33-753

Wishing the osc a more auspicious New Year-round

To do with tied selling and other anticompetitive behaviour.

When the osc offsets to the sros (iiroc) and just assumes the ecbs are fully addressing the issues have you tested this.

By that I mean beyond the legacy advisory and fraudster its?

Are you not aware that it isn't just smaller financial shops that have been ignored 're anti competitive behaviour?

Retail investor in particular the ones using the more direct investing trading portals set out by the dealer brokers are certainly capital market participants.

(Note the options derivatives accounts offered by dealer brokers where for example the banks other corporate arms are also participating in derivatives trades.

Has the osc even analysed how the dealer brokers are placing the investing public at a distinct disadvantage against other capital market participants including other arms of the bank…in derivatives and margin accounts.

And the other concerns I have raised that remain ignored including systemic risk and poor risk management when dealer brokers outsource to third parties? The osfi is only now recognizing the interconnection.

The so why are you delegating wholes dealer broker issues to the sros and assuming the ecbs are screening effectively as they have much narrower bandwidths.

So if the osc wished to gather in more business it needs to update its understanding of who are capital market participants and IIrocs deficiencies (and obsi s which goes beyond, it's very narrow funnel)

Because the world has moved on since this set up was initially set up.

I have a very long paper trail to demonstrate my concerns.

And you certainly aren't recognizing nor the sros or ecbs deeply embedded anti competitive strategies set in motion by the bank owned dealer brokers even as retail open accounts and consent to those terms of service. As the sros and ecbs don't even screen for this.

It doesn't mean it doesn't exist but the osc can pursue a strategy of ignoring this when it offsets such concerns by simply outsourcing to non crown bodies. And focuses on the obsi s lack of binding authority as being the only issue.

So why the disinterest? And the disconnect?

Bev Kennedy Oakville Ont

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It comes down to flawed assumptions and poor question formatting including by the osc. As well as iiroc and ecbs…infact there areconcerns that as much as the osc might hope wish and request iiroc to cover. Iiroc never ever will. Because it is also outdated and isn't screening effectively except for a very narrow niche

Retail sent to ecbs and ecbs will never be heard properly when these bodies aren't set up to cull certain issues

You may want to ignore how business portals and retail investors have evolved but then you fall short of your own mandates.

This is the same for those smaller financial shops. And the issues they have raised. The osc will never be effective if your screening methodology and formats are outdated and you have a very narrow definition fo capital market participant.

Which means you will continue to ignore very serious anti competitive behaviour. And other issues which you certainly are supposed to be addressing including for the osfi (you do sit on its boards so there is little excuse)

This continues with the bodies yOu detour concerns to that you should really retain or insist these third party outsourced service oversight entities you utilize do as well.

But in some situations they really can't address everything you download and then ignore. These issues you need to retain

So dealer brokers being gatekeepers to the capital markets are certainly setting in motions some barriers that service deeply anti competitive agendas of industry.

So given your expertise what excuse do you have for ignoring this reality?

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Because the world has moved on since this set up was initially set up.

Your screening seems to lean toward how much money industry can make (e.g. the auditor general's review 're impact of your footdragging on fees and the public

And your bias continues to be the large players or you wouldn't be hearing from the smaller shops. (The optics 're your funding is definitely troubling and perhaps explains your deeply engrained biases which is appalling for a crown body surely)

I have a very long paper trail to demonstrate my concerns.

And you certainly aren't recognizing nor the sros or ecbs deeply embedded anti competitive strategies set in motion by the bank owned dealer brokers even as retail open accounts and consent to those terms of service. As the sros and ecbs don't even screen for this.

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Bev Kennedy Oakville Ont

For33-735 tied selling and other anti competitive behaviours

Could this extract from the Toronto Star explain the OSCs one sided view of issues?

Https://www.thestarMcom/business/2021/12/24/calls -for-moreiprogressive-laws-on-competition-face-push-back-from-bay-street-establishement.htm the

Giving credence to my concerns I have shared here and even the auditor general's on the osc slow to address fees costing the publication c billions? And of course those smaller financial industry shops. And also OScs lack of oversight following through when they do delegate to non crown. Also mentioned in your recent TTN modernization task Force?

Bkennedy Oakville Ont. (Of course the hand off to and other ecbs/edr and sros like iiroc make sense per this link and agendas encouraging these "efficiencies")

Tied selling and other anti competitive behaviour

The osc in its oversight is being undermined by how fragmented oversight is especially in the hand off to iiroc and ecbs (relying on the latter to satisfactorily raddress retails concerns and ofsi concerns ‘re B10 and B13 when in fact they only address a portion.)And certainly not anti competitive behaviour.

Because the osc has decided retail for example aren’t ever capital market participants. Just “consumers of products and advisory services)

And this also has impeded the osc vision of smaller shops as well.

So the osc is like a blinders grasping the tail of an elephant and using this tactil but limited hands on approach to describe the full elephant.

The osc is missing also the interplay between all the capital market participants including dealer brokers focused on their and their if they are bank owned larger corporate agendas profit making regardless of their compliance onus ‘re even smaller capital market players including their retail base.

The sros e.g. iiroc certainly do not do a full scan of osc or osfi agendas despite what their general promos say. And this goes for OScs other crown peers under the CSA.

So in punting all dealer member issues to sros and ecbs to these parties the osc falls short of even its stated goals regarding a fair capital market and to protect investors.

