

# Chapter 1

## Section 1.15

Ministry of Finance

Follow-Up on 2021 Value-for-Money Audit:

# Ontario Securities Commission

RECOMMENDATION STATUS OVERVIEW						
	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	3		2	1		
Recommendation 2	2		2			
Recommendation 3	3	1	2			
Recommendation 4	1		1			
Recommendation 5	3			3		
Recommendation 6	1	1				
Recommendation 7	3	3				
Recommendation 8	2			2		
Recommendation 9	1		1			
Recommendation 10	2			2		
Recommendation 11	2			2		
Recommendation 12	1		1			
Recommendation 13	4	1	2	1		
Recommendation 14	4	2	2			
Recommendation 15	2		2			
Recommendation 16	1		1			
Recommendation 17	1			1		
Recommendation 18	1	1				
Recommendation 19	3	1	2			
Recommendation 20	4	3	1			
Recommendation 21	2	2				
Recommendation 22	1		1			
Recommendation 23	4	4				
Recommendation 24	3	3				
Recommendation 25	2	2				
Recommendation 26	1	1				
<b>Total</b>	<b>57</b>	<b>25</b>	<b>20</b>	<b>12</b>	<b>0</b>	<b>0</b>
<b>%</b>	<b>100</b>	<b>44</b>	<b>35</b>	<b>21</b>	<b>0</b>	<b>0</b>

Note: **Recommendations 1, 2, 3, 7, 9, 10, 13, 14, 15, 18, 20, 21, 22, 23, 24, 25** and **26** were made to the Ontario Securities Commission, and **Recommendations 4, 5, 6, 8, 11, 12, 16, 17** and **19** were made to the Ministry of Finance.

## Overall Conclusion

The Ontario Securities Commission (OSC) and the Ministry of Finance (Ministry), as of November 14, 2023, have fully implemented 44% of actions we recommended in our *2021 Annual Report*.

The OSC has fully implemented recommended actions such as becoming more proactive in adding more companies and entities that may pose a risk to Ontario investors to its investor warning list. For the fiscal year ended March 31, 2023, the investor warning list added 217 entities, or a 206% increase over 71 listings added for the fiscal year ended March 31, 2022.

The Ministry has fully implemented recommendations such as working with the OSC to identify and nominate new Board and Capital Markets Tribunal members during 2021 and 2022. We found that these appointments adhered to the *Securities Commission Act, 2021*, Agencies and Appointments Directive, memorandum of understanding between the Ministry of Finance and the OSC, and the process set out by the Public Appointments Secretariat.

The OSC and the Ministry have made progress in implementing an additional 35% of the recommended actions. For example, the OSC was in the process of completing the project to improve the transparency of total fees and costs paid by investors. In April 2023, the OSC approved proposed amendments on enhanced cost disclosure reporting requirements for investment funds, and new cost and performance reporting guidance, as part of the Total Cost Reporting (TCR) project initiative. The Minister of Finance approved the amendments in June 2023. The OSC expects to complete their implementation by January 2026, as investment firms require an extended transition period to implement such complex and potentially costly initiatives.

However, the OSC and the Ministry have made little progress on the remaining 21% of the recommended action items. For example, the Ministry of Finance has made little progress in adopting best practices to block or remove unregistered websites that market and distribute fraudulent or unregulated securities or distribute information to induce Ontario's investors to invest in fraudulent securities (similar to the authority

provided to the Quebec securities regulator). The Ministry indicated that it was analyzing the feasibility and effectiveness of this recommendation, given the international nature of information distributed through websites and limits on the jurisdiction of the Ministry and the OSC.

The status of actions taken on each of our recommendations is described in this report.

## Background

The Ontario Securities Commission (OSC) is a Crown corporation accountable to the provincial Legislature through the Minister of Finance. It administers and enforces the provisions of Ontario's *Securities Act* (Act) and *Commodity Futures Act* and administers certain provisions of Ontario's *Business Corporations Act*. Also, the *Securities Commission Act, 2021* governs the OSC's organization and governance structures. The OSC's mandate is to provide protection to investors from unfair, improper or fraudulent practices; foster fair, efficient and competitive capital markets, and confidence in the capital markets; foster capital formation; and contribute to the stability of the Canadian financial system and the reduction of systemic risk.

The OSC is the largest financial regulator in Canada, owing to the size and nature of the province's capital markets and their participants. In 2022/23, the OSC employed 685 employees (629 in 2020/21) and had about \$158 million in revenue (\$138 million in 2020/21), with \$149 million in expenses (\$128 million in 2020/21).

Our audit found that the OSC's rule-making processes were lengthy, especially when rules had to be drafted in co-ordination with other securities regulators that were part of the Canadian Securities Administrators (CSA). The OSC took, on average, 2.9 years to develop a new CSA rule, policy or amendment, more than a year longer than for Ontario-only rules (1.7 years). Delays were also attributed to the complexity of the sector and strong industry opposition to change. Two changes to increase investor protection—a proposed ban on deferred sales charges and a

proposed partial ban on trailing commissions—took more than a decade to implement.

Our audit also found the OSC was vulnerable to political interference, which risked undermining its operational independence and impartiality. For example, on deferred sales charges, the Ministry surprised the OSC in September 2018 by publicly opposing the OSC-led CSA's consensus on needed reform. The Ministry then reversed its position in May 2021. This incident demonstrated the government's ability to override the OSC's judgment and evidence.

We also confirmed that the OSC had limited enforcement tools. For example, it did not have the power to issue "tickets" to individuals and companies for violations that did not warrant a full-blown investigation by the OSC's Enforcement Branch. Nor could the OSC make orders to seize assets or direct the refusal of driver's licence renewals so as to collect unpaid monetary sanctions, powers that had been provided to the British Columbia securities regulator. Between fiscal years 2011/12 and 2020/21, the OSC collected only 28% of the \$525 million in monetary sanctions it imposed. Most of the uncollected balance was owed by unregulated individuals and entities, such as those that traded or advised in securities without being registered with the OSC. The lack of effective enforcement tools has hindered the OSC in deterring wrongful conduct.

The OSC deposits money collected from administrative penalties and other enforcement orders in a special fund, called the Designated Fund. As of 2020/21, the Designated Fund held \$117 million. We observed that the OSC was paying out only between 6% and 11% per year for the benefit of the investor community and other purposes allowed under the Act. About \$208 million in sanctions was also directly paid by violators to investors during the period 2016/17–2020/21.

We noted during our audit that some of the OSC's information systems were significantly outdated and were not integrated, which hindered the corporation's ability to effectively utilize the data it was gathering.

Some of our significant audit findings were:

- The OSC could have better ensured that firms acted in the best interests of their clients. According to studies, most investors

mistakenly believe that dealers have a legal obligation to act in their clients' best interests. To improve the quality and impartiality of advice that investors were receiving, the CSA, with the OSC as lead, had begun studying the area and had proposed reforms. Initially, the proposed reforms included reference to a fiduciary duty or similar overarching client best interest standard, similar to what is required in the United Kingdom, Australia and the European Union. This would have legally required dealers to act in their clients' best interests. However, the changes that were ultimately proposed, called the "client-focused reforms," were narrower and more complex, allowing systemic conflicts of interest to continue.

- Deferred sales charges and trailing commissions took over a decade to be banned, and the ban on trailing commissions applied only to discount brokers and not to other kinds of dealers. As of June 1, 2022, discount brokers/dealers (that is, dealers who are not permitted, under existing regulations, to provide advice to investors) were prohibited from charging trailing commissions. Trailing commissions are still permitted for full-service dealers so long as dealers implement complicated controls to identify, document, disclose and address any conflicts. The potential conflict of interest that arises from this arrangement is that a dealer will seek to maximize its own revenue by recommending funds that pay it higher commissions, regardless of whether those funds are best for the investor. Similar existing controls in the investment industry in Canada have proven ineffective in deterring such conflicts of interest. By contrast, in the United Kingdom and Australia, securities regulators have banned these types of embedded commissions since 2012.
- The OSC conducted limited reviews to vet the entry of special purpose acquisition companies (SPACs), capital pool companies (CPCs) and reverse takeovers (RTOs) in the capital

markets. For instance, from 2016/17 to 2020/21, the OSC reviewed only seven CPCs out of a total of 77 CPCs at the time of entry to the market, after identifying issues with their promoters. The OSC also did not always alert investors to the specific risks posed by these kinds of transactions. In two examples we looked at, private companies that entered the markets by taking over a public company faced many allegations and complaints about conflicts of interest and illegal insider trading. One of those companies was eventually delisted from the stock exchange. The other was ordered by Ontario's Superior Court of Justice to compensate investors for omitting material facts that resulted in an artificial inflation of the company's share price. Because issuing securities in the public markets through the traditional IPO method tends to be more expensive for companies due to legal costs, regulatory scrutiny and the volume of documentation required, alternative methods of entering the public markets were gaining popularity.

- The Corporate Finance Director did not have adequate regulatory authority to respond effectively and on a timely basis when it identified a lack of sufficient disclosure by companies that have distributed securities using a regulatory exemption. Between 2016/17 and 2019/20, we noted that the Corporate Finance Branch identified non-compliance concerns relating to the lack of adequate disclosure to the investing public in 36 reviews (or 35%) of the 104 reviews of disclosure filings that the branch conducted. The Corporate Finance Branch did not have the power to issue a cease-trade order to a company for non-compliance and could only request that the company voluntarily cease distributing securities until it had complied with the disclosure requirement. We examined 10 of the 36 reviews conducted by the branch in detail, and in two of the

10 reviews we determined that potential investors could have been better protected if the Director of the Corporate Finance Branch had the legislative authority to issue a cease-trade order to the company for insufficient disclosures.

- The OSC did not have the necessary technology and analytical tools to conduct efficient oversight of market participants. OSC staff faced challenges in integrating information from various databases. Better IT system integration was needed to identify potential securities law breaches by issuers across the public and private or exempt capital markets (where companies qualify for exemptions from legislative requirements) areas. We found that the OSC's Enforcement Branch lacked critical data analytics, tools and reporting capability to assess the effectiveness of its performance. For example, it was unable to track the average time between the receipt and the closure of an enforcement case, or to flag cases that were taking exceptionally long to close. Those activities were conducted manually by staff.

We made 26 recommendations, consisting of 57 action items, to address our audit findings. We received commitment from the Ministry of Finance and the Ontario Securities Commission that they would take action to address our recommendations.

