

INVESTOR ADVISORY PANEL

December 18, 2023

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
E-mail: comments@osc.gov.on.ca

RE: OSC Notice 11-798 — Statement of Priorities – Request for Comments Regarding Statement of Priorities for Fiscal Year 2024-2025

The Investor Advisory Panel (the “Panel”) welcomes this opportunity to comment on the Ontario Securities Commission’s (“OSC”) draft [Statement of Priorities](#) for the fiscal year ending March 31, 2025. The Panel is an initiative of the OSC to ensure investor concerns and voices are represented in the OSC’s policy development and rulemaking process. Our mandate is to solicit and articulate the views of investors on regulatory initiatives that have investor protection implications.

Overall comments

Investor protection lens

The Panel commends the OSC on bringing an enhanced investor protection lens to this year’s Statement of Priorities.

However, it is the Panel’s view that two of the purposes that are core to the OSC’s mandate¹ — “providing protection to investors from unfair, improper or fraudulent practices” and “contributing to the stability of the financial system and the reduction of systemic risk” — do not figure prominently in the Statement of Priorities. Given that these purposes are core aspects of the OSC’s mandate, and that the OSC is required to balance the various purposes of the Act,² they should be focused upon within the Statement of Priorities and the OSC’s six-year strategic plan.

¹ *Securities Act*, R.S.O. 1990, c. S.5, s. 1.1.

² *Ibid*, s. 2.1.

Number of priorities

The Panel commends the OSC on including fewer priorities in its Statement of Priorities than in previous years. However, sixteen priorities is still a considerable number, especially given that these priorities are above and beyond the OSC's core activities, which are themselves extensive.

We understand that it may be challenging for the OSC to pare down the number of priorities, and would recommend that the OSC rank them in order of importance and prioritize the highest-ranking items as it executes on the listed initiatives.

Similarly, we understand that it may be challenging for the OSC to achieve all of its priorities over one year, and would recommend that the OSC set a multi-year time frame for achieving them. This approach would ensure the OSC and stakeholders do not lose sight of the priorities and continue to track them in next year's Statement of Priorities.

Tracking performance

The Panel commends the OSC on ensuring that Priority 1 includes a commitment to "Develop performance measurement frameworks with relevant KPIs to track progress against strategic goals and outcomes." Measurable performance indicators are a key enabler to tracking progress.

The Panel would advise the OSC to apply a similar framework to all of its priorities. In our view, the priorities would all benefit from specific, measurable goals and outcomes that the OSC expects to achieve and the proposed timeline for achieving them.

Comments on specific priorities

Priority 1: Develop and publish OSC strategic plan

The Panel understands that developing and publishing a six-year strategic plan will be a top priority of the OSC and an important undertaking in 2024. We would support the OSC in maintaining its investor protection lens in its planning process, and to placing the protection of retail investors at the centre of its objectives over the coming six years.

Priority 4: Assess implementation of Client Focused Reforms and consider impact of limited product shelves

The Panel suggests that the OSC collaborate with stakeholders — including the Canadian Securities Administrators, the Canadian Investment Regulatory Organization, registrants and investors — to understand the shelf-formulation approaches taken by registrants, particularly how the CFRs are affecting investors, and to measure whether the CFRs are achieving the objectives that the OSC set out to achieve with these reforms. It would also be helpful to understand if the CFRs have had any unintended consequences (for example, if firms have increased fees given additional costs of compliance, or have limited the shelf available to investors to minimize firm risk).

Priority 6: Study the Limitation of Advice in the Order-Execution Only Channel

The Panel is strongly supportive of this priority and would recommend that the OSC treat this priority as a multi-year priority and area of continued focus.

