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Mr. Robert Day
Senior Specialist, Business Planning
Ontario Securities Commission
20 Queen Street West
Suite 2200, Box 55
Toronto, Ontario M5H 3S8

Dear Mr. Day:

RE: Ontario Securities Commission Notice 11-769 – 2014-2015 Statement of Priorities

We are writing to provide comments on behalf of the Members of The Investment Funds Institute of Canada (“IFIC” or “we”) with respect to the draft of the OSC’s Statement of Priorities (“the Statement”) for the financial year ending March 31, 2015.

General Commentary

The Statement contains a number of objectives that intersect with those of the investment funds industry, all grounded in our mutual interest in promoting fair and efficient capital markets within Ontario and across the country. We welcome the opportunity to highlight these shared goals, and to discuss the areas of focus for our industry in the coming year. We believe that many of the OSC’s key priorities – particularly those requiring extensive empirical research – can be best achieved through close collaboration between policymakers and industry participants. We look forward to working with the OSC on these initiatives in the year ahead.

Priority 1 – Best Interest Duty to Investors

We agree with the Statement’s acknowledgement of the need for additional research regarding the potential application of a best interest duty on dealers and advisers. As the recent CSA Status Report (CSA Staff Notice 33-316) on the subject accurately notes, we believe that “the current regulatory framework, coupled with recent Canadian regulatory reforms, provide[s] a robust, flexible and principled regulatory foundation that affords strong investor protection and that addresses the investor protection concerns identified in the Consultation Paper.”

IFIC provided extensive commentary and evidence-based recommendations on the potential application of a fiduciary standard in our response to CSA Consultation Paper 33-403. The industry’s perspectives are supported by independent legal analysis submitted by securities law expert Ms. Laura Paglia, which, based on a detailed comparative analysis, concluded that Canada’s regulatory framework for dealers and financial advisers is thorough, progressive and, in many cases, superior to the framework found in other jurisdictions, including the United States, the United Kingdom and Australia. This type of research – rigorous, evidence-based and context-specific – meaningfully advances the conversation, providing the OSC with an evidentiary basis upon which it can make informed decisions in the best interests of Ontario’s investors and capital markets.

The Statement cites the joint OSC/IIROC/MFDA mystery shop project as a research input into decision making around a best interest standard. We are aware that mystery shopping and shadow shopping are increasingly being used by regulators in other jurisdictions as a tool to understand the investor experience. We have also noted, with interest, the way in which the information gathered through mystery shops is being used. Rigorously designed and managed, mystery shops may provide useful snapshots of individual advisor/investor interactions and reveal gaps and opportunities to improve the investor experience. Their limitations, of course, are that they seldom track the interaction to completion and that they only track one interaction; whereas, advisor/investor relationships extend over multiple conversations and over extended periods of time. These limitations may constrain the use of mystery shops to inform specific regulatory initiatives; however, they may be very effective in identifying non-regulatory interventions. For example, in reviewing the results of mystery shops in other jurisdictions, we noted that the U.K. regulator used it as an opportunity to work collaboratively with industry in the interests of financial consumers by sharing the results in advance of release. Industry took steps to address gaps through training, better processes and controls. When the regulator announced the findings of the mystery shopping exercise it was also able to advise consumers of the steps the industry would take to address the gaps. IFIC encourages the OSC to adopt a similar approach of working with industry on a voluntary basis.

Priority 2 – Embedded Fees in Mutual Funds

We support the OSC's determination that it would benefit from additional third-party research on the structure of mutual fund fees. We view this as another valuable opportunity for cooperation and collaboration between industry and the OSC to ensure the best possible outcomes for investors. The reliability of the findings of this study and subsequent value for informing decision-making will depend on both rigorous design and precise data gathering from fund managers and dealers. The wide range of investor purchase channels available to investors, participant business models, and compensation structures will present a number of challenges for even the most experienced research firm. Industry stakeholders are well-placed to assist in capturing the full complexity of the investment fund marketplace. Once a research firm is selected, we suggest that the firm and OSC staff meet with IFIC to determine how we can help ensure the integrity of the data gathering process.

Priority 3 – Point of Sale Disclosure for Investors

The CSA's Point of Sale (POS) disclosure initiative is succeeding in its objectives to provide Canadian investors with clear, plain language, accessible investment information and in making Canada's capital markets fair and efficient. As a result, mutual funds continue to be the most transparent financial products available within the retail marketplace. This transparency will only increase as Fund Facts is fully adopted within the marketplace and the rules governing pre-sale delivery of Fund Facts are finalized.

As we move toward Phase III of POS implementation, we are confident that investor understanding of their investments will further improve and, over time, result in better, more informed conversations between investors and their advisors. Given the substitutability of retail financial products, we believe that this high standard of transparency should be universal within the retail marketplace; that is, all retail financial products, from ETFs to GICs to insurance, should offer investors the same level of disclosure currently provided by mutual funds in Fund Facts. This uniform standard would create a consistent investor experience, enabling investors to better assess and compare the suitability of all products within the marketplace. We note this is the approach being taken in Europe. While we recognize that the OSC regulates only securities, we encourage the OSC to collaborate with its other provincial counterparts and Joint Forum colleagues to provide investors with a consistent disclosure standard across the entirety of the retail landscape.

Priority 5 – Improve Capital Formation

While we support a broader range of capital raising options, particularly for smaller companies, investor protection must remain a paramount consideration under any new or proposed

prospectus exemption. To strike the proper balance between improved capital formation and strong consumer protection, we therefore urge the OSC to work closely with all participants in Ontario's capital markets in developing these proposals further.

We also note that the OSC's proposed exemptions are not fully harmonized with similar proposed or extant exemptions elsewhere in Canada. Inconsistencies raise regulatory and compliance costs for capital market participants – costs which are ultimately borne by investors. As always, we urge the OSC to continue working closely with its provincial counterparts to ensure that Canada's securities regulatory framework remains consistent, coordinated and cost-effective.

Priority 6 – Fixed Income Securities

Canadian mutual funds are major participants on both the buy- and sell-sides of this important market area. This deep experience gives Canadian mutual funds an unparalleled understanding of the risks and opportunities within the fixed income marketplace. As the OSC reviews its oversight of these securities, we would urge the OSC to consider the mutual funds industry a key stakeholder that can offer valuable investor feedback on any issues and proposed regulatory changes concerning fixed income securities. Many of our recommendations regarding comparability of regulation of interchangeable products may also be relevant here, as fixed income products comprise a significant share of the financial wealth of Canadian households.

Priority 9 – Serious Securities-related Misconduct and Effective Enforcement

The Statement notes that:

The OSC conducts compliance reviews of registered firms primarily to assess compliance with Ontario securities law, but also to help registrants improve their understanding of the regulatory requirements and our expectations, and to help us to learn about a specific industry topic or practice.

We support this collaborative approach to compliance and encourage the OSC to maintain a continuous dialogue with industry participants on compliance matters.

Priority 10 – Systemic Risk to Financial Markets

In order to fulfil G20 commitments, both American (FSOC) and international regulatory bodies (FSB/IOSCO) have recently turned their attention to the possibility that the asset management industry could pose systemic risks to domestic and international capital markets. The Statement notes that, in the year ahead, the OSC also must align its regulatory framework to conform to the G20 commitment on systemic risk.

We understand that the OSC must develop and implement timely, aligned regulatory responses to maintain the competitiveness and attractiveness of Ontario's capital markets to investors and capital. Nonetheless, no regulatory action should be taken to address the supposed systemic risk of investment funds until substantive empirical research demonstrates that such risk actually exists.

As we noted in our response to the recent FSB/IOSCO Consultation on identifying systemically risky asset management companies, there are a number of reasons to doubt that mutual funds could pose systemic risk, because mutual funds a) make little use of leverage; b) do not fail in the same way as banks or insurance companies; c) are structured and regulated in such a way that protects investors and limits systemic risk; and d) have never demonstrated evidence of the kinds of risky behaviour that could engender systemic risk.

Given these high-level considerations, the dearth of substantive empirical research on the subject, and the potential competitive and market effects of firm-specific SIFI designations, we urge the OSC to carefully assess the costs and benefits before importing any future

international assessment methodology into the Canadian marketplace. More generally, we urge the OSC to continue using its leadership role internationally to influence the development of global securities regulation that works for Canada. In our view, Canada – with its world-class securities regulatory framework and enviable record of financial stability – should be a net exporter rather than net importer of regulatory measures.

Priority 11 – Reduce Regulatory Burden

We support the inclusion of a commitment to reduce the regulatory burden on market participants. As the Statement notes, intense competition, uneven global economic growth, and slowly recovering financial markets all pose significant challenges to our members. However, the industry is not subject to domestic regulation alone; extra-territorial legislation and initiatives, such as FATCA, impose significant burdens on the industry without in any way benefitting the Canadian market; but compliance is mandatory nevertheless. Reducing the regulatory burden not only helps to lower costs for investors, but also ensures that the OSC is focusing its resources in the most effective and efficient manner possible.

Similarly, the industry is committed to working with the OSC to deliver on its renewed commitment to complete a regulatory impact analysis prior to initiating any proposed policy projects. Rigorous, evidence-based research and analysis is an indispensable prerequisite for effective policymaking. It offers considerable potential benefits to the OSC, providing a framework by which it can: clearly identify desired investor outcomes; assess the available range of potential interventions – both regulatory and non-regulatory; and assess one or more for their effectiveness in achieving desired behaviours. Integrating impact analyses into the full lifecycle of its policymaking process, from proposal to implementation to evaluation carries benefits for the OSC and the industry alike. The industry fully understands the challenges associated with regularly conducting such analyses, from scarce resources to incomplete data to competing priorities. Other bodies, such as the OECD have turned their attention to the development of impact analysis models, creating guidelines that can serve as proven starting points for us in Canada. We wish to support the OSC as it strengthens its impact assessment capacity and we look forward to working closely with the OSC on this priority in the year ahead.

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We thank you in advance for considering our comments on the 2014-2015 Statement of Priorities. Please do not hesitate to contact me directly, or contact Graham Smith, Senior Policy Advisor by email gsmith@ific.ca or by phone at 416-309-2328 if you have any questions or would like to discuss our comments in more depth.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Joanne De Laurentiis
President & CEO