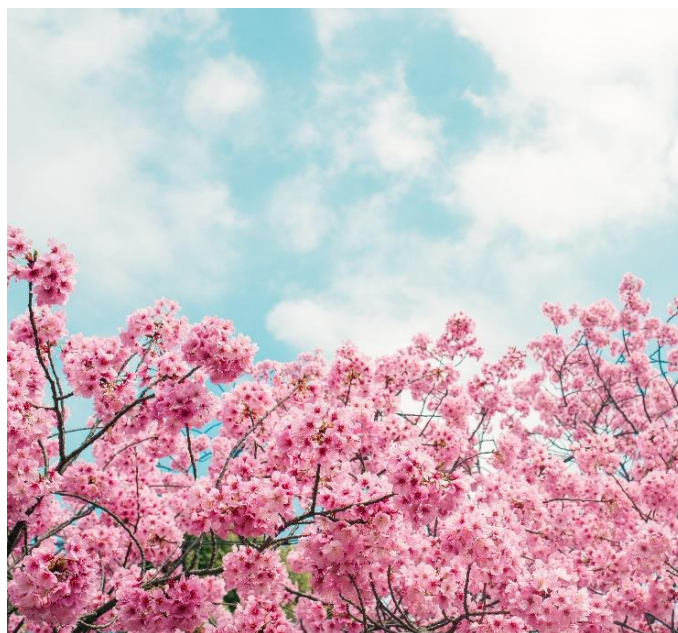


## April Showers Edition

April showers bring May flowers! As the popular proverb predicts, the rain this month has indeed sparked the beginning of spring.

For those of you in Toronto, have you seen the Sakura Cherry Blossoms in High Park yet? They are currently in peak bloom and crowds gather every year in the park (particularly by Cherry Hill) to marvel the extensive collection.

Cherry blossoms in Japanese are known as Sakura, and they are a national treasure. In Toronto, large crowds have gathered in the city to view the local blooms (causing major traffic, may we add). We wish our readers happy viewing; don't forget to bring your camera and be prepared to walk a bit, as parking may be difficult! Bring along a copy of this bulletin to read as a passenger while you try to find a spot.



### In this bulletin:

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2. AMPed for Spring: FSRA Proposes Guidance on Administrative Monetary Penalties
3. FSRA Proposes Guidance to Cut Down Mortgage Fraud
4. Three more Sakura Seasons, then Total Cost Reporting will be Required for the Year Ending December 31, 2026
5. The OSC's Egg-cellent Final Statement of Priorities

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### FAQ Corner

### BLG's Resource Corner

#### 1. Better Days Ahead: Proposed Amendments Regarding Diversity Disclosure

Do you think more information is needed about diversity on boards and in the C-suite? Canadian regulators do. But they can't decide how much more information is enough. As a result, they have published two proposals. One proposal, supported by the securities regulators in British Columbia, Alberta, Saskatchewan and the Northwest Territories, favours a principles-based approach (**Proposal A**). The other proposal, supported by the OSC and aligned with the *Canada Business*

*Corporations Act*, is more prescriptive (**Proposal B**). But wait, what about the other provinces and territories? They have not expressed a preference. Presumably, they are waiting to hear your comments on the proposals.

On April 13, 2023, the regulators published two proposals for comment (Proposed Amendments to Form 58-101F1 *Corporate Governance Disclosure* and National Policy 58-201 *Corporate Governance Guidelines*). A detailed overview of the proposal is published by our friends at BLG in this [article](#). What is the gist of the proposals?

### Proposal A – Issuer Specific Information

- This proposal would require an issuer to disclose its approach to diversity in respect of the board and executive officers, but doesn't mandate disclosure for specific groups, other than women.
- Proposal A would require an issuer to describe its (i) chosen diversity objectives, (ii) how it would measure progress and (iii) explain what mechanisms it has determined are appropriate to achieve its diversity objectives.
- The proposal would only require disclosure of data (other than with respect to women) if an issuer chooses to collect data with respect to specific groups it identifies as being relevant for its diversity objectives.

