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RE: Ontario Securities Commission Notice 11-774 – Statement of Priorities

FAIR Canada is pleased to offer comments on Ontario Securities Commission's ("OSC") Notice 11-774 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2017 (the "2017 Draft Priorities") published on March 10, 2016.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

1. Executive Summary

- 1.1. FAIR Canada is happy to see that the OSC's core mandate, investor protection, shines through the 2017 Draft Priorities. Many of the initiatives the OSC proposes to prioritize will have a positive impact on investors and will help to improve investor protection in Ontario. FAIR Canada believes there are certain other priorities that should be added to the 2017 Draft Priorities in the interests of investor protection.
- 1.2. FAIR Canada believes that existing regulatory requirements and industry practices do not provide adequate protection for consumers of financial services. We are pleased to see the OSC's commitment to working with the CSA to improve the client-advisor relationship by developing a meaningful statutory best interest standard. This should include addressing conflicted compensation and developing regulations that will increase the knowledge and proficiency of advisors.
- 1.3. We believe that robust oversight and strong enforcement of the OSC's rules is essential to developing a regulatory system that works to protect investors. The OSC should focus on ensuring that the compliance and registrant regulation branch and the enforcement branch have the proper tools, structures and resources to fulfill their roles. The OSC should also prioritize its efforts to be transparent, and ensure that information on investor complaints the OSC receives and enforcement matters the OSC undertakes is collected and made publically available.
- 1.4. Compensation is a top priority for investors who suffer losses because of violations of the securities acts. FAIR Canada urges the OSC to prioritize improving investor compensation for those who have suffered losses due to breach of securities laws. The OSC and the Ontario government should also take a leadership role in order to establish a single ombudservice with binding decision-making power.

- 1.5. The OSC should expand the point of sale disclosure beyond mutual funds, group scholarship plans and exchange traded funds. Summary disclosure documents should be required for all types of investments funds and structured products. These documents should be clear and easy to read, should be easy to locate, and should be provided to investors before they decide to purchase an investment product. This should be done in a timely manner.
- 1.6. FAIR Canada strongly supports the mandates of the Investor Office and Investor Advisory Panel as these entities help inform the OSC as it engages in policy-making and operations and allow it to modernize its efforts in investor engagement, research, education and outreach. FAIR Canada is supportive of efforts to develop tailored solutions to reach the broad range of at-risk investor groups, including seniors, millennials, new Canadians and indigenous peoples.
- 1.7. In addition to working on new regulatory reforms and initiatives, the OSC should monitor and assess, through investor testing and otherwise, regulatory reforms that have already been implemented. It is important to understand the impact of recent regulatory reforms, particularly to the extent that such assessments can help us to learn the impact of the OSC's work. The OSC should make the results of any research or studies done in this regard public and should work to swiftly make any changes that are needed in light of its findings.
- 1.8. Timely policy making should be given precedence. The OSC should work to ensure that the development and implementation of its initiatives is done in an efficient and timely manner.
- 1.9. Finally, FAIR Canada encourages the OSC to enhance its oversight of the fixed income market. Given the amount of money that Canadian retail investors hold in the fixed income market and the opaque nature of that market, it is crucial that the OSC make oversight in this area a priority.
- 1.10. FAIR Canada believes that adding these issues to the 2017 Draft Priorities will help to achieve more meaningful investor protection.

2. FAIR Canada's General Comments

- 2.1 We are pleased to see that the OSC's 2017 Draft Priorities acknowledge many of the key challenges Canadian investors face.
- 2.2 More and more, individuals today are forced to take responsibility for their own financial security, while at the same time their investment choices have become much more complex. They face a low interest rate environment with significant volatility, where efforts to achieve adequate yields or capital appreciation can expose investors to severe risks that can have long term negative outcomes. The OSC has correctly assessed that as investors place ever-greater reliance on financial advisors to help them navigate through the financial markets and help them try to achieve their financial goals, a well functioning investor/advisor relationship is critical to the economic well-being of Ontarians and the health of our capital markets.
- 2.3 FAIR Canada is pleased to see the OSC recognizes that "investors need to be confident that the advice they receive is appropriate and unbiased." We also are pleased that the OSC will "continue to seek improvements to the culture of financial services businesses, including the incentive structures they use", and that a policy recommendation on how to best move forward to reform mutual fund fees will be forthcoming in light of the gathered research, industry data and stakeholder feedback. FAIR Canada believes that taking concrete action to address these issues will significantly benefit investor

protection.

