

December 20, 2021

Delivered by Email

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Re: OSC Notice 11-794 – Statement of Priorities – Request for Comments regarding Statement of Priorities for Financial Year to End March 31, 2023

We are pleased to provide comments to the Ontario Securities Commission (OSC) on its draft Statement of Priorities for Financial Year to End March 31, 2023 (SofP). We support the OSC's priorities and our comments are focused specifically on Goal 1, being to promote confidence in Ontario's Capital Markets.

Key Priority 1.1 - Sustain Strong Core Regulatory Operations

We support the OSC's commitment to supporting strong core regulatory operations that contribute to confidence in Ontario's capital markets. Investment in enforcement is particularly important; market abuse and fraud can occur across a broad spectrum of investment products, from private debt to initial coin offerings, and the OSC must have the resources to move quickly to identify and stop abuse and fraud before investors suffer material losses. Otherwise, investor confidence in our capital markets will erode. We therefore encourage the OSC to continue to strengthen its enforcement efforts across all parts of Ontario's capital markets.

Key Priority 1.3 - Improve the Retail Investment Experience and Protection

We support the OSC's efforts to improve the retail investment experience and expand investor protection. In particular, we are committed to making investing more accessible and less intimidating, particularly for first-time and younger investors.

Past research conducted by Canadian securities regulators has shown that the traditional investing environment can put up barriers to investing for certain demographics. For example, the OSC's research on millennials, published in OSC Staff Notice 11-782 (July 12, 2018), outlined three barriers to engaging Ontario's millennials:

- low motivation to taking action when potential benefits are uncertain and distant in time,
- complex and unfamiliar environments like investing, are overwhelming and discouraging, and
- triggers for building confidence with investing are difficult to design due to the other barriers and because approaches to investing are very dependent on an individual's circumstances.

Our own experience, as the operators of a digital advice platform and self-directed trading platform popular with millennial investors, has shown that the lowest point in the customer journey for first-time investors is the “discovery phase”, when prospective investors are just starting to learn about investing and deciding on a course of action.

We believe it is essential that all Canadians can access and use simple and affordable investment tools that position them for long-term financial success. We therefore believe that Key Priority 1.3 should include initiatives focused on removing barriers to responsible investing. Regulators and industry should work together to address gaps for under-served investors, including:

- rethinking engagement strategies,
- reassessing the meaning of investor protection, and
- approaching new ideas with an open mind.

Actions should also include ongoing measurement of, and reporting on, investor diversity. An important objective for both regulators and industry should be an increase in the overall diversity of the investor population.

Our suggested actions for increasing investor diversity are consistent with other key priorities in the SofP which we also support, including:

- *2.4 Develop a Framework for Identifying and Monitoring Emerging Regulatory Issues,*
- *3.1 Engage with Novel Businesses and Support Innovation in our Capital Markets, and*
- *3.4 Foster New Methods of Engagement with the Innovation Community.*

Key Priority 1.7 - Strengthen Oversight of Crypto Asset Trading Platforms and Other Dealers

We support the OSC’s efforts to strengthen oversight of crypto asset trading platforms. While several Canadian platforms have become registered in 2021, we are concerned about the continued growth and solicitation activities of unregistered crypto asset trading platforms in the Ontario market, particularly non-Canadian platforms.

The continued presence of unregistered platforms in Ontario - two years after the Canadian Securities Administrators (CSA) published CSA Staff Notice 21-327 - *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* and nearly a year after CSA and IIROC jointly published CSA/IIROC Staff Notice 21-329 - *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* - undermines the purpose of the *Securities Act (Ont) (Act)* to protect investors from unfair, improper or fraudulent practices and to foster fair and competitive capital markets.

To our knowledge, unregistered crypto asset trading platforms are not paying any capital markets participation fees to the OSC, which disadvantages all fee-paying capital markets participants in Ontario. The impact of this fee gap is particularly problematic in the face of the recent OSC decision to extend SLAs for routine regulatory actions of capital markets participants. The OSC should require every capital markets participant, including all crypto asset trading platforms operating in

Ontario, to pay their fair share in order to ensure adequate resources are in place to fund the mandate of the Commission.

One of the planned outcomes under Key Priority 1.7 is that “crypto asset trading platforms operate with appropriate oversight”. While we agree that appropriate oversight is needed, we are concerned that specific rules around crypto asset trading platforms, in the form of terms and conditions on registered firms, are being developed without transparent public consultation. Absent full, open and ongoing consultation with the appropriate stakeholders, regulation of crypto asset trading platforms is likely to be inconsistent and result in requirements becoming ingrained in the regulatory regime that are not fit for purpose. Examples of areas where current securities laws should be carefully considered, and amendments may be required, to better fit the regulation of crypto asset trading platforms include:

- Insurance - Insurance requirements for crypto asset trading platforms should address the risks that do, and do not, apply to crypto assets, the unique controls and protections available for crypto assets using cryptographic technologies, and limitations on available insurance products and underwriting capacity for crypto assets.
- Custody and Clearing – Registered Canadian crypto asset trading platforms all must use a small number of U.S.-based custodians, which are the only custodians that currently satisfy the requirements applied in the terms and conditions on registered firms. This has arguably deprived Canadian-based custodians of significant clients that would help them achieve scale. It has also resulted in crypto assets owned by Canadians being primarily held with foreign custodians.
- Account Appropriateness & Suitability - In light of the range of applications for crypto assets, which, unlike securities, extend beyond investment and trading, any requirements for account appropriateness and suitability must be re-considered through this lens.

In addition to the potential for the inappropriate application of existing securities law requirements to crypto asset trading platforms, entirely new requirements such as purchase limits and loss limits are being imposed on some, but not all, crypto assets and registering firms. We are concerned that these limits, which imply that regulators are apply a risk-reward assessment on crypto assets, have been imposed without the benefit of any industry or public consultation or a comprehensive assessment of whether they will advance the purposes of the Act, particularly investor protection.

Finally, the use cases and applications for crypto assets are far-reaching and extend well beyond trading and investment. The future regulation of crypto assets will necessarily span several different regulatory regimes, including taxation, securities, lending, insurance, payments, gaming, communications and consumer protection. This breadth of activity will present jurisdictional issues and challenges, but it also points to new opportunities for Canada’s economy. We believe that there is a need for broad and transparent consultation among policymakers and regulators to achieve the appropriate balance that protects investors and promotes responsible innovation. We therefore encourage the OSC to adopt, as an action item, extensive and ongoing consultation with industry participants and other financial and non-financial regulators to better inform the development of holistic regulation for crypto assets in Ontario and Canada.



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We hope that our comments will be considered positively by the OSC and helpful in establishing the OSC's priorities. We welcome the opportunity to discuss our comments with you.

Yours very truly,

A handwritten signature in blue ink that reads "Blair Wiley".

Blair Wiley
Chief Legal Officer
Wealthsimple