Kenmar Associates

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The Secretary Ontario Securities Commission
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ONTARIO SECURITIES COMMISSION– Statement of Priorities Request for Comments Regarding Statement of Priorities for Fiscal Year 2024-2025

Kenmar Associates appreciate the opportunity to comment on the proposed OSC 2024-25 Priorities. Kenmar is an Ontario-based privately-funded organization focused on investor education via articles hosted at www.canadianfundwatch.com Kenmar also publishes *the Fund OBSERVER* on a monthly basis discussing consumer protection issues primarily for retail investors. Kenmar is actively engaged with regulatory affairs and participates in Public consultations. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, harmed consumers in filing investor complaints and restitution claims.

Executive Summary

In our view, the annual SOP exercise has become a performative exercise rather than a disciplined and thoughtful priority setting effort.

We are struck by both the number of 2024-25 priorities and how many of them could divert attention from core investor protection. Several initiatives have been ongoing for years, adding to an ever-increasing backlog of “to do” work.

We are taken aback by the disconnect between the retail investor protection related priorities proposed by the OSC and those of consumer advocates. It appears to us that the expanded OSC mandate has caused a number of core investor protection issues to be edged out by priorities in other mandates.

As in prior year commentaries, we are again concerned that many of the identified ‘priorities’ are not associated with objective actions, specific milestones/ completion dates or clear outcomes/metrics. The absence of objective targets makes it virtually impossible to gauge progress or hold the Commission accountable. The sage management adage that” *What gets measured, gets done”* applies here.

All of this activity is occurring while the OSC undergoes major organizational /cultural change, applies a relatively new fostering capital formation mandate, a consolidated SRO structure has being implemented, significant ESG related reforms are being demanded by stakeholders, the CFR regime is incurring significant bumps coming into force and new IT systems are being deployed (e.g. SEDAR).We are concerned that as staff and resources are spread across these many initiatives, the OSC will not be able to adequately attend to its most important mandate of all- protection of investors at a time when they face a significant number of headwinds.

The OSC should undertake a detailed review and consultation of its strategic approach to investor protection going forward. The U.K. Financial Conduct Authority (FCA) unequivocally places financial consumers at the centre of its mission. See *FCA Mission: Approach to Consumers* https://www.fca.org.uk/publication/corporate/approach-to-consumers.pdf (44 pages). Kenmar believe this discussion could lead to the OSC rethinking its approach to strategy, priority setting, regulation and investor protection.

Commentary on selected priorities cited

Our comments are limited to those proposed priorities that are intended to directly protect retail investors. Here are our comments/suggestions for the 2024-2025 priorities. Many are carryovers from prior years that have been sidelined or ignored altogether:

Develop and publish OSC Strategic Plan

The action : Assess and align core organizational enablers to ensure organizational programs, including a talent strategy, the investment in technology and data analytics, and operating models are designed to support the implementation of the strategic plan .

A strategic plan (STRAP) is a representation of vision, created to drive organizational change and transformation. What VISION has been adopted? What does the Mission Statement look like?

We are apprehensive that the strategic plan intends to deliver on its expanded mandate. The expanded mandate means more management time spent on mandates that not only may not support investor protection but may actually be in opposition. Furthermore, it defies logic that a Strategic Plan is being developed without active and early engagement with its most important stakeholder – retail investors. For the record, Kenmar Associates were never invited to engage as the Strategic Plan was being developed. See ***Involving consumers in securities regulation:*** J. Black LSE https://www.lse.ac.uk/law/people/academic-staff/julia-black/Documents/black18.pdf

The first signs of a change in strategy appeared with the OSC's break from the CSA to retain the toxic DSC sold mutual fund. The fact that the OSC, which chairs the OBSI JRC, has not provided OBSI with a binding mandate after this issue has been included in multiple SOP's spanning years, sends Main Street a message. Is senior/vulnerable investor protection not a strategic objective and socio-economic issue? - if it was, it would surely be included in the 2024-25 OSC SOP.

Kenmar have been pleading for a modern complaint handling rule for a decade but it never appears as a OSC priority.

The OSC essentially failed the AOG audit report and to date has not publicly disclosed how it plans to address the deficiencies which have cost retail investors

billions in lost retirement savings. Addressing the recommendations should be an integral part of the go-forward strategic plan. The OSC is well aware of the poorly funded investor advocacy community yet its cash rich Designated fund is planned to be diverted elsewhere.

We need not even comment on the numerous exemptions that have been granted to registrants and issuers over the past 3 years while investors waited for investor protection enhancements. Lately, even the minimum consultation time is going to be slashed 33% which can only diminish retail investor input. And, the OSC seems to be a willing enabler that would permit tens of thousands of Ontario mutual fund salespersons to use the controversial FSRA Financial Advisor title.

The OSC has lost the leadership role and respect it once had. We fear the new STRAP could widen the trust gap considerably. Thankfully, regulatory leadership has come from the AMF, IIROC and the MFDA.

If we judge the OSC by its actions and inactions, we are anxious over the Strategic Plan to be issued in the Spring of 2024. What will the Key Performance Indicators look like? If they are in any way tied to the proposed 2024-25 priorities, investor advocates should be ringing alarm bells. What data is the OSC using to drive strategy? Who is influencing strategy? - it certainly is NOT Main Street investors.

We quote from the consultation paper:

To gain a breadth and depth of perspective, we have consulted with key external stakeholders, including ***market participants, industry organizations****, and government bodies. Their valuable input is an essential part of shaping our strategy and ensuring that* ***we stay well-connected and aligned with our industry.***

How should investors react to such a proclamation? Efforts to enhance investor protection in Ontario have been undermined by a combination of government interference, industry lobbying and regulatory dissonance, according to an audit review of the OSC by Ontario's Auditor General.

At a minimum, the Strategic Plan will need to be supported by updated policies on independence, ethics. transparency, fairness, conflicts-of-interest, Code of Conduct and a set of organizational Values.

The Strategic Plan should be transparent on how it plans to reconcile the inherent conflict of interests between investor protection and fostering capital formation/economic development.