## Status of Actions Taken on Recommendations

We conducted assurance work between April 2023 and October 2023. We obtained written representation from the Ontario Securities Commission and the Ministry of Finance that effective November 14, 2023, they have provided us with a complete update of the status of the recommendations we made in the original audit two years ago.

## The OSC Has Been Slow in Adopting Protections for Mutual Fund Investors and the Need for Additional Action Should Be Assessed

### Recommendation 1

To better protect investors from unfair or improper practices, we recommend that the Ontario Securities Commission develop and implement further measures to protect investors, such as:

- complete the project to improve the transparency of total fees and costs paid by investors;

**Status:** In the process of being implemented by January 2026.

### Details

In our 2021 audit, we found that the OSC had led efforts, labelled as “client-focused reforms,” to help ensure investors receive appropriate advice from advisors, dealers and their representatives (dealers). However, these reforms were less rigorous and narrower than the higher standards of fiduciary or similar duty that would require dealers to act in their clients’ overall best interests.

In our follow-up, we found that, in April 2023, the OSC had approved proposed amendments on enhanced cost disclosure reporting requirements for investment funds, and new cost and performance reporting guidance as part of the Total Cost Reporting (TCR) project initiative. The TCR aims to improve investors’ awareness of the ongoing costs associated with their investment funds. This information is to be expressed both as a percentage for each fund and as an aggregate amount, in dollar value, for all investment funds. The TCR initiatives have been developed by a joint project committee composed of several regulators including members of the Canadian Securities Administrators and the Canadian Insurance Services Regulatory Organization. These proposed amendments were published in April 2023 and approved by the Minister of Finance in June 2023. The OSC expects to complete their implementation by January 2026, as investment firms require an extended transition period to implement such complex and potentially costly initiatives.

- determine within a reasonable time frame whether the objectives of the client-focused reforms have been met, including, among other things, that material conflicts of interest are addressed in the best interests of clients in the selection of products to be offered to clients;

**Status:** In the process of being implemented by December 2024.

### Details

During our 2021 audit, an investor advocacy group that we interviewed noted that the client-focused reforms were similar to existing industry rules that had not been effective in ensuring objective, professional advice in the best interest of investors. These rules have coexisted with compensation-related arrangements and incentive practices that reward dealers at the expense of investors.

In our follow-up, we found that the OSC had updated its compliance review programs to test registrants’ compliance with the revised requirements such as conflicts of interest, referral arrangements, relationship disclosure information and misleading communications under the client-focused reforms. Updates were made to test for compliance with “know your client,” “know your product” and “suitability” requirements. The OSC is in the process of finalizing the requirements and incorporating them into its operations by the fall of 2023. As part of the OSC’s routine compliance reviews, it is also testing for compliance with the conflict of interest requirements under the client-focused reforms. The OSC indicated that it will also continue conducting reviews based on the new requirements of the client-focused reforms. In addition, the OSC completed a project specifically focused on registrants’ compliance with the conflict of interest requirements. In total, the OSC reviewed 46 registrant firms during the project. The OSC issued a staff notice in August 2023 that discussed the findings and provided additional guidance to registrants. The OSC expects full implementation of this recommended action by December 2024.

- *if the client-focused reforms have not achieved their intended benefits, consider further policy options to protect investors, such as the complete elimination of trailing commissions and the introduction of an overarching best-interest standard to require advisors, dealers and representatives to act in the best interests of their clients.*

**Status: Little or no progress.**

### Details

Our 2021 audit found that the OSC and CSA had identified significant issues with deferred sales charges and trailing commissions, and had presented evidence of harms. Trailing commissions have attracted particular criticism when those dealers who are prohibited from providing advice to investors (that is, discount brokers who do not assess the investor's suitability for the product) are nevertheless being compensated with trailing commissions that purport to be compensation for advice.

In our follow-up, we found that the OSC is awaiting the results from the client-focused reforms. It stated that if the reforms do not achieve the intended effect, it will consider further policy options to protect investors, such as the complete elimination of trailing commissions and the introduction of an overarching best-interest standard. It plans to make a decision in this regard by December 2025.

### Recommendation 2

*To better protect investors through efficient rule-making processes, and recognizing the importance of harmonized securities regulation within Canada and the potential of Ontario Securities Commission (OSC) action impacting other provinces without the input of their securities commissions, we recommend that the OSC:*

- *assess, approve and implement rules independently of the Canadian Securities Administrators, where involvement by other securities regulators slows key initiatives significantly;*

**Status: In the process of being implemented by December 2024.**

### Details

Our 2021 audit found that the process of making rules for capital markets was exceedingly slow. For example, the OSC took the lead in introducing reforms in the mutual fund industry, with the stated objective of protecting investors. But it had taken almost a decade to selectively ban sales practices, such as deferred sales charges and trailing commissions (for only discount brokers), that are often considered unfair and predatory.

In our follow-up, we found that the OSC has implemented and used an internal Policy Project Onboarding Form since June 2023. The form includes various formalized questions that assist OSC staff to assess, on a case-by-case basis, and determine whether the involvement of other securities regulators could significantly delay a project beyond the specified Canadian Securities Administrators' project management timelines.

The OSC plans to further improve the rule/policy-making process by developing and implementing a centralized tool that captures all ongoing policy projects in a single repository and guides OSC staff through milestones of the policy-making process, including policy development, the approval and publication process, and post-implementation monitoring. The OSC expects full implementation of this centralized tool by December 2024.

- *increase its focus on managing risks relating to investor protection.*

**Status: In the process of being implemented by December 2023.**

### Details

In our 2021 audit, we found that projects that involved investor protection took on average 3.9 years to complete compared with two years for projects that did not include an investor protection component. We further observed that the OSC's risk-management framework described investor protection as "low priority" in terms of additional management action required to manage the risk.

In our follow-up, we found that the OSC was in the process of developing internal guidance to reinforce that investor protection remains a significant focus but

is to be balanced with the new, expanded mandate components, which include fostering competitive markets and capital formation. The guidance will provide OSC staff with questions to assess how the individual mandate components are relevant to a particular regulatory issue. The OSC indicated that it would continue to update and adapt the guidance as appropriate, and would continue to identify and assess risks impacting investor protection, develop action plans and seek to mitigate such risks. This would include increased communication with the OSC Investor Advisory Panel (IAP) and the newly formed Canadian Securities Administrators' IAP to ensure the OSC mitigates retail investor protection risks. In its Statement of Priorities for 2023/24, investor protection remains a focus of the OSC.

The OSC expects to complete the internal guidance by December 2023.

### Recommendation 3

*To help achieve its mandate of protecting investors from unfair or improper practices, we recommend that the Ontario Securities Commission:*

- *include investor protection as a key priority in its annual statement of priorities, with planned actions and outcomes;*

**Status: Fully implemented.**

### Details

In our 2021 audit, we noted that the top-level goals stated in the OSC's annual Statement of Priorities for 2021/22 did not include investor protection, although the text in the document observes that "investor protection is always a top priority" for the OSC and actions under existing goals relate to investor protection.

During our follow-up, we found that the OSC's annual Statement of Priorities, as part of its business plan for 2022/23 through 2024/25 published in April 2022, included the specific initiative to improve the retail investor experience and protection. Proposed actions include expanding the focus on investor education and financial literacy, increasing the use of investor social media channels, redeveloping the OSC's

investor website, and continuing implementation of the OSC Seniors Strategy. Other initiatives that highlight investor protection as a key priority in the 2022/23 Statement of Priorities include:

- expanding the focus on retail investors through "specific education, policy, research and behavioural science" activities;
- strengthening dispute-resolution services for investors, such as the Ombudsman for Banking Services and Investments, through policy and oversight activities; and
- monitoring and responding to the impacts of the ban on deferred sales charges.

Per its 2022/23 through 2024/25 business plan, the OSC plans to broaden consideration of investor perspectives early in its policy-making process.

Further, the OSC publishes a Report on the Statement of Priorities in its Annual Report, which identifies the status and outcomes of the key priorities for the recently completed fiscal year. The 2022/23 Annual Report, that was published in October 2023, described the OSC's progress toward its goal to "improve the retail investor experience and protection." Some of the OSC's accomplishments covered in its 2022/23 Annual Report are that it:

- published a dedicated fraud prevention page on [GetSmarterAboutMoney.ca](https://www.getsmarteraboutmoney.ca) to increase investor education regarding financial fraud and its warning signs;
  - launched the [InvestorOffice.ca](https://www.investoroffice.ca) microsite to provide information on the regulatory operations of the OSC's Investor Office Branch, including updates on investor education efforts and materials;
  - launched a number of crypto-related resources to educate investors; and
  - expanded its multicultural outreach and education program.
- *include, as a default requirement, members with retail investor protection experience and an investor protection outlook on its policy advisory committees;*

**Status: In the process of being implemented by June 2024.**

## Details

In our 2021 audit, we found that the OSC has 10 policy advisory committees, including the Investor Advisory Panel, which is focused on investor protection issues. However, we did not find evidence of a requirement (such as in committee terms of reference or nominee qualification criteria) that the policy advisory committees include members with direct experience in investor protection matters or a demonstrated investor protection perspective.

In our follow-up, we found that the OSC was in the process of implementing an alternative approach to achieve the recommendation outcome. This approach aims to ensure that retail investor protection perspectives can be provided for other advisory committees through the existing OSC Investor Advisory Panel (Panel). The Panel continues to provide the primary investor protection perspective to OSC staff and its Board in carrying out the OSC's mandate. The OSC advised us that to address this recommendation, the meeting agenda of each of the other OSC advisory committees will be provided to the Chair of the Panel in advance of a meeting and, at the Chair's discretion, the Panel can participate in discussion of any matter on the meeting agenda. The OSC believes this step will provide support for the primary investor perspective to the OSC and its Board. The OSC expects that this alternative approach will be implemented by June 2024.

In addition, the OSC has developed guidelines when recruiting members to a committee, to consider whether including members with retail investor protection experience and an investor protection outlook is appropriate and beneficial to the committee's mandate at the time, and to document the reasons if not. This would not necessarily mean seeking investor advocate representation on a committee.

The OSC advised us that it plans to implement the guidelines and that adoption of the terms of reference will occur over time as an advisory committee is reconstituted as a result of this process. The OSC indicated that its Investor Office also plays a critical function in identifying investors' needs and priorities to inform the OSC's work.

