TAB 1
TREASURY BOARD / MANAGEMENT BOARD OF CABINET
REQUEST ASSESSMENT NOTE

Ministry:	Energy
Meeting Date:	April 15, 2015
Agenda Class:	Major Item (In Camera)
Last reviewed by: Cabinet, February 4, 2015	**Tracking to:** Cabinet, April 15, 2015

SUBMISSION TITLE:	Hydro One Initial Public Offering and merger of Hydro One Brampton with local distribution companies

I. DECISION BEFORE THE BOARD

- Approve the announcement and terms for an Initial Public Offering (IPO) process for Hydro One, and an intended merger of Hydro One Brampton with other local distribution companies.

II. RECOMMENDATIONS:

• Direct the Ministry to work with CO, MOF (Ontario Financing Authority), and TBS on the development of an IPO implementation plan for Hydro One.	*Direct*
• Approve that the IPO will include the divestment of approximately 15% of the Province's interest in Hydro One in 2015-16.	*Approve*
• Note that the Province would provide to Hydro One a financial benefit, such as a capital contribution, up to the amount of departure tax paid to the Ontario Electricity Financial Corporation by Hydro One.	*Note*
• Recommend legislative amendments that would enable the Province to provide a financial benefit to the OEFC equivalent to the net IPO proceeds, less certain prescribed deductions.	*Recommend*
• Approve the development of a Governance Agreement that would lay out the ongoing obligations of both the Province and Hydro One.	*Approve*
• Recommend legislative and regulatory amendments that would allow Hydro One to operate on a level playing field with other publicly-traded companies and to maximize proceeds.	*Recommend*
• Approve an exemption from the open competitive requirements of the OPS Procurement Directive for Hydro One to acquire book runners for the IPO through an invitational procurement	*Approve*
• Approve an exemption from the open competitive requirements of the OPS procurement directive to conduct non-competitive procurement processes for Hydro One to acquire executive recruitment services to identify nominees for the Hydro One Board of Directors, the Hydro One Chief Financial Officer, the Board of Directors for the Hydro One Brampton combined entity, the Hydro One Chief Financial Officer, and other select Hydro One senior management positions.	*Approve*
• Approve an exemption from the open competitive requirements of the OPS	*Approve*

Procurement Directive for the Ministry to acquire a financial expert to provide advice on the IPO process.	
• Approve the Minister of Energy to direct Hydro One to immediately enter into negotiations to combine Hydro One Brampton with one or more urban local distribution companies (LDCs).	*Approve*
• Recommend that the Ministry will introduce of a number of changes to ensure on-going effective Ontario Energy Board oversight, including including adding consumer protection and education to the OEB's objects.	*Approve*
• Direct the Ministry to report back to TB/MBC with a completed Governance Agreement with Hydro One prior to execution.	*Direct*
• Direct the Ministry to report back to TB/MBC with a detailed IPO implementation plan by Summer 2015.	*Direct*
• Direct the Ministry of Energy to report back to Treasury Board/Management Board of Cabinet with details on the final Brampton transaction results.	*Direct*
• Direct the Ministry to report back to TB/MBC prior to selling any additional subsequent shares of Hydro One, after the IPO.	*Direct*
• Note that the Ministries will report back with proposed regulations to designate Hydro One shares as qualifying assets for the purposes of the Trillium Trust.	*Note*

III. Financial Summary*

$ Millions	2015-16	2016-17	2017-18
Initiative cost requested	0.0	0.0	0.0
Initiative cost recommended	0.0	0.0	0.0
Recommended program base	0.0	0.0	0.0
Offset Recommended	0.0	0.0	0.0
Total Fiscal Impact	0.0	0.0	0.0

*All procurement, due diligence, legal, and transaction costs during 2015-16 would be offset from the proceeds resulting from the proposed IPO.

IV. Key Comments and Considerations

Note: all transaction amounts presented are based on Council estimates and are subject to change based on actual market estimates.

On April 1, 2014, Cabinet Office received approval from TB/MBC to establish the Premier's Advisory Council on Government Assets (the Council), to provide analysis, advice and recommendations on how best to maximize value of a number of key government assets, including Hydro One.

In November 2014, the Council released a report on its initial findings entitled *Retain and Gain: Making Ontario's Assets Work Better for Taxpayers and Consumers*, and the Council was directed by Cabinet to proceed with Phase 2.

In January 2015, Cabinet Office reported back to TB/MBC with an updated Terms of Reference for Phase 2, including:

- Developing implementation planning associated with the separation of the distribution and transmission businesses that are currently integrated in Hydro One; and

- Developing implementation planning and options such as a sale, merger, or amalgamation of Hydro One Brampton.

IPO Process

Through its work, the Council's due diligence and on-going work with the government and other stakeholders has concluded that the Province should proceed with an Initial Public Offering of Hydro One, without separating the distribution and transmission businesses, because:

- there would be costs to separating Hydro One's distribution and transmission businesses, and that the process of separation would take considerable time during a period when the market is particularly attractive;

- all provincial distribution or transmission public policy objectives can be achieved through regulatory oversight;

- an IPO would allow for the company to be widely-held; and

- There is a potential for accelerated Local Distribution Company (LDC) consolidation from merging Hydro One Brampton with other Greater Toronto and Hamilton Area (GTHA) LDCs to drive efficiencies and benefit ratepayers.

As a result, the Ministry is proposing that, based on the Council's recommendations:

- it proceed with an IPO for approximately 15 percent of Hydro One targeted in Fall 2015/Winter 2016;

- the IPO documents indicate that the Province intends to participate in subsequent secondary offerings such that it would retain not less than 40 percent of its Hydro One common shares;

- an allocation of approximately 25-30 percent of the shares in the IPO be targeted for the retail market;

- that, aside from the Province, no single entity be allowed to own more than 10 percent of the voting shares of the new Hydro One (this restriction would also be included in proposed legislation).

Prior to the IPO, the Minister of Energy would issue to Hydro One one or more unanimous shareholder declarations and/or resolutions, to assume decision making from the Board of Directors for all decisions, direction, and instructions related to the IPO of Hydro One.

In addition, the Minister of Energy would appoint a new Chair to the Board of Directors of Hydro One, and the Minister of Energy would appoint a new Board of Directors for Hydro One, based on the recommendation of the new Chair.

Fiscal Considerations

1. *Departure Tax/Capital Contribution*

With a sale of greater than 10 percent, Hydro One will become taxable, and as it leaves the payments-in-lieu of tax (PILs) regime it will have to pay an estimated $2.6B in departure tax to the Ontario Electricity Financial Corporation (OEFC).

- Departure Tax is not an eligible expense that Hydro One can recover from ratepayers, and must be expensed in the year it is incurred.

- As Hydro One's net income would decline by the amount of the tax, the departure tax would not reduce stranded debt (since the Province dedicates an amount to OEFC in respect of Hydro One's net income).

To maintain the capital structure of Hydro One, the Ministry of Finance is assessing different options that would allow Hydro One to fulfil its departure tax obligation to the OEFC. The Ministry of Finance is currently recommending, based on the Council's advice, that the Province enter into an agreement with Hydro One whereby the Province would agree to make a capital contribution to Hydro One, up to the amount of the departure tax, to coincide with Hydro One's payment of the departure tax.

