

## Chapter 6

# Request for Comments

---

---

### 6.1.1 OSC Notice 11-762 - Request for Comments Regarding Statement of Priorities for Fiscal Year Ending March 31, 2009

#### OSC NOTICE 11-762 - REQUEST FOR COMMENTS REGARDING STATEMENT OF PRIORITIES FOR FISCAL YEAR ENDING MARCH 31, 2009

The *Securities Act* requires the Commission to deliver to the Minister and publish in its Bulletin by June 30 of 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 2008/2009 Statement of Priorities.

The Statement of Priorities, once approved by the Minister, will serve as the guide for the Commission's ongoing operations. At that time we will also publish a report on our progress against our 2007/2008 Priorities on our website.

#### Comments

Interested parties are invited to make written submissions by June 3, 2008 to:

Robert Day  
Manager, Business Planning  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario M5H 3S8  
[416] 593-8179  
rday@osc.gov.on.ca

April 4, 2008

**ONTARIO SECURITIES COMMISSION  
STATEMENT OF PRIORITIES  
FOR  
FISCAL 2008/2009**

**JUNE 2008**

**Introduction**

The *Securities Act* 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. The OSC remains committed to delivering its regulatory services in a businesslike manner and to working closely with its colleagues within the Canadian Securities Administrators (CSA) and with market participants to ensure that the regulatory system remains relevant to the changing marketplace.

**Our Mandate**

The OSC's mandate is set by statute:

To provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

**Our Role**

The OSC safeguards and strengthens the integrity and soundness of Ontario's securities markets for the benefit of domestic and international investors, issuers, intermediaries and other market participants. We operate in a flexible and accountable manner that is responsive to the dynamic securities markets we regulate. We strive to cooperate with other regulators in Canada and internationally.

**Our Environment**

The OSC faces multiple challenges as it works to achieve its mandate of protecting investors while fostering fair and efficient capital markets. These challenges include: working within a fragmented and cumbersome structure of provincial securities regulators as well as other financial service sector regulators; establishing clear and measurable enforcement priorities; increasing the level of engagement among investors to understand the risks they are exposed to; understanding the longer term impacts on the markets as they evolve; and encouraging a high standard of conduct by registrants and promoting attention to compliance programs among participants. These challenges persist and require our continued focus to ensure confidence in our markets.

Properly functioning capital markets that inspire a high degree of confidence among investors and market participants, both inside and outside Canada, make a significant contribution to Ontario's economic performance. The capital markets are an essential part of the engine for economic growth in Ontario, and we believe regulatory reform can benefit investors, business and the province as a whole. We recognize the need to intensify cooperation with our regulatory counterparts in the banking, pension and insurance sectors to ensure an integrated view of market impacts and investor protection. In addition, the OSC will continue to co-operate with other provincial, territorial and international regulators to foster a harmonized and modernized regulatory framework, although over the longer term we support efforts to move towards a more efficient and effective, unified securities regulatory structure.

Concerted efforts continue to be made to improve enforcement of securities regulation in Canada in terms of acting on recommendations from numerous studies, enhancing jurisdictional cooperation and seeking amendments to the criminal code and new investigative powers to name a few. There remains, however, a wide perception that securities enforcement processes are inadequate. More than ever, we recognize the challenge to establish clear enforcement priorities and the means to assess our performance against measurable targets to demonstrate that our system is effective and that investors can rely on the integrity of our markets.

Investors continue to be increasingly reliant on the capital markets for their retirement savings. As our markets become more competitive and investment products evolve both in number and complexity, our role in fostering confidence in the fairness and efficiency of the capital markets continues to increase. Some investors and market participants are actively engaged in understanding potential risks and returns available in the markets; others less so. Our challenge is to increase the level of engagement among investors and market participants so that risks are understood and investment decisions are informed thereby contributing to confidence in our markets.

Related to the challenge of encouraging investor engagement in the face of increasingly numerous and complex product types is the challenge of ensuring adequate and appropriate disclosure of information by issuers as well as oversight of the various distribution channels employed.

A challenge we face is to better understand evolution in the marketplace and to adopt regulatory approaches that address adverse impacts of change. For example, imperfect information flows, unintended consequences and uncompetitive practices can arise as markets evolve. These potentially adverse impacts need to be addressed without unduly impairing market efficiency through excessive regulation or costs of compliance. We want to protect the rights and interests of investors, while allowing market participants to take reasonable risks and compete effectively both at home and abroad. Technology and product innovation continue to spur competition in the Canadian and Ontario securities markets. Generally, heightened competition is desirable since it leads to increased efficiency in the marketplace and greater choice for investors as well as other market participants. However, competition can, if only temporarily, lead to imbalances in the markets as the implications and potential impacts of market changes are fully appreciated over time.