- *take appropriate steps in its public consultation on rule and policy changes to identify and evaluate vested interests and weigh these interests against the benefits from changes to protect investors.*

**Status: In the process of being implemented by December 2024.**

## Details

Our 2021 audit found that the 2019 Notice of Amendments (the actual rule changes) indicated that the OSC had received 135 public comment letters regarding its proposed rule changes meant to protect investors. Of these, 117 were from industry stakeholders and 18 were from investors, investor advocates, academics and other non-industry stakeholders. The summary of comments accompanying the changes indicated that many industry commenters did not want an overarching client best-interest standard.

In our follow-up, we found that the internal Policy Project Onboarding Form that the OSC has used since June 2023 includes formalized questions that assist OSC staff to identify public comments on rule changes and assess their impacts on investors.

As discussed in the first action item of **Recommendation 2**, the OSC plans to further improve the rule/policy-making process, including incorporation of investor perspectives, by developing and implementing a centralized tool that captures all ongoing policy projects in a single repository and guides OSC staff through milestones of the policy-making process. The OSC expects the full implementation of this centralized tool by December 2024.

## Recommendation 4

*To assist the Ontario Securities Commission (OSC) in protecting investors from unfair or improper practices, we recommend that the Ministry of Finance work with the OSC's Governance and Nominating Committee to identify, and recommend for appointment, Board members with retail investor protection experience and an investor protection outlook so that this perspective is enhanced in Board representation.*

**Status: In the process of being implemented by April 2024.**



### Details

In our 2021 audit, we found that Board members at the time tended to have acquired their experience and qualifications from the investment industry, rather than from an investor protection background—for example, working for an investor or consumer protection agency.

In our follow-up, we found that in September 2022 the OSC's Board had approved an update to the Board member competency matrix to include retail investor protection experience. The OSC Board informed us that it would consider retail investor protection experience as a key criterion in evaluating potential future Board members for the next Board recruitment. Recommendations by the Chair for member appointments to the OSC Board are reviewed by the Minister of Finance, who makes the final decision to recommend a Board appointment to the Lieutenant Governor in Council.

However, the OSC Board has not undertaken Board member recruitment because Board members' terms do not end until April 2024. At the time of our follow-up, the OSC was planning to launch a recruitment process for up to three new Board members and recommend the appointment of Board members with retail investor protection experience.

## Untimely Political Interference Undermined the OSC's Operating Independence in Setting Evidence-Based Market Rules

### Recommendation 5

*To preserve the operational independence of the Ontario Securities Commission (OSC), and eliminate perceptions of overt political interference where the Ministry of Finance disagrees with a rule proposed by the OSC, we recommend that the Ministry make public:*

- *criteria used to reach the differing decision;*
- *inputs into the decision (including advice from lobbyists and investor advocates); and*

- *the Minister's evaluation weighing the inputs, including vested interests against protection for investors.*

**Status:** Little or no progress.

### Details

In our 2021 audit, we found that the OSC was vulnerable to political interference, which risks undermining its operational independence and impartiality. For example, on deferred sales charges, the Ministry surprised the OSC by initially publicly opposing the OSC-led CSA consensus on needed reform in 2018. The Ministry later reversed its position in 2021. This incident demonstrated the government's ability to override the OSC's judgment and supporting evidence on a proposed reform.

In our follow-up, we found that the Ministry has made little progress on this recommendation. The Ministry indicated that it will continue reviewing this recommendation as to how it may interact with existing privacy legislation such as the *Freedom of Information and Protection of Privacy Act*, which exempts the disclosure of records containing materials that are intended to inform Cabinet policy decisions. The *Securities Commission Act, 2021*, which came into force in April 2022, modernized the OSC's corporate governance and established an independent Capital Markets Tribunal. Together with the *Securities Act*, this legislation provides the OSC with a governance structure and statutory framework that aims to respond to capital markets developments and exercise its statutory rule-making authority in an appropriate and independent manner. Under the existing legislative framework, during its rule-development process, the OSC is able to conduct stakeholder consultations on substantive rule changes, and stakeholder comments received through this process are published on the OSC's website to provide for a transparent and independent process. However, the Ministry has not yet made public how its involvement in the new decision-making process would be transparent and free of perceptions of overt political interference in areas such as the criteria it would use to reach decisions that differ from the OSC's proposals,

its input into decisions, and the Minister's evaluation of inputs into the decision-making process.

### Recommendation 6

*So that the Board of the Ontario Securities Commission (OSC) has independent board members with appropriate skills and experience, we recommend that the Ministry of Finance work with the Chair of the OSC to follow an appointment process that is responsive to the advice and recommendations of the Board and its Governance and Nominating Committee.*

**Status: Fully implemented.**

#### Details

In our 2021 audit, we found that twice in 2019 the government did not follow the established consultative process for appointments to the OSC's Board of Directors.

Subsequent to our audit, the proclamation of the *Securities Commission Act, 2021*, in April 2022 changed the governance framework of the OSC and established the Capital Markets Tribunal. Under the new governance structure, the adjudicative and regulatory functions were separated. Also, the Ministry worked with the OSC to identify and nominate new Board and Capital Markets Tribunal members. In the letters to the Minister of Finance dated September 2021 and January 2022, the OSC recommended to the Minister the appointment of several potential Board members and Capital Markets Tribunal members. The Minister recommended the appointment of nine OSC board members and 10 Capital Market Tribunal members to the Lieutenant Governor in Council, effective in April 2022. We found that these appointments adhered to the *Securities Commission Act, 2021*, Agencies and Appointments Directive, memorandum of understanding between the Ministry of Finance and OSC, and the process set out by the Public Appointments Secretariat.

## The OSC Could Take More Enforcement Action in Deterring Violations by Unregulated Companies and Individuals

### Recommendation 7

*To make Ontario investors better aware of misconducts in the capital-markets sector, we recommend that the Ontario Securities Commission:*

- *be more proactive in adding fraudulent companies to its own investor warning list;*
- *update this list regularly; and*
- *increase public awareness of the existence of the list.*

**Status: Fully implemented.**

#### Details

In our 2021 audit, we reviewed a sample of 35 of the 2,029 cases of claimed misconduct with limited or no action taken, and found that in 17 cases (or 49%) the Enforcement Branch confirmed that misconduct had occurred but had not updated the OSC's investor warning list with this information. Our view was that a more updated and complete warning list posted on the OSC's own website and further educating investors about the existence of the warning list would increase public awareness of these misconducts in the sector.

In our follow-up, we found that the OSC has become more proactive in adding more companies and entities that may pose a risk to Ontario investors to its investor warning list. Regular additions to the investor warning list are based on assessments by the OSC's Disruptions Team to determine whether certain conduct of the companies and entities poses a risk to Ontario investors that would warrant issuing a warning. For the fiscal year ended March 31, 2023, the investor warning list added 217 entities, or a 206% increase over 71 listings added in the fiscal year ended March 31, 2022.

To increase public awareness of the investor warning list, the OSC has done the following since our 2021 audit:

- issued 18 press releases to notify investors about the new additions to the investor warning list during 2022/23; each press release identifies the specific entities added to the list over the previous three weeks;
- created a new page on its investor education website, which provides a link to the OSC investor warning list, which is automatically updated periodically; and
- published the investor warning list through various channels such as social media posts on Twitter, Facebook and the Investor News newsletter.

The OSC's Investor Office communicated the list to attendees at its retail outreach events. From January 1, 2022, to November 30, 2022, the Investor Office participated in 115 outreach events.

### Recommendation 8

*To better protect Ontario investors from financial misconduct and violations of securities laws, we recommend the Ministry of Finance adopt best practices from other jurisdictions, such as to provide the Ontario Securities Commission with the authority to:*

- *block or remove unregistered websites that market and distribute fraudulent or unregulated securities or distribute information to induce Ontario's investors to invest in fraudulent securities (similar to the authority provided to the Quebec securities regulator);*

**Status: Little or no progress.**

### Details

In our 2021 audit, we noted that, for example, the securities regulator in Quebec has the authority to block or remove fraudulent websites. The securities regulator in the UK has implemented a goal to block or remove such websites within 24 hours to minimize losses to potential investors. The OSC, at the time of our audit, did not have similar authority to block or remove unregistered websites marketing and distributing fraudulent or unregulated securities or distributing information to induce investors to invest in fraudulent

securities. Having such authority would help to protect Ontario's investors from investing in such products.

In our follow-up, we found that the Ministry has made little progress on this recommended action. The Ministry is working with the OSC to analyze the policy and legal ramifications of implementing this recommendation, including determining the constitutionality of website blocking in Ontario. The Ministry of the Attorney General was also consulted to provide an opinion on the constitutional considerations of regulating aspects of the telecommunications sector.

In addition, the Ministry indicated that it was analyzing the feasibility and effectiveness of this recommendation, given the international nature of information distributed through websites and limits on the jurisdiction of the Ministry and the OSC. The Ministry is planning to conduct further research and is working with the OSC to assess the feasibility of the measures outlined under this recommendation. The Ministry is also considering additional tools that could be employed to achieve the policy goals of this recommendation.

- *impose administrative monetary penalties, in the form of tickets, similar to the authority provided to the British Columbia securities regulator, for less egregious instances of misconduct.*

**Status: Little or no progress.**

### Details

In our 2021 audit, we noted that the securities regulator in British Columbia (BC) was given the authority in 2020, under its provincial *Securities Act*, to impose administrative monetary penalties. These actions include issuing "tickets," based on information obtained from a review, an investigation or another source (for example, a self-regulatory organization such as the Investment Industry Regulatory Organization of Canada, an auditor or a stock exchange) for contraventions of the *Securities Act* or regulations, or a decision of the BC Securities Commission. The OSC had not been given such authority to, for example, issue tickets to deter less egregious instances of misconduct that call for more serious sanctions than a

warning letter but do not warrant the expense and resources of a full investigation or hearing.

In our follow-up, we found that the Ministry has made little progress on this recommended action. The Ministry indicated that it was working with the OSC to analyze the policy and legal ramifications of implementing this recommendation. The Ministry is also reviewing other provinces' legislation to assess the potential effectiveness of this initiative. It plans to conduct further research and is working with the OSC to assess the feasibility of the measures outlined in this recommendation.

