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OSC Notice 11-797 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2024

https://www.osc.ca/en/securities-law/instruments-rules-policies/1/11-797/osc-notice-11-797-2023-2024-statement-priorities-request-comments

I lend my support to some other writers who have written to recommend some changes to the OSC priorities. I have read carefully several of the comments posted. I do not propose to repeat all of their recommendations. I did not see anything in any of the comments I will mention here that I did not support. I provide one very broad comment of my own supported by evidence as to your emphasis on protecting the interests of the investment industry over the interests of individual investors.

Let me draw your attention two paragraphs from Harvey Naglie's submission:

> I understand that it was neither practical nor necessary for the SoP to speak to each of the AGO's recommendation, but the failure to acknowledge and address the deficiencies identified by the Audit relating to investor perceptions and protections represent glaring omissions. While the Audit highlighted many areas where the OSC could improve regulatory processes and investor outcomes, the SoP is silent on virtually all of them. In particular, the SoP ignored the AGO's recommendations to improve and accelerate the rule-making process, to request additional powers to better protect investors and to pay out more from the fines and penalties it collects to harmed investors.

> The SoP chooses not to prioritize addressing these investor-related issues and focuses instead on promoting initiatives related to fostering competition, capital formation and burden reduction. Of the nineteen priorities itemized in the SoP, only three are classified under the heading of "Strengthening Investor Safeguards." This demonstrable OSC preoccupation with responsibilities other than investor protection both defies and makes more poignant the admonition of its own IAP "that investor protection is the sine qua non of the OSC's mandate, the defining element of its purpose, and its cultural cornerstone." The SoP falls well short of manifesting this type of overarching commitment to investor protection.

You should read them again. I could not say it better.

In particular I support the careful analysis of Ken Kivenko/Kenmar Associates, which they support with extensive evidence. They have commented in detail on every aspect of the SOP, with agreement where it seems warranted, and recommended changes where needed.

The Canadian Coalition for Good Governance likes many of the specific priorities. But note that they start their report expressing concern over the conflict of interest between encouraging more capital formation and protecting the interests of the investors who are providing the capital.

Peter Whitehouse is very direct and to the point. To continue on his line, the SOP is very long and talks about a lot of things. I believe that the forest of verbiage is designed to conceal a lack of attention to protection of investors. In another year the OSC can point to all sorts of actions taken for the investment industry and chalk up points for meeting many of its priorities, and leave the weakness of investor protection obscured by all the positive scores.

Let me make a broader point. A huge part of the investment capital in the world is now under the control of huge funds and corporations. In 2001 Adam Harmes showed how this concentration was causing serious macro-effects. The herding effect of attempts to match benchmarks causes big swings in markets as all the large funds try to buy or sell the same shares at the same time. This effect has increased because ETFs have now soaked up trillions of dollars of equities and bonds. I am an individual investor my whole adult life, but I now have part of my own investments in ETFs.

Adam Harmes, (2001) *Unseen Power: How Mutual Funds Threaten the Political and Economic Wealth of Nations*, Stoddart.

In addition, the big investment funds can invest only in other large companies, not smaller firms. Otherwise they end up controlling the small firms with their minimum investments. The markets require individual investors to capitalise many small firms that are the very target of the priority to increase capital formation. Small investors have been harmed so badly and so often by bad capital markets practices and players that more and more of them refuse to invest directly any more, defeating the stated OSC priority.

If the OSC doesn’t make protection of small investors a much more important priority and take action on it, everyone loses.

Why should you pay attention to my comments? I am a Professor Emeritus of Finance and Senior Scholar from York University, with decades of experience and research in investment analysis, personal finance and ethics. I have been working in personal finance research, teaching, regulation and litigation support for decades. My co-authored university text on personal finance is in its sixth edition. I have won research awards, teaching awards, a National Business Writing award for my work with the Financial Post and was named an inaugural Fellow of FP Canada in 2011. I have been a retail investor in equities for almost 50 years. My course development and teaching has included: ethics for investment managers, security valuation, financial statement analysis, ethics for financial planners, corporate finance, environmental management, PhD seminar in finance, business strategy and every topic that exists in personal finance.