

Appendix: Summary of Provisions

Improving Regulatory Structure

The Final Report contains a series of recommendations to “create a more modern and efficient securities regulator and a nimble capital markets regulatory framework that addresses market participants’ concerns”.

Restructuring the Ontario Securities Commission (the “OSC”): The Taskforce recommends expanding the mandate of the OSC to include fostering capital formation and competition in the markets (**Recommendation #2**), introducing a standard of reasonableness for courts when reviewing OSC adjudicative decisions (**Recommendation #6**), and separating the OSC’s regulatory and adjudicative functions (**Recommendation #4**).

Transitioning to a Single Self-Regulatory Organization (“SRO”): In addition to restructuring the OSC, the Taskforce recommends transitioning to an SRO covering all advisory firms, including investment dealers, mutual fund dealers, portfolio managers, exempt market dealers and scholarship plan dealers (**Recommendation #9**).

Regulation as a Competitive Advantage

The Final Report contains a series of recommendations aimed at streamlining regulatory requirements, supporting a continuous disclosure model and transitioning toward an “access equals delivery model”. Osler was supportive of a number of these recommendations but, as stated in our comment letter, certain proposals raise investor protection concerns and concerns regarding harmonization. Given the significance of certain proposals and limits on the capacity to focus on and implement changes, we encourage the OSC and Ontario Government to be thoughtful in prioritizing those proposals that could have the greatest immediate impact.

Introducing Semi-Annual Reporting: The Final Report recommends offering semi-annual reporting to publicly listed reporting issuers where certain eligibility conditions related to their continuous disclosure record and annual revenue quotas (i.e., less than \$10 million) are met (**Recommendation #14**). This is one of the recommendations where the Taskforce encourages the OSC to implement the proposal in consultation with the CSA to ensure harmonization.

Creating an Alternative Offering Model: For issuers that choose not to adopt semi-annual reporting, the Taskforce recommends introducing an alternative offering model to allow exchange-listed reporting issuers to offer freely tradeable securities to the public, provided that the issuers are in full compliance with their continuous disclosure requirements. The Final Report includes the recommended annual maximum for offerings under this exemption, which varies based on an issuer’s market capitalization (**Recommendation #16**).

Developing a Well-Known Seasoned Issuer Model: As supported in Osler’s comment letter, the Taskforce recommends the development of a well-known seasoned issuer model. Shelf prospectus receipts would issue automatically for issuers above a certain public float (\$500 million) or those that have issued debt securities above a set amount, provided they have established an appropriate disclosure record (**Recommendation #17**).

Transitioning Towards an Access Equals Delivery Model: The Taskforce recommends transitioning towards an access equals delivery model of disseminating information in the capital markets, along with a focus on the digitization of capital markets more generally (**Recommendation #20**).

Consolidating Reporting and Regulatory Requirements: The Taskforce recommends consolidating various reporting and regulatory requirements including:

- combining form requirements for AIFs, MD&As, and financial statements (similar to the U.S.);
- streamlining the material change report by allowing the filing of a news release on SEDAR;
- eliminating the interim MRFP and streamlining the contents of the MRFP;
- streamlining certain reporting and regulatory requirements applicable to investment fund issuers;
- combining the simplified prospectus and annual information form into one annual disclosure document;
- eliminating the requirement to include unnecessary non-IFRS items from financial statements; and
- streamlining the Personal Information Form (PIF) filing requirements for issuers (**Recommendation #21**).

Expanding the Rights of Exempt Market Dealers (“EMDs”): The Taskforce recommends opening additional channels of financing to issuers (particularly in the venture space), by allowing EMDs to participate as selling group members in prospectus offerings and be sponsors of reverse-takeover transactions. This slightly tightens the preliminary recommendation in the Consultation Report, in that it has set reasonable eligibility conditions on EMDs that are necessary for classification as “selling group members” (**Recommendation #22**).

Expediting the SEDAR+ Project: The Taskforce recommends expediting the SEDAR+ project. The OSC will work with all other CSA jurisdictions to accelerate this initiative (**Recommendation #24**).

Ensuring a Level Playing Field

In what is probably its most controversial aspect, the Final Report contains a series of recommendations intended to “drive competition among intermediaries and products and provide investors with more choice in their investment decisions”. While we supported certain aspects of these proposals, we have a number of concerns regarding the potential adverse impact of certain proposals on the Ontario capital markets.

Strengthening Restrictions on Tied-Selling: The Final Report seeks to enhance restrictions on tying commercial lending services and capital markets activities to facilitate growth of independent dealers and ensure issuer choice. To address this concern, the Taskforce recommends:

- enhancing the tied-selling restriction in NI 31-103;
- creating an attestation requirement in certain circumstances to confirm that no prohibited tied-selling has occurred;
- requiring an independent underwriter in prospectus offerings involving a connected issuer; and
- creating a ban on restrictive clauses in capital markets engagement agreements where a registrant of an affiliated lender provides capital markets services.

In line with the position Osler took in its comment letter, the Taskforce has pared back this recommendation since the Consultation Report by removing the prohibition against bundling and focusing solely on the tied-selling component (**Recommendation #34**).

Increasing Shelf System Access for Independent Products: The Taskforce recommends increasing access to the shelf system for independent products. This would involve increasing OSC and SRO oversight of shelf issues, including targeted reviews and publication of guidance regarding conflicts of interest as a result of shelf composition. Slightly varied from the Consultation Report, this recommendation now includes a requirement that dealers with open shelves consider new securities to be made available to clients where those securities are proposed for inclusion on the shelf by their dealing representatives, and that they include them on their shelves unless there is a reasoned basis for exclusion (**Recommendation #35**).

