

OSC Investor Advisory Panel  
c/o Anita I. Anand  
Associate Professor  
Faculty of Law  
University of Toronto  
78 Queen's Park, Suite 301  
Toronto, ON M5S 2C5  
Email: iap@osc.gov.on.ca

April 27, 2011

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West, Box 1903  
Toronto, ON M5H 3S8

Dear Mr. Stevenson,

**Re: Draft Statement of Priorities**

**I. Introduction**

The Investor Advisory Panel (“IAP” or “Panel”) is an independent body formed by the Ontario Securities Commission in August 2010. We are charged with providing input on the Commission’s policy initiatives, including proposed rules and policies, the annual Statement of Priorities, concept papers and specific issues. Our specific mandate is to represent the views of investors in discharging this responsibility. We have interpreted this responsibility broadly, meaning that we seek to represent the views of all types of investors, including retail and institutional investors, in our process. This letter constitutes the IAP’s submission on the Commission’s draft annual Statement of Priorities.

To inform our views in preparing this submission, we undertook a number of public consultations. In particular, we requested input from investors on a List of Initiatives posted on our webpage in December, 2010.<sup>1</sup> We also considered comments that we received from time to time in the form of written correspondence sent to the Panel. In March 2011, we held four focus groups in the Greater Toronto Area comprised of randomly-selected retail investors.<sup>2</sup> We also held two roundtable discussions consisting of invited representatives from investor advocate groups and experts in securities law.<sup>3</sup> We have also had the benefit of research assistance from two research students on the

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<sup>1</sup> See OSC Investor Advisory Panel Initiatives, online: [http://www.osc.gov.on.ca/en/Investors\\_iap\\_initiatives\\_index.htm](http://www.osc.gov.on.ca/en/Investors_iap_initiatives_index.htm) (These initiatives focus on: point of sale, enforcement, fiduciary standards for financial service professionals, credit rating agencies, and initiatives in other countries).

<sup>2</sup> See Appendix A which contains the Report prepared by the Brondesbury Group for the Investor Advisory Panel dated April 7, 2011 which outlines the methodology and results of the four focus groups.

<sup>3</sup> See Appendix B for a list of experts with whom we consulted.

range of issues discussed here.<sup>4</sup> Our policy recommendations are informed by this background research and information. In our view, these recommendations are in the best interests of investors in Ontario. We turn now to discuss these recommendations.

## II. Statements of Priorities

The Ontario Securities Commission is the guardian of investors' interests. At the core of its mandate is a responsibility to protect investors in Ontario's capital markets. While the Commission sets forth broad goals to be achieved in its draft Statement of Priorities,<sup>5</sup> it does not provide a firm set of proposals to ensure that investors will indeed be protected. Rather, the draft Statement of Priorities contains objectives that are overly broad and lack specificity.<sup>6</sup> By contrast, in at least one previous Statement of Priorities (2007-08), the Commission not only set general goals but also provided specific steps that it proposed to take in order to achieve these goals.<sup>7</sup> The current Statement of Priorities, like its immediate predecessor, is more general than statements issued in previous years.

We are concerned that investors will not be able to determine if any of the priorities so stated have been achieved. We believe that in its annual Statement of Priorities, the Commission should go further and identify specific actions that it will take in the upcoming year to protect investors. Such a process would constitute an accountability mechanism, which does not exist in the current draft Statement of Priorities. We believe that the Statement of Priorities should respond to the questions: what specific actions will the Commission take to protect investors over the next year and what has it accomplished in this regard in the prior year? The current draft of the Statement of Priorities does not do this.

## III. Substantive Recommendations

We believe that three areas of securities regulation warrant attention by the Commission in the upcoming year: duties owed by financial service providers to their clients; point of sale disclosure obligations; and, a power for the Commission to award restitution to investors.<sup>8</sup>

### a. Financial Service Providers

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<sup>4</sup> We extend deep appreciation to Corinne Bordman and Christopher Somerville, students-at-law, of Bennett Jones LLP, for their excellent research assistance which has been provided on a pro bono basis to the Investor Advisory Panel.

<sup>5</sup> In *Notice 11-765 – 2011-2012 Statement of Priorities* (February 25, 2011) ("*Notice 11-765*"), these goals are stated to include: "Better demonstrate our commitment to investor protection"; "Intensify Operational, Compliance and Enforcement efforts"; "Modernize our Regulatory systems and approaches"; "Pursue a Coordinated Approach to Securities Regulation"; and "Demonstrate accountability for [our] performance as a leading securities regulator in Canada".

<sup>6</sup> *Ibid.*

<sup>7</sup> See *Ontario Securities Commission Statement of Priorities for fiscal 2007/2008*, (June 2007), online: [http://www.osc.gov.on.ca/documents/en/About/www\\_2007-2008\\_statement\\_of\\_priorities\\_final.pdf](http://www.osc.gov.on.ca/documents/en/About/www_2007-2008_statement_of_priorities_final.pdf).

<sup>8</sup> We note in the 2007-08 Statement of Priorities, the Commission wrote: "In 2007/08, specifically we plan to...research and consider more effective means for the resolution of complaints and restitution." *Ibid* at 8. We question the progress that has been made with regards to this priority.

A significant majority of investors utilize an intermediary such as an advisor to complete their trades in securities.<sup>9</sup> The intermediary can fulfill a number of roles. Sometimes the intermediary executes orders only. Sometimes the intermediary provides advice. Often the relationship between the investor and the intermediary is long-term. The investor comes to rely on the intermediary's advice in deciding where to place his or her money.<sup>10</sup> For ease of reference, we refer here to individuals who act as intermediaries in any of these capacities as "financial service providers".

Currently, all dealers and advisors in Ontario are subject to a registration regime under which they must meet know-your-client and suitability requirements.<sup>11</sup> They are also required to deal "fairly, honestly and in good faith with [their] clients."<sup>12</sup> This latter requirement is often overlooked by those debating issues relating to fiduciary duties of securities dealers. The provision is contained in an Ontario-only rule and *may* be interpreted to be a fiduciary standard, but this particular point has not been decided by the courts, and the Commission has not indicated whether this is the case.<sup>13</sup>

Other provinces and territories in Canada also impose a good faith requirement on registrants. Legislation in Alberta, Manitoba, Newfoundland and Labrador and New Brunswick takes an additional step and states that when registrants have discretionary authority over their clients' investments, the registrants must act in the clients' best interests.<sup>14</sup> Regulators and legislators in other advanced markets, notably the United States, the United Kingdom and Australia, have moved to implement a fiduciary duty for

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<sup>9</sup> The results of our focus group discussions indicated that most participants consulted financial advisors in making investment decisions and that those participants with advisors "put unconditional confidence and trust" in them. See Report of the Brondesbury Group for the Investor Advisory Panel, "Focus Groups with Retail Investors on Investor Rights and Protection," (April 7, 2011) at 8 in Appendix A, *supra* note 2 ("Focus Group Report").

<sup>10</sup> *Ibid.*

<sup>11</sup> The *Securities Act* (Ontario), R.S.O. 1990, c. S.5 ("*Securities Act* (Ontario)"), subsections 25(1), (2) and (3) set out the requirements of the registration process. See also section 32 of the *Securities Act* (Ontario) and *NI 31-103 Registration Requirements and Exemptions*, which further set out registration requirements: [http://www.osc.gov.on.ca/documents/en/Securities-Category3/rule\\_20090717\\_31-103\\_national-instrument.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category3/rule_20090717_31-103_national-instrument.pdf).

<sup>12</sup> See *OSC Rule 31-505*. This Rule is often overlooked, and some have raised the question as to whether it is in force in light of *NI 31-103*.

<sup>13</sup> See Philip Anisman, "Existing rule requires 'good faith'" *National Post* (February 16, 2011).

<sup>14</sup> For provisions with a rule substantially similar to OSC Rule 31-505, see section 14 of the *Securities Rules*, B.C. Reg. 194/97 under the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418; section 33.1 of the *Securities Act* (Saskatchewan), S.S. 1988-89, c. S-42.2; sections 160 and 160.1 of the *Securities Act* (Quebec), R.S.Q., c. V-1.1; section 39A of the *Securities Act* (Nova Scotia), R.S.N.S. 1989, c. 418; section 90 of the *Securities Act* (Prince Edward Island), R.S.P.E.I. 1988, c. S-3.1; and section 90 of the *Securities Act* (Nunavut), S.Nu. 2008, c. 12, the *Securities Act* (Northwest Territories), S.N.W.T. 2008, c. 10, and the *Securities Act* (Yukon), S.Y. 2007, c. 16.

For the provisions imposing a higher standard, see section 75.2 of the *Securities Act* (Alberta), R.S.A. 2000, c. S-4; section 154.2 of the *Securities Act* (Manitoba), C.C.S.M. c. S50; section 26.2 of the *Securities Act* (Newfoundland and Labrador), R.S.N.L. 1990, c. S-13; and section 54 of the *Securities Act* (New Brunswick), S.N.B. 2004, c. S-5.5.

financial service providers who offer investment advice.<sup>15</sup> In light of these developments, the question arises as to whether an explicit fiduciary duty should be implemented in this country also.

The majority of participants in our focus groups indicated that they utilize a financial service provider.<sup>16</sup> Participants further reported that they place unconditional trust and confidence in their financial service provider.<sup>17</sup> This finding is consistent with past research studies which have similarly found that investors rely on guidance from their advisors.<sup>18</sup> Once the notion of “fiduciary” was explained to the focus group participants, most believed that their advisor owes them a fiduciary duty already. As one of the participants commented, “[i]sn’t that their job?” We also received a submission from FAIR Canada, an organization that represents retail investors, that, “a ‘fiduciary-like’ duty would be in the best interests of investors.”<sup>19</sup> In short, during our consultations, we came to understand that investors already believe that their advisors are bound by a fiduciary obligation.<sup>20</sup> Yet this is not, legally speaking, necessarily the case.