As a result of the osc focus on cost efficiencies it is NOT getting a full view of how each component of the capital markets are interacting. Just the view up to where it hands off for retail, and this also is an impeded view of smaller shops.

The focus on ponzi perps, fraudsters. Crypto, and advisory services completely ignore the obvious and how business services have evolved bringing retail investor more directly into competition with all the other capital market players.

So the osc is not even seeing certain aspects of anti competitive behaviour, and compliance and it can not afford to assume the sros or iiroc or ecbs or Dr have thei covered off because they don’t.

I find it odd that the osc would ignore the work of the SCC and contracts if it really wants to protect all capital market participants including retail, instead of victim blaming them

Osc is the problem and the osc has not evolved with newer business models let alone the ramifications of osfi concerns let alone its own

Nor is it addressing obvious gaps in what these non won bodies focus on

So you have a prime example of “tokenism” and a pretence of oversight which actually is selective. Which feeds into anti competitive behaviour the osc has been ignoring for years now

Tied selling and other anti competitive behaviour

The smaller financial shops have alleged that the osc only has eyes for the big firms.

To support this (and issues even smaller CM participants face. E.g. retail investor.)

Has the osc (or iiroc or ecbs)even considered or asked where dealer Members like TD direct of TD bank where TD gets the authority to override osfi B10 best practice on risk management when engaging outsourced third parties? Or osc or Csa directives or even IIrocs own 14-0012)

The TDw TD direct electronic terms of service clauses 4 and 5. Where TD grants by itself permission for it and any third party service provider dispensation from liability for oversight of outsourced third party service providers (contrary to the small fine print elsewhere in TDs codes of conduct and ethics that prohibits this.

It would appear the smaller the CM participant the less the diligence in rigour of oversight by the osc (and crown peers) including services the osc outsource to SROs and ECBs.

So how fit is the osc to take on an even greater role ‘re oversight of the capital markets given its history of ignoring “risks”

The report by the auditor general on how OScs footdragging has cost the public billions is another example of pro industry bias, and the smaller firms allegations simply support this skew to the larger CM participants.

Despite what the osfi has laid out.

The osc needs to understand just how integrated the modern capital markets are but currently this seems to be lacking.

I have already provided two other examples so the above makes three reading material this is not random or a coincidence this bias.

Terms for margin accounts very predatory and exploitive) and earlier concerns ‘re clauses 4 and 5 including impact of interruption of service while TDs own derivative trading desk can continue to trade while retail are frozen out and can’t unwind a deteriorating position due to interruption of service….And even when retail report discrepancies in data feed nothing is done to alert the service provider (per my discussions with a senior compliance officer at the time. So there is a huge burden shifted by TD as an example to retail sidestepping the DM and registered firms own compliance duties and onus.

And despite IIrocs guidance notice 19-0177 nothing has been done to address the core lack of responsibility by the in this case G-SIB even as related to cyber and systemic risk vulnerabilities.

All under the osc watch.

Bkennedy

Abusive trading practices. (And anti competitive behaviour). 33-753

Despite its statement in its purpose the osc continues to be obvious to abusive trading practices set in motion by the dealer broker terms of service when the retail investor opens a margin account (as part of the electronic services)

So how is the dealer broker capping the true title holders profit making for shares held in margin accounts.

Then lending them out to third parties wishing to borrow to go short (and paying interest to do so). Which the dealer broker does NOT share with the true retail title holder?

This is a very common practice with our big banks security arms so common that perhaps the osc is blind to it.

How is this not an abusive trading practice? Especially given the shorts agenda? And since newer shops especially US do and can make arrangements for the retail investor to split the profits made from lending out the retail titleholder stock?

Retail are already paying transaction fees including large ones for options trading and to do so must open margin accounts..and are normally up to date on their margin interest.

This is exacerbated with the terms of service tied to interruption of service (platform crashes. Where the banks derivative trading desks continue to function as normal (and other retail not using the dealer brokers crashed platFomr, while the margin position continues to deteriorate and the retail trader can not exit their position but is frozen.

So what is the banks justification for less robust tech platforms and the osc blind eye to this?

This is certainly pitting the corporate person against the individual person in the capital market context.

So just how alert is the osc to such abusive trading practices? And how they are set in motion?

How is this not an anti competitive practice the osc continues to facilitate and ignore?

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Something else I should request you consider in addition to what follows, is that by acting as an intermediary by grabbing retail longs shares held in margin accounts (but not offering to share the profits with the true title holder, is that the dealer broker arm of the bank (or financial entity) is acting against the title holder (longs) best interests facilitating the short with shing to borrow the shares. The short of course hoping the sharpie will drop.

So why is the osc (and peers) and iiroc(sro) or ecbs edr ignoring this?

How is this protecting investors. How is this overseeing a fair market….As the margin account terms holder has no say in this transaction at all.

See what constitutes fraudulent conveyance Milosevic Finke

Https//www.mlflitigation/what-constitutes-a fraudlulent-conveyance?amp_-1

Https;//www.ontario.ca/laws/statutues/90f29

This is yet another aspect of anti competitive behaviour that the osc continues to ignore by our large banks and the “borrowing” of retail margin account holders shares to lend out for profit which is not shared with the true titleholder even when what might be owned on margin is considerable less and the margin account holder is fully paid up on interest

This is no different from the overly rapid foreclosures during the financial crisis even when mort ages and interest were being paid by titleholder according to their agreements. The incentive was to trigger profit from foreclosure insurance

This had to be reversed when home owners were not behind in their payments.