Ontario political leaders owe hard-working Canadians safe and secure retirement savings. The retirement savings of Canadians are not our country's economic development department. Inherently, the added mandates asks retail investors to foot the bill to promote Ontario economic growth and development. **We urge the OSC to press for removal of the *foster capital formation* mandate as it creates a material conflict of interest with investor protection**.

Kenmar are relieved to note that comments received on the proposed SOP will be taken into account in finalizing the Strategic Plan. We expect that this will result in material changes if our input is considered. Enhanced Complaint handling and senior/ vulnerable client protection along with a strengthened OBSI are our top implementation priorities for 2024-25.Our biggest concerns are that AED ,as proposed, will further disengage retail investors from their investments and that the fostering capital formation mandate will add significant risks to retail investors .

We plead with the Board to drive the OSC to retain its primary mandate and behave like a modern, independent securities regulator that puts investor protection at the center of strategic decisions.

Advance Work on Environmental, Social, and Governance Disclosures for Reporting Issuers

The Action: Continue development of a revised climate-related disclosure rule for reporting issuers (**other than investment funds),** based on the ISSB Standards with any modifications considered necessary and appropriate in the Canadian context

This priority really is now business as usual as the "action" plan suggests. Kenmar do support continued, ongoing development on this important disclosure issue.

Our primary interest is on investment funds. ESG is a growing consideration in retail investing today. Addressing investor protection can take on new meaning in markets that are being increasingly impacted by environmental, social and governance stresses. The Wild West of ESG fund disclosure / reporting has to end-better standards (and robust enforcement) are needed. It is necessary for the OSC to ensure that the names of investment funds and associated marketing are not misleading and that appropriate and enforceable standards are adopted for the use of the ESG label on an investment fund. Greenwashing must be eliminated.

See ***IOSCO outlines regulatory priorities for sustainability disclosures, mitigating greenwashing and promoting integrity in carbon markets***
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjEi5O-uN-CAxXLHjQIHdzZB3cQFnoECBIQAQ&url=https%3A%2F%2Fwww.iosco.org%2Fnews%2Fpdf%2FIOSCONEWS669.pdf&usg=AOvVaw1OZVb7p6f58-w7ZcjCyUa7&opi=89978449

Assess implementation of Client Focused Reforms and Consider Impact of Limited Product Shelves

The Action Conduct additional CFR sweeps, in conjunction with CIRO and the CSA, to determine understanding and compliance with the Know Your Client, suitability

and Know Your Product requirements of the CFRs and communicate the outcome to stakeholders.

Communicating outcomes of sweeps to stakeholders is necessary but **inadequate as a investor protection action**. Kenmar urge the OSC to closely monitor industry progress and ensure CFR regulations are adhered to by Dealers, especially KYC and conflict-of-interest provisions. A close liaison with OBSI and CIRO will help quickly identify emerging trends. Select high profile enforcement actions may be required to modify industry behaviour.

We recommend that a high priority be set on ensuring the CFR initiative is effectively implemented. This will require a dedicated OSC/CSA team to review and monitor, in real time, how Firms are applying CFR.

We already have evidence from the U.S. how Reg BI has gone astray. In Canada, we have seen how 3 bank-owned dealers have determined that proprietary product shelves are the way forward, a response that blatantly defies regulatory intent. A recent CFR-related audit revealed major problems related to conflicts-of-interest (the negative impact on client outcomes was not explored). The OSC/CSA response to this challenge has been disappointingly less than swift and impactful. The OSC must respond quickly, with intensity, to industry misinterpretations, direct breaches of the rules and subversion of regulatory intent or the CFR initiative will fail.

The action: Conduct further investigation, in conjunction with CIRO and the CSA, to consider the shelf formulation approaches taken by registrants and the decisions to rely on predominantly proprietary products.

Again, conducting further investigation does not improve client outcomes so is not really an *action*. Why do further research? In a November 2021 letter Ontario Finance Minister Bethlenfalvy asked the OSC to undertake a review and report back by the end of February 2022 with recommendations. The Report has not been made public. **The Ontario Govt. should release the OSC report prepared in response to this issue**.

The aspirational intentions of the OSC's CFR initiative could be undermined by the elimination of choice (and **competition).** Several of Canada's largest banks have halted sales of third-party investment products from their financial planning arms on the basis that new regulatory rules require advisors to have deeper knowledge of the funds they recommend to clients. Apparently, advisors can only cope with proprietary funds.

The OSC is concerned about what impact predominantly proprietary products shelves may have on client outcomes (e.g., higher fees and inferior performance) and other possible negative results may result if financial institutions ban third party products. *See* ***Proprietary investment funds and financial well-being***: Canadian Fund Watch: http://www.canadianfundwatch.com/2021/11/proprietary-investment-funds-and.html At a minimum, we have recommended that such Dealers fully disclose the limitations and risks associated with restricted shelves, be

constrained in their marketing language (e.g. can only provide *restricted* advice) and its Reps be required to use the title "sales representative" (and be prohibited from using the FSRA FA title). No doubt the secret OSC research Report is loaded with more good ideas.

Study the Limitation of Advice in the Order-Execution Only Channel

The Action: Consider, in conjunction with CIRO, whether OEO firms can provide non-tailored advice to meet the needs of DIY investors while not diluting the value of robust established advice channels so the two are not confused.

Once again, this sounds more like contemplation than affirmative action that will improve investor outcomes. If making useful information available to Main Street is positive, why should the OSC care if it dilutes the value of regulated investment advice? Regulated advisors should up their game to remain relevant and reduce conflicts-of-interest. Increasing competition will lead to better value propositions for retail investors.

Current CIRO-IIROC guidelines impose certain limitations on discount brokers. We have been interacting with CIRO to review these guidelines for some time.

The OSC believe that the present limitations on *advice* being provided by OEO firms may be preventing some information from being provided to DIY investors who are increasingly seeking advice from unregistered channels. Young investors are turning to online resources such as AI chatbots, social media influencers, investor-focussed bloggers, investment apps such as Wealthsimple and traditional media like BNN/ G&M to help manage their modest portfolios.

