

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Re: OSC Staff Notice 11-784 Burden Reduction

Dear Ontario Securities Commission:

CNSX Markets Inc. ("CSE") is responding to **OSC Staff Notice 11-784 Burden Reduction** ("Burden Reduction") published on January 14, 2019. CSE applauds the formation of the OSC Burden Reduction Task Force established by the OSC and Ministry of Finance. The CSE encourages the OSC, Ministry of Finance and the Government of Ontario generally to also seek burden reduction cross-jurisdictionally in Canada (i.e. through the Canadian Securities Administrators) and extraterritorially where appropriate (e.g. harmonizing rules with other securities regulatory authorities).

There are various areas where there are, or may be, unnecessary regulatory burdens. The following is not intended to be an exhaustive list of such areas but hopefully a useful presentation of ideas for consideration. To the extent the CSE has additional thoughts, it will forward such to the Task Force.

Duplication of Legal Requirements

Where possible, legal requirements that are contained in the *Securities Act*, national instruments, or similar requirements should not be hard-coded and duplicated in regulated entities' recognition orders. Inevitably, there arises discrepancies between the drafting contained in recognition orders versus legal requirements (e.g. slightly different definitions or terminology). This creates uncertainty and confusion and results in unnecessary analysis to determine necessary compliance steps.

Presentation of Legal Requirements

It would be very helpful to the capital markets community (including investors) that the most up-to-date consolidated versions of legal requirements (such as national instruments) be available on the OSC website. Parsing through various postings of amendments to determine what is in force is not productive time spent (and for the lay public, likely mystifying). There is at least one CSA jurisdiction that posts up-to-date consolidated versions. If a legal requirement is no longer in force (such as a particular protocol), it would be helpful if this was clearly presented (perhaps in a tabular format).

Business functions in regulated entities would appreciate, to the extent possible, that legal requirements be presented in a plain language format (requirements checklists would also be helpful).

Requirements versus Optional Items

There are situations where staff notices, companion policies or similar documents use a passive voice in outlining various items. There is significant time spent by regulated entities attempting to determine if

something is a “requirement” or a “preference”. It is clear that when something is a requirement, it must be done (in the absence of regulatory relief). However, when language used is passive, it generates an optionality in that a regulated entity is permitted to perform or not perform activity. For instance, “a regulated entity should” or “it is staff’s expectation” do not mandate an action. If that is the case, then inaction should not be penalized. If on the other hand, assuming there is a legal basis underpinning the requirement and action has to occur, clear and non-passive language should be used i.e. “a regulated entity must” or “staff require”.

Filing Processes

Filing of documents should be required only on an as amended basis (e.g. an annual refiling of the complete Form 21-101F1 every year, even when changes have not been made to exhibits, uses unnecessary resources). A CEO certification that all amendments have been duly filed should be adequate for this purpose.

There are filings that include information that is problematic to collect. For instance, in Form 21-101F1, Exhibit B, exchanges are required to include principal business or occupation and titles of shareholders. Such information is fluid and requires chasing down of shareholders to provide such information. If truly required, there should be a minimum shareholding percentage that would trigger this requirement.

In terms of maintaining filing documents (i.e. blacklined documents) for Form 21-101F1, a review should be undertaken to streamline the process. A suggestion is to follow the process for amending a marketplace’s rules.

Systems changes versus filing requirements

Challenges can arise for marketplaces undertaking systems changes. The current process (as per NI 21-101) requires marketplaces to disseminate proposed systems requirements 90 days before launch, testing facilities to be available 60 days before launch and filing for approval 45 days before launch. If a proposed change is not approved, participating organizations will have potentially undertaken work in the 90 or 60 day period. Further analysis should be undertaken to better align the various timeframes.

Certainty of Outcomes

Improving the adherence to response times (such as outlined in protocols) and providing responses generally in writing would provide greater certainty for regulated entities.

Roundtable

I would be pleased to participate in the roundtable.

Sincerely,



Jamie Anderson
General Counsel & Corporate Secretary

Cc. Richard Carleton – Chief Executive Officer