

INVESTOR ADVISORY PANEL

May 27, 2019

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Dear Mr. Day,

RE: OSC Draft Statement of Priorities for 2019-2020

The members of the Investor Advisory Panel (IAP) welcome this opportunity to respond to the *Ontario Securities Commission Statement of Priorities for 2019-2020*. The IAP is an initiative of the Ontario Securities Commission (OSC) to enable investor concerns and voices to be represented in its rule making and policymaking process.

Almost exactly a year ago, the IAP described the OSC's Statement of Priorities for 2018-2019 as "a well-conceived, thoughtful and aspirational document" that identified and prioritized many watershed initiatives. We particularly appreciated the focus in last year's Statement of Priorities to strengthen investor protection – including commitments to reform titles and proficiency requirements, to maintain support for the Investor Office, and to assume oversight of syndicated mortgages. We did chide the OSC for not advancing several longstanding investor-protection initiatives more quickly, but overall our comments were generally complimentary and broadly supportive.

Regretfully, we are unable to offer the same level of endorsement and approbation for the OSC's draft Statement of Priorities 2019-2020 (SoP).

Upon reading the SoP's proposed key priorities for the coming year – to promote confidence in Ontario's capital markets; reduce regulatory burden; facilitate financial innovation; and strengthen the OSC's organizational foundation – we were taken aback by the glaring omission of the first key priority from last year, namely: deliver strong investor protection.

Given the OSC's statutory mandate, we believe delivering strong investor protection necessarily must be a perennial key priority of the OSC. It should be a priority that cannot be set aside or eclipsed by other goals, even in the face of competing

imperatives. And while we appreciate that the OSC has a difficult and unenviable task in balancing the interests of multiple stakeholders, we maintain the OSC must commit itself to ensuring that all other initiatives be designed to co-exist with strong investor protection.

To be clear, we do support the SoP's commitment to improve the retail investor experience. However, this focus on investor experience rather than investor outcomes is disconcerting, as it makes unclear whether investor protection will remain the essential lodestar for the OSC in the months and years ahead. This is a critical issue, especially when the Commission increasingly is being called upon to address a shifting marketplace and adopt new and additional priorities.

The IAP believes investor protection always needs to be front and centre in OSC policymaking and we encourage the Commission to reconfirm the centrality of investor protection to all activities of the OSC by reinstating it as a key priority – indeed, the first priority – in the final version of the SoP.

Specific comments on initiatives

We note that, despite the omission of investor protection as a key priority, the draft SoP includes several investor-centric initiatives and we address those in the balance of this comment letter, as follows:

Continue Developing and Consulting on Client Focused Reforms

In 2018, the OSC and its CSA partners made significant headway by bringing forward *Client Focused Reforms: Proposed Amendments to National Instrument 31-103 and Companion Policy 31-103CP* which infused best interest principles into the client-advisor relationship through a series of positive changes. In its draft SoP, the OSC has committed to moving this forward by integrating feedback from comment letters, consulting with the CSA and other stakeholders, and drafting of a second publication.

Notwithstanding that regulators have eschewed the adoption of an overarching best interest standard at this time, the current proposals would constitute an improvement relative to the status quo and we support their adoption. However, the time for consultation has long-since passed and it is now time to move forward with concrete changes that will protect investors and improve outcomes.

Continue CSA Policy Work on Mutual Funds Embedded Commissions

The OSC has committed to developing responses to the proposals published for comment in September 2018 with one planned outcome: to develop and publish for comment revised proposals. We regret that elimination of DSCs is not achievable at this

time but we encourage the CSA to move forward quickly to ban the payment of trailer fees on mutual funds purchased by investors through discount brokers.

Eliminating them will foster a more competitive and transparent investment industry in Ontario and ensure retail investors across the province achieve better outcomes.

Improve Experience for Retail Investors

Subject to our concerns mentioned above about clarity, we are pleased the OSC's proposed list of priorities includes improving the retail investor experience through initiatives to provide additional resources for investor education and financial literacy, and initiatives to make disclosure more meaningful and transparent.

While both education and disclosure are necessary and valuable investor protection tools, the current environment of scarce resources makes it especially important that the OSC pursue these initiatives 'smartly' – i.e., we encourage the OSC to put more emphasis on performance and accountability. All new education and disclosure initiatives should be subject to periodic review to determine if they are doing the job intended, including whether they incorporate the most current research and best practices. In developing and supporting these types of initiatives, the OSC must be clear and transparent about the results it wants to achieve and how they will be measured.