We believe that the suitability and know-your-client rules are insufficient to protect investors adequately. For example, clients are often sold products that seem to meet the suitability standard but are not suitable either because they are too complex or because clients and perhaps their advisors do not understand what is being bought and sold. We

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<sup>15</sup> In particular, Section 913 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, Pub. L. No. 111-203, 124 Stat. 1376 (2010) gave the SEC the legal authority to impose a fiduciary standard on broker-dealers. In the EU, Article 19, Paragraph 1 of the Markets in Financial Instruments Directive adopted in 2004 already states that "Member States shall require that...an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients," and this wording was adopted by the UK in the rules of its Financial Services Authority ("FSA"), specifically at Chapter 2, Section 1 of the *Conduct of Business Sourcebook*. Australia is also in the process of developing new legislation as part of the "Future of Financial Advice" reforms, which propose "a statutory fiduciary duty so that financial advisors must act in the best interests of their clients". For details regarding the Australian reforms, see <http://futureofadvice.treasury.gov.au/content/Content.aspx?doc=reforms.htm>. The Australian Treasury has stated that it "anticipates there will be a public exposure of draft legislation and/or regulation in mid-2011, with further consultation on that draft legislation and/or regulation once it is public."

<sup>16</sup> *Supra* note 9.

<sup>17</sup> *Ibid.*

<sup>18</sup> For example, Pollara found that "investors who purchase mutual funds through an advisor continue to rely on their advisor when making decisions about mutual funds": See "Canadian Investors' Perceptions of Mutual Funds and the Mutual Fund Industry 2010" prepared by Pollara for the Investment Funds Institute of Canada at 19, online: <https://www.ific.ca/Content/Content.aspx?id=1540>. Further, in a poll conducted by Ipsos Reid, 50 % of respondents indicated that their financial advisor was a primary source of financial information: Ipsos Reid, "Investor Research: The Value of Advice" (July 15, 2010) at 7, online: <https://www.ific.ca/WorkArea/DownloadAsset.aspx?id=6193>.

<sup>19</sup> Canadian Foundation for Advancement of Investor Rights (FAIR), submission to the OSC Investor Advisory Panel re Investor Advisory Panel Seeks Input (January 14, 2011) at 3, online: [http://www.osc.gov.on.ca/documents/en/Investors/com\\_20110114\\_iap-fair.pdf](http://www.osc.gov.on.ca/documents/en/Investors/com_20110114_iap-fair.pdf). Other organizations have expressed support for the creation of a fiduciary duty for financial advisors: see Kenmar Associates, submission to the OSC re Notice 11-765 Priorities for fiscal year ending March 31, 2012 (March 3, 2011) at 3, online: [http://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com\\_20110303\\_11-765\\_kivenkok.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20110303_11-765_kivenkok.pdf) and Morningstar Research, "Ten New Year's resolutions to help investors", (January 7, 2011), online: <http://cawidgets.morningstar.ca/ArticleTemplate/ArticleGL.aspx?id=365398>.

<sup>20</sup> *Supra* note 9 at 10.

therefore support strengthening the duty owed by financial service providers to their clients. Ontario securities law should be amended to ensure that financial service providers are bound by a fiduciary duty to their clients. We recognize that financial service providers may be held to owe fiduciary duties under specific circumstances at common law.<sup>21</sup> Over and above the common law, however, we believe that a fiduciary duty would eliminate the need to prove the existence of a fiduciary duty on the facts of a specific case and would greatly enhance the access of retail investors to rights of action vis a vis financial service professionals.

Implementing a fiduciary duty is important to set the standard against which egregious conduct will be measured. Yet the presence or absence of such a duty does not necessarily address the core issue of what registrants can and cannot do. We believe that the Commission also has a role in specifying the types of behaviour that would run contrary to the standard that is required. For example, retail investors can easily be duped by inflated titles and professional designations of financial salespeople, some of which are easily obtained and not dependent on particular qualifications being achieved or studies undertaken.<sup>22</sup> Furthermore, many investors are often unaware of the fees that they pay on their investments, especially if these fees change during the course of the investors' relationship with the advisor.<sup>23</sup> These are but two of a myriad of issues that can affect a transparent relationship between the investor and his or her financial service provider. We encourage the Commission to examine such issues, and set out examples of egregious conduct in a policy statement or guidance, in the interests of accountability of financial service providers and transparency in the relationship with their clients.

From our review of the applicable law, we believe that the Commission has the authority to implement a fiduciary duty for financial service providers.<sup>24</sup> We thus recommend that the Statement of Priorities be amended to state that the Commission will examine the issue of duties owed by individuals and firms that provide investment advice to clients and that it will prepare a draft rule for comment which imposes a fiduciary duty on such individuals and firms.<sup>25</sup> We further recommend that the Commission will include in the

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<sup>21</sup> In particular, a stockbroker may owe such duties while acting as the investor's agent. See *Maghun et al. v. Richardson Securities of Canada Ltd. et al.*, [1986] O.J. No. 1323 (Ont. C.A.) at paras. 13-17 and 26.

<sup>22</sup> In the focus group sessions, participants were not generally familiar with the qualifications of their financial advisors or with financial services designations. See Focus Group Report *supra* note 9 at 9.

<sup>23</sup> *Ibid* at 7-8.

<sup>24</sup> Under section 143(1)2 of the Securities Act, the Commission can make rules prescribing "the criteria a person or company must satisfy to qualify for registration...including, (i) standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients...; (ii) requirements that are advisable for the prevention or regulation of conflicts of interest..." Of course, any proposed rule would need to proceed through the comment periods and then go to the Minister for approval. (s. 143.2) On this basis, it appears that the Commission has the legal authority to implement a fiduciary duty for registrants.

<sup>25</sup> Commission case law already suggests that a dealer owes an obligation to act in his or her client's best interests whether or not this duty is classified as a fiduciary duty: see *Re Gordon-Daly Grenadier Securities* (August 9, 2000), 23 O.S.C.B. 5541 at para. 5. For further background, see *Re Marchment & MacKay Ltd.* (July 27, 1999), 22 O.S.C.B. 4705. The Panel favours an explicit fiduciary duty owed by financial service providers to their clients.

draft rule, companion policy or other guidance specific types of behaviour that violate this fiduciary duty.

b. Point of Sale Disclosure

Canadian investors have approximately \$620 billion invested in mutual funds.<sup>26</sup> Despite the large aggregate investment in these securities, few investors understand the fundamental objectives, risks or charges involved in their financial choices. Without this knowledge, investors have little ability to protect their own interests and compare investment options. To address this imbalance in knowledge, the Canadian Securities Administrators introduced a point of sale disclosure regime that provides investors with a short, plain-language, regulated document that summarizes the key features of the mutual fund in a format that is more accessible to the average consumer. The first stage of implementation for this new framework began on January 1, 2011 and every mutual fund is required to have filed and posted a "Fund Facts" document by July 8, 2011. Once fully implemented, delivery of the Fund Facts document will be required at or before the point of sale.

Our focus group participants indicated that the most common pieces of information that retail investors seek out in making investment decisions relate to: fund performance, performance history, projections and, most importantly, risk.<sup>27</sup> The focus group participants confirmed the general impression that extensive disclosure documents (such as firms' annual reports and investment fund prospectuses) are daunting and cumbersome. As a result, investors rarely consult them as sources of information.<sup>28</sup> Thus, the Fund Facts document can be useful as it potentially allows investors access to the information that is most important to their decisions without requiring them to sift through large and complex disclosure documents to find this information.

The Investor Advisory Panel applauds the effort to proceed with an effective point of sale document to be given to investors before or at the time they make a decision to invest. The principle of timely and simple disclosure before or at the point of making the investment decision remains a key goal and one that can serve investor interests. While we recognize that there are considerable obstacles to achieving this goal, we are nevertheless disappointed at the slow pace of change. Suggestions for simplified disclosure date back to 1995 with the work of Commissioner Glorianne Stromberg and subsequently the Fair Dealing Model concept paper of 2004 which further addressed this issue.<sup>29</sup> We fear that the numerous iterations of the Fund Facts document have yet to produce a document that is timely, clear and useful. Specifically, we make the following observations:

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<sup>26</sup> Canadian Securities Administrators, *Staff Notice 81-319 Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds* (June 16, 2010).

<sup>27</sup> Focus Group Report *supra* note 9 at 6.

<sup>28</sup> *Ibid.*

<sup>29</sup> See "Regulatory Strategies for the Mid-'90s: Recommendations for Regulating Investment Funds in Canada," prepared by Glorianne Stromberg for the Canadian Securities Administrators (January 1995). See also Ontario Securities Commission, "Concept Paper: The Fair Dealing Model" (January 2004) at 57-67.

*Risk measurement.* The current Fund Facts uses a vague low to high risk measure self-assessed by the fund sponsor that means little to the average investor. Investors need a concrete, specific measure such as the worst quarterly/annual loss in the previous 10 years. Such information is available in the performance section, under year-by-year returns. If the product does not have a ten-year history, the loss for the average fund in the comparable group (to be confirmed by the regulators) could serve as a substitute.

*Benchmark/comparative rates of return to sectors and market indices.* Investors cannot judge rates of return without the appropriate context. Fund returns compared to returns of sub-groups and of a larger industry benchmark such as the main market index are the most meaningful and impactful performance measures for investors. Industry protestations that such information is difficult to provide are simply not credible. Entire industries (such as Morningstar and S&P) have sprung up to provide investors with essential information that the industry does not provide. Other improvements could include revealing the foreign exchange hedging policy and fuller fee disclosure – including the disclosure of potential conflicts of interest stemming from third party commissions to financial advisors and/or salespeople.

*Providing simplified prospectus.* While not widely read, the simplified prospectus remains an essential tool for investors that mutual funds should be required to deliver to their investors. Once the Fund Facts document is strengthened, removing the requirement to provide the simplified prospectus could then be considered. Mutual funds should further simplify the prospectus and move from laundry list and boiler-plate disclosure to more meaningful and more easily understood essential information.<sup>30</sup>

*Extending Fund Facts.* Despite its limitations, the Fund Facts document is an important step forward. But why should some products be subject to more fulsome disclosure while others have almost no disclosure at all? To ensure that investors in all products receive consistent disclosure, the Investor Advisory Panel endorses the extension of Fund Facts to other investment products. The long list would include, for example, Exchange Traded Funds, government and corporate bonds, structured products such as fund-of-funds, and hedge funds. A medium term goal should be the extension of Fund Facts to other investment and quasi-investment products such as insurance annuities and bank GICs. We encourage the Commission to ensure that point of sale disclosure required for mutual funds extends to other products also.

