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OSC Staff Notice 11-784 Burden Reduction
http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20190114_11-784_burden-reduction.htm and http://www.osc.gov.on.ca/documents/en/Securities-Category1/regulatory-burden-survey.docx

DEFINITION ***Burden*** a duty or misfortune that causes hardship, anxiety, or grief; a nuisance.

I am responding to this consultation as an individual as not a single Kenmar associate is willing to spend time on this consultation. Investors are still recovering from the June ,2018 disappointment re Best interests and a proposed ban on embedded commissions after 5 -6 years of hard work. A recent article by IE **Investor submissions to proposed DSC ban reveal anger, frustration** https://www.investmentexecutive.com/news/industry-news/investor-submissions-to-proposed-dsc-ban-reveal-anger-frustration/ accurately reflects the current investor mood. .After all the pain, investors are now being asked to comment on a plan to reduce the regulatory "burden "on industry participants. Surely, the OSC must realize that retail investors are tapped out and have lost confidence in regulators to provide timely, robust investor protection in Ontario / Canada.

The OSC has a dual mandate of both protecting investors and supporting healthy Canadian capital markets. What happens when industry interests do not align with investors? The last 6 years provides the answer. In December, Kenmar Associates reported that 2018 was the worst year for investor protection in its 16 year history. And now investors are faced with the challenges of "burden reduction".

It is not clear from the Consultation Paper what precise OSC goals will be achieved by the proposed "burden" reduction initiatives. Specifically, what does reducing "regulatory burden" really mean? Is the goal to increase efficiency for issuers? Is it to consolidate financial information for investors? Is it to reduce the painful burden investors face when their nest egg has been harvested by conflicted "advisors"? Is it to reduce the use of paper? Is it to decrease disclosure obligations Exactly what "burden" needs to be alleviated? More clarity regarding "burden" is warranted. There is also the question of how any "burdens" identified will be implemented if they impact other CSA jurisdictions e.g. National Instruments.

*"We are currently reviewing comments submitted on several significant CSA initiatives [1], such as the **proposed Client Focused Reforms, amendments regarding embedded commissions for investment funds and new derivatives rules. We intend to consider these submissions as part of our review of regulatory burden**. As such, there is no need to repeat comments provided in response to these projects."*
http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20190114_11-784_burden-reduction.htm

It is our understanding that, despite the obtuse wording, the work on client focused reforms and amendments regarding embedded commissions will not be impacted by the work of the Task Force.

The CSA/ OSC has already implemented significant steps to reduce the "burden" on reporting issuers through recent reform initiatives. Specifically, the CSA has implemented new prospectus exemptions, modified existing exemptions and tailored disclosure requirements to alleviate regulatory burden for venture issuers. These changes have reduced the regulatory" burden" imposed on reporting issuers. Before moving forward with any further reforms, I believe that the OSC should demonstrate with empirical evidence that these and further steps are beneficial for the capital markets – this includes investors as key stakeholders in the capital markets.

At one time, mutual fund companies were required to provide, upon request, a statement of portfolio transactions. This document was very useful in that it showed all the trades the mutual fund manager made and thus provided some insight into his approach to investing. A few years back, regulators allowed the fund industry to remove the requirement for access to this document. Another example in the reduction of disclosure was the acceptance by regulators of a catchall "administration fee", which captured a number of costs and expenses of the fund that previously had been broken out separately for investor visibility. It used to be possible to see how much the fund was spending on such items as audit and legal fees. These are no longer visible as they are subsumed in the lump sum of the administration fee. Annual reports used to be a mandatory disclosure sent to fund unitholders. After intensive industry lobbying, regulators changed this to "upon request". The argument used was that industry researchers had concluded that few investors actually read the documents.

And of course, Fund Facts has obviated the affliction for Fundcos to distribute a bulky Simplified prospectus to investors that have been sold a mutual fund.

It is therefore clear that the OSC has continuously been reducing the *burden* of numerous mutual fund disclosures.

I do not doubt that some rules can be improved/updated or other measures taken to improve their effectiveness in meeting regulatory objectives. But to call the laws and rules a *burden* is to imply they are a unnecessary heavy load. It would have been helpful if some specific examples had been provided.

Commentary

It is well past time the burden of financial assault that retail investors endure be contained. There needs to be a TASK Force for that. Caveat Emptor is not acceptable for protecting savings and retirement income.

Well conceived regulations actually support economic activity and advance important environmental, health and safety, investor and consumer protection objectives. There is strong evidence that investment flows into jurisdictions where securities regulation is robust. But regulatory policy that is poorly designed, administratively complex or ultimately ineffective (or counterproductive) can stifle entrepreneurship, innovation and investment, with minimal or no public interest benefits. I can certainly understand that reducing the hidden "tax "from ineffective government regulation would be at the heart of improving Ontario's competitiveness. I have no issue with eliminating duplicative, redundant, outdated or ineffective regulation. My concern is that needed investor protections might be rolled into the drive to reduce "regulatory burden". I expect the OSC's IAP will be consulted before changes are made that could adversely impact retail investors.