Establishing and Enforcing Diversity Targets: The Final Report reiterates the emphasis on diversity through the establishment of significant board diversity targets – specifically an aggregate target of 50% women and 30% BIPOC, persons with disabilities and those in the LGBTQ+ community within five to seven years. In an effort to mitigate board entrenchment and ensure the regular introduction of fresh and diverse perspectives, the Taskforce recommends establishing a 12-year tenure limit for directors of publicly listed issuers, with limited exceptions (**Recommendation #36**).

Enhancing Proxy Systems, Corporate Governance and Mergers and Acquisitions

The Final Report contains a series of recommendations to “modernize and enhance the corporate governance standards and proxy voting framework for Ontario’s public companies”. Like other aspects of the Consultation Report, we were supportive of select elements from these proposals, but believe many of them require further consideration and consultation.

Decreasing the Ownership Threshold for Early-Warning Reporting: The Taskforce recommends decreasing the ownership threshold for early-warning reporting disclosure from 10% to 5% for non-passive investors. This recommendation varies from the Consultation Report, in that the ownership threshold is now exclusively tailored to non-passive investors, rather than investors generally. Additionally, the Taskforce clarifies that, although these non-passive shareholders should be required to file a news release and early-warning report disclosing their ownership, they

are not subject to a moratorium on further acquisitions following the disclosure of their ownership until it increases to the 10% threshold level (**Recommendation #39**).

Increasing Transparency of Executive Compensation: The Taskforce recommends requiring all publicly listed issuers (rather than exclusively TSX-listed issuers, as proposed in the Consultation Report) to have an annual advisory shareholders' vote on the board's approach to executive compensation (**Recommendation #40**).

Enhancing Disclosure of Environmental, Social and Governance (ESG) Information: The Taskforce recommends mandating disclosure of material ESG information for all public issuers, with a particular focus on climate change disclosure that is compliant with the Taskforce on Climate-Related Financial Disclosures recommendations. Consistent with the executive compensation point, this recommendation has been expanded in the Final Report from exclusively TSX-listed issuers to instead capture all public issuers (**Recommendation #41**).

Prohibiting Voting with Borrowed Shares and Preventing Over-Voting: The Taskforce recommends combatting empty voting by introducing rules to prevent over-voting. This recommendation, unlike its predecessor in the Consultation Report, also includes a prohibition against voting with borrowed shares (**Recommendation #45**).

Allowing Reporting Issuers to Obtain Beneficial Ownership Data: The Taskforce recommends allowing reporting issuers to obtain the identities and holdings of all beneficial owners of their securities effective as of September 2022. In the interim, the recommendation is to increase transparency by amending securities law so that Non-Objecting Beneficial Owner status is the default for beneficial owners. This recommendation is a welcomed modification from the proposal put forward in the Consultation Report, which intended to eliminate the non-objecting beneficial owner and beneficial owner status entirely (**Recommendation #46**).

Fostering Innovation

The Final Report contains a series of recommendations aimed at fostering innovation in Ontario's capital markets.

Creating an Ontario Regulatory Sandbox and Canadian Super Sandbox: The Taskforce recommends spurring the growth of start-up businesses by creating an Ontario Regulatory Sandbox to benefit entrepreneurs. This initiative would provide reduced time-to-market at a potentially lower cost and offer appropriate consumer and investor protection safeguards, as well as tools such as restricted registration, guidance, and exemptions. In the longer term, the development of a Canadian Super Sandbox may be considered (**Recommendation #49**). The Taskforce has since noted that, in addition to benefiting start-up businesses, this recommendation will enable regulators to learn how to regulate innovative products as they are being developed in real-time.

Considering the Application of Open Data Framework: The Final Report softens the language of the initial recommendation regarding open data by instead suggesting that the OSC *consider* how an open data framework could be applied to Ontario's capital markets, rather than implementing a concrete proposal. The Final Report recommends that the OSC work with capital market participants and federal regulators to develop an open data framework that addresses the scope of

open data, data protection, and the necessary level of industry participation (**Recommendation #51**).

Modernizing Enforcement and Enhancing Investor Protection

Lastly, the Final Report contains a series of recommendations intended “to modernize enforcement and enhance investor protection”, including through new and modern offences to reflect market realities, together with modern investigative tools.

Increasing the OSC’s Enforcement Powers: The Taskforce recommends increasing the maximum for administrative monetary penalties to \$5 million and the maximum fine for offences to \$10 million (**Recommendation #58**). To improve the OSC’s ability to collect monetary sanctions, the Taskforce recommends vesting it with powers to freeze, seize or otherwise preserve property, including property transferred to family members or third parties below market value (**Recommendation #55**).

Targeting Short-Selling Campaigns: The Taskforce recommends creating a new and specific prohibition against making misleading or untrue statements about public companies to target “short and distort” campaigns (**Recommendation #57**). In its recent webinar for stakeholders on January 29, 2021, the Taskforce noted that, while it recognizes the benefit of short-selling in certain instances, its recommendations operate to target the type of short-selling that generates negative market impacts.

Increasing Transparency in OSC Investigations: In the context of adjudication of disagreements arising in the course of investigations and examinations, the Taskforce recommends integrating more transparency into the process as a whole. This includes providing notice upon the closing of an investigation, facilitating an examination by providing certain documents in advance to persons served with summons, and coordinating with summons recipients to discuss realistic timelines and production concerns (many such recommendations were supported in Osler’s comment letter) (**Recommendation #68**).

Designating Dispute Resolution Services (“DRS”) Organizations: The Taskforce recommends providing the OSC with the authority to designate a DRS organization that would have the power to issue binding decisions. According to the Taskforce, this would be a significant improvement to the retail investor protection framework (**Recommendation #71**).