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May 27, 2015

Ontario Securities Commission
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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

Submission by S. Fortier

I am pleased to have the opportunity to provide my recommendations to the Ontario Securities Commission regarding the proposed priorities for the fiscal year 2015-2016. I note that this year there will be an emphasis on retail investor protection. Here are my recommendations:

Increase enforcement and fines for suitability violations – “Wrist slap” penalties are clearly not working. I would recommend increasing penalties for abuse of vulnerable investors by 50% or more in order to enforce the message. It is vital that regulators impose penalties sufficient that investment dealers feel it on the P&L statement. The suitability standard is all investors have right now so at least its rules should be vigorously enforced. In addition, the whole approach to Know Your Client needs to be re-assed from the ground up. NAAF forms are severely limited by the embedded subjective terminology and the use of industry jargon used on these forms. Generic terms such as “moderate risk” are meaningless on their own. While investors may fit neatly into boxes labeled aggressive, moderate, or conservative, such categories ignore their response to short-term risk- that is, volatility-and their fear of the unknown. Risk is multi-dimensional. Behavioural aspects include fear (selling everything at the worst time) and greed (buying stocks / mutual funds after a huge rise). Loss capacity - the amount of money an investor can afford to lose without putting the achievement of financial goals in jeopardy is a critical consideration. Loss capacity assessment needs actual

income and expenditure data modeled against a proposed portfolio solution. This is rarely assessed as part of the suitability determination. I recommend that signed/dated KYC forms be time stamped and an original copy given to the client for retention.

Dramatically raise the minimum proficiency standards for those providing financial advice – The financial services industry has evolved from a transaction based industry to one that provides wealth management advice that can shape a client’s future retirement. It is therefore essential that the professional standards be raised so that robust solutions are provided to clients. In addition, there is a growing need to service retirees. According to Statistics Canada, 15.7% of Canada's population is aged 65 and older as of July 1, 2014. Thirty years ago, that percentage was 10%. The trend will continue. Complaints by and on behalf of seniors are soaking up large chunks of regulators' resources. About 30% of formal disciplinary hearings commenced by the MFDA between July 2013 and June 2014 involved seniors and other vulnerable groups, according to the *MFDA 2014 Annual Report*. Things are no better for IIROC-regulated firms. According to IIROC's 2013 Annual Enforcement Report, that SRO's most recent, 37% of complaints reviewed by the regulator involved seniors. And 40% of IIROC's prosecutions dealt with misconduct involving seniors. (Both SROs define a "senior" as someone who is 60 years of age or older.). There is clearly something wrong – some of the problem may be due to commission driven “advisors” but there is clearly a competency problem in responsibly managing de-accumulating accounts. We assume that the OSC will engage with the Committee examining the regulation of Ontario financial planners and advisors.

Prohibit banks and insurance companies from having their internal “Ombudsman” getting involved with securities complaints. Their only impact is to fool investors, delay decisions and wear them down so they have no energy left to complain to OBSI. The internal “Ombudsman” have no doubt kept many valid complaints away from OBSI with investors getting little or nothing in compensation via biased and conflicted dealer complaint handling systems.

Enforce title inflation It appears that clients definitely are influenced by designations. That point came through clearly when IIROC ran focus groups involving investors of all ages. In general, firms are responsible for ensuring that designations are up to standard and appropriate for the services being offered by their advisors. IIROC's guidance note on titles and designations specifically outlines four criteria for deciding the use of titles and designations. These include: considering the role and function the advisor is approved to undertake; the services and products that the advisor is approved to sell or advise on; the qualifications of the advisor, including his or her education and experience; and the actual role, function and office held by the advisor within the firm, whether or not that requires

IIROC approval. Yet, we constantly read in the press of “advisors” using terms like Retirement Consultant or Seniors Specialist. This misleads people and the practice should be halted by diligent enforcement.

Update dealer and SRO complaint handling systems to reflect contemporary standards of conduct Require that investment dealers provide complainants with the information necessary to make an informed decision on so-called dealer “substantive responses”. Complaint handling should be congruent with the rule to deal fairly, honestly and in good faith with clients.

Amend the Ontario Securities Act so that the MFDA and IIROC have the legal power to collect fines from individuals. The current system has little deterrence effect and is mocked by investor advocates and others. While IIROC collected 100% of fines and other penalties levied against firms across the country in 2014, collecting from individuals has been much more challenging for IIROC. Last year they collected only 17% of the penalties levied against individuals nationally. In much of the country, these people can evade payment by simply leaving the securities industry or by operating in an unregistered capacity. This is wrong. If an “advisor” breaks the rules and abuses the trust their clients have placed in them, they should pay the penalty. A system that would allow IIROC to pursue these individuals, even if they leave IIROC membership or leave the financial services industry entirely sends a clear, deterrent message – and just as importantly demonstrates the integrity of the regulatory system. Note that the government of Québec on the recommendation of the AMF, amended the *Act respecting the Autorité des marchés financiers (the AMF Act)* in June 2013. These amendments gave IIROC clear authority to seek court certification of their disciplinary decisions and enabled them to pursue payment as if the fines were decisions of Québec’s courts. Quebec and Alberta are two jurisdictions where they have been granted and have used the statutory power to register their disciplinary decisions. While collection rates for individuals vary significantly over time and based on the number and types of cases prosecuted, last year IIROC had the highest fine collection rate in Quebec - 59% - versus the 17% nationally. SRO’s should hold dealers accountable for the decisions of its “advisors” including when they cheat or defraud clients by selling them whacky or phantom investments off the books of the dealer. All uncollected fines after one year should be to the account of the sponsoring dealer – this will result in more attention to compliance and enhanced supervision.