So why is the osc ignoring a parallel practice here?

33-753

Both shares and contracts can be borrowed

Certain categories of investors and those using newer on line shops can make arrangements to lend out their shares for a profit

But NOT the average TD bank Group TD direct retail client/investor.

Nor other big banks Canadian)I

But the osc and crown peers ignore this anti competitive behaviour. So normally it is an industry participant e.g. an arm of for example TD bank Group that benefits from the lending (and also grabbing from retails margin accounts)

Further looking electronic terms of service and interruption of service this actually increases the risk for those holding deteriorating positions who are locked out because of a platform crash due to for example outdated tech software's .

But the dealer broker benefits from interest shorts pay to borrow.

Why borrow from the retail margin account at all if there is a risk? Especially as it isn't offset for retail with any profits from this activity. .

See how Td direct also offsets its risks by shifting liability for interruption of service on all electronic service accounts including margin. (Even though tech upgrades are beyond the control of the retail client.

Additionally note how iiroc has stepped back from certain clearing arrangement. Does the osc (and peers) still dump concerns tied to this on iiroc and expect them to address it?

Clearingarrangements/iiroc https://www.ca/news-and-publications/notices-and guidance/clearing-arrangements

Https//www.investopeadia.com/terms/minimum/margin.asp

How does the average retail investor benefit when their shares are lent out to third parties as they don't get a split of the profits from the interest paid by the shorts to borrow.

Who benefits from lending shares in a short sale

Https://www.investopeadia.com/ask/answers/05/shortsalebenefit apps.

And being locked out and unable to exit from a deteriorating position simply compounds the retail investors exposure as others are not blocked as they don't all use the platform that has crashed that is set out for the retail client.

How is this not exacerbating anti competitive behaviour (Including OScs blind eye to this and terms of “service)

Re tied selling and other anticompetitive behaviour

Is the osc s focus on firms and non retail as the retail sole capital market participants also out of date and inconsistent with reality?

Denial won’t make the retail capital market participant go away back to the era of legacy advisory services but it also means this groups protections are less than stellar under the osc oversight. (And osfi).

See Toronto star item :https://www.thestar.om/business/opinion/2022/01/01/Canadas-outdated-toothless+competition-act-needs to join-the modern-era

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See Nelson City V Marchi SCC decision. And implications for Crown Liability and proceedings Act 2019

And the osc s operational products in delegating complaints to the SROs and assuming ECBs have all concerns related to dealer brokers (Including arms of the banks) adequately covered.

And not considering concerns raised by retail investors that should more properly be retained by the osc because they are more aligned with capital market issues, not adequately handled by iiroc.

And this specifically involves the non advisory dealer broker services and portals to the capital markets.

Noting issues tied to interruption of service disclaimers, negligent oversight of third party data feed stream including material disclosure and margin accounts and conduct of clearing dealers. (Which iiroc has stepped back from overseeing)

Especially as the retail investor is put at a disadvantage by the terms of service they consent to set out by dealer brokers, versus what the dealer brokers including arms of the banks reserve a to benefit their other corporate arms and other capital market participants.

Tied selling and OTHER ANTI COMPETITVE behaviour

Can the osc show where TD and TD direct get the legal authority to grant immunity for itself and it's third party data service provider per terms of service for electronic clauses 4 and 5 or margin accounts for appropriate risk management of concern to osfi, and osc when outsourcing to third parts?

Just adding the caveat by TD of retail needing to check alternative data does NOT adequately address this. Even for accuracy of what listed firms originally filed let alone for B10 osc or similar for Csa and osc.

I note even when I reported specific errors I was brushed off by TDs sir compliance officer.

Obsi and iiroc are also ignoring this despite IIrocs rule 14-0012.

Where does TD (and peers get the legal authority to override osfi concerns on systemic risk and cyber risk) for interruption of service see osfi B13

Why is the osc turning a blind eye to this as well. It is because it prefers to believe retail aren't part of the capital market thus this has zero ramifications for its own statutues let alone osfi s best practices?

How is this not enabling anticompetitive behaviour?

As for the grab and make a profit but not share it with the true titleholder.

Again why is the osc (and peers ignoring this) is this not enabling large corporate entities to abuse their position of dominance?

How is this not going to get even worse when osc is granted further duties 're the CMA? Now under review?

I didn't think I would have to spell out word by word the disparities but clearly this is required.

Should the osc continue to use operational excuses to serve as an excuse to ignore the above? And to bury non compliance by delegating to iiroc? (Or ecbs like obsi? Etc?)

Bkennedy Oakville Ont

See https;//vancouversun.com/oipinion/columnists/ian-mulgrew-b-c-s-mark Benton-has- spent-four-decades-in-legal-aid-career-ir-calling

With respect to the osc solicitation for 33-753

And 21Mof13

Does the osc even have the funding to deliver on these new oversight roles?

Do the sros (like iiroc even with reforms? Do the ECBs or EDRs

Bev Kennedy. (Let alone on osfi expectations !10 and B13?

What of the other crown peers?

Re anti competitive behaviour being overlooked by the osc

Https;//www,investementexecutive.com/news/from-the-regulators/retail-traders-surge-on-regulators-radar-vingoe- says

Just because the number was lower than now is that any excuse for the osc to deny this sector of the capital markets a lesser standard of care?