2.4 Accordingly, FAIR Canada believes the OSC should prioritize the following important issues in 2017:

- (i) improving the client-advisor relationship by developing a meaningful statutory best interest standard which includes addressing conflicted compensation and that increases the knowledge and proficiency of advisors;
- (ii) developing compliance and enforcement departments that are properly resourced and transparent in order to provide robust oversight and enforcement of the rules;
- (iii) improving investor redress by prioritizing compensation and providing leadership to put in place a single ombudservice with binding decision-making power;
- (iv) expanding point of sale summary disclosure requirements for all types of investments funds and structured products in a timely manner;
- (v) improving investor education and engagement;
- (vi) monitoring and assessing the impact of recent regulatory reforms in Ontario;
- (vii) focusing on achieving policy reforms in a more timely fashion; and
- (viii) enhancing oversight of the fixed income market.

3. Client-Advisor Relationships: Statutory Best Interest and Conflicted Remuneration

3.1 FAIR Canada hopes that the OSC, in conjunction with the CSA, will make a real commitment to take action and swiftly develop and implement a statutory best interest standard. Such a standard will require addressing: (i) conflicted remuneration (including embedded fees in mutual fund sales); (ii) inadequate levels of proficiency and knowledge of those providing advice to investors; (iii) misleading (and numerous) business titles; and (iv) the existence of structural problems which result in misalignment of incentives between firms/advisors and their clients and the inability to provide advice to clients that is truly in the clients' best interests. These issues are profound and require a willingness to undertake real reforms in order to address them. These issues are also of critical importance to protecting the investing public, improving the economic well-being of Ontarians and fostering fair and efficient capital markets. Such reforms, therefore, are vitally important to implement.

3.2 Research initiatives, including the Cumming Report¹, the Mystery Shopping Report² and the

¹ Specifically, we note the following findings from Professor Cumming's report: (i) Mutual funds that perform better attract more sales; (ii) the influence of past performance on fund sales is considerably reduced when fund manufacturers pay sales and trailing commissions; (iii) as past performance becomes less influential on fund sales, so too is there a reduction in future fund performance; (iv) for mutual fund sales through fund distributors that are affiliates of the fund manufacturer, past performance has little to no influence on sales, and this also negatively impacts future fund performance; and (v) for mutual fund sales through fee-based purchase options, fund sales are highly influenced by past performance, and this positively impacts future fund performance. See Douglas Cumming, Sofia Johan, Yelin Zhang, "A Dissection of Mutual Fund Fees, Flows, and Performance" (February 8, 2015) available online at: https://www.securitiesadministrators.ca/uploadedFiles/General/pdfs/Dissection%20Fund%20Fees%20Flows_Feb%208%202016_en.pdf

² The Mystery Shopping Report published on September 17, 2015 by the OSC, IIROC and the MFDA found that: (i) "Investors did not always know if they have had experienced a good advice process: while 88% felt they received sufficient information to make an informed decision, 33% of those experiences did not meet regulators' compliance expectations; (ii) the variety of business titles used by representatives (48 different titles were used across all platforms) creates confusion concerning proficiency and representatives' status and responsibilities within their firms; and (iii) when first meeting with a representative, investors were likely to hear about products and services offered (78%) and discuss their investment goals (89%), but less likely to hear about product fees (56%), the risk/return relationship (52%) or registrant compensation (25%) making it difficult to comparison shop for financial advice, especially on important aspects such as fees and costs." See OSC Staff Notice 31-715 Mystery Shopping for

Brondesbury Group's literature review on advisor compensation³, highlight problems with the client-advisor relationship and demonstrate the influence of trailing commissions and other compensation structures on mutual funds sales and investors' long-term outcomes. FAIR Canada believes that a statutory best interest standard must be implemented in order for consumers to rightly and safely expect that their financial advisors and financial planners will provide them with high-caliber professional advice.⁴ Moreover, FAIR Canada believes that only a statutory best interest standard will deliver:

- Adequate protection for consumers;
- More and better choices for consumers;
- Better financial outcomes for consumers;
- More effective competition;
- Increase in professionalism in the financial services industry; and
- Increase in the level of trust in the financial services market.⁵

3.3 FAIR Canada commends the OSC for leading the mutual fund fee reform initiative, for persisting to obtain the necessary data, and for getting the research done. We urge the OSC to move quickly now and implement the regulatory changes that the research shows are necessary⁶ as part of the reforms required to implement a best interest standard.

4. Supervision, Enforcement and Compliance: Develop a supervision/enforcement/compliance department that is properly resourced, transparent and effective

Compliance

4.1. Through the recent expansion of the exempt market, an increasing number of risky products have been made accessible to retail investors, despite the fact that such products may not be appropriate for all retail investors. This expansion has occurred in the wake of unacceptable levels of non-compliance with suitability and other regulatory requirements associated with the sale of investments through prospectus exemptions.⁷ Accordingly, FAIR Canada is concerned about the likely increase in mis-selling in the exempt market and corresponding increase in the potential for investor

Investment Advice (September 17, 2015) available online at: <https://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf>.

³ We note the following findings from the Brondesbury Report: (i) funds that pay commission (sales loads and trailing commissions) underperform those that do not, whether looking at raw, risk-adjusted or after-fee returns; (ii) mutual fund distribution costs raise expenses and lower investment returns; (iii) advisors push investors into riskier funds; (iv) compensation influences the flow of money into mutual funds. Higher embedded commissions stimulate sales; (v) advisor recommendations are sometimes biased in favour of alternatives that generate more commission for the advisor; and (vi) in the absence of embedded compensation, advisors recommend lower cost products. These typically have better returns because of lower expenses. See Brondesbury Group, "Mutual Fund Fee Research" (Spring 2015), available online at: http://www.osc.gov.on.ca/documents/en/Securities-Category8/rp_20150611_81-407_mutual-fund-fee-research.pdf.

⁴ FAIR Canada's letter to the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives regarding the Consultation on Financial Advisory and Financial Planning Policy Alternatives (September 23, 2015) available online at: <http://faircanada.ca/submissions/consultation-regarding-financial-advisory-and-financial-planning-policy-alternatives/>

⁵ See FAIR Canada's submission in response to the CSA Consultation Paper 33-403: Statutory Best Interest Standard, available online at <http://faircanada.ca/wp-content/uploads/2013/02/130222-final-Statutory-Best-Interest-Submission.pdf>.

⁶ In light of the research cited in footnotes 2 through 4, we are of the view this includes reforms mandating elimination of conflicts of interest created by trailing commissions and deferred sales charge arrangements. It also includes addressing conflicts that arise when fund dealers sell products manufactured by related parties and misleading business titles.

⁷ The evidence available (primarily as a result of regulatory sweeps and reviews) suggests a multitude of problems with those prospectus exemptions that were already in use prior to the expansion. See FAIR Canada's letters to regulators on the exempt market, available online at http://faircanada.ca/fca_submissioncategory/capital-raising-exempt-market/.

harm.

- 4.2. In addition, FAIR Canada notes that the current risk-based approach to compliance oversight may result in the new “high risk” firms (such as crowdfunding portals) being reviewed while those that would previously have been high risk may no longer be captured in this category.
- 4.3. **Accordingly, FAIR Canada recommends that the OSC commit to make additional compliance, supervision and enforcement resources available, and commit to conduct a compliance audit of all registrant firms within a given time period.⁸**

