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**ONTARIO SECURITIES COMMISSION OSC Notice 11-794 – Statement of Priorities Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2023**

Kenmar Associates appreciates the opportunity to comment on the proposed Priorities. Kenmar Associates is an Ontario-based privately-funded organization focused on investor education via on-line research papers hosted at [www.canadianfundwatch.com](http://www.canadianfundwatch.com). Kenmar also publishes *the Fund OBSERVER* on a monthly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, harmed investors and/or their counsel in filing investor complaints and restitution claims.

**Executive Summary**

We are struck by both the number of 2022-23 priorities and how many of them will divert attention from core investor protection. Many initiatives have been ongoing for years, adding to an ever-increasing backlog of “to do” work. This, we believe, is symptomatic of a regulator with multiple and maybe too many mandates. Perhaps the OSC should split the workload among other CSA jurisdictions.

We are concerned that none of the identified ‘priorities’ are associated with specific milestones, deadlines or completion dates. The absence of clear targets makes it virtually impossible to gauge progress or hold the Commission accountable. The sage management adage that “*What gets measured, gets done*” applies here.

All of this activity is occurring while the OSC undergoes major organizational /cultural change, a new and ill-defined capital formation mandate has been added, a revolutionary SRO structure is being implemented, significant ESG related reforms are being demanded by stakeholders, the long-awaited CFR regime is coming into force, new IT systems are being deployed and many staff are still working under restrictions imposed by the pandemic. Plus, more change and distractions await if the CMA is enacted. We are concerned that as staff and resources are spread across these many initiatives, the OSC will not be able to adequately attend to its most important mandate of all- protection of Ontario investors.

Investor advocates have good reason to be concerned about the new “Modern” OSC. The OSC boldly state that they have removed Reducing Regulatory Burden as

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a specific goal within the SOP. Instead, a culture of burden reduction has been embedded across the OSC, and many of the activities previously captured under the burden reduction goal have been integrated into the OSC's core operations and **polymaking activities**. It appears that the OSC has been convinced that investor protection reforms have, over time, imposed an unreasonable "burden" on industry. We had hoped that the OSC would adopt a culture of **effective** regulation instead. If this new culture and mindset weaves its way into the New SRO, retail investors will be placed in harm's way.

Fostering capital formation and becoming a partner in industry innovation crosses the line especially since the OSC is already challenged with its existing investor protection mandate. Playing the role of market promoter and enforcer simultaneously would lose whatever remains of investor confidence. It is like stepping on the accelerator and brake at the same time. Imagine if the FAA/MOT decided to promote air travel in addition to ensuring aircraft passenger safety. We'd like to see this new mandate removed.

One piece of good news is that in fiscal 2021-22, the OSC, the lone standout against a DSC ban, yielded to investor concerns and in May finally joined the rest of the CSA in banning the sale of toxic DSC mutual funds. In joining the rest of the CSA, the OSC leadership demonstrated that it can still stand up to political interference. The challenge going forward will be to keep political interference to a minimum. Perhaps the OSC should report to say, Justice, rather than the heavily lobbied Ministry of Finance.

We need the OSC to undertake a detailed review and consultation of its planned approach to investor protection going forward. The U.K. Financial Conduct Authority (FCA) unequivocally places financial consumers at the centre of its mission. See *FCA Mission: Approach to Consumers* <https://www.fca.org.uk/publication/corporate/approach-to-consumers.pdf> (44 pages). Kenmar believe this discussion could lead to the OSC rethinking its "modernized" approach to regulation and investor protection.