In sum, while the existing Funds Facts document is flawed and does not go far enough, the Investor Advisory Panel believes that it is an important first step. However, the Fund Facts program alone will not turn the tide, especially given low levels of financial literacy in this country. We recommend that the draft Statement of Priorities be amended to state that the Commission will explore ways to make the next generation of this document more effective by including, for example, items discussed above, including benchmark information for investors and fuller fee disclosure. We strongly endorse the call to

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<sup>30</sup> In making our recommendations, we support the recent Financial Literacy Task Force Report. See “Task Force on Financial Literacy: Canadians and their Money,” (December 2010).

extend a (hopefully improved) Funds Fact document to all savings and investment products sold to investors.

We also recommend that the OSC consider additional investor protection steps now being implemented in other advanced markets. In the US, for example, the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* calls for the creation of: an SEC department called the Office of the Investor Advocate; an ombudsman to represent retail investors; and, an extensive new investment-oriented whistle-blower program.<sup>31</sup> The UK and Australia have both set up departments to monitor financial services advertising.<sup>32</sup> Such reforms are important to consider in the context of Ontario's capital markets.

c. Enforcement and Restitution

In the draft Statement of Priorities, the Commission states that it is committed to intensifying "operational, compliance and enforcement efforts" but it does not explain what steps in particular it will take to reach this objective.<sup>33</sup> The IAP has considered this issue and, in particular, whether the scheme of enforcement and the remedies available to investors in the *Securities Act* (Ontario) are sufficient to protect investors' interests. At present, investors have two private statutory rights of action for misrepresentations in prospectuses and continuous disclosure documents.<sup>34</sup> The Commission can pursue one of three main types of public rights of action under the Act. These include: the Commission's quasi-criminal power, the administrative or "public interest" power and a declaration that a person or company has not complied with Ontario securities law.<sup>35</sup>

Investors' abilities to recover are limited under both private and public rights of action. In terms of private rights, the ability to launch an action arises only in limited circumstances (i.e. when there is a misrepresentation in a disclosure document). Costs of such actions can be prohibitive. In terms of public rights, there is no assurance that the investors who suffered will be compensated for the securities law violation. In particular, there is no explicit ability for staff to ask for, or for the Commission to award, restitution to investors.

By contrast, the Commissions of Manitoba, New Brunswick and Saskatchewan all have the ability to award restitution to investors.<sup>36</sup> The Quebec Autorité des marchés financiers

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<sup>31</sup> See sections 915, 919D, and 922 of the Act, *supra* note 15 for full legislative citation.

<sup>32</sup> In the UK, the FSA implemented a financial promotions unit that is responsible for monitoring financial services advertising.

<sup>33</sup> Specifically, in *Notice 11-765*, the OSC states that it seeks to "intensify operational, compliance and enforcement efforts to be more effective in addressing not only breaches of the [*Securities Act* (Ontario)] but also by vigorously promoting public confidence in the markets by addressing issues that negatively affect market integrity. The OSC's operational, compliance and enforcement regime is vigorous and active. However, it must be more visible and better understood by market participants and the public in order to achieve the desired deterrent effect. The OSC will step up its focus on compliance and enforcement by insisting on adherence to both the spirit and letter of regulatory requirements."

<sup>34</sup> *Securities Act* (Ontario), *supra* note 11 at sections 130 and 138.1.

<sup>35</sup> *Ibid.* at sections 122, 127 and 128.

<sup>36</sup> See *Securities Act* (Manitoba), C.C.S.M. c. S50, section 148.2; *Securities Act* (Saskatchewan), S.S. 1988-89, c. S-42.2, section 135.6; and *Securities Act* (New Brunswick), S.N.B. 2004, c. S-5.5, s. 188.1.



has a program through which it can compensate investors who fall victim to fraud, fraudulent tactics or embezzlement.<sup>37</sup> In terms of extra-territorial jurisdictions, the Commodity Futures Trading Commission<sup>38</sup> and the Financial Services Authority<sup>39</sup> have the ability to award restitution, though the U.S. Securities and Exchange Commission does not. Finally, the proposed *Canadian Securities Act* largely reproduces the *Securities Act* (Ontario) and contains no explicit ability for the Canadian Securities Regulatory Authority to order restitution.

It is true that the Commission is able to order disgorgement under the public interest power<sup>40</sup> and has made a number of decisions ordering money obtained through disgorgement or administrative penalties to be set aside for allocation to third parties, including investors.<sup>41</sup> Yet the disgorgement right is not explicitly aimed at ensuring restitution for investors, and it is also limited to circumstances where there has been a specific violation of securities laws as opposed to conduct that violates the public interest more generally. Furthermore, while the Commission can apply to the Superior Court of Justice for compensation and restitution for non-compliance with securities law under section 128,<sup>42</sup> it has done so infrequently relative to proceedings under the other public rights of action. In short, there is limited scope for investors to be compensated or receive restitution for their losses under the current legislative regime.

The IAP supports the implementation of a remedy of restitution for investors in the *Securities Act* (Ontario). Such a remedy would provide a more direct way to compensate investors than the current method of allocating proceeds from penalties and disgorgement. Participants in our retail focus groups almost unanimously supported this concept,<sup>43</sup> though they evidenced limited knowledge regarding avenues of recourse. Further, they had a high level of trust in their advisors which renders it unlikely that they would recognize conduct and/or practices that violate the law. They had little idea of whom they should or could contact if they objected to the conduct of their financial advisor or a corporation in which they had invested.<sup>44</sup>

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<sup>37</sup> Under this program, an investor who falls victim to fraud, fraudulent tactics or embezzlement can submit a claim for compensation of up to \$200,000. If the claim is successful, money is paid out of the program and the AMF can then recoup the money from those responsible. See *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, sections 258 to 283. See also Barbara Hendrickson, Larry Markowitz, Shahen Mirakian and Marty Venalainen, "2009 Report of the Expert Panel on Securities Regulation in Canada," *CBA National Business Law Section Newsletter*, online: [http://mcmillan.ca/Files/ARTICLE\\_Securities%20and%20Public%20Markets\\_2009\\_Report\\_Expert\\_Panel\\_Securities\\_Regulation\\_0709.pdf](http://mcmillan.ca/Files/ARTICLE_Securities%20and%20Public%20Markets_2009_Report_Expert_Panel_Securities_Regulation_0709.pdf).

<sup>38</sup> See United States Code, Title 7, section 9.

<sup>39</sup> See *Financial Services and Markets Act 2000* (U.K.), 2000, c. 8 at section 384.

<sup>40</sup> *Securities Act* (Ontario), *supra* note 11 at subsection 127(1), paragraphs 9 and 10.

<sup>41</sup> See, for example, *Re Sabourin*, 33 OSCB 5299 (June 4, 2010).

<sup>42</sup> *Securities Act* (Ontario), *supra* note 11 at section 128. See also Mary Condon, "Rethinking Enforcement and Litigation in Ontario Securities Regulation," (2006) 32 *Queen's Law Journal* 1.

<sup>43</sup> Participants made it clear that they would deserve to get their money back in the event of misappropriation, but they also doubted whether this would occur under the current system of enforcement. See Focus Group Report *supra* note 9 at 11.

<sup>44</sup> See *Ibid.* at 10-11.

The most obvious place in which a restitutionary provision should be implemented is under the Commission's administrative power in section 127. We note that section 122 already contains a provision of the sort that we support to be implemented in section 127. Specifically, under subsection 122.1(1) a court may "order the convicted person or company to make restitution or pay compensation in relation to the offence to an aggrieved person..." We recommend that the draft Statement of Priorities be amended to indicate the Commission's commitment to seek an amendment to section 127 of the *Securities Act* (Ontario) to provide the Commission with the power to order restitution or compensation to investors.<sup>45</sup>

On a more general level, investors would benefit from more transparency about the Commission's current enforcement policies and when disgorgement, in particular, will be ordered.<sup>46</sup> In this regard, we recommend that the Commission consider whether it would be appropriate to publish an "enforcement guide" summarizing its enforcement procedures and policies in a way that retail investors can understand. This approach may follow the *Enforcement Guide* published by the UK's FSA,<sup>47</sup> which explains, for example, how the Commission will make decisions about granting disgorgement in a given case and when the Commission will decide to prosecute a section 122 matter, pursue an administrative action under section 127, and make applications for court-ordered remedies pursuant to section 128 and/or a restitutionary order, when it becomes available.

#### **IV. Conclusion**

We believe that the Commission should define more precisely what actions it intends to take to protect investors' interests. It is our view that the Statement of Priorities must include specific targets and goals to be achieved so that Ontario investors have an objective way to measure the Commission's effectiveness. Without such specificity, the Commission's accountability is undermined.

It is also our view that the Statement of Priorities should include the following specific objectives:

- implementing a fiduciary duty to be held by financial service providers who offer investment or financial planning advice and factors necessary to guide them and the courts with regards to the fulfillment of this duty;

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<sup>45</sup> As Philip Anisman has stated, "There is no reason why the Commission should not have the ability to make an order for restitution or compensation, where appropriate after a hearing, against a person who has been found to have violated Ontario securities law." See P. Anisman's submission to the standing committee on finance and economic affairs of the legislative assembly of Ontario concerning its review of the Final Report of the Five year Review Committee (August 16, 2004).

<sup>46</sup> Knowledge among participants concerning recourse was very limited, and participants suggested additional and improved information on the enforcement process. One participant stated, "There needs to be a clear channel, with easy to follow steps – how to make a complaint, and what to expect in that process." Focus Group Report *supra* note 9 at 10-11.

<sup>47</sup> For the contents of the *Enforcement Guide* please see the following:  
<http://fsahandbook.info/FSA/extra/5511.pdf>.

- improving point of sale disclosure and extending its application to a broader group of securities and investment products; and
- seeking from the legislature an amendment to the *Securities Act* (Ontario) to implement a power for the Commission to provide restitution to investors in case of loss.