- While the transactions (the Province providing capital to Hydro One and Hydro One paying the departure tax to the Province) would be simultaneous and fiscally neutral on a net basis, the Province's capital contribution would need to be recorded as an expense through a voted appropriation.

- It may be possible to offset a portion of the appropriation requirement by reducing the allocation of the Ministry of Finance's Electricity Sector Provision.

Due to the large size of the appropriation requirement, the Province's provision of the capital contribution would result in the need to table Supplementary Estimates in the days immediately preceding the IPO once a final valuation has been determined, or agreed to for departure tax purposes.

- The final value of the departure tax and capital contribution to be made will not be known until there is a better understanding of the final valuation for Hydro One.

Other options being considered by the Ministry include a net payment in cash, or a remission to the departure tax. A remission of departure tax would eliminate the need to table Supplementary Estimates, but raises a complication in the provision of shares to the OEFC.

The Ministry of Finance/Ontario Financing Authority will report back to TB/MBC with details on the proposed capital contribution, cash transaction or remission to the departure tax, and for approval of supplementary estimates, if required, prior to implementation.

2. *IPO Proceeds*

The Initial IPO of 15 percent of Hydro One is estimated by the Council to result in net proceeds of $760M in 2015-16. A more refined estimate will be available in the days leading up to the IPO, based on current market conditions at the time (see table on page 6 for additional detail, which is based on a scenario that assumes 60 percent of Hydro One's equity is sold over four years).

- The Province is also projected by the Council to receive an additional fiscal benefit of $770M in 2015-16 due to "tax goodwill", a one-time accounting gain that provides a fiscal benefit; and $40M in interest savings in 2015-16.

- Note that with an IPO of greater than 10 percent, the Province would lose a proportionate share of Hydro One's net income going forward, and also lose all PILs revenues from Hydro One going-forward, as Hydro One would exit the PILs regime and become federally and provincially taxable. The total loss for these items is estimated at $140M in 2015-16.

Under the *Electricity Act, 1998* proceeds from any Hydro One divestment, less transaction costs and any amounts determined by the Minister of Finance in connection with the Province's acquisition costs and obligations in Hydro One and transaction costs are to be paid to the OEFC.

The Ministry of Finance is proposing instead that the *Electricity Act, 1998* be amended as part of the proposed legislation to allow the net proceeds from the Hydro One IPO and subsequent share sales to fund the Trillium Trust, while also allowing for the OEFC to reduce the stranded debt (See Appendix C for additional details).

Subject to legislative approval, the Ministry of Finance proposes that the net proceeds (estimated at $760M in 2015-16) and an amount equivalent to the fiscal benefit resulting from "tax goodwill" would go to the Trillium Trust and that the Province provides a financial benefit to the OEFC of approximately $660M (estimated proceeds less the amounts prescribed under the *Electricity Act*) to reduce the OEFC's stranded debt.

The transaction with the OEFC would be fiscally neutral as the OEFC is consolidated on the Province's books. The proposed legislation will provide for a statutory appropriation authorizing the Minister to pay the required amount out of the Consolidated Revenue Fund, but may require an appropriation increase of $660M (however, the proposed legislative changes would allow for the payment to the OEFC to be accomplished by granting a remission of OEFC debt, issuing securities or debt obligations to the OEFC, set off, or any other form determined by the Minister of Finance).

The Ministry will report back to TB/MBC in Summer 2015 with a detailed IPO implementation plan, including the financial details. The Ministry will also report back to TB/MBC prior to participating in any secondary offerings, which would be included in future announcements.

The Ministry of Finance/Ontario Financing Authority will also report back to TB/MBC with details on the financial benefit to be provided to the OEFC prior to implementation.

3. Ongoing Fiscal Impacts

As noted above, the Province will be foregoing annual PILs and net income revenue from Hydro One, estimated at about $740M in 2019-20 and ongoing, assuming the Province's share ownership decreases to 40 percent.

Interest savings from debt paydown from upfront cash proceeds could partially offset the annual loss to approximately $350M starting in 2019-20, after accounting for potential interest savings once the Province decreases its holdings to 40 percent. However, once the government starts investing amounts credited into the Trillium Trust in infrastructure, the interest savings will start winding down, resulting in a higher ongoing loss.

Fiscal Benefit ($M)*		2015-16	2016-17	2017-18	2018-19	2019-20/ Ongoing
Proceeds from H1 IPO (cash)	a	$1,970	$2,230	$2,340	$2,480	
Less: Book Value of Equity	b	$1,210	$1,240	$1,300	$1,350	
Gain on Sale: Upfront Impact from Transaction (Before Tax Goodwill)	**c = a-b**	**$760**	**$990**	**$1,040**	**$1,130**	**-**
Tax Goodwill**	d	$770	-	-	-	-
Loss of Net Income/PILs/Indemnity Payments	e	($140)	($350)	($480)	($640)	($740)
Estimated Fiscal Contribution	**f = c+d+e**	**$1,390**	**$640**	**$570**	**$500**	**($740)**
Potential Interest Savings**	g	$40	$130	$220	$330	$390
Total	**f+g**	**$1,430**	**$770**	**$790**	**$820**	**($350)**

*Based on PAC information as of February 20, 2015 and includes only Hydro One IPO figures. Numbers are based on Council analysis, and subject to change arising from new options. Numbers rounded to the nearest $10M. Numbers may not add due to rounding. On-going amounts forgone would change over time, depending on amount of forgone H1 growth and other changes in market conditions. Assumes mid-fiscal year transactions.
**Tax Goodwill based on fair value on entire H1 less Brampton, arising from H1 partial IPO transaction
**Potential IOD savings would decrease and effectively be eliminated over the long-term as infrastructure projects materialize. Up-front proceeds provide immediate IOD savings, and above assumes that IOD expenditure related to investment projects is capitalized until projects are finalized and in-service.

The initial estimated fiscal benefits are based on continuing the current accounting treatment for Hydro One, reflecting a proportionate share of the entity's net income until a subsequent change to dividends occurs. The fiscal benefits have not been adjusted to reflect potential operational efficiencies that may occur following the sale.

<u>Governance</u>

The current structure of Hydro One is that it is a corporation established under both the *Electricity Act, 1998* and the *Business Corporations Act*, with a single shareholder (the Province), and subject to many accountability and oversight provisions that reflect that ownership.

To enable the IPO and reflect the Province's revised relationship with Hydro One as a result of the IPO, the Ministry is proposing a number of governance changes, including:

- Changes to the role of the Province in appointing the Board of Directors:
  - To oversee the IPO and other changes, the Minister would appoint a new Chair and new Board of Directors;
  - Subsequently, the Province would be entitled to nominate directors up to a maximum of 40 percent of the Board.

