

Securities Law Bulletin

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OSC Releases New Policy for Whistleblower Program for Public Comment

By: Tom Fenton

On October 28, 2015, the Ontario Securities Commission (the “OSC”) published Proposed OSC Policy 15-601 *Whistleblower Program* (the “Policy”), which describes a whistleblower program (the “Program”) designed to encourage the reporting of serious securities-related misconduct in Ontario to the OSC. The Program would be the first of its kind for securities regulators in Canada, and under the proposed Policy, a whistleblower could be awarded up to \$5 million upon the final resolution of an administrative matter. The U.S. Securities and Exchange Commission (the “SEC”) launched a whistleblower program in 2011 and it has been more successful than the SEC anticipated, generating 3,600 tips last year alone and paying out more than US\$50 million to whistleblowers.

The Program is expected to increase the effectiveness of the OSC’s Enforcement Branch by providing access to high-quality information about matters such as insider trading, accounting and disclosure violations and registrant misconduct. The Program is also expected to encourage companies to self-report potential wrongdoing to the OSC.

The Policy was developed after extensive stakeholder consultation and sets out key details about the Program, including the type of information that may result in a monetary award; the criteria that would make an individual eligible for an award; and the factors to be considered in determining the amount of an award. Under the proposed Policy, if there is an award eligible outcome, eligible whistleblowers could receive up to a maximum of \$1.5 million regardless of whether the OSC recovers sanction monies ordered, and up to a maximum of \$5 million if the OSC does recover funds for penalties exceeding \$10 million.

The proposed Policy also expands the list of persons eligible to be whistleblowers to include directors and officers, chief compliance officers, in-house legal counsel and culpable whistleblowers, provided certain additional criteria are met.

In developing the proposed Policy, OSC Staff considered comments received on OSC Staff Consultation Paper 15-401 *Proposed Framework for an OSC Whistleblower Program*, which was published on February 3, 2015 for a 90-day comment period. Staff also considered the valuable discussion that took place at the OSC’s June 9, 2015, public Whistleblower Roundtable.

In the proposed Policy, the OSC states that it believes that the Policy would create incentives for an individual or entity with the most specific, timely and credible information to report to the OSC concerning serious misconduct that may otherwise go undetected. This would support the OSC’s mandate, namely investor protection and maintaining fair and efficient capital markets.

Staff are seeking comment on the proposed Policy by January 12, 2016, with a planned implementation date in the spring of 2016.

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