We recommend that the discount brokers be given more leeway to assist DIY investors to manage their portfolios. Discount brokers have a tremendous opportunity to democratize *advice* if regulators pave the way. Of course, any *advice* provided would not be personalized but the generic tools and calculators provided would enable better retail investor decisions.

Discount brokers have been a saviour for Canadians locked out of the full- service brokerage channel with its high minimum account sizes, high fees and conflicts-of-interest. The access to research ,low cost ETF's , real time information, numerous calculators , model portfolios , abundant self -help tools , Alerts, educational materials , account information including performance measurement and seemingly endless innovation have permitted DIY investors and those of modest income to better manage their investments.

As AI and increasingly creative financial planning Aps become available, more Canadians than ever will be able to bypass high-fee alternatives with increasing confidence. The OSC has an important regulatory and socio-economic role to ensure that vested interests do not prevent technology from blossoming to the detriment of Main Street Ontarians. The outdated "Order Execution Only" label will

need to be re-imagined so that discount broker clients can increase their capability to control their own financial destiny.

At the same time we encourage the OSC /CIRO to ensure discount brokers to improve uptime, enhance security/privacy and in particular, improve client complaint handling processes.

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

The action: Consider stakeholder feedback in the development of a final framework and proposed legislative amendments to provide an independent dispute resolution service, **such as OBSI**, with the authority to make binding compensation decisions .With other members of the Joint Regulators Committee and OBSI, continue to review, discuss and support progress of activities in response to the independent evaluation of OBSI's investment mandate.

A binding decision mandate for OBSI is definitely a high priority. The wording in the action plan is confusing. Are there OSC recognized independent dispute resolution services other than OBSI? Should investors assume that after due consideration, review and discussion there will actually be an OBSI with a binding mandate? We are not yet convinced. In any event, it appears unlikely any decision will occur during the 2024-25 fiscal year which is shameful.

The OSC has been analyzing frameworks for years with no deliverable outcome. There should be a target date for this important consultation. This lack of a timeline informs us there is no sense of urgency- paralysis by analysis rules the day.

By its inaction, we conclude that the OSC has determined it is not a priority to increase OBSI's compensation limit or establish a process for periodically reviewing the limit. The independent evaluation made 22 recommendations including increasing OBSI's compensation limit to $500,000 to align it with the limits found in other countries.

Ontarians have every right to expect a final decision by say, September 30, 2024. Investors seek and need an OBSI with a binding decision mandate and protocol to address systemic issues. It is time that the OSC leadership made the common sense decisions that will actually provide fair redress for harmed investors. It would be unconscionable for us to support this empty "priority" as written. **The OSC priority must definitively state that a binding mandate for OBSI will occur during the timeframe.**

The Action: Publish a proposed rule for public comment governing the distribution of disgorged amounts collected by the OSC and consider the feedback received on the proposed rule.

Disgorgement does not appear on investor advocates top 5 investor protection priority lists so we were surprised to see it on the OSC's priority list for 2024-25. No timeline for the planned consultation is provided and no figures are provided as to the expected dollar amounts. CIRO-IIROC have been working the disgorgement issue for some time and have held a public consultation. Kenmar support the initiative to rebate applicable collected disgorgement cash to harmed investors. [a similar plan consulted upon by CIRO/IIROC revealed that the actual collected dollar disgorgement amounts were much lower than revealed in settlements and cash distribution more complicated than believed.] Like so many of the priorities, we do not expect this one will positively impact retail investors in fiscal 2024-25. IF Dealer complaint handling rules are tightened up and OBSI is provided a binding mandate, the impact of distributing disgorged cash diminishes.

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

The Action: Continue programs to enhance investor education and financial literacy, including through the recently relaunched website. GetSmarterAboutMoney.ca that introduced artificial intelligence, enhanced accessibility, innovative design and behavioural science tools and insights.

While we do not disagree that there should be continuing effort on investor education and financial literacy, we would like to stress the critical need for that education to also feature Bay Street proofing education.

Kenmar suggest webinars, web materials, print literature, etc. that cover such topics as: How to use CRM2/TCR disclosures in decision making, Pros and Cons of a fee -based account, what to look for in an account statement, writing an effective complaint, what exactly is the suitability standard? , buying into an IPO - risks and opportunities , completing a KYC / Account opening form, understanding the impact of advisor compensation on advisor behaviour, how to use CSA registration check , avoiding Off Book transactions, crypto alerts etc. Such plain language materials will help counterbalance the risks associated with conflicted advice and scammers. The net societal benefit will be better investor outcomes, reduced client complaints and better retirement income security for Ontarians.

Strengthen Oversight and Enforcement in the Crypto Asset Sector

The Action: Apply regulatory obligations to crypto firms that provided a PRU [Pre-Registration Undertaking], pending completion of the registration or approval process

This strengthening of regulation is urgently required for this relatively new “asset class” - in our opinion, this is a most risky space as it appeals to younger investors and is full of problems. We support robust prosecution of Firms that mislead investors through false or misleading information in any information medium. In

some cases, the financial losses can be life-altering. The crypto space has seen its fair share of scandals so the application of regulatory obligations is welcomed.

Modernize Delivery Options of Regulatory and Continuous Disclosure Filings for Issuers

The Action: Consider stakeholder feedback in the development of the final amendments to implement an access model for certain continuous disclosure documents of *corporate finance reporting issuers*

As detailed in our Comment letter on AED to the OSC/CSA, we cannot support this initiative. We urge the OSC to abandon this priority and are relieved to see investor feedback will be considered. Investors must be provided the disclosure document, a direct link to the document and/or be able to request a paper copy. We DO NOT support adoption of the "access equals delivery" model if it means that as long as an individual has access to a document online then they are deemed to have received *delivery*. Retail investors must actually be delivered a document or notified that a document is available and shown how it can be easily retrieved. No additional burdens should be placed on Main Street by the OSC.