### Recommendation 9

*To improve its ability to assess, investigate and disrupt securities misconduct and fraud, we recommend that the Ontario Securities Commission develop a formal roadmap and budget for reviewing and implementing new data analytics tools and approaches, including the ability to identify, evaluate and reduce Ontario securities law violations and misconduct occurring on websites or social media, and be fully aware of the extent of the impact on Ontarians by analyzing the Internet activities of those types of websites and social media sites.*

**Status:** In the process of being implemented by December 2023.

#### Details

We found in our 2021 audit that the OSC lacked adequate technology and analytical tools to improve its case assessment, disruption (or attempting to stop misconduct), and investigation capabilities to identify potential securities law violations and misconduct. It also did not have sufficient tools to scrutinize websites or social media, and analyze the Internet activities on those websites by Ontarians who may be victimized.

In our follow-up, we found that the OSC had created a digital platforms strategy in early 2022 after taking into consideration its digital and data capability needs. Under the new strategy, in 2022 the OSC set up the Enterprise Data Analytics and Reporting Platform (e-EDARP), which is a cloud-based and secure enterprise platform that provides data collection, analytics and reporting capabilities to branches across the OSC.

This centralized platform allows the OSC to collect data sets for various analyses to be performed across the OSC. The data sets include, for example, data from clearing houses, funding data from third-party organizations such as the Canadian Investment Regulatory Organization and listings of officers and directors.

The platform has data analytics tools, capabilities and reporting functionality that staff can build on and create reports and dashboards to share internally. The OSC indicated that it will continue bringing more databases into the new data analytics platform throughout 2023.

The OSC has also subscribed to supplementary platforms to obtain website and social media data. This data can help identify, evaluate and reduce Ontario securities law violations and misconduct on websites and social media, and analyze these sites and media to understand their impact on Ontarians. The third-party data providers provide an estimate of traffic to any domain and/or its subdomains and identify and validate intelligence threats across a wide range of mainstream and niche data sources.

### Recommendation 10

*To evaluate the effectiveness of disruptive activities to stop misconduct by fraudulent market players, we recommend that the Ontario Securities Commission:*

- *conduct timely follow-ups to confirm whether the misconduct has actually stopped before closing the case; and*
- *take necessary action to stop activities that have not ceased.*

**Status:** Little or no progress.

#### Details

In our 2021 audit, we found that the OSC closed cases based on the fact that a disruptive action was taken (a “disruptive action” is taken when a case does not warrant a full investigation and enforcement action), rather than considering whether the misconduct has completely stopped. In instances where the misconduct continues, Ontario’s investors may be left with inadequate protection.

In our follow-up, we found that the OSC has made little progress in implementing this recommendation. The OSC has indicated that it will follow up on disruption actions taken in the following circumstances where: (a) the initial questionable misconduct originates from within Ontario and was shown to impact many investors either inside or outside of Ontario; (b) new evidence suggests that the questionable conduct is still active; and (c) other cases identified by the Disruption Team in Enforcement meet the OSC's established criteria for follow-up.

## The OSC Has Limited Legislated Tools to Collect Unpaid Monetary Sanctions

### Recommendation 11

*To better enforce and increase the collections rate for monetary sanctions for individuals with unpaid amounts owing to the Ontario Securities Commission (OSC), we recommend that the Ministry of Finance provide the OSC with collection enforcement authority, similar to those provided to the British Columbia Securities Commission, such as powers to:*

- freeze, preserve and dispose of assets that were transferred below fair market value to family or third parties; and
- restrict a person's ability to access a driver's licence or licence plate.

**Status: Little or no progress.**

### Details

In our 2021 audit, we found that, over the 10-year period up to 2020/21, the OSC's Tribunal imposed \$525 million in monetary sanctions, including disgorgement (an OSC-imposed order that requires the respondent to pay any amounts obtained as a result of their non-compliance with securities law), payments for investigation costs and administrative penalties, but collected only 28%, or \$145 million.

Our audit also noted that British Columbia amended its provincial securities law in 2019 to provide its securities regulator additional powers to collect

financial sanctions. For instance, it can ask BC agencies to refuse the renewal of the driver's licence of someone sanctioned, or order the seizure or freezing of assets from third parties who have received assets below fair market value from someone sanctioned or under investigation. In addition, the regulator can dispose of frozen assets. At the time of our audit, the OSC did not have such powers.

In our follow-up, we found that, under the existing *Securities Act*, the OSC can direct a person or company to refrain from liquidating or transferring funds or property. The OSC can preserve assets when they are identified in an investigation and seek to freeze the property of a third party if it can establish that the ownership or interests in the property arose from a breach of Ontario securities law. The Ministry consulted stakeholders in the fall of 2021 on the draft Capital Markets Act, which contains provisions to improve enforcement collection tools. However, the government had not proceeded to introduce a bill to make the draft Capital Markets Act into law as of October 2023.

The Ministry is also reviewing other provinces' legislation to assess the potential effectiveness of this initiative and, working with the OSC, it continues to review this recommendation. However, the OSC has indicated to the Ministry that it is able to rely on existing statutory authority to improve collection rates. Based on the figures provided by the OSC, however, we found that the OSC collected only 35% and 30% of the fines imposed over the last two fiscal years, 2021/22 and 2022/23.

The Ministry, working with the OSC, also continues to review the recommendation to restrict a person's ability to access a driver's licence or licence plate. The OSC has indicated to the Ministry that it does not require this statutory authority at this time. The OSC informed us that the collections rate is almost entirely determined by the nature of the cases adjudicated and whether they are settled or contested. However, this appears to describe a stage in the process that is earlier than the stage we address in our recommendation, which is concerned with collecting unpaid amounts that are owing to the OSC and therefore are no longer being adjudicated.

## The OSC Only Paid Out 6% to 11% of the Financial Sanctions Collected That Can Be Used for the Benefit of Investors

### Recommendation 12

*To compensate harmed investors and protect them from improper, unfair or fraudulent market activities, we recommend that the Ministry of Finance work with the Ontario Securities Commission (OSC) to ensure that monetary sanctions collected by the OSC are distributed to harmed investors in an effective and timely manner, after reviewing the process in other jurisdictions.*

**Status:** In the process of being implemented by December 2024.

### Details

The OSC's Designated Fund includes the money from administrative penalties, disgorgement orders and settlement orders that the OSC collects from enforcement actions. At the time of our audit, the *Securities Act* permitted the OSC to use designated funds to educate investors, promote and enhance knowledge and information regarding the operation of the securities and financial markets, allocate funds for third parties, and undertake initiatives that further the purposes of the *Securities Act* or *Commodity Futures Act*.

In our 2021 audit, we found that despite the significant growth in the OSC's Designated Fund cash balance, the OSC paid out only 6% to 11%, or \$3 million to \$10 million, of the available funds each year, leaving the vast majority of the funds unallocated and unused. In addition, we found that the *Securities Act* did not prescribe a specific framework or process for the distribution or allocation of designated funds. By comparison, regulators in other jurisdictions, such as Quebec and British Columbia, have prescribed procedures to administer such distributions. We found that if the OSC were to be given similar powers as have been given to the Quebec securities regulator and BC Securities Commission, the distributions to harmed investors could be more efficient and timelier.

In our follow-up, we found that the Ministry in fall 2021 undertook a public consultation on the

draft Capital Markets Act, which includes provisions regarding a statutory framework for the distribution of disgorged amounts. Section 120 of the draft Capital Markets Act addresses the distribution of disgorged funds to harmed investors. The draft Act proposes that, if the Capital Markets Tribunal determines, after a hearing, that a person has contravened capital markets law, the Tribunal may order the person to disgorge funds if the Tribunal considers the order to be in the public interest. This includes any amount obtained, or the amount of any payment or loss avoided, directly or indirectly as a result of the contravention.

As part of the 2023 Fall Economic Statement, the government has introduced legislative amendments to the *Securities Act*, the *Commodity Futures Act*, and the *Securities Commission Act, 2021* to prescribe a statutory framework to support the distribution of disgorged money to investors who have suffered financial losses as a result of a securities contravention. The Ministry contemplates that any future legislative amendments would be accompanied by OSC rules containing additional conditions, restrictions and requirements for the distribution process. The anticipated December 2024 implementation date factors in these contemplated legislative changes and the development of accompanying OSC rules, pending government direction on these matters.

### Recommendation 13

*To distribute the funds accumulated in its Designated Fund balance in accordance with the Securities Act, we recommend that the Ontario Securities Commission (OSC):*

- *develop an overarching policy to support the allocation and use of the designated funds, informed by best practices for using similar funds in other jurisdictions such as Quebec and British Columbia;*

**Status:** In the process of being implemented by December 2024.

### Details

At the time of our 2021 audit, the *Securities Act* in Ontario did not prescribe a specific framework or

process for the distribution or allocation of designated funds.

Our audit also noted that the Quebec securities regulator has the authority to establish terms to administer and distribute disgorged amounts, once the terms have been approved by its tribunal. The *Securities Act* in British Columbia also prescribes procedures for how harmed investors can make a claim for payment if the BC Securities Commission has received disgorged funds, and how its commission can assess the eligibility of these applicants and decide whether payments can be made to them.

In our follow-up, we found that, in July 2022, the OSC Board had approved a decision-making framework for allocating enforcement money. The framework covers the allocation of sanction and settlement money, including an annual planning process through which the Board approves the allocation and designates the existing balance of sanctions and settlement funds on hand to go into various reserves for purposes authorized by the *Securities Commission Act, 2021*.

When the OSC collects sanction and settlement money, OSC staff first consider whether it is practicable to distribute the funds to investors who were directly harmed by the conduct giving rise to the payment. This assessment is then reviewed and approved by the Executive Directors if the amount is less than \$5 million, and by the full Board if it is \$5 million or more. Distributions are generally carried out by a receiver or with the assistance of the Ministry of the Attorney General using the *Civil Remedies Act, 2001* process for the receipt and adjudication of claims.

In February 2023, the Board approved setting up reserves totalling \$120 million from the sanction and settlement funds held by the OSC. These reserves are subject to adjustment in future years if priorities change or additional funds are received.

At the time of our follow-up, OSC staff were working with the Ministry to develop and draft a regulation change that would prescribe additional uses for enforcement money. The proposed regulation was published for public comments between August 2023 and September 2023. Adoption of the regulation following the close of the comment period will depend on

Ministry approvals. The anticipated implementation date of December 2024 factors in the contemplated legislative work, subject to government direction.