As issues commented on have still not been addressed

And just hoping the public will return to the y high fee drivers and blaming retail does not even begin to address the exploitation by Aintree industry who are actually also capital market participants.

Further allowing lax oversight does not excuse the osc from its duties.

Nor does pretending these issues don't exist just sidesteps the issues. As does failing to enforce the non compliance

The osc is clearly aware of quite a bit of deliberate industry misconduct so what is its excuse for ignoring it

Is this the same rational the enabled the issues compliance of by smaller shops as well?

Bkennedy

Https:www.osc.ca/en/tribunal/-proceeding/deutche-bank-securities-limited-re-reason- and decision-mater-deitsche-bank-securities-limited

Here is an industry firm complaining about procedural fairness so what of

The ecbs are even more problematic especially the obsi per sro compliants.

2.Canada's two biggest banks pay almost 23million to settle probe into FX trade FP Sept 3 2019

But what of the other Trading practices beyond this one the osc is still ignoring? And why?

See osc stated purpose Https:www.osc.ca/en/tribunal-proceeding/toronto-dominion-bank-re settlement-matter-torontoiz dominion bank

So why is it still ignoring other misconduct and exploitive abusive trading set in motion with the terms of service dealer brokers set out for retail and what happens after (derivatives options and grabbing longs shares in margin accounts and just pocketing the profits from lending out to shorts (the shorts have a direct agenda opposite to longs so why not mitigate the down size as the dealer brokers are NOT neutral agents here.

See also 4435-20210902-oscb-4435.pdf (derrivatives

So how does victim blaming even begin to address what expert eyes at osc are closing to ingore

Just wishing retail would use legacy advisory service does not address this nor osc s duties.

So as it moves ahead with the Cma proposal how is any of the above addressed?

See also Nelson City v Marchi and operational excuse being no shield for liability.

Pretending the public aren't also capital market participants does not make this true. As much as this imposes further costs on the osc. Iiroc doesn't even address issued tied to derivatives so just shOehorning such issues to them accomplished nothing.

How is this equal protection before the law? See charter and bank acts terminology 're corporate persons. (Versus individual persons?

Are you even meeting your obligations with osfi? Let alone iosco or are you a weak spot (osc?i

Bkennedy

Survey 33-753

Tied selling and other anti competitive behaviour

If Adr was initially created to address smaller shops concerns and later expanded to include retail investors…since the smaller shops have raised concerns to tie to your study as did the earlier capitalization modernization Tom. What does this say about adr. (And what it also like obsi) and iiroc are missing due to osc s and peers mini -me processing of issues versus big banks?

And implications for the new CMA if this negligence continues?

Bkennedy

Tied selling and other anti competitive behaviour

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Look to the terms listed companies and those contemplating IPOs consent to, and funding from the bigger players

Likely you will find a parallel to what dealer brokers do for retail clients when opening accounts

Is the osc even screening the above?

I see from the following link that the FCA has a far more comprehensive understanding of who capital market participants are versus OScs niche focus here..

Https://www.investmentexecutive.com/news/from-the-regulators/market-data-faces-scrutiny-from-the U-K-regulator/

Where does TD get its data for its prop trading and derivatives trading versus smaller firms? And even worse note the terms of service in its electronic accounts clauses 4 and 5 for retail?

Better data would definitely give the big players a huge advantage over the small fry wouldn't it? Including speed and accuracy.

Bkennedy

Tied selling and other anti competitive behaviour

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Here is an example

While there is nothing amiss with the latest offering by TD of principle at risk notes (five per cent. To offset some of the risk)

Contrast this with the industry (banks dealer broker practice of grabbing retails shares held long in Margin accounts lending them out to counterparts wishing to go short and just pocketing the profits and not even offering the true title holder a share of what the banks dealer broker arm grabbed? To offset the downward pressure or as an income source?

Newer especially US based platform type accounts offer this but not our big banks

So why is the osc (and peers) and iiroc adr and obsi ignoring this?

Tied selling and other anti competitive behaviour

Like it or not size does matter and the smaller the capital market participant the more critical an even handed oversight by the osc is

(The sros and ecbs are way out of touch ‘re this and not set up to address this)

So denying the smaller retail participants are also capital market participants not just “consumers” means the osc is complicite in enabling serious misconduct by larger players especially the big banks to go unaddressed.

Which means the osc is only doing a token effort to address issues and vulnerable investors.

See Michael H McCain’s item in the financial post

“we need a new charter for capitalism,and here is what it should include

“Https://finnancialpost.com/news/economy/Michael-H-.McCain-we-need-a-new-charter-for-capialism-and-here-is-what-it- should-include.....

Keep in mind at the dawn of the industrial revolution and globalization most citizens didn’t even have the right to vote.

So the osc still in its approach has its feet in a much earlier era…and has not kept up with democratic rights which is troubling for a crown body.

Osc consultation on tied selling and Other anti competitive behaviours 33-753

Dear Osc. Addendum…… is the osc directing its focus for the banks on their liability shields as bottom line risk management tactics for litigation rather than what they are ignoring. For example compliance, and broader systemic risk issues and signs of anti competitive behaviour.

Those liability disclaimers are no substitute for tech platform upgrades. The failure to prioritize this leaving retail investors rose out with platform crashes while the banks prop trading arms continue to trade as do others in the markets including other retail with competitors whose platforms currently aren't impacted?