No specific action plan has been identified for investment funds. Kenmar and others have recommended a modern approach to delivery of investment fund disclosures. **We do not support the OSC/CSA proposal as it will reduce information access and retail fund investor engagement.**

Facilitate Financial Innovation

The Action: Conduct research and engage with stakeholders for input into how we can better support innovation and modernize our regulations

As previously stated, we view research as the expected norm of a modern regulator, not a regulatory "priority" per se. **Acting** on the research is what counts. The OSC wants to continue its efforts to strengthen Ontario's innovation ecosystem through flexible and proportional regulatory approaches and enhanced support for novel and innovative businesses looking to establish or expand in Ontario. This will take significant resources to be meaningful, hopefully resources not taken from the investor protection team. Experiments with novel businesses adds investing risk so we request that Main Street investor access to such businesses and their products be diligently controlled. Such experiments make the case for a strong CIRO and an effective OBSI critical in the event proportionate regulatory approaches fail or have unintended consequences.

Innovation can help deliver CFR. For example, risk profiling tools and cash flow planning software can go a long way to meeting the KYC/KYP obligations. By running target client scenarios that help ensure the appropriate products and services are chosen, they allow for compliance-friendly evidencing of a robust suitability determination. In addition, the resulting documentation demonstrates

that the advice provided meets CFR requirements. See also ***INFORMATION ON INVESTMENT ADVISER USE OF TECHNOLOGY TO DEVELOP AND PROVIDE INVESTMENT ADVICE*** https://prorrt.com/wp-content/uploads/2022/01/Information-Provided-to-SEC-RFI-File-No.-S7-10-21-on-10-1-2021-Copy-1.pdf

In our view, business development is a controversial mandate for a regulator. We expect continuous tension between mandates. **The overarching priority for the OSC must be investor protection and orderly markets.**

Based on recent experience, we associate "modernization" and "regulatory burden reduction" as code words to weaken retail investor protection and engagement.

Like so many of the priorities, we do not expect any meaningful investor protection outcome for Main Street in 2024-25 from this priority. It could very well be that investors will end up being exposed to increased complexity, risk and fees.

Integrate Digital and Data Capabilities and Processes to Support Effective Decision Making, Risk Monitoring and Streamlined Operations

The Action: Continue to enhance and evolve OSC's enterprise data analytics and reporting capabilities to support core regulatory operations and policy work

A priority with the word "continue" in it, implies *business as usual* rather than a priority. In any event, we are unclear as to the exact actions and timelines that will be undertaken under this "priority" to which staff will be held accountable. It would be helpful to provide additional detail with respect to how these actions will impact stakeholders especially retail investors.

We recommend adding a heightened focus on RegTech. RegTech provides financial institutions with a way to minimize the time spent responding to regulatory obligations via manual processes, and puts time back in the hand of compliance professionals whose experience and insight could be better used on more nuanced and strategic areas. RegTech has the potential to enhance compliance, improve investor outcomes and lower fees for retail investors. See RegTech Universe 2021 https://www2.deloitte.com/lu/en/pages/technology/articles/regtech-companies-compliance.html

Investor Priorities NOT proposed by the OSC

In the paragraphs that follow we relate long standing issues we believe the OSC should consider for inclusion in the 2024-25 SOP.

Address the Auditor General's Audit Report

The citizens of Ontario deserve to see the priorities contain a plan to address the OAG Report on the OSC Value-for-Money Audit https://www.auditor.on.ca/en/content/annualreports/arreports/en21/AR_OSC_en21.pdf In all, the Report made 26 recommendations that included 57 action items. **This should be on the OSC Priority list**. A frank disclosure of changes and reforms taken will help rebuild the OSC's reputation and regain investor trust.

NI 31-103 complaint handling requirements needs to be modernized

"Complaints handling mechanisms are especially important for low-income and vulnerable financial consumers, to whom timely and effective recourse processes can have a decisive influence over their trust in their financial service provider (FSP) and in the financial sector in general. Increased trust contributes to consumers' uptake and sustained usage of financial services and, consequently, their economic livelihoods. "-- **Complaints Handling within Financial Service Providers: Principles, Practices, and Regulatory Approaches:** World Bank 2019 https://openknowledge.worldbank.org/entities/publication/3398ac6b-beb7-5dcb-b5ae-556a65b763fd

Investor complaint handling is a cornerstone of investor protection .NI31-103 dealer complaint handling rules are simplistic, inadequate and out-of-date. **We strongly recommend that contemporary investor complaint handling obligations applicable to registrants dealing with the public be put on the high priority list**. We have put this forward as a TOP priority for over 5 years. Our latest letter was sent to the OSC/CSA in January.

The *G20 High Level Principles of Financial Consumer Protection* are very clear, stating explicitly that investors must have *"access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient."* The OSC must ensure that the investing public is provided a complaint handling system that delivers fair and timely resolution of complaints.

Kenmar expect the OSC/CSA to provide more detail and much higher level explanation of core principles and standards that they expect of the industry as regards complaint handling. See for example, **ASIC RG 271 Internal Dispute Resolution** (57 pages). https://download.asic.gov.au/media/5720607/rg271-published-30-july-2020.pdf

The wealth management services industry complaint handling process is complex, adversarial and puts an unsophisticated investor against a Firm's highly sophisticated complaint handling team. As one would expect, the process is less than fair and retail investors receive far less in compensation (or no compensation) than they should. For most complainants, the cost of civil litigation is simply out of

reach. This situation is precisely why the OBSI was created. As OBSI does not currently have a binding decision mandate, this results in cases where Firms have simply exploited investors and provided low-ball or no compensation. **In other words, the securities industry complaint handling system is broken, to the detriment of ordinary Canadians. Dealer complaint handling needs to be modernized whether or not OBSI obtains a binding mandate.**

"External complaint bodies exist within systems and systems determine standards and competencies and accountabilities. Canada arguably lags best practices around the world when it comes to standards of competency and accountability for advice and when it comes to specifically defining rules, regulations and expectations for internal complaint and dispute resolution." – A. Teasdale CFA

The issues related to complaint handling start at the root- How should Dealer's resolve client complaints fairly and effective? Per para 13.15 *"registered firm must document and, in a manner that a reasonable investor would consider fair and effective, respond to each complaint made to the registered firm about any product or service offered by the firm or a representative of the firm"* This is just not adequate even if a " reasonable investor" could be defined and located. **It is the duty of the OSC/CSA to set professional complaint standards, NOT retail investors.**