### Proposal B – Standardized Information

- This proposal, on the other hand, extends the current disclosure framework as it applies to women to historically under-represented groups called “designated groups”.
- Proposal B would require standardized reporting on the representation on boards and in executive officer positions of five designated groups –women, Indigenous peoples, racialized persons, persons with disabilities and LGBTQ2SI+ persons.
- This proposal is similar to the approach adopted under the C under which approximately 29% of TSX-listed issuers report.

### What is common to both proposals?

- The current “comply or explain” disclosure model would continue to apply with respect to policies for women on boards and targets for women on boards and in executive officer positions.
- The proposals are both designed to increase transparency about diversity on boards and in executive officer positions and provide investors with decision-useful information that enables them to better understand how diversity is addressed by an issuer.
- The proposals are aligned on disclosure requirements regarding board nominations and renewal.
- Neither proposal would apply to investment funds or venture issuers.

### How do the proposals differ?

- The proposals reflect different concepts related to disclosure regarding the representation of members from diverse groups.
- Proposal A provides issuers with greater flexibility to design practices and policies respecting how they will address diversity, while the other proposal provides investors with greater

access to information in a standardized format, which would promote consistency and comparability of disclosures.

## Next Steps

The comment period closes on July 12, 2023. Further information about the proposals, including specific questions to which the CSA are seeking feedback, are set out in the [CSA Notice and Request for Comments](#).

If you would like to share your view on which proposal provides you with decision-useful information that enables you to better understand how diversity is addressed by an issuer, we would be happy to assist you in preparing a comment letter.

## 2. AMPed for Spring: FSRA Proposes Guidance on Administrative Monetary Penalties

On March 27, 2023, the Financial Services Regulatory Authority of Ontario (FSRA) released [draft guidance](#) (the **Draft Guidance**) for public consultation setting out FSRA's approach to imposing Administrative Monetary Penalties (AMPs). The Draft Guidance is intended to assist stakeholders in understanding how FSRA exercises discretion when imposing AMPs and determining AMP amounts in order to support transparency, fairness, consistency and better decision-making by persons/entities on whom AMPs are imposed.

As part of FSRA's enforcement mandate, it has the power to impose AMPs if it is satisfied that a person or entity has contravened or is not in compliance with certain statutory requirements. The two types of AMPs that FSRA may impose are general administrative penalties (**General AMPs**) and summary administrative penalties (**Summary AMPs**). General AMPs tend to be available for a broad range of contraventions and are subject to significant regulatory discretion, within statutory maximums. Summary AMPs are available under some of the FSRA sector statutes for more technical violations (such as non-filing and inappropriate record keeping) and the amounts are usually prescribed.

The Draft Guidance sets out FSRA's position on the interpretation of, and approach to, the application of the statutory and regulatory provisions dealing with the following aspects of AMPs:

- A. The purpose for which AMPs can be imposed under the sector statutes;
- B. The criteria for determining the amount of General AMPs imposed under the sector statutes; and
- C. The considerations for determining whether a General AMP is "punitive" and requires adjustment, or whether the amount of penalty imposed is consistent with the purposes for imposing AMPs.

Prior to imposing an AMP, FSRA must believe it will satisfy at least one of the enumerated statutory purposes, being: (i) to promote compliance with statutory requirements or (ii) to prevent a person or entity from deriving economic benefit (which includes non-monetary benefits such as time saved from non-compliance) as a result of the contravention.

The Draft Guidance includes FSRA's interpretation of the following statutory criteria that it must consider when exercising discretion to determine the amount of a General AMP:

- A. Degree to which the contravention or failure was intentional, reckless or negligent;

- B. Extent of the harm or potential harm to others resulting from the contravention or failure to comply;
- C. Extent to which the person tried to mitigate any loss or take other remedial action;
- D. Economic benefit derived or reasonably expected to be derived by the person or entity from the contravention or failure to comply; and
- E. Prior history of contraventions or failures to comply.