### **Commentary on priorities cited**

Here are our comments/suggestions for the 2022-2023 priorities:

#### **GOAL 1 – Promote Confidence in Ontario's Capital Market**

##### *1.1 Sustain Strong Core Regulatory Operations*

Kenmar argue that actions against Firms and individuals who do not comply with the rules need to be timely and visible to achieve the desired deterrent effect and enhance public confidence in our markets. They need to be impactful. We urge that OSC enforcement focus on root causes in order to prevent recurrence more effectively. Many root causes are systemic in nature. Kenmar strongly recommend that investor compensation be prioritized in all enforcement actions. Finally, we suggest that the OSC fine limit be increased to a level where deterrence will be meaningful. Given the huge scale of many of the registrants, a \$1 million fine is

unlikely to be impactful or change behaviour. A good benchmark here would be IOSCO ***Credible Deterrence In The Enforcement Of Securities Regulation*** [https://www.iosco.org/library/annual\\_conferences/pdf/40/Credible%20Deterrence%20Report.pdf](https://www.iosco.org/library/annual_conferences/pdf/40/Credible%20Deterrence%20Report.pdf)

Cash received as a result of a disgorgement order should be directed to harmed investors or, where that is not possible or practical, diverted to an investor compensation fund and not retained by the OSC.

### *1.2 Support Implementation of the Mutual Fund Embedded Commissions Rules Banning the use of Deferred Sales Charges (DSC Ban) and Trailing Commission Where No Suitability Determination is Required (OEO Ban)*

This is an issue that should have been dealt with years ago. The agony of these products will continue to haunt investors until June 2028 because the OSC/CSA allowed sales of the toxic DSC mutual fund to continue until May 31, 2022.

Instead of embedded commissions, DIY investors will, after June 1, 2022 be charged applicable direct fees for mutual fund trades on order execution only (OEO) platforms. Hundreds of millions of dollars were incurred by investors over a decade that could have gone towards retirement income security. Hopefully, the OSC has learned a lesson here on responsive, socially-responsible regulation and enforcement.

### *1.3 Improve the Retail Investor Experience and Protection*

We urge the OSC to include BayStreet proofing in its investor education program.

As to senior / vulnerable investor protection, we fully support this socio—economic initiative. The OSC/ CSA has taken some positive steps to protect seniors and vulnerable clients. We encourage the OSC to have a continuing dialogue with organizations such as CARP, The Office of the Public Guardian, consumer groups and academia to identify new methods to protect vulnerable Ontario citizens.

With the increasing average age of the Canadian population and increased longevity, segregated funds may become a more common part of consumers' investment portfolios- seniors/ vulnerable clients should not be disadvantaged or burdened by having to file two separate complaints –one to OBSI and one to OLHI. The OSC should take concrete steps to prevent OBSI complaint splitting. It is not just a burden on investors, the approach is inconsistent with modern portfolio theory.

Kenmar are deeply concerned that while CFR almost always considers a salesperson acting as a POA, executor or trustee for a client a material conflict-of-interest, it is permitted. The CSA expect Firms to have policies and procedures in place to ensure that these conflicts are identified and are either avoided or otherwise addressed in the client's best interest. Based on our experience, seniors and vulnerable investors are most impacted by this questionable CFR provision, one which the MFDA does not permit. We request that the OSC remove this CFR clause and limit its applicability to immediate family. .

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Typical OSC response to a complainant: *The OSC does not typically provide compensation to investors. As we discussed over the phone, you may wish to consult with a lawyer about potential civil remedies through the courts.*

Telling retail investors they must engage a lawyer, knowing full well this is impractical for most individuals, is not a shining example of investor protection. If this policy is not going to change, the OSC should take steps to ensure that Main Street investors have access to an efficient, timely and effective ombudsman service that can provide compensation when justified.

### *1.5 Strengthen Dispute Resolution Services for Investors, such as the Ombudsman for Banking Services and Investments (OBSI), through Policy and Oversight Activities*

The actions include: "Provide **analysis of a framework** for binding decisions of a dispute resolution service, such as OBSI, in Ontario within increased claim limits" This tells us there is no sense of urgency- paralysis by analysis .The increase of the \$350K compensation limit for OBSI is NOT a high investor priority. Investors seek an OBSI with a binding decision mandate, an obligation to investigate systemic issues and an ability to investigate investment portfolios containing insurance products. The OSC has been analyzing frameworks for years with no deliverable outcome. This is a prime example of a protracted policy making process that confounds and frustrates investors. Ontarians have every right to expect a final decision by Q1 2022.

