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Dear Mr. Day,

The Investor Advisory Panel is pleased to submit this Comment Letter regarding OSC Notice 11-771 – Statement of Priorities – Request for Comments Regarding the Statement of Priorities for Financial Year to End March 31, 2016.

The Investor Advisory Panel (“Panel”) was established to provide the Ontario Securities Commission (“OSC”) with its advice on investor protection. Our response to the OSC Statement of Priorities will focus on two OSC regulatory goals: *Deliver strong investor protection* and *Deliver effective compliance supervision and enforcement*.

Executive summary

2014 was a bad year for investors—so noted the Panel in our response to the OSC’s 2015 Statement of Priorities. At that time, we expressed our frustration with the slow pace of progress at the Commission in improving investor protection and implementing specific regulatory initiatives such reforms to titles, mutual fund compensation and a best interest duty. The 2015 Statement of Priorities, in the Panel’s view, focused too much on review and study in the absence of clear deliverables.

The 2016 Statement of Priorities is a significant improvement and the Panel welcomes the Commission’s focus on investor protection as well as its proposed initiatives and deliverables. The Panel is pleased to see listed among the priorities a best interest standard, compensation arrangements in mutual funds, regulatory compliance and enforcement, and understanding the needs of seniors.

Regulatory arbitrage

We are increasingly concerned about the dangers posed by regulatory arbitrage and urge the Commission to make this a priority.

All segments of Ontario's financial services industry are aggressively expanding their highly profitable wealth management businesses, competing for the same retail consumer. Each segment—insurance, banks, investments—has its own separate regulator, providing very different standards of investor protection. It is up to the consumer to navigate through these regulatory silos seeking the fair, consistent and robust investor protection that Ontario consumers have every right to expect but which, absent government and

regulatory action, does not currently exist.

Ontario securities regulators are introducing CRM's new cost and account performance disclosure. If they also move to eliminate compensation incentives like mutual fund embedded commissions which bias advisor product recommendations, it is reasonable to anticipate that regulatory arbitrage will become even more prevalent. It is already happening—there have been reports of a significant increase in segregated fund assets, a product not under Commission oversight or OBSI dispute resolution.

We urge the Commission to develop a robust and comprehensive action plan to address the risks of regulatory arbitrage. The plan should involve recommendations to the Ontario government that it reform financial regulation in Ontario so it reflects the realities of the marketplace, eliminating regulatory silos and creating a single consumer-centric investor protection regime for Ontario consumers.

The newly created Expert Panel set up by the Ontario government to review insurance regulation in Ontario offers the Commission a timely and appropriate forum for these discussions. The Commission's action plan to address regulatory arbitrage also needs to include its compliance and enforcement programs. It is essential that the Commission closely monitors the suitability of its registrants' product recommendations and ensures, through its oversight of the self-regulatory organizations, that they too make this a key element in their compliance programs.

We also urge the Commission to participate in and support the Ontario government's review of regulations relating to financial advisors and planners, a review intended to address, among other matters, key investor protection issues of advisor proficiency and the use of professional and business titles. It is simply unacceptable that anyone in Ontario today can call themselves a financial planner (or advisor, or seniors specialist, for that matter) with no formal training or proficiency requirements. This is unfair, both to industry professionals and investors. We support the Ontario government's important initiative and urge the Commission to make title reforms a key component accompanying its introduction of a best interest standard.

In addition, we continue to urge the Commission to make higher proficiency standards an investor protection priority. The proficiency level needs to be raised particularly given today's realities of complex structured products, market turbulence, and the growing need among seniors for expert pension management and asset de-accumulation.

Ontario investors ought to be able to count on an investor protection regime that ensures competent, well-trained advice givers whose use of business titles is properly regulated and controlled. This is not the case today and the Commission should make this a priority objective.

The pace of reform

We also remain concerned about the pace of reform, with one key environmental factor creating a possible barrier to meaningful change. As the SOP points out:

“Harmonization and Coordination needs to be key focus areas for the OSC given the international, national and interprovincial nature of the markets it regulates and because capital flows are not constrained by borders.The OSC is working with the Ontario Government and other participating jurisdictions to implement a cooperative capital markets regulatory regime to deliver more efficient and effective regulation of the capital markets. The OSC must balance the need to maintain an engaged and effective OSC regulatory presence while contributing to a smooth transition to a Capital Markets Regulatory Authority (CMRA) that addresses the needs of investors and market participants.

