OSC has identified five broad priorities for 2011-12. These priorities are set out below. In addition, the OSC will carry out a number of other initiatives as well as ongoing operational programs in order to achieve its mandate.

- 1. *Better demonstrate our commitment to investor protection***
  - In undertaking policy and rule development as well as compliance and enforcement programs, a foremost priority of the OSC will be the protection of investors.*

The interests of investors are at the core of everything that the OSC does. The need to assist and protect investors is even more critical given the increased availability of complex products, greater reliance on the exempt market for distribution; and potential intermediary conflicts of interest in the distribution of products. The OSC will work with added vigour to help investors get a fair deal. The OSC will:

- Build confidence in the investment process and the integrity of our capital markets through requirements that investors be provided with information that is timely, clear and useful. Better information, and not just more information, will allow investors to make more informed choices.
- Identify and address investor protection issues to help retail investors get useful and un-conflicted advice in their interactions with market participants.
- Simplify its messaging and use a variety of tools (e.g. social media, focus groups, etc.) to communicate more effectively with retail investors.
- Address investor engagement and the role of shareholder activism through greater interaction with investors.
- Continue its focus on issues relevant to investors who own securities (shareholder rights).
- Continue to support investor education through the use of monies received through enforcement proceedings to support the Investor Education Fund.
- Investigate mechanisms to return recovered funds to investors who have suffered losses through frauds, scams, etc.

**2. *Intensify Operational, Compliance and Enforcement efforts to be more effective in addressing not only breaches of the Securities Act but also by vigorously promoting public confidence in the markets by addressing issues that negatively affect market integrity***

The OSC's operational, compliance and enforcement regime is vigorous and active. However, it must be more visible and better understood by market participants and the public in order to achieve the desired deterrent effect. The OSC will step up its focus on compliance and enforcement by insisting on adherence to both the spirit and letter of regulatory requirements. To this end the OSC will:

- Strengthen the risk and outcomes-based focus of its compliance work through better use of data and the refinement of risk assessment criteria and processes.
- Strive to modify market behaviour by making use of the full set of regulatory tools available to take action against those who engage in activities that are adverse to investors' interests or raise market integrity concerns.
- Continue to refine processes to reduce timelines for completing investigations and bringing regulatory proceedings forward.
- Direct regulatory attention to the successful implementation of IFRS in our capital markets, specifically focusing compliance efforts at affected capital market participants.
- Focus on improving the timeliness of adjudicative processes.
- Focus compliance efforts on higher risk areas and potential abusive practices affecting investors.
- Identify through compliance efforts registrants and issuers whose operations or structure may pose risks to retail investors.
- Improve communication and collaboration among domestic and international enforcement agencies.

**3. Modernize our Regulatory systems and approaches**

- Respond to emerging issues and trends in product development, distribution models, trading programs and market structures; and
- Monitor developments among international regulators while adapting their principles and programs as needed for Ontario and Canada's markets

Market quality and investor confidence are key outcomes for the OSC. The OSC strives to identify the important issues and deal with them in a timely way. The OSC must continue to be proactive in pursuing regulatory standards that discourage or pre-empt regulatory arbitrage, maintain market confidence, reduce financial crime and safeguard investors.

The global financial environment is dynamic and will continue to evolve. There is a need to ensure that regulatory risks and consequences that arise as products and market structures change (e.g. new technology, new market participants), are appropriately assessed and effectively mitigated. Key steps in this process will include:

- Re-assessing current regulatory approaches to determine areas where change may be necessary to improve fairness and protection for investors.
- Continuing to work with international regulators to influence the development of an international regulatory agenda that works for Canada.
- Continuing to develop new regulatory approaches focussed on risk-based tools and measurable outcomes.
- Focusing efforts on systemic risk with greater participation in the international arena and more interaction with other Canadian financial services regulators in Canada, such as OSFI and the Bank of Canada.

Proactive regulatory responses that are "risk oriented" are needed to maintain confidence in the markets. As part of accomplishing this goal the OSC should:

- Implement a robust regulatory framework for OTC derivatives including new rules specifically designed to implement the G20 commitments. The framework also brings OTC derivatives within the scope of existing insider-trading offences.
- Develop rules to provide non-exempt investors with risk disclosures contained in a disclosure document.
- Review and develop an appropriate regulatory approach, through recognition or exemption, for OTC derivative clearing houses operating in Ontario.

**4. Pursue a Coordinated Approach to Securities Regulation**

- By supporting the development of a Canadian Securities Regulator; and
- Collaborating in the ongoing harmonization and modernization of regulation in Canada through the CSA while representing the interests of Ontario investors.

The evolution of the capital markets reinforces our belief that now, more than ever, the OSC must enhance its system of regulation by supporting the implementation of a Canadian Securities Regulator. Capital markets by their very nature extend across provincial boundaries and are important to the entire economy of Canada. Their effective regulation argues strongly for a national approach to dealing with issues that are important to the whole of Canada such as the regulation of derivatives and the coordination with other Canada-wide regulation in the broader financial services sector in addressing systemic risk. To reflect the reality of Canadian capital markets, the Canadian Securities Regulator should be based in Canada's financial capital, Toronto, ensuring a leading role that recognizes the importance of Ontario's markets in the context of Canada's capital markets and utilizes the deep expertise of OSC staff.

The OSC will continue to support the Ontario Government, the Canadian Securities Transition Office (CSTO) and participating provincial regulators to make this important goal a reality. The OSC expects the CSTO to request more of the OSC's resources to support this initiative as it proceeds. The OSC will remain committed to working with the CSA to promote the protection of retail investors and the quality and integrity of Canada's capital markets. The OSC will find a way to do this. In some instances this may mean encouraging its CSA colleagues to take on the development of initiatives that are not a priority for Ontario capital markets.

Through this transition period, the OSC will also coordinate with other Canadian financial services regulators to monitor and mitigate system-wide issues and ensure consistent regulatory coverage. The OSC will work with other sector regulators, such as OSFI and Bank of Canada, to create coordinated responses to effectively address regulatory issues as they emerge.

5. **Demonstrate accountability for its performance as a leading securities regulator in Canada by:**
- *identifying specific outcomes and related rationale;*
  - *developing clear reporting on its progress in achieving the outcomes the OSC will pursue; and*
  - *prudently managing its limited resources.*

As the CSTO works toward a national regulator the OSC will not stop delivering on its mandate and will continue efforts to improve its organizational performance. As a leading regulator, the OSC will continue to protect Ontario's investors and capital markets as it moves towards creation of a national regulator and beyond. Throughout this period the OSC will become a more capable organization. The OSC will:

- Communicate its agenda and the outcomes it expects to achieve more clearly.
- Improve its visibility by being more externally focused in its actions and communications.
- Increase its reliance on data and facts when developing policy and operational solutions to achieve measurable outcomes that clearly demonstrate its results and support its actions.
- Continuously monitor and improve the efficiency and effectiveness of its operations to provide cost-effective regulation.