It would appear regulators neither want to take responsibility nor to ensure an external complaints body has the powers to make binding decisions. It is time that the OSC leadership made the common sense decisions that will actually provide fair redress for harmed investors. It would be unconscionable for us to support this priority as written. As Greta Thunberg might say-blah, blah, blah.

### *1.6 Move Forward to Establish a New Single Enhanced Self-Regulatory Organization (SRO), and Consolidate the Current Two Investor Protection Funds (IPF) Independent from the New SRO*

We fully support the establishment of a New SRO. Kenmar have submitted a detailed commentary to the OSC/CSA of our expectations. A satisfactory outcome would be a national investor-centric co-regulator with a new culture, responsive to the needs of Main Street. Governance would be robust. Enforcement would be focussed on root cause elimination and compensation for harmed clients. The Public interest would be front and center. If well managed, the New SRO could be in place by year end 2022.

### *1.7 Strengthen Oversight of Crypto Asset Trading Platforms and Other Dealers*

This strengthening is urgently required for this presumed new "asset class". The *Reduction of misleading information in crypto asset trading platform advertising, marketing and social media* text should be replaced with Robust prosecution of Firms that mislead investors through false or misleading information in any information medium. We remain concerned about the crypto craze as it applies to Main Street investors.

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### 1.8 Introduce Proposed Rule for Climate Change-Related Disclosures\*

We agree with this as a priority. Enforcement will be a key indicator of success.

### 1.11 Develop Total Cost Reporting Disclosure for Investors

This high priority project has been dragging on for years. We certainly hope it will be completed early in the fiscal year. This project is a perfect fit with CFR. Investors should know the total cost of investing given the dramatic de-compounding effect of fees on long-term returns. We just hope that restricted product shelves and mis-selling are not permitted to negate expected benefits.

### *Ongoing compliance and oversight related to the implementation of the Client Focused Reforms*

We recommend that a high priority be set on ensuring the CFR initiative is effectively implemented. This will require a dedicated team to review and monitor, in real time, how Firms are applying CFR. We already have evidence from the U.S. how Reg BI has gone astray. In Canada, we have seen how 3 bank-owned dealers have determined that proprietary product shelves are the way forward, a response that blatantly defies regulatory intent. The OSC/CSA response to this challenge has been disappointingly less than swift-actually nothing, other than words. The OSC must respond quickly, with intensity, to industry misinterpretations, direct breaches of the rules and subversion of regulatory intent or the CFR initiative will fail.

We certainly hope there will be no regulatory exemptions granted and no further extensions permitted. We encourage the development and promotion of high quality investor information materials in advance of CFR rollout in January. This will help inform retail investors of the expectations they can have of dealers and the rights available to them if they have a complaint.

The biggest cause for complaints is unsuitability and the primary cause of that is defective risk profiling. We are concerned that the enhanced risk profiling required by CFR is not in place for most registrants. From our observations, internationally recognized, independent research on risk profiling of client's KYC profiles (commissioned by the OSC IAP, funded by the OSC in 2015) has not led to CSA regulatory reforms or changes in Firm business practices. Re ***Current Practices for Risk Profiling in Canada And Review of Global Best Practices*** [https://www.osc.gov.on.ca/documents/en/Investors/iap\\_20151112\\_risk-profiling-report.pdf](https://www.osc.gov.on.ca/documents/en/Investors/iap_20151112_risk-profiling-report.pdf) The study found that most of the questionnaires (83.3%) in use by the industry are not fit for purpose. Fifty five percent had no mechanism to recognize risk-averse clients that should remain only in cash.

Kenmar recommend that the OSC provide guidance/questionnaires on how Firms should assess risk profiles and how to use that assessment determination in suitability determinations. This would help support uniform application of CFR requirements across Firms. Re *FG 11-05 Assessing suitability: Establishing the risk a customer is willing and able to take.* <https://www.fca.org.uk/publication/finalised-guidance/fsa-fg11-05.pdf>

We urge the OSC to add para 1.12 *Establish a modern client complaint handling system*

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Investor complaint handling is a cornerstone of investor protection. NI31-103 dealer complaint handling rules are simplistic, inadequate and out-of-date. We strongly recommend that contemporary investor complaint handling obligations applicable to registrants dealing with the public be put on the high priority list. We have put this forward as a TOP priority for over 5 years. Our latest letter was sent to the OSC/CSA in January. Kenmar expect regulators' to provide more detail and much higher level explanation of core principles and standards that they expect of the industry as regards complaint handling. See for example, ASIC RG 271 Internal Dispute Resolution (57 pages).