Is the osc actually facilitating anit competitive conduct in the way it manages its priorities and where it delegates retail investors concerns to lighten the osc s workload. This is lethal especially when the osc is reluctant to intervene with its own third party legal service providers for retail such as iiroc and ECBs?

And how does this pattern repeat for smaller shops raising concerns 're IPOs and tied selling.

How is the osc own behaviour facilitating this while proclaiming otherwise?

Bev Kennedy

Some observations

1 Please make a point of checking the terms of service set out by the Banks not just for participants who are bringing IPOs. As you may discover one way the larger participants ensure traffic remains with them.

2Please consult the newer Supreme Court of Canada decisions on Contracts (including power imbalances and what is being consented to. Including efforts to sidestep compliance onuses by industry participants.

The walls for those liability disclaimers are no longer as bullet proof as they used to be. If that was why the osc and iiroc and obsi were sidestepping this. See Hrynew v BHasrin , and Dourex v Facebook Inc. And ensuring discussions since by legal firms.

3 retail investors also are capital market participants not just "clients". They also are consumers of goods and services but unlike consumer protection bodies outside the securities industry terms of service and contracts are not being vetted and more importantly corrected when they are exploitive and or non compliant with layers of your and osfi and even iiroc compliance duties (or CSAs)

The dealer brokers are gatekeepers to the capital markets and are expecting this with problematic terms of service they set out.

But neither osc or peers or iiroc despite its guidance notice 19-0177 and osc awareness and claims to be monitoring this.

You will find patterns in anti competitive strategies in the terms of service retail investors are presented with especially by the banks that can be used to examine the issues raised by smaller industry shops and tied selling.

2 retail investors are certainly capital market participants. Unfortunately your delegation off to iiroc and assumption that obsi and adr are adequate venues for ECB is flawed.

Which is why you have a higher duty of care to vet the outcomes.

The obsi doesn't even vet contracts for non compliance. How up to date is it on systemic risk facilitators on those bandages over compliance . Since the problematic terms remain in place. And iiroc is looking for excuses for what services aren't a statutory concern also to ignore problematic clauses.

The outcomes from this detour are not the same in standards that the osc produces for issues it choses to retail. For example the banks complaint about poor oversight by TD and RBC and prop trading desks which you did address.

But for the retail investor crashed platforms are ignored even though the banks prop trading desks continue to trade were as the retail investor is literally frozen out and unable to mitigate a position.

And the dealer broker has inserted liability disclaimers in its electronic service accounts to try to deflect responsibility which the retail investor client has had to consent to if they wish to use the services and platforms.

How does this not put the retail capital market participant at a disadvantage (be it via the secondary markets)

As for margin accounts again the same game where the banks insert terms allowing the bank dealer broker to grab shares at will in margin accounts even when the account holder is fully paid up on margin obligations and then the dealer broker can lend them out to shorts and pocket the profit all the profit without offering to share this with the true title owner the retail investor?

Newer shops are offering the option to split the proceeds with the retail title holder but the osc still is not addressing this nor is obsi and iiroc (small wonder Td sends disgruntled retail investors to the obsi as the obsi does not address this period)

2 unless retail investors aren't capital market participants why is the osc allowing this? It seems to be a repeating pattern with those smaller industry shops as well hence the letter from the Minister of finance which was what finally got the osc to atleast open a file.

3the provincial auditor also has raised many examples of footdragging by the osc that has favoured industry agendas over the smaller retail investor. So how is the osc not facilitating anti competitive practices?

Per the auditors examples. Also where it directs retail investors for remedy against industry and the less than stellar outcomes compared to what it choses to focus on and outcomes there.

The terms of service have the retail investor hosted before they can even make an investment decision. But the focus continues to be to victim blame.

The Client focused "reforms" simply duck other concerns (while making public other abuses in a very competitive market by industry) and ignore those more directly trying to participate in the capital markets at the retail level on line.

4 the above echos the concerns raised by smaller shops that are trying to service industry participants.

5 this fragmented approach also undermine the osc s efforts to gain a larger footprint in the capital market as the osc is ignoring serious issues and using various pretexts to avoid addressing the concerns to ensure a fair and equal paying field for all.

Pretending the retail investor is not a capital market participant only serves to ensure the larger players continue with their anti competitive behaviour

5 Ignoring the implications of landmark supreme court cases is also a puzzler. As is the detour the retail investor is directed to for redress of a lower standard especially when the issues osc has handed off are not always IIrocs priorities (or obsi). This silo approach certainly does facilitate anti competitive behaviour.

This is in contrast to the charters dictate that all persons are entitled to equal protection before the law. The osc operational pattern indicates favouring corporate over individual.

There is widespread systemic abuse and non compliance in the industry that does as much damage as the fraudsters the osc PR focuses on to deflect attention from what it is not addressing. Could this be tied to the source of its funding in recent years?

Thank you for your time. I fear this will just be downplayed as Kvetching despite the implications that would help the osc do its job better and more effectively.

The osc needs to keep up with the law as it evolves and take seriously beyond just talk serious defects.

As for seniors…the above headwinds they face also are applicable. As much as those smaller shops that are industry are concerned about.

This slice and dice is ineffective. And deceitful especially for a crown body. I have to ask finally why is it the osc is so afraid of interfering with iiroc decisions or simply placing obsi s malfunctions as having lack of teeth when this is just one part of the issue.

