

December 22, 2022

VIA EMAIL

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Re: OSC Notice 11-797 – Statement of Priorities - Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2024 (the “Consultation”)

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following general comments on the Consultation.

We are generally supportive of many of the priorities set out in the Consultation. We feel that the Consultation should be a meaningful way for the Commission to engage with stakeholders. However, without a longer consultation period, more insight into the process of creating and weighing competing priorities vis-à-vis the OSC’s mandate, and more substantive identified target outcomes and related KPIs, it is difficult for us to fulsomely comment.

In future consultations on priorities, we believe some explanation of priorities’ ties to the OSC’s mandate would be a useful addition, along with how the different aspects of the OSC’s mandate are being interpreted and balanced in identification and pursuit of priorities.

As a general comment, we are disappointed at the lack of new, specific investor protection initiatives included in the enumerated priorities, as well as the seeming lack of progress and indeterminate timelines for ongoing initiatives that relate to protection of investors. One example is the provision of OBSI with binding decision authority. Under the second goal stated in the Consultation under the banner of Strengthening Investor Safeguards, it is simply noted that the OSC will continue its efforts to strengthen OBSI

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors’ interests come first, markets function at their best, and economies grow. There are more than 190,000 CFA Charterholders worldwide in 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies. For more information, visit www.cfainstitute.org or follow us on [LinkedIn](https://www.linkedin.com/company/cfa-institute) and Twitter at [@CFAInstitute](https://twitter.com/CFAInstitute).

as an independent dispute resolution service. The next steps appear to be to once again consulting on how to effectively do so. The timeframes for this type of sorely needed regulatory improvement have been simply too long. We think these timelines can be improved with more meaningful engagement and clearer communication with stakeholders throughout the rulemaking process; not just as a “check the box” exercise, but as part of ensuring staff accountability for project completion.

We query why the key priorities set out in the Consultation are so heavily focused toward financial or capital markets innovation (which could be interpreted as increasing systemic risk), rather than innovation that could also serve to protect investors (which in aggregate is often a systemic risk reducer). We note that the second stated goal, being strengthening investor safeguards, references expanding efforts to strengthen investor protection, most of the key priorities throughout the Consultation point elsewhere.

With respect to the references to innovation throughout the Consultation, the focus seems to be concentrated on capital formation, and more specifically, initiatives intended to ease capital raising for *issuers*. We would have thought it would be more intuitive to focus on how innovation might be harnessed to serve *investors*—for example, by using digitization and emerging technologies to better protect them, or to solve coordinative challenges that could have benefits to both investors and issuers and other market participants. We also would prefer to see more specific information and accountability with respect to how ‘innovation’-themed policy and operational initiatives link to the actual stimulation of innovation that serves regulatory goals, beyond simply serving as promotional platforms for involved stakeholders and market participants participating in test environments or programs. In this vein, it would be helpful to have additional detail on these types of initiatives being pursued, their connection to regulatory goals, including information on the questions being asked, the technologies being explored, international comparators that are being examined, and the staff examining these questions from an investor-protection perspective. Information on the types of businesses and solutions staff are interested in pursuing over the longer term (again, with their connectivity to regulatory goals and priorities) would also be helpful.

We wish to comment on two of the specific key priorities. Under the first goal of building trust and fairness in Ontario’s capital markets, it is noted that the CSA published NI 51-107 *Disclosure of Climate-related Matters* (“**NI 51-107**”) for comment. NI 51-107 is currently paused as the CSA considers global changes in disclosure standards; it is our view that it should be unsurprising to staff that changes have occurred or have been proposed in other jurisdictions in the period since the proposed NI was released for comment, and we would prefer that the CSA push ahead with proposed improvements in continuous disclosure standards relating to climate matters, and amend the resulting NI as necessary for changes in other jurisdictions as needed in the future. With respect to investment funds, while CSA Staff Notice 81-334 provides helpful guidance as to sustainability and ESG-related disclosure practices for investment funds, and we are aware of related staff review of current disclosure and marketing practices, we remain concerned that in the absence of additional rulemaking that certain problematic marketing practices may lead to a loss of investor confidence in related investment fund and manager claims generally.

We strongly support the priority relating to incorporating Indigenous Peoples' issues and perspectives into CSA policy work and looking to improve ways to engage Indigenous groups. The initiatives are a great first step toward wider CSA initiatives on Indigenous reconciliation. However, the requirement under Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples* requires a higher bar than just consideration of Indigenous peoples: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." We would expect more explanation on how the OSC and CSA plan to consult and cooperate. We would also be strongly supportive of a broader regulatory focus on the promotion of diversity, equity and inclusion (and their attendant benefits) within the priorities and a broader constituency of registrants and market participants, rather than the narrow focus on regulatory organizations and issuer boards and management that currently exists.

Finally, we wish to comment on the conspicuous lack of priorities that follow from the recent implementation of the client-focused reforms under NI 31-103, which the registrant community has been heavily focused on implementing for the last two years. It has been stated more than once that various government agencies believed that issues arising from proprietary product shelves would be examined more closely, but to date, no further action resulting in a public report, guidance or proposed rulemaking has been taken. We feel that further direction and transparency is needed on the current status and future direction of this initiative, along with some report on whether the regulatory and industry effort in implementing these reforms is achieving the intended outcomes.

Concluding Remarks

While there are laudable goals and priorities contained in the Consultation, we believe additional focus on connectivity of priorities to mandate along with additional measures of accountability would improve stakeholders' ability to meaningfully engage in this process.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. The introduction to the Consultation emphasized that the OSC engages with investor advocacy groups directly to gain insights into investor needs, and we would be pleased to engage further. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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