<https://download.asic.gov.au/media/5720607/rg271-published-30-july-2020.pdf>

The *G20 High Level Principles of Financial Consumer Protection* are very clear, stating explicitly that investors must have "access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient." The OSC must ensure that the investing public is provided a complaint handling system that requires the fair and timely resolution of complaints. We deplore that a modern client complaint handling system is not an OSC priority while reduced costs and "time to market" for innovative businesses and new businesses seeking to raise capital are.

### **GOAL 2 – Modernizing the Regulatory Environment**

We do not agree that watering down the investor protection mandate by adding a fostering capital formation mandate was modernizing the regulatory environment. The added mandate makes it materially more difficult to assess whether, on balance, rules and policies are in the Public interest. **Even worse, trying to do so could result in the OSC being compelled to prioritize quantifiable benefits associated with capital markets growth and competition at the expense of generally unquantifiable, but extremely important, consequences of rules that are absolutely necessary to protect capital markets and investors.**

By forcing the OSC to balance investor protection against additional competing interests, the voice of the retail investor inevitably becomes more difficult to hear. The more complex a system, the more immune it is to change and reform. There is a significant risk that if we use regulatory structure to make regulation softer and to prevent real modernisation and evolution of our economy, that we end up holding back Ontario on the international stage.

All of the other initiatives will be resource constrained by the added mandate. We remain dubious that investor protection will improve going forward. In fact, we expect that aggressive burden reduction (now to be an embedded cultural trait) and economic development priorities will materially slow down (or even eliminate) the progress of needed investor protection reforms.

### *2.3 Work to Modernize Delivery Options of Regulatory and Continuous Disclosure Filings for Issuers*

As detailed in our Comment letter on AED to the OSC/CSA, we oppose this initiative. We urge the OSC to abandon this priority. Investors must be provided the disclosure document, a direct link to the document and/or be able to request a



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paper copy. We DO NOT support adoption of the “access equals delivery” model if it means that as long as an individual has access to a document online then they are deemed to have received *delivery*. People must be actually be delivered a document or notified that a document is available and shown how it can be easily retrieved. No additional burdens should be placed on Main Street by the OSC. The AED priority should be removed.

### *2.4 Develop a Framework for Identifying and Monitoring Emerging Regulatory Issues*

Kenmar fully support the development and implementation of a framework for identifying and monitoring trends and emerging regulatory issues that may impact future OSC priorities. The framework should include Main Street investor participation and timely decision/intervention processes.

### *2.5 Continue to Expand Systemic Risk Oversight*

There are a number of systemic issues in the wealth management industry but current regulatory practices do not appear to be effective at promptly identifying them or resolving them. Kenmar welcome the development and implementation of such a framework. One important component of the framework would be providing OBSI with a mandate to investigate systemic issues. Investor complaints are like the canary in the mine. They are an early warning signal that there is an issue that needs regulatory attention. At one time, OBSI had such a mandate but in order to secure FCAC ECB approval they dropped this mandate in the securities sector for “consistency”. The OSC took no action and the mandate vanished. It is time to correct that mistake.

## **GOAL 3 – Facilitate Financial Innovation**

The OSC wants to continue its efforts to strengthen Ontario’s innovation ecosystem through flexible and proportional regulatory approaches and enhanced support for novel and innovative businesses looking to establish or expand in Ontario. This will take significant resources to be meaningful, hopefully resources not taken from the investor protection team. Experiments with novel businesses adds investing risk so we request that Main Street investor access to such businesses and their products be diligently controlled. Such experiments make the case for a strong SRO and an effective financial ombudsman service critical in the event proportionate regulatory approaches fail or have unintended consequences. The overarching priority for the OSC must be investor protection and orderly markets.