National Instrument 31-103:

- Does not articulate underlying principles required of a modern complaint system or final response letter
- Does not define basic criteria for fair and effective complaint handling
- Does not specify a time constraint for acknowledging a complaint
- Does not directly specify a time constraint for responding to a complaint
- There is no robust requirement to review complaints to identify systemic issues , ensure they are investigated , followed up and reported upon
- Does not require Dealers to consider OBSI decisions in similar circumstances.
- Does not specifically identify OBSI as the exclusive dispute resolution service; it only states that the Firm take must take *reasonable steps*
- Does not set out expectations for using OBSI as a strategic source of information that could improve regulations, investor protection, disclosure practices, products, or wealth management industry service / conduct standards

This National Instrument is embarrassingly light on Dealer Complaint handling rules compared to other jurisdictions. **Kenmar recommend that the CSA NI31-103 Dealer complaint handling rules be brought up to international standards as a TOP priority.** The modernized standards will help reduce the number of complaints and improve investor outcomes.

We note that the AMF is developing an enhanced consumer complaint handling regulation for registrants under its jurisdiction. The OSC should build on all the fine work their team has done. IIROC has also proposed a modernized complaint rule

with generally positive commenter reaction. It recognized that CFR has impacted its existing rules.

The deliverable under this priority would be a modern CSA complaint handling rule resulting in fair outcomes for complainants. At the same time, the reduced complaint flow to OBSI will reduce their operating costs and the cost to Participating Firms and increase investor trust in the financial services industry.

See ***The Complaints Process for Retail Investments in Canada*****:** H. Geller https://static1.squarespace.com/static/58350df5b3db2bbc30614fbf/t/5b2444c86d2a734942edff91/1529103562413/Complaints+Process+for+Retail+Investments+in+Canada.Handbook.MBC+FLAG+2018.pdf

Regulators have never really closely examined how complainants are treated. **We recommend a sweep of Dealer complaint handling, which we assert does not put the client's interest first and requires the signing of a non-negotiable NDA.** OBSI should be able to provide insight into the quality of Dealer complaint handling and how it can be improved.

Ban the use of NDA's in complaint resolution

A binding decision mandate for OBSI must consider the adverse impact on investors of the imposition of an NDA. A binding decision should be just that- compensation is due with no strings arranged. (we accept that an appeal and release may not be inappropriate under limited conditions).

Dealers use non-negotiable NDA's to gag victims of financial assault. This compensation owing is not made unless the victim agrees to the terms presented to her/ him, effectively undermining the binding decision. The beneficiary of the gagging is the Firm that harmed the client as other similarly impacted clients may not be aware they too have been harmed.

Empirical research has shown that signing an NDA in order to resolve a wrongdoing comes with longer term physical and mental health issues. Not surprisingly, not one NDA we have seen permits victims to reveal the complaint details when consulting with health professionals. **Ironically, a system designed to be informal and non-legalistic ends with an abusive legal document**. **The OSC/CSA must ban NDAs in financial complaint handling to prevent re-victimization of complainants and continued harm to others who are not made aware of their exposure to wrongdoing or negligence**. See *How NDAs can affect your mental health* https://yr.media/health/how-ndas-can-impact-your-mental-health/ NDA (gagging) of Canadians is NOT in the Public interest.

Systemic issues need OSC/CSA attention

Resolving the same type of complaints day after day, year after year is, as Einstein would say, insanity. If OBSI is encouraged to address systemic issues, its value-add and effectiveness would dramatically increase. Poorly designed forms would be

corrected, software glitches would be fixed, deficient rules and policies would be amended, compliance/ enforcement would be more focussed, disclosure documents clarified and complaint handling processes would be improved. What's not to like? Improving the "system" is totally congruent with, and supportive of, CFR. The lack of an effective systemic issues protocol is a very important negative, since if systemic issues are not addressed, the "system" will not improve.

Besides resolving individual complaints, the implied role of OBSI is to formulate and promote standards of best practise, of complaint resolution leading to positive change, of identifying how organisations can improve the way they do things and reduce the likelihood of similar complaints arising in the future., to feed back information and relevant systemic advice and of feeding the outcome of systemic findings into best practises. The absence of a meaningful role with respect to systemic issues narrows the scope and effectiveness of OBSI. The OSC/CSA can correct that.

Systemic issue **resolution** remains the role of regulators. That being said, once informed of a systemic issue, there must be an obligation of the regulator to act and report publicly on its actions to deal with the systemic issue(s) or explain why it chose not to act.

Accordingly, Kenmar support that the OSC/CSA adopt the 2021 Independent Review Recommendations:

A. OBSI should work with the JRC to review and improve the systemic issue reporting system, including by:
1. Amending the definition of systemic issue to include complaints raised by a single complainant;
2. Requiring OBSI to report repeated systemic issues year-after-year, even if the same issue was identified in prior years; and
3. Ensuring more robust communication between the JRC and OBSI once a systemic issue has been identified by OBSI.

B ***OBSI should set out in its Annual Report the number of potential systemic issues it has identified in the previous year, both in respect of securities and banking complaints, and provide a generic description of the type of issue identified.***
OBSI should work with the JRC or the CSA Designate to issue a report to the public on what steps have been taken with respect to the potential systemic issues identified by OBSI.

If properly addressed, the binding mandate and enhanced systemic issue protocol could involve (a) Dealers compensating victims of financial assault that did not complain to the Dealer or OBSI, which is a very positive investor protection outcome AND (b) the elimination of the root causes of problems leading to complaints.

Accelerate introduction of robust senior investor protection initiatives

While an intended "action" to *"Continue implementation and evolution of the OSC Seniors Strategy* "is mentioned in the consultation document, we find it so vague that it provides zero bits of information content. Readers are not informed exactly what actions are going to be effected other than they *"will enhance protection of seniors and vulnerable investors*" as an outcome. This level of opaqueness is not consistent with a best practice consultation process. How does the OSC expect commenters to respond to such an ill-defined priority and "action" plan? Kenmar and others have previously provided the OSC with concrete suggestions on how to improve senior investor protection. We expected some of these ideas to appear in the SOP. In any event, we take this opportunity to inspire the OSC to make senior investor protection a **TOP** 2024-25 OSC priority.