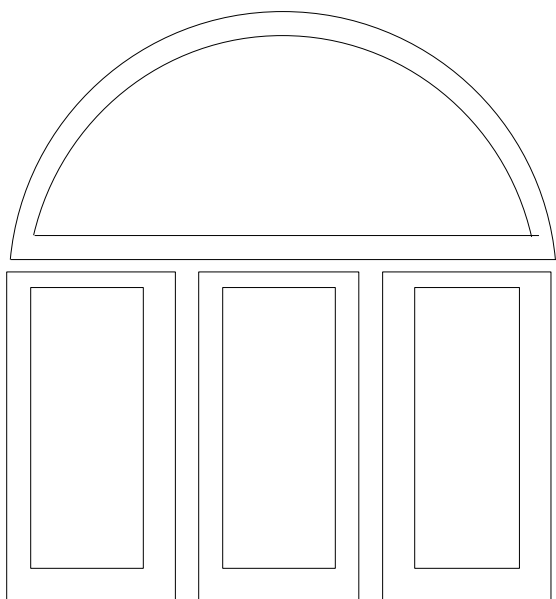
We thank you for considering our comments on the draft Statement of Priorities.

Yours very truly,

Anita I. Anand, Chair, and all of the members of the Investor Advisory Panel: Nancy Averill, Paul Bates, Stan Buell, Lincoln Caylor, Steve Garmaise and Michael Wissell

cc Allan Krystie

**Appendix A**  
**Report on Focus Groups**



## **Focus Groups with Retail Investors on Investor Rights and Protection**

Prepared for  
The Investor Advisory Panel  
Of The Ontario Securities Commission

Written by:  
Lori Bottrell  
Ed Weinstein, PhD  
April 7, 2011

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## 0. EXECUTIVE SUMMARY

- The objective of the focus group research is to gather the views and opinions of retail investors in the GTA on investor rights and protection and to gather feedback on the initiatives drafted in the Ontario Securities Commission Statement of Priorities for the fiscal year 2011-12.
- Four focus groups were held in the latter part of March 2011. Two in downtown Toronto, and two in Mississauga. There were 39 participants in total. Participants were screened according to age, education, investments owned, and amount invested to ensure diversity in the groups.
- Before the client (OSC) was revealed, participants were asked to identify the meaning of the acronym of OSC (Ontario Securities Commission). Overall, just over half correctly identified the Ontario Securities Commission. The Mississauga group fared better with over 2/3 who knew, while in Toronto a little more than 50% either did not know or incorrectly named the OSC.
- Disclosure of risk level of a particular investment is received the most from financial advisors and/or financial service professionals. This reflects positively as the most important information they need to make an investment decision to buy or sell. In conjunction, assessment of an investor's risk tolerance level is commonly received. Risk is typically expressed as "high, medium, low" or "conservative versus aggressive".
- To understand information and protection needs, it is essential to understand that the most critical decision an investor makes is their choice of advisor. The majority say they work with a financial advisor for investment. **Overwhelmingly, participants put unconditional confidence and trust in their advisor.** Advisors are the main source of investment information and a good proportion blindly trust the advice they are given. There is a real belief among participants that their advisor always acts in their best interest.
- **There is a very limited knowledge about both compliance and recourse.** Although, participants would not hesitate to lodge a complaint if warranted. Complaints would be first made to the advisor, and then escalated if necessary. A few suggest they would contact the OSC or an Ombudsman, if they objected to the conduct of their financial advisor or a company in which they have invested.
- On the topic of recourse, there is a subtle, underlying opinion that restitution may not be met. While participants feel entitled to get their money back if misappropriated, they are less confident that full compensation would be awarded in reality.
- Fiduciary standards is not a well-known term. However, once the principle is explained, all believe that their advisor has a fiduciary duty. As one participant comments, "Isn't that their job." Support for a fiduciary standard for advisors is strong.
- Unanimously, a national securities regulator in Canada is favoured by participants. A national regulator is seen as streamlining process, setting uniform standards, cost-efficient over the long-term and less bureaucracy. One of the main drivers was a sense that fraudulent advisors would be more likely to be caught and punished if the regulator had a national scope.
- Participants do not generally have a strong opinion of what their rights as investors might be. When asked what role the Investor Advisory Panel should play, regulation and protection are key themes. Regulating financial advisors is also suggested. While this is outside the scope of the IAP, the panel will need to make clear its mandate to retail investors as it moves forward.

## 1. INTRODUCTION

- The Investor Advisory Panel (IAP) was created by the Ontario Securities Commission (OSC) in August 2010 to provide input to the OSC, from the perspective of the investor and advance the interests of investors in Ontario. This includes input towards the Commission's proposed priorities set forth in its annual Statement of Priorities (SOP).
- A draft of the SOP was released to the public at the end of February and is currently open for comment. To increase input from retail investors, the IAP decided to hold focus groups as a means to receive feedback on the initiatives put forth by the Commission. Key regulatory priorities for 2011-12 include:
  1. Better demonstrate commitment to investor protection;
  2. Intensify Operational, Compliance and Enforcement efforts;
  3. Modernize Regulatory systems and approaches;
  4. Pursue a Coordinated Approach to Securities Regulation;
  5. Demonstrate accountability for its performance as a leading securities regulator in Canada.
- The primary challenge was to position the priorities in terms and issues that retail investors could understand through their experience and knowledge of investing and investment.

### 1.1 Method

- Four focus groups were held with retail investors in the third week of March. Two focus groups were held in Toronto and two focus groups were held in Mississauga. Participants were recruited randomly (as opposed to employing lists) by telephone by the Logit Group. To ensure participants represented a varied mix of

investment knowledge and financial literacy, participants were screened according to the type of investment (s) held and the total amount invested.

- In previous research, The Brondesbury Group found a direct relation between investments held, amount invested, and the level of investor knowledge. Those who hold more sophisticated investments typically have a higher level of investing knowledge and financial literacy. Those who invest in more basic financial products (CSB, GICs, savings accounts) typically have both a limited level of knowledge and literacy about investing and investment.
- Participants were also screened for age and education level. A few of screening criteria had quotas to ensure demographic diversity. Please refer to Appendix 1 for the full Screener used in recruitment.

#### 1.1.1 Demographics of Participants

- There were 39 participants in total. Toronto focus groups had a total of 18 participants while Mississauga groups had 21 total participants. Females represented 23 of the participants, while males represented 16.
- **Exhibit 1.1** and **Exhibit 1.2** provide a snapshot of participant demographics. While the demographics of groups were similar, it needs to be noted that the Mississauga groups were more financially literate and knowledgeable about the topics in general.



### Exhibit 1.1 Demographics of Participants

DEMOGRAPHICS	Toronto (n=18)	Mississauga (n=21)
<b><u>Gender</u></b>		
Female (n=23)	12	11
Male (n=16)	6	10
<b><u>Age</u></b>		
25 - 39	1	3
40 - 49	5	7
50 - 64	6	6
Age 65 and over	6	5
<b><u>Education</u></b>		
Less than high school	1	1
Secondary School Diploma	6	4
Completed College	6	8
Completed Uni/Postgrad Degree	5	8
<b><u>Amount Invested</u></b>		
Less than \$50,000	5	9
At least \$50,000 but less than \$250,000	8	8
At least \$250,000 but less than \$500,000	5	3
More than \$500,000	0	1

### Exhibit 1.2 Investment Types Owned By Participants

<b><u>Investment Type</u></b>	Toronto	Mississauga
<b>Mutual funds (or other investment funds)</b>		
Own Now	13	17
Owned Past	4	4
Never Owned	1	0
<b>Stocks (equities) not in a mutual fund</b>		
Own Now	6	12
Owned Past	7	5
Never Owned	4	4
Don't know/not sure	1	
<b>Government or corporate bonds (excl Canada Savings Bonds)</b>		
Own Now	6	11
Owned Past	4	4
Never Owned	6	5
Don't know/not sure	2	1
<b>Exotic investments (i.e. derivatives, hedge funds or limited partnership units)</b>		
Own Now	1	1
Owned Past	5	2
Never Owned	10	16
Don't know/not sure	2	2

## 1.2 The Facilitation Guide

- The facilitation guide was drafted in consultation with the IAP. The primary challenge was to position the Statement of Priorities in terms and issues that retail investors could understand and relate to through their experience and knowledge of investing and investment.
- As a result, the facilitation guide was organized around the following topics:
  - Overall Awareness of the IAP and Investment Decision
  - Investment Information (1)\*
  - Disclosure (1)
  - Fees ( 1)
  - Working with Financial Service Professionals ( 1)
  - Conflicts of Interest and Fiduciary Standards (1)
  - Compliance and Recourse (1, 2, 3)
  - Fraud and Enforcement (2)
  - After the Financial Crisis (1)
  - Views on Regulators (3, 4, 5)
  - Investor Rights and Protection (1, 5).

**\* Bracketed number corresponds to the key regulatory priority in the Statement of Priorities 2011-12 that the topic addresses.**

## 1.3 Organization of The Report

The findings of the research have been organized around the five key regulatory priorities of the SOP.

## 2. KEY FINDINGS

### OVERALL AWARENESS OF THE OSC

- Before the client (OSC) was revealed, participants were asked to identify the meaning of the acronym of OSC (Ontario Securities Commission). Overall, just over half correctly identified the Ontario Securities Commission. The Mississauga group fared better with over 2/3 who knew, while in Toronto a little more than 50% either did not know or incorrectly named the OSC. The TSX (Toronto Stock Exchange) was more widely known with about ¾ of all participants correctly identifying the acronym.
- The OSC is viewed as an “enforcer” but often after the fact. Therefore, it is seen as reactive rather than pre-emptive. In general, regulators are defined as setting process and procedures for listing companies. It is also known as a body that investigates and enforces financial crime. For some, regulating individual advisors is believed to be at the forefront of OSC’s mandate.

*“OSC comes after the fact, should regulate so things don’t happen.”*

*“Regulate, make sure people follow principles and the way they invest”.*

*“(To ensure that) Businesses are legitimate not scams.”*

*“Certain rules and regulations as per standard.”*

*“Companies that have advisors that are looking at ways to beat the rules. How can the OSC control that?”*

*“I feel that it’s a toothless tiger, does not have any bite at all, going after the fraudsters. It is not a high profile organization with a history of bringing about convictions.”*

- It is clear that while participants have a general understanding of the role of the OSC, there is limited awareness of how it carries out its responsibilities, especially in regards to the individual retail investor. Greater victim protection and recourse measures are desired. Presently, the OSC gives some a false sense of

security. There is a sense that the interests of the “small” investor are not a priority of the OSC.

