



THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

BY ELECTRONIC MAIL: rday@osc.gov.on.ca

June 6, 2012

Mr. Robert Day
Manager, Business Planning
Ontario Securities Commission
20 Queen Street West, Suite 1900
Box 55
Toronto, ON M5H 3S8

Dear Mr. Day:

Re: Ontario Securities Commission Notice 11-766 – 2012 Statement of Priorities

We are writing to provide comments on behalf of the Members of The Investment Funds Institute of Canada (IFIC) with respect to the OSC's Statement of Priorities ("the Statement") for the financial year ending March 31, 2013.

General Commentary:

We commend you on the inclusion in the Statement of several initiatives that focus on leveling the playing field and minimizing opportunities for product arbitrage. For example, the initiative to "*undertake research and analysis of increasingly complex financial products and investment strategies and ... to ensure regulatory approaches towards investment products are consistent and opportunities for regulatory arbitrage minimized*" recognizes the ever-increasing breadth and variety in the product menu offered to retail investors. We believe that as the selection of products available to retail investors becomes more complex and expands beyond traditional securities and insurance areas, it is increasingly important for regulators of all these areas to work together to ensure a consistent investor experience regardless of the product, or the industry which generated it. This will also curtail regulatory arbitrage which can be harmful to investors.

Our second general comment pertains to the way in which the Statement reflects the OSC's statutory mandate. That mandate is two-fold – "*to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets*" (emphasis added).

While the Statement addresses the first part of the mandate, it is silent on the second part. The continued strength and growth of the institutions that are part of the capital markets is critical to a strong Ontario economy, job creation and ultimately to provide consumers with a broad range of competitive products and services. We recommend that you consult with the industry to identify industry business priorities the OSC could address in this regard.

We will provide detailed comments on any formal proposals issued to implement initiatives noted in the Statement; however, we take this opportunity to provide some comments on particular goals and priorities.

Goal #1 – Deliver Responsive Regulation

“The OSC strives to identify the important issues and deal with them in a timely way. The OSC will continue to be proactive in pursuing regulatory standards that discourage or pre-empt regulatory arbitrage, maintain or improve market confidence, reduce financial crime and safeguard investors. Expanding OSC research and analytical capabilities in support of policy making and operational decisions will better inform policy development.”

We support expansion of the OSC’s research and analytical capabilities; however we question the appropriateness of the stated initiative “to conduct research and analysis, and publish a discussion paper on the cost of ownership of mutual funds in Canada, identifying investor protection and public interest issues”, particularly as it focuses on a single product and suggests there may be pricing issues with that product.

The disclosure of costs of ownership of mutual funds is the most transparent of all financial products in Canada. The same cannot be said about costs associated with other financial products and services Canadians own. Should you decide to pursue this as a priority, we urge you to expand the review to include all other financial products and services reflected in the individual’s household balance sheet, including savings and chequing deposits, GICs, market securities, insurance products in addition to investment funds/ETFs. For those products and services that do not come under your jurisdiction, we encourage you seek the collaboration of all of the members of the Joint Forum as well as OSFI so that Canadians are informed about and are able to see and understand the costs of all the financial products they own.

Regular Review of Existing Rules

A much-needed priority that should be added to this goal is a commitment to engage in a regular, holistic review of existing rules and regulations, rationalizing them where appropriate. Many of the national instruments applicable to mutual funds are in need of such a review, however sufficient resources to do so are seemingly never available.

Goal #2 -- Deliver Effective Enforcement and Compliance

“Timely and appropriate compliance oversight and enforcement actions are integral to fostering confidence in capital markets and preventing harm to investors. The OSC's compliance and enforcement regimes are dynamic; however, greater focus is needed on preventing non-compliance by issuers and registrants, rather than finding non-compliance after the fact.”

IFIC agrees that a strong regulatory environment focused on prevention serves the best interests of both investors and the industry. We agree with the Statement's priorities associated with this goal. To assist in such a preventive approach, the OSC should continue to stay abreast of regulatory changes and trends internationally, particularly securities enforcement actions taken in other jurisdictions. The OSC should also become much more proactive in discussing with the industry changing trends and risks, and should consider adding more individuals with strong industry backgrounds and compliance/ethics cultures to its compliance and investment funds staff.

Goal #3 – Deliver Strong Investor Protection

Office of the Investor

As the OSC strives to integrate an understanding and consideration of investor issues in its work, we would remind the OSC that Canadian mutual funds, themselves, are significant investors on the buy-side in the Canadian capital markets, investing about \$411 billion in the Canadian economy. In that respect we believe that investment fund managers and portfolio managers have a significant interest and nexus to investor issues, and their input should also be sought out by the OSC and the Office of the Investor in order to ensure the full range of investor issues and their context is understood and considered by the OSC in its rulemaking.

As was stated earlier, it is also imperative that the OSC bear in mind the second half of its mandate which is to ensure the efficient functioning of and confidence in the capital markets in Ontario; seeking input from investment fund managers will assist the OSC in identifying priorities to address this aspect of the mandate.

Fiduciary Standard

Regarding the study of a *“re-evaluation of the adviser-client relationship to consider whether an explicit statutory fiduciary duty or other standards should apply to all dealers and advisors in Canada”*; we encourage a thorough analysis, and that a presentation of the body of rules that is in place today be included in this study. Such a review will first show that we have a strong set of rules in place, and second will allow an informed discussion as to whether gaps exist. In addition the analysis should identify the full impact of introducing a statutory fiduciary standard on the relationship between the investor and the advisor.

