



December 16, 2020

Sent by email: rday@osc.gov.on.ca

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Dear Mr. Day:

**Re: OSC Notice 11-791 Statement of Priorities for Financial Year to End
March 31, 2022**

We are writing on behalf of the Osgoode Investor Protection Clinic (Osgoode IPC), the first of its kind in Canada. The IPC provides pro bono legal advice to retail investors who have been harmed in the capital markets and cannot afford a lawyer. Our clients are vulnerable, often with low investment knowledge; many are seniors, sometimes with diminished capacity. We are grateful for the opportunity to contribute to the OSC's Statement of Priorities for 2021-2022 through this request for comment.

In the time of Covid-19, investor protection is more important than ever

This past year, retail investors have dealt with unprecedented uncertainty. As the economy locked down in March and April 2020, the markets were in turmoil. Even today, while the economy seems to be performing better than expected, enormous risk remains on various time horizons. The Osgoode IPC has been actively engaged on investor protection issues in this unprecedented time. In December, we released "[The Retail Investors Guide to COVID-19](#)", highlighting common covid-19 scams and how investors can protect themselves.

We have heard from our clients that covid-19 has impacted their portfolios and their lives. We have seen cases of panic trading and advisors who have not reviewed their clients' portfolios with them since the pandemic struck.

Financial stress has added to the other stresses caused by the pandemic, whether from childcare, a job loss or illness in the family. Investors with low investment knowledge might be spooked by market losses. Desperate to regain lost retirement savings, they might feel pressured into higher-yield, higher-risk investments, which might not be suitable for them. At the same time, fraudsters can exploit the uncertainty to peddle investment products which are outright scams. For these reasons, we welcome the OSC's focus on covid-19 related investor protection issues.

OSC's organizational goals

We support the OSC's organizational goals of promoting confidence in Ontario's capital markets, reducing regulatory burden and facilitating financial innovation. We believe that investor protection needs to be woven into each of these goals.

Confidence in the capital markets cannot be attained without robust and responsive investor protection that delivers results for those harmed. Regulatory burden reduction is important for fostering capital raising, but investor protection needs to be a consideration with every rule, policy or process eliminated or changed. Lastly, financial innovation will give retail and institutional investors access to new, exciting products and will lead to economic growth; but retail investors are uniquely vulnerable with these products, which are often complex and relatively untested in the markets.

Proactive measures to protect investors

During these uncertain times, proactive and preventative investor protection measures are important. We support sentiments along these lines in the Statement of Priorities, in particular the focus on investor education and outreach as well as the focus on proactive and timely disruption to mitigate or stop investor harms.

Preventing harm is the best way to provide a positive investor experience and to protect vulnerable Ontarians. Many of our clients realize that they have been harmed only after it is too late. The signs of fraud, if one knows what to look for, can in many cases be readily apparent. Osgoode IPC student caseworkers were pleased to have participated in multiple OSC in the Community events since the Clinic launched four years ago, to advance the goal of educating retail investors.

We encourage the OSC to fully adopt the digital tools at its disposal. The covid-19 pandemic has accelerated access to and use of digital platforms. The OSC should further embrace tools such as chat functions and video conferencing to engage retail investors. Recently, the Osgoode IPC produced a series of [investor education videos](#); we would be delighted to partner with the OSC to produce further digital content in the future.

Proactive and timely disruption to mitigate or stop investor harms is also critical. For many of our clients, redress after being harmed is incredibly difficult because of the cost of obtaining a lawyer and the challenge of getting access to funds, especially in the case of fraudsters who have absconded with the monies.

Welcome changes to OBSI

We support the OSC's goal to strengthen investor redress through the Ombudsman for Banking Services and Investments (OBSI). After years of discussion and debate, reforms to OBSI appear to be on the horizon. In September, the Osgoode IPC submitted feedback to the Capital Markets Modernization Taskforce (the Taskforce). Our submission focused in large part on the long-needed reforms to OBSI.

We welcome the OSC's efforts to make OBSI an effective tool for investor redress through policy and oversight activities. The Osgoode IPC has used OBSI on multiple files. When we present our clients with their options for redress, they often select OBSI. Unable to afford a lawyer and deterred by lengthy and

expensive civil litigation, harmed retail investors appreciate OBSI's free service. Moreover, they appreciate that it is a quick and user-friendly service. OBSI is also a proven path to financial recovery for many harmed investors.

However, OBSI is not always a path to recovery, and that is where the reforms proposed by the Taskforce and contemplated in the draft Statement of Priorities come into play. The non-binding nature of OBSI's recommendations is a constant concern for our clients and retail investors more broadly. The ability of firms to refuse to compensate investors after an investigation found wrongdoing creates considerable mistrust and impacts the confidence that retail investors have in the capital markets. Just this month, OBSI announced that a firm had refused to compensate an investor in the amount of \$33,055 when the firm was found to have recommended unsuitable investments.

The Osgoode IPC believes strongly, informed by our work with retail investors, that an OBSI with the power to issue a binding recommendation is a much better tool for harmed retail investors.

We also welcome the OSC's acknowledgment that an increased claim limit is good for investors. Currently at \$350,000 the Taskforce proposed increasing it to \$500,000 with subsequent increases every two years based on a cost of living adjustment. The Osgoode IPC supports these proposed reforms.

When our clients lose amounts above the threshold and cannot afford a lawyer to pursue civil action, they are forced to "cut their losses". This is unfair to individuals who have lost money through no fault of their own and reduces investor confidence in the capital markets.

Concluding thoughts

We thank you for this opportunity to comment on the Statement of Priorities for 2021-2022. As covid-19 related turmoil continues, investor protection is more important than ever. We welcome the OSC's focus on investor protection and encourage investor protection considerations to be woven into decisions, policies and programs.

Sincerely,

Osgoode Investor Protection Clinic
c/o Poonam Puri, Brigitte Catellier, Co-Directors