Enforcement

- 4.4. FAIR Canada applauds many of the OSC’s enforcement and supervision initiatives, specifically the work that the OSC has done to date through the Joint Serious Offences Team (“JSOT”) in conjunction with the RCMP’s Financial Crime Program and the Ontario Provincial Police’s Anti-Rackets Branch, as well as the OSC’s work to develop its whistleblower program. We are pleased to see that the OSC takes enforcement of fraud and other wrongdoing seriously and encourage the OSC to continue these efforts. We urge the OSC to vigorously prosecute those who have defrauded Ontarians and believe that the most effective deterrent is criminal sanctions rather than fines (that often are not paid by the wrongdoer or collected by regulators).
- 4.5. FAIR Canada believes that for the OSC’s enforcement initiatives to be meaningful, they will have to be appropriately structured and resourced. We urge the OSC to ensure that the whistleblower program has the proper structure⁹ and sufficient resources, both in terms of staff and funds, in order to function in a meaningful way. This must include ensuring that the whistleblower program will have sufficient resources to handle all the tips received, conduct appropriate investigations to build strong cases, and compensate whistleblowers when appropriate.
- 4.6. FAIR Canada also applauds the OSC for taking steps to increase its level of cooperation with domestic entities, including the Bank of Canada, Federal Finance and the Office of the Superintendent of Financial Institutions, in order to achieve more harmonized and coordinated outcomes. FAIR Canada also calls on the OSC to further its efforts and cooperate with other Canadian regulators, including securities regulators, self-regulatory bodies and insurance regulators, especially with respect to enforcement matters. Specifically, FAIR Canada urges the OSC to implement automatic reciprocal enforcement of disciplinary orders. We strongly believe that by immediately adopting the enforcement orders of other regulatory bodies, the OSC will be able to take the lead on implementing a robust and comprehensive enforcement system that will ultimately serve to benefit both investors and the integrity of capital markets.

Combating Investment Fraud

- 4.7. FAIR Canada also urges the OSC to work collaboratively with other regulators to prioritize the collection of better information about investors’ experience with investment fraud, and to publicize the same. We continue to note the lack of meaningful reporting or statistical information regarding

⁸ Note that the SEC has committed to continuing to conduct focused, risk-based examinations of selected registered advisers and investment company complexes that have not yet been examined: see <https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2016.pdf>.

⁹ See paragraph 3.27 to 3.29 of FAIR Canada’s comments on the proposed Whistleblower Policy, available online at <http://faircanada.ca/wp-content/uploads/2011/01/150501-Final-Whistleblower-Program-Submission-May-1-signed.pdf>.

investment fraud in Canada. Better empirical information would assist regulators and others and we recommend that there be better collection and publication of information including the number of investment fraud complaints the OSC receives (including from seniors), investigations and enforcement proceedings.

- 4.8. We recommend that the OSC work with its CSA colleagues to develop a better registration check system. While some improvements have been made, there are still problems with the current website for retail investors. There is a need for a single, comprehensive tool that would allow investors to check the background of a potential advisor or investment firm. FAIR Canada calls for a user-friendly, one-stop tool where investors can access licensing, registration, disciplinary and background information (including proficiency and SRO membership) regarding advisers, dealers and their respective registered persons.¹⁰ Investor testing should be conducted to ensure the system is user-friendly and generates meaningful, helpful results.

Transparency

- 4.9. FAIR Canada calls on the OSC to be more transparent with respect to the type and number of complaints, investigations and enforcement initiatives that it undertakes. The OSC does not currently make available a list of all its concluded enforcement cases (nor does the CSA¹¹) as part of its report on enforcement activity¹², nor does it make available the number or types of complaints received. By collecting and making such information public, the OSC would be able to better demonstrate the impact of the OSC's enforcement program and the public would be able to better understand and assess the program's successes.
- 4.10. It will be important for the OSC to be able to demonstrate that the whistleblower program has improved the number and quality of tips it receives. Accordingly, the OSC should track and disclose the number of tips and other complaints it now receives on an annual basis as well as track and disclose those received once the whistleblower program has been implemented. FAIR Canada believes this information should be publically available and easily accessible, and we urge the OSC to make this a priority. In doing so, FAIR Canada believes the OSC can move toward the desired outcome that is set out in the current draft Statement of Priorities, namely, "Investor protection improved through increased public awareness of fraud and other serious securities laws violations".