Canada's and Ontario's aging population makes protecting seniors a priority for the OSC. The data tells us that Ontarians are living longer than ever, and older Ontarians make up a growing portion of Ontario's population: the Ontario government has projected that one in four Ontarians will be aged 65 or older by 2041. *According to the 2022 OBSI Annual Report 27% of complainants are 60 years old or older.*

There should therefore be a specific identifiable priority to protect seniors and vulnerable clients. With immigration at record highs, many new Canadian investors may be exposed to rogue /incompetent/negligent advisors and/or ineffective supervision. Seniors (and immigrants) are disproportionately targeted because of their vulnerability.

We recommend that the TCP/ temp holds program be reviewed and updated as appropriate, that SEAC be recharged and that IIAC recommendations Re https://www.obsi.ca/en/how-we-work/resources/Documents/IIAC-Protecting-Senior-Investors.pdf be considered in addition to the now dated 2018 OSC Seniors Strategy. We also firmly believe OBSI's research https://www.obsi.ca/en/news-and-publications/OBSI-presentations-and-submissions.aspx on seniors would be a very useful input to the OSC in implementing enhanced protections for vulnerable investors.

Reviews of senior investor protection programs in examinations, enforcement actions and collaboration with other regulators, as well as research and education initiatives should be an integral part of the OSC integrated Seniors investor protection action program. Consideration should also be given to the establishment of a Seniors Hot Line similar to FINRA's apparently successful approach.

Fulsome discussions with CARP, Canage, Office of the Public Guardian and Trustee (Ontario), academia and consumer groups/individuals are most appropriate in defining senior investor protection strategies, priorities and action plans.

In addition to improved regulations to protect seniors, based on our experience, Dealer complaint handling for seniors needs an overhaul See

http://www.canadianfundwatch.com/2014/11/complaint-investigators-have-not.html

Retirees/ seniors are harmed by bad advice that can be life-altering due to the limited time to recover losses and emotional anguish leading to physical and mental health issues**.** **We urge the OSC to make *senior investor protection* a discrete high priority for 2024-25.**

We feel so strongly on this issue that we implore the OSC to designate a staff member to lead the initiative. The protection of the vulnerable is a major socio- economic issue in Ontario.

Monitor SRO CIRO in accordance with Recognition Order

CIRO is building a new organization and rule book while overseeing the implementation of CFR, modernizing the arbitration program , dealing with multiple new products and technologies , updating registrant proficiency standards , establishing an Investor Office and IAP , reviewing disgorgement practices , updating complaint handling rules, integrating IT systems, and even considering becoming a FSRA accredited FA Credentialing Body. This is a heavy workload involving significant change that needs to be carefully managed so that investor protection is not compromised. **We urge the OSC / CSA to closely monitor CIRO so that there are no negative "surprises" or gaps.**

Ban advisors from acting as a POA, trustee or executor (or beneficiary)

Kenmar are deeply concerned that while CFR almost always considers a salesperson acting as a POA, executor or trustee for a client a material conflict-of-interest, it is permitted The CSA expect Firms to have policies and procedures in place to ensure that these conflicts are identified and are either avoided or otherwise addressed in the client's best interest. Based on our experience, seniors and vulnerable investors are most impacted by this questionable CFR provision, one which the former MFDA did not permit**. We request that the OSC remove this CFR clause and limit its applicability to immediate family.** .

Review Regulation of ETF's

We have provided the OSC some ideas to enhance the regulation of ETF's especially complex ones. ETFs comprise approximately 15% of total publicly offered investment fund assets in Canada and are expected to continue to grow .**Given the rapid growth of ETF's, we recommend a review of ETF regulation resulting in a Report with tangible improvement actions.**

Expand the whistleblower program

Given the huge success of the SEC whistleblower program, it seems to be most appropriate that the OSC should review its program to include best practices and lessons learned. A robust whistleblower program will enhance investor protection

and buttress market integrity. **We recommend that the OSC benchmark the SEC Program and expand the OSC program accordingly.**

Evaluate risk profiling practices

The biggest cause for complaints is unsuitability and the primary cause of that is defective risk profiling. We are concerned that the enhanced risk profiling required by CFR is not in place for most registrants. From our observations, internationally recognized, independent research on risk profiling of client's KYC profiles (commissioned by the OSC IAP, funded by the OSC in 2015) has not led to CSA regulatory reforms or changes in Firm business practices. Re ***Current Practices for Risk Profiling in Canada And Review of Global Best Practices*** https://www.osc.gov.on.ca/documents/en/Investors/iap_20151112_risk-profiling-report.pdf The study found that most of the questionnaires (83.3%) in use by the industry are not fit for purpose. Fifty five percent had no mechanism to recognize risk-averse clients that should remain only in cash.

Kenmar recommend that the OSC provide guidance/questionnaires on how Firms should assess risk profiles and how to use that assessment determination in suitability determinations. This would help support uniform application of CFR requirements across Firms. Re *FG 11-05 Assessing suitability: Establishing the risk a customer is willing and able to take.* https://www.fca.org.uk/publication/finalised-guidance/fsa-fg11-05.pdf

Track TCR implementation

We encourage the OSC to closely monitor, and intervene if necessary, to ensure the already ultra-generous implementation date is met. The TCR Enhancements are expected to come into force on January 1, 2026**.** Both securities registrants and insurers will be required to deliver the first annual reports that incorporate the TCR Enhancements for the year ending December 31, 2026. TCR is a powerful adjunct to CFR so smooth implementation is critical.

Use the Designated fund to protect investors

Instead of using the Designated fund to subsidize OSC operations, the fund should dramatically expand its use of cash to support investor protection. We have provided the OSC a number of suggestions including a sizable award to FAIR Canada so it can develop a long-term plan to counter the massive lobbying power and influence of the Canadian financial services industry. Other ideas included increased investor research and providing financial support for more Investor Protection Clinics in Ontario. **Commit a significant cash deployment in the fiscal year.** That would have a major positive impact on investor protection as investor advocacy would be more robust and sustainable.