- The Province and the Board would have the ability to reject nominees that do not meet qualifications to be set out in the Governance Agreement, but that the Province would be required to vote in favour of the Board's appointments unless it decides to remove all members of the Board, except, at the Province's discretion, the Chair.
- No government employee or person employed by the Province within the last three years would be eligible for election to the Board.
- The Minister of Energy would no longer be able to issue sole shareholder declarations and resolutions allowing the Minister to assume powers of the Board of Directors.

- The development of a Governance Agreement that would establish the obligations of both the Province and Hydro One (some of which would also be included in the proposed legislation), including:
  - Hydro One would be required to maintain a substantial presence in Ontario, including: its principal executive head office; executives with strategic decision-making authority; its grid control functions for the Province; ownership of its regulated Ontario-based transmission and distribution businesses.
  - Hydro One would be required to follow Ontario Securities Commission requirements, including: publicly disclosing the compensation levels of CEO, CFO and the three other most highly compensated executive; publicly disclosing the annual remuneration for each member of the Board of Directors; publicly disclose perquisites (e.g., cars, car leases and car allowances, club memberships, parking, personal travel, reimbursements) that in aggregate are worth $50,000 or more, or are worth 10 percent or more of the salary of the CEO, CFO and the top three most highly compensated executive officers for each year as well as all perquisites paid to directors.
  - Hydro One would list its common shares on the Toronto Stock Exchange.
  - Hydro One would no longer be required to submit annual business plans to the ministries of Energy and Finance for concurrence, nor would the Province receive, for Budget planning purposes, the business plans from Hydro One.
- The introduction of legislation that would allow Hydro One to operate in the same way as other publicly-traded companies (and so create a level playing field with them) and to maximize proceeds, including:
  - Allowing it to own or operate transmission and distribution systems or other businesses outside of Ontario.
  - Limiting the Province from selling or divesting more than its base level of 40 percent interest in Hydro One (note that while the Province could not sell or divest its ownership below 40 percent, the Province's common share ownership could be diluted below 40 percent though, for example new share issuances by Hydro One);.
  - Allowing the net proceeds to flow to the Consolidated Revenue Fund and Trillium Trust by amending the *Electricity Act, 1998* to allow the Province to meet its obligations under the Act towards the OEFC and stranded debt in different ways, e.g., debt remission or issuance, or another form, instead of cash payments. The legislative amendment would also specify as a cost to be deducted from proceeds the past allocations already made to OEFC in respect of Hydro One net income.
  - Enabling the Hydro One board of directors to authorize the issuance of shares of Hydro One to employees of Hydro One or any of its subsidiaries or affiliates, or for

their benefit or on their behalf, for no consideration or for such consideration as the board of directors may approve and enable.
- o Removing Hydro One and its subsidiaries from TB/MBC Directives under the *Management Board of Cabinet Act*.
- o Removing Hydro One from the *Ombudsman Act* (with provision for transitional matters) and instead, requiring the creation of a new ombudsman within Hydro One to provide oversight of the company and its customer interactions.
- o Removing Hydro One from the requirements of the *Public Sector Salary Disclosure Act*.
- o Removing Hydro One from the parameters of the *Financial Administration Act*, but retain the right to request information from Hydro One and the administrator of any pension plan sponsored by it that is necessary and relevant for the sole purposes of preparing the consolidated financial statements of the Province.
- o Removing Hydro One from the oversight of the Auditor General of Ontario, while providing the Auditor with six months to complete any open special audits or special assignments commenced before Royal Assent. Create new right of the Auditor General to access information from Hydro One and its auditors that is necessary and relevant to enable the Auditor General to prepare his or her report, for inclusion in the Public Accounts, on the consolidated financial statements of the Province. However, Hydro One and its auditors are not required to provide information for a period for which Hydro One has not yet disclosed to the public its audited or unaudited financial statements.
- o Removing Hydro One from the *Freedom of Information and the Protection of Privacy Act* and the *Municipal Freedom of Information and the Protection of Privacy Act* (with a six-month transition for both).
- o Removing Hydro One from the requirements of the *Public Sector Expenses Review Act* (with a six-month transition)
- o Excluding Hydro One from the application of the Broader *Public Sector Executive Compensation Act, 2014*.
- o Removing the freeze on executive compensation for Hydro One through changes to the *Broader Public Sector Accountability Act, 2010*.
- o Removing Hydro One from the requirements of the *Financial Accountability Officer Act* (with a six month transition).

In addition, to provide certainty, the Ministry is seeking approval for Hydro One to be exempt from any Treasury Board/Management Board of Cabinet directives that currently apply to.

The Ministry will report back to TB/MBC with the proposed governance agreement prior to implementation. This is necessary to ensure the appropriate accounting treatment for the entity.

Procurement

To assist with the IPO process, Hydro One will conduct, at the request of the Province, the following procurements:

- An invitational competitive process to acquire one or two active bookrunners. Due to the value of the procurement, this requires an exemption from the open competitive requirements of the OPS Procurement Directive. The Ministry indicates that due to the time required to undertake a competitive procurement, the need to issue the IPO in the Fall of 2015, and the fee structure that it is proposing for the lead bookrunner, that an invitational procurement is recommended.

  - Qualified firms (in this case, the five Canadian chartered banks as the Ministry has assessed that they have the footprint required to run this IPO, and, if there is a decision to have a global offering of shares, one or two global firms) would be invited to express an interest to serve as active bookrunner. One or two firms would then be selected to serve as the active bookrunner. The selection would be based on advice from a panel of senior staff or Board members from, for example, the Ontario Financing Authority, Hydro One, and Infrastructure Ontario and who have direct experience in capital markets. This panel will consider experience, expertise, resources, and access to retail markets of the proposing firms. The bookrunners, would then be selected with input from the Panel.
  - Evaluation criteria will include presence, experience and understanding of and in Ontario / Canada; ability to reach retail investors; financial scale and resources; previous experience as active bookrunner of large initial equity / debt public offerings on Canadian exchanges and internationally, as well as secondary equity / debt public offerings on Canadian exchanges and internationally; demonstrated ability and experience providing advice and services with regard to debt offerings, preferred share offerings, and financial capital structures; and experience with infrastructure finance.
  - The active bookrunner(s) is responsible for organizing investor roadshows, marketing and managing the underwriter syndicate that purchases and resells shares to investors through brokers and dealers.
  - It is expected that the total fee paid to the bookrunner and the accompanying underwriting syndicate would be approximately 1.8 percent of the transaction value (about $35M-$45M, with $50M as a ceiling), which the Council indicates is considerably lower than the industry average of 4-5 percent ($100M).

- A non-competitive procurement process requiring an exemption to the open competitive requirements of the OPS Procurement Directive and from the use of the mandatory Vendor of Record (VOR) arrangement to acquire an executive recruitment firm to identify candidates for the new Hydro One Board of Directors, CEO of Hydro One, and if necessary, the Board of Directors for the Hydro One Brampton combined entity (see below).

- A non-competitive procurement process requiring an exemption to the open competitive requirements of the OPS Procurement Directive and from the use of the mandatory VOR arrangement to acquire an executive recruitment firm to identify candidates for the Hydro One Chief Financial Officer position.

- An invitational procurement process requiring an exemption to the open competitive requirements of the OPS Procurement Directive and from the use of the mandatory VOR arrangement to acquire an executive recruitment firm to identify candidates for Hydro One senior management positions.