5. Redress: Compensation, Dispute Resolution and Binding Decision-making

- 5.1. FAIR Canada urges the OSC to prioritize initiatives that will improve investor redress, which includes obtaining compensation.
- 5.2. Ontarians (and all Canadians) should have access to an independent ombudservice that provides for a binding decision. FAIR Canada believes this is absolutely essential to the OSC's key regulatory mandate of investor protection. When investors believe they have been harmed (through non-compliance with suitability obligations, for example), they deserve to have access to an ombudservice

¹⁰ The Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives has also made this recommendation in their Preliminary Report at page 9.

¹¹ The CSA has a database which lists the enforcement against a specific respondent but does not list them by matter, nor does the database list cases that are pursued quasi-criminally or criminally. The 2015 CSA Enforcement Report did not provide a list of the cases concluded in the given year categorized by type of wrongdoing (illegal distributions, fraud, misconduct by registrants, illegal insider trading etc). Previous versions of the Enforcement Report listed the concluded cases.

¹² OSC Media Release, "OSC reports growth in enforcement activity in 2015" (March 7, 2016) available online at: http://www.osc.gov.on.ca/documents/en/News/nr_20160307_osc-reports-growth-in-enforcement-activity.pdf.

that fully meets international standards and our international obligations. This should be the expectation and the reality for all investment complaints. Steps should be taken to have a single, national, statutory ombudservice in Canada with the power to make binding decisions. This is vital to the integrity of our financial services market and the protection of Canadian consumers.

- 5.3. Canada's G20 obligations – including the obligation to ensure consumers have access to adequate complaint handling and redress mechanisms that are “accessible, affordable, independent, fair, accountable, timely and efficient...” – require giving Canadian consumers access to an ombudservice that will actually deliver a resolution of each dispute, as is the case in other leading jurisdictions. In the United Kingdom, Australia, New Zealand and Malaysia, for example, decisions are binding if the consumer accepts the recommendation. Canadians deserve no less. Binding decisions will prevent firms from refusing to comply with OBSI's compensation recommendations or making low-ball offers which lead to settlements well below OBSI's recommendations.¹³
- 5.4. The power to implement binding decisions is an essential component of a well-functioning regulatory system. Without the power to implement binding decisions there are fewer incentives for financial services providers to adhere to the rules within the governing regulatory framework.¹⁴ Under the current system, those firms who violate the rules and cause financial harm to investors are not required to compensate investors for their losses. Rather, the firms are free to refuse to accept OBSI's recommendation. FAIR Canada believes that a robust regulatory framework is not achievable if the rules in place allow firms to disregard their obligations to compensate investors. In order for our financial services system to work, effective consumer redress is required, and this must include binding decision making as part of the dispute resolution system. **FAIR Canada urges the OSC and the Ontario Government to be a leader in this regard and develop a body that has the power to implement binding decisions.**
- 5.5. In addition, FAIR Canada calls for the OSC to work with OBSI and other regulators to facilitate reforms of the investor complaint and compensation process to provide a single point of entry for a financial consumer's complaint so they do not have to navigate on their own through the regulatory labyrinth in order to have their complaint addressed. The individual's complaint should be guided to the appropriate place for resolution by intake staff trained specifically for this purpose.¹⁵
- 5.6. Finally, investors who have suffered losses through fraud should be compensated as in a manner similar to the situation in Quebec with the Fonds d'indemnisation des services financiers or the UK's Financial Services Compensation Scheme. Recent high profile cases involving fraud and related insolvency have not resulted in investors receiving any meaningful compensation through existing

¹³ See FAIR Canada's letter to OBSI regarding the Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investment with respect to Investment-Related Complaints (February 26, 2016) at para 3.4-3.6, available online at: <http://faircanada.ca/submissions/fair-canada-comments-on-independent-evaluation-of-obsi/> and OBSI's Annual Report 2015 available online at: <https://www.obsi.ca/en/download/fm/500/filename/Annual-Report-2015-1459375786-099e4.pdf>

¹⁴ See FAIR Canada's letter to OBSI regarding the Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investment with respect to Investment-Related Complaints (February 26, 2016) at section 4, available online at: <http://faircanada.ca/submissions/fair-canada-comments-on-independent-evaluation-of-obsi/>