*“Where is OSC when company is cooking up the books”.*

*“Tough to prove, have some friends I know that are traders and they laugh – called before OSC – they say yeah, I was doing this and that, called me and couldn’t prove it, so walked out and that was that. No repercussions.”*

*“If someone is defrauding people, their name should be published. One of things the OSC seems to do is do their best to hide their name.”*

*“Does the ordinary man on the street know the OSC exists? And Investor Advisory panel first time I am hearing of it.”*

*“Give us information on recourse.”*

*“If someone screws you, they should get theirs, and you shouldn’t be left holding the bag...and that happens far too often”.*

- We will now present the key findings of the research. These have been organized by which priority they reflect. This will help the IAP identify issues that are relevant to that priority in an effort to assist the panel in its implementation of a particular priority.

## 2.1 PRIORITY 1. BETTER DEMONSTRATE COMMITMENT TO INVESTOR PROTECTION

- Capital markets have become increasingly complex. There is a proliferation of securities products and investment advice. Technological advancements in operations and product development along with increasing information and investor participation has had a significant impact on the industry and investors alike. Market turmoil and accompanying financial crisis around the world continue. In response, regulatory changes and challenges remain forefront. The interest and protection of investors is core to the work of the OSC and its commitment to help investors get a fair deal.
- Understanding retail investors' information needs for investing and investment in order to make informed investing decisions is critical. Presently, what are the information needs of retail investors? What are they getting now? What sources of information do retail investors review before making an investment decision to buy/sell?
- To understand information and protection needs, it is essential to understand that the most critical decision an investor makes is their choice of advisor. For many, once they have chosen an advisor, they rely on the advisor to provide them with the information they should have and no longer exercise independent judgment. The advisor is the nexus for investor communications.

*"I actually have a financial advisor, greatly rely on him for information...he has been with the family for a while. Also I have that trust factor, and that is important because it's not something I can confidently do by myself, so having that experience and background for me is very important."*

*"I'm in her situation, the find world of finance overwhelming, I don't have a lot of passion or interest in it, but I know it is a necessary thin. If I want to invest my money I basically rely on my advisor who I have been dealing with a long time, trust her, sit down with her, she explains everything to me, I trust her and her advice."*

- **The most common information retail investors seek to inform their investment decisions pertains to risk: What is the risk level of an investment?** The perception of risk appears more closely tied to the questions they were asked for their KYC form, rather than to any underlying notion of investment volatility.
- Fund performance, performance history and projections are also important to investment decisions. To a lesser extent cost is also an issue, but awareness of sales charges is greater than awareness of MERs.
- Both company annual reports and the investment fund prospectus are not frequently cited as sources of information that is reviewed before making an investment decision. When mentioned, the prospectus is viewed as daunting and cumbersome. Many say they received it but didn't read it.

### 2.1.1. Information Sources

- **Most rely on their financial advisor for their investment information. Only three participants were not working with a financial advisor.** The implication of this will be presented in detail when we discuss Working with Financial Services Professionals later in the report.

- Family and friends are common sources of investment information, but more rely on media sources (print, TV) and the internet. Again, advisors play a key role. Once information is found, many vet this through their advisor for opinion. Those who do not work with a financial services professional, rely more on internet sources.

*“I do more research first online, then call financial advisor.”*

*“Read article in Sunday Sun, did some research online, and called my investment advisor.”*

*“I have friends in the field, brokers and stuff, and always I compare, when I get information and first I look at it to make the comparisons. Always just consult with my friends, and then come up with best optimum solution.”*

- Popular media sources include:

- Newspapers – Globe and Mail, National Post, Toronto Star, Sunday Sun;
- TV – BNN, CNBC, CBC (and CBC radio);
- Internet – Bloomberg, Morningstar, FI websites.

- Participants recall receiving financial statements pertaining to their investments, however the level of attention participants give to statements and the information they contain varies greatly. So too is the frequency that statements are received. Some receive statements monthly, while others receive these quarterly and annually. Also, some have access to their statements online, and will check them regularly.
- **Participants’ level and depth of understanding of their investment statements varies greatly.** For example, while some recall performance benchmarks in their statements, very few can identify what benchmark is used. The vast majority just look at the change in the value of their portfolio and little more.

*“I received them monthly – read them quickly. Just basically where I stand. I look at strictly the numbers. What the difference is, up or down. Benchmarks I don’t know.”*

*“I look at my monthly statement, look at bottom line to see what investment has gained, what has loss...I look at bottom line. Sort of understand them.”*

*“Recently going on internet, use to take quick look when in mail, but now take more line online – market value, type of acct, details, try to look at other info, top 10 holdings.”*

- While performance history was cited by the group as “important investment information to know”, it is unlikely that the majority have sufficient understanding to assess benchmark information on their statements.

### 2.1.2. Disclosure

- By far, disclosure of risk level of a particular investment is received the most from financial advisors and/or financial service professionals. This reflects positively as the most important information they need to make an investment decision to buy or sell. In conjunction, assessment of an investor’s risk tolerance level is commonly received. Risk is typically expressed as “high, medium, low” or “conservative versus aggressive”.
- Participants also recall receiving a prospectus and information pertaining to fees and investment cost (i.e. management and operating costs relating to mutual fund). However, there is little or no recall of specific fees and costs.

*“The prospectus, and a lot of info, to be honest, I listen to to what they have to say, but to read through it all, is not my thing. So I rely on what they are telling me more than an over 40 page document.”*

*“Usually your advisor should inform you on this, and for me he does, and if I have questions, I ask as many as I want to, so technically, when I buy it I should be comfortable enough, I trust my advisor what he says...and also background of the fund –“*

### 2.1.3. Fees & Costs

- The good news is everyone knows there are fees and costs associated with their investments. Fees are viewed as a cost of doing business. In principle, paying fees to an advisor or financial services professional is acceptable.
- On the flip side, participants are unsure what the fees are paying for. They have a general idea of the percentage rate they are paying, but many are unsure. So too, is the frequency fees are charged. There is no evidence that participants seek out information to clarify fee amount and structure on their investments.

*“Don’t know off hand of mutual fund fee or what they are paying for.”*

*“Most fees I guess are to manage the fund. That is a cost”.*

*“I am probably paying something, but don’t know what.”*

*“MER on my mutual fund is 1% or something. I don’t think there are any front end loads, or when you cash out.”*

*“Management fees, front and rear end loading on mutual funds. I’d have to do far bit of math to tell you the percent.”*

*“I have no idea. Get statement look at bottom line.”*

- At the same time, participants would not hesitate to call their advisor if they questioned a fee. This is problematic. Participants are rather complacent about fees and fee structure. Coupled with the fact that statements are haphazardly reviewed, we are unsure how participants can spot a mistake or problem.
- While a very few are aware 3<sup>rd</sup> party commissions paid on mutual funds, the vast majority of participants were not. It would be safe to say that at least ¾ of the participants were not aware of 3<sup>rd</sup> party commissions. Once explained, many see this as a potential conflict of interest. Participants say more disclosure is needed.

*“Need a whole lot disclosure from financial advisor why they are recommending a certain stock. Like real estate cleared it up a few years ago.”*

*“Brokers are a sales man, have to make his commission. They use to give incentives to brokers (i.e. cruises, trips) if they hit certain sales targets. So could have conflict if broker is half way there and wants to hit his target.”*

*“(The advisor) He should tell you that.”*

### 2.1.4. Working with Financial Service Professionals

- The majority say they work with a financial advisor for investment. Only a handful are not using an advisor at the present time. **Overwhelmingly, participants put unconditional confidence and trust in their advisor.** Advisors are the main source of investment information and most blindingly trust the advice they are given. There is a real belief among participants that their advisor always acts in their best interest.

*“She trusts the guy – don’t have a lot of knowledge, so you trust him.”*

*“I don’t believe that if I go to you and say let’s invest in that, you won’t treat me fairly...or you won’t do the right thing for me. I believe it’s a trust factor over time, it will work, it has worked in the past, and I see it working in the future.”*

*“You are sounding very trustworthy and whenever you are handling your money, you should never be that trusting with your money. But you should always do research on what they said, say ok, I am going to think about it and can I give you a call tomorrow.”*

- Advisors are obtained either with through a personal referral or were assigned to them by their financial institution. There are some who have had several advisors over the years, either by

choice of their own (trial and error) or through bank employee turnover.

- Those who have switched advisors cite poor communication as the most common reason. The few who are not using an advisor cite fees as a deterrent and one experienced a poor investment decision (i.e. futures).
- Unfortunately, few, if any can accurately describe the level of education and/or training of their financial advisor. Again, many assume that the advisor has an undergraduate degree (commerce, business, accounting) at minimum. Comment is made that if an advisor was bank-employed, the bank would have done their due diligence to ensure the advisor was qualified. There is no need for them to double-check.

*“We make assumptions, perhaps wrong assumptions, if someone is a financial rep from established bank or investment organization you assume they have checked that person credentials and back them. Maybe that is an assumption, not justified, but most of us make that. Probably have a degree in commerce or finance to have gotten to this position, but I have never went into an office with a framed degree on the wall.”*

- Specific training and qualifications needed in the industry is relatively unknown. Designations (i.e. CFP) are also unclear.
- While a few may regard an advisor as a salesperson, this is not a dominant view among participants. For most, advisors work with them over time. They help adjust financial plans to life events and to meet their evolving personal and financial situation. They rely on their advisor to provide them with advice that is in the client’s best interest.
- A main criticism is that communication and client contact needs improvement, especially during a downturn. Often times, participants must initiate contact. Some regard this as an investor’s responsibility.

## 2.1.5 Suitability and Know Your Client

- It is interesting to note that Toronto participants were relatively unfamiliar with these terms, while Mississauga participants mentioned both suitability and Know Your Client prior to topic discussion or being prompted by moderator. Regardless of knowledge level, most feel that these requirements are a “given”.
- Suitability is defined as an investment that meets your investment objectives and financial priorities.
- However, suitability and know your client is a two-way street. It is as much the investor’s responsibility to fully disclose pertinent financial and personal information. Withholding or falsifying key facts that inform risk and one’s financial situation impacts both suitability and KYC.