### *3.3 Expand OSC TestLab*

Add “The Innovation Office is to develop a testing environment in Ontario to enable discount brokers to test novel services and solutions, subject of course to appropriate testing parameters”. Such an approach would, as a by-product, put pressure on full service brokers to up their game and increase competition. Such competition will create a healthy, competitive financial services sector in Ontario.[ DIY investing is growing rapidly and technology has the potential to economically provide innovative tools and services for those Ontarians that cannot afford

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personalized advice, do not trust conflicted advice, or who simply prefer to manage all or some of their money on their own. ]

### **GOAL 4 – Strengthen Our Organizational Foundation**

#### *4.1 Redevelopment of CSA National Systems*

The OSC, along with the other CSA jurisdictions, says it will continue to work toward replacing the legacy CSA national systems with SEDAR+. Development of this new CSA system has been ongoing for too long. We believe that in the interests of accountability that some milestones and an end date should be provided. Going forward, the OSC/CSA should never again let the system become obsolete. Steps need to be taken to ensure that SEDAR+ is continuously kept up to date.

#### *4.2 Technology Modernization, Digital Transformation and Data and Analytics Enablement*

Add a heightened focus on RegTech. RegTech provides financial institutions with a way to minimize the time spent responding to regulatory obligations via manual processes, and puts time back in the hand of compliance professionals whose experience and insight could be better used on more nuanced and strategic areas. RegTech has the potential to enhance compliance, improve investor outcomes and lower fees for retail investors. See RegTech Universe 2021 <https://www2.deloitte.com/lu/en/pages/technology/articles/regtech-companies-compliance.html> In terms of priority, we'd like to see RegTech placed higher on the OSC priority list than FinTech.

#### *4.3 Foster/Improve Inclusion, Equity and Diversity*

Kenmar fully support this component as a priority. A workforce representative of the Ontario population is more likely to provide optimal solutions to regulatory challenges.

### **Other potential priorities**

In the paragraphs that follow we relate long standing issues we believe the OSC should consider for inclusion on the 2022-23 SOP.

#### **Reconsider joining the CSA Passport system**

A modern regulator should drive for uniform regulation across Canada. At one time, the OSC was a leading advocate for a national securities regulator. It expended considerable resources to that end. With the demise of the CMRA idea, the OSC has an opportunity now to at least increase harmonization by participating in the Passport system.

#### **Make product design a factor in prospectus approval**

For years we have identified weaknesses in the way some Firms approach product design and governance for structured products. We recommended that more effort is needed by Firms to match product design with customer needs, demonstrate product value through robust stress-testing and provide potential customers with clear, balanced information on the products. The UK FCA paper, TR15/2



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*TR15/2: Structured Products: Thematic Review of Product Development and Governance*, is an excellent read Re improved standards on product governance. RE <https://www.fca.org.uk/publications/thematic-reviews/tr15-2-structured-products-thematic-review-product-development-and> Such a process is critical, especially when dealing with new businesses and novel products distributed under relaxed regulatory conditions.

### **Modernize the Investor Office**

Financial education resources and channels such as GetSmarterAboutMoney.ca are used by retail investors and are an invaluable tool for them. The Office is a bright spot within the Commission and should get the resources it needs. Investor education should include Baystreetproofing .Suggested priority education topics for 2022-23 include (a) impact of fees on investing returns (b) how to file an effective complaint (c) recognizing Outside Business Activity and (d) How does CFR affect me?

We recommend that the OSC Investor Office continue its evolution with a transition to Investor Advocate while maintaining its existing excellent work on investor research and education. We recommend adding a complaints function and formal obligation to submit reports directly to the Legislature, without any prior review or comment from the Commissioners or OSC staff. The mandate would be similar to those of the Investor Advocate of the SEC. In fact, a name change would be in order.

This role change is being proposed, in part, in light of the added mandate to foster capital formation and the introduction of an Economic Development Office which we are concerned will cause the OSC to be less focussed on investor protection.

