

**OSC STAFF NOTICE 15-702
CREDIT FOR COOPERATION**

PURPOSE OF THE NOTICE

1. This notice is to clarify that it is part of the Commission's compliance policy that market participants should have an incentive to self-police, self-report, and self-correct matters that may involve breaches of Ontario securities law or activities that would be considered contrary to the public interest.
2. The results of cooperation in accordance with the following guidelines may lead to recommendations which narrow the scope of the allegations, a reduction in the sanctions proposed and, in some cases, a decision not to name a market participant in the Notice of Hearing.
3. This notice is intended to announce and formalize Staff's position in respect to what cooperation means and how cooperation can be translated into a form of credit during the investigative and litigation process.

STAFF'S EXPECTATIONS OF MARKET PARTICIPANTS

4. A market participant that identifies a serious problem in respect of their systems of internal control, the reporting of financial results, misleading disclosure, illegal trading or any other inappropriate activity that has impacted investors or cast doubt on the integrity of Ontario's capital markets, should promptly and fully report to the appropriate regulatory or law enforcement agency.
5. Market participants should fully cooperate with staff of the OSC, or any other regulator, when they are asked to provide assistance or information and should promptly and fully respond to all production orders and summonses.
6. When a serious matter is reported to staff of the OSC, a market participant should volunteer all the necessary books and records required to assess the matter and any reports or analysis prepared by experts retained by the market participant or its counsel.
7. When a matter has been reported to a regulator, market participants and their employees, officers and directors should make themselves available for voluntary interviews to allow staff to assess the situation.
8. When a market participant has identified a serious breakdown in its system of internal controls, the market participant should promptly investigate, take corrective action and implement new systems of control, as appropriate.
9. A market participant that is aware that an employee, officer or director may have acted in a manner that is contrary to Ontario securities law, should fully investigate the matter and, independent of whatever action a regulator may take, deal with the matter promptly and appropriately.
10. The market participant should fully and completely provide restitution, if appropriate, to any investors that have been harmed by inappropriate conduct or by a failure of internal controls.

WHAT IS NOT VIEWED AS COOPERATION

11. In general, staff of the OSC will not give credit for cooperation to market participant in situations where, during the course of an investigation, the market participant puts the interest of the firm or its officers, directors or employees ahead of its obligations to clients, shareholders, or the integrity of Ontario's capital markets.
12. Specifically no credit for cooperation will be given when market participants:
 - fail to promptly and fully report serious breaches of Ontario securities law to staff of the OSC or to another regulator when the facts of the matter are known to them.

- withhold information that in light of the circumstances should be provided to staff of the OSC.
- arrange their affairs in such a manner to delay reporting a matter that should be reported or to claim a privilege to avoid providing details of potential breaches of Ontario securities law.
- indicate they are prepared to cooperate fully but will only provide information on a compelled basis.
- undertake to provide staff with books, records or information and then fail to live up to the undertaking or fail to provide the required documents in a timely fashion.
- misrepresent the facts of a situation.
- destroy documents in an attempt to avoid production of the records.
- invoke legal advice as a defence, but refuse to disclose the advice.
- enter into settlement arrangements with employees, clients or shareholders that include an agreement not to disclose information to a regulator or an agreement to withdraw any existing complaints.
- continue the inappropriate conduct or fail to correct internal control problems after the conduct or internal control problems have been identified to senior management and the board of directors.

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13. If potential respondents act in a responsible manner during the course of an investigation and have self-policed, self-reported, and self-corrected the matters under investigation, staff may agree that it may be in the public interest to resolve the outstanding issues by:
- i. recommending that the matter not proceed by way of a prosecution under section 122 of the Act.
 - ii. issuing a Notice of Hearing and Statement of Allegations and recognizing and giving credit for cooperation by narrowing the scope of the allegations and in the settlement process recommending reduced sanctions against cooperative respondents.
 - iii. not issuing a Notice of Hearing and Statement of Allegations and propose that the issues be address by one or more of the following:
 - entering into an Executive Director settlement as contemplated in the Rules of Practice;
 - placing terms and conditions on a potential respondent's registration;
 - obtaining an undertaking from potential respondents that in the future they will not violate Ontario securities law;
 - issuing a warning letter.
 - iv. in appropriate circumstances, concluding the matter without taking any action against the potential respondent.
14. As a practical matter, greater cooperation during the course of an investigation will lead to reduced costs incurred by Commission Staff, and consequently, a reduction of the potential costs that might be assessed under section 127.1 of the Act.

15. During the course of the investigation, market participants, who have been less than cooperative up to a point in time, may decide to fully cooperate with staff and would normally receive partial credit for the cooperation.