*“I don’t think it does –Not sure if that covers everything. Making assumptions that is covered in risk. Needs to know more lifestyle...have kids, family, single.”*

*“You have to open up to your advisor, my goals and expectations, people often try to impress their advisor, then expect advisors to do perfect job for you.”*

*“On both sides, stay in contact and update one another.”*

*“I have heard – know your clients – ask you a whole lot of questions. What goals are? Suitability, I am not too sure?”*

*“Just a metrics on piece of paper, doesn’t tell where you are coming from?”*

*“Exactly, they have to know what your best interests are when you might not know what your best interests are, because you don’t know the complexity of the investment market or the laws that are governing how the investments are held.”*



### 2.1.6. Fiduciary Standards

- Overall, fiduciary standards is not a well-known term. It is described by participants as rules and regulations; being responsible for money and a “duty to advise the standards of the profession of an advisor”. Once the principle is explained, most believe that their advisor has a fiduciary duty. As one participant comments, “Isn’t that their job.”
- Support for a fiduciary standard for advisors is clear.

*“Part of their job”*

*“Should be held accountable whether they do it or not, not for us to decide, up to the watchdogs”*

*“You could do a surprise drug test, surprise visit on someone -- do a spur of the moment thing to the advisor.”*

*“You don’t know what he does for the whole day – may be wheeling dealing behind the scene, but talks nice to you...you don’t know what he does behind the scene. And you trust the organization to hire the right person, but here are some bad apples everywhere.”*

*“Definitely, they should, but may come a time, when advisor puts his mores above yours to make a commission.”*

*“Perhaps a need for full clarification of what these standards are.”*

## 2.2 PRIORITY 2. INTENSIFY OPERATIONAL, COMPLIANCE AND ENFORCEMENT EFFORTS

- As mentioned at the beginning of this chapter, those who are aware of the OSC, the commission is seen as an enforcing body. Unfortunately, it is also viewed as acting after the fact. Participants welcome more public disclosure of enforcement activities carried out by the OSC. They hear about the larger cases, but not the smaller ones. To increase relevance to the retail investor, policy work, regulatory initiatives and enforcement need to be more visible.

*“Consequences. There doesn’t seem to be consequence, hear about the problem, comes to a judgment, I don’t remember hearing much about any of things. Feeling it takes so long for these things to come to fruition. Not really due diligence to do this quickly.”*

*“Make presence known, and that they won’t stop short of prosecution when it is warranted. Those who have a tendency to have crooked, if they feel repercussion is few and far between, do it, insider trading if fragrant.”*

*“Make it more open, don’t hear about the little ones, make it known that this company does this...”*

*“No one seems to care, you snooze, you lose, complain all you want. OSC comes after the fact, but should be regulating so things don’t happen.”*

### 2.2.1 Compliance, Recourse and Restitution

- **There is a very limited knowledge about both compliance and recourse.** Although, participants would not hesitate to lodge a complaint if warranted. Complaints would be first made to the advisor, and then escalated if necessary. A few suggest they would contact the OSC or an Ombudsman, if they objected to the



conduct of their financial advisor or a company in which they have invested.

*“Maybe give us information on recourse. Communicate to public we are there, maybe toothless now, but we are going to the dentist.”*

*“There needs to be a clear channel, with easy to follow steps – how to make a complaint, and what to expect in that process. A well publicized pathway along which a person who feels rightly or wrongly, has been dealt badly with, could have a well known process to follow to get some satisfaction.”*

- It is worth repeating at this point that the high level of trust participants bestow on their advisor coupled with overall investor complacency in regards to fees, cost and perhaps proper disclosure, make it unlikely that participants will recognize non-compliant conduct or practices.

- On the topic of recourse, there is a subtle, underlying opinion that restitution may not be met. While participants feel entitled to get their money back if misappropriated, they are less confident that full compensation would be awarded in reality.

*Restitution is unlikely, someone will get arrested for it, but it is unlikely they will get their money back.*

- Participants were asked to rate their level of understanding of regulatory terms. They were asked to consider the term in how it relates to investing and investment. When considering the level of financial literacy participants demonstrated in the focus groups, it may be safe to assume that overall, they over estimated their level of understanding. This was purely a self-assessment exercise, and has no external benchmark to establish its validity.
- Areas shaded green indicate the most frequent rating for each term.

On a scale of 1 – 5 rate level of understanding. (1=do not understand the term at all, 5=fully understand the term)

<u>Term</u>	1	2	3	4	5
Compliance					
Enforcement					
Restitution					
Recourse					
Registrant					
Issuer					
Disclosure					
Fiduciary Standards					

## 2.3 PRIORITY 3. MODERNIZE REGULATORY SYSTEMS AND APPROACHES

### 2.3.1. Reviewing New Products Before Entering Marketplace

- As new products continue to arise in the capital markets, participants favour the idea that the OSC review and pre-approve new financial products in efforts to mitigate risk to the retail investor. They would prefer safeguard at the expense of slowing down financial innovation.

### 2.3.2 Fraud and Enforcement

- Participants can easily identify signs of investment fraud and/or scams. Promises of high returns with little risk signal and

investment too good to be true both raise red flags. Insider trading and “Pump and Dump” (although not termed as such by participants) are recognized as fraudulent investment conduct.

- Investigating and enforcing investment fraud and scams is seen as the responsibility of the OSC and the RCMP. Some also cite the Board of Directors of listed companies and the complaint departments of financial institutions as responsible too.

## **2.4 PRIORITY 4. PURSUE COORDINATED APPROACH TO SECURITIES REGULATION**

### **2.4.1 Thoughts on a national securities regulator**

- Unanimously, a national securities regulator in Canada is favoured by participants. A national regulator is seen as streamlining process, setting uniform standards, cost-efficient over the long-term and less bureaucracy. It may mean stiffer penalties and improved enforcement measures, which are all seen as a good thing from the view of retail investors in the groups. One of the main drivers was a sense that fraudulent advisors would be more likely to be caught and punished if the regulator had a national scope.

*“I think we need one.”*

*“One of only countries that doesn’t have one.”*

*“Give us a degree of protection we don’t have now”*

*“The more people watching over you the better.”*

*“I thought we had one.”*

- At the same time, an alarming number were under the impression that a national regulator already existed in the Canadian capital markets. This view is more prevalent among the Toronto groups, who on the whole, demonstrate lower financial literacy than the Mississauga groups.

### **2.4.2. After The Financial Crisis**

- Participants credit Canada’s tight bank regulations and more regulatory bodies for protecting investors and the financial systems from greater impacts of the financial crisis. While they think Canadians are more risk-averse in general (in comparison to U.S. investors), they do not view this as a primary reason for Canada’s ability to weather the financial storm better than the U.S., the UK or Europe.
- As a result, participants did not feel a need to panic in 2008. A fair number received contact from their financial advisor telling them it was best to remain calm, stay invested and weather the storm. Today, investor confidence is varied among the groups. Toronto groups are much more confident in the capital markets, while Mississauga groups are taking a more slow and steady approach. They view capital market as volatile and over-priced.

## **2.5 PRIORITY 5. DEMONSTRATE ACCOUNTABILITY FOR ITS PERFORMANCE AS A LEADING SECURITIES REGULATOR IN CANADA**

- The work of the OSC needs to be made more visible to retail investors. Successful enforcement cases (big and small) need to be publicized more. This would give retail investors confidence that the regulatory body has some “teeth”. Retail investors in the groups support the work the OSC does. Showcasing how regulatory and policy reform is working in their best interest will only increase their support. This can provide an opportunity for the OSC to raise its profile above industry interests only.

*“Do they do that? Do they have any teeth to do any protection?”*

*‘I haven’t heard anything about what they have done for us.’*

### 3. INVESTOR RIGHTS AND PROTECTION

- Participants do not generally have a strong opinion of what their rights as investors might be. A few key ideas include:
  - Right to confidentiality;
  - Fairness;
  - Investment insurance.

*“Right to some security with your investment – that your financial planner is not going to run off with your money.”*

*“Insurance to protect investments – is that feasible, doesn’t make sense to me”*

*“Obviously some holes that need plugging.”*

- When asked what role the Investor Advisory Panel should play, regulation and protection are key themes. Regulating financial advisors is also suggested. While this is outside the scope of the IAP, the panel will need to make clear its mandate to retail investors as it moves forward.

*“Where would you go to learn about investor rights and protection?”*

*“Truly, to be the client’s watchdog, and that they can do something”*

*“It strikes me as a result of our discussion, part of our responsibilities – very nebulous of our obligation and any recourse process we might be able to access in order to address our concerns, whether bona fida concerns or not, so again, we will have some complaints, but have no idea what channels to access these.”*

*“List things to look for as an investor – things to look for if that is happening – maybe this is not a good company.”*

### 4. CONCLUSIONS

1. The most critical decision retail investors make is choosing a financial advisor. Once they have chosen an advisor, participants rely on the advisor to provide them with the information they should have and no longer seem to exercise independent judgement. They have an overwhelming trust in their financial advisor. This has several implications. The advisor is the nexus for investor communications. They are the prime and often only source for investment information. Material not communicated by advisors is typically ignored. Therefore, the advisor could be the point-of-entry for IAP. Communicating your initiatives and efforts to advisors can be the platform for building awareness and credibility.
2. There is a general understanding of the role OSC plays, but there is limited knowledge how the commission carries out its work. While the OSC is seen as an “enforcer”, retail investors do not feel that their interests are a priority of the OSC. As a result, participants feel a false sense of security. Greater victim protection and recourse measures are desired.
3. Financial literacy among participants is low. They exhibit a general complacency towards financial matters and improving their knowledge base about investing and investment. There is no real evidence that participants seek information for clarification. At the same time, participants may have over-assessed what they “think” they know. But “you don’t know what you don’t know.”
4. Participants assume fiduciary standards are already in place. In addition to the blind trust they have put in their financial advisor, there is a potential for vulnerability.