Can you explain why the osc continues to act as if retail investors aren't also capital market participants. In addition to the concerns raised by smaller shops that they too are a lower priority and prey to the larger industry shops tactics in keeping business to itself if it can?

Why aren't you vetting the terms of service (contracts for anti competitive behaviour as well as taking compliance breaches facilitated by these legal strategies more seriously?

Bev Kennedy

‘re 33-753 osc consultation

Dear osc

Further to my other submission is the osc aware that it’s focus on cost efficiencies has repercussions

Meaning it is not recognizing anti competitive behaviour staring it right in the face?

For example those liability disclaimers in terms of service are Not proof of compliance?

Are not an indicator that large corporate players are not using these terms to facilitate anti competitive behaviour rather they are intended to manage the firm’s liability risks costs and what is covered by their insurers.

Further retail investors certainly are capital market participants just as smaller industry shops. And clues regarding anti competitive behaviour need to be examined by the dealer brokers serving as gatekeepers to the capital markets

Further the osc in selectively retaining registered firms such as the banks for preferential treatment are providing protection for these large firms against each other but this does nothing for smaller shops or retail investors.

This is exacerbated by the osc reluctance to intervene in its own third party service providers that it delegates oversight of dealer broker behaviour to.

Additionally this does not address systemic risk issues. As the terms of service set out by large industry players are a way to manage their own risks not broader capital market systemic risks. Or anti competitive behaviour

Which raises the question of just how evolved is the osc in managing its duties that it should be handed greater responsibility for the capital markets until it fixes these gaps that it has set in motion itself to ensure its own cost efficiency. But at what cost to others?

In case the osc isn’t aware of developments an appeal court overturned the Ontario governments efforts to increase the barriers for negligence lawsuits including those from the public and crown bodies.

The optics for impartiality is also problematic given the osc source of funding as well.

Thankyou for your time in reading and considering this. Your silo focus is undermining your stated mandates.

As well as your failure to apply the significant work of the Supreme Court on contract laws and consent (including for what firms consent to with the larger banks that is shutting the smaller shops out.)

Liability disclaimers are NOT proof of compliance. It may be convenient for the osc not to deem retail investors as capital market participants or dealer brokers as the gatekeepers. For the sake of cost efficiencies. But that is denial of legal reality.

Nor does that mean the osc is fulfilling its mandate which is quite different from year to year priorities.or the osfi expectations.

Or that it's third parties it delegates duties to e.g. sros or ECBs are nearly as effective or on all fours with the osc agendas as assumed.

Bev Kennedy

Re osc 11-794 and osc 33-753

And the recent globe article in Globe investor;A couple of tricks for non wealthy investors seeking advisors.

In the OScs new client based reforms (which is oblivious to electronic dealer broker service and compliance) is the osc even aware that the advisors are more focused on high net worth clients not the average “punter” .

How is this any different from the concerns raised by smaller shops and the finances minister letter on the matter

Clearly the osc is also more focused on higher net worth capital market participants than the average retail investor noting the detour it sends the retail investor on away from the osc to a lower standard of care

The obsi doesn’t even screen contracts – have mentioned this before and iiroc has not followed up on its guidance notice 19-0177 nor has the osc invited it do so.

As for priorities going forward. Again talk is cheap, and nothing much will change for the lower tier capital market participant if the osc continues to ignore this group

The auditor in issues it could scan which would not be what the osc sent on a detour to non crown although it should have considered why osc and peers does this and then brushes its hands noting billions being lost to retail investors due to the osc footdragging and catering to industry even when others in the CSA networking were deeply concerned.

So you are echoing the pattern set by these advisory shops aren’t you.

Consider just how anti competitive this set up under your nose remains.

You can fluff the pillow on priorities going forward but all that is is fluffing.

Yours truly

Bev Kennedy

Re33-753

Dear osc

Is your operation as effective as you believe it to be? Sometimes cheap is just cheap. And fails to deliver on your mandate let alone your promises

Even if the Auditor can't screen what happens to items you stickhandle to the sros or ECBs. Some of which certainly are enabling systemic risks.

If you continue to ignore the retail investor as a capital market participant and route their concerns especially electronic internet or cyber to a watered down venue with a less satisfactory outcome

You are leaving yourself exposed for contributory negligence claims but you are failing to ensure critical back doors enabling systemic risk are firmly closes

I note even the Bank of Canada has participated in these secondary levels of the capital markets where retail mainly swim.

In handing off their concerns to a degraded portal for redress you are certainly protecting negligent and exploitive practices of large capital market participants. Same concern as the issues the Minister of finance has requested follow up on smaller shops.

A recent by ctv news.ca via associated press " the internet is on fire' as techs race to fix the software flaw suggested that the osc needs to be proactive not reactive. Or why did it take the Minister letter on smaller shops to trigger a file opening? The auditor general also noted this in its findings of how much retail investors were out as a result of the osc footdragging.

The but it gets worse for the osc.

Because how does those liability disclaimers trying to patch over tech vulnerability abilities due to outdated platforms and outdated security actually address software flaws such as the ones per the headline techs are racing to fix?

It doesn't. This is a liability shield not a tech shield which is what is needed to address the issue.

And the SCC actually provided some "apps" in its landmark rules to fix this which the osc has continued to ignore. Why?

Handing off to sros and ecbs also does not address the core concern. (For a range of reasons my earlier filings covered)

It just massauges your budget.

How does this address the defective technology or poor systemic risk management by big banks or dealer broker arms. It doesn't.

