January 11, 2016

BY EMAIL

Dear Sirs/Mesdames:

Josée Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Email: comments@osc.gov.on.ca

Re: Proposed OSC Policy 15-601 - Whistleblower Program (the "Proposed Policy")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on the Proposed Policy, as well as respond to the specific questions set out below.

As noted in our comment letter on the initial consultation paper, we support the principles behind the proposed whistleblower program which is intended to encourage persons to report knowledge of possible serious breaches of securities law to the OSC.

We have been considering the concept of an award eligible outcome, which is defined as one of the specified orders resulting in the imposition of total monetary sanctions against, and/or the making of voluntary payments by, one or more respondents in an amount of $1,000,000 or more. We believe that a lower threshold of $500,000 may be appropriate in determining eligibility for an award, particularly as it relates to transgressions made by employees of a smaller sized firm. Potential whistleblowers providing information that protects the capital markets may, notwithstanding any anti-retaliation provisions, be subject to reprisals and a monetary award may be the only compensating factor. In addition, we note that in order for a payment to be made, the appeal period must have expired or the right to appeal must have been exhausted, which in the ordinary course would take a number of years. The length of time a whistleblower must wait to receive funds (during which time a whistleblower whose identity has become public may find it difficult to obtain alternative employment) may be a deterrent in providing relevant information to the securities regulatory authorities. Consideration could be given to making a payment of a portion of the award at the positive conclusion of the initial

[1]The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 135,000 members in 151 countries and territories, including 128,000 CFA charterholders, and 145 member societies. For more information, visit www.cfainstitute.org.

proceeding or payment of monetary penalties, which would not be subject to clawback in the event an appeal is ultimately successful.

The quantum of the award is proposed to be set at between 5 and 15% of the total monetary sanctions imposed and/or voluntary payments made. While it is helpful to a potential whistleblower to have a framework for any potential award, we believe that there may be extenuating circumstances in which an individual whistleblower should be entitled to an award greater than 15%. As noted above, a whistleblower could suffer reputational damage which would make future employment difficult, and the monetary caps may not be sufficient compensation. For example, a higher percentage could be paid out in the event of a smaller monetary sanction (e.g. $500,000) to provide sufficient financial incentive for potential whistleblowers to come forward. In the event the caps are not adjusted, the damage suffered by the individual whistleblower should be a factor taken into consideration when determining the award quantum.

In addition, instead of taking into account the degree to which a whistleblower is complicit in the conduct as a factor in decreasing the amount of any award, we prefer that culpable whistleblowers be excluded from award eligibility. Permitting such persons to benefit monetarily from their improper and/or illegal actions will not serve as a deterrent to similar action in future.

We continue to believe that confidentiality for participants in the program will be the key to its success. For matters involving registrants that are also regulated by an SRO, it will be important for OSC staff to co-ordinate with staff at the applicable SRO to ensure that anonymity is not comprised. The protections provided to whistleblowers under the rules of the relevant SROs should be harmonized with those of the OSC.

The strength of the anti-retaliation provisions will also be important to potential whistleblowers and strong legislation in this area is imperative. Without the latter protection, potential whistleblowers who report internally but who choose not to report further to the OSC would be disadvantaged, thus discouraging the internal reporting to compliance which is a core function of our markets.

Specific Consultation Questions

1. *Do you agree with in-house counsel being eligible for a whistleblower award? If not, why?*

With respect to award eligibility, we understand that in-house counsel may be eligible for an award in certain circumstances, provided the information is not obtained through a communication that was subject to solicitor-client privilege. Allowing in-house counsel to be eligible, but only with respect to certain limited information, might result in additional complexity.

2. *Is the 120 day period relating to the timing of internal reports as set out in section 16 of the Proposed Policy an appropriate time limit?*

We agree with the proposal that the Commission will consider the timing of a report due to the failure by a whistleblower's employer to respond to an internal report provided that not more than 120 days have passed since the initial internal report. The employer organization should be given sufficient time to collect, analyze and form a conclusion based on the allegations made. In larger organizations, committees and/ or board meetings may have to be called in order for such decisions to be finalized, and the 120 day period should be sufficient time in which to do so.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Michael Thom*

Michael Thom, CFA
Chair, Canadian Advocacy Council