## 5. RECOMMENDATIONS

1. The point-of-entry to reach retail investors is through their advisor. Material that is not communicated by the advisor is typically ignored by most.
  2. Retail investors are overly trusting in their financial advisors, which may pose a risk to some. It is recommended that the IAP publish policy and regulation in plain language that relates to the financial advisor-client relationship and clearly states the role and responsibility of financial service professionals to retail investors.
  3. Publicize success stories of the OSC that highlight regulation and enforcement.
  4. Increase efforts to educate retail investors on issues relating to Disclosure; Compliance and Recourse.
  5. Debunk myths. Fiduciary Duty is not a required industry standard. But it is worth encouraging a move to this standard in an effort to meet consumer expectations while providing the kind of protection their current expectations require.
  6. Increase outreach methods through research efforts that include surveys and focus groups.
    - With regard to research, it is best to identify the purpose and key questions of the research first, then move into methods". In our preliminary discussions, the aims for research ranged from making people aware of the OSC through research to questions about investors' behaviour.
    - We would be pleased to meet with you and discuss what you want to achieve, then advise you on suitable research methods and their trade-offs. Unlike survey firms, we have no pre-set biases about methods, so everything from reviews of 'private sector' and public research to specialized use of databases like the Survey of Financial Security to a variety of primary research methods are open for consideration.
- In most cases, given you are early in your research development, we suggest beginning with a review of secondary sources since they are fast and cost-effective. After exhausting those sources, moving into primary research is quite typical.

**APPENDIX 1. RECRUITMENT SCREENER**

**Retail Investor Focus Group Screener – Toronto\***

Version 2  
March 10, 2011

Good evening, this is \_\_\_\_\_ from Logit Group.

Our client, The Brondesbury Group is conducting focus groups for an Ontario Government policy agency. The agency is responsible for advancing the interest of investors in Ontario, some special types of consumer financial protection, and investor education.

The focus groups are being held in Toronto at (location) on Tuesday March 22. They will be held in the late afternoon and early evening. As a token of our appreciation for your participation, we would like to offer an honorarium of **\$60**. The group lasts for two hours and your responses will be kept confidential. Would you be interested in participating?

**A1. Yes – (Continue)**

Which time can you attend? (circle)

- a) Group 1 (4:00 – 6:00 pm)
- b) Group 2 (7:00 – 9:00 pm)

No/DK – **[Thank and terminate]**

Now, I would like to ask you a few questions to see if you qualify to attend.

**B.**

1. Identify (don't ask)... [No gender should exceed 55% of recruits]

- 1 Male
- 2 Female

2. What is your current age? Is it....?

- 1 Less than 25 years old [Thank and terminate]
- 2 25 – 39 years old (Not to exceed 25% of recruits)
- 3 40 – 49 years old
- 4 50 – 64 years old
- 5 Age 65 or older (25% of recruits must be age 65 or older)

[No one age group should exceed 50% of recruits]

4. What is the highest level of education that you completed? Is it...?

- 1 Less than a high school diploma
- 2 A secondary school diploma
- 3 Completed College
- 4 Completed University/Postgraduate degree

[no one level of education should exceed 50% of recruits]

5. Please indicate which of the following financial products you own now including products inside an RRSP. If you don't own the product now, please indicate if you have owned this financial product in the past five years?

<u>Own</u> <u>Now</u>	<u>Owned</u> <u>Past</u>	<u>Never</u> <u>Owned</u>	<u>Not</u> <u>Sure</u>	
1	2	3	9	Mutual funds (or other investment funds)
1	2	3	9	Stocks (equities) not in a mutual fund
1	2	3	9	Government or corporate bonds (excl CSB)
1	2	3	9	Exotic investments (derivatives, hedge funds or limited partnership units)

If all = 3 or 9 / Never Owned or Not sure [thank and terminate call]

6. Thinking about the amount of money you have saved or invested including in an RRSP or company pension plan, would you say that the total amount you have invested is roughly....

- 1 Less than \$50,000
- 2 At least \$50,000 but less than \$250,000
- 3 At least \$250,000 but less than \$500,000
- 4 More than \$500,000
- 9 Not sure/Don't know (thank and terminate call)

[no one level of amount invested can represent more than 50% of recruits]

7. Do you get professional advice to help you make savings or investment decisions?

- 1 Yes
- 2 No

The focus group will take place on Tuesday March 22 at:

Metroline Research Group  
161 Eglinton Ave East, Suite 310  
Tel: (416)440-2885

Metroline is located on the South-east corner of Redpath & Eglinton, two lights east of Yonge Street and is easily accessible by public transit.

The nearest TTC subway station is Eglinton station on the Yonge subway line. Exit Eglinton subway, and walk 2 blocks east on Eglinton Avenue.

Paid Parking is also available.

The focus group will start at (see A1 a/b). Please arrive at least 15 minutes before to sign in. We will confirm your attendance a couple of days before the focus group.

**Thank and terminate**

**\*MISSISSAUGA SCREENER IS IDENTICAL APART FROM DATE OF SESSIONS (MARCH 24<sup>TH</sup>) AND FACILITY DETAILS.**

## APPENDIX 2. FACILITATION GUIDE

Retail Investor Focus Group  
Facilitation Guide Version 4  
Tuesday March 22<sup>nd</sup> (Toronto)  
Thursday March 24 (Mississauga)

### I. INTRODUCTION - 5 minutes

The initial stage of the focus group is to establish a level of confidence, comfort and a rapport between the moderator and the participants.

#### 1. *Word of welcome and introduction of moderator*

Housekeeping rules – cell phones/pagers, restrooms, length of session, refreshments

#### 2. *Objectives of the research:*

We are here today to talk about investor protection, what investor protection means to you? Do you, as a retail investor feel confident about investing in the Canadian stock market, either by buying stocks or buying stock-based mutual funds but also by buying fixed income mutual funds, GICs, Canada Savings Bonds and the like. Do you have the information you need to make informed investing decisions? If not, what do you think is needed to make more informed decisions when it comes to investing?

#### 3. *Role of Moderator*

Neutral party  
Here to lead the discussion.  
Live Video Feed/Audio Taping, used to write the report  
Client Viewing  
Confidentiality

#### 4. *Role of Participants* – honesty, respect, like to hear from everyone

<Answer any questions from participants before getting started.>

#### 5. *Round Table Introductions*

### II. WARM UP - 10 minutes

**Moderator:** This section will reveal participants general knowledge levels and familiarity of the securities landscape in Ontario and Canada.

We live in a world full of acronyms. The financial sector is no different. Tonight's discussion will be quite in-depth and comprehensive. So let's begin on a lighter note, and play a short game. It's like Name that Tune, but instead of music, you are going to guess what some acronyms mean. We don't have buzzers, so I am going to ask you to write your answer out on the cue cards in front of you. A little hint before we begin, the acronyms are from the financial sector.

#### Name that Term

OSC (Ontario Securities Commission)

TSX (Toronto Stock Exchange)

Add? CDIC; GIC

MFDA (Mutual Fund Dealers Association of Canada)

CSA (Canadian Securities Administrators)

SEDAR (System for Electronic Document Analysis and Retrieval)

OTC (Over-the-counter, hint: derivatives)

SEC (US Securities and Exchange Commission)

KYC (Know Your Client)

IAP (Investor Advisory Panel)

**III. Exploring Basic Investor Rights and Protection – 30 minutes**  
(SOP #1)

**REVEAL CLIENT**

During this section, participants' will explore their level of understanding of basic investor rights and protection, in addition to top-of-mind concerns investors.

**Reveal Client**

The Investor Advisory Panel (IAP) of the Ontario Securities Commission (OSC) has commissioned this Research. I am not an employee of the commission or a member of the panel. Our company, The Brondesbury Group, has been hired to carry out this research for the advisory panel.

**I. OVERALL AWARENESS OF IAP AND INVESTMENT DECISION**

*What would be some things that you feel you need to know about that will help you make informed investment decisions? By "investment decisions", we mean making decisions about what products you should buy or sell, and how much money you should save or invest.*

Probe: risk of losing money, costs and fees for buying and holding investments, qualifications and licensing of your financial advisor, making complaints about an advisor, performance, rate of return.

**II. INVESTMENT INFORMATION**

What types of information are you getting now that helps you make informed decisions about what investments to buy/sell and how much to invest? (Advisor, family, friends, media – which ones?)

When and how did you get this information?

Thinking about the last time you purchased or sold a mutual fund, a stock or any other security, **what information** or document did you review when making your decision to invest or not? Where did you get this information – did your financial institution or financial advisor give this to you?

How was this information or document useful when making your decision to invest or not? If it was not useful why not? What would be more helpful information?

*Probes: company annual report, prospectus (full or simplified), S&P ratings, friends and family, media and financial press (what sources) Prospectus, risk disclosure, audited financial statements, fees,*

In the case of mutual funds investments, what forms of disclosure did you receive? *Point of Sale Disclosure (Fund Facts) - highlights potential benefits, risks, and cost of investing in the fund.*

How was this information or document useful when making your decision to invest or not? If it was not useful why not?

What would be more helpful information?

What information about your investment have you reviewed in the past few months relating to your investment? (i.e. reporting relating to performance of the security for example)

- a. What types of information were you able to find? Where? How? From Whom?
- b. What types of information could you not find that you thought was important to your investment decision?

**Statements on Performance:**

How often do you receive these?  
Do you read them?  
What do they tell you?  
Can you understand them?  
How are you doing on your investments?

How can you tell if your investments are performing better than others?

Do your statements regarding your investments provide an annualized rate of return and is it compared to an appropriate benchmark? What benchmark is that?  
**Probe if needed: Do you know what a benchmark is? Can you name a few for me?**

**EXERCISE:**

Before further discussion, the Moderator will hand out a list of terms and ask Participants to rate their level of understanding: (1=I don't not understand the term at all, 5=I fully understand the term)



Compliance  
Enforcement  
Restitution  
Recourse  
Registrant  
Issuer  
Disclosure  
Fiduciary Standards

**III. DISCLOSURE: (SOP#3) -- ALREADY COVERED ABOVE GO TO FEES SECTION**

What information about the investment did your financial institution or advisor give to you before or after you made your investment decision?

In the case of mutual funds investments, what forms of disclosure did you receive?  
*Probe: Point of Sale Disclosure (Fund Facts) – highlights potential benefits, risks, and cost of investing in the fund.*

Did you understand it?