NOTE: In its 2021 OSC audit the Auditor General of Ontario found that the OSC *"has not effectively used its accumulated Designated Fund … for the benefit of the investor community as much as permitted within the existing securities laws in*

Ontario." The OSC leadership and Board should use the current consultation to address the AGO critique and reflect on the incredible opportunity missed to support Main Street.

Harmonize industry-OBSI investment loss calculation model

OBSI use an opportunity loss calculation methodology while most of industry use the book loss method. Harmonization with OBSI will cut down on the number of disputes sent to OBSI, be more fair and improve the Dealer–OBSI relationship. **We strongly recommend that the OSC/CSA prescribe the opportunity loss methodology as the industry standard.** A common methodology will immediately reduce conflict and bickering with industry and lead to better, more consistent and fairer outcomes for victims of financial assault. We cannot overstate the importance of this recommendation especially under a OBSI binding decision mandate.

Impactful Enforcement will promote confidence in Ontario's Capital Market

We recommend that the OSC fine limit be increased to a level where deterrence will be meaningful. Given the huge scale of many of the registrants, a $1 million fine is unlikely to be impactful or change behaviour. [The Ontario Capital Markets Task Force to modernize securities regulation recommended increasing administrative penalties from $1 million to $5 million and fines for quasi-criminal offences from $5 million to $10 million, limiting access to drivers' licences and licence plates for failure to pay amounts ordered by the OSC or a court among several other actions to strengthen OSC enforcement capability.]

A good reference here would be IOSCO ***Credible Deterrence In The Enforcement Of Securities Regulation*** https://www.iosco.org/library/annual_conferences/pdf/40/Credible%20Deterrence%20Report.pdf

We urge that OSC enforcement focus on root causes in order to prevent recurrence more effectively. Most root causes are systemic in nature.

Kenmar strongly recommend that investor compensation be prioritized in OSC/CIRO sanction guidelines and settlement agreements.

Assess impact on OBSI of proposed IIROC arbitration program

With a binding mandate, OBSI's free service would be on a par with IIROC's binding arbitration, at least up to the $350,000 compensation limit. For higher amounts and complex cases, binding arbitration may well be the superior approach. If the CSA permits investor choice, which we do not support, the CSA or CIRO should provide plain language guidance materials to complainants to assist with the choice selection. As an aside, the average retail investor would be crazy to enter into binding arbitration against a Dealer without engaging a lawyer. For amounts less than $350K, it seems to us that OBSI would be the optimum choice in virtually

every case**. In our view, the creative IIROC proposal to enhance the arbitration program should not be accessible to consumers if OBSI is available**. Based on our experience, introducing competing dispute resolution systems is just looking for trouble and added investor confusion.

Reduce Regulatory arbitrage

We recommend that the OSC prioritize steps to reduce regulatory arbitrage with the insurance industry. For one, we'd like to see the Ontario government have the FSRA ban DSC segregated funds and for the OSC to formally work with the FSRA to adopt insurance industry conduct rules equivalent to CFR in Ontario. In the area of registration/enforcement, it would be useful to develop a protocol and processes to enable registrants banned in the securities sector to also be banned in the insurance sector. Insurance agents with outstanding unpaid OSC or CIRO fines should have their licenses revoked until the fine is paid in full. Kenmar believe such basic initiatives would be very effective in protecting Ontario financial consumers. We refer you to this article https://www.advisor.ca/news/industry-news/hidden-in-plain-sight-how-banned-iiroc-and-mfda-advisors-can-still-sell-insurance/

Make product design a factor in prospectus approval

For years we have identified weaknesses in the way some Firms approach product design and governance for structured products. We recommended that more effort is needed by Firms to match product design with customer needs, demonstrate product value through robust stress-testing and provide potential customers with clear, balanced information on the products. The UK FCA paper, TR15/2 *TR15/2: Structured Products: Thematic Review of Product Development and Governance***,** is an excellent read Re improved standards on product governance. RE https://www.fca.org.uk/publications/thematic-reviews/tr15-2-structured-products-thematic-review-product-development-and Such a process is critical especially when dealing with new businesses and novel products operating under regulation-lite.

Update Investment fund regulation

Efforts to eliminate embedded commissions have continued to be sidelined despite overwhelming evidence of harm to retail investors. We encourage the OSC to revisit the decision not to ban advice-skewing embedded trailing commissions.

Pre-sale disclosure via ETF Facts should be implemented as it is for mutual fund Fund Facts. Also, the use of a risk rating methodology based on the standard deviation in Fund Facts has led to misleading disclosure and consequent investor confusion and bad decision making. It should be reviewed.

A review of NI81-107 fund governance rules appears to be overdue. We recommend that the OSC prioritize investor protection and slow down its efforts to greenlight complex and higher cost investment fund products. Kenmar do not believe class action lawsuits are the best way to improve fund governance.

The OSC should consider updating NI81-105 so that it can be applied more broadly. We can see no justification for singling out mutual funds.

Create a registrant category for Adviser

The scope and accountability of advice provided by dealing registrations is poorly defined as is the wider dimensions of personalised advice generally. Kenmar recommend that the OSC/CIRO create a new category of registrant that would better define the obligations of personalized financial advice similar to advisers covered by the U.S. Advisers Act. An integral component of the registration would be an overarching Best interests conduct standard. The acceptance of embedded commissions would be banned. We believe this will provide a cadre of professional advisers that Ontario financial advice consumers can trust. It would be a significant move towards professionalism of financial advice and away from the prevailing "Caveat Emptor "state of affairs.

Expand the Investor Office scope

Financial education resources and channels such as GetSmarterAboutMoney.ca are used by retail investors and are an invaluable tool for them. The Investor Office is a bright spot within the Commission and should get the resources it needs. Investor education should include Baystreetproofing .Suggested priority education topics for 2024-25 include (a) how to file an effective complaint (b) recognizing Outside Business Activity and (c) How does CFR affect me?

