OSC provides practical takeaways for issuers

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The Ontario Securities Commission's (OSC) Corporate Finance Division 2025 Annual Report (Report) provides essential updates, regulatory guidance, and emerging trends for reporting issuers and companies considering going public.

Takeaways

- **$58.4 Billion Raised in the Exempt Market.** Institutional investors were the most significant investors in 2025; however, individuals contributed nearly $3 billion to the exempt market. The accredited investor exemption accounted for 90% of all exempt capital raised.
- **Continuous Disclosure is Non-Negotiable.** The OSC's continuous disclosure review program (CDR Program) flagged common deficiencies across issuers, including disclosure related to geopolitical uncertainty, material contracts and forward-looking information.
- **Audit Committee Independence is Determined by Bright Line Tests.** The OSC clarified that "material relationships" under NI 52-110 are bright-line tests, regardless of board determinations.
- **Crypto Assets Companies Encouraged to Engage with OSC.** With renewed interest, crypto companies should engage with OSC Staff early to discuss compliance. Crypto Treasury Companies must heed new NI 81-102 rules.
- **Substance Over Form in the Exempt Market.** Issuers raising capital in the exempt market are encouraged to prioritize substance over form in offering memoranda.

OSC guidance

Following an active year from the OSC, which saw several new blanket orders and proposals to foster enhanced capital formation, the Report details the OSC's policy and operational work for the fiscal year ending March 31, 2025 (Fiscal 2025) and includes various updates, trends and guidance for issuers.

Continuous disclosure remains critical to capital markets

The Report includes helpful guidance for issuers based on common deficiencies and areas for improvement related to continuous disclosure observed by the OSC in its CDR Program including:

- **Impact of Global Geopolitical Uncertainty and Tariff.** Issuers are encouraged to continually assess the impact of global developments to ensure that they are providing timely, meaningful and balanced disclosure to the market. In particular, the broader impact of tariff policies should be considered, including whether such impact triggers an obligation to file a material change report.
- **Forward Looking Information (FLI).** While FLI can provide helpful and responsive information for investors, it must be supported by reasonable and sufficient quantitative and qualitative assumptions, particularly where the information spans multiple years. If multi-year FLI is not adequately supported, OSC Staff may ask issuers to limit their disclosure to a shorter period that can be more clearly supported based on the facts and circumstances.
- **Audit Committee Independence.** While NI 52-110 – *Audit Committees* (NI 52-110) sets out a broad definition of "independence", the deemed "material relationships" in sections 1.4 and 1.5 of NI 52-110 are bright line tests that apply regardless of whether an issuer's board has otherwise determined a person to be independent. Section 1.4(7) of NI 52-110 provides an exception to the bright line tests solely because the individual has previously acted as an interim chief executive officer of the reporting issuer or acts, or has previously acted, as a chair or vice-chair of the board of directors or of any board committee of the reporting issuer on a part-time basis.
- **Acts in Furtherance of a Trade.** The carve-out to the definition of a "trade" for transfers, pledges and encumbrances of securities for the purpose of giving collateral for a debt made in good faith is limited only to the transfer, pledge or encumbrance and not to subsequent dealings in the security or the issuance of the debt itself. In addition, where the transfer, pledge or encumbrance forms part of a prearranged scheme that involves a trade of securities, involvement in the scheme may constitute an act in furtherance of a trade.
- **Bankruptcy, Restructuring and Receivership.** Issuers undergoing bankruptcy, restructuring or receivership proceedings are not exempt from their ongoing continuous disclosure requirements and will generally be subject to a failure-to-file cease trade order if such obligations are not satisfied. In addition, issuers are generally expected to issue and file a press release when they become subject to such a proceeding.
- **Material Contracts.** Issuers are reminded that amendments to previously filed material contracts must be filed on SEDAR+. Venture and non-venture issuers must file material contracts for which a material change report is filed no later than the material change report. Otherwise, all other material contracts made or adopted before the date of filing an annual information form must be filed no later than the time of filing the AIF (or within 120 days after the end of the financial year in which the material agreement was made or adopted if no AIF is being filed).

