

# INVESTOR ADVISORY PANEL

November 13, 2017

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Chair, Ontario Securities Commission  
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## **Re: Investor Advisory Panel Response to the OSC's 2017 Annual Report**

The Investor Advisory Panel (IAP) is pleased to comment on the OSC's 2017 Annual Report and to provide our input from the perspective of retail investors. The Report clearly conveys the drive and determination exhibited by the OSC, its Commissioners and its staff in making Ontario's capital markets safer, fairer and more efficient. The format is user-friendly and exhibits clarity of purpose. We also appreciate that the OSC responded to previous IAP comments requesting more statistics, where available and appropriate.

While we acknowledge the progress made by the OSC in addressing certain key areas of investor protection, more work remains to be done. In this regard, we would like to reiterate some of our main concerns in the hope that the OSC continues to work diligently to address them in the future.

### **Goal: Deliver strong investor protection**

Implementation of a best interest standard and targeted reforms are top priorities for the Panel and we applaud and support the OSC's work towards reaching these goals in 2018. Implementing a best interest standard is a must for underpinning a more effective investor protection framework in Ontario and we urge staff to propose the rule as soon as possible. We also look forward to proposed amendments to NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations that will incorporate meaningful targeted reforms. Implementation of both these initiatives would constitute a giant leap forward for investor protection in Ontario.

We also urge the OSC to move forward with a ban on embedded commissions – we recommend that such a ban go hand in hand with addressing all forms of conflicted compensation and, if possible, be done in tandem with best interest and targeted reforms. Coordinating these initiatives would better ensure that investors do not receive advice that puts the advisor's financial interests ahead of their own.

On the disclosure front, although we welcome fact sheets for ETFs and Mutual Funds, we remain concerned with the risk rating methodology. While recent changes have improved standardization and comparability, we remain concerned that the basis for measuring risk, standard deviation, is a volatility measure and does not on its own provide investors with a comprehensive risk assessment of the investment. Providing investors with additional information such as a maximum potential loss, liquidity, leverage exposure, etc. should be considered.

### **Responsive regulation**

The Panel looks forward to reviewing the results of the analysis now underway to assess the effects (long- and short-term) of CRM2 on investor decision-making. We commend the Investor Office on its initiatives relating to senior and vulnerable investors. Protecting seniors against fraud or poor decision-making due to declining capacity is important not just for individuals but also for society. We encourage the Investor Office to bring forward proposals in this area as soon as practicable.

The Panel also remains focused on the importance of risk profiling and we will continue to reach out and work with the OSC to determine ways to support regulators as they address gaps in the current process.

### **Effective Compliance, Supervision and Enforcement**

The Panel is pleased to see more coordination between the OSC and the SROs. Greater cooperation will, in our view, enhance effectiveness and efficiency.

We also believe that effective and robust enforcement will mitigate the need for increased regulation and contribute to a more efficient regulatory framework, thus falling in line with OSC's goal of reducing regulatory burden while maintaining appropriate investor protections.

With regard to no-contest settlements, the Panel acknowledges that the process is speedy and provides at least some restitution to disadvantaged investors. Offenders may be less reluctant to report given that the "coming clean" process appears relatively benign. There remains, however, some concern about whether the penalty/restitution is appropriate, e.g., might a formal traditional process have resulted in a better outcome for the disadvantaged investors, and/or have systemic issues in the offender firm been adequately analyzed and addressed.

Ultimately, the Panel would like to see a more comprehensive program in place that could provide restitution, where appropriate, to victimized Ontario investors. In this context, the Panel notes that significant time has passed since an independent evaluator recommended that OBSI be better empowered to secure redress for investors. To date, no action has been taken on this front. We look to the OSC to expedite the process to give the OBSI binding power in dispute settlements.

### **Financial Stability through Effective Oversight**

The Panel supports the OSC's focus on regulation for participants in the derivatives market to ensure competency, proficiency and appropriate knowledge by registrants and dealers to

understand potential consequences of products and trades on markets, market stability, and investors.

### **Summary**

The Commission's 2017 Annual Report shows considerable commitment to, and action on, a list of priorities that puts investors first in critical areas. The Panel supports the leading role that the OSC is playing among Canadian regulators on difficult and critical issues.

But we must also point out that while the OSC has set a great example for other regulators in Canada, they have been slow to follow the OSC's lead. We remain dismayed that most other provincial securities regulators are not prepared to move forward with a best interest duty and we have concerns about the prospects for investor protection under the Cooperative Capital Markets Regulator (CCMR). The Capital Markets Regulatory Authority, as currently proposed, lacks investor representation and includes no provisions for an Investor Office or an Investor Advisory Panel. Moving forward with a new securities regulator that lacks mechanisms for meaningful investor input and participation in securities regulation would be a significant step backward for Ontario savers and investors.

Unless current proposals are revised to include adequate investor representation, the Panel cannot support the OSC transitioning to the CMRA. Investor representation is a fundamental tenet of securities regulation and it must be in place before this project proceeds, not just for the sake of investors in Ontario, but for the sake of investors throughout Canada.

Yours truly,

*"Letty Dewar"*

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Chair, Investor Advisory Panel