The consultation period is open until May 31, 2023, and feedback can be provided through FSRA's website.

### 3. FSRA Proposes Guidance to Cut Down Mortgage Fraud

On March 28, 2023, the Financial Services Regulatory Authority of Ontario (**FSRA**) released updated [draft interpretation guidance](#) (the **Draft Guidance**) that addresses requirements and expectations for FSRA-licensed mortgage brokers, agents, brokerages and administrators to deter deceptive and fraudulent practices in the mortgage brokering sector. The Draft Guidance takes into consideration feedback received from the December 2021 public consultation and outlines FSRA's interpretation of various provisions of the c 2006 (**MBLAA**) and related regulations, and includes a non-exhaustive list of key steps for detecting and preventing mortgage fraud.

Fraud includes both situations where misleading or false information is provided to qualify a borrower for a mortgage, as well as when a person falsifies information to benefit financially from a mortgage transaction. FSRA expects brokerages and administrators to have policies and procedures that address the MBLAA prohibitions against providing false or deceptive information, the steps licensees must take to detect and prevent mortgage fraud and the duty to conduct identity verification.

The Draft Guidance notes that although FSRA does not regulate anti-money laundering (**AML**), conducting adequate identity verification is important for brokerages and administrators to defend against being used to facilitate money laundering. As we highlighted in our [February bulletin](#), the federal Department of Finance has proposed amendments that once implemented will extend the application of the AML compliance regime to MBLAA licensees.

The Draft Guidance outlines FSRA's expectation for licensees to take steps to ensure the accuracy of documents in a mortgage or investment transaction as well as the role of the principal broker in detecting and preventing mortgage fraud. The Draft Guidance also includes examples of red flags for fraud. The Draft Guidance notes that the failure to address or obtain the satisfactory resolution of red flags may be a reason to doubt the effectiveness of a licensee's governance and the suitability to hold a licence under the MBLAA. We recommend that licensees review the Draft Guidance as it addresses practices that apply to your day-to-day business.

### 4. Three more Sakura Seasons, then Total Cost Reporting will be Required for the Year Ending December 31, 2026

On April 20, 2023, the securities and insurance regulators announced final changes to total cost reporting (**TCR**) disclosure for investment funds and individual segregated fund contracts. The changes for the securities sector are through amendments to National Instrument 31-103

*Registration Requirements, Exemptions and Ongoing Registrant Obligations* and changes to the related Companion Policy (the [Amendments](#)).

The Amendments require annual reporting to clients showing the ongoing costs of owning mutual funds, exchange-traded funds and scholarship plans. This information will need to be expressed both as a percentage for each fund and as an aggregate amount.

### Changes from proposals published last year

In response to comments made on the proposals published last year, a number of changes were made, including an extended transition period, revisions to mandated disclosure and sample documents, clarifications regarding calculation methods, and consolidation of all new cost information in a single annual report on charges and other compensation (**ARCC**). The joint BLG-AUM Law summary of the 2022 proposals is [here](#) and is being updated.

### New securities disclosure requirements

Once the Amendments come into effect:

- Dealers and advisers will need to include the following information in the ARCC for all investment fund securities owned by a client during the year, excluding labour-sponsored investment funds and prospectus-exempt funds:
  - the aggregate amount of fund expenses, in dollars, for all investment funds;
  - the aggregate amount of any direct investment fund charges (for example, short-term trading fees or redemption fees), in dollars, for all investment funds; and
  - the fund expense ratio, as a percentage, for each investment fund class or series.
- Investment fund managers will need to provide additional information to the dealers and advisers who distribute their products so that they can include it in the ARCC.
- **Note** – the calculation and reporting of the information will be prescribed.

### What stays the same?

Existing exemptions for statements and reports provided to non-individual permitted clients will continue to apply.

### Timing

The Amendments are expected to come into effect on January 1, 2026.