"Enhancing investor experience and outcomes
Strong investor protections are the underpinnings of fair and efficient capital markets. Reducing unnecessary regulatory burden for issuers, registrants and other market participants will benefit investors, because investors ultimately bear the costs of unnecessary or outdated regulations. The Task Force will review the interface between our regulatory requirements and investors to see if there are ways to enhance and improve how investors experience disclosure provided: (i) before they invest; (ii) as part of ongoing public disclosure; and (iii) by registrants as required. We are also interested in any suggestions for improving the investor experience by modernizing the information provided to investors or other interactions that investors have with issuers or registrants because of regulatory requirements, which could include further efforts to promote the use of plain language in regulatory disclosure."

My comments re disclosure generally are conveyed in the following two articles.1. Canadian Fund Watch: **There's disclosure and then there's mal-disclosure** http://www.canadianfundwatch.com/2014/11/theres-disclosure-and-then-theres-mal.html and 2. Canadian Fund Watch: **All you ever wanted to know about Disclosure...and MORE** http://www.canadianfundwatch.com/2014/10/all-you-ever-wanted-to-know-about.html Regulators must do more to ensure that disclosures are effective and actionable to enable informed consent. We most definitely support increased utilization of plain language. That would reduce the burden most retail investors face when presented with overly complex disclosures.

Fund Facts: As far as disclosure goes I have to repeat again that the Fund Facts risk Disclosure is incomplete and misleading. This was well documented in the Kenmar Comment letter when the rating system was first proposed. My other concerns wrt Fund Facts are well captured by FAIR commentary:

More broadly, in response to consultation question 33, FAIR Canada finds that some regulatory documents that are required to be delivered, such as Fund Facts and Plan Summaries for Group Scholarship Plans, are difficult to find on the fund manufacturer or group scholarship plan dealer's website. Mandating where these documents are required to be found on a provider's website would improve investor protection. The Fund Facts document has also been permitted to be delivered by linking to a document containing numerous fund fact documents of the

manufacturer – but it is extremely difficult for the individual retail investor to determine which fund facts document is relevant to their proposed purchase or existing holding. Therefore, the effectiveness of disclosure (electronic or otherwise) may be increased by introducing additional requirements rather than lessening them. **Reference** https://faircanada.ca/submissions/csa-consultation-paper-51-404-considerations-reducing-regulatory-burden-non-investment-fund-reporting-issuers/

Other opportunities to reduce the trials and tribulations investors face include the following:

CRM3: I have been quite vocal about CRM2 reporting deficiencies and need not repeat them here. I welcome the MFDA initiative calling for CRM3 and the associated investor research they have initiated. We anticipate that the OSC will support enhanced disclosure. CRM3, if implemented, will reduce the burden on investors trying to figure out the fees that they are paying.

The Complaint Process (Burden on complainants): The complaint process for aggrieved investors is technical and expensive. Both are beyond the competency level of the average Ontario investor. The complaint process pits sophisticated market participants with lawyers against the average Ontarian. It is fundamentally unfair. This unfairness is particularly evident given: 1) the market participants response strategy of attrition and refusal to act "fairly, honestly and in good faith" when responding to the complaints by Ontario's investors; and 2) the absence of an Ombudsman service with binding authority over the vast majority of complaints (those of a monetary value of less than $350,000). Thus, two further burden reduction steps should be: 1) an unequivocal requirement that market participants including investment and mutual fund dealers and ICPMs be subject in complaint handling to the duty to act fairly, honestly and in good faith; and 2) binding authority for Ontario investor complaints investigated by OBSI.

ESG: As Ontario investors embrace ESG investing, I fully expect disclosure obligations to increase, not decrease. According to SHARE Canada, investors need access to reliable and timely disclosures from publicly-traded companies on environmental and social impacts. Although the specific disclosures most salient to investors will vary by sector, the OSC can act to improve issuer understanding of the salience of ESG matters and their importance for investors, and can encourage the use of investor-friendly disclosure standards such as those promoted by the Sustainability Accounting Standards Board (SASB). Improving disclosure could well increase investments in socially responsible companies.

Protection of seniors: I am concerned that the OSC's well researched plan to improve vulnerable investor protection will get caught up in the "burden" reduction, The OSC's 2018; Compliance report (http://www.osc.gov.on.ca/documents/en/Securities-Category3/20180823_annual-summary-report-for-dealers.pdf) listed numerous compliance deficiencies. Specifically, a compliance sweep focused on senior investors found widespread KYC

and suitability failings. Most registrants (90%) haven't adopted written policies specifically for dealing with seniors and other vulnerable investors, the report states. Firms are generally aware of the challenges that can accompany serving these clients, but most haven't established specific practices for handling these challenges. No doubt, some will consider these additional controls as an added burden. The Task Force should use its influence to accelerate senior investor protection initiatives. This would reduce the strain placed on vulnerable investors by deficient regulations and protections.