The Panel cautions that the Commission’s focus on the transition to a common regulator (Capital Markets Regulatory Authority) could lead to diminished capacity in the area of investor protection. We reiterate our concern that the Commission ought to focus its resources on Ontarians first and foremost and not be diverted and distracted by demands and resources required to participate in constructing a common regulator.

To that end, the Panel encourages the Commission to continue to act in the best interest of Ontario investors even if regulators in other jurisdictions are slower or hesitant to act. This is particularly important with regard to a best interest standard and reforms to mutual fund compensation.

Panel Comments on Specific Goals

Goal 1 - Deliver Strong Investor Protection

The OSC is strongly committed to delivering on its mandate to protect investors and proposes a series of priorities “designed to improve the alignment of the expectations of investors and the actions of their advisors and assist investors to more effectively meet the challenging environment they face.”

Putting the Interests of Investors First

The Panel is pleased the Commission has identified “Advance regulatory reforms that put the interests of investors first” as a priority issue. We also recognize the commitment to developing and evaluating regulatory provisions to create a best interest duty and to completing an analysis of approaches for doing so.

A best interest standard will require the advisor to be the true agent of the client, putting the client’s interests first. This is a basic first step in investor protection and it is long overdue. We support the immediate introduction of a best interest standard to protect Ontario investors who expect their advisors to place their interests first.

The Panel expects and urges the commission to be in a position to recommend and clearly lay out a specific course of action for introducing a best interest duty by spring 2016.

Develop and evaluate target regulatory reforms under NI 31-103

As part of its action plan to put investors first, the OSC will seek to develop and evaluate targeted regulatory reforms under NI 31-103 to improve the advisor/client relationship. The Commission will also finalize its analysis of advisor compensation practices and address practices that are inconsistent with current regulatory requirements.

The Panel has consistently called for action to improve proficiency and training, to address conflicts of interest, and to deal with issues of titles. In the past, we have strongly recommended that the introduction of a best interest standard be accompanied by reforms regarding titles and specific proficiency requirements that support the use and maintenance of such titles.

Business titles and designations must be meaningful and representative of an individual's proficiency. Unfortunately, today's regulatory regime does not ensure that this is the case. Until regulators set out clear rules, investors will continue to be, at best, confused and, at worst, badly misled. This is also unfair to the many industry participants who deserve recognition and respect for their own high professional standards.

In 2013, the Panel supported the Commission's commitment to work with standard setters to advance registration and proficiencies. We emphasized the need to set a high standard of education and proficiency for advice providers. We called on the OSC to work with the self-regulatory organizations to encourage them to undertake a long overdue review of the educational and professional standards for their registrants. The existing standards are outdated, in some cases dating back decades, and reflect a sales culture. They have also fallen behind the norm set by the U.K. and Australia.

Last year, the Panel expressed disappointment that no priority was given to proficiency and standard setting in the 2015 Statement of Priorities.

In this year's Statement of Priorities, the Commission acknowledges that:

A well-functioning investor/advisor relationship is critical to the economic well-being of Ontarians and ultimately to achieving healthy capital markets....Better alignment of the interests of firms and investors can be achieved by improving standards of financial advice, raising competency and increasing transparency regarding financial advice.

The Panel fully supports making matters of proficiency and titles under NI 31-103 a priority. We also urge the OSC to work with SROs to raise their standards on proficiency. Right now, they are too low.

The practice of compensation among advisors is an extremely important issue that the Panel has commented on in past Statements of Priorities. The Panel urges swift compliance or enforcement action on the proposed analysis of compensation practices to address any it identifies as inconsistent with the current standards.

Reviewing compensation arrangements in mutual funds and empowering investors through better disclosure

The Commission has identified as a priority issue: “Determine what regulatory action is needed to address embedded commissions and other types of compensation arrangements and improve retail investment product disclosure.”

