

Kenmar Associates

Dedicated to Investor Protection

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ONTARIO SECURITIES COMMISSION NOTICE 11-771 – STATEMENT OF PRIORITIES

REQUEST FOR COMMENTS REGARDING THE STATEMENT OF PRIORITIES FOR FINANCIAL YEAR TO END MARCH 31, 2016

http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20150402_11-771_rfc-sop-end-2016.htm

Kenmar Associates welcomes the opportunity to comment on the Proposed 2016 Statement of Priorities (SOP). Kenmar is an Ontario- based privately-funded organization focused on investment fund investor education via on-line research papers hosted at www.canadianfundwatch.com. Kenmar also publishes ***the Fund OBSERVER*** on a bi-weekly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

We'd like to acknowledge the OSC's determined and positive leadership on retail investor protection over a wide spectrum of issues. The Office of the Investor is unique among Canadian regulators as is the Investor Advisory Panel. The financial support for FAIR Canada has been a very positive action since the Canadian investor advocacy community is chronically underfunded. The OSC's process for consultation from stakeholders is more than fair and has greatly improved in quality and participation these last three years. The OSC's principled stand countering the financial services industry's relentless attempts to thwart, delay or water down investor protection reforms is recognized.

With the evolution of the investment markets, technological change, changing age demographics, complex structured products, new investment "opportunities" (medical marijuana companies), and the key "RRSP rollover" decision point, investor risks and vulnerabilities are much greater than ever before. Canadian investors are highly vulnerable due to low financial literacy, information asymmetry vs.

dealers/dealing Reps (“advisors”), investor overconfidence in their investing skills, blind trust in advice givers and a desperate search for yield in a low interest environment.

Much of the debate has centered on conflicts-of-interest and the argument that embedded commissions gives rise to conflicts-of-interest and skewed investment advice recommendations. There is another important dimension to consider. Commission –based **and** fee-based advice can also cause excessive leveraging, discourage debt reduction, ignore household spending patterns and downplay savings (as opposed to investing). True wealth management would not focus exclusively on investments .This why we strongly support the idea of revealing the actual financial advisory services provided by any fees or commissions charged. This would give investors the opportunity to assess the value delivered by the advice.

Recent high profile scandals, “advisor” abuse and changing demographics (higher ratio of seniors, pensioners and retirees) suggest that investor protection demands HIGH priority attention from the OSC .Our review of the draft SOP suggests that the OSC has, to a large extent, the appropriate priorities and emphasis but would add more meat to one: Seniors Issues. Abuse of the elderly in particular continues to emerge as a major issue as reported by OBSI, the SRO's, academic research and others. A recent BCSC research report found that one-in-eight British Columbians over 50 is vulnerable to investment fraud and that doesn't include abuses committed under the “suitability” advice regime.
<http://www.investright.org/uploadedFiles/news/research/2015BCVulnerability.pdf>

Over the past two decades the financial services industry has rebranded itself from a transaction business to an advice business and more recently to a Wealth management business but remained anchored in a transaction based regulatory environment. Corporate culture has remained tied to a sales and marketing mindset rather than as a trusted provider of unbiased advice. Regulators have allowed this disparity between reality (the suitability standard) and advertising and marketing to persist by permitting dealers and salespeople to hold themselves out to Canadian consumers as trusted advisors despite significant conflicts- of- interest that affect the advice provided. The OSC priority now should be to transform itself from a regulator of transactions to a regulator of investment advice as well as products.

