

May 4, 2015

BY EMAIL

Dear Sirs/Mesdames:

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8
Email: comments@osc.gov.on.ca

Re: OSC STAFF CONSULTATION PAPER 15-401 *Proposed Framework for an OSC Whistleblower Program (the “Consultation Paper”)*

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on and wishes to provide the following general comments on the Consultation Paper.

We support the principles behind the proposed whistleblower program which is intended to encourage persons to report knowledge of possible serious breaches of securities law to the OSC.

Effective internal compliance systems are integral to the efficiency of our capital markets and should remain a “first line of action”. As a result, we agree with an approach whereby the OSC will consider the timing of an initial report by a potential whistleblower who first reports to internal compliance personnel while a second person reports directly to the OSC in determining whistleblower eligibility. We understand that it may not be appropriate in every situation that individuals report misconduct to their organizations’ internal compliance program in order to be eligible for a whistleblower award, particularly if the organization does not have an effective compliance department.

It is currently contemplated that persons who are Chief Compliance Officers (or the equivalent) who acquired information as a result of an organization’s internal reporting or investigation process would be ineligible for an award under the program. We agree that as CCOs are ultimately responsible for compliance at their workplace, in most circumstances they should not receive an award as a result of information obtained from successful

¹The CAC represents the 14,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC’s website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors’ interests come first, markets function at their best, and economies grow. CFA Institute has more than 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 143 member societies. For more information, visit www.cfainstitute.org.

internal compliance systems. Similarly, we also believe that other compliance staff should, in most circumstances, be ineligible for an award. However, in specific limited instances, it might not be possible for the CCO or other compliance staff to effectively deal with culpable individuals. For example, the CCO might report to the culpable person(s). In those circumstances, while it is likely the CCO would be required to take other action (e.g. resign), if senior management or the board of directors does not address the issues raised by the CCO or compliance staff, and the CCO or other compliance staff report such information to the OSC, they should be eligible for an award.

On a related matter, we do not see a compelling reason to disqualify directors and officers that are not directly responsible for compliance matters from receiving awards under the program.

We disagree with the proposal to permit, in certain circumstances, individuals who provide information on matters in which he or she actively and improperly participated, to be eligible for awards. While the OSC could still take enforcement action against such an individual, permitting such persons to benefit monetarily from their improper and/or illegal actions would not serve as a deterrent to similar action in future. The Consultation Paper also recognizes that such persons may have credibility issues. If such issues could potentially be alleviated through corroborating evidence, it is likely that there are other persons, other than the culpable individuals, who should receive the awards instead. In addition, culpable individuals should not be eligible for the proposed anti-retaliation provisions, in which case it may become difficult for organizations to effectively deal with individuals who break laws and who then become whistleblowers.

We believe that confidentiality for participants in the program will be the key to its success. We do not believe that the Consultation Paper goes far enough to ensure the anonymity of potential whistleblowers. The Consultation Paper explicitly states that “the OSC would use all reasonable efforts to keep confidential a whistleblower’s identity”, which is a subjective standard subject to wide interpretation. Furthermore, the express exceptions to confidentiality include the situation where the relevant information is necessary to make Staff’s case against a respondent. Such a situation might be expected to be triggered on a frequent basis. We believe it would be helpful during further formulation of the program to provide additional details with respect to the efforts that would be undertaken to maintain confidentiality, as well as the general circumstances and examples in which an individual’s identity would not be expected to remain confidential (we understand that in practice this will have to occur on a case-by-case basis). In addition, in order to avoid deterring potential whistleblowers from providing important information to the OSC, we support the potential policy under consideration whereby a whistleblower would remain anonymous to the OSC through their legal counsel for a period of time until it is determined whether or not the information will lead to an administrative proceeding.

For persons who are not interested (or may not be eligible) to receive an award, it would be constructive if it would be possible to maintain the anonymity of the whistleblower perpetually.

We also agree with Staff's recommendation that the anti-retaliation provisions should apply to persons who report directly to the OSC and through their own internal reporting mechanisms. Without the latter protection, potential whistleblowers who report internally but who choose not to report further to the OSC would be disadvantaged, thus discouraging the internal reporting to compliance which is a core function of our markets.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Cecilia Wong*

Cecilia Wong, CFA
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