Ministry of Finance

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March 29, 2022

MEMORANDUM TO: Christopher Tyrell
Clerk of the Committee
Standing Committee on Public Accounts

FROM: Greg Orencsak
Deputy Minister

SUBJECT: **Standing Committee on Public Accounts - 2021 OAGO Report – Ontario Securities Commission**

Pursuant to the request from the Standing Committee on Public Accounts, please find enclosed the Ministry of Finance's response to the Value-for-Money Audit: Ontario Securities Commission of the 2021 Annual Report of the Auditor General. This response includes an update on the Ministry's action plans, progress-to-date and timeframe for consideration of the Auditor General's recommendations.

Sincerely,

Greg Orencsak
Deputy Minister of Finance

c: Nancy Mudrinic, Associate Deputy Minister, Office of Regulatory Policy and Agency Relations, Ministry of Finance
Francisco Chinchon, Assistant Deputy Minister, Financial Services Policy Division, Office of Regulatory Policy and Agency Relations, Ministry of Finance

Summary Status Table in Response to the Report of the Auditor General of Ontario

Value-for-Money Audit: Ontario Securities Commission

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Auditor's Recommendation	Completed undertaking	Outstanding undertaking (including timeline)
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.	The Ministry has worked with the OSC to identify and nominate new board and tribunal members under the agency's proposed new governance structure under the yet-to-be-proclaimed *Securities Commission Act*. The Ministry agrees that the OSC has a statutory mandate to protect investors from unfair or improper practices, as outlined in s. 1.1 of the Securities Act, and acknowledges the importance of having retail investor protection experience on the OSC Board. The Ministry will continue to work with the OSC on an ongoing basis to ensure that diverse and relevant perspectives are represented on its Board as the need for appointments at the OSC arises.	

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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.		The Ministry will consider this recommendation and will work with the OSC to ensure that the OSC continues being able to respond to capital markets developments and exercise its statutory rule-making authority in an effective and timely manner. Ministry of Finance's expected timeframe to conduct analysis: 2 years

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Auditor's Recommendation	Completed undertaking	Outstanding undertaking (including timeline)
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.	The Ministry has worked with the OSC to identify and nominate new board and tribunal members under the agency's proposed new governance structure under the yet-to-be-proclaimed *Securities Commission Act.* The Ministry agrees that it is important that the OSC continues to have board members who have relevant skills and experience to carry out their duties and responsibilities. The Ministry will continue to work with the Chair of the OSC to ensure that appointments reflect the needs identified by the Board and Governance and Nominating Committee and that appointments continue to be made in adherence to legislative requirements, the Agencies and Appointments Directive and the process articulated by the Public Appointments Secretariat. Implementation of this work has already begun and will continue on an ongoing basis as the need for appointments at the OSC arises.	

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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); and • 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.		The Ministry acknowledges the need to continue to protect Ontario investors. This imperative aligns with many enforcement-related changes proposed in the Ministry's draft Capital Markets Act (CMA), published for stakeholder consultation from October 12, 2021 to February 18, 2022. The draft CMA includes tools aimed at modernizing the enforcement of securities law. The Ministry will work with the OSC to consider this recommendation and determine next steps. Ministry of Finance's expected timeframe to conduct analysis: 3 years

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Auditor's Recommendation	Completed undertaking	Outstanding undertaking (including timeline)
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 license or licence plates.		The Ministry recognizes the importance of the OSC having appropriate tools to collect monetary sanctions. This policy priority aligns with many enforcement-related changes proposed in the Ministry's draft Capital Markets Act (CMA), published for stakeholder consultation from October 12, 2021 to February 18, 2022. The draft CMA includes provisions aimed at modernizing the tools available to the OSC. The Ministry will work with the OSC to consider this recommendation and determine next steps. Ministry of Finance's expected timeframe to conduct analysis: 3 years

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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.		The Ministry supports improving the OSC's ability to distribute disgorged funds to harmed investors. The draft Capital Markets Act, published for stakeholder consultation from October 12, 2021 to February 18, 2022, includes a statutory framework for the distribution of disgorged amounts and contemplates OSC rules relating to the distribution, including conditions, restrictions, and requirements. The Ministry will work with the OSC to consider this recommendation and determine next steps. Ministry of Finance's expected timeframe to conduct analysis: 3 years

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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.		Ensuring that the OSC has the ability to enforce compliance with securities law is an important priority for the Ministry. The draft Capital Markets Act (CMA), published for stakeholder consultation from October 12, 2021 to February 18, 2022, contemplates providing additional regulatory powers to the Chief Regulator, including the ability to cease trade or impose terms and conditions on exempt-market companies. These powers could be further delegated to OSC staff. The Ministry will work with the OSC to consider this recommendation and determine next steps. Ministry of Finance's expected timeframe to conduct analysis: 3 years

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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.		The Ministry supports the objective of ensuring that the OSC can continue to appropriately oversee Ontario's capital markets, including monitoring public companies and ensuring investors continue to be protected from improper financial reporting. The Ministry will consider this recommendation and work with the OSC and CPAB in determining any changes regarding information-sharing between the two entities. Ministry of Finance's expected timeframe to conduct analysis: 2 years

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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; • assess the appropriateness of the existing Protocol; and • determine whether the Protocol should be mandatory for all participating audit firms.		The Ministry will consider this recommendation and work with the OSC and the CPAB to assess the appropriateness of the Protocol and whether it should be mandated. Ministry of Finance's expected timeframe to conduct analysis: 2 years