The U.S. organization, the Public Investors Arbitration Bar Association (PIABA) has recently issued a report ***MAJOR INVESTOR LOSSES DUE TO CONFLICTED ADVICE: BROKERAGE INDUSTRY ADVERTISING CREATES THE ILLUSION OF A FIDUCIARY DUTY***
<https://piaba.org/system/files/pdfs/PIABA%20Fiduciary%20Study%20>

[News%20Release.pdf](#) highlighting how U.S. brokerages mislead investors as to the true nature of the dealer- client relationship. They want Federal action to stop U.S. Brokerage Firms misleading investors about their role as fiduciaries, which Firms deny to block arbitration claims. The report states that investors believe they are doing business with individuals they can trust, because the brokers use titles which imply trust, their advertisements give the impression they can be trusted, and the brokers say they can be trusted to look out for the best interests of their clients. Yet when that trust is breached, the PIABA survey of answers filed in arbitrations demonstrate that these same firms disclaim liability when held to account in arbitration, and rely on case law to say no such duty exists. The public face of the firms is that they hold themselves to the highest standards, while the private face of the firms, in the arbitration forum where everything is non-public, is that they are mere order-takers. We face a similar situation in Canada when we read OBSI rejection cases, Enforcement decisions and letters sent to complainants by dealers. Were it not for our strong engagement with investors we would not see dealer responses to complaints because of confidentiality agreements ("gag orders") clients are forced to sign in order to obtain any restitution.

It's not just trust that is misrepresented. While marketing materials suggest robust financial plans are prepared, qualified income tax advice will be provided and that competent estate planning is available, our experience is that, with a few notable exceptions, the vast majority of the focus is on selling product. One example of this deception is the industry's hostile reaction to personalized performance reporting reform attempts and the constant whining subsequent to its introduction .It will take to 2016 and beyond before industry will routinely provide this information. For years investor advocates have asked how the industry was able to provide planning retirement advice without the most basic tool to measure progress and the effectiveness of the advice. The industry resistance to this no-brainer regulatory CSA reform was to say the least, fierce.

Our comments are limited to retail investor issues. We leave it to others to deal with such issues as shareholder democracy, insider trading, HFT, IFRS, diversity on Boards, reverse takeovers etc. Here are our recommendations regarding retail investor protection priorities for the 2015-16 fiscal year:

1. Establish a Seniors Advisory Committee to laser focus on senior's issues: A 2014 IIAC report made it clear that Senior investor protection is a very critical issue with many challenges. With the aging population, there is a likelihood there will be more and more abuse of seniors by the financial industry .OBSI report that about half of all complaints emanate from those over 60. Boomers and current retirees need protection from the same predatory business practices for the same reasons. They do not have as many options as younger investors who have time to recover from bad financial advice, excessive expenses, and bad investment products. They face

tough options like deferred retirements, reduced standards of living during retirement, and financial instability late in life.

The Canadian Centre for Policy Alternatives has released a damning condemnation of mutual fund fees. Canada's much maligned mutual fund fees have been the object of derision for some time now. The 22-page report *The Feeling's Not Mutual :The High Costs of Canada's Mutual Fund Based Retirement System* from CCPA, while well produced, contains some inaccuracies. The average equity mutual fund in Canada in 2014 according to this report was 2.1%, six times higher than the average pension plan fee of 0.38% – 0.36% for defined benefit plans and 0.69% for defined contribution plans – and a big reason why Canada is considered to have some of the highest mutual fund fees in the world. Despite some quibbles with some of the data, the central conclusion is on the mark- Canadians need a better solution for their retirement income needs.

A "senior crisis" posed by the risk of seniors' outliving their assets and their declining ability to manage their money as they age must be addressed. Given that thousands of Canadians each month are retiring/entering into RRIF's (de-accumulation account phase), time is of the essence. This is a major socio-economic issue as well as an important regulatory issue.

We recommend that the OSC establish a standing multi-stakeholder Seniors Advisory Committee to keep on top of the developing situation and stimulate progress on addressing the issues identified in the 2014 IAP/OSC Seniors Roundtable, the MFDA, IIAC and other research.

2. Decide on Best interests standard for all advice givers: The Draft SOP states

" Advance regulatory reforms that put the interests of investors first "

Much independent research has already been done in Canada and elsewhere that demonstrates that conflicted advice acts against investors. Our Comment letters on Fund Fees and Best interests consultations provided a comprehensive listing of independent research references. Roundtables have been held. OSC Enforcement and Compliance reports have been issued that year after year contain the same issues adversely impacting retail investors.