Support Transition to the CMRA

As the OSC works with its CMRA partners to enable a seamless transition to a new national model, we remain concerned that investor representation within the new authority remains inadequate in comparison to what is currently in place at the OSC.

Furthermore, at a time when eliminating regulatory burden and duplication are key priorities, it is increasingly unclear why the OSC continues to support transition to the CMRA (which at inception will not include such key jurisdictions as Quebec, Alberta and Manitoba) rather than joining Passport (which would then become a truly national securities regulatory forum).

We encourage the Commission to pursue discussions with the Ontario Government for the purpose of re-considering the merits of the CMRA project, as currently designed.

Regulatory Burden

The IAP endorses a cost-effective regulatory framework that supports innovation and protects investors. To that end, we strongly support the OSC's goal of reducing unnecessary regulatory burden across the investment industry.

We [have already](#) urged the OSC to put its focus first and foremost on eliminating administrative red tape as a means of reducing cost burdens and boosting efficiency for the industry. We reiterate that this initiative must be pursued in conjunction with and not at the expense of the OSC's investor protection mandate. Burden reduction achieved at the expense of effective and meaningful investor protection is too high a price to pay.

Engage with the Fintech/Start-Up Sector

The OSC has committed to assisting fintech businesses in meeting regulatory requirements, making it easier and faster to bring innovative new models to market. We broadly support this commitment. In particular, we are glad to see initiatives to encourage technologies that are reshaping and improving the investor experience by providing more choices offering consumers lower cost and greater transparency.

The one caveat we make is that all new technologies and innovations designed for retail market use or application must be examined to ensure, to the extent possible, that they do not pose an unmitigated danger to retail investors. In this regard, we are concerned that the specific innovation cited under this heading in the draft SoP – the newly launched alternative funds regime – may not have been adequately vetted.

Alternative investment funds are a new category of mutual funds designed to facilitate access by retail investors to alternative investments. By their nature these funds present more complexity, higher fees, less liquidity, and potentially greater and more opaque risks than conventional funds. But despite these characteristics, regulators have determined alternative funds can be offered to the public under the same framework as that now in place for conventional funds – even though the existing Fund Facts disclosure and mutual fund risk rating methodology were not designed to address the unique characteristics of alternative funds. We urge the OSC and its CSA partners to monitor this sector very closely and be prepared to move quickly to add safeguards if unintended adverse consequences arise.

Timely and Impactful Enforcement Actions

As in previous years, the OSC has set out several priorities in the area of enforcement, which we support, though we encourage more prioritization of investor redress and broadening of the concept of reciprocal enforcement.

For example, we remain concerned about the state of OBSI a year after the OSC had made working to address investor redress a priority. At that time, we also called for the OSC to be more aggressive in pushing for steeper punishment for securities fraud through the pursuit of criminal prosecutions and substantial prison sentences. We also asked the Commission to ensure that the necessary resources and personnel are

directed towards identifying and apprehending fraudsters. We once again encourage the OSC to consider these comments as it seeks to protect investors.

The IAP also reiterates [our earlier recommendations](#) that the OSC work to break down regulatory silos for the purpose of making enforcement more effective across all areas of financial services. To do this, we continue to recommend that the OSC initiate discussions with all CSA members and other financial services regulators in Canada to implement a process for automatically and instantly applying bans and suspensions across all provincial boundaries and all regulatory jurisdictions.

Finally, in the area of continuous disclosure, we [echo earlier comments](#) and urge the OSC to meaningfully address persistent deficiencies that are evident over the last decade. While we do not question the OSC's and CSA's commitment to addressing the problem, the numbers over the years show no improvement. Accordingly, we recommend that an examination and re-evaluation of current methods and controls be undertaken by the OSC, preferably in conjunction with the other members of the CSA. This would, incidentally, go a long way to supporting the desired outcome of using data analytics to address market conduct issues.

We thank the OSC for this opportunity to comment on its draft Statement of Priorities for 2019-2020, and we look forward to continued dialogue on how the Commission can best advance its investor protection initiatives.

Sincerely,



Neil Gross
Chair, Investor Advisory Panel