- *define the process to support the distribution of disgorged funds to harmed investors in cases where funds have been collected and there is sufficient evidence to establish that investors suffered direct financial losses;*

**Status:** In the process of being implemented by December 2024.

### Details

In our follow-up, we found that section 120 of the draft Capital Markets Act contains a process for distributing money to harmed investors from monetary sanctions that the OSC collected pursuant to its disgorgement orders. The draft Capital Markets Act was released for public consultation in October 2021, and comments were received by February 2022. If the Capital Markets Tribunal determines, after a hearing, that a person has contravened capital markets law, the Tribunal may order the person to disgorge funds if the Tribunal considers the order to be in the public interest. This includes any amount obtained, or the amount of any payment or loss avoided, directly or indirectly as a result of the contravention. The process in the draft Capital Markets Act provides that unless the rules specify otherwise, the disgorged amount received by the OSC is distributed to persons who:

- incurred direct financial losses as a result of the contravention giving rise to the payment; and
- satisfy such conditions, restrictions and requirements as may be prescribed.

As part of the 2023 Fall Economic Statement, the government has introduced legislative amendments to the *Securities Act*, the *Commodity Futures Act* and the *Securities Commission Act, 2021* to prescribe a statutory framework to support the distribution of disgorged money to investors who have suffered financial losses as a result of a securities contravention. The anticipated implementation date of December 2024 factors in the contemplated legislative work, subject to government direction.

- *establish criteria and thresholds for the timely use of the funds, including the assessment of opportunities to support third-party initiatives that support the OSC's investor protection mandate;*

**Status:** Little or no progress.

### Details

Our follow-up found that the OSC has made little progress on establishing criteria and thresholds for timely use of the designated funds. The OSC indicated that it was considering piloting a call for applications from third parties to undertake initiatives that align with the purposes of the *Securities Act* or the *Commodity Futures Act*. The call for applications would be administered similarly to a procurement for goods and services. While the OSC anticipates that the subject matter of any such call for applications would be investor-focused, the applications would be subject to approval by the management and possibly the Board of Directors of the OSC.

In addition, the OSC was considering the development and publication of more general criteria for the assessment of funding requests that could be applied to requests that are received from third parties on an ad hoc basis.

However, the OSC has not yet drafted any criteria and thresholds for the timely use of the funds at the time of our follow-up.

- *establish criteria and thresholds to continue the existing uses of allocations from the fund to whistleblowers and investor education activities, such as raising awareness of the OSC's warning list.*

**Status:** Fully implemented.

### Details

Our 2021 audit noted that, for 2021/22, of the \$117 million in cash in the OSC's Designated Fund, the OSC reserved \$43 million, or 37%, for potential use in future years in accordance with the provisions of the *Securities Act*. This includes allocations reserved for potential whistleblower payments (\$20 million), and for recoveries of investor education costs and knowledge enhancement costs (\$20 million) for the next

four years. However, we noted that in the previous year (2020/21), the OSC also similarly reserved \$22 million (including the \$20 million reserved for potential whistleblower payments), but ended up paying out only \$4 million of that amount. We observed that the reserved amounts are significant and the OSC has paid out much less than planned.

In our follow-up, we found that, in July 2022, the OSC Board had approved a new framework for allocation and distribution of enforcement money, including an annual planning process through which the Board approves the allocation and designates the existing balance of sanctions and settlement funds on hand to go into various reserves for purposes authorized by the *Securities Commission Act*. In February 2023, the Board approved the establishment of a reserve of \$34.7 million for investor education and knowledge enhancement over the next six years, as well as \$20 million to fund payments to eligible whistleblowers, from the balance of \$120 million in sanction and settlement funds held by the OSC. Under the OSC's Whistleblower Program, whistleblowers may be eligible for awards of 5% to 15% of total monetary sanctions imposed if their information leads to a proceeding where sanctions amount to \$1 million or more. The maximum amount of the award has been set at \$1.5 million when monetary sanctions are not collected and at \$5 million when they are collected.

## Limited Review of Special Purpose Acquisition Companies, Capital Pool Companies and Reverse Takeovers

### Recommendation 14

*To further the Ontario Securities Commission's (OSC) investor protection mandate in situations where companies seek to enter the capital markets through alternative methods, we recommend that the OSC:*

- *propose revisions to the current regulatory framework that would enable the OSC to ensure all key regulatory documents of these transactions are effectively reviewed, including prospectuses, non-offering prospectuses and personal information*



*forms, in a timely manner, and using a risk-based approach;*

**Status: In the process of being implemented by December 2024.**

### Details

In our 2021 audit, we found that the OSC conducts very limited reviews of regulatory filings and disclosures of companies seeking to enter Ontario's capital markets through alternative methods versus through traditional Initial Public Offerings (IPOs). These methods include distributing securities through companies set up as Special Purpose Acquisition Companies (SPACs) or Capital Pool Companies (CPCs), or through reverse takeovers (RTOs) of existing publicly traded companies, at the time of their entry to the market. These kinds of ventures might pose risks for investors relating to conflicts of interest, founder/promoter compensation and the difficulties these companies might face in remaining viable or profitable.

We also noted that the OSC did not regularly track the companies that have entered the capital markets through RTOs or as CPCs, and therefore did not use this information as a key criterion in selecting market participants for compliance reviews.

Ontario's investors could be better protected from potential losses if the OSC more thoroughly vetted these entrants by reviewing their regulatory filings prior to their entry into the capital markets.

In our follow-up, we found that the OSC was in the process of developing a risk-based approach to review alternative listings, to assess key disclosure documents for companies that entered the capital markets through CPCs and RTOs. For SPACs, the OSC was planning to maintain the existing review of SPAC IPO and non-offering prospectuses. It will continue to monitor American and international developments with respect to SPACs. The OSC's view is that the existing review process for SPACs adequately addresses public interest concerns and that measures proposed to respond to the potential regulatory gap it has identified would be a departure from Canadian and US practice. The OSC plans to monitor this area for future developments and

states that a regulatory response to address the gap identified may be appropriate in the future.

In June 2023, the OSC began reviewing a sample of CPC qualifying transactions from the TSX Venture Exchange (TSXV) completed within the past two years. A qualifying transaction is a reverse takeover of a CPC by an operating business that will access the capital, shareholders and expertise of the CPC to complete a listing on the TSXV. The Alberta Securities Commission and the British Columbia Securities Commission, which are the joint lead regulators of the TSXV, are also conducting an oversight review of the exchange, which includes CPC qualifying transactions. When the OSC has completed this process, it is planning to review the findings to identify issues and deficiencies, such as areas or industries that present the greatest risk to investors. This review is expected to be completed in June 2024. Its results are to be used to develop a risk-based review program and approach for identifying CPC qualifying transactions that may warrant additional review. This phase is to commence in the summer of 2024 and to be completed by December 2024.

For RTOs, the OSC is planning to select a sample of RTO issuers from the NEO Exchange, now called Cboe, that have filed disclosure documents within the past two years in connection with an RTO transaction and to conduct a full review of the disclosure documents filed to assess their compliance with securities law. For phase one, the sample will be selected using a risk-based approach such as reviewing higher-risk industries such as psychedelics, cryptocurrency, cannabis, and new industries and issues previously identified by staff. The OSC is planning to use the findings from phase one to inform a risk-based approach in reviewing RTOs in phase two and whether other changes in listing practices of Cboe will be required. Phase one started in the summer of 2023 and is to be completed by June 2024. The OSC expects phase two to be completed by December 2024.

The OSC indicated that any proposed changes to the existing regulatory framework will be dependent on the findings from the work in phase one and phase

two in reviews of CPC qualifying transactions and RTO issuers.

- *provide greater oversight of exchange processes to approve these types of alternative listings;*

**Status: In the process of being implemented by December 2024.**

### Details

At the time of our 2021 audit, the OSC reviewed only the stock exchanges' rules and approved rule changes to ensure that the exchanges complied with the rules, but did not regularly review the exchanges' processes to approve the alternative public offerings described in the first action item of **Recommendation 14**. We found that between 2016/17 and 2020/21, the OSC had not performed any proactive oversight reviews of the stock exchanges' processes to monitor if they had appropriately approved these new entrants at the time of their entry, where the OSC was the principal regulator.

In our follow-up, we found that the OSC is planning to conduct oversight reviews of the Cboe, Canadian Securities Exchange (CSE) and TSX relating to their listing standards. The initial priority is Cboe. As discussed in the first action item of **Recommendation 14**, the OSC is commencing a review of selected CPC qualifying transactions on the TSXV and RTO transactions on Cboe with an aim to provide greater oversight of exchange processes used to approve alternative listings.

The OSC is planning to start its review of Cboe in fall 2023, to be completed by December 2024. The OSC plans to conduct an oversight review of Cboe that will include the RTO review described in the first action item of **Recommendation 14** as well as a review, on a sample basis, of the stock exchange's processes for approving new entrants, where OSC is the principal regulator.

The OSC is also planning to start its review of the CSE in fall 2023, and to conduct a formal oversight review by December 2024, within one year after the amended CSE listing policies became effective in April 2023. This time frame will allow for a large enough sample of issuers that have been accepted for listing under the new listing requirements. The review will

assess the CSE's implementation and application of the amended policies.

The OSC was not planning to conduct a review of the TSX's listing functions at the time of our follow-up. It noted that the nature of the issuers listing on the TSX, its more established listing processes, experienced staff and smaller number of issuers listing through alternative methods pose less of a risk for investors. The OSC stated that there were no RTO issuers listed on the TSX in 2021. The OSC also completed a TSX oversight review in 2016. Taking into account resources and risk levels, the OSC is prioritizing reviews of the CSE and Cboe. The OSC may consider a review of the TSX's listing function after the priority reviews of the TSXV, CSE and Cboe have been completed. The OSC expects to have fully implemented this recommendation by December 2024.

- *publish the names of new reporting issuers in Ontario, detailing the means by which each issuer raised capital in the public markets, for example, by IPO, Capital Pool Companies, Special Purpose Acquisition Companies as well as reverse takeovers;*

**Status: Fully implemented.**

### Details

During our 2021 audit, we noted that the OSC did not communicate and highlight new distributions of securities by companies that have entered the market through the alternative methods described in the first action item of **Recommendation 14**, nor had it alerted investors to specific risks inherent in these types of transactions.