¹⁵ See FAIR Canada's letter to OBSI regarding the Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investment with respect to Investment-Related Complaints (February 26, 2016) available online at: <http://faircanada.ca/submissions/fair-canada-comments-on-independent-evaluation-of-obsi/>. Also, please see the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives' issues for further consideration at page 10 of their Preliminary Report, April 5, 2016, available online at <http://www.fin.gov.on.ca/en/consultations/fpfa/fpfa-policy-recommendations.pdf>.

mechanisms such as the courts or through CIPF coverage.¹⁶ In addition, FAIR Canada believes there is a lack of empirical data to determine the incidence of fraud, misrepresentation and resulting losses suffered by investors as a result of investing in securities through purported reliance upon prospectus exemptions. However, media reports suggest that there are serious and widespread losses associated with certain prospectus exemptions such as the Offering Memorandum. Three scandals reported in the press in 2013 alone amounted to some \$500 million in retail investor losses. In addition, information from Alberta's securities commission released with Multilateral CSA Notice dated March 20, 2014 noted that there have been "...numerous complaints from investors that have invested significant amounts under the OM Exemption and incurred significant losses." As access to the exempt market has been expanded to retail investors through amendments and additional prospectus exemptions, it is incumbent on the industry and regulatory bodies to put into place compensation safety nets to ensure adequate protection to investors.

- 5.7. FAIR Canada therefore encourages the OSC to prioritize establishing a fund to compensate victims of fraud when dealing with a registrant.

6. Timely expansion of disclosure requirements

- 6.1. FAIR Canada is pleased to see that mutual fund facts documents have been created and are now required before the point of sale.¹⁷ However, FAIR Canada believes that similar disclosure documents should be made available for all investment products (not just mutual funds and exchange traded funds) and structured products (for example, market linked notes and principal at risk notes) so that investors and their advisors can better understand these products before a decision to invest is made.
- 6.2. European policy makers have drafted rules requiring short, standard, plain language disclosure documents for all retail investment products, including all packaged retail and insurance-based investment products (PRIIPs). The rules state that "clear, comparable and complete information" on investment products must be provided to investors in a Key Information Document ("KID") for all PRIIPs sold on or after December 31, 2016. The European rules will require KIDs to be drafted on a common mandatory template, including text and layout, in order to make it easy for retail investors to compare the different features of different products. The KID will be no more than three pages in length and will contain details of product costs, including separate indicators for product charges and transaction costs, and will also include risk indicators. The European rules also require KIDs to be delivered "sufficiently early" in the sales process to enable an investor to "take its contents into account when making an investment decision."¹⁸ FAIR Canada hopes that the OSC will look to the European model and work to expand the types of investment products that require summary disclosure in Ontario.
- 6.3. FAIR Canada reminds the OSC that it is crucial for such documents to be provided prior to the point of sale so that investors can make a more informed investment decision. In addition, the fund

¹⁶ The recent First Leaside case highlights the fact that investors thought that CIPF coverage would be available, but found it was not. See the appeal decisions of the CIPF Appeal Committees, available online at <http://www.cipf.ca/public/cipfcoverage/FirstLeasideSecuritiesIncfr/Appealcommitteedecisions.aspx>. See also the following media article <http://www.investmentexecutive.com/-/contingency-fund-needed-to-cover-investors-losses-some-argue?redirect=%2Fsearch>.

¹⁷ Requirement effective May 30, 2016.

¹⁸ European Banking Authority Joint Discussion Paper on Key Information Documents (November 17, 2014) available online at: http://www.eba.europa.eu/news-press/calendar?p_p_auth=uCTldB0i&p_p_id=8&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&_8_struts_action=%2Fcalendar%2Fview_event&_8_eventId=899033

manufacturer should post fund fact documents on their website as the primary document that investors will reference rather than require investors to navigate the provider's website. We note that it is often difficult to locate the mutual fund facts document or the group scholarship plan summary document on a provider's website. In addition, it is difficult to locate these documents rather than a marketing document given that marketing documents often have similar names. We therefore think that such documents should be required to have clear, concise titles that cannot be confused with marketing documents¹⁹ and should be required to be prominently displayed on the website.

