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Big Changes in Financial Regulation: Dialogue with the OSC 2020

On November 4, 2020, the Ontario Securities Commission (OSC) held its annual OSC Dialogue. Financial industry leaders, senior regulators and investors came together virtually to discuss changes in the industry and how they are working together.

This year, the current COVID-19 global pandemic informed both the virtual setting for and the theme of the OSC Dialogue. The main theme of the discussion was the link between the world's physical and financial health brought forth by the pandemic. The OSC Dialogue was divided into five sessions, and in spite of the different topics and perspectives, one key issue was at the forefront of the discussion: the role of the OSC in fostering economic growth, adapting to technological innovation, and incorporating principles of Environmental, Social and Corporate Governance (ESG).

The Capital Markets Modernization Taskforce and the Expansion of the OSC's Role

In February of this year, the Ontario government established the Capital Markets Modernization Taskforce, which is in charge of making recommendations to the Minister of Finance for the review and modernization of the province's capital markets regulations. Walied Soliman, Taskforce Chair and Canadian Chair of Norton Rose Fulbright, provided an update on the work of the Taskforce. He noted that the Taskforce's recommendations will focus on three pillars: (1) proper governance, (2) an expanded mandate for the OSC, and (3) harmonized regulation.

One of the key discussions across the OSC Dialogue focused on the second of these pillars. In several panels, which included a conversation with former OSC chairs, a discussion about the role of regulation in rebuilding the economy, an update from the Ontario Capital Markets Modernization Taskforce and a discussion on fostering innovation, the participants discussed the proposed expansion of the OSC's mandate to include the fostering of capital formation and the protection of competition. This proposal, as pointed out by Soliman, is part of the Taskforce's recommendations and will

be delivered to the provincial government in December in its final report.

The Taskforce's justification for this and other recommendations highlighted by Soliman is that, "Capital markets regulation is not an end to itself"; a phrase he repeated during his presentation, and a sentiment which aligns with the current Ontario government's view on regulation.

Soliman stated that such regulation must respond to the social and public good it is meant to support and the economic well-being of the province. He pointed out that the inclusion and making of this recommendation was not a difficult decision to reach by the members and that it follows advances already occurring in other places, including changes made in the UK, Singapore and Australia, where regulators have mandates to promote economic growth and competition, allowing them to remove obstacles including fees and tackle anti-competitive behaviour.

However, not every panelist agreed with the Taskforce's easy adoption of this recommendation. On an earlier panel where several former OSC chairs discussed perspectives, Maureen Jensen, the previous OSC Chair until April of this year, had a word of caution for this proposed mandate expansion. Jensen warned that it can be very difficult to be both the regulator and a partner in fostering businesses, as it can affect the OSC's independence in subsequent regulatory and enforcement actions. She added that the OSC's current mandate already allows it to promote a fair and efficient market which allows the regulator to encourage innovation but without standing in the way by partnering in the innovation. Howard Wetston, Senator and former Chair of the OSC, agreed with Jensen's caution but noted that capital formation has always been a key role of the OSC and that what is needed in any case is more transparency in the OSC role.

Other recommendations that the Taskforce update revealed include an increase of OSC oversight over self-regulatory organizations (SROs). While Soliman recognized the importance of SROs in filling the gap left by the lack of a national securities regulator, he noted that their recommendation would be for the OSC and Minister of Finance to collaborate to ensure business plans and regulations align with public policy, avoid duplication of regulation, and ensure that all capital markets are rowing in the same direction. This recommendation follows policy discussion around the combination of the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association

Finally, Soliman made a call to the public to continue to engage with the Taskforce. In spite of the Taskforce's public consultation period ending in September of this year, he pointed out that stakeholders can still reach out to the Committee.

Innovation, the Pandemic and ESGs

Throughout the day, most panelists agreed that promoting innovation and ESGs is key for today's market. A number of panelists pointed to the importance of making sure that we have a safe and secure market for innovation. In the discussion on fostering innovation, senior OSC staff discussed the role of the office in supporting innovation. Pat Chaukos, Director of the Office of Economic Growth and Innovation at the OSC, highlighted that the OSC's work in this area is based on three strategic objectives: using research and technology within the OSC's activities; supporting innovative processes in markets; and, supporting innovative economy and incubation markets.

With COVID-19 and the pandemic being the underlying topics of the OSC Dialogue, the discussions around innovation could not possibly ignore the acceleration of the adoption of different technologies in the economy and in the financial sector as a result of the pandemic. This, as many agreed, demands a capacity for faster adaptation by several key stakeholders, both public and private. Jeremy Rudin, Superintendent of Financial Institutions Canada, pointed out that with technological change fast advancing, regulators are trying to catch up at an accelerated rate and that a lesson to be learned from the pandemic reaction should be for regulators to attempt to be more proactive instead of reactive.

Finally, ESGs and pathways to increase diversity in the financial sector were a common theme. Ms. Jensen put the OSC on this path, which mantle has been adopted by Grant Vingo. This was a topic discussed in every panel with several

panelists highlighting the importance of transparent disclosure on ESG and diversity, the role of the OSC in advancing diversity on corporate boards and throughout the market, and the role of public and private bodies in supporting consumers, investors, stakeholders and vulnerable populations as a part of their pandemic response.

While many of the attendants mentioned their disappointment at the Dialogue not being able to take place in person as in past years, the one advantage of the OSC Dialogue taking place virtually was that the dialogue was recorded and will eventually be available to the public. Follow the Dialogue's website for updates. The keynote speech on the taskforce update by Walied Soliman is also available publicly.