### Impact

- Investors will first receive enhanced TCR disclosure in early 2027 in annual reports for the year ending December 2026.
- This gives dealers, advisers and investment fund managers effectively December 2025 (32 months) to implement the policies and procedures and system changes needed to operationalize the Amendments. However, before this deadline, they will need to complete the design and development of their system changes well in advance of the deadline to have time to test and resolve unforeseen issues.



## 5. The OSC's Egg-cellent Final Statement of Priorities

On an annual basis, the Ontario Securities Commission (**OSC**) delivers a multi-year business plan addressed to the Minister of Finance, which among other items, includes the OSC's Statement of Priorities (**SoP**), which the OSC undertakes as its goals and priorities for the upcoming fiscal year under its mandate to administer securities laws in the province.

As we had noted in our [previous bulletin](#), the OSC had released its draft SoP in November 2022, requesting stakeholder comment and feedback as part of the OSC's continuing commitment to transparency and accountability.

On April 18, 2023, following the review of stakeholder feedback, the OSC has now published its final SoP for the financial year ending on March 31, 2024, which can be found within the OSC's Business Plan for the Fiscal Years Ending 2024-2026 (in the "Strategic Direction – Current and Future Programs and Activities" section), also released same day. This represents the first SoP under the OSC's new organizational and governance structure (which included the division of the CEO & Chair role into two separate roles, the establishment of the new and separate Capital Markets Tribunal, as a division of the OSC, and a board of directors comprised of up to twelve directors, including the CEO & Chair).

The key changes made to the draft SoP in November 2022, and incorporated into this final SoP include:

- Revising the actions and planned outcomes for incorporating Indigenous Peoples' issues and perspectives into policy work;
- Clarifying the OSC's role in overseeing the implementation of the office of the investor and the investor advisory panel of the New Self-Regulatory Organization of Canada (**New SRO**) and the new Canadian Investor Protection Fund (**New CIPF**);
- New action to support broader diversity on OSC advisory committees; and
- Highlighting actions the OSC is taking to pursue policy and regulatory initiatives that are responsive to investor research findings.

The finalized 2023-2024 SoP sets out the following four strategic goals of focus for the OSC for the upcoming fiscal year, which remains unchanged from the draft SoP:

- Building Trust and Fairness in Ontario's Capital Markets;
- Strengthening Investor Safeguards;
- Adapting Regulation to Align with Innovation and Evolving Markets; and
- Enabling the Organization to Deliver Effective Regulation.

For each goal, the OSC sets out certain priorities it will pursue to achieve that goal.

To achieve the first goal, the OSC will continue to focus on advancing work on environmental, social, and governance disclosures (**ESG**) for reporting issuers. Action items will include the continuing consideration and development of the proposed National Instrument 51-107 *Disclosure of Climate-related Matters*, which would require reporting issuers (other than investment funds) to disclose certain climate-related information; and following the recently published CSA Staff Notice 81-334 in January 2022, complete a focused review of ESG disclosures by investment funds and publish a summary of findings and guidance by December 2023. The OSC also aims to

continue its development of the over-the-counter derivatives regulatory framework by finalizing and implementing the derivatives fee rule amendments and the derivatives dealer business conduct rule, by first and third quarter of fiscal 2023-2024, respectively. The OSC will also continue to oversee initiatives following the launch of the New SRO and New CIPF on January 1, 2023, such as overseeing the harmonized rulebook, and initiating work to assess incorporating other registration categories into the New SRO, such as portfolio managers, exempt market dealers and scholarship plan dealers.

To achieve the second, third and fourth goals, the OSC intends to pursue, among others, the following initiatives:

- Develop and publish for comment a proposal to provide the Ombudsman for Banking Services and Investments (**OBSI**) with the authority to make binding compensation decisions.
- In the crypto space, the OSC's action items include continuing to apply regulatory obligations to crypto firms while completing their registration or approval process, such as obtaining pre-registration undertakings from firms pending completion of the registration or approval process; and an intention to develop a regulatory framework for how investment funds invest in crypto assets.
- For investment fund reporting issuers, the OSC intends to continue to review the continuous disclosure requirements set out in National Instrument 81-106 *Investment Fund Continuous Disclosure* and other disclosure requirements with a view to publishing rule amendments on disclosure requirements in December 2023, focusing on the Management Report of Fund Performance and non-IFRS content in investment fund issuers' financial statements.
- The OSC will continue its strategy to attract, develop and retain talent, understanding that staff expertise is critical to the OSC's ability to deliver on its strategic goals and initiatives. To aid in this, the OSC intends to continue to execute on its inclusion and diversity strategy, which will involve a review of its talent acquisition process to identify relevant areas for inclusion and diversity.

