

Sent VIA email

May 30, 2013

To:

The Ontario Securities Commission
20 Queen Street West; Suite 1900, Box 55
Toronto, Ontario M5H 3S8

ATTENTION: Robert Day rday@osc.gov.on.ca

Responding to OSC Notice 11 -768 Priorities for fiscal year ending March 31, 2014

http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20130404_11-768_rfc-sop-fiscal-2013-2014.htm

I have been retired for a number of years. By any measure, at 79, I would be considered a senior. I would like to provide my humble input into the Commission's 2013-2014 priorities.

For the elderly, the key issue is that I would like to feel confident that the elderly can trust their financial advisor. I support the notion of fiduciary duty. To the surprise of many, there are currently no, or very weak, statutory fiduciary standards governing investor-advisor relationships. As a result, it creates an uneven playing field between financial professionals and investors. Without fiduciary standards, “advisors” can take advantage of investors’ trust, inadequate financial literacy, information asymmetry, and high levels of discretion given to their advisors, leaving investors, particularly the elderly, vulnerable to unwanted financial risks. Introducing robust fiduciary duty standards and increasing access to financial restitution and complaint processes would go a long way to protecting seniors.

There should also be some regulation over the titles so-called “advisors” are allowed to use. And “Free lunch” educational seminars also need some guidance from regulators as in most cases they are merely sales pitches. Some of these present incomplete information and rarely explain the high costs and tricky terms and conditions.

The most immediate concern for seniors is to get their money back. At present, there is no way to get restitution except through the courts. The proposed National Securities Regulator had included an investor protection and enforcement agency that might have provided an alternative avenue. The recent case of [Octagon Capital](#) – spotlighted by OBSI – would re-confirm to the citizens of Ontario that even when the existing regulatory and self-regulatory bodies have ruled against the adviser, the investor still has no right to his/her money back – without going to court. And the biggest hurdle to suing the adviser/broker, often, is that the investor no longer has the resources to pursue the case through the complex court system.

Following are some other suggestions for improving investor protection :

- Fine companies utilizing misleading presentations/ advertisements . Healthy fines will “motivate” brokerage firms to alter their abusive sales practices.
- Adopt the **NASAA MODEL RULE ON THE USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS**
http://www.nasaa.org/wpcontent/uploads/2011/07/3-Senior_Model_Rule_Adopted.pdf without undue delay . [[The OSC is a member of NASAA](#)].

- Provide guidance brochures on how individuals can protect themselves from deceptive sales and marketing practices- use case histories. (Also make it obligatory that the "Advisors" must present these guidance brochures to the potential investor before any investments are transacted. I have a list of guidance subjects, available on request, that should be include in the brochures)
- According to a recent article in the Toronto Star “ The Leith Wheeler Canadian Equity Fund has an outstanding track record. Since 2006, it has been a first or second quartile performer in its category every year but one. The average annual compound rate of return over the decade ending April 30 was a sparkling 9.9 per cent, more than 2.25 percentage points better than the average Canadian equity fund. Unfortunately, if you live east of Ontario or in one of the territories, you can’t buy into this first-rate fund. The reason: Canada’s patchwork quilt of securities regulators makes it too expensive for small fund companies like Vancouver-based [Leith Wheeler](#) to register in every jurisdiction.”. We would ask the OSC to lead a CSA initiative that would eliminate this costly and bureaucratic barrier and allow access to low cost funds for small investors.
- Require that salespersons make the mutual fund Fund Facts disclosure document available to investors **prior** to sale rather than a week AFTER purchase . I simply do not understand why such a practice is allowed. I have hard physical evidence that the OSC regulation requiring disclosure documents be included with Purchase Transaction Confirmations are being violated by one particular Investment Dealer.
- Require OBSI to comply with its 80% 180 day complaint review time goal. It is way off target at this time. Also, OBSI should be operated with financial independence away from the financial services industry. Whereas, the OBSI ability to be maximum effective is constrained by the limitation on available resources.
- Explain what “suitability” really means in a brochure or online video. This will help retail investors to better understand what the OSC means by “ suitable investment” and to better assess the recommendations being made by advisors.
- Perform a sweep of dealer complaint handling practices. Complainants are being treated unfairly. A recent Mutual Fund Dealers Association of Canada (MFDA) report says dealers should be reviewing the information they give clients about the complaint handling process, after a compliance sweep found a variety of shortcomings in the disclosure firms provide to clients. The MFDA issued a [bulletin](#) spelling out the common issues it found when reviewing fund dealers' complaint handling documentation that must be provided to clients. The Bulletin says that, in certain cases the information in the summary contained unacceptably vague contact information; doesn't reference the MFDA or the Ombudsman for Banking Services and Investments (OBSI); doesn't spell out possible outcomes for complaints, or adequately explain various aspects of the process. It also found some issues with the process firms are using including: forms that use fonts that are too small and hard to read; and, information on legal limitation periods (a short two years in Ontario).We can relate to all these issues and a lot more
- Be very wary about allowing crowdfunding. It smells like a Golden opportunity for fraudsters and opportunists.

- Encourage the Office of the Investor to expand its Community Outreach initiative. Too many people do not know the role the OSC and securities regulations play. Do not restrict discourse to fraud. There is much more wrongdoing going on with registered firms and advisors. Make more use of radio, TV and Billboards to get the message out.

The Commission generally seems to be in tune with the needs of the retail investor. I hope this modest submission proves useful to you.

Do not hesitate to contact me if additional information is required.

Sincerely,

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