So the osc has several systemic "failures" it is accountable for as a crown and oversight body.

It also is falling short of the osfi expectations and it's own stated mandates using these strategies.

And certainly is facilitating ongoing anti competitive behaviour by sidestepping the larger capital markets non compliance.

As for the goal to take on greater capital market participation. It isn't about just the money but also your duty to manage systemic risks rather than the current practice of sidestepping and enabling the current stub quote to simply continue

Finally it isn't just about what others are or aren't doing. The osc has left its back door wide open and is a magnet itself to encourage liability suits from major interNation players and countries and even from the osfi.

Do you have adequate liability insurance? And would this insurance even cover this type of deliberate negligence?

This negligence leaves Canada's internet and services exposed to systemic risk and intrusions. Shifting the venues for redress is not the same as insisting on adequate tech patches.as to those crashed platforms why is the osc complacent about this?

As for priorities going forward if the osc keeps doing as it always has do you really think the outcome will improve?

Yours truly

Bev Kennedy Oakville Ont Canada

11-794. And 33-753 consultations

Please see the finding of GAO regarding the need for the s e c to have better oversight of Finra

The key finding was that the surveys as such that s e c used to monitor were not properly worded or per the report were not set up meaning whatever the s e c was using to scan Firms proficiency was missing key issues so it wasn't able to do an effective review of Finra work essentially

This would explain perhaps why despite IIrocs guidance notice 19-0177 there has been no follow through specific to what iiro referenced.

And it also means the osc isn't even aware of critical gaps in what the osc (and Csa regulations directives and protocol are demanding or osfi B10 and B13 or recent adjustments

Further using the obsi as an example obsi not even screen terms of service.

And iiroc despite its rule 14-0012 is missing this issue even for its own particulars (I send you the respOnse from iiroc which will back this up and also for obsi. (So what of adrobo)I

None of you are formatting to include important Scc decisions on contracts tighter than have ramifications as well for IIrocs guidance notice

Further you aren't effectively screening for anti competitive behaviour even after the modernization task Force cited concerns from smaller shops – believe it was this task Force but this definitely was in trade media.

And you also completely dropped the ball on oversight of sros effective oversight as mentioned in your task Force, and even for obsi the face was lack of teeth when it was certainly mentioned to your taskforce that there was a failure of the obsi to have a silo to screen that was wide enough to make mention of what iiroc picked up regarding deceptively worded liability disclaimers that are actually shouting violation of your and Csa s and even osfi concerns and best practices and your rules.

You missed the very exploitive anti competitive practices that triggered the letter from the finance Minister. And you certainly ly failed to understand the implications embedded in retail terms of service regarding margin accounts that are certainly exploitive unfair and competitive. Because your formats for screening don't include an effective screen to pick this up (similar to the GAO assessment of what the s e c lacked and thus was not effectively overseeing FINRA

This also applies to cyber risk vulnerabilities and poor risk management protocol (despite what your older legislation set out for risk management protocol and third party outsourcing. Which you and iiroc and obsi are completely ignoring.

Your screens also are not set up to catch serious non compliance and deliberate efforts to sidestep compliance by dealer brokers who are the gatekeepers to the capital markets who are exploiting this position of trust in the terms of service they set out for retail who are capital market participants especially those using electronic services to consent to.

This probably explains why my efforts to alert you and to use the normal venues for redress have fallen flat…despite very clear evidence that my concerns certainly do have merit. And the relevance of what I tried to alert the osc to continues to increase

Especially as the osfi has broadened its catchment criteria to beyond the narrower what was “material” to industry insider agendas. And there are concerns at the federal level for even non federally regulated practices.

Your focus on client based reforms and the legacy niche advisory and Kyp services while ignoring the other non advisory type services also offered by dealer brokers (electronic digital etc) is a big hint.

So my question to both comments and to Royal is. How do you suggest I overcome this glitch of yours so that the issues I keep raising and likely others are addressed?

My concerns certainly have been validated by both osfi which has asked fres to provide reports within a limited time frame of any cyber risk or I believe platform vulnerability facilitating this e.g. a crashed platform. And iiroc guidance notice also was a bit hint 19-0177 so why no follow through to address those problematic terms of service and why the denial by iiroc of its rules specific to third party risk 14-0012 (hoping this would also Cath your concerns would be a stretch.

So perhaps for your. Priorities going forward what the audit of the s e c found ‘re it’s oversight of Finra and lack of well aimed surveys to catch issues Finra was ignoring at the s e c level should be used and considered for your priorities going forward

As well as for the survey on anti competitive behaviour and tiered selling

The cyber risk focus for the osc is currently still overly narrow for the osc to monitor and address cyber risk issues including concerns referenced in osfi B10 and B13. Which have been amended to a wider scope to reflect the reality

Meanwhile the osc hopes for greater role in the capital markets (all upside focus for the osc) neglecting to keep current and effective in risk management monitoring and compliance even within its own scope of screening. Which really needs to consider what should not be auto delegated to iiroc or the ecbs given their even narrower silos and efforts to sidestep serious and persistent non compliance even when provided complaints aiming directly at these concerns.

My efforts continue to be validated but are not being followed through despite osfi broadening of its screens despite your own risk management protocol specific to outsourcing and even IIrocs guidance 19-0177

And you have not adequate screened for discriminatory policies or practices or barriers the public face that industry don’t for capital market participation as you keep pretending that the retail investor is not a capital market participant (contrary to what the s e c has also noticed regarding dealer brokers exploiting their position as gatekeepers to the capital markets. As for those terms of service in margin accounts and industry anti competitive behaviour for retail. Again completely ignored.

