June 1, 2015

Mr. Robert Day
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Ontario Securities Commission (OSC)
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Dear Mr. Day:

Re: *2015-2016 OSC Draft Statement of Priorities – Request for Comments* (the "Draft Priorities)

Thank you for considering my input on the OSC's Draft Priorities. I appreciate the OSC's request for views, and think all Canadian Securities Administrators (CSA) members should work jointly on planning. My comments below, provided as an individual investor with an interest in regulation, are divided into high priority (and ones to discuss with the CSA) and technical remarks. In summary, they are:

1. **Improve accessibility and usefulness of data available to the public**
2. **Communicate better the need for investors to check if dealers/advisors/managers or channels to invest are regulated and offer more concise, plain-language information on regulatory changes Facilitate investor/issuer/dealer/advisor/regulator interaction**
3. **Review whether/how the regulator/regulated relationship can be made more effective**
4. **Build on the priority-setting exercise to enhance transparency.**

High Priority

The Draft Priorities for the OSC's April 1, 2015 to March 31, 2016 fiscal year are generally ones that have been underway for some time. The four items below are ones I believe should be added as important tools for transparent, fair and effective regulation in the interests of investors and other stakeholders.

1. **Improve accessibility and usefulness of data available to the public**

    The OSC is to be congratulated on moving to more electronic filing and data collection, and for becoming part of the National Registration System (NRS) in 2013. The CSA, according to Chair Bill Rice on January 28, 2015, has been involved in a three-year technology upgrade. Although it is unclear exactly what this entails, what is certain is that data available are not accessible to investors, regulators and others in a way that allows for as useful searching, aggregation, and understanding of information for decision-making purposes as is desirable. For example, I was told that the CSA database of enforcement actions is not extractable into Excel. This would allow better analysis and comparison of common problem factors and therefore more transparent and useful information on which to base effective investor protection policies. Moreover, the database does not allow consolidation across the CSA, designated regulatory organizations[i], Ombudsman for Banking Services and Investments (OBSI) and other regulated entities). Reference to the lack of data use by CSA members to develop policy was made in a FAIR Canada report last year.

Recommendation: That the OSC, and representatives from other CSA members, IIROC, Mutual Fund Dealers Association (MFDA) and OBSI, work with volunteers (I would be pleased to be one) on identifying the data fields, definitions and ways to easily make relevant information accessible to stakeholders, including investors, on a timely basis.

2. **Communicate better the need for investors to check if dealers/advisors/managers or channels to invest are regulated and offer more concise, plain-language information on regulatory changes**

The OSC has a role in promoting public confidence in Canadian capital markets. Having plain-language information and data available on where risks are and who to trust or not trust, is a vital part of effectively fulfilling this role.

- **First**, what the available, hard-to-access data from the CSA, IIROC, MFDA, and OBSI seems to show is that investors with Canadian-IIROC regulated organizations, or that invest in securities of issuers registered in Canada, have a lower risk of losing their money through fraud and non-compliant behaviour than those that do not.
- **Second**, those who deal through IIROC-regulated dealers have access to free redress mechanisms (IIROC, commissions, and OBSI) that generally work.
- **Third**, CSA (and I understand IOSCO) studies of those at greater risk of loss through fraud – indeed to repeated losses through fraud – are middle-aged men. Other studies have shown that many Canadians do not know how or by whom their investment assets are regulated, suggesting untapped opportunities for securities regulators to connect with investors about these risks.
- **Fourth**, considerable regulatory change has been introduced by Canada's securities regulators over the past ten years without a chance to measure its impact. Moreover, OSC Chair Wetston, in a speech on May 27, 2015, questioned reliance on disclosure for investor protection, suggesting further regulation to come, where additional data (noted above) would be desirable.

Recommendation: That in light of the above factors, and to make 'check registration' efforts effective, the OSC work with the CSA to undertake an effective penalty-funded public information ad campaign (radio, local papers) with simple messages – possibly like the B.C. Securities Commission's one using a hockey analogy. Also, rather than mandating removal of advice-and-admin-inclusive fee fund options, the OSC could tell investors if they buy funds this way, they should know they can ask for advice (and on not just fund selection but other matters, as already many do). These more mainstream communication efforts could be considerably more effective than large-scale changes currently being contemplated. The results would yield data to support whether and if so how additional major changes referenced in the Draft Priorities should be implemented.

As well, and a suggestion Mr. Rice suggested I pass to the CSA that he chairs, there should be a single channel for the posting and delivery of investor alerts and other CSA communications that are critical to consultation and decision-making by regulators, investors, and other stakeholders. This is easy to build on a go-forward basis and could link to individual commission websites for history.

Recommendation: That the CSA website become a virtual single source rather than link to all the regulators' sites. It should be the single source for the distribution of information, alerts and

comment requests, with a list – updated quarterly – of all rules (national, multilateral or regional) that are expected to be published, are out for comment or under review and the status of each.