In addition, the Ministry is seeking approval to conduct a non-competitive procurement process to acquire the consulting services of a financial expert on a retainer basis in order to provide advice as needed and help ensure that the IPO process is run appropriately and in a transparent manner.

As the financial expert would be providing advice on a multi-billion dollar initiative, the Ministry is seeking approval of a liability framework (see Appendix D) that would protect the individual from any liability they may face as a result of their work, and that this framework be used instead of the standard liability/indemnity provisions for OPS procurements as outlined in the Form of Agreement.

- The proposed liability framework is based on the standard Ministry of Finance liability framework.
- Following approval of the liability framework, the Ministry will be required to seek approval of the liability agreements for the advisor as per section 28 of the *Financial Administration Act*.

These procurements have not been reviewed by the Supply Chain Leadership Council.

Brampton Merger

The Ministry is also seeking approval to direct Hydro One to proceed with an immediate transaction that would result in the merger of Hydro One Brampton with three LDCs.

The transaction would be based on a non-binding letter of intent (LOI) that the Council has negotiated that would merge Hydro One Brampton with the holding corporations for PowerStream, Enersource, and Horizon.

- Details of the LOI have been reviewed and approved by the holding company boards of the LDCs, which include their respective City Council representatives.

As a part of the proposed transaction, the Province would receive 17 percent of the shares in the new company, or, at the option of the LDCs, the equity value of Hydro One Brampton based on an enterprise value of $607M. The LDCs will determine this by July 31, 2015.

- The Province's fiscal benefit from the transaction would be approximately $175M-$220M in 2015-16, depending on whether the Province receives equity (Scenario 1: MergeCo) or cash (Scenario 2: Buyout) (see table below).

Fiscal Benefit ($M)*		2015-16	2016-17	2017-18	2018-19	2019-20 / Ongoing
Scenario 1: MergeCo**	Asset Revaluation & Share of Net Income/PILs in MergeCo	$174	($3)	($0)	$1	($1)
Scenario 2: Buyout	Up-front Gain & on-going revenue impacts	$216	($18)	($17)	($17)	($20)
	Potential Interest Savings for Scenario 2***	$5	$18	$19	$20	$21
	Total	$221	$0	$2	$3	$1

*Based on PAC / KPMG information as of April 1, 2015. Numbers are based on Council analysis, and subject to change arising from new options. On-going amounts forgone would change over time, depending on amount of forgone growth and other changes in market conditions. Assumes Jan. 1 2016 transaction date.
**Assumes that Province is able to account for its share of MergeCo income under modified equity accounting. There are risks that this method of accounting for share of income would be disallowed given Province would only have about 17% of MergeCo. This would reduce annual revenue by about $8-10M [TBC]
***Potential IOD savings would decrease and effectively be eliminated over the long-term as infrastructure projects materialize

Subject to approval, Minister of Energy would issue a sole shareholder declaration and resolution to Hydro One to require the Chair and CEO of Hydro One Brampton to sign the LOI with the LDC partners, based on the above noted terms, and to enable Hydro One's interest in Hydro One Brampton be transferred directly to the Province in order to separate the IPO from this merger.

Further review of the proposed transaction details will be necessary in order to determine/ensure that there is no exit from the PILs regime as a result of the transaction

The details of the agreement are expected to be finalized in Spring 2015. The agreement would also then require OEB approval before the financial close for the transaction could be completed.

A merger of the four companies would create the second largest LDC in Ontario by customer size that would serve as a platform for further LDC consolidation.

- In 2012, the Ontario Distribution Sector Review Panel estimated that net cost savings from LDC consolidation would be $1.2B over ten years in present value terms.

The Ministry of Finance is also proposing, based on the Council's advice, time-limited changes effective for a three year period beginning after January 1, 2016 and ending December 31, 2018 to the existing transfer tax regime to provide a further incentive to spur further LDC consolidation with these rules to remain in effect for any utility with a related Merger, Acquisition, Amalgamation and Divestiture application before the OEB:

- A transfer tax, paid towards stranded debt, is currently 33 percent of the fair market value of any LDC assets sold to the private sector. The Council is recommending that the transfer tax rate be reduced to 22 percent for all LDCs, as well as a complete exemption for small LDCs with fewer than 30,000 customers.

- Hydro One and its subsidiaries are not subject to transfer taxes and, thus, a sale of its subsidiaries would not incur the 33 percent tax.

- Capital gains (with an exception for goodwill) would also be exempt arising under the PILs departure tax rules.

Ontario Energy Board (OEB) Changes

In order to ensure that there is no loss of consumer protections from the changes to Hydro One's governance and provincial oversight, the Ministry will be proposing (later in the spring for introduction during the 2015-16 fiscal year) a number of administrative, legislative, and regulatory changes that would further strengthen the powers and processes of the OEB. These changes will include a change to the OEB's objectives to ensure the OEB has a role in consumer education. These changes will need to be reflected in the Memorandum of Understanding between the Ministry and the OEB.

One of the proposed changes is to amend legislation to allow the OEB to appoint a consumer advocate(s), or where the OEB has not already done so, allow the appointment of a consumer advocate(s) through an Order-in-Council. As the possible rate of remuneration for such an appointment is not known at this time, the Ministry will report back to TB/MBC with that information at a later date.

Risks

There are a number of different risks to the proposed approach, including financial, governance, and legal risks.

There is a financial risk on actual proceeds of the IPO from the market. The valuation and expected fiscal gains presented by the Council are estimates, with actual market value subject to market volatility including interest rates as well as to changes in Hydro One business plan future performance projections.

- Negative changes on actual proceeds could reduce the Province's fiscal gains compared to estimated amounts, affecting the Fiscal Plan.

There is a potential risk to the fiscal plan if there is a decision to end the Debt Retirement Charge (DRC) earlier than currently planned given incremental upfront revenue from asset sales (which is offset by revenue losses to OEFC over time)

- MOF has included DRC revenues of about $620M/year in the fiscal plan going forward to 2018.

As the Province dilutes its ownership (e.g. below 50 percent), the accounting control assessment could lead to a determination that the Province no longer controls Hydro One. This would mean the entity's net income would no longer be consolidated, and that only dividends received from Hydro One would be included in the Province's financial statements. Dividends recognized by the Province would likely be less than the Province's proportionate share of net income, and therefore, could result in a larger negative fiscal impact than is currently projected. The Auditor General will need to review and confirm the appropriate accounting treatment on an annual basis, beginning with her audit of the 2015 Public Accounts. To help mitigate this risk, an independent accounting analysis will help ensure the government's position is well supported

In the specific case of Brampton/MergeCo and if the buyout provision is not exercised by the other parties, there is a risk that the Province would not be allowed to consolidate its proportionate share of net income of MergeCo. In such case the Province would only be able to recognize dividends from MergeCo with the consequent immaterial negative fiscal impact.

In terms of the oversight of Hydro One, in the medium-term (e.g., while the Province retains 85 percent ownership), there are risks in respect of loss of oversight. These include the perceived imbalance during the period where the Province would own 85 per cent of the shares but only nominate 40 percent of Board members, and the loss of oversight currently stipulated by various Acts and TB/MBC Directives.