Potential strains arising due to recent adverse market conditions may distract market participants from focus on compliance requirements towards other business activities. We must encourage market participants to maintain vigilance in their compliance activities. A reduced focus on core compliance activities could lead to a weakening of investor protection and a greater incidence of non-compliance and even financial crime.

Governance and accountability remain continuing priorities of the OSC. We must ensure that the OSC conducts itself as an efficient, accountable and flexible organization as it serves investors, issuers of securities, intermediaries and other market participants. We will continue to maintain excellent internal controls and promote high staff morale.

### **Our Goals**

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 those markets. To meet this mandate, the Commission identified, in 2007, four strategic goals over the five year period ending in 2012. They are:

1. Identify the important issues and deal with them in a timely way;
2. Deliver fair, vigorous and timely enforcement and compliance programs;
3. Champion investor protection, especially for retail investors; and
4. Support and promote a more flexible, efficient and accountable organization.

The Statement of Priorities is an annual document required under the *Securities Act*. This year's Statement sets out the Commission's strategic goals along with specific initiatives for the 2008/09 fiscal year in support of each of those goals.

### **GOAL 1 – Identify the important issues and deal with them in a timely way.**

Our goal is to deal with today's concerns, while anticipating tomorrow's challenges. We want to be a strategic leader in fulfilling our mandate to Ontario investors and the Ontario marketplace. We will:

- Consult and collaborate with investors, issuers, intermediaries, other industry participants and professionals;
- Identify trends and emerging issues, and develop solutions to address them in a risk-based framework;
- Work with the Government of Ontario, other securities regulators and market participants to strengthen the Canadian securities regulatory system. We will support efforts to move towards a common securities regulator. We will also continue to further harmonize, streamline and modernize securities laws and ease the regulatory burden on market participants;
- Continue to examine alternative securities regulatory approaches that provide a balanced regulatory approach and adopt best regulatory practices from other Canadian and international jurisdictions to support Ontario markets and investors. We will work to enhance the global competitiveness of our capital markets as well as foster co-operative relationships with other securities regulators;
- Use the full range of tools available to achieve our mandate, and assign priorities to all our work based on our strategic goals; and
- Ensure our priorities are communicated in a timely and effective manner.

Specifically we plan to:

- Work to strengthen the registration regime by harmonizing, streamlining and modernizing current registration requirements including:
  - i) reviewing and responding to comments on NI 31-103 *National Registration System* and related instruments and preparing to implement the new registration regime;
  - ii) developing interface policies to support passport for registration; and
  - iii) supporting the Ministry in finalizing legislative amendments that would, if approved, support the new registration regime;
- To improve accountability and enhance the integrity of financial reporting, implement the revised National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* to bring greater transparency to the state of internal control over financial reporting by reporting issuers other than TSX Venture issuers;
- Improve disclosure of executive compensation by amending National Instrument 51-102 *Continuous Disclosure Obligations*;
- Address evolving market developments by proposing amendments to the Alternative Trading System (ATS) rules (National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*);
- Complete an assessment of the policy and operating implications of adopting International Financial Reporting Standards (IFRS) as the basis for financial reporting by reporting issuers and propose changes to our rules as necessary to facilitate the transition;
- Publish final amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* to provide guidance on fair-value principles;
- Play a leading role with the CSA to review issues and develop a response to the ABCP/credit issues falling within the jurisdiction of securities regulators. The OSC's participation on the IOSCO Task Force on Credit Rating Agencies and the IOSCO Subprime Task Force complements and provides insight in support of the work undertaken by the CSA;
- Participate actively as an observer on the committee that will be appointed to review the *Securities Act*;
- Work with CSA jurisdictions and the SEC to develop a proposed framework for discussions on mutual recognition that would exempt Canadian exchanges and possibly dealers from registration in the US by complying with Canadian securities regulatory requirements;
- Support the government's work to modernize the *Commodity Futures Act*.
- Chair the IOSCO Task Force on Corporate Governance that is examining the protection of minority shareholders in listed issuers. The Task Force is surveying IOSCO members to compile information about rules and practices in other jurisdictions. A report of the findings will be published in 2008-2009;
- Complete a review of the regulation of non-conventional investment funds and begin to develop proposals for a framework for the regulation of all investment funds; specifically, we plan to begin by codifying frequently-granted relief given under National Instrument 81-102 *Mutual Funds*;
- Ensure OSC priorities are communicated in a timely and effective manner across all communications vehicles, including executive speeches, publications, media releases, website content and investor-related materials; and
- Continue to re-assess the effectiveness of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and propose amendments to the rule as appropriate;

**GOAL 2 – Deliver fair, vigorous and timely enforcement and compliance programs.**

Timely and appropriate compliance and enforcement are integral to fostering confidence in capital markets and preventing harm to investors. To address this, we will:

- Enhance our focus on compliance reviews of market participants to identify and prevent violations of Ontario securities law and ensure effective coordination among OSC branches in addressing improper market conduct;
- Identify gaps in the enforcement framework and co-operate with other regulators and agencies to find practical solutions;
- Improve the effectiveness of our enforcement work through reduced timelines for completing investigations and bringing regulatory proceedings forward;
- Provide leadership and assistance to improve collaboration among Canadian and *international regulatory* and criminal law enforcement agencies;
- Foster inter-jurisdictional co-operation to improve the coordination of investigative efforts, enforcement, and legal tools for enforcement; and
- Increase our transparency through timely and effective communications of enforcement actions where warranted.

Specifically we plan to:

- Continue to articulate and promote a coherent statement of compliance and enforcement priorities;
- Work to better identify those activities seen as posing greatest risk to our investors and their confidence in the capital markets and focus enforcement resources on those matters;
- Continue to increase use of coordinated inter-Branch compliance field reviews of market participants;
- Focus compliance efforts on new and high-risk market participants;
- Continue to enhance our risk-based approach to compliance oversight to make it more effective and efficient;
- Continue to improve the integration of our investigation and litigation processes;
- Assess all enforcement investigations at the outset and on an ongoing basis to determine whether seeking interim relief (such as a temporary cease trade order, freeze order, etc.) is in the public interest;
- Continue to increase the number of enforcement proceedings commenced within four months of the date of the recommendation to commence litigation, where there have not been settlement discussions, and increase the overall number of proceedings commenced;
- Expand our specialized multi-disciplinary unit dedicated to investigating fraudulent securities transactions such as illegal distributions and unregistered trading in securities in order to increase the effectiveness of the protection provided to investors against frauds and scams by increasing the number of investigations and early interventions. Give specific priority to illegal distributions and other scams which target seniors;
- Continue to work with the International Organization of Securities Commissions (IOSCO) and other international bodies to enhance global co-operation in enforcement matters;
- Develop a new approach to insider trading investigations, including tools aimed at allowing us to target “recidivist” insider traders who have organized their affairs to improperly use undisclosed material information;
- Implement further improvements to the electronic processing and storage of documentary evidence to permit more efficient and effective access by investigators and counsel and provide enhanced disclosure of documents by creating a document control unit for the processing and storage of electronic documentary evidence; and
- Work with the CSA Enforcement Committee in communicating enforcement and compliance initiatives through the redevelopment of the CSA Enforcement Report.

### **GOAL 3 – Champion investor protection, especially for retail investors.**

The interests and needs of investors, particularly retail investors, will continue to be strongly reflected in all the OSC's operations. In addition to our enforcement activities, investor education and awareness and timely access to accurate information are important components of investor protection. We will:

- Continue to reflect investor interests in all that we do;
- Continue to support investor education initiatives;
- Continue to support and grow plain-language initiatives for investors to achieve better communications;
- Work with the self-regulatory organizations (SROs) to improve investor access to timely and affordable means of complaint handling and redress. This includes improving investor awareness of, and access to, existing mechanisms for resolution of complaints and restitution, such as those offered by the Ombudsman for Banking Services and Investments (OBSI);
- Work with the SROs and lead or support initiatives that recognize the importance of the adviser to the retail investor, and strengthen and improve the adviser/retail investor relationship;
- Communicate our commitment to investor protection and the importance of that commitment;
- Increase and enhance targeted outreach efforts to investors; and
- Increase the involvement of other industry groups, such as SROs, through their participation and information exchange.

Specifically we plan to:

- Work with the Joint Forum of Financial Market Regulators to publish a final framework for point-of-sale disclosure that would require clear, concise and plain-language product and sales fee disclosure for investors in mutual funds and segregated funds;
- Continue to work with the Joint Forum of Financial Market Regulators to enhance the effectiveness of the Financial Services OmbudsNetwork to improve resolution of customer complaints;
- Monitor compliance issues with the new investment funds long form prospectus 41-101 *General Prospectus Requirements*; adjust prospectus review procedures; and compile issues for possible one-year amendments;
- Develop proposals to modernize securities regulation of scholarship plans;
- Establish a standing committee with the SROs and OBSI to discuss and coordinate work on investor initiatives and engage retail investors in the regulatory process;
- Work with the CSA Investor Education Committee to produce brochures, web materials and other information for investors that is consistent, accurate and timely;
- Maximize the use of communications channels, including the web and partnerships with community organizations, to effectively reach targeted investor groups across Ontario;
- Implement a focussed 'Investor Assistance section' within the Inquiries & Contact Centre to continue to increase our responsiveness to retail investor needs; and
- Continue to explore opportunities for enabling investors to receive, compare and analyze financial information through eXtensible Business Reporting Language (XBRL).