The Panel is concerned that unsophisticated investors can easily access complex and leverage-based investment products in Order-Execution Only (“OEO”) channels (such as leveraged ETFs, closed-end funds and split-share corporations), and that current limitations that disallow OEO firms from providing advice prevent investors from receiving timely information that could potentially protect them from investment losses. (We would reference the [Comment from Blair Wiley on December 22, 2022 regarding OSC Notice 11-797 Statement of Priorities - Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2024](#) under the heading “Key Priority 2.1 - Expand the Focus on Retail Investors Through Specific Education, Policy, Research and Behavioural Science Activities”)

The Panel recommends that the OSC evaluate what types of non-tailored advice could be most beneficial to investors and to consider additional measures that could be used to protect investors in the OEO context. These additional measures might include:

- Requiring OEO firms to publish clear risk warning ‘pop-ups’ and/or product disclaimers at the point in time immediately prior to investors placing orders — and requiring investors to acknowledge that they have read and understood such warnings. For example:
 - If an individual is about to engage in high-risk investing and is at risk of losing all of their money and more, a big red warning would pop up before the trade were completed;
 - Now that OEO platforms have been operational for several years, it might be helpful to re-examine the concept of model portfolios;

- Having regulators conduct spot audits on OEO platforms with respect to these specific warnings and disclaimers;
- Conducting a compliance review of ‘finfluencers’ to determine whether measures are needed to regulate their conduct; and
- Taking measures to reduce or restrict digital engagement practices in retail investing and the heightened risks of the gamification of OEO channels. Reference is made to the conclusion of the November 17, 2022 [OSC Staff Notice 11-796 - Digital Engagement Practices in Retail Investing: Gamification and Other Behavioural Techniques](#):

“Given the statistically significant findings derived from the [online randomized controlled trial] RCT, the Report recommends that regulators consider the implications of the findings, including whether any of the gamification and other behavioural techniques examined have attributes similar to recommendations and/or result in investor behaviour that is (on average) detrimental to investor outcomes, and if so, consider possible responses.

The Report also recommends:

1. collecting more data to see the impact of gamification and other behavioural tactics through leveraging data collected by digital trading platforms, or through other experiments,
2. collecting evidence and data on strategies to mitigate negative impacts of DEPs to determine if mitigation approaches are effective (e.g., adding friction points), and
3. exploring positive impacts of gamification and other behavioural techniques to increase investing knowledge and level of expertise.”

Priority 8: Enhance Information Sharing with the Canadian Public Accountability Board

The Panel supports enhanced information sharing with the Canadian Public Accountability Board (“CPAB”). As the Panel noted in its [comment letter to the CPAB](#) on its proposed rule changes, the Panel supports “improving audit quality by motivating audit firms to address audit deficiencies. It also supports increasing transparency so that investors and other stakeholders have the information they need to make informed investment decisions.”

Priority 9: Conduct Initiatives for Retail Investors Through Specific Education, Policy, Research and Behavioural Science Activities

In the OSC’s survey of the environment in which it operates, the Statement of Priorities discusses the technological evolution that the OSC has observed, including the advent of AI. The OSC makes the observation that “AI has the potential for misuse in deceptive practices and fraud.”

One of the actions set out at Priority 9 is the continuing implementation and evolution of the OSC Seniors Strategy. The Panel supports the ongoing research and work in the area of seniors and their relationship with AI, and recommends that the OSC consider the adverse impacts that seniors might experience by using AI.

Priority 10: Strengthen the Dispute Resolution Framework of the Ombudsman for Banking Services and Investments and Modernize OSC's Disgorgement Framework

The Panel has long supported the Ombudsman for Banking Services and Investments (“OBSI”) having binding compensation authority, and remains supportive of this change. A fair, efficient and accessible dispute resolution service is an essential element of an investor protection framework.

The Panel recommends that, as much as possible, OBSI’s binding process be developed with investors in mind. This means making the process as simple and easy for retail investors to follow as possible.

The Panel also supports the proposed amendments to the Securities Act, introduced in the Fall legislative session, which propose streamlining the OSC’s ability to distribute disgorged funds to eligible investors. We note that the Capital Markets Modernization Task Force (“Modernization Task Force”) observed that the \$350,000 limit on OBSI's compensation recommendation has not been increased since its inception in 1996. The Panel would advise the OSC to revisit this limit.