Multiple consultations have been conducted. An analysis of complaint data also shows the fundamental weaknesses of the suitability regime. It has been over a decade since the FDM was first proposed. When the mystery shopping experiment results are released and the other research the CSA/OSC has contracted is completed, the amount of information should be more than adequate to understand the need for a Best interests standard for Canadians saving for retirement. We respectfully suggest that the impact on Ontarians of NOT imposing a best interest duty is fairly obvious. Such a reform is in the Public Interest. The status quo is not, in our view, a viable option.

No discussion of investor protection issues and the costs of transactions/advice can be complete without consideration of the broker and investment dealer business model. If embedded commissions are prohibited but a Best interests regime is not applied, all that will happen is that commissions will be converted into fees potentially leaving investors worse off. Thus, removal of embedded commissions alone is not a panacea.

It is glaringly evident to us that investment advice robustness needs to be dramatically improved. We recommend the OSC move away from the transaction model and pursue a fiduciary / Best interests regime for advisors without undue delay. Embedded commissions are not consistent with a Best interests advice standard. Professional financial advisor and respected author John DeGoey has enumerated the advantages of prohibition of embedded commissions .These include:

- Transparency- investors will understand very well that neither mutual funds, nor advice associated therewith is "free".
- Cost arbitrage- both advisors and investors will be able to substitute higher-cost products with lower-cost products (including, but not limited to, other mutual funds) resulting in higher returns.
- Allowing for potential [tax] deductibility of advice depending on the nature of the account
- Removing the potential of compensation-induced bias- both within and throughout product lines
- Enhancing consumer confidence in both advisor motives and the actual advice given
- Improving consumer understanding of the constituent component parts of mutual fund costs
- Allowing for scalability of fees (a so-called 'volume discount) as accounts grow

Canadian retail consumers need increased protection when dealing with the financial services industry, according to a report released March 26, 2013 by the Public Interest Advocacy Centre (PIAC) entitled, ***Purse Strings Attached: Towards a Financial Planning Regulatory Framework***. The report reveals that the pace of reform has been slow for an industry entrusted with the retirement security of Canadian consumers. "It's time all employees of the financial planning industry in Canada face the reality-they need to employ a uniform standard of care for investors, complete with a full disclosure of how they're being compensated," noted Jonathan Bishop, co-author of the report. The research reveals Canadian consumers are potentially leaving thousands of their retirement dollars in someone else's hands by not being fully informed .The report concluded that the time remains ripe for provincial consumer and finance ministries to work towards a regulatory framework for financial advisors .The Report is available at http://www.piac.ca/files/pursestrings_attached_final_for_o.ca.pdf

In a 2014 paper ***The Costs and Benefits of Financial Advice*** http://www.hbs.edu/faculty/conferences/2013-household-behavior-risky-asset-mkts/Documents/Costs-and-Benefits-of-Financial-Advice_Foerster-Linnainmaa-Melzer-Previtero.pdf Stephen Foerster, Juhani Linnainmaa, Brian Melzer Alessandro Previtero assess the value that financial advisors provide to clients using a unique panel dataset on the Canadian financial advisory industry. They found that advisors influence investors' trading choices, but they do not add value through their investment recommendations when judged relative to passive investment benchmarks. The value-weighted client portfolio lags passive benchmarks by more than 2.5% per year net of fees, and even the best performing advisors fail to produce returns that reliably cover their fees. The research shows that differences in clients' financial knowledge cannot account for the cross-sectional variation in fees, which implies that lack of financial sophistication is not the driving force behind the high fees. Advisors do, however, influence client savings behavior, risky asset holdings, and trading activity, which suggests that benefits related to financial planning may account for investors' willingness to accept high fees on investment advice. This research, existing independent research and the OSC contracted research should be used to help shape regulations.