### **GOAL 4 – Support and promote a more flexible, efficient and accountable organization.**

The OSC's strength is its people. We will make the best use of all our resources, including people, technology, research and financial, to achieve timely and effective execution of all that we do. We expect OSC Commissioners and employees to maintain the highest standards of conduct and personal integrity and to deal openly and fairly with all of our stakeholders. We shall continue to constantly advance our business competence and effectiveness. We will:

- Continuously monitor and improve the efficiency and effectiveness of our operations;
- Be responsive and flexible as an organization and treat all stakeholders with respect and fairness;
- Identify skills requirements and ensure that we attract, retain and motivate staff who possess the required skills, and continue improving and enhancing our succession plans;
- Leverage information technology effectively to support our operations and optimize our electronic interface with our stakeholders;
- Secure the most appropriate resources and justify their acquisition through cost- benefit analyses and similar tools;
- Increase the knowledge management and risk analysis capabilities of the OSC;
- Supplement OSC staff resources with external resources where appropriate; and
- Identify those situations where greater reliance on other jurisdictions or organizations is appropriate.

Specifically we plan to:

- Develop and adopt an updated conflict of interest policy (Code of Conduct) that would appropriately strengthen the Commission's standards of ethics, integrity and accountability consistent with the new Public Service of Ontario Act.
  - i) Submit the policy to Conflict of Interest Commissioner for approval;
  - ii) Implement policies and procedures for oversight of the Code of Conduct, employee trading procedures and to manage staff complaints and issues;
- Implement improved internal knowledge-management initiatives across the OSC that will enable us to respond to issues and take decisions, that are consistent and reflect current technologies and practices;
- Enhance our service and operational efficiency by increasing and improving the self-service options provided through our website and telephone technology;
- Continue to improve the efficiency and effectiveness of our Inquiries & Contact Centre operations by streamlining the inquiries and complaints-handling processes and providing specialized assistance for people contacting the OSC; and
- Complete a redevelopment of the OSC website to better respond to the needs of our stakeholders and contribute positively to effectiveness, responsiveness, transparency and accountability.

### **2008/2009 Financial Outlook**

The coming year is the final year of our three-year cycle for setting fees, which began April 1, 2006. The budget for 2008/09 is for a deficit. This is consistent with our plan to reduce our surplus and return the surplus to market participants by way of fees that are lower than would otherwise be the case.

### **2009 Budget versus 2008 Forecasted Actual**

<b>(Thousands)</b>	<b>2008</b>	<b>2009</b>	<b>Change</b>	
	<b>Forecasted</b>	<b>Budget</b>	<b>\$\$\$</b>	<b>%</b>
Revenues	\$78,615	\$79,064	\$449	0.6%
Expenses	\$75,425	\$86,172	\$10,747	14.2%
Excess/(deficit) of revenue over expenses	\$3,190	-\$7,108	-\$10,298	
Capital expenditures	\$759	\$5,669	\$4,910	646.9%

## Request for Comments

---

Revenues for 2008/09 are forecast to increase by 0.6% due solely to market forces, which affect the revenues of registrants and the capital of issuers, on which the fees are based. No increases in fees are proposed. Higher than anticipated market growth in 2007/08 resulted in actual revenues that were \$3.4 million higher than originally forecast.

The 2008/09 expense budget is \$86.2 million, an increase of \$10.7 million or 14.2% over the forecast actual results for 2007/08. Salaries and benefits comprise \$62.1 million or 72% of the budget and are the key driver accounting for more than 60% of the total proposed increase. This is the only area of expenditure that exceeds 10% of expenses. Most of the increase in salaries and benefits reflects cost momentum from prior staffing decisions including the full year costs for staff hired during 2007/08, the planned filling of previously approved positions and the impact of performance-based salary increases. Other costs, such as occupancy costs of \$6.5 million and training of \$1.2 million, are correlated with staff numbers. Professional services are proposed to increase by \$2.2 million or 37% above our last year's actual. One-time investments in IT infrastructure, which flow out of our IT Strategic Plan and will enhance our operational efficiency, re-design of the OSC website and completing our OSC Stakeholder Survey are some of the key drivers of the increase.

Key one-time increases in the capital budget are \$3.0 million for leasehold improvements and \$1.9 for IT infrastructure. Significant growth in hearing activity has generated needs for expanded Hearing Room facilities and additional working space for Commissioners. Creating enough contiguous space for our expanded Commission requirements will necessitate moving other OSC groups. The key initiatives driving higher IT infrastructure spending are:

- to improve and increase storage to facilitate current and future document management processes (including software in Enforcement), an OSC-wide document management system and business continuity;
- information security, access and identity; and
- for redevelopment and content management of the OSC website.