The Panel will be submitting a more detailed comment letter in regards to this key initiative.

Priority 11: Strengthen Oversight and Enforcement in the Crypto Asset Sector

The Panel strongly supports the OSC taking a leadership role in collaborating with other regulators on enforcement in the crypto sector. Crypto poses a systemic risk to markets and significant risk to retail investors.

We would encourage the OSC to bring this aggressive enforcement mindset to other areas as well. Enforcement is a key pillar of investor protection. Recent research³ has shown that there are opportunities to improve investor trust in capital markets in order to mitigate the risk that retail investors access unregistered trading platforms. The Panel is of the view that a more aggressive enforcement agenda would reinforce for investors that markets are fair — both in perception and reality — and would send a strong deterrent message to capital markets in Ontario and beyond, which would further the goal of capital formation.

³ Investors vs. Savers: Attitudes Towards Investing - A Survey of Canadians (osc.ca), p. 36.

To bolster its enforcement agenda, the OSC may want to assess and strengthen its enforcement resources, budget and internal-case reporting, with a view to increasing the number and types of cases it brings each year.

We would advise the OSC to explore adopting an administrative penalties or “ticketing” mechanism — similar to the one adopted by the British Columbia Securities Commission this year — to facilitate efficient enforcement and collections activities for relatively minor securities law infractions.

We would also encourage the OSC to consider adopting some of the Modernization Task Force’s [recommendations](#) to bolster the OSC’s collections powers, including its recommendation to limit access to drivers’ licences and licence plates if an individual or company fails to pay fines as ordered by the OSC or courts.

Priority 13: Facilitate Financial Innovation

As the Panel has noted previously, facilitating financial innovation should always be undertaken with an investor protection lens in mind.

The Panel believes that a secure open banking (“OB”) policy is one area where the OSC could act to foster innovation that impacts investors. Broadly, an OB policy would be focused on enabling financial advisors to view investors’ financial profiles holistically (by viewing their assets and liabilities across all financial institutions) to improve the quality of their advice and, ultimately, investors’ financial outcomes.

The Panel also believes that developments in AI provide significant room for financial innovation. The Panel would again urge the OSC to view such innovations from an investor protection lens, and specifically leverage the [SEC’s proposed conflict rules](#) exploring the inherent conflicts surrounding AI to inform its own work.

Finally, the Panel would advise the OSC to outline key success criteria that it aims to achieve as part of this priority. Moving away from open-ended language will help all stakeholders, including staff, to align and deliver on concrete targets.

Priority 14: Further Initiatives that Promote Capital Formation and Foster Competition

The OSC’s language in this priority currently reflects a concerning lack of attention to investor interests. For instance, the section states that the OSC will act in the “best interests of the capital markets in Ontario.” This “best interests” language, which is usually reserved to director or trustee obligations, suggests a prioritization of the capital markets over investor interests.

The Panel urges the OSC to ensure that any initiatives to promote capital formation and foster competition are undertaken with an investor protection lens, and that this aim is reflected in concrete action items and planned outcomes. It is the Panel's view that acting in the best interests of investors will ultimately serve the best interests of capital markets.

Conclusion

Lastly, we would add that the OSC's 2023 [follow-up report](#) on 2021 Value-for-Money Audit conducted by Ontario's Auditor General highlighted recommendations for improvements where the report notes there has been little or no progress made, particularly Recommendations 8, 10 and 11. We would recommend that priority be given to addressing those matters.

We hope these comments will prove useful to the Commission as it considers and sets its priorities for the fiscal year ending March 31, 2025. We would be happy to clarify or elaborate on our comments should the need arise.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ilana Singer', written in a cursive style.

Ilana Singer
Chair, OSC Investor Advisory Panel