3. Facilitate investor/issuer/dealer/advisor/regulator interaction

From my involvement with individual investors (including cases resolved with the MFDA and OBSI); associations representing issuers, dealers and advisors; and government and regulatory officers, there have been many good intentions that have not translated to successful improvements to Canada's regulatory system. From training as a teacher and experience with continuing education, I know that this often arises because the different parties – while speaking English – actually interact using different "languages" reflecting their respective backgrounds and occupations. This is compounded when consultation is effectively a series of successive bilateral exchanges; when individuals' assumptions are based on insufficient, incorrect information; and when consultation documents are written in a more legal style than more concise plain language.

The OSC is to be commended for its concerted effort to engage in more consultation with investors. Summaries of investor consultations, however, have sometimes reflected inaccurate or incomplete understandings; when I suggested to the Office of the Investor that the Commission correct misapprehensions at the time they are made and through notes in the summaries, I was told that the summaries were to reflect accurately what had been said at the events. This perpetuates misperceptions among investors and in the media. Also, media (and even titles of some CSA releases) often do not clearly distinguish if problem firms or advisors are regulated and, if so, by whom, nor what protections the investor has or could have had. Without such contexts, investors and regulators may inadvertently come to false conclusions.

Recommendation: That to best carry forward the OSC's efforts to improve outcomes for investors, the Commission – and all the stakeholders whose interests must be considered – co-facilitate, with an "ordinary" investor, dealer, and advisor, public discussion of an identified concern(s) on an annual basis. In my view, the first topic should be to make investors aware of the huge changes in the investment industry and what these may mean for their choices to the extent that regulators, investor and industry representatives each have different valid experiences to share.

4. Review whether/how the regulator/regulated relationship can be made more effective

As a key player delivering the benefits of a more common securities regulator, and the largest securities regulator in Canada, the OSC has an important role to play in setting the tone for regulation in Canada. The nature of the regulator's relationship with issuer, dealer, advisor or portfolio manager or investor advocates warrants discussion. Many investors would be surprised to hear of the unwillingness of regulators earlier this year to meet with regulated firms on a regulatory matter of considerable concern. It is natural that regulators and regulated firms will sometimes disagree with or not understand each other; however, as regulators are in a position of power (as regulated parties often are with respect to investors and issuers), regulators striving to meet quality regulatory standards should test if they have preconceptions or conflicts of interest, or lack information, because their education and experience overseeing the industry is different from that of those actually in the industry. In fact, while regulatory documents reference the compliance cost impact, there is a perception among a good number of parties that regulators rarely accept anything *but* regulation as a solution to any issue; that where there are two regulatory approaches, the more

complicated will invariably be chosen; and that it is better not to raise issues with regulators for fear of worse to follow. This may lead to the very behaviours the regulators want to avoid.

And it is difficult to understand, when the Draft Priorities highlight that "Reliance on advice is expected to continue to grow", why IIROC dealers and advisors serving retail investors are subject to an increasing focus on KYC and suitability, while other parties seem to escape these (and perhaps other) key investor protections, including free redress mechanisms. As well, it now seems that reference to disclosure of relationship factors, conflicts of interest, compensation and return may not be enough, implying more regulation to follow. This is while the use of robo-advisors and expected approval of crowd-funding exposes investors to new and apparently sanctioned risks that would not be covered even were a fiduciary standard to be implemented. It is hard to see how this will achieve the best outcomes Canadian investors deserve, and regulators want.

Recommendation: That the OSC, IIROC, and a mix of IIROC representatives discuss how to build the most effective relationship possible between the regulator and the regulated.

Technical Comments: build on the priority-setting exercise to enhance transparency

As said above, the OSC is to be congratulated for the priority-setting process and requesting comments.

Recommendation: As an improvement to the process, and based on my experience with a number of boards of directors, the following enhancements are typical of effective priority-setting and would improve transparency, further contributing to the credibility of the process:

a. Publication of priorities for comment *preceding* the OSC's fiscal year, allowing for the finalization of priorities reflecting any changes from the draft to be published just before the fiscal year starts.
b. Concise summary of how the preceding year's priorities were met (recognizing events may mean priorities must change)
c. Identification in the document of the highest three priorities
d. Dollar and FTE estimates of resources against the regulator's total budget and staff complement.

Conclusion

Thank you for the thoughtful work that went into preparing the Draft Priorities, and for asking for public comment. I would like to volunteer to work on the data project or others listed above as priorities. I appreciate the efforts and engagement of OSC staff in regulation and look forward to further work.

Yours truly,

Barbara Amsden

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[i] Neither IIROC nor the MFDA is self-regulatory organizations. To avoid investor confusion, these should be renamed "designated regulatory organizations" in the interest of clarity and transparency.