

Legal update

Ontario Government Announces Next Steps on Securities Law Modernization

March 24, 2021

Capital markets

Corporate governance

Corporate, M&A and securities

Special situations

Today the Government of Ontario announced its path forward on the implementation of recommendations of the Capital Markets Modernization Task Force set out in their Report published earlier this year. Here are the highlights:

- (1) **Expansion of OSC Mandate:** The Government of Ontario will be expanding the mandate of the Ontario Securities Commission (OSC) to include i) fostering capital formation and ii) encouraging economic growth through increased competition. While investor protection and efficiency of the capital markets will continue to be the primary objectives of our securities regulators, the expansion of their mandate will bring Ontario in line with other Canadian provinces and global competitors, including the UK, Australia and Singapore. Expansion of the OSC mandate will be undertaken by special legislation as part of the announced 2021 Ontario Budget.
- (2) **Separation of OSC Chair and CEO Positions:** The Government of Ontario will be following the FSRA model –and widely supported change–of separation of the Chair and CEO positions of the OSC. A board of directors, led by the Chair, will provide strategic oversight and governance of the regulator while the CEO will be responsible for the overall management of the organization and execution of the OSC’s updated mandate. Separation of the two positions will be undertaken by special legislation as part of the announced 2021 Ontario Budget.
- (3) **Separation of OSC Regulatory and Adjudicative Functions:** The Government of Ontario will be separating the regulatory and adjudicative functions of the OSC, in a widely supported change. The new adjudicative tribunal is expected to be established within the OSC and is expected to be managed by a Chief Adjudicator who will also supervise a Tribunal Secretary and Adjudicative Office. The separation will be undertaken by special legislation as part of the announced 2021 Ontario Budget.
- (4) **New Capital Markets Act (Ontario):** The Government of Ontario announced that it will publish a draft *Capital Markets Act* for consultation in the coming months. The CMA will replace the current *Securities Act* (Ontario) and the *Commodity Futures Act* (Ontario) with a modern, global-best-in-class statute that is based on legislation developed by the national Cooperative Capital Markets Regulator. The new CMA already includes provision for separate CEO/Chair/Adjudicative and Regulatory roles and is expected to include many of the Taskforce’s recommendations that require legislative enactment. We understand that the Government of Ontario will be looking for stakeholder comments on the new CMA over the summer months with a view towards adoption by year end.
- (5) **OSC Consultation Process:** The Government of Ontario announced that it has asked the OSC to proceed with its regulatory consultation process on the Taskforce’s recommendations that fall within the purview of

OSC rulemaking. The Government of Ontario has placed a special urgency around the Taskforce's ESG recommendations. We understand that this process is being managed at a senior level at the OSC. While a specific timeline for the OSC's process has not been disclosed, the Government of Ontario has indicated a timeline of "over the coming year". Norton Rose Fulbright Canada's recommendation to the OSC is, where possible, to adopt proposals in Ontario and to subsequently work with the CSA on national adoption and consensus.

We understand that these changes are primarily being driven to optimally position Ontario's capital markets for what is expected to be a competitive COVID recovery, where jurisdictions will be heavily competing for capital and the establishment of headquarters of new issuers. We are told that these changes are one part of a multi-tiered plan to ensure that Ontario is well positioned post-COVID.

A copy of the Capital Markets Modernization Task Force Final Report can be found [here](#).

A summary of the Taskforce's recommendations can be found [here](#).

Walied Soliman served as Chair and Heidi Reinhart and Rowan Weaver served as counsel to the Capital Markets Modernization Task Force. Please do not hesitate to contact any one of us for further information or discussion.

Walied Soliman
Heidi Reinhart
Rowan Weaver

For further information, please contact one of the following lawyers:

> Walied Soliman	Toronto	+1 416.216.4820	walied.soliman@nortonrosefulbright.com
> Heidi Reinhart	Toronto	+1 416.216.2979	heidi.reinhart@nortonrosefulbright.com
> Rowan Weaver	Toronto	+1 416.216.3952	rowan.weaver@nortonrosefulbright.com

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss Verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

References to "Norton Rose Fulbright", "the law firm", and "legal practice" are to one or more of the Norton Rose Fulbright members or to one of their respective affiliates (together "Norton Rose Fulbright entity/entities"). No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any Norton Rose Fulbright entity (whether or not such individual is described as a "partner") accepts or assumes responsibility, or has any liability, to any person in respect of this communication. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of the relevant Norton Rose Fulbright entity.

The purpose of this communication is to provide general information of a legal nature. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.