



Via email

April 24, 2015

SIPA Comment Letter

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ONTARIO SECURITIES COMMISSION NOTICE 11-771 – STATEMENT OF PRIORITIES
REQUEST FOR COMMENTS REGARDING THE STATEMENT OF PRIORITIES FOR FINANCIAL
YEAR TO END MARCH 31, 2016

http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20150402_11-771_rfc-sop-end-2016.htm

The Small Investor Protection Association (SIPA www.sipa.ca) was founded in 1998 and is registered in Ontario as a national non-profit organization. Its mission is to raise awareness of small investors.

It is recognized that the OSC may be among the regulators most concerned with retail investor protection. SIPA applauds the efforts and achievements of 2014-2015, however there are fundamental issues remaining that require action and implementation and these are outlined below. The stage has been set for 2016 to be a decisive year for many long outstanding issues.

SIPA is pleased to provide comments on the proposed OSC priorities for the fiscal year 2015-2016.

1. Implement a Fiduciary standard for all advisors: Much independent research has already been done in Canada and elsewhere that demonstrates that conflicted advice acts against investors interests. Our comment letters on Fund Fees and best interests provided a comprehensive listing of this research. Roundtables have been held. OSC Enforcement and Compliance reports issued year after year contain the same issues. Merely issuing reports and suggested practices leads only to a quick read and discard by dealers and a repeat of breaches the following year.

Multiple consultations have been conducted. CBC's Market Place mystery shopping experiences showed that the advice industry is deceiving and failing investors. An analysis of complaint data shows the fundamental weaknesses of the suitability regime. It has been over a decade since the Fair dealing Model (FDM) was first proposed. The adverse impact on Ontarians of NOT imposing a fiduciary duty is obvious. The status quo is not a viable option.



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Canadian retail consumers need increased protection when dealing with the financial planning industry, according to a report released March 26, 2013 by the Public Interest Advocacy Centre (PIAC) entitled, [Purse Strings Attached: Towards a Financial Planning Regulatory Framework](#). The report reveals that the pace of reform has been slow for an industry entrusted with the retirement security of Canadian financial consumers. "It's time all employees of the financial planning industry in Canada face the reality-they need to employ a uniform standard of care for investors, complete with a full disclosure of how they're being compensated," noted Jonathan Bishop, co-author of the report. [The research reveals Canadian consumers are potentially leaving thousands of their retirement dollars in someone else's hands by not being fully informed](#). The report concluded that the time remains ripe for provincial consumer and finance ministries to work towards a regulatory framework for financial advisors. The report is available at: http://www.piac.ca/files/pursestrings_attached_final_for_o.ca.pdf

On October 14, 2013, FINRA issued a [Report on Conflicts of Interest](#). The report summarizes FINRA's observations following an initiative, launched in July 2012, to review conflict management policies and procedures at a number of broker-dealer firms. The report focuses on approaches to identifying and managing conflicts of interest in three broad areas: enterprise-level conflicts governance frameworks; new product conflicts reviews; and compensation practices. The sheer number and nature of conflicts-of-interest is breathtaking as is the potential harm to investors.

In [Should Canada's financial advisors be held to a higher standard?: Research paper \(Jan 2015\)](#) <http://dtp.lib.athabasca.ca/action/download.php?filename=mba-15/open/punkon-aprj-final.pdf> the authors conclude "The implementation of a fiduciary standard would have widespread implications for the financial industry, as advisors would be required to ensure that all recommendations were in the best interest of their clients, including the minimization of all fees and expenses, which is typically at odds with the advisor's goal of maximizing revenue from a client account. " We agree with this. It is only a disruptive change that will elevate advice giving to the professional status it deserves. Constantly tinkering around the edges is a loser's game.

"In my opinion fiduciary duty is an established legal principle and legislating fiduciary responsibility for sellers of financial products and advice (regardless of title) should minimize the number of issues today."

2. Rein in use of misleading Titles The improper titles and designations within the investment advice industry is a major cause of confusion for small investors. Such titles lull retail investors into a false confidence. There are far too many Advisors, Vice Presidents, Seniors Specialists etc. that are really just salespeople not the fiduciaries investors assume. An unusual number of titles are aimed at misleading the elderly. It is unfair that regulators allow the use of misleading titles to deceive the public into placing their trust and their life savings in the hands of a sales person unqualified to give financial advice. We recommend that the OSC rein in these misleading monikers by



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ensuring that all sellers of financial products and advice are held to a fiduciary accountability.

3. Introduce an Investor Restitution Fund Restitution is the top priority for investors who suffer losses because of violations of the Securities Acts. The status quo is just not working – the published SOP does not, but should, address this long standing issue. We recommend that the OSC add investor restitution initiatives to its 2016 priorities. 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 as is the case in several other provinces. It should be noted that OBSI has encountered a record number of Name and Shame cases and in its latest Annual report cited the developing issue of **low balling** restitution settlements. The OSC would do well to look to the Autorité des marchés financiers (AMF) with regard to aggrieved investor restitution.

4. Abandon the Equity Crowdfunding initiative We do not see Equity Crowdfunding as a priority. As demonstrated in the SIPA Comment letter we view equity crowdfunding as negative for Main Street Ontario investors. The scheme is reminiscent of the ill fated LSIF's misadventure but without any tax incentives. Equity Crowdfunding will also amplify risks, cause harm to seniors and unsophisticated small investors/trusting seniors and increase fraud potential. It is inevitable that crowdfunding will lead to public scandals and well publicized horror stories. This constitutes a major risk for retail investors but also the OSC will be exposed to immeasurable reputational risk for allowing an exemption publicly rejected by all Advocacy and Consumer groups.

5. Treat Regulatory Arbitrage as a systemic Risk Wealth Management is a strategic goal of the three main pillars of the financial services industry – banking, insurance and investments. It is clear that arbitrage is growing as all pillars are competing for the same demographic. Regulatory arbitrage often leads to a race to the bottom as has already happened with banking Ombuds complaints (TD/RBC Banks). Such arbitrage contributes to unfair and disorderly financial markets. Retail investors are always the big losers in these regulatory arbitrage situations. Consideration should be given to bringing Segregated funds under securities regulation as this is a major cause of regulatory arbitrage. One constructive suggestion that keeps coming up would be to merge FSCO with the OSC to provide better 360 degree knowledge of financial system issues in Ontario. Given the recent Auditor General report on FSCO operations, the timing is right for such consideration.

6. Focus on Seniors Issues Seniors are more dependent than ever on their own investments for retirement. Investment dealers are developing and offering a variety of new products and services that are intended to generate higher yields in a low interest rate environment. It is imperative that firms are recommending suitable investments and providing proper disclosures regarding the related terms and risks. With the dramatic increase in the population of our nation's seniors, it is critical that securities regulators work collaboratively to make sure that senior investors are treated fairly. The culture of



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compliance at firms is key to ensuring that seniors receive suitable recommendations and proper disclosures of the risks, benefits and costs of any investments they are purchasing and have a fair dispute resolution mechanism. Clear standards and robust enforcement are critical investor protections that should be top of mind for 2015-2016.

There are many other regulatory issues facing small investors but we believe these are the top 6.

Regulatory bodies exist to safeguard trust in the system. Carping and criticism leveled at a regulator by a regulated industry and its lobbyists are not only to be expected, their absence is cause for concern. This isn't to suggest an autocratic approach, just that the axiom endures: "You can't please all of the people all of the time.". By and large, the proposed priorities do address key investor issues and opportunities. The investment industry needs guidance, finality and progress more than it needs perfection.

The OSC must distill and clarify the underlying principles so that they become a directional compass for market participants and stakeholders. A complex journey cluttered with many competing players can only be navigated with a clear eye at the helm. Be bold. Articulate the vision, simplify and hold firm. Faster progress and better outcomes will result.

If regulators have the intention of protecting investors it is absolutely essential that the deception be halted and the providers of financial products and services be held accountable. Failure of the regulators to accomplish this will result in Canadians continuing to lose their life savings whne trusting the industry to look after their best interests.

SIPA agrees to public posting of this Comment Letter.

We would be pleased to discuss our comments and recommendations with you in more detail at your convenience.

Sincerely,

Stan Buell,
President
Small Investor Protection Association