Another document worth reading is the ***Proposed Best Practices*** Institute for the fiduciary standard <http://www.thefiduciaryinstitute.org/wp-content/uploads/2015/02/BestPracticesFinal-copy.pdf>

University of Toronto law professor and former OSC IAP Chair Anita Anand sums up the situation in her September 2013 article ***Yes, Investment Advisers Should be Fiduciaries*** with this succinct comment "Provincial securities regulators have investor protection as a central mandate. A default fiduciary standard for investment advisers is the best way to protect investors and needs to be explicitly enacted - now." **Source:** <http://www.law.utoronto.ca/blog/faculty/yes-investment-advisers-should-be-fiduciaries> A best-interests obligation is one of the key factors that distinguishes advice from a sales recommendation. If broker-dealers want to portray themselves as trusted advisers, they need to meet the standard that warrants that trust.

Under a suitability standard, mutual funds and annuities, and other such investments that can't compete on quality, can and do compete by offering generous remuneration to the sellers, and that's perfectly legitimate. Investors end up paying high costs, suffering substandard performance, being exposed to unnecessary risks and subjected to exploitive behaviours as a direct result. That has a huge impact on the ability of Canadians to afford a decent standard of living in retirement or fund other long-term financial goals. Surely, a CAVEAT EMPTOR standard for advice cannot be in the Public Interest.

The OSC must distill and clarify the underlying advisory principles so that they become a directional compass for market participants and stakeholders.

A complex reform journey cluttered with many competing players can only be navigated with a clear eye at the helm. Articulate the vision, simplify and hold firm. Faster progress and better outcomes will result.

3. Resolve outstanding Mutual fund industry issues A significant proportion of retirement savings has been, and continues to be channeled into the mutual fund sector in Canada. Over a trillion dollars is invested in mutual funds by 12 million Canadians. Because of embedded commissions and other factors, Morningstar gave Canada's fund industry an F grade (the lowest rating) in a 2013 global ranking for having the highest fees among all the ranked countries. It was the only country on the list to receive an F. We appreciate that the long drawn out OSC/CSA rule change, so fiercely resisted by industry participants, regarding pre-sale FF disclosure may help but as has been well documented, disclosure alone is inadequate.

Some of the issues we see include but are not limited to:

- (a) Discount brokers collecting 1 % trailers but unable to provide advice associated with the trailer
- (b) Using larger asset investors to subsidize smaller fund investors
- (c) Mis-selling of ROC funds
- (d) Selling DSC funds to the elderly
- (e) Not informing income investors that distributions do not have to be reinvested
- (f) Utilizing an incomplete and misleading FF risk disclosure methodology
- (g) Selling Seg funds to clients to avoid CSA compliance rules and fee disclosure (regulatory arbitrage)
- (h) Not advising fund clients of price breakpoints/ alternate series
- (i) Converting clients into fee -based accounts without good reason or just cause

We wish to stress that our target is not the individual dealer representative, the majority of which would like to do a good job for clients. The target is the management that creates the culture, incentives (commission grids and the like), financial and non-financial rewards/sanctions and sales targets/quotas that drive a singular behavior to "produce". There is something inherently wrong with an "advice" system that doesn't have client satisfaction and integrity at its core yet advertizes that it does.

It's time for more action and less contemplation/monitoring. The retirement savings and nest eggs of the people of Ontario are at risk. The function of the financial services industry to turn retirement savings into future retiree wealth is an important public policy issue. More and more seniors and pensioners become vulnerable each day, quarter and year that the status quo remains entrenched that a low suitability standard coupled with fund company commissions and other payments permit. Given the extensive research available on this subject we urge definitive action on Best interests in the coming fiscal year.