- The Ministry indicates these risks will be mitigated by the Governance Agreement between the Ministry and Hydro One, which will be reviewed by TB/MBC prior to execution, and the fiduciary responsibilities of the new Hydro One Board of Directors. As a publicly-traded company, all Board members – appointed by the Province or by other shareholders – will have a fiduciary duty to act in the best interest of the Corporation, and, therefore, provide adequate oversight to the management team.

There may also be risks of public perception in respect of an in-house ombudsman not having sufficient independence in review of issues. The Ministry notes that an in-house Ombudsman is a feature of other service-based organizations e.g., banks.

There is also a risk that the proposed six-month transition may not be sufficient for completion of on-going work required on existing issues by independent officers of the Legislature. Concerns of this nature would likely be raised by the officers themselves.

There are potential legal risks on limiting the participation in the procurement for the lead active book runner to the five Canadian chartered banks and likely two global banks. Courts have indicated that judicial review of procurement decisions may be appropriate where there is a broad public interest in doing so, which may include procurements where there are significant expenditures of public money. There is a risk that an interested party may seek judicial review of the decision not to run an open competitive procurement. Additionally there are potential trade risks from limiting the invitation to the five Canadian chartered banks and likely two global banks. The Ministry has indicated that it accepts these risks.

Name of analyst:	Mark Lyons	**Phone number:**	416-327-2184
Date:	April 15, 2015	**Log number:**	
Branch / Division:	General Government, Planning and Resources/Planning and Expenditure Management Division		

Appendix A: Proposed Minute

Approve the intention to proceed with an Initial Public Offering process for Hydro One Inc. (Hydro One), and the intended merger of Hydro One Brampton with local distribution companies.

In this regard, the Board

Initial Public Offering process

i. Direct the Ministry of Energy to work with the Cabinet Office, Ministry of Finance, the Ontario Financing Authority, Treasury Board Secretariat, and Hydro One on the development of an Initial Public Offering (IPO) process for Hydro One.
ii. Approve the Minister of Energy to direct Hydro One to proceed with an IPO of Hydro One including all of its subsidiaries at the time of the IPO, consisting of approximately 15 per cent of the Province's interest in Hydro One, during the 2015-16 fiscal year.
iii. Approve the following specific elements to be included as part of the proposed Initial Public Offering process and that these elements may be included in any of the constating documents of Hydro One including revised Articles of Incorporation and/or by-laws, a Governance Agreement to be executed between the Minister of Energy on behalf of the Crown, proposed legislation, and an underwriting agreement:
    a) that there will be an issuance of common shares only;
    b) that at least 25-30 per cent of the total shares in the IPO will be targeted to retail investors, with the remaining shares to be allocated to institutional investors;
    c) that the Province may sell subsequent tranches of shares that would, once complete, reduce the province's ownership position of Hydro One to not less than 40 per cent of the number of Hydro One's common shares outstanding on the date of the closing of the IPO;
    d) that, with the exception of the Province, no single person, corporation, or group of persons acting jointly or in concert may own more than 10 per cent of any class or series of Hydro One's voting shares; and
    e) that the Province would be restricted from reducing its ownership position in Hydro One to less than 40 per cent of the number of Hydro One's common shares outstanding on the day of the closing of the IPO.
iv. Note that the Province would make a payment to the OEFC which may be satisfied by issuance of debt, remission of debt or another form as determined by the Minister of Finance, equivalent to the net IPO proceeds, less certain deductions prescribed under the Electricity Act, to reduce the OEFC's stranded debt.
v. Note that Hydro One would pay departure tax to the OEFC.
vi. Note that the Province would provide to Hydro One a financial benefit, such as a capital contribution, up to the amount of departure tax paid to the Ontario Electricity Financial Corporation by Hydro One.

Governance

vii. Approve the development of a Governance Agreement that would include the following key elements, some of which may alternatively or supplementally be included in the proposed legislation or in Hydro One's constating documents::

- a) that Hydro One would be prohibited from doing any of the following:
  - 1) selling, leasing, divesting or otherwise disposing of all or substantially all of the business, property or assets related to the transmission system of Hydro One regulated by the Ontario Energy Board;
  - 2) selling leasing, divesting or otherwise disposing of all or substantially all of the business property or assets related to the distribution system of Hydro One regulated by the Ontario Energy Board; or
  - 3) continuing under the laws of a jurisdiction other than Ontario.
- b) that if the Province's ownership is reduced to 10 percent or less, the Province shall be restricted to acquiring shares in excess of 10 percent in the same manner as other shareholders, the Governance Agreement would no longer apply, but all other statutory restrictions would remain in place;
- c) that Hydro One would be required to:
  - 1) maintain its principal executive head office in the Province of Ontario;
  - 2) ensure that substantially all of its executives with strategic decision-making or management authority reside in the Province of Ontario;
  - 3) subject to meeting ongoing listing requirements, maintain a listing of its common shares on the Toronto Stock Exchange;
  - 4) maintain the location of its transmission and distribution grid control functions for Ontario operations, in the Province of Ontario;
  - 5) set the initial number of directors on Hydro One's Board of Directors;
  - 6) follow Ontario Securities Commission requirements, including:
    - a. publicly disclosing the total compensation levels of the CEO, CFO and the three other highest paid executives of the corporation each year; and
    - b. publicly disclosing the annual remuneration for each member of the Board of Directors.
  - 7) establish an Office of the Ombudsman to act as a liaison with customers and report to the Hydro One Board of Directors on matters raised with the Ombudsman by or on behalf of customers of Hydro One including with regard to services provided to customers of Hydro One and ensure that this Office is functional prior to end of the six month transition from the requirement of the Ombudsman Act.
- d) that ongoing obligations of both Hydro One and the Province would include:
  - 1) that, after the appointment of the initial Board of Directors, the Province would be entitled to nominate directors equal to its percentage equity interest, to a maximum of 40 percent, with the balance to be nominated by a nomination and governance committee of the Board;
  - 2) that the Province and nomination and governance committee of the Board would each have the right to reject nominees in writing, if either determines that nominees do not meet qualifications as set out in the governance agreement;
  - 3) that the Province would be required to vote in favour of the directors nominated by the nomination and governance committee unless it votes to

remove all, but not less than all, of the members of the Board, with the exception, at the Province's discretion, of the Chair,

4) that no government employee or persons employed by the Province within a three year period from the date of their proposed election/appointment would be eligible for election to the Hydro One Board of Directors;
5) that no directors, officers or employees of the following organizations or their affiliates would be eligible for election to the Hydro One Board of Directors:
    i. The Ontario Financing Authority;
    ii. The Independent Electricity System Operator;
    iii. Ontario Power Generation Inc.;
    iv. The Electrical Safety Authority;
    v. The Ontario Electricity Financial Corporation;
    vi. Ontario Infrastructure and Lands Corporation;
    vii. The Ontario Energy Board;
    viii. Hydro One (with the exception of the Chief Executive Officer and any current directors the Province wishes to remain on the Board of Directors post-IPO).
6) that all of the Province's remaining rights as shareholder would be preserved.