We recommend that the OSC Investor Office continue its evolution with a transition to Investor Advocate while maintaining its existing excellent work on investor research and education. We recommend adding a formal obligation to submit reports directly to the Legislature, without any prior review or comment from the Commissioners or OSC staff. The mandate would be similar to that of the Investor Advocate of the SEC. In fact, a name change would be in order.

This role change is being proposed, in part, in light of the added mandate to foster capital formation and the introduction of an Economic Development Office (and OAG Report) which we are concerned could cause the OSC to be less focussed on investor protection. The Investor Office should have an operating budget adequate to fulfill its expanded role.

Enhance Exempt market oversight

The exempt market is a large and growing market. Given the increased emphasis by the Ontario government and increased OSC exemptions to expand this market, Kenmar recommend that the OSC prioritize oversight of this market segment due to unproven work-at-home business practices, numerous exemptions granted and the recurring troubling results of OSC compliance reviews.

The OSC should consider requiring an appropriate Investor Protection Fund like CIPF for EMD's (as well as one for Portfolio Managers) unless the OSC/CSA has plans to consolidate the EMD sector into CIRO.

Establish a formal link with FSRA on financial advisor/planning title protection rule implementation

We see the Ontario Government's initiative to regulate the titles of "financial advisor" and "financial planner" as an opportunity to strengthen professionalism and modernize financial services delivery by aligning regulatory reality with consumer beliefs and expectations. We urge the OSC to work with its colleagues at the Ministry of Finance and FSRA to ensure that the regulatory intent of the Title Protection Act is met consistently across all financial service providers. Misleading financial advisor titles have been a major cause of investor confusion, deception and harm.

At the same time, we ask the OSC to review the impact of establishing CIRO as a FSRA- accredited Credentialing Body (CB). In our Comment letter we recommended the Quebec model for regulating Financial Planners and were constructively critical of Ontario's approach to FA title protection and the Act itself. Our comment letter is posted on the FSRA website. If CIRO becomes an FSRA accredited CB, it is likely that all mutual fund salespersons in Ontario would be permitted to use the Financial Advisor title. **That would be misleading representation of the highest order. The OSC should distance itself from such a nightmare scenario.**

JRC OBSI oversight merits tuning

It is our opinion that the CSA JRC effectiveness can be improved if investor advocates and others were periodically consulted. Kenmar have provided documented evidence demonstrating areas where OBSI oversight can be enhanced if the retail investor viewpoint is brought in to focus.

Increase Advisor proficiency standards

While the bar needs raising, so does the floor. The proficiency level of advice givers needs to be raised to address complex issues like investor longevity, market turbulence, risk management and increasing product complexity. There is a crying need to truly "professionalize" the financial advice industry. Ontarians not only need increased investor protection but the industry has to mobilize how to advise on pension planning and capital preservation strategies – a shift away from traditional asset accumulation to "de-accumulation " This will require a different skill set, different products and professional, unbiased advisers competent in the art and science of pension management. Given the particular concentration of wealth at this juncture in an aging segment of the Canadian population, demands for expertise will only increase in coming years. Coordination with CIRO –IIROC is essential.

Ensure minimum consultation period remains at 90 days

Sixty days is simply not enough time for retail investors/ consumer groups to review proposals, conduct research, apply effective analysis and assess potential impacts. This is especially true when there are concurrent consultations underway. **The cycle time component that really needs to be managed is the time taken by the OSC post -consultation to make a decision.** The OAG audit reported that projects that involved investor protection took on average 3.9 years to bring to a conclusion vs. 2 years for projects that did not.

Summation

To be frank, we find a fair number of the listed priorities incidental to investor protection, more related to business as usual than real regulatory priorities, a rehash of unfulfilled 2023-24 and prior priorities, remote from investor advocate input and so craftily articulated as to make intelligent commentary impossible. **In our opinion, the Board should not permit this published set of priorities to move forward to Finance without major amendments.**

When everything is a priority, nothing is a priority. Projects are not priorities when they are listed without specific timelines, milestones, definitive actions and clear success metrics. Investors deserve real action, concrete results and accountability, not motherhood aspirations.

The OSC, by attempting to achieve an appropriate balance in supporting novel businesses and fostering innovation and competitive capital markets while promoting investor protection, seems to be a dichotomy as the balance always seems to favour the industry.

While "*Delivering strong investor protection remains a top priority in all initiatives* and actions..." is comforting, we would appreciate more detail on how the OSC will actually ensure that investor protection is prioritized when faced with competing and/or opposing priorities .For example, we expect that this means that the OSC will routinely solicit and respect input from the Investor Office and the IAP or be prepared to explain why it chose an alternate course.

The OSC should publish its methodology for ensuring investor protection is placed at the top of the hierarchy. In particular, the methodology should assure that political influence is not a factor.

Kenmar prioritize improving the investment dealer complaint handling system in Canada through greater clarity, consistency and codification of best practices. Such clarity will be beneficial to Dealers and is an important investor protection measure that will enhance fairness, effectiveness, and confidence in Canadian securities markets. A modern complaints rule would also recognize and enhance the utility of complaints data in CIRO's regulatory work and strengthen this important information channel for assessment of risk, identification of harmful conduct and improving the efficiency of CIRO's compliance, enforcement and member regulation mandates.

From our perspective, the OSC has not acted decisively and in a timely manner to protect retail investors on a number of issues. We sincerely hope the OSC Strategic Plan will address these deficiencies despite a lack of proactive engagement with investors/ investor advocates.

The OSC has very talented staff; effective leadership has the potential to create world class investor protection for Ontarians. All it takes is determination.

We sincerely hope our forthright critique of the proposed priorities will inspire the Commission to laser focus on investor protection. Ontarians have never needed a strong, effective OSC more than they do now.

Given the material change in governance, the added mandate of fostering capital formation and the high number of high impact reforms ,we urge the Ontario Legislative Assembly to establish a standing Committee to oversee the OSC's conformance with its Public interest mandate.

Permission is granted for public posting of this letter.

We would appreciate it if copies of this Comment letter were forwarded to the Board Directors.

If there are any questions regarding this Comment letter, we would be most pleased to meet with the OSC executive and Board.

Respectfully,

Ken Kivenko P.Eng. (retired), President
Kenmar Associates