4. Deal with complex Investment products Structured /hybrid products need to be better regulated and their distribution channels better understood. Retail investors (and even their advisors) might lose money through not understanding the products' complexity. Several events, including the 2008 default on products relating to the Lehman Brothers failure, exposed the problems retail investors can face with structured products. The International Organization of Securities Commissions (IOSCO) has published a final report [Regulation of Retail Structured Products](#), that analyzes trends in the retail structured product market, and proposes a "regulatory toolkit" for IOSCO members (like the OSC) to use to address the particular risks that these products may pose to retail investors. We believe the plans for structured product regulation in the 2015-16 OSC Priority list are appropriate. We assume marketing and sales communications will also be monitored so as to prevent mis-selling such as has occurred with leveraged and reverse ETF's.

5. Increase Advisor proficiency standards While the bar needs raising, so does the floor. The proficiency level of advice givers needs to be raised to address complex issues like investor longevity, market turbulence, risk management and increasing product complexity. There is a crying need to truly "professionalize" the financial advice industry. The Ontario Government is currently examining the need for more consistent standards for individuals who offer financial advice and planning services. We urge the OSC to work with the government as this important initiative evolves.

So called Robo Advisors have the potential to economically provide investment advice for investors with modest account sizes. These vary in nature, artificial intelligence and sophistication. While we expect the OSC to apply appropriate due diligence, such innovations can be a boon to small investors and their use should be encouraged subject to regulatory oversight.

Ontarions will not only need increased investor protection but the industry has to mobilize how to advise on pension planning and capital preservation strategies – a shift away from traditional asset accumulation to distribution ("de-accumulation "). This will require a completely different skill set, different products and **professional, unbiased** advisers competent in the art and science of pension management.

6. Whistleblowing. We support this OSC initiative and have provided extensive comments in our formal Submission. Please note a recent Study *[The Impact of Whistleblowers on Financial Misrepresentation Enforcement Actions](#)* that shows whistleblower complaints lead to increased penalties and likelihood of enforcement <http://www.lexology.com/library/detail.aspx?q=49f83aeb-168b-4b98-97db-7e99cd1732c7> The Study concludes that, in regulatory enforcement actions brought by the SEC and DOJ alleging financial misrepresentation, employee whistleblowers have a consequential impact on regulatory outcomes, increasing the size of penalties, length of prison sentences and duration of

the actions. In addition, whistleblower complaints were found to significantly increase the likelihood of an enforcement action.

7. Regulation of Fixed Income Securities We strongly support the steps the OSC is taking to enhance regulation in the fixed income market and to identify opportunities where changes to regulatory approaches could improve market transparency and better protect investor interests. The fixed income market has substantially increased in size in the last decade and there is a large presence of retail investors, particularly seniors/retirees, invested in this market directly and indirectly. As people age, the proportion of the portfolio in fixed income increases so this will be an increasingly important issue over the next few years. Corporate bond trading is opaque with limited post-trade transparency for both regulators and retail investors. This lack of transparency limits the OSC's ability to determine whether retail investors and small institutional investors are obtaining best execution. We encourage the OSC to better understand the significant issues affecting fixed income securities and those who invest in them, and to act on identified opportunities where changes to regulatory approaches would improve price transparency and better protect investor interests.

8. Tighten Enforcement: Investors want to see that justice is done and that white-collar crime is considered a serious form of financial assault. We think a significant number of issues would go away with effective enforcement, a point we make with CSA members several times per year. Has anyone ever heard of an enforcement action for NI 81-105 Mutual Fund Sales Practices violations? See *OSC identifies issues with investment funds' marketing materials*: Canadian Securities Law <http://www.canadiansecuritieslaw.com/2013/07/articles/continuous-timely-disclosure/osc-identifies-issues-with-investment-funds-marketing-materials/> as an example of the information retail investors must try to make sense of.

The OSC investor protection initiative is therefore most appropriate and timely. Beyond money, industry wrongdoing affects many aspects of people's lives including stress, marriage and health. The OSC's plan to improve the efficiency, effectiveness and timelines of its enforcement work is welcomed. The penalties contained in settlement agreements often pale in significance to the gains made by those involved in wrongdoing. In fact, many of the fines imposed on individuals are not paid since registrants leave the industry or declare personal bankruptcy. We recommend that fines be increased and disgorgement and punitive damages be added to the tool kit.