Deal with misleading ads. These ads are tricking trusting Ontarions in placing trust where it is not warranted. See Fiduciary duty is a marketing illusion: Small Investor Protection Association Special Report
http://www.sipa.ca/library/SIPASubmissions/720_SIPA_Report_Deception_20150505.pdf

Prohibit IIROC from allowing salespersons from acting as executors or trustees. Incorporate regulations that would require that advisors assigned to vulnerable investors have a fiduciary duty and the necessary qualifications and experience to advise on such accounts e.g. RRIF (a de-accumulating account).

I definitely support the introduction of an incentivized Whistleblowing program. In the U.S. this has proven to be a very effective tool in exposing and prosecuting corporate wrongdoing.

I trust you will find this feedback useful in your deliberations.

I am providing permission to post this letter on your website for public viewing.

Sincerely,

S. Fortier

REFERENCES

Teasdale (CFA) on Suitability ,KYC and the fiduciary standard For those investors who want a detailed commentary on the shortcomings of KYC because of the industry transaction-based mindset should read the TAMRIS Special Report by portfolio consultant Andrew Teasdale ***Suitability, Minimum Standards & Fiduciary Duty in the Canadian Financial Services Industry*** available at http://www.moneymanagedproperly.com/New_Folder/technical.htm The document argues that the prevailing "Know Your Client" form cannot safeguard the suitability of a transaction because it cannot effectively relate the transaction to financial needs, existing investments, risk preferences or current risk/return relationships. It also reminds us that Canadian regulators need to deal with the client/adviser fiduciary relationship (sales commissions platform vs. unbiased professional advice), a movement rapidly gathering steam in the U.S., the U.K. and elsewhere.

The Costs and Benefits of Financial Advice "We assess the value that financial advisors provide to clients using a unique panel dataset on the Canadian financial advisory industry. We find that advisors influence investors' trading choices, but they do not add value through their investment recommendations when judged relative to passive investment benchmarks. The value-weighted client portfolio lags passive benchmarks by more than 2.5% per year net of fees, and even the best performing advisors fail to produce returns that reliably cover their fees." http://www.hbs.edu/faculty/conferences/2013-household-behavior-risky-asset-mkts/Documents/Costs-and-Benefits-of-Financial-Advice_Foerster-Linnainmaa-Melzer-Previtero.pdf

White Paper :Advisor Disguise/Deception This fact filled White Paper by respected investor advocate and former investment industry participant Larry Elford explains how Bay Street deceives investors about the integrity of advice provided. A real eye opener and MUST read. There is a need for professional unbiased advice and regulators need to take the bold steps that ensure investors receive it. Better disclosure, calls for enhanced investor education, more reports etc. are necessary but insufficient solutions to investor abuse. It's time to make the word "advisor" meaningful and respected. The retirement income security of Canadians depends on it. <http://www.investoradvocates.ca/viewtopic.php?f=1&t=193>

Historic Survey of Financial Services Professionals Reveals Widespread Disregard for Ethics, Alarming... -- NEW YORK, May 19, 2015 /PRNewswire/ --
 "...How severe is the ethical breakdown? An astonishing 22 percent of respondents say they have observed or have first-hand knowledge of actual wrongdoing in the workplace. On an individual level, a quarter of those surveyed say they would likely engage in insider trading to make \$10 million if there was no chance of being arrested. Employees with less than 10 years experience are more than two times as likely to use non public information than those with over 20 years experience, reporting 32 percent and 14 percent respectively". Situation in Canada is at least as bad. Getting rid of embedded commissions / conflicted advice, improving complaint handling and introducing whistleblowing will help reduce the carnage.
<http://www.prnewswire.com/news-releases/historic-survey-of-financial-services-professionals-reveals-widespread-disregard-for-ethics-alarming-use-of-secrecy-policies-to-silence-employees-300085343.html> Full report at
<http://www.secwhistlebloweradvocate.com/LiteratureRetrieve.aspx?ID=224757>

Whistleblowing: Understanding the Global Landscape

http://www.eversheds.com/documents/services/employment/Whistleblowing-Survey-Results-brochure_V15_pr.pdf

Investment Performance and Costs of Pension and other Retirement Savings Funds in Canada: Implications on Wealth Accumulation and Retirement (2008) :GOC <http://www.fin.gc.ca/activty/pubs/pension/ref-bib/jog-eng.asp>