In our follow-up, we found that the OSC has fully implemented this recommendation by adding a drop-down list and date field to its new Reporting Issuer Database. The database includes all reporting issuers in Ontario, and the entry method by which an issuer became a reporting issuer has been populated with all issuers that will have become new reporting issuers after April 1, 2023, and where the OSC is the principal regulator. The new database has been made available to the public since August 2023, following the Canadian Securities Administrators' release of the new System for Electronic Data Analysis and Retrieval+

(SEDAR+) in July 2023. SEDAR+ allows issuers to file public securities documents and information with the Canadian Securities Administrators.

- provide educational resources to investors highlighting the risks of investing in these companies.

**Status:** Fully implemented.

### Details

In our follow-up, we found that the OSC has fully implemented the recommended action by publishing new guidance for investors that highlights the risks of investing in SPACs, CPCs and RTOs through various educational resources. The new guidance:

- describes these different methods of becoming a public company;
- explains the speculative nature of investing in companies that seek to enter the capital markets through these alternative methods; and
- highlights the risks of investing in such companies, including limited public disclosure, potential conflicts of interest, absence of redemption rights and limited voting rights.

The OSC has distributed these educational resources to investors through multiple channels. For example, in its November 2022 newsletter, the OSC included an article on SPACs, CPCs and RTOs discussing the additional risks these may pose for investors. In December 2022, the OSC posted an article containing similar information on its investor website. OSC has also posted information about these types of entities and the risks of investing in them on Twitter and Facebook.

## The OSC Can Expand Its Existing Processes to Provide Broader and More Proactive Oversight over Market Participants

### Recommendation 15

*To sufficiently identify and evaluate the risk associated with reporting issuers and registrant firms by considering additional key risk factors, we recommend that the Ontario Securities Commission:*

- collect and analyze data, such as location and size of operations, frequent changes of senior management, late filings and deficiencies identified in prior reviews; and
- use the additional data when selecting additional reporting issuers and registrant firms for compliance reviews.

**Status:** In the process of being implemented by December 2023.

### Details

In our 2021 audit, we found that the OSC's Corporate Finance and Compliance and Registrant Regulation Branches could improve their existing risk assessment processes and better protect investors by selecting key criteria such as location of reporting issuers or key deficiencies found in registrant firms, to identify and select additional market participants for proactive review and provide better oversight over market participants.

During our follow-up, we found that the OSC was in the process of adding key risk factors to the risk assessment processes as part of its review of reporting issuers and registrant firms. For example, the OSC includes the following factors in its risk assessment processes:

- Location and size of operations of reporting issuers in Russia and in jurisdictions that have denied access to component auditor working papers (i.e., China, Mexico, Tunisia and Bermuda)—As of March 15, 2023, the OSC identified 39 reporting issuers with more than 10% of their revenues from these countries, and another 22 reporting issuers with more than 10% of their assets in these countries. Of these 61 total reporting issuers, 28 issuers had a market capitalization below \$50 million. The OSC included the data as part of its risk assessment for selecting firms to review in 2023/24.
- Reporting issuers' point of entry into the capital markets through an RTO, SPAC qualifying transaction or CPC qualifying transaction—OSC staff have analyzed the data on an annual basis and started to incorporate the results as part of the OSC's risk assessment since March 2022.

- Past significant deficiencies from late filings and deficiencies identified in prior reviews— The OSC used the data that it already captures in its database as part of its risk assessment process for selecting firms to review in 2024.

With respect to collecting and analyzing data relating to frequent turnover of senior management, the OSC has put in place a process to obtain such information for registrant firms.

With respect to reporting issuers, in March 2023 it created a centralized database of all directors and officers. The OSC plans to incorporate this data into its risk assessment processes, which it expects to put into effect by December 2023 for selecting reporting issuers to review in 2024.

## The Corporate Finance Director Lacks Statutory Authority to Require Companies Using Regulatory Exemptions to Make Sufficient Disclosures

### Recommendation 16

*To enhance the ability of the Ontario Securities Commission to enforce compliance with securities law by companies selling securities in the exempt market, including disclosure requirements and conditions of prospectus exemptions, we recommend that the Ministry of Finance provide the Director of the Corporate Finance Branch with the authority to cease trade or impose terms and conditions on these exempt-market companies when issues are found in their compliance reviews, after reviewing the authority provided to other jurisdictions such as Alberta.*

**Status:** In the process of being implemented by December 2024.

### Details

In our 2021 audit, we reported that the OSC's Corporate Finance Branch did not have adequate legislative authority to respond effectively or quickly when it identified non-compliance by companies that were not reporting issuers and that qualified for regulatory exemptions.

It would be beneficial for the Branch Director to have the power to issue a cease-trade order in respect of an exempt market issuer on a timelier basis, in situations where there are significant concerns with the issuer and its compliance with prospectus exemptions. We found that a similar authority to issue a cease-trade order, relating to both the exempt and non-exempt markets, had been provided to the Alberta securities regulator under that province's laws.

During our follow-up, we found that the Ministry had undertaken a public consultation process to obtain feedback on the draft Capital Markets Act in fall 2021, which was concluded in February 2022. Sections 124 and 125 of the draft legislation, if passed, would provide additional regulatory powers for the OSC Chief Regulator, including the ability to cease trade or impose terms and conditions on exempt-market companies. These powers could be delegated to the Director of the Corporate Finance Branch.

The Ministry and the OSC also reviewed the public comments received from the public consultation on the draft Capital Markets Act and continue to conduct policy and legal analysis. Implementation of this recommendation will require amending the *Securities Act*. The anticipated implementation date of December 2024 factors in the time required to consider, develop and introduce future proposed legislative changes, pending government direction on these matters.

## The OSC Has Limited Power to Require Formal Communication from the Public Accounting Firm Oversight Body

### Recommendation 17

*To enable the Ontario Securities Commission (OSC) to be able to fully monitor market participants and protect investors from the risk of improper financial reporting practices, we recommend that the Ministry of Finance work with the OSC and the Canadian Public Accountability Board to review and identify opportunities to improve information-sharing practices, including potential legislative changes.*

**Status:** Little or no progress.

### Details

At the time of our 2021 audit, we found that the OSC did not have the legislated authority to require the Canadian Public Accountability Board (CPAB)—the pan-Canadian regulator created by the CSA, the Office of the Superintendent of Financial Institutions and other regulators to provide oversight over public company auditors—to communicate to the OSC certain information about audit firms and the public companies that they audit. In comparison, the federal Securities and Exchange Commission (SEC) in the United States has greater authority over the Public Company Accounting Oversight Board (PCAOB).

In our follow-up, we found that the OSC and CPAB were working together but have made little progress on developing a non-legislative approach to improve and formalize information-sharing practices within the existing legislative framework. Throughout the policy development process, the Ministry has engaged both OSC and CPAB staff, and conducted internal policy and legal analyses. The OSC and CPAB have developed protocols and are working on a draft amending the memorandum of understanding between them to improve information-sharing arrangements. This includes:

- notification of issues within an inspection that CPAB believes may pose a serious imminent risk to the investing public—CPAB would provide the information to OSC staff as soon as practicable after an issue is identified; and
- Investigation Reporting Protocol—which includes regular updates on investigation activities when CPAB’s Board determines that a violation may have occurred.

The sharing of other reports and information is an additional component to this work that has raised further legal, jurisdictional and stakeholder considerations. The OSC and CPAB continue to work together with the Ministry to assess the policy and legal considerations relating to improvements in information sharing that may require legislative amendments. For example, the sharing of Engagement Findings Reports continues to undergo policy and legal analyses, as it

has raised further legal, jurisdictional and stakeholder considerations.

### Recommendation 18

*To strengthen the oversight of reporting issuers with significant operations in foreign countries, we recommend that the Ontario Securities Commission continue to actively support the Canadian Securities Administrators and the Canadian Public Accountability Board in accessing audit working papers of component auditors outside of Canada.*

**Status: Fully implemented.**

### Details

In our 2021 audit, we noted that the CPAB reported that it had been denied access to component auditor working papers in four jurisdictions—Bermuda, China, Mexico and Tunisia. However, since the OSC did not track the location of operations of the approximately 1,000 publicly traded companies or reporting issuers that it regulated, it did not know how many of its reporting issuers had significant operations in the four countries that denied access to the work of component auditors to the CPAB.

In October 2019, the CSA published proposed amendments to existing rules that would assist the CPAB in accessing audit work performed by component auditors outside of Canada. Final amendments are expected to be operational by the end of 2021/22.

In our follow-up, we found that the rule amendments came into effect in 2022 and have been available for the CPAB to use in its inspections since that time. The amendments require reporting issuers to give notice in writing to their auditors to provide CPAB, on request, with access to their audit work papers relating to the audit of the reporting issuers’ financial statements. In early 2023, OSC staff confirmed with the CPAB that the CPAB had no issues in its 2022 inspections since the rule amendments had come into effect, and that no further support is needed from the OSC. Therefore, this recommendation is fully implemented.

## Recommendation 19

To better monitor market participants and to provide protection to investors from potentially unfair and improper financial reporting practices, we recommend that the Ministry of Finance work with the Ontario Securities Commission (OSC) and the Canadian Public Accountability Board (CPAB) to:

- review public feedback on the CPAB's consultation paper requesting input on the Protocol for audit firm communication of the CPAB inspection findings with audit committees;

**Status: Fully implemented.**

### Details

In our 2021 audit, we noted that the regulatory framework governing the CPAB included a voluntary Protocol that sets out how audit firms communicate the CPAB's inspection findings to audit committees of reporting issuers. Under the Protocol, audit firms provide to the audit committees of the reporting issuer the inspection findings report that details any significant findings specific to the reporting issuer's inspection. This is in addition to the publicly available annual audit quality assessment report that highlights the CPAB's common findings across its inspections in a given year, as well as recommendations to improve audit quality.

Following our audit, in March 2022 the CPAB released a report titled "Update on feedback received and next steps for CPAB's disclosures consultation." The report summarizes the public feedback that the OSC collected in a 2021 consultation from over 100 stakeholders on potential changes to the voluntary Protocol. The stakeholders, composed of audit committee chairs and members, investors, audit firm partners and professionals, responded through an online survey, comment letters and one-on-one interviews. CPAB solicited feedback on whether its rules should be amended to make the sharing of the results of individual audit file inspections with the audit committee mandatory. CPAB was also interested in whether this sharing of information should be mandatory for all reporting issuers, specifically whether there should be a different practice for certain reporting issuers with

different disclosure obligations in Canada, such as venture issuers.

- assess the appropriateness of the existing Protocol; and
- determine whether the Protocol should be mandatory for all participating audit firms.