According to the SRO's, somewhere between 80 and 90 % of fines imposed on individuals are never collected. Unpaid fines on such a scale make a mockery of the enforcement system and the deterrence value of fines. This needs to be changed. We urge the OSC/CSA to give the SRO's the legal capability to collect fines or for Ontario to go it alone in this area.

Moreover, investment dealers should be held accountable for any unpaid fines by individuals – in our opinion, this rule change would result in an immediate improvement in dealer behaviour and supervisory practices

9. Introduce an Investor Restitution Fund This item has flowed in and out of OSC priorities over the years with no firm decision. Investors are very interested in **restitution** not fines imposed on registrants. Restitution is the top priority for investors who suffer losses because of violations of the securities Acts. The status quo is just not working – the published SOP does not, but should, address this long standing issue. We recommend that the OSC add investor restitution initiatives to its 2016 priorities. If section 128 OSA applications of the OSA are not a useful mechanism, as appears to be the case, for investor restitution, we urge the OSC to establish a restitution fund as is the case in several other provinces.

11. Stabilize OBSI According to the 2014 OBSI Annual Report their recommendations amounted to a total of \$4.3 million in compensation for clients in 2014, down from \$4.9 million in 2013. The vast majority of this (\$4.1 million worth) involves investment complaints. And, it reports that it recommended compensation in over four in ten (42%) of investment complaint cases, compared with just 14% of banking cases. According to a letter from OBSI chair, Fernand Bélisle, in the report, the settling of complaints for amounts that are well below its recommendations is raising concerns at the dispute resolution service. Consumers and investors should not feel coerced to accept reduced offers rather than face the possibility of a firm refusal of OBSI's recommendation, resulting in no compensation at all," it says; noting that refusals and 'low-ball' settlements will both be priorities for the year ahead. They should be priorities for the OSC as well.

Securities acts, regulations and rules across the country require investment firms to deal with their clients "fairly, honestly and in good faith" — an obligation that extends to dealing with client complaints. Dealers who refuse to participate meaningfully in a regulator-mandated dispute-resolution process, dealers who reject OBSI recommendations or worse, dealers who low ball OBSI recommendations are fundamentally not acting in good faith. They are deliberately subverting the process and OBSI. In addition, victims must sign gag orders that are attached to OBSI's restitution recommendations . . . when they are paid .Securities regulators must address such practices with prompt and decisive action. The time for JRC "monitoring" is long past.

The departure of Doug Melville adds to the challenges faced by troubled OBSI. Regulatory oversight will hopefully ensure that OBSI is able to function effectively. Investors want an ombudsman that has mandate and capability to efficiently resolve disputes and deal with systemic issues in a timely manner. We believe that there are several important open issues with regard to OBSI. Specifically, we believe that there should be a mandatory regulatory

investigation of each and every case where an OBSI recommendation is not accepted by a dealer. The findings should be published and compensation, if and as appropriate, provided. Secondly, we believe that regulators owe investors an explanation of what will happen, if anything, when they are advised by OBSI of a systemic issue. Finally, we remain concerned that OBSI is unable to investigate an investment portfolio that contains a Segregated fund or other insurance products recommended by dually licensed "advisors". We recommend that OBSI findings be made binding on dealers as the ideal solution to this chronic issue and that OBSI be given the mandate to investigate systemic issues that regulators have removed.

12. Abandon the Equity Crowdfunding initiative We do not see Equity Crowdfunding as a priority. In fact, as demonstrated in the SIPA and our Comment letters we view equity crowdfunding as negative for Main Street Ontario investors. The scheme reminds us of LSIF's, Business income trust and non-bank ABCP misadventures. We believe Crowdfunding will also amplify risks, cause harm to seniors and unsophisticated small investors /trusting seniors and increase fraud potential. It is inevitable that crowdfunding will lead to public scandals and well publicized horror stories. This constitutes a major risk for retail investors but the OSC too will be exposed to immeasurable reputational risk for allowing an exemption publicly rejected by all Advocacy and Consumer groups. It also could impair the important and growing Exempt market.