- 6.4. Finally, we note, that the Canadian Securities Administrators point of sale initiative for mutual funds disclosure has taken over ten years to implement. Conversely, the European Key Information Documents discussed above, which cover a full spectrum of investment products, took just four and a half years to go from the initial impact assessment stage to full implementation.²⁰ FAIR Canada therefore encourages the OSC prioritize the swift implementation of additional summary disclosure requirements.

7. Monitor and assess the impact of recent regulatory reforms in Ontario

- 7.1. FAIR Canada encourages the OSC to follow-up on its recent expansion of the exempt market and the data collected through the reports of exempt distribution so as to help inform the public about this area of our capital markets. What types of investors have purchased in reliance of the various prospectus exemptions (equity crowdfunding, the offering memorandum, and the family, friends and business associates exemption, for example)? What returns have been generated for investors one, and three years subsequent to the investment? What were the amounts invested? What is the incidence and prevalence of investor harm from unsuitable and fraudulent exempt market investments? How many of the issuers were still in operation one year, three years, and five years subsequent to their capital raising activities in reliance on prospectus exemptions? Does the survival rate vary depending on the size of the issuer, whether it is a reporting issuer, or the industry it is in, etc.? We encourage the OSC to collect and publish this information.
- 7.2. Research should also be done to show whether benefits such as economic growth or job creation have occurred as a result of exempt market initiatives.
- 7.3. FAIR Canada also urges the OSC to undertake investor testing of the risk acknowledgement forms. Investor testing will allow regulators to determine whether investors understand the information that is being conveyed, how they are being used by investors and whether it helps protect investors. It will also allow regulators to determine whether any changes are needed to ensure that the risk acknowledgement forms being produced are in fact effective and useful to investors.
- 7.4. Such testing could also be done on summary disclosure documents (such as the mutual fund facts document, the exchange traded fund facts documents (once implemented) and the group scholarship

¹⁹ FAIR Canada notes that while disclosure is important and that the point of sale initiative is a worthwhile endeavor, disclosure is not a panacea for the existing gaps in financial consumer protection. We caution regulators against relying solely on disclosure and encourage continued progress on initiatives aimed at bolstering protection for retail financial consumers. FAIR Canada recommends that OSC and other members of the CSA consider the findings made in the area of behavioral economics, both in terms of improving summary disclosure documents and in considering how to ensure adequate investor protection.

²⁰ KIDs began with an initial assessment of the proposal for a regulation by the European Commission in July 2012. KIDs will become part of the mandatory disclosure landscape on December 31, 2016. See the report from Deloitte EMEA Centre for Regulatory Strategy "No time for KIDing around PRIIPs is on the way" (2015) available online at: <http://www2.deloitte.com/content/dam/Deloitte/lu/Documents/financial-services/performance-magazine/articles/lu-no-time-kiding-around-012015.pdf>

plan summary documents) in order to better understand how they are being used and whether improvements to their effectiveness can be made.

- 7.5. FAIR Canada supports the proposed post-implementation analysis of the impact of CRM2 and POS amendments. Such analysis should include assessing whether firms are providing the required information in a format that is clear and understandable to investors and is comparable between firms, including those with different business models.
- 7.6. FAIR Canada encourages the OSC to make all of its research and testing available to the public.

8. Timely Policy Making

- 8.1. FAIR Canada stresses that in order for policy-making to be effective it must also be efficient. FAIR Canada is concerned with the length of time it takes for Canadian regulatory bodies to implement necessary changes. While we understand that the OSC alone cannot drive national policies forward, we urge the OSC to be a leader in this regard. This recommendation is in line with recommendations from the International Monetary Fund, which stated that Canadian securities regulators should ensure that policy formulation is done in a timely manner, noting that while “...regulatory policy making requires time to allow for consultation so that the impact of policy proposals can be evaluated and incorporated...the current government arrangements...might affect [the] timeliness of decision making.”²¹