For the full SoP, the OSC's Business Plan for the Fiscal Years Ending 2024-2026 can be accessed on the [OSC's webpage](#). The OSC's Business Plan is an Egg-Cellent read – one that gives the reader a thorough picture of the changed OSC, its executive and staff, its work, mission and priorities.

If you have any questions regarding the OSC's SoP or how the intended goals and upcoming priorities may impact you, please [contact us](#).

## In Brief

### New SRO Blossoms With Its New Name

As of January 1, 2023, the Mutual Fund Dealers Association of Canada (**MFDA**) and the Investment Industry Regulatory Organization of Canada (**IIROC**) came together as the New Self-Regulatory Organization of Canada (**New SRO**). The newly amalgamated organization advised that New SRO would be an interim placeholder name until consultations could be completed for a new official name later in 2023.

On March 31, 2023, the New SRO released the much-anticipated proposal for its new official name, the Canadian Investment Regulatory Organization (**CIRO**) or Organisme canadien de réglementation des investissements (**OCRI**) in French. The new name also comes with a new logo

and branding. According to the information circular, the New SRO believes the new name will resonate with all stakeholders and foster a strong sense of confidence in the New SRO's mission.

On April 24, 2023, members of the New SRO voted in favour of adopting the new name and branding. While the new name still requires approval by provincial and territorial securities regulators, the New SRO is hopeful that the new name can be rolled out around June 1, 2023. Assuming the name is approved by the required securities regulators, dealer firms will then have until December 31, 2024, to incorporate the new name and logo on required disclosures in place of the existing MFDA and IIROC logos.

### **Busy Bees: FSRA Consumer Advisory Panel Annual Report**

The Financial Services Regulatory Authority of Ontario (**FSRA**) receives advice from a consumer perspective from the Consumer Advisory Panel (**CAP**). In April, CAP released a report on its activities for the year ended December 31, 2022, which may be of interest to those working in sectors regulated by FSRA. The report details CAP's relationship with FSRA, including meetings with FSRA's board, panel members expanding their governance and advisory roles, and CAP's new working groups. Some of the activities reported on include a description of new members appointed by FSRA, topic-specific working groups relating to vulnerable consumers (including advice on the definition of vulnerability), outreach to various interest groups, and written submissions on FSRA's proposed statement of priorities. CAP also provided advice to FSRA on its proposed guidance on administrative monetary penalties (described elsewhere in this bulletin).

### **Sunny CSA Report on SRO Oversight**

The CSA released the annual report (**Report**) summarizing its key activities in 2022 with respect to its oversight of what was then known as the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) and their respective investor protection funds. The Report covers the period prior to the consolidation of the two self-regulatory organizations into the New Self-Regulatory Organization of Canada (**New SRO**) at the start of 2023.

During the period, most of the CSA's efforts related to dealing with the amalgamations of the former self-regulatory organizations, however staff also continued to oversee the SROs under the then-existing regulatory framework.

Of note, at the end of 2022 there were 173 IIROC member firms with 31,646 approved persons, and 83 MFDA member firms with 77,341 approved persons. Six IIROC rule amendments were approved, and five other rule amendments were still under review. A number of key subjects impacting member firms were discussed between staff of the CSA and IIROC, including IIROC's market surveillance infrastructure, order execution only service levels, and advertising and social media guidance. The Report notes that IIROC is developing a proposal to update existing guidance on advertising and social media, particularly with respect to influencers, gamification and research reports based on non-traditional inputs such as social media sentiment indicators. It is also mentioned that new rules, guidance and compliance procedures relating to crypto assets are expected to be developed by staff of the CSA and the New SRO.