Prospectus filings remain stable compared to Fiscal 2024

Despite significant challenges to the global economy and financial markets, the OSC reviewed approximately 300 prospectuses in Fiscal 2025 across several industries. When filing a prospectus, issuers are reminded that:

- **Business Description.** Disclosure about an issuer's business and/or business plan should be entity specific and avoid boilerplate language, including discussion about unexecuted business plans or strategies, a lack of binding agreements or preliminary business plans.
- **Significant Developments During Review.** If a significant development occurs that impacts the issuer's business during the prospectus review, issuers are expected to advise staff of the relevant development as soon as possible.
- **Unsigned Auditor's Report.** A comfort letter signed by the issuer's auditor is required where an issuer files a preliminary prospectus accompanied by an unsigned auditor's report. The OSC expects that the comfort letter only be provided where the audit has been substantially completed except for the four matters set out in paragraph A38 of Section 7150 *Auditor's Consent to the Use of a Report of the Auditor Included in an Offering Document.*
- **Special Purpose Acquisition Corporations (SPACs).** SPACs are reminded that OSC Staff expect such issuers to include a statement in their IPO prospectus that the SPAC will not complete or propose to complete its qualifying acquisition / transaction with or involving any reporting issuer. SPACs should also provide investors with clear and consistent disclosure at the time of the IPO, including the nature and scope of a qualifying acquisition or qualifying transaction.
- **A Subsidiary May Not be a "Corporation".** OSC Staff have clarified that the terms "subsidiary", "affiliate", "control" and "beneficial ownership of securities" under the *Securities Act* (Ontario) include and relate to non-corporate entities, such as partnerships and trusts despite such terms specifically referencing companies. OSC Staff are of the view that a different interpretation would raise public interest concerns.

Crypto asset companies remain on the OSC's radar

With renewed interest in the crypto asset industry, the OSC has provided guidance on issues related to crypto companies going public and on crypto asset treasury strategy companies (Crypto Treasury Companies):

- **Registration and Listing Concerns.** If a company in the crypto industry intends to become a reporting issuer, such a company is expected to contact OSC Staff early to discuss its compliance with securities laws. Additionally, if the company intends to go public by filing a prospectus, the OSC encourages issuers to consider submitting a confidential prospectus pre-filing for discussion regarding securities laws compliance.
- **Crypto Treasury Companies.** The business strategy of raising money from the public to purchase and hold crypto assets caught the OSC's attention in Fiscal 2025. These Crypto Treasury Companies share many similarities to investment funds which may require the issuer to register as a dealer, adviser or investment fund manager. Crypto Treasury Companies should consider the recent changes to NI 81-102 – *Investment Funds* (NI 81-102) which permits the purchase of certain crypto assets that meet certain criteria. Where an issuer proposes to pursue becoming a Crypto Treasury Company using crypto assets that do not

meet the criteria in NI 81-102, there are concerns about regulatory gaps. The OSC would also view a proposed change to a crypto asset investment strategy to be a material change generally requiring shareholder approval and filing an amendment to any prospectus in effect.

Accounting & Disclosure: What's changing?

The OSC continues to emphasize the importance of transparent and reliable financial reporting. Recent guidance and observations highlight several areas for issuers to consider, including:

- **Disclosure of Management-defined Performance Measures (MPMs): Coming Soon.** With IFRS 18 *Presentation and Disclosure in Financial Statements* (IFRS 18) set to take effect in 2027, issuers should be aware that MPMs, a new concept under IFRS 18 comprising subtotals of income and expenses meeting specific criteria, will be disclosed as a note to the financial statements once IFRS 18 takes effect. MPMs have historically been treated as non-GAAP financial measures (Non-GAAP Measures) and are only disclosed outside of financial statements in documents like earnings releases and management's discussion and analysis. Issuers are advised to consider the nature, extent and manner of their current Non-GAAP Measures disclosure as they may soon be MPMs requiring disclosure in their financial statements.
- **Non-GAAP Measures Disclosure.** The OSC's CDR Program objected to instances where disclosure of Non-GAAP Measures, despite meeting the requirements of NI 52-112 – *Non-GAAP and Other Financial Measures Disclosure* were nonetheless misleading. Issuers should ensure that their Non-GAAP Measures do not alter the recognition and measurement principles required by IFRS Accounting Standards.
- **Valuation Information in Financial Reporting.** Issuers preparing financial statements under IFRS or similar frameworks must ensure robust processes for developing high-quality valuation information. The International Organization of Securities Commissions (IOSCO) emphasizes the importance of consistent, reliable fair value determinations, including the use of adequate expertise and reasonable, supportable inputs and assumptions. Issuers are encouraged to review IOSCO's statement and apply its guidance when preparing financial reports.
- **Unadutied Information in Audited Financial Statements.** Issuers are reminded that all information in the annual financial statements accompanied by an unqualified auditor's report must be audited.
- **Cash Flow and Liquidity Disclosures.** Reporting issuers must provide robust, entity-specific disclosures regarding cash flows and portfolio liquidity to support transparent financial reporting. The OSC identified deficiencies in Fiscal 2025 with respect to collateral disclosure, classification of cash flows and presentation of non-cash transactions which required re-filing of financial statements to correct misclassifications or agreements to improve future disclosure. The OSC will continue to focus on the sufficiency of liquidity and credit risk disclosures, recognizing their impact on reported financial position and performance.

Mergers & Acquisitions: Real-time review insights

The OSC's Department of Mergers and Acquisitions (DM&A) real time review program reviewed approximately 120 proxy circulars and over 50 material change reports in connection with various transactions, including take-over bids, issuer bids, dissident proxy solicitations and transactions requiring minority shareholder approval. Trends and guidance from Fiscal 2025 include:

- **Financial Hardship Exemption for Related Party Transactions.** Reporting Issuers relying on the financial hardship exemption under MI 61-101 – *Protection of Minority Security Holders in Special Transactions* (MI 61-101) for related party transactions must provide thorough disclosure in material change reports, including business reasons, board review process, and why shareholder approval is not possible. The DM&A have observed instances where issuers complete a related party transaction in reliance on the financial hardship exemption shortly before or following a meeting of securityholders. Issuers are reminded the exemption is only appropriate when no meeting of affected securityholders is otherwise required. If a meeting is required for any reason, reliance on the exemption is not permitted. If a transaction is completed to fund the costs of a required meeting, this should be explicitly disclosed.
- **Previously Agreed to and Generally Disclosed Transactions.** MI 61-101 provides a carve-out for transactions that were agreed to and generally disclosed before an issuer became a reporting issuer, or for previously disclosed transactions carried out in compliance with MI 61-101. The carve-out applies only if the issuer is obligated to carry out the transaction and optional transactions do not qualify. Amendments to previous transactions may constitute new related party transactions, requiring a fresh determination of formal valuation and minority approval requirements.
- **Minority Approval via Written Consent.** Minority approval for transactions under MI 61-101 must generally be obtained at a meeting of affected securityholders. Exemptions may be granted if the issuer demonstrates that a majority of eligible securities would vote in favor of the proposed transaction, provided that disclosure equivalent to an information circular is made available to all securityholders at least 14 days before consents are obtained. Such relief is considered exceptional and typically applies to closely held issuers and should not be used as a pretext for broad solicitation by written consent.

Looking ahead: Stay agile, stay informed

As regulatory requirements and market conditions shift, issuers must proactively monitor new OSC and CSA guidance and policy developments. The OSC is closely watching trends in global uncertainty, crypto assets and accounting standards. Issuers should remain agile and informed of shifts in these areas and ensure their disclosure is aligned with their business strategy.

For further information, please see OSC Staff Notice 51-737 – Corporate Finance Division 2025 Annual Report.

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