13. Mobilize for regulation of The Exempt Market The Exempt market is large and growing due to a number of recent regulatory exemptions and rule changes. One estimate puts retail investor participation at about 10 %. Kenmar (and SIPA, FAIR Canada) have noted their concerns in its previous comments on OSC priorities and in response to other consultations that there is insufficient information available in respect of the Exempt market upon which to base important policies.

According to a research paper recently released by Vijay Jog of The School of Public Policy at the University of Calgary - the estimated Canadian exempt market provides in excess of \$100 billion in gross capital flow every year and continues to grow, yet according to the report "the data about the exempt market is so incomplete, that we lack information on the type of issuers, investors and securities, or the volume and duration of the securities and the level of redemptions". Without this information, regulators are flying blind and investor protection may be compromised. The paper can be downloaded at <http://www.policyschool.ucalgary.ca/?q=research>

As a result, policy is being formed without a thorough analysis of the implications - both economic and on investors. We are concerned about the potential investor harm posed by new prospectus exemptions. We recommend more information be gathered about this market especially given the results of a 2012 sweep of EMD's. We had previously also recommended that an SRO be formed (or IIROC be designated or that the OSC organize

/resource itself to effectively act as a well oiled SRO) and that an investor protection fund similar to CIPF be established.

14. Engage the Public The OSC has made progress in this area in 2014-15. The Outreach program seems to be working but has limited reach .To make it more investor- friendly and useful. , more topics on Baystreetproofing, investor research and plain language .Case studies should be added. We agree with a plan to issue more ALERTS and Bulletins and work with investor networks and organizations on education and outreach campaigns

The OSC website design should be enhanced to provide better navigability/search as should the usability of registration check. As an aside, we continue to recommend approved OBA to be part of the public registration data file.

We'd also like to see more Investor cautionary materials, not just fraud awareness. There are plenty of minefields to navigate with registered representatives/dealers as well. Documents like the **CFPBoard Consumer Guide to Financial Self Defense**

http://www.asuupmmc.utah.edu/files/CFPBoard_Financial_Self-Defense_Guide.pdf , and **Consumer Awareness Booklet** (28 pages loaded with useful material for the retail investor)

http://www.onusconsultinggroup.com/uploaded_files/InvestorAwarenessBooklet.pdf are examples of what we'd like to see. We have recommended that the OSC/CSA prepare brochures on how to use Fund Facts and the new CRM2 reporting.

We respectfully refer the OSC to **Canada Steps Up**, a comprehensive research report by the *Task Force to Modernize Securities Legislation in Canada* <http://www.tfmsl.ca/> Volume 6 contains an especially relevant paper by LSE Professor Julia Black, **Involving Consumers in Securities legislation in Canada.**

15. Recognize Regulatory Arbitrage as a systemic Risk Wealth Management is a strategic goal of the three main pillars of the financial services industry – banking, insurance and investments. It is clear that arbitrage is growing as all pillars are competing for the same demographic. Regulatory arbitrage often leads to a race to the bottom as has already happened with banking Ombuds complaints. Such arbitrage contributes to unfair and disorderly financial markets. Retail investors are always the big losers in these regulatory arbitrage situations. At a minimum, consideration should be given to bringing Segregated funds under securities regulation as this is a major cause of regulatory arbitrage. One constructive suggestion that keeps coming up would be to merge FSCO with the OSC to provide better 360 degree knowledge of financial system issues in Ontario. Given the recent Auditor General report, the timing is right for such consideration.

16. Improve Suitability assessment process: We appreciate that the OSC will continue with its focus on suitability sweeps and take enforcement actions as appropriate. This is necessary and appropriate. We believe that in many cases only real time or near real time software tools that make robust dealer compliance with regulations a reality.