**Status: In the process of being implemented by December 2023.**

### Details

Our 2021 audit found that non-participation in the CPAB Protocol indicates a general lack of transparency and potential issues with an audit firm's operational approach. The CPAB noted that audit committees, being responsible for overseeing the work of the external auditors, have indicated to the CPAB that they would like more transparency with respect to audit-inspection findings in order to improve the effectiveness of their own oversight role. Our 2021 audit also noted that the CPAB's public consultation on making the Protocol mandatory contained a proposal that the CPAB's rules be changed to require mandatory sharing of file-specific audit-inspection findings with the audit committee of a reporting issuer.

In our follow-up, we found that the CPAB report referenced in the first action item of **Recommendation 19** indicated that over 85% of respondents supported mandatory sharing of individual audit file inspection results with the respective audit committee on the basis that this information supports the audit committee's oversight of their auditor. The Ministry and the OSC have reviewed a brief proposal for the potential changes to the Protocol developed by the CPAB based on the feedback received. The CPAB's proposal contemplates updating the *Protocol for the Audit Firm Communication of CPAB Inspection Findings with Audit Committees, 2014* to reflect mandatory reporting to audit committees of significant inspection findings.

The CPAB has completed pre-consultations with key stakeholders on a series of proposed amendments to the CPAB rules, including concerns regarding sharing of inspection findings by participating audit firms with audit committees. The CPAB started to conduct

a formal public consultation on the proposed rule changes in September 2023, whose feedback will help determine whether it is appropriate to adopt the proposed rule change and amend the Protocol to reflect mandatory reporting to audit committees. Following the completion of the consultations, the CPAB, with input from the Ministry and the OSC, intends to finalize the implementation plan, which will include approval of the new rules by the Minister of Finance.

The Ministry expects that the recommended actions within its scope will be fully implemented by December 2023. However, implementing the mandatory protocol would require legislative amendments based on the latest analysis conducted by the CPAB that would most likely not be completed by that date. At the time of this follow-up, the Ministry was reviewing the CPAB's revised proposal for rule changes and considering the implementation timelines, which are subject to government direction.

## The OSC Lacks the Technology and Analytical Tools to Provide Efficient Oversight over Market Participants

### Recommendation 20

*To enhance the effectiveness and efficiency of monitoring market participants for compliance with securities laws and conducting enforcement actions for non-compliant activity, we recommend that the Ontario Securities Commission (OSC):*

- *develop a formal plan, with a specific timeline and budget, to replace separate, legacy systems and databases with an integrated platform;*

**Status: Fully implemented.**

### Details

In our 2021 audit, we found that the OSC lacks data analysis tools to enable it to effectively identify trends and analyze market participants' compliance with securities laws. The OSC relied on third-party data providers to assess such trends and perform the analyses.

As well, we noted that financial statement filings by reporting issuers that are submitted to the OSC

through the System for Electronic Document Analysis and Retrieval (SEDAR)—a decades-old filing system developed for the CSA to facilitate the electronic filing of securities information—are filed in a format that cannot readily be used for data extraction and analysis. Therefore, OSC staff were unable to use modern technologies to effectively and efficiently monitor reporting issuers and their related filings by extracting trends and performing other analyses. For example, OSC staff did not use tools such as the Beneish Model, generally used to identify and prevent financial statement fraud.

In our follow-up, we found that, in November 2021, the OSC had finalized a strategy and a formal plan with timelines and budget to replace separate legacy systems and databases with integrated platforms. Specifically, the OSC created the Digital Platforms Strategy after taking into consideration its digital and data capability needs. Two new digital platforms (Reg360 and the OSC1 portal) were created to cater to various branches of the OSC and will eventually replace legacy applications and Lotus Notes databases.

In addition, the OSC created a five-year (2021/22–2025/26) product roadmap to set up the two new digital platforms. Reg360 is to streamline end-to-end regulatory activities including contact centre operations, registrations, disclosure, compliance oversight and enforcement. The OSC1 portal provides a single window for OSC staff to access internal systems, and a client-facing window for OSC external participants such as individuals and organizations that submit OSC-specific filings to the OSC on a regular basis.

Based on the roadmap, the OSC has budgeted a total of \$17.6 million to set up these platforms over a five-year period. As of June 2023, the OSC has spent \$6.3 million and budgeted another \$11.3 million until the end of 2025/26.

- *equip and train OSC staff in the use of modern technologies;*

**Status: Fully implemented.**

### Details

In our follow-up, we found that the OSC has fully implemented this action item and provided training to its staff on the new digital platforms mentioned in the

first action item of **Recommendation 20**. The OSC has also created awareness across the organization on the new technologies and their capabilities using internal communications such as Digital Ignite and Showcase forums. Product managers are leading the training sessions virtually, and the sessions are recorded for future reference. For example, in November 2022, the OSC trained the Enforcement Branch to support the rollout of the Reg360 platform. During 2023, the OSC held further training sessions on the Reg360 platform and other data platforms and tools such as Tableau/Business Intelligence and the Refinitiv Workspace. The OSC indicated that as needs arise, it will also facilitate deep-dive, hands-on training sessions for more complex features on new technologies.

- *include a centralized view of information regarding directors and senior management of market participants in the integrated platform;*

**Status: Fully implemented.**

### Details

Our 2021 audit found that essential information regarding directors and senior management of companies issuing securities was found in various databases that the OSC uses and was collected in different formats. Several OSC databases contained critical information about public-financing activity (Management Information Tracking System), filings and director and senior management information for companies selling securities in the exempt market (Reports of Exempt Distribution), past compliance reviews (Continuous Disclosure or CD Workflow) and insider participation (SEDI).

In our follow-up, we found that the OSC has fully implemented this action item and created a searchable centralized database for its staff to access information on directors and senior management of issuers. In June 2022, the OSC engaged a third party to access relevant data on directors and senior management of market participants. In 2023, the OSC was testing the integration of the data from the third party into the OSC's database of officers and directors. The OSC has engaged with the supplier's technical support and resolved issues around the completeness of the data.

The OSC indicated that it has also been collecting user feedback to make any needed improvements to the database going forward.

- *prioritize an integrated approach to monitoring compliance and flagging problematic behaviour on a timely basis through the use of integrated technology tools, data and other processes.*

**Status: In the process of being implemented by December 2025.**

### Details

During our 2021 audit, we noted that the OSC had established the Digital Solutions Branch in September 2020 to address the issues it had with multiple databases. This branch was expected to build an enterprise data approach to allow for "improved data insights and efficient data sharing between branches within the OSC and with industry stakeholders." The OSC's draft 2021/22 Statement of Priorities indicated that it wishes to increasingly transition from "stand-alone, legacy systems to integrated enterprise platforms."

In our follow-up, we found that the OSC has completed work in defining its vision for its digital and data platforms, which focuses on an integrated approach to monitoring compliance and flagging problematic behaviour on a timely basis. The Digital Solutions Branch worked with branches across the OSC and identified the digital and data capabilities required. Based on this, the OSC published its platform strategy in November 2021. It has developed a digital and data roadmap for 2023/24 to 2025/26 to provide the capabilities for an integrated approach to monitoring compliance.

At the time of our follow-up, the OSC was setting up multiple digital platforms to implement its digital and data platform strategy. For example:

- Reg360, the core regulatory compliance platform, to integrate tools and data;
- e-DARP, the Enterprise Data Analytics and Reporting Platform, to offer enterprise data, analytics and reporting capabilities;
- Trillium Back Office, to integrate and support OSC's back office processes;



- Robotic Process Automation, to automate repetitive manual activities; and
- the OSC1 portal, to provide a single view for staff and another single portal for external participants who are individuals and organizations that submit OSC-specific filings to the OSC on a regular basis.

The OSC has mapped the various legacy systems to the new digital and data platforms. These legacy systems will eventually be replaced by the new platforms.

The OSC expects to complete implementation of the digital platforms roadmap by December 2025.

### Recommendation 21

*To better record, manage and analyze investor complaints consistently within the Ontario Securities Commission (OSC), we recommend the OSC:*

- *develop and implement a formal plan with a specific timeline and budget to integrate the applications, data and processes across the organization used to record and manage investor complaints; and*
- *complete the integration of operations, data and processes around OSC.*

**Status:** Fully implemented.

#### Details

In our 2021 audit, we noted that the database used to record investor complaints received by the OSC's contact centre was not integrated with those that recorded complaints received directly by the other regulatory branches of the OSC. Although this lack of co-ordination was also mentioned in the OSC's 2017 internal audit report, at the time of our audit, the OSC still did not have a formal plan to consolidate the systems or move to one platform so that the weaknesses could be addressed.

Our follow-up found that in November 2021, the OSC approved the business case to develop and implement its new integrated system to record and manage investor complaints. Product and system development spanned November 2021 to March 2022; rollout, including training, production and deployment, was

done in April and May 2022. The new contact centre application was launched in June 2022.

Since June 2022, the OSC has implemented a new application to support the Inquiry and Contact Centre business processes and has integrated the recording, managing and analysis of investor and market participant inquiries and complaints across its branches. The OSC's Inquiries and Contact Centre staff, along with other operational branch staff, were migrated to the new Reg360 platform, the OSC's integrated regulatory platform, in July 2022. The Reg360 platform integrates various data and processes, and replaces the legacy applications that were used to manage investor and market participant inquiries and complaints across the OSC.

In December 2022, the OSC reminded all its staff of the need to use Reg360 to track complaints received from external parties in the new system and processes. Staff from across the OSC have access to dashboards covering activity in their branch and are able to search cases across the OSC. Regulatory Branch directors are provided with quarterly reports on their branch's use of the Reg360 application for tracking complaints.

### Recommendation 22

*To help improve case management, tracking and monitoring capabilities by its Enforcement Branch, we recommend that the Ontario Securities Commission identify a deadline and budget, and move forward and implement an integrated information system.*

**Status:** In the process of being implemented by December 2025.

#### Details

In our 2021 audit, we found that the OSC's Enforcement Information System was a more than 20-year-old Lotus Notes database that was not designed to track case evidence or investigations. As a result, much investigation work exists outside the system, requiring manual tracking via spreadsheets. That limits the Enforcement Branch's reporting capabilities and makes it more difficult to consolidate branch reports. There was also no integration between the Enforcement

Information System and other databases used by the OSC.

As of July 2021, the Digital Solutions Branch had been leading a project to move to a new system to consolidate the OSC's internal systems. This would include replacing the Enforcement Information System as well as other databases.