Key subjects discussed with CSA staff and the MFDA included cybersecurity, continuing education and expanded cost reporting.



Post-amalgamation, the CSA will continue its work on post-close transition activities, harmonization of the New SRO rulebooks and policy work related to directed commissions. Staff will also consider whether there can be improvements to the SRO complaint resolution process, enforcement and registration practices.

### **Time Flies: New SRO Proposes Amendments for T+1 Settlement**

The New Self-Regulatory Organization of Canada (**New SRO**) has proposed amendments to the Universal Market Integrity Rules (**UMIR**) and the Investment Dealer and Partially Consolidated Rules (**IDPC Rules**) to help facilitate the move from a T+2 settlement cycle to a T+1 settlement cycle. The U.S. Securities and Exchange Commission has already adopted rule changes to amend the settlement cycle to T+1, which industry must comply with by May 28, 2024. Collectively, the proposed New SRO amendments harmonize the rules with the T+1 settlement cycle by shortening delivery and settlement periods by one day.

Certain other changes are also being proposed to modernize the IDPC Rules relating to buy-ins and conform to industry settlement periods for mortgage-backed securities. In addition, the New SRO intends to repeal requirements for dealers to file broker-to-broker trade matching exception reports, similar to what the CSA proposed earlier for institutional trade matching exception reports. In the notice of the proposed amendments, the New SRO recommended that dealers review their executed agreements (such as custodian agreements and lending agreements) to determine whether there are any delivery or payment obligations, or interest calculations, specific to a T+2 settlement cycle that will need to be amended.

Comments on the proposal are due by June 19, 2023.

### **FAQ Corner**

#### **Question: Can a “Term Sheet” be an Offering Memorandum?**

**Answer:** In some circumstances, yes.

In Ontario, an offering memorandum (an **OM**) can be any document, or a collection of documents, that describes the “business and affairs” of an issuer that was prepared for the primary purpose of delivery to and review by prospective purchasers to assist them in making an investment decision. The full definition of an OM is contained directly in securities legislation.

The definition of an OM specifically excludes a document that sets out current information about an issuer for the benefit of a prospective purchaser already familiar with the issuer through prior investment or business contacts.

It is very important to determine early on whether a term sheet or other marketing documents constitute an OM, as it will impact the potential liability of the issuer and certain other parties, as well as disclosure, update and filing requirements.

The definition of an OM can be broadly interpreted, and may include documents such as promotional materials, term sheets, confidential promotional memoranda and slide decks.

All marketing documents must also be reviewed in the context of other documents provided to investors when considering the proper characterization.

[AUM Law](#) would be pleased to assist you in your marketing reviews or if you have any questions with respect to your exempt trade report filing obligations.

### BLG's Resource Corner

Our colleagues at BLG have provided the following insights we thought might interest our readers:

- [Cyber risk management guidance for Canadian corporate directors – 2023 Update](#)
- [Climate-related disclosures: The Big Three's proxy voting guidance and expectations](#)
- [Canada's New SRO: A new name, enforcement and policy focus](#)

For more information, please visit the [BLG website](#).

#### **Practical Advice • Efficient Service • Fixed-Fee Plans**

AUM Law focuses on serving the investment management sector with legal and consultancy services related to regulatory compliance. AUM Law provides its registrant clients with annual fixed-fee regulatory compliance support plans and related offerings. It provides registrants with an efficient, innovative approach to help manage their legal and regulatory compliance obligations.

##### **BLG + AUM Law**

AUM Law has been part of BLG since May 2021 and is integrating with BLG's suite of alternative legal services known as BLG Beyond.

This bulletin is an overview only and it does not constitute legal advice. It is not intended to be a complete statement of the law or an opinion on any matter. No one should act upon the information in this bulletin without a thorough examination of the law as applied to the facts of a specific situation.