One chronic underlying problem for investors and OBSI (and industry participants) – non-standard, misleading and inadequate NAAF forms within the industry. If the NAAF/KYC process were re-engineered and standardized, a significant number of complaints could be avoided. We recommend this be a specific 2015-/2016 priority as it will have a big payoff for all stakeholders. This was recommended to the OSC by the *Regulatory Burden Task Force* in December 2003.

http://www.investorvoice.ca/Research/OSC_RegulatoryBurden_Dec03.pdf

We expect that the risk profiling research project launched by the IAP will also lead to opportunities for improvement in understanding client needs and constraints.

17. Improve dealer complaint handling Closely related to the KYC issue is the fairness of dealer complaint handling practices. Unsuitable investment recommendations is one of the top reasons for complaints. Dealer responses tend to be unfair, dismissive and abrupt based on our samples. Too often the “substantive responses” are not responsive to the complaint and critical information needed by the complainant to make an informed decision is not provided. We recommend that a compliance sweep of dealer complaint handling practices be part of the 2015-2016 work plan. It is not however just the implementation of existing rules that are a problem. The rules themselves are deficient in a number of critical aspects. Kenmar have provided the OSC as well as the CSA, MFDA and IIROC with a detailed report explaining the fundamental flaws in the prevailing complaint handling rules. We recommend that the OSC address the deficiencies through improved rules and practices.

SUMMARY and CONCLUSION

The OECD warns poverty among seniors is rising in Canada providing yet one more good reason to introduce a Best interests standard and ensure systemic issue complaints are promptly investigated

<http://www.theglobeandmail.com/report-on-business/top-business-stories/oecd-warns-poverty-among-seniors-rising-in-canada-points-to-public-pensions-gap/article15600342/> Report at <http://www.oecd.org/canada/OECD-PensionsAtAGlance-2013-Highlights-Canada.pdf>

Other statistics of concern include the fact that Canadians borrowed \$19.2 billion against their brokerage accounts in January, near a peak of \$19.4 billion in September 2014, according to figures from the Investment Industry Regulatory Organization of Canada. Investors surpassed the previous 2008 peak in 2013

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and have been steadily increasing margin borrowing since. And the ratio of household debt to disposable income rose to a record 163.3 percent in the fourth quarter of 2014. Multiple research reports and polls suggest many Canadians may not be well prepared for retirement. It is our firm conviction that Ontarions are at a cusp of significant risk profile that the OSC should consider in its rulemaking, compliance monitoring and enforcement priorities.

Regulatory bodies exist to safeguard trust in the system. Carping and criticism leveled at a regulator by a regulated industry and its lobbyists are not only to be expected, their absence is cause for concern. Our quarterly Investor Protection Reports regularly highlight numerous breakdowns and missed opportunities to protect retail investors. The investment industry (now rebranded as the Wealth Management industry) needs guidance, decisiveness, finality and progress more than it needs perfection.

It is all well and fine to be concerned about regulatory burden but investor protection is JOB #1 and keeping up with investor needs and international regulatory developments is essential to making Canada a safe haven for investors. The OSC must balance the costs of complying with the regulatory protections that safeguard investors with the concern that avoiding these costs may leave retail investors dependent on taxpayer funded social programs during their retirement years . While regulators should be mindful of the costs and avoid imposing unnecessary regulation, Kenmar do not believe the OSC should be influenced by the idea that regulation is a burden that must be reduced and minimized. Evidence-based regulation improves and supports the fairness, integrity and efficiency of capital markets, increases investor confidence in those markets and addresses social accountability.

We would be remiss if we did not express our concern that significant OSC staff resources are being deployed towards the establishment of a national securities regulator, the unknown status of the articulated priority initiatives within a national regulator and the uncertain role of the "new CSA" in harmonizing regulations across Canada.

Kenmar Associates agree to public posting of this Comment Letter.

We would be pleased to discuss our comments and recommendations with you in more detail at your convenience.

Respectfully,

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