In our follow-up, we found that the OSC had identified the digital and data capabilities it needs for operations, and developed the OSC Digital Platforms strategy. The OSC has created a roadmap for each platform, including Reg360 (the regulatory platform that includes the enforcement case management system), mentioned in **Recommendation 20**.

Since the business case for Reg360 was approved in June 2022, the OSC has been rolling out the platform with various teams within the Enforcement Branch. The OSC expects to manage all enforcement cases from the new platform and to consolidate views of all data and information related to enforcement, and to consolidate documents by December 2025.

## The OSC's User-Access and Change-Management Controls for Information Technology (IT) Systems Can Be Further Strengthened

### Recommendation 23

*To prevent unauthorized modification to data and programs, we recommend that the Ontario Securities Commission implement controls to:*

- *enforce its existing process for all IT systems to periodically review users' roles or permissions and implement any required changes in a timely manner;*

**Status: Fully implemented.**

#### Details

In our 2021 audit, we found that the OSC had established a quarterly user-access review process to ensure that employees who no longer require access to IT systems are removed in a timely manner. But we found that the OSC had never performed an access review

to determine if user access to IT systems and the data centre was appropriate and relevant for most of the key IT systems that we selected.

Since our 2021 audit, the OSC has reviewed and added additional applications to its quarterly user-access review process to help prevent unauthorized access or changes to data or programs. The OSC's User Account Administration unit, which began operating in June 2022, has generated an extract of a report that lists all the existing users and their access to the specific applications from the previous quarter. The extract is then filtered by individual branch and shared with the director of each branch. Each branch director is responsible for reviewing the branch-specific user-access report and identifying any changes required on a separate change report document. Once all changes have been reviewed and approved by the director, the branch director is to return the completed Change Report spreadsheet to User Account Administrators.

If there are changes, the User Account Administration unit reviews and approves the necessary updates based on the completed Change Report spreadsheet. If there are no changes, and the list is approved, the User Account Administration unit approvals are filed to ensure that permanent records are maintained. This reporting process, started in June 2022, was fully implemented across all OSC branches in December 2022, and the OSC informed us that it will continue this process in the future.

- *document physical access permissions and modification approvals via a ticketing tool, and review changes regularly;*

**Status: Fully implemented.**

#### Details

Our 2021 audit also found that changes to access provided to the OSC data centre were not adequately recorded and reviewed by OSC staff. Unauthorized and inappropriate access to computer facilities may lead to theft or loss of critical data.

In our follow-up, we found that the OSC had put in place a new process for requesting physical access to the OSC data centre, starting in August 2022. All requests for access are now tracked via Helpdesk tickets

or a new “Request Access to Restricted Areas” form. The IT storage and hub rooms, and another computer room, have been added to the list of restricted access areas. In August 2022 the OSC emailed its staff a reminder about the access requirements and processes. The OSC indicated that it will continue monitoring and reviewing physical access to the restricted areas on a monthly basis.

- *retain and review logs showing when access was removed for terminated employees and staff to ensure access was removed on the same day of termination;*

**Status: Fully implemented.**

### Details

Our 2021 audit noted that the OSC did not retain logs of user account deletion for terminated employees. As per industry best practices, access for terminated employees should be removed on the day of termination.

After our audit, the OSC initiated a monthly process to review logs of user account deletion for terminated employees. Since July 2022, the OSC’s technology services manager has randomly reviewed five account deletions from the previous month to ensure that access was removed on the same day as termination. The technology services manager captures and maintains screenshots as evidence to demonstrate that the accounts have been deleted appropriately and in a timely manner. Any findings from the manager reviews are recorded on a spreadsheet that is accessible only to the IT management team. The OSC’s Chief Information Officer then receives the review attestation provided by the client service manager on a monthly basis.

- *review and retain user activity logs for events/alerts that are necessary for its operations based on the system criticality to the business.*

**Status: Fully implemented.**

### Details

Of the 17 systems that we reviewed during our 2021 audit, we found that detailed user activities were not being recorded and retained for 10 systems and not

logged for seven systems. As per industry best practices, user activity logs should be enabled, and reviewed on a periodic basis.

In our follow-up, we found that, on a monthly basis, the OSC reviews and retains user activity logs for critical business applications such as Lotus Notes, IBM Case Manager, Tableau and e-DARP to identify all events and alerts. This information, such as which employee has access to which applications and other events/alerts, is extracted and captured in a single spreadsheet.

The OSC Chief Information Security Officer reviews the spreadsheet and its contents on a regular basis to determine what activity logs should be sent to the Security Information & Event Management System, a security tool that provides centralized log monitoring and security incident correlation and automation. The security tool captures log monitoring from multiple systems such as firewalls and access control systems, and triggers alerts when certain conditions are met.

### Recommendation 24

*To control that only authorized changes are made to the IT systems, we recommend that the Ontario Securities Commission:*

- *implement a centralized change-management tracking tool so that changes are tracked efficiently and unauthorized changes cannot be implemented, and retain all testing evidence related to the changes for traceability;*
- *implement controls to restrict access to apply changes to IT systems; and*
- *implement user activity logging and perform a review to assess the risk associated with the development team having access to production environment for legacy IT systems where access cannot be restricted.*

**Status: Fully implemented.**

### Details

In our 2021 audit, we found that for changes made to key IT systems in the previous year, the OSC did

not have a change management ticketing or tracking tool to track necessary information such as approvals, test details and evidence of implementation of changes it made to its IT systems. Changes made to its systems were manually tracked through Microsoft Excel spreadsheets and emails instead of an automated change management tracking tool. In addition, for 36 out of 113 change records, we noted that the IT staff who developed the IT system changes also applied the changes. As per industry best practices, changes should be developed and applied by separate teams in order to ensure segregation of duties to prevent unauthorized changes.

In our follow-up, we found that the OSC had launched a new change management tool within its cloud environment in August 2022. The new system has role-based permissions to ensure that only authorized staff or change managers can approve a request for change once the associated criteria have been met. The members of the Change Approval Board are known as change managers; the Board is composed of senior IT staff including the Chief Information Officer. The Change Approval Board, which was created in September 2019, meets weekly to review all requests for change and provide the required approval if the criteria are met. Testing evidence is also attached to the relevant request for change prior to authorization and is retained for historical purposes.

The change management tool tracks all steps in the process (from request to approval and implementation) and the outcome for each request, and provides a history of all changes. Only the change managers are allowed to complete each change request by verifying that the change was completed successfully.

The OSC also implemented a privileged access management tool in November 2018 to allow secure privileged credentials through password management. The tool stores privileged passwords while logging who accessed them, when they were accessed, and which systems the implementer has connected to. This system provides additional controls for onboarding privileged users who have access to both development and production systems. In November 2022, the OSC began using a new monthly review process as an additional

safeguard, by extracting and reviewing all access by IT administrators and privileged accounts.

The OSC has identified and maintained segregation of duties for 95% of all changes made to its production environment since August 2022. To ensure transparency where segregation is not possible, the individuals making the request for change are clearly outlined within each request for change submission and reviewed by the Change Approval Board. The OSC continues to accept the risk of its development team having access to production systems, but is limiting the risk with its use of a privileged access management tool, the Change Approval Board approval process and the new monthly review of privileged account users.

### Recommendation 25

*In order to establish accountability and restrict the use of system administrator accounts, we recommend that the Ontario Securities Commission:*

- *assess appropriate access permissions required and assign individual user administrator accounts (username and password) for IT staff; and*
- *enroll the legacy system as part of the Privileged Identity/Access Management tool to ensure that actions performed using administrator accounts are recorded and monitored.*

**Status: Fully implemented.**

### Details

In our 2021 audit, we found that the OSC utilized a Privileged Identity/Access Management software tool that stores usernames and passwords for administrator accounts for multiple IT systems. However, this tool did not maintain administrator accounts and passwords for certain key operational systems supported by legacy technologies. When assessing whether administrator accounts were restricted to authorized users, we found instances where two IT staff shared credentials, such as IT system user ID and password, for one system administrator account. If credentials are being shared, there is a risk that accountability for activities performed using administrator accounts cannot be traced back to individual staff.

In our follow-up, we found that, in April 2022, the OSC had completed an initial review of information technology administrator accounts and ensured that staff requiring administrator access are assigned individual information technology administrator accounts. Starting in July 2022, the Information Services (IS) and Information Security branches commenced monthly reviews of the OSC's privileged accounts on both servers and workstations. The process entails the Information Security team sending the IS team a raw extract of all activity on all accounts. The IS team then assesses each account to determine if it is still required or can be removed. If an account needs to be removed, the IS team will delete it. The OSC's Privileged Account Management Policy requires that privileged access be reviewed on a quarterly basis, but the OSC has chosen to perform the review monthly.

All legacy systems such as Lotus Notes are now enrolled within the OSC's Privileged Identity/Access Management tool so that actions performed using administrator accounts are recorded and monitored regularly.

## Additional and Emerging Areas of Interest

### Recommendation 26

*To regulate evolving capital markets effectively, we recommend that the Ontario Securities Commission develop regulatory strategies in these areas and implement appropriate actions on a timely basis.*

**Status:** Fully implemented.

### Details

During our 2021 audit, we noted a number of additional and emerging areas of interest, such as alternative performance measures, minimum pricing increments and fixed income markets, in our discussions with the OSC and stakeholders.

In our follow-up, we found that the OSC has developed a tool for collecting, collating and sharing information on emerging regulatory issues. In August 2022, OSC staff completed the testing phase of this new tool, and it is assessing potential next steps. In support of this business planning process, the results of this work were presented to the executive management team and to the Board in September 2022. The OSC indicated that this exercise is intended to think beyond the one-year planning cycle to help anticipate changes that could emerge in Ontario's markets, and to identify areas for further research.

The OSC is also implementing "horizon scanning" that aims to identify emerging issues relevant to its oversight of capital markets. OSC staff have considered various academic and organizational approaches to horizon scanning to identify trends and their potential impacts, taking into account a range of plausible outcomes in the OSC's regulatory environment. The OSC indicated that it will continue to be involved in several international and cross-agency committees. One of these activities is leading the development of the International Organization of Security Commissions' annual Risk Outlook Report. Developing the report provides the OSC staff with an opportunity to learn about emerging risks present in other jurisdictions and to assess foreign risks that may be relevant to Ontario's capital markets.