viii. Recommend legislative amendments and regulatory amendments as follows:

a) Amendments to the *Electricity Act, 1998*, in order to:
    1) remove a prohibition that precludes Hydro One Inc. from owning or operating transmission and distribution systems outside of Ontario;
    2) require Hydro One to establish an Office of the Ombudsman to act as a liaison with customers and report to the Hydro One Board of Directors on matters raised with the Ombudsman by or on behalf of customers of Hydro One;
    3) require Hydro One to maintain its principal executive head office in the Province of Ontario;
    4) ensure that substantially all of the executives of Hydro One with strategic decision-making and management authority reside in the Province of Ontario;
    5) prohibit Hydro One from selling, leasing, divesting or otherwise disposing of all or substantially all of the business property or assets related to the transmission system of Hydro One regulated by the Ontario Energy Board;
    6) prohibit Hydro One from selling, leasing, divesting or otherwise disposing of all or substantially all of the business, property or assets related to the distribution system of Hydro One regulated by the Ontario Energy Board;
    7) with the exception of the Province, limiting any single person, corporation, or group of person acting jointly or in concert, from owning more than 10 percent of any class or series of voting shares of the company;
    8) restricting the Province from reducing its ownership position in Hydro One to less than 40 percent of the number of Hydro One's common shares it immediately held prior to the IPO;
    9) enable the Hydro One board of directors, despite the limitations in sections 23 and 24 of the Business Corporation Act (Ontario), to authorize the issuance of shares of Hydro One to employees of Hydro One or any of its subsidiaries, or for their benefit or on their behalf, for no

consideration or for such consideration as the board of directors may approve and enable Hydro One to add to the appropriate stated capital account for the shares issued, the amounts received by Hydro One for those shares;

10) restrict the Province to acquiring shares in the same manner as other shareholders if the Province's ownership is reduced to 10 percent or less of the common shares;
11) Recommend an amendment to section 50.3 of the Electricity Act, 1998 so that the Province will be required to pay to the OEFC a financial benefit equivalent to the adjusted net proceeds and the payment may be satisfied by payment of cash, granting a remission of OEFC debt, issuing securities or debt obligations to OEFC, set off or another form as determined by the Minister of Finance. Recommend that the amendment also specify that the Province's costs to be deducted include the Province's allocations for Hydro One income made to OEFC;
12) amend the transfer tax and payments-in-lieu of tax (PILs) rules as follows, effective for a three year period beginning on January 1, 2016 and ending December 31, 2018, with these rules to remain in effect for any utility with a related Merger, Acquisition, Amalgamation and Divestiture application before the OEB before January 1, 2019, and a written agreement completed before January 1, 2019 provided the agreement is not materially changed thereafter.:
    i. Reduce the transfer tax rate from 33 per cent to 22 per cent;
    ii. Reduce the transfer tax rate from 33 per cent to 0 per cent for municipal electric utilities with less than 30,000 customers; and
    iii. Exempt capital gains arising under the PILs departure tax rules.

b) Amendments to the *Management Board of Cabinet Act* to remove Hydro One and its subsidiaries from being considered part of the "public service" under the Management Board of Cabinet Act so that the Act, including policies and directives made under it, could no longer apply to Hydro One and its subsidiaries.
c) Amendments to the *Lobbyist Registration Act, 1998* to remove the reference to Hydro One and its subsidiaries from the definition of "public office holder" in subsection 1(1) of the Lobbyists Registration Act; and remove three unproclaimed references to Hydro One and its subsidiaries from subsections 4(4), 5(3) and 6(3) of the Act.
d) Amendments to the *Public Sector Salary Disclosure Act, 1996* to remove Hydro One and its employees from salary disclosure requirements in respect of salaries and benefits paid after December 31, 2014.
e) Amendments to the *Financial Administration Act* to remove Hydro One and its subsidiaries from oversight of the Act. However, retain the right to request information from Hydro One and the administrator of any pension plan sponsored by it for the sole purpose of preparing the consolidated financial statements of the Province (annual and quarterly). Hydro One and the pension plan administrator are not required to provide any information that relates to a period for which Hydro One has not yet disclosed to the public its audited or unaudited financial statements.
f) Amendments to the *Auditor General Act* to exclude Hydro One and its subsidiaries from the purview of the Auditor General and provide the Auditor General with 6 months to complete any open special audits or special

assignments commenced before Royal Assent. Create new right of the Auditor General to access information from Hydro One and its auditors that is necessary and relevant to enable the Auditor General to prepare his or her report, for inclusion in the Public Accounts, on the consolidated financial statements of the Province. However, Hydro One and its auditors are not required to provide information for a period for which Hydro One has not yet disclosed to the public its audited or unaudited financial statements.

g) Amendments to the *Ombudsman Act* to exclude Hydro One and its subsidiaries from the purview of the Ombudsman, with provision for transitional matters.
    1) For transition purposes, the Ombudsman may continue to exercise his or her powers for six months after Royal Assent with respect to investigations started prior to Royal Assent, but is prohibited from starting any new investigation of Hydro One and its subsidiaries.
    2) An investigation of Hydro One and its subsidiaries taking place during the six month transition period may be reported on after that period.

h) Amendments to the *Freedom of Information and Protection of Privacy Act* to exclude Hydro One and its subsidiaries from that Act.
    1) As of the date of Royal Assent, provide that no new access to information requests be made to Hydro One and its subsidiaries, but allow for the completion of existing requests and any related appeals.
    2) Provide the Information and Privacy Commissioner with six months to complete all outstanding appeals and privacy investigations after the date of Royal Assent.
    3) Amend the schedule of institutions in Ontario Regulation 460 under FIPPA to remove Hydro One and its subsidiaries.

i) Amendments to the M*unicipal Freedom of Information and Protection of Privacy Act* to exclude Hydro One Inc. and its subsidiaries from that Act.
    1) As of the date of Royal Assent, provide that no new access to information requests be made to Hydro One and its subsidiaries, but allow for the completion of existing requests and any related appeals.
    2) Provide the Information and Privacy Commissioner with six months to complete all outstanding appeals and privacy investigations after the date of Royal Assent.
    3) Amend Ontario Regulation 372/91 under MFIPPA to clarify that MFIPPA does not apply to any Hydro One subsidiaries.

j) Amendments to the *Public Sector Expenses Review Act* to exclude Hydro One and its subsidiaries from being considered “public entities” under the Public Sector Expenses Review Act, but provide for a six month transition period during which the Integrity Commissioner can continue to exercise her powers in respect of expense claims made before April 1, 2015 and Hydro One and its expense officers continue to have duties in respect of those expenses.

k) Amendments to the *Broader Public Sector Executive Compensation Act, 2014* to exclude Hydro One from application of the Act.

l) Amendments to the *Broader Public Sector Accountability Act, 2010* in order to:
    1) Create an exception in section 3 of the Broader Public Sector Accountability Act so that Hydro One and its subsidiaries could not be prescribed by regulation to be “designated broader public sector organizations” or “publicly funded organizations” for the purposes of the Act; and remove the reference to Hydro One and its subsidiaries in section

4 of the Act so that they would no longer be prohibited from paying lobbyists to lobby government and create an exception so that they could not be prescribed for the purpose of that prohibition by regulation from the time of the IPO.