Disclosure Document Alignment

With respect to the OSC's priority to develop alternative, tailored disclosure documents, we welcome current OSC initiatives to level the playing field in terms of investment and disclosure rules governing competing securities products. This will ensure investors receive comparable information about competing securities products they may be offered to meet their desired objectives. However, it is not sufficient that this initiative be limited to securities, notwithstanding that the OSC regulates only securities. Individuals consume a broad range of financial products and services, including insurance, banking and securities products. When considering their purchases and investments it is appropriate that similar information on all such products be available to them. In this regard, we would urge the OSC to coordinate this initiative with banking and insurance regulators to truly ensure that investors receive comparable, fundamental information about all products that may be considered "competing" products. Such cooperation is becoming more critical as product features become more similar, and more complex products are permitted to be offered to retail investors. For this reason, we commend the OSC on its initiative to seek increased cooperation and the creation of more formal and regular working relationships with other financial service regulators, domestic and international, a priority. We note that taking a more holistic financial services/products perspective is also recognized in the initiatives of international bodies such as the Joint Forum Risk Assessment and Capital Working Group (JFRAC), particularly in its current work stream on cross-sectoral standards for point of sale disclosure.

Re-examining Risk Disclosure

We wonder whether it is premature to consider re-examining risk disclosure in the 'Fund Facts' as part of the Point of Sale initiative. As an information tool, Fund Facts has only been implemented recently and, therefore, it is too early to know how investors view it, and whether the risk disclosure or any other of its contents are in any way inadequate in the eyes of the investor. We recommend that the OSC allow more time to be able to more fully assess the investor experience with this document before considering adjustments.

As to the risk disclosure issue generally, we would note that the Fund Facts requirement essentially follows on the prospectus risk disclosure requirements that have been contained in NI 81-101 since its adoption in 2000. We also refer to the OSC's April 2012 *Investment Funds Practitioner* which reported on a review of funds in the risk rankings within the two largest mutual fund risk bands – "low to medium" and "medium" when competitive funds were ranked in higher categories – and found only six funds the rankings of which could not be supported by the managers' methodology. Again, this may be a practice issue rather than a rules or regulation issue. Allowing some time to pass so that we can assess market experience may be more helpful in informing where changes need to be made.

Goal #4 – Run a Modern, Accountable and Efficient Organization

Cost-Benefit Analysis

Among the initiatives included in the modernization of the OSC, we applaud the desire to increase the research capabilities as this is consistent with recent statements that the OSC's objective is fact-based rulemaking. As we have noted in previous submissions, the OSC is required by section 2.1 of the Securities Act to have regard to fundamental principles in pursuing its objectives under the Act. Principle 6 states "*business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized.*" In addition, section 143.2(2) of the Act requires that the notice of every rule proposal include "*a description of the anticipated costs and benefits of the proposed rule.*" We have seen a number of examples of recent rulemaking proposals where neither consideration of nor compliance with these requirements was fully demonstrated. We hope that the increase in research and analytics capabilities enhances the OSC's abilities to conduct appropriate cost-benefit analyses. With the ever-increasing number of regulations being applied to the industry, having a thorough understanding of the incremental benefit over the cost of each new proposal is essential so that we do not unduly add costs.

Fee Model

We note the OSC intends to review the Current Fee Model for implementation of a new Fee Rule in April 2013. As the OSC embarks on this review, we would refer to our comments made in submissions on previous proposed fee rules, expressing concern (a) about the level of participation fees charged to mutual fund industry registrants who continue to shoulder a disproportionate burden of the OSC's operating costs and (b) about the fact that the market capitalization of reporting issuers (other than investment funds) far exceeds the size of the mutual fund industry.

In its 2008 Annual Report, the last time the OSC published the breakdown of participation fees between registrants and issuers, registrant participation fees comprised approximately 53% of total OSC revenues, while reporting issuer fees comprised less than 30% of its total revenues. In its 2010 fee revisions, different participation fee rate increases were adopted for registrants and issuers "*to better align revenues generated from each group with its level of participation in the Ontario capital markets*". Without the breakdown previously provided we do not know to what extent that imbalance may have been addressed by this move. However based on the level of imbalance that existed originally, we assume that it has only partially addressed this concern. We would also point out that regulatory fees normally reflect the costs of regulating the sector; it appears to us that the fees paid by the fund industry are not commensurate with the regulatory effort required on the part of the OSC. As such, we urge the OSC to continue its efforts to address this imbalance in this next fee review.

CSA Relationship

Finally the Statement of Priorities refers to a plan to increase cooperation and implement more formal and regular working relationships within the CSA. A national securities regulator with all provinces and territories participating is clearly not going to happen; but there may be a voluntary group of provinces who will join forces. It is clear that for the foreseeable future there will be more than one securities regulator operating in Canada. As we stated throughout the discussions on the national securities regulator initiative, as long as multiple securities regulators exist, it is imperative that a workable interface is created across those bodies. For efficient capital markets, and an investor-responsive regulatory system, the regulatory process must remain cooperative and harmonized regardless of the structure.

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We do look forward to learning of the OSC's final priorities, and to receiving and providing detailed comments on the necessary rulemaking proposals to implement the OSC's various initiatives.

If you have any questions regarding our comments please contact Ralf Hensel by telephone at 416-309-2314 or by email at rhensel@ific.ca.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



Joanne De Laurentiis
President and CEO