### **Reduce Regulatory arbitrage**

We recommend that the OSC prioritize steps to reduce regulatory arbitrage with the insurance industry. For one, we'd like to see the Ontario government have the FSRA ban DSC segregated funds and for the OSC to work with the FSRA to adopt insurance industry conduct rules equivalent to CFR in Ontario. In the area of registration/enforcement, it would be useful to develop a protocol and processes to enable registrants banned in the securities sector to also be banned in the insurance sector. Insurance agents with outstanding unpaid OSC or SRO fines should have their licenses revoked until the fine is paid in full. Kenmar believe such basic initiatives would be very effective in protecting Ontario financial consumers. We refer you to this article <https://www.advisor.ca/news/industry-news/hidden-in-plain-sight-how-banned-iirac-and-mfda-advisors-can-still-sell-insurance/>

### **Investment fund regulation**

We remain uncomfortable that mutual funds, the most popular retail investment product, continue to be inadequately regulated. Efforts to eliminate embedded commissions have continued to be ignored despite overwhelming evidence of harm to retail investors. We encourage the OSC to revisit the decision not to ban advice-skewing embedded trailing commissions.

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While we fully appreciate the OSC's initiative to make the cost of investing clearer for retail investors, we encourage the OSC to go further. Kenmar suggest that, to the extent it can, it should permit Ontarians to access U.S. originated mutual funds. These funds have exceptional managers, more robust governance and are in general, lower cost than comparable Canadian funds. The OSC already permits access to U.S. actively- managed ETF's .This access would potentially improve the retirement income security of Ontarians and support the government's policy of increased competition in financial services. The OSC has fully supported the Canadian asset management industry via reduced regulatory "burden", watered down regulations and multiple regulatory exemptions, preparing them for increased competition. This initiative would indeed be in the Public interest.

Pre-sale disclosure via ETF Facts should be implemented as it is for mutual fund Fund Facts.

A review of NI81-107 fund governance rule efficacy is overdue. Class action lawsuits are not a cost or time efficient way to resolve fund governance issues.

The OSC should consider updating NI81-105 so that it can be applied more broadly. We can see no justification for singling out mutual funds.

### **Recognize the modern "discount broker"**

Many small investors are being priced out from personalised advice ("advice gap") because of high minimum account sizes by full service brokerages. We recommend that IIROC OEO guidance be reviewed and updated.

Discount brokers have been a saviour for Canadians locked out of the full- service brokerage channel with its high minimum account sizes, high fees and conflicts-of-interest. The access to research , access to low cost ETF's , real time information, numerous calculators , model portfolios , abundant self -help tools , Alerts, educational information , account information including performance measurement and seemingly endless innovation have permitted DIY investors and those of modest income to control their own financial destiny. Discount brokers can be the Amazon, Uber and Airbnb of financial services if innovation is allowed to prosper in the Public interest. The OSC and IIROC must enable responsible innovation to take hold.

As AI and increasingly creative financial planning Apps becomes available, more Canadians than ever will be able to bypass expensive alternatives (based on the suitability plus standard) with increasing confidence. The OSC has an important regulatory and socio-economic role to ensure that vested interests do not prevent technology from blossoming to the detriment of Main Street Ontarians. The ancient "Order Execution Only" label will need to be re-imagined so that users of this platform are able to control their own financial destiny if that is their preference .At the same time, the OSC should do everything in its power to bring affordable, unbiased holistic financial advice to Ontarians whose personal circumstances justify professional assistance.

### **Enhance Exempt market oversight**

The exempt market is a large and growing market. Given the increased emphasis by the Ontario government and increased OSC exemptions to expand this market, Kenmar recommend that the OSC prioritize oversight of this market segment especially during a pandemic, unproven work-at-home business practices, numerous exemptions granted and the recurring troubling results of compliance reviews. See latest **OSC report Summary Report for Dealers, Advisers and Investment Fund Managers Compliance** OSC Staff Notice 33-751 and Registrant Regulation September 14, 2020

[https://www.osc.gov.on.ca/documents/en/Securities-OSCB/20200917\\_osc\\_b\\_4338\\_toc.pdf](https://www.osc.gov.on.ca/documents/en/Securities-OSCB/20200917_osc_b_4338_toc.pdf) where significant deficiencies were again noted in KYC, suitability and KzyP .

The OSC should consider requiring an appropriate Investor Protection Fund like CIPF for EMD's (as well as one for Portfolio Managers).

### **Introduce an investor restitution fund**

The Commissions of Manitoba, New Brunswick and Saskatchewan all have the ability to award restitution to investors (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) The Quebec Autorité des marchés financiers (AMF) has a program through which it can compensate investors who fall victim to fraud, fraudulent tactics or embezzlement (Under the AMF 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.).

Such a fund has flowed in and out of OSC priorities over the years with no firm decision. Investors are more interested in restitution than fines imposed on registrants. Restitution is the top priority for investors who suffer losses because of violations of the securities Act. If section 128 OSA applications of the OSA are not a useful mechanism, as appears to be the case, for investor restitution, we urge the OSC to establish a restitution fund similar to those in the other provinces cited. We therefore recommend that the OSC add investor restitution initiatives to its 2022-23 priorities.

NOTES: (a) In 2004, a legislative committee in Ontario (SCFEA) recommended the establishment of a workable mechanism that would allow investors to pursue restitution in a timely and affordable manner. (Five Year Review Committee Final Report: Reviewing the Securities Act (Ontario) - Status of Recommendations [https://www.osc.ca/sites/default/files/2020-12/fyr\\_20040818\\_fairness\\_status-rpt.pdf](https://www.osc.ca/sites/default/files/2020-12/fyr_20040818_fairness_status-rpt.pdf) )

(b) The Expert Panel on securities regulation also made specific recommendations with respect to investor redress and complaint handling. (<https://central.bac-lac.gc.ca/.item?id=F2-188-2008E&op=pdf&app=Library> ). The status quo is just not working – the published SOP does not, but should, address this long standing issue.

### **Increase Advisor proficiency standards**

While the bar needs raising, so does the floor. The proficiency level of advice givers needs to be raised to address complex issues like investor longevity, market turbulence, risk management and increasing product complexity. There is a crying need to truly “professionalize” the financial advice industry. The Ontario Government is currently examining the need for more consistent standards for individuals who offer financial advice and planning services. We urge the OSC to work with the government as this important initiative evolves. Ontarians will not only need increased investor protection but the industry has to mobilize how to advise on pension planning and capital preservation strategies – a shift away from traditional asset accumulation to distribution (“de-accumulation”). This will require a different skill set, different products and professional, unbiased advisers competent in the art and science of pension management.

### **Scholarship Plan trust rules**

We believe FAIR Canada has made a very strong case for OSC intervention. See ***Overhaul of Group Scholarship Plan Rules Needed to Protect Consumers*** <https://faircanada.ca/whats-new/overhaul-of-group-scholarship-plan-rules-needed-to-protect-consumers/>. The Commission should take swift action as some of the most vulnerable clients may be harmed if action is not taken. OBSI statistics point to the fact that SPDs account for a disproportionate number of client complaints. We suggest that the OSC review the rules applicable to this registration category in the context of contemporary investor experience and outcomes.

### **Create a registrant category for Adviser**

Most individuals in the industry are registered as dealing representatives and dealing representatives are noted as salespeople. The scope and accountability of advice provided by dealing registrations is poorly defined as is the wider dimensions of personalised advice generally. Kenmar recommend that the OSC create a new category of registrant that would better define the obligations of personalized financial advice similar to advisers covered by the U.S. Advisers Act. An integral component of the registration would be an overarching Best interests conduct standard. We believe this will provide a cadre of professional advisers that Ontario financial advice consumers can trust. It would be a significant move towards professionalism of financial advice and away from the prevailing “Caveat Emptor” state of affairs.

### **Establish a formal link with FSRA on financial advisor/planning title protection rule implementation**

We see the Ontario Government’s initiative to regulate the titles of “financial advisor” and “financial planner” as an opportunity to strengthen professionalism and modernize financial services delivery by aligning regulatory reality with consumer beliefs and expectations. It is particularly in times of crisis that we can appreciate the importance of having a professional and regulated financial adviser or planner on the financial consumer’s side. We urge the OSC to work with its colleagues at the Ministry of Finance and FSRA to ensure that the regulatory intent of the Title Protection Act is met consistently across all financial service providers.

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Misleading advisor titles have been a major cause of investor confusion, deception and harm.

At the same time, we ask the OSC to review the impact of establishing FSRA-regulated Credentialing Bodies on the OSC, IIROC and the MFDA. In our Comment letter we recommended the Quebec model for regulating Financial Planners and were constructively critical of Ontario's approach to FA title protection and the Act itself. Our comment letter is posted on the FSRA website.

### **OBSI Oversight needs an overhaul**

It is our opinion that the CSA JRC effectiveness can be improved if an investor advocate were added to the oversight team. Kenmar have provided documented evidence demonstrating areas where OBSI oversight can be enhanced if the retail investor viewpoint is brought in to focus. We also recommend that the OSC remove themselves from chairing this important committee given its controversial new mandates, organizational restructure and other material changes occurring at the OSC. This would also address the optics of the "Modern" OSC chairing an entity known for its laser focus on investor protection. Finally, the MOU should be updated to reflect a contemporary approach to financial ombudsman oversight. We are confident that the 5 year independent review report, expected in Q1 2022, will provide additional support for a MOU update.

### **Deal with "Tied-selling"**

The Ontario Taskforce recommended measures to combat tied-selling "to facilitate growth of independent dealers and ensure issuer choice.". We suggest that the OSC work with the FCAC to ensure that banks obey the law and do not abuse their power. Such a priority would align well with the Government's priority of increasing competition.

### **ESG disclosure, greenwashing et al**

ESG (particularly climate change/pollution) is a rapidly growing consideration in retail investing today and a growing social factor among Ontarians. Addressing investor protection can take on new meaning in markets that are being increasingly impacted by environmental, social and governance stresses. The Wild West of ESG disclosure / reporting has to end- some standards are needed. We expect there will be numerous challenges related to disclosure, investment fund composition/ nomenclature and the like. Retail investors are showing a strong interest in ESG investment funds – it is necessary for regulators to ensure that the names of such funds are not misleading and that appropriate and enforceable standards are adopted for the use of the ESG label. See *Sustainable Finance and the Role of Securities Regulators IOSCO Final Report* (April, 2020) <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD652.pdf>

## **Summation**

The 2022-23 priorities give the impression of an organization trying to walk a fine line-between not alienating the Ontario government and doing the right thing for Main Street. The implied workload necessary to deliver on all the identified priorities

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is neither manageable nor realistic. When everything is a priority, nothing is a priority and the OSC is undermining the value and significance of its mandated Statement of Priorities by overloading it with a laundry list of projects and suggesting that they are all priorities. Projects are not priorities when they are listed without specific timelines, milestones and deliverables. Investors want concrete results and accountability, not pie in the sky promises.

Kenmar is very uncomfortable with the changing culture of the OSC and the diluted focus on protecting Ontarians from unfair, improper or fraudulent practices. Indeed, with the decline in Defined Benefit pensions and the correspondingly increased reliance by Ontarians on financial advice, the OSC should have an **added mandate** of helping people achieve retirement income security and financial well-being. In our view, that would be a defining characteristic of a truly modern securities regulator and socially-responsible regulation.

We sincerely hope our forthright critique of the proposed priorities will inspire the Commission to laser focus on investor protection. Ontarians have never needed a strong, effective OSC more than they do now.

**Given the material change in governance, the added mandate of fostering capital formation and the large number of high impact reforms ,we urge the Ontario Legislative Assembly to establish a standing Committee to oversee the OSC's conformance with its Public interest mandate.**

We hope this input is useful to the Commission.

Permission is granted for public posting.

If there are any questions regarding this Comment letter, we would be most pleased to meet with you.

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