Was the disclosure helpful in making your investment decision? Why/why not?  
What information would be more helpful ?

**IV. FEES:**

What is your understanding of investment fees?

What are your investment (mutual fund, GIC, stocks) and what fees are you paying?  
*Probe: MERs, front-load, transaction fees .*

And how much and how often? (go round table for all input)

For those buying GICs or mutual funds, are you aware that the cost is often buried in the price and not easily seen?

Are you aware of fees that you pay throughout its lifetime in your portfolio?

*Probe: MERs, front-load, transaction fees .*

Are you aware that third parties often pay the commissions for your mutual funds? In other words, are you aware that mutual fund companies are paying your advisor a

commission to sell you certain mutual funds? What are your views on this? Do you see this as a conflict of interest?

Has there been a time when you did not understand the fees associated with your investment, or charged fees that you did not understand?

What were they?

What did you do about it? Who did you speak with?

In general, do you feel that you are getting value for the fees charged on your investments? Why/why not?

Are you aware of instances in which your financial service professional had a conflict of interest in offering advice to you, perhaps associated with fees that they might receive if you make a certain investment?

Could you provide us with any examples of conflicts of interests of which you are aware?

Can anyone share with us an experience that involved conflict of interest?

Moderator Notes (Types of fees)

MERs: Operational and managerial costs. They are deducted from fund earnings

Front Load Fees – pay certain % of your purchase as a commission upfront when purchase

Back Load Fees – pay commission (%) when sell all or part of holding in fund

Trading Expense Ratio (TER) – cost of commission paid in the fund as a % of funds total assets

#### IV. WORKING WITH FINANCIAL SERVICES PROFESSIONALS – 30 minutes

**Moderator:** This section will explore who people talk to for investment advice and their level of knowledge among the different professionals who work in financial services (investments) -- roles, responsibilities, limitations. This section will also discuss fiduciary duty/standards.

##### Who Did You Talk To About Investment ?

There are many different types of professionals who can help you with your investment decisions and purchases. Different licenses allow a professional to sell certain investments and not others. Some offer other services outside of just buying and selling investment products.

#### I. TITLES & DESIGNATIONS –

Who among the group has employed or otherwise relied upon a financial advisor or other professional such as a financial planner, dealer, life insurance agent for financial advice? (show of hands)

Who mainly gets advice from the counter staff in their bank branch? (show of hands)  
Does anyone also have their own self-directed account at their bank or a discount brokerage? (show hands)

Did the person's title (either in the bank branch or outside of the bank) influence your willingness to utilize them/employ them to assist with your investment decision? Why? What did his or her title imply?

Do financial advisors have roughly the same qualifications or training?

Do you know the background/training of your financial service professional that you deal with for your investments? If so, what is it?

How did you go about choosing your financial advisor or other financial service professional who helps you with your investing and investments?  
Probe: cold call, referral from friends/family, bank employee

Who among the group does not get professional advice from anyone and gets their information from other sources such as the family, friends, the Internet, newspapers etc?

What are your reasons for not using a financial service professional?

#### II. PROFESSION & COMPETENCE

Introductory Statement: Let's discuss what functions financial services professional serve.

What role do financial services professionals play in assisting with your investment decision?

What services have you used your advisor for?

Probe: financial planning, retirement planning, estate planning, tax planning, buying/selling stock (transaction services)

Based on your experience with your advisor, how do you know when your financial advisor is giving you good advice?

How do you check this?

Can anyone share an experience where they were given bad advice? What was it? What was the outcome?

Do you feel they are giving you professional advice or are they order takers? Why do you feel that way?

What level of responsibility to you as a purchaser do you think they have?

How would you overall assess your relationship with your advisor – what do you think of their knowledge and professionalism they exercise, their communication skills (do you understand them); do they understand you – your goals and objectives?

#### III. CONFLICTS OF INTEREST AND FIDUCIARY STANDARDS:

**Suitability and know-your-client** are the current requirements for financial service professionals.

Were you aware that financial service professionals must meet these requirements?

What do these terms mean to you?

When is an investment suitable or not suitable?

Participants will be asked to share any experience where they made an investment decision that was not suitable? What happened? What was the outcome?

**Moderator will now explain suitability and know-your client requirements - Financial service professionals must know the client's financial situation; the client's level of investment knowledge and investment objectives, and the client's tolerance for risk.**

Now that you know the definition of the terms, in your opinion, will they capture what type of investment is suitable for you?

Do they establish a standard of conduct for financial service professionals? Why or why not?

#### **FIDUCIARY DUTY/STANDARDS:**

Are you familiar with the term fiduciary duty or fiduciary standards (show hands)?

If so, what does the term mean to you?

**Definition:** Fiduciary duty is a standard of care. In the financial services industry fiduciary standards means to act in clients' best interests with utmost good faith and loyalty, putting your client's interests above your own. It is based on the following principals:

1. Put the client's best interest first;
2. Act with care, diligence and good judgment;
3. Provide full and fair disclosure of all important facts; and
4. Avoid conflicts of interest and fairly manage unavoidable conflict in the client's favour.

In light of this definition, "Do you believe your advisor as a financial service professional has a fiduciary duty?"

Should financial service professionals owe a fiduciary duty to their clients, such as you and me?

#### **IV. COMPLIANCE & RECOURSE**

If you objected to conduct of your financial service professional or the company in which you have invested, did you make a complaint? How did you do so?

What steps would you take to lodge a complaint?

Can someone share with us a time when a friend or member of your family made a complaint and what they did?

If you are not working with an advisor or other professional, and have a concern relating to your investment, where would you go to make a complaint? Where would you go learn about filing a complaint?

How about when an investment goes sour – not the way it was suppose to, either you bought something that was “too good to be true” or chasing a return that never materialized. Who do you think is at fault? Who is responsible? What responsibility does the client bear?

## V. FRAUD AND ENFORCEMENT– 15 minutes (SOP#2)

**Moderator:** In this section, discussion will focus identifying fraud/scams and what methods of recourse are known to participants.

1. Brainstorm among group signs of investment fraud and/or scams.  
  
Ideas: telephone calls/emails from strangers; promises of little risk and great returns; hot tips; feel pressured to make decisions; not tell anyone.
  - a. Has anyone in the group (or someone they know) ever been a victim of an investment fraud or a scam?
  - b. What was it?
  - c. What did you/ they do?
  - d. What was the outcome?
2. Which body is responsible for investigating and enforcing financial crimes? Is this body doing a good job? How could enforcement of such crimes improve? (Probe: penalties, deterrents )
3. If you lose your money because of fraud or financial wrongs that are committed by someone investing on your behalf or by a company that has misappropriated your money, do you think that you should be entitled to get that money back?  
  
If so, how would you go about it?
4. Do you think that you ARE entitled to get your money back at the present time?

**At this point, we will take a short break. Moderator will check in with client for any points needing clarification and/or further discussion.**

## VI. After the Financial Crisis and Investor Protections (Building Awareness & Credibility of IAP) - 30 minutes

The final section will discuss ideas for improving investor confidence, building awareness, improving investors' rights and protection, and best practices for improving communication.

### I. AFTER THE FINANCIAL CRISIS (SOP#1)

Canada seemed to weather the financial crisis much better than most other developed countries, particularly the US and Britain. Why do you think that was the case?

Probes: Are our banks more prudent? Are our regulators better at doing their jobs? Are our investors less greedy and more risk-averse?

Let's talk about how you felt at the start of financial crisis:  
How did you do in the market crash in 2008?  
What were your main worries and concerns?

Did you advisor get in touch with you then?  
Did they have some good answers? What were you told by your advisor at this time?

(Advisors often claim that they are able to counter-act the tendency of their (less sophisticated) clients to chase after hot markets ("buy at the top") and run away from scary markets ("sell at the bottom"). Has their experience born that out?)

Since the financial crisis, how confident are you about investing in capital markets (stock market)?

What has made it better for you? What has made it worse? What worries you the most (about investing, capital markets)?

What changes would increase your level of confidence?  
Probe: changes to law/regulations

What information do you need to get that will help you assess and make the right investment decision for you?

## VIEW ON REGULATORS

What is your general understanding of regulators?  
Do you think they do a job?  
How good a job did the OSC do in protecting investors?  
Can you recall any recent laws or policies that have been made that improve investors' rights and protection? If so, what are they? What do they do?

What should the OSC be doing to protect investors?  
Should the OSC be reviewing and pre-approving new financial products to make certain that they are not harmful to investors, even at the cost of slowing down financial innovation?

**Thank Participants for their views and opinions. Incentives distributed.**

## NATIONAL REGULATOR:

What are your opinions on a national securities regulator? (SOP#4)  
What are the pros and cons? Will this help/or hinder you as an investor? How?

## II. INVESTORS' RIGHTS AND PROTECTION -- add in from tues session

What rights should investors have?

Do you think that investors' rights are adequately represented in the making of rules relating to securities?

Why do you feel this way?

What are some areas that need to be addressed to increase investor rights and protection?

Whose responsibility is it to protect investors?  
What protections would increase your confidence when investing?  
Where would participants go to learn about Investor rights and protection?  
What are some areas that need to be addressed to increase investor rights and protection?

Who is familiar with the Investor Advisory Panel of the Ontario Securities Commission?  
What do you think the role of the Investor Advisory Panel is?  
What do you think the role of the Investor Advisory Panel?  
How can the Investor Advisory Panel help you?

How could the Investor Advisory Panel receive feedback from investors in addition to its website and these focus groups?

## **Appendix B Experts Consulted**

- |                        |  |
|------------------------|--|
| 1. Philip Anisman      | Barrister & Solicitor                  |
| 2. Judy Cotte          | Canadian Coalition for Good Governance |
| 3. Carol Hansell       | Davies Ward Phillips & Vineberg LLP    |
| 4. Peter Jarvis        | Toronto CFA Society                    |
| 5. Alison Knight       | Consumers Council of Canada            |
| 6. Jay Naster          | Rosen & Company                        |
| 7. Ermanno Pascutto    | FAIR Canada                            |
| 8. Glorianne Stromberg | Securities Lawyer                      |
| 9. Ed Waitzer          | Stikeman Elliot LLP                    |
| 10. Joel Wiesenfeld    | Torys LLP                              |