Embedded commissions should be eliminated altogether—the Panel has repeatedly stated this in its responses to past Statements of Priorities and elsewhere. Embedded trailer commissions represent a clear conflict of interest and are totally inconsistent with a best interest standard because they align the commercial interests of the fund manufacturer with those of the advisor instead of aligning the interests of advisors with clients. There is clear and compelling evidence that current compensation practices lead to biased product recommendations. There is also no correlation between these fees charged and the advice or services offered: they do not serve the needs of investors.

We recommend regulators prohibit the payment of embedded trailer commissions. As we’ve stated previously, other jurisdictions have already moved to eliminate conflicted remuneration and the OSC needs to follow suit. In the UK, the FCA recently commissioned independent research that clearly indicated the absence of an advice gap and demonstrated less bias in advisor product recommendations. The evidence shows that investors are benefiting.

The Panel looks forward to the Commission moving ahead to address these issues now.

Improve Education, Outreach and Advocacy for Investors

The Commission has identified as a priority, “Advance investor protection and support to investors by expanding the OSC’s investor engagement, education and outreach.”

The Panel generally supports the directions identified for the Office of the Investor. The Commission specifically says it will seek to “Obtain a better understanding of investor issues and needs through targeted research, seminars and roundtables” and respond to issues identified at a September 29, 2014 seniors’ roundtable, which was hosted by the Panel in partnership with the Office of the Investor. We support using the findings from the roundtable to better understand and address seniors’ issues. These insights will also inform the Panel as we identify our own priority areas later this year.

Seniors are particularly vulnerable to unsuitable investment advice and financial abuse because many are reliant on their investments for retirement. Many Canadian and American regulators recognize and have made the protection of seniors a regulatory priority. For example, the SEC and FINRA released a full report in April on observations and practices identified during their examination of how firms conduct business with senior investors. Areas of focus include types of securities purchased by seniors, suitability, training of brokerage firm representatives, marketing and the use of designations such as “senior specialist.”

The Commission should also set clear and specific deliverables in its own policy development, compliance and enforcement activities.

Goal 3: Deliver effective compliance supervision and enforcement

The OSC states, “effective compliance and strong enforcement are the cornerstones of protecting investors and fostering confidence in capital markets.” The Commission commits, as part of its core work, that it will “continue to undertake targeted compliance reviews of high risk and new registrants, specifically, online advice and portal business models.” The OSC also states it will “conduct targeted prospectus and continuous disclosure reviews of issuers, investment funds and structured products that respond to market developments and product innovations, and publish OSC staff guidance as warranted.”

While we are generally supportive of the Commission's Compliance and Enforcement priorities (see below for our detailed comments), we do have concerns that additional or expanded activities (exempt markets, crowd funding, seniors) may undermine current compliance and enforcement efforts, diverting resources and focus away from key investor issues like suitability assessments.

We urge the Commission to focus on compliance and enforcement of unsuitable investment advice with regard to their own registrants and the registrants and firms regulated by the self-regulatory organizations that they oversee. We noted with concern the findings of the Oversight Review Report of the Investment Industry Organization of Canada (December 4, 2014) which found failures to investigate allegations of unsuitable recommendations, including incomplete assessments to determine whether the firm effectively supervised its advisors, and insufficient compliance suitability procedures, including advisors recommending high risk products across clients. The Commission's 2014 compliance reviews of exempt market dealers also revealed high levels of non-compliance with suitability standards.

Unsuitable investment advice is the number one complaint at the Investment Industry Regulatory Organization of Canada (IIROC), the Mutual Fund Dealers Association, and the Ombudsman for Banking and Investments (OBSI). Better regulatory compliance and enforcement is urgently needed.

Enhance Compliance through Effective Inspections, Supervision and Oversight

The Commission has identified as a priority issue, “protect investors and foster confidence in our markets by confirming compliance with our regulatory framework.” To that end, the Commission will undertake targeted compliance reviews of high risk and new registrants, specifically online advice and portal business models.

The Panel welcomes this priority but recommends the OSC adopt a stronger and clearer compliance focus on seniors' issues, in line with the environmental challenges identified. We continue to urge OSC staff to conduct compliance sweeps on business titles aimed at seniors, free lunches, and marketing material aimed at seniors (issues also identified in the SEC/FINRA report). We continue to recommend the OSC and the Office of the Investor

make seniors' issues a formal priority with clear deliverables and timelines and to communicate to the investing public how and what they propose to do.