2) Create an exception in section 7.5 of the Broader Public Sector Accountability Act, 2010 to end the compensation restraint measures applicable to Hydro One and its subsidiaries, designated executives and designated office holders and amend section 7.13 to ensure that certain limits on restructuring do not apply to Hydro One and its subsidiaries; create an exception to exclude Hydro One and its subsidiaries from the requirement to conduct compensation studies if required by Management Board of Cabinet directive

m) Amendments to the *Financial Accountability Officer Act, 2013* to exclude Hydro One and its subsidiaries from obligation to provide information to the Financial Accountability Officer, but include a transition period of six months with respect to research commenced before Royal Assent.

ix. Approve exempting Hydro One from any Treasury Board/Management Board of Cabinet directives that currently apply to Hydro One.

x. Note that the Minister of Energy would issue to Hydro One one or more unanimous shareholder declarations and/or resolutions, to assume decision making from the Board of Directors for all decisions, direction, and instructions related to the IPO of Hydro One, and the divestment and merger of Hydro One Brampton.

xi. Note that prior to the IPO for Hydro One:

a) that the Minister of Energy would appoint a new Chair to the Board of Directors of Hydro One;
b) that the Minister of Energy would appoint a new Board of Directors (Board) for Hydro One, based on the recommendation of the new Chair; and
c) that the Board of Directors of Hydro One would then be authorized to make a determination as to whether to appoint new or additional senior management of Hydro One including but not limited to the Chief Executive Officer, Chief Financial Officer, and Chief Regulatory Officer.

Initial Public Offering procurements

xii. Approve an exemption from the open competitive requirements of the OPS Procurement Directive to allow Hydro One to use an invitational competitive process for a procurement of over $100,000 to acquire active book runner(s) for the IPO, and in this regard:

a. Note that an evaluation process including the involvement of representatives from the Ministry of Energy, Infrastructure Ontario, Ministry of Finance (Ontario Financing Authority), and Hydro One will be used.
b. Approve a rate of remuneration for active book runners at an estimated 3 percent of proceeds for retail investors and estimated at 1 percent for institutional investors, with a total procurement value estimated at $50,000,000 over nine months.

xiii. Approve Hydro One to use a non-competitive procurement process requiring an exemption to the open competitive requirements of the OPS Procurement Directive and from the use of the mandatory Vendor of Record (VOR) arrangement to acquire an executive recruitment firm to identify candidates for the Hydro One Board of Directors, CEO of Hydro One and if necessary, the Board of Directors for the Hydro One Brampton combined entity, in the estimated amount of $1,700,000 over four months, and in this regard:

a. Approve an exemption from the Advance Contract Award Notification Process for this procurement.

xiv. Approve Hydro One to use a non-competitive procurement process requiring an exemption to the open competitive requirements of the OPS Procurement Directive and from the use of the mandatory Vendor of Record (VOR) arrangement to modify terms of an existing executive recruitment firm engagement to identify candidates for Hydro One Chief Financial Officer, in the estimated amount of $350,000 over four months, and in this regard:

a. Approve an exemption from the Advance Contract Award Notification Process for this procurement.

xv. Approve an exemption from the open competitive requirements of the OPS Procurement Directive to allow Hydro One to use an invitational competitive process for a procurement of over $100,000 and from the use of the mandatory Vendor of Record (VOR) arrangement to acquire an executive recruitment firm to identify candidates for Hydro One senior management positions, in the estimated amount of $200,000 over four months.

xvi. Approve an exemption from the open competitive requirements of the OPS Procurement Directive and from the use of the mandatory Management Consulting Services Vendor of Record for a non-competitive consulting contract by the Ministry for consulting services at an estimated value of $100,000 over 12 months to provide strategic financial advice and to ensure the transparency of the IPO process.

xvii. Approve a liability framework for the consultant to be acquired to provide strategic financial advice and to ensure the transparency of the IPO process that would protect them from any liability they may face as a result of their work.

xviii. Note that following approval of the liability framework, the Minister of Energy would be required to seek approval of the liability agreement for the advisor as per section 28 of the Financial Administration Act.

xix. Note that any procurement costs incurred during the 2015-16 fiscal year that are related to the IPO would be offset from the proceeds resulting from the proposed Initial Public Offering.

Hydro One Brampton

xx. Approve the Minister of Energy, consistent with previously approved direction, to direct Hydro One to immediately enter into exclusive negotiations to combine its wholly-owned subsidiary Hydro One Brampton with one or more urban local distribution companies in exchange for shares of the combined entity or cash.

Ensuring Regulatory Oversight

xxi. Recommend the development of a legislative and regulatory package to further strengthen the powers and processes of the Ontario Energy Board (OEB), including adding consumer education to the OEB's objects, for introduction during the 2015-16 fiscal year. In this regard

a. Direct the Ministry to amend its Memorandum of Understanding to reflect the changes;
b. Direct the Ministry to report back to TB/MBC for approval of the rate of remuneration for a consumer advocate appointed by Order-in-Council once this rate is known.

Other Issues

xxii. Direct the Ministry of Energy to continue to work with Cabinet Office, Premier's Office, Ministry of Finance, and Treasury Board Secretariat on a communications plan.

xxiii. Direct the Ministry of Energy to report back to Treasury Board/Management Board of Cabinet with the proposed Governance Agreement, prior to implementation.

xxiv. Direct the Ministry of Energy to report back to Treasury Board/Management Board of Cabinet in the summer of 2015 with a detailed IPO implementation plan, including financial details.

xxv. Direct the Ministry of Finance (Ontario Financing Authority), working with the Ministry of Energy to report back to Treasury Board/Management Board of Cabinet for approval of supplementary estimates and/or details on the proposed capital contribution, cash transaction or remission to the departure tax, and any related transactions, prior to implementation.

xxvi. Direct the Ministry of Finance (Ontario Financing Authority), working with the Ministry of Energy to report back to Treasury Board/Management Board of Cabinet with details on the financial benefit to be provided to the OEFC as a result of the IPO, and any related transactions, prior to implementation.

xxvii. Direct the Ministry of Energy to report back to Treasury Board/Management Board of Cabinet with details on the final Brampton transaction results.

xxviii. Direct the Ministry of Energy to report back to Treasury Board/Management Board of Cabinet for approval prior to selling any additional shares of Hydro One, after the IPO.

xxix. Note that the Ministries of Finance and Energy will report back with proposed regulations to designate Hydro One shares as qualifying assets under the *Trillium Trust Act*.