9. Investor Education, Engagement and Alignment with Investor Interests

- 9.1. FAIR Canada strongly supports the mandates of the Investor Office and Investor Advisory Panel as these entities help inform the OSC as it engages in policy-making and operations and allow it to modernize its efforts in investor engagement, research, education and outreach. FAIR Canada is supportive of efforts to develop tailored solutions to reach the broad range of at-risk investor groups, including seniors, millennials, new Canadians and indigenous peoples.
- 9.2. FAIR Canada recommends that the OSC Investor Office consider developing and providing an unbiased brochure “Understanding Investment Funds” for ETFs, mutual funds and other commonly held investment funds that would replace the existing “Understanding Mutual Funds” brochure. FAIR Canada believes a revised brochure should be created in light of the fact that investor testing found investors have a low level of understanding of investment products including ETFs.²² The brochure should be designed so that it can be used to help investors understand what are mutual funds, exchange traded funds and other common investment funds sold to retail investors, how they are created and structured and their key differences, including the fact that, unlike mutual funds, ETFs are traded over an exchange.

10. Enhance Oversight of the Fixed Income Market

- 10.1. Canadian regulators have limited data on the amount of bonds held directly or indirectly by retail

²¹ International Monetary Fund Country Report No 14/73 “Canada – Financial Sector Assessment Program – IOSCO Objective and Principles of Securities Regulation: Detailed Assessment of Implementation” (March 2014) at p 6, available online at: <https://www.imf.org/external/pubs/ft/scr/2014/cr1473.pdf>

²² CSA Point of Sale Disclosure Project - ETF Facts Document Testing, Prepared by: Allen Research Corporation, (January 2015) at page 39, available online at: <https://www.osc.gov.on.ca/documents/en/InvestmentFunds/etf-factsdocument-testing.pdf>.

investors.²³ A recent article in The Globe and Mail indicates that, in Canada, retail investors have invested around \$535 billion in fixed income securities, \$230 billion directly and \$305 billion indirectly through fixed income and balanced mutual funds and exchange traded funds. It is estimated that Canadians hold 20 percent of their financial wealth directly and indirectly in fixed income securities.²⁴

10.2. The fixed income market is a large and important market for retail investors but, since this market is opaque, retail investors are largely left in the dark. FAIR Canada commends the OSC for producing its report on the Canadian Fixed Income Market and we are pleased to see the CSA outlining next steps for regulatory reform to this area of our markets. We urge the regulators to not only do more, but do more in a timely manner so as to improve transparency, fairness, efficiency and integrity of this market for all market participants, especially retail investors.²⁵

FAIR Canada notes that we have made substantial comments in prior years' submissions in response to the OSC's draft statement of priorities that have not been addressed. We believe these suggestions are important and remain very relevant, and urge the OSC to consider unaddressed recommendations.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Neil Gross at 416-214-3408/ neil.gross@faircanada.ca or Marian Passmore at 416-214-3441/ marian.passmore@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights

²³ Ontario Securities Commission, "The Canadian Fixed Income Market", (2014), at p. 11.

²⁴ Federico Knaut, "Why Canada needs transparent corporate bond markets", October 30, 2014. available online with subscription at <http://www.theglobeandmail.com/report-on-business/streetwise/why-canada-needs-transparent-corporate-bond-markets/article21371149/%3bjsessionid=D12rXwSCPZs3hW0QLw27Tdqf4NwNGjh00Sb1lvXhsy1yYny5wS7q!1992518891/?ts=160509140853&ord=1>. The OSC Report at page 18 to 19 includes the following information about retail investor participation: Reports from Investor Economics indicate that in Canada, direct bond holdings (both corporate and government) account for approximately 10% of retail assets held in full service brokerage accounts. For online or discount brokerages, bonds account for around 3% of client assets. Studies in other jurisdictions indicate that retail investors predominately participate in corporate bond markets through mutual funds. According to the Bank of Canada, mutual funds are estimated to hold 16% of outstanding corporate bonds issued in Canada. According to Investor Economics based on 2014 data, Canadian domiciled fixed income mutual funds had \$312 billion in AUM.

²⁵ Please see our submission to the CSA on the Proposed Fixed Income Reforms, (November 2, 2015) available online at <http://faircanada.ca/wp-content/uploads/2015/11/151102-FAIR-Canada-Submission-to-CSA-Re-Fixed-Income1.pdf>.