Financial planning: In Canada, outside of Quebec, anyone can call themselves a financial planner without meeting any standards of competence, ethics or practice," This leaves Ontarians confused and at risk. In fact, previous FPSC research shows that half of Canadians think financial planners are regulated. It would be unconscionable if the Task Force sidelined an ongoing Ontario initiative to regulate financial planners. I recommend that the Task Force support completion of the ongoing work without undue delay.
http://fpsc.ca/alerts-updates/2017/11/20/financial-planning-is-unregulated-in-canada-where-can-people-turn

Cybersecurity: Cybersecurity now is a key concern for investors, firms in Canada's investment industry as well as for the regulators that oversee their businesses. Yet, many compliance officers (COs) and company executives surveyed for IE's 2018 Regulators' Report Card said regulators should be doing more to help guard against the threat of cyberattacks. In fact, just 56.7% of survey participants said that regulators' efforts to ensure cybersecurity in the investment industry are adequate in response to a supplementary question on the topic. The remaining 43.3% said that regulators' efforts fall short. Doing more will no doubt result in more regulation, regulation that must not be labelled a " burden" any more than mandatory seatbelts were a burden on car manufacturer's decades ago.

Recommendations

In my view, the real problem facing investors is the quality, timeliness, accuracy and depth of financial and operational reporting and associated auditing quality. Investors do not need more Bre-X's, ABCP, Sino-Forest's or double billing scandals.

We recommend the following to the OSC:

The Task Force deal with low hanging fruit and present proposed changes to the OSC for implementation. Any change would be vetted for its ability to maintain or improve investor protection. After that, the Task Force should disband.

In order to keep regulations current and effective, I recommend that the OSC's Annual statement of Priorities always include an initiative to improve regulatory efficiency and effectiveness. The OSC and each branch should be assigned tasks that will increase regulatory productivity. Measurable goals, metrics and timelines would need to be set to measure progress. What gets measured gets done.

I recommend that the OSC establish a Standing committee for regulatory productivity improvement. The committee would include a broad range of stakeholders including investors, financial reporting specialists, accountants, lawyers, enforcement, disclosure experts, and small issuers. I believe it will be able to deliver solid results. This will however likely require contemporary continuous improvement (CI) processes and tools and likely some external CI process expertise.

I also recommend that institutional investors, pension plans, seniors groups and SRI entities be part of any assessment of burden reduction projects.

Conclusion

For years Kenmar, FAIR, SIPA and others have pleaded with regulators to resolve dealer abuse issues, issues that place a burden on consumers, with little positive action. It should therefore be understandable why investors feel insulted and ignored about a consultation to reduce the alleged regulatory "burden" of financial industry participants and issuers.

The primary concern of retail investors is not the "burden" of the rules but how weak they are, how lightly they are enforced and the wrist-slap sanctions imposed for breaches of those rules.

It now appears that even a ban on toxic DSC funds will not occur because of the "burden "it would place on several dealers, supported by uninformed political interference. Apparently, a ban on A series mutual funds sold by discounters would be too much regulation, at least based on the Comment letters submitted from industry participants. The Task Force should take every possible action to ensure that these two reforms are approved thereby reducing the drag of high fees and conflicted advice on investor returns. That would remove a big burden from the shoulders of exploited Ontarians.

If all we see emanating from this Task Force is less disclosure, less frequent disclosure, more disclosure via electronic means and the delay of any new investor protection regulations, that would be a serious blow to investor protection in Ontario.

Any burden reduction should be viewed through the lenses of the ultimate user, the investor.

No matter what rules are in place, they have no meaning since they are rarely enforced. NI81-105 was not enforced until 19 years after release! Discount brokers have improperly collected trailer commissions on A series of mutual funds for over a decade costing investors hundreds of millions of dollars.

I urge the OSC and the SRO's to dramatically step up enforcement of existing regulations and rules with meaningful , not wrist-slap sanctions. Robust and timely enforcement can actually help expose outdated, redundant or ineffective laws,

regulations and rules. See **Investors want to know why watchdogs didn't raise a red flag on a deal that sent a penny stock soaring 1,000% and then collapsed** | Financial Post
https://business.financialpost.com/news/fp-street/canadas-light-touch-on-penny-stocks-draws-ire-as-deal-fails

I also strongly believe the Task Force should review OSC policies on granting regulatory exemptions. It seems to me that such exemptions are generally not to the advantage of retail investors. The more regulatory exemption granted, the less meaningful are the underlying regulations. Care must be taken to ensure that exemptions do not become routine, a way of life. Monitoring so many exemptions must surely add a burdensome load to OSC staff.

The Commission should focus, first and foremost, on meeting the informational needs of investors.

Permission is given for public posting of this document.

Please feel free to contact me if there are any questions.

I look forward to participating in the Roundtable

Ken Kivenko P. Eng. (retired)
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