APPENDIX B: FINANCIAL IMPACTS

FINANCIAL IMPACTS: CHANGES TO EXPENSE AND REVENUE					TABLE B1
			Fiscal Plan Basis		*Appropriations Basis*
$ Millions		**2015-16**	**2016-17**	**2017-18**	**2015-16**
Initiative cost recommended		0.0000	0.0000	0.0000	
Expense changes:					
Operating item	Oper	0.0000	0.0000	0.0000	0.0000
Capital item	Cap	0.0000	0.0000	0.0000	00000
Revenue changes:					
Revenue increase/offset		0.0000	0.0000	0.0000	
Revenue decrease		0.0000	0.0000	0.0000	
Total Fiscal Impact (draw from c-funds)		**0.0000**	**0.0000**	**0.0000**	**0.0000**

Sample Transaction

- The following diagram illustrates how the proceeds from the sale of a 15% stake in Hydro One would flow.

1. Proceeds from sale are paid to the Province; net proceeds of $0.76 billion dedicated to Trillium Trust

2. Province deducts transaction costs from proceeds, as well as proportional amounts owing on the notes receivable and the ESDI allocated to OEFC related to Hydro One, and makes some form of payment of the net amount ($0.66 B) to OEFC as per sec. 50.3 of the Electricity Act

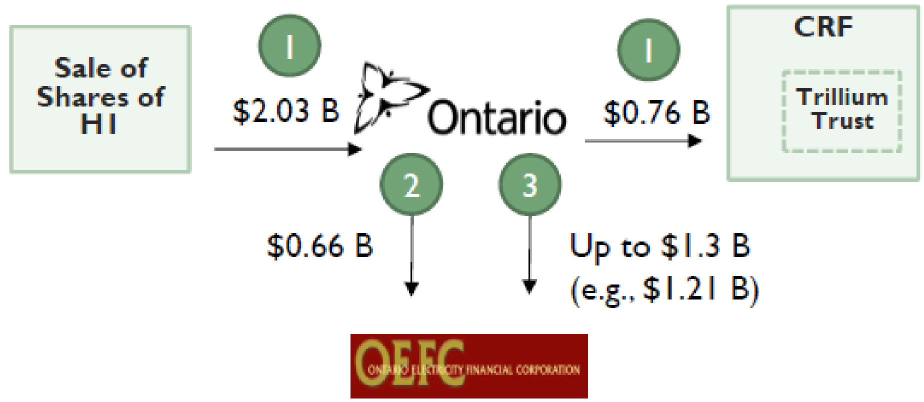
3. The Province could also use cash from transaction up to H1 book value ($1.21 B) to pay to OEFC the amounts deducted in Step 2 above to reduce its obligations owing on the notes receivable and ESDI receivable held by OEFC

Trillium Trust*

Proceeds:	$2.03 B
Transaction costs:	$(0.06)
H1 Book Value:	$(1.21)
Net Proceeds:	**$0.76**

OEFC*

Proceeds:	$2.03 B
Transaction costs:	$(0.06)
Note receivable:	$(0.56)
ESDI**:	$(0.74)
Gain to OEFC:	**$0.66**



- In summary, net proceeds would go to Trillium Trust, the Province would provide some form of payment to OEFC (e.g., forgive debt) to OEFC to reduce its unfunded liability, and the Province could also reduce some of its obligations owing on notes receivable to OEFC.

**Numbers may not add due to rounding. Numbers provided are for illustrative purposes only and are subject to change.*
***ESDI amount is based on the amount Due from Province of Ontario as per OEFC's financial statements.*

APPENDIX D: LIABILITY FRAMEWORK

INDEMNITY

To:

In consideration of your agreement to [insert description of services/role] the Premier's Advisory Council to Provide Advice on Assets (the "Advisory Council"), the undersigned, Her Majesty the Queen in right of Ontario as represented by the Minister of Finance (the "Province") hereby agrees, subject to the terms hereof, to indemnify and hold harmless you and your heirs and legal personal representatives against and from any and all losses, costs, damages, expenses and liabilities of whatsoever kind, including amounts paid to settle an action or to satisfy a judgement and including all legal fees and other expenses (a "Claim" or collectively, the "Claims") which you may sustain or incur or become subject to by reason of your being or having been appointed as a representative of, or seconded to the Advisory Council as described above, but this indemnity does not apply with respect to Claims:

(a) arising from any circumstances for which coverage is provided under an insurance policy or claims fund to the extent that you are indemnified or covered under such policy or fund;

(b) arising out of circumstances in which you did not act in the performance or intended performance of your duties on behalf of the Advisory Council or arising from any circumstances for which you have been separately retained to provide professional services including consulting, accounting, financial valuation or legal services; or

(c) brought about or contributed to by your dishonesty, gross negligence or wilful misconduct.

In order to be entitled to indemnification here under, you must comply with the following terms and conditions:

(i) if you receive a notice of Claim or Claims, whether actual or threatened, you shall forthwith deliver to the Province (through the Director of Legal Services of the Ministry of Finance) a notice setting forth in reasonable detail all available particulars of the Claim(s);

(ii) upon the written request of the Province, you shall furnish to the Province copies of all documents and provide any other information relating to the Claim(s) that is in your possession or under your control;

(iii) you shall take all reasonable steps necessary to secure and preserve your rights in respect of the Claim(s) and, to the extent that you have a right to commence a proceeding against another person (whether for damages or indemnification or otherwise) in respect of a matter for which you claim indemnification from the Province hereunder, you shall assign that right to the Province and subrogate the Province to that right to the extent of the amounts paid by the Province or for which the Province is liable hereunder;

(iv) you shall not voluntarily assume any liability in respect of or settle or compromise any Claim(s) or any proceeding relating thereto without obtaining the Province's prior written consent;

(v) the Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and any proceedings relating thereto or appeal thereof but the Province may not settle any action commenced against you without your written consent;

(vi) if the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and any proceedings relating thereto or appeal thereof, you shall cooperate fully with the Province in connection with the same, and you shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing you, and, where it is such legal counsel's opinion that a conflict of interest prevents their representing you, you will be entitled, subject to the Province's prior written approval, to retain legal counsel of your choice (it being understood that the Province may withhold its approval in relation to any counsel proposed by you who does not agree to retainer terms, including fees, consistent with the policies of the Ministry of the Attorney General of Ontario), and the fees and expenses of your counsel incurred in your representation shall be costs to which this indemnity extends;

(vii) if the Province is not also a party to the Claim, you shall consent to any order or leave that may be required for the Province to be added as a party or to be allowed to make representations on its own behalf without being a party;

(viii) the expenses incurred by you in investigating, defending or appealing any Claim(s) shall, at your request, be paid by the Province as may be appropriate to enable you to properly investigate, defend or appeal such Claims(s), with the understanding that if it is ultimately determined that you are not entitled to be indemnified hereunder, you shall immediately repay such amount(s) so paid, which shall become payable as a debt due to the Crown; and

(ix) you agree to pay to the Province all amounts you receive as a recovery or reimbursement of any Claim which has been previously indemnified by the Province hereunder.

For greater clarity, this indemnity shall apply to Claim(s) that are referable to the period during which you were acting as a representative of the Advisory Council, and of which notice is received by the Province either during the period you are or after you cease to be involved with the Advisory Council.

This indemnity shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

IN WITNESS WHEREOF, the undersigned has duly executed this indemnity this _____ day of April, 2015.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
as represented by the

____