Kenmar Associates
Dedicated to Investor Protection

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ONTARIO SECURITIES COMMISSION NOTICE 11-771 – STATEMENT OF PRIORITIES

REQUEST FOR COMMENTS REGARDING THE STATEMENT OF PRIORITIES FOR FINANCIAL YEAR TO END MARCH 31, 2017

https://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20160310_11-774_rfc-sop-end-2017.htm

Kenmar Associates is an Ontario- based privately-funded organization focused on investment fund investor education via on-line research papers hosted at www.canadianfundwatch.com.Kenmar also publishes the Fund OBSERVER on a bi-weekly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

Introduction

A word from the IMF *:"...Finally, the securities regulators should continue to take steps to ensure*
timely decision making in policy formulation. By its own nature policy making requires time to allow for consultation so that the impact of policy proposals can be evaluated and incorporated. However, the current governance arrangements, based on a consensus building approach across several entities, might affect timeliness of decision making..." ***IMF report on Canada*** https://www.imf.org/external/pubs/ft/scr/2014/cr1473.pdf

Kenmar Associates welcomes the opportunity to comment on the Proposed 2016-2017 Statement of Priorities (SOP). Kenmar is an Ontario- based privately-funded organization focused on investment fund investor education via on-line research papers hosted at www.canadianfundwatch.com.Kenmar also publishes *the Fund OBSERVER* on a bi-weekly basis discussing investor

protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

We'd like to acknowledge the OSC's determined and positive actions on retail investor protection over a wide spectrum of issues. The Office