Same with what the smaller shops keep voicing concerns about also completely ignored until the finance minister specifically sent a letter and you opened file. But unless you update your survey catchment how will you even pick up on these issues? You won’t.

No more than you are catching issues tied to cyber vulnerability at the retail level and those deceptively worded liability disclaimers that actually reference interruption of service (crashed platforms would do

that) and the permission by TD direct granted to its third party vendors to just keep on doing what they always have on third party outsourcing in the terms of service that actually grant third party service providers permission to do so by TD direct (where does Td get this authority by the way?). See clauses 4 and 5 pdf in the electronic terms of service retail consent to.

This is why nothing has changed or been updated especially for retail because your surveys to catch and address this miss simply aren't in place. You still used very very outdated screening surveys so like the s e c continue to be far less effective let alone efficient that you urgently need to be to keep up and to even be considered relevant.

I am also tired of the persistent abuse I keep accounting including even from the osc (which actually is tantamount to obstruction of justice as how else should I read those relayed threats in 2015 from your officials to Halton police to tell me to stifle (and what did my husband think of my efforts? Gaslighting or what). As for iiroc how is blocking correspondence sent immediately in the age of their guidance notice 17-0177 not obstruction of justice? And obsi s failure to even respond to the issues of law I had sent to theme and the not so cute efforts to reframe it as my problematic decision making?

It appears you aren't even fulfilling osfi expectations tighter given the deficiencies in your screening protocol.

So for both surveys I urge you to consider the ramifications of what was found leading to the s e c failure to effectively oversee Finra…the root cause.

I have filed this within the timelines for both of your surveys.

Thank you

Bev Kennedy Oakville Ont

- Re 33-753

And tied selling and anti competitive behaviour

Please note that the osc is no longer funded from the public's purse.

And the funding sources come from the financial industry including the very big banks. So is there one fee or is is calibrated according to footprint size

As that might explain the need for the Minister of Finance to finally have to send a letter on behalf of smaller shops to get the osc to open a file even thought this has come up before and I may be incorrect but didn't your own capital modernization TTM find the same concern? But no action followed?

What this is leading to is regarding "and other anti competitive behaviour"

E.g. those very predatory terms of service dealer brokers set out for margin account holders allowing the dealer broker to grab and and go make a profit by lending out the retail title holders shares but not offer to even spilt the profit and it isn't as if the dealer broker (e.g. arm of the bank) isn't already making profits when retail do use their margin.

So why the concern by the finance minister Ontario for industry toes albeit smaller and failure to address similar right there in bold print regarding the public aka retail investors who elected this Minister to Office and whom the crown even though you are now funded by industry etc and not the public purse but are still supposed to consider the public's best interest continuing to ignore this? Is it because we are no longer a source of funding?

You might Want to consider this when reviewing other anti competitive behaviour that harms the public not just industry versus industry since you are nominally atleast a crown body?

Bkennedy Oakville Ont 21 Dec 2021

Re request for submission 33-753

On tied selling and other anti competitive behaviour

Dear Osc

Once again why are screening retail investors out of this item as if they aren't also capital market participants?

Please see the link Competition Mystified by Bruce Greenwall

Https//www.athenarium.com/competition-demystified-greenwald.

And consider the five elements highlighted in the link. And what is deemed the most critical.

Aren't terms of service set out by dealer brokers not barriers because unless the retail investor consents to these terms they don't get to open an account.

So why isn't the osc vetting such terms if it really is trying to ensure a fair and equal capital market?

And the dealer brokers setting out the terms of service (while acting not just as a service venue is also acting as a gatekeeper to the capital markets for the retail investor) while also participating in those same capital markets as well as setting out terms that give the banks own prop trading and derivatives desks an advantage over retail capital market investors.

Noting again the terms set out by the dealer broker for retail to consent to if they want to have access using the dealer broker (and it's rivals platforms and services portals)

How does this not facilitate the other rams of the banks (using TDS prop trading desks including derivative terms a competitive advantage. As for example to trade option the investor must open a margin account. Please se the accompanying terms allowing the dealer broker to grab shares held in such margin accounts? Even when the retail investor is not elegant in pain interest should they use the margin allowance? Why is this when competitors newer entrance now do allow opportunities to split the profits with the true title holder to atleast try to mitigate the downside pressure of shorts boring these shares via the broker?

Note the district competitive advantage given the banks own prop and derivatives trading desk over their own retail clientel when retails platforms crash freezing out retail but not the same banks prop or derivative desks?

Note OScs focus on fraudsters or fee driver advisory services but silence on the other service arm retail use (via their electronic platforms and competitive advantages set out by these same bank service arms against their retail clients as the terms of service certain do function as barriers to entry with no room to adjust the terms

See where you detour complaints over to the industry itself with a less than stellar outcome

And as the auditor noted your own footdragging on mutual funds and (hidden fees where no advice is provided)a

Just whom are you favouring really here on a range of excuses? And you are a crown body. This is not just about smaller shops by the way but the even smaller retail investor. Same pattern of enabling and favouring the big players.

The optics of who pays your funding now is also suggestive as to whose agendas you prioritize.

Bev Kennedy Oakville Ont