The Panel also expressed its concerns about the effects of a crowdfunding exemption on investors in its submission last year. Should a crowdfunding exemption be approved, it is imperative that the OSC monitor crowdfunding activity closely and ensure effective compliance and enforcement of OSC rules.

Enhance compliance through effective inspections, supervision and oversight - Exempt market oversight

The Panel has grave concerns about the expansion of the exempt market and regulators' ability to strike the right balance between access to capital and investor protection. If regulators continue to expand retail investor access to the exempt market, we believe they must place a higher priority on effective compliance review and supervision of this market. OSC compliance reviews of exempt market dealers have already revealed a high level of non-compliance with the suitability requirement. To increase surveillance activities by Commission is a significant undertaking from the standpoint of resources and expertise. If this is not done well with adequate resources assigned, investors are truly at risk as the exempt market expands.

Earlier Identification of Fraud and Other Violations

The OSC will complete consultations on a whistleblower program as part of its effort to deter misconduct through more timely, actionable information.

The Panel considers the OSC's Proposed Whistleblower Program to be in the interests of investors in Ontario and we support the proposed framework presented by the OSC in Staff Consultation Paper 15-401.

We look forward to reviewing future iterations of the policy and understand that a successful program will enable the OSC to learn of wrong-doing on a timely basis and motivate registrants to self-report misconduct.

Timely, Fair and Efficient Adjudication

The OSC states that it "will improve its case management and adjudicative processes through more transparent policies, practices and procedures and more timely issuance of its orders, decisions and reasons."

We support this.

Make dispute resolution a priority

Regulators must provide Ontario investors with access to timely, independent and binding restitution. The OSC must put the issue of restitution back on its list of priorities.

Although robust enforcement policies are important to the public's perception of market integrity, we believe that individual investors are primarily concerned with being compensated and secondarily concerned about general deterrence and penalties for securities violations on a broader level. As we have stated before, an enforcement program that focuses only on market integrity without addressing investors' interests in compensation is one-sided, in our view. A robust enforcement program should be based on both preventative and remedial measures.

We recommended last year that the OSC implement recommended steps to ensure fair, timely and independent complaint handling, enforcement, and restitution. The most urgent is intervention by the OSC in response to industry attacks on the key component in investor protection: the Ombudsman for Banking Services and Investments. During the past year, the Panel has conveyed its grave concern to the Commission about the industry's refusal to accept OBSI's dispute resolution recommendations—concerns exacerbated by recent reports of incidents of firms “lowballing” OBSI compensation recommendations. Addressing problems at OBSI must be a Commission priority.

The Panel also urges to Commission to consider empowering self-regulatory organizations like IIROC to collect fines from former registrants who are no longer working in the industry - a power which they do not currently have. Such a move could provide an additional deterrent to the industry as well as another layer of support for securities regulators at a time when enforcement should be a key priority.

Regulation of the fixed income market

A priority issue for the Commission is to enhance regulation in the fixed income market by increasing transparency, improving market integrity and evaluating access.

In its response to the 2015 Statement of Priorities, the Panel expressed concerns over the regulation of the fixed income market and the fact that the priorities made no reference to a review or any other recommendations, nor had any research or review been made public at that time.

Robust regulation of the fixed income market is a priority for investors. Hence, the Panel is pleased to see this again as a priority and that the Commission plans to address key issues identified in the fixed income review, including requirements to increase post trade transparency

Conclusion

While the Panel feels the Commission has done a better job of addressing investor protection in the 2016 SOP, it is imperative that it move quickly to introduce a best interest standard. The time for study and review has passed—the time for action is here. We urge the Commission not to allow itself to become distracted by its heavy regulatory agenda or dissuaded by lack of support from other regulators as it addresses this critical issue. Rather, we urge the OSC to remain focused on finding ways to better protect Ontario investors now.

The Panel is confident the Commission can move forward with a best interest standard prudently and appropriately based on years of research and the experiences of other jurisdictions that have already moved forward. The evidence is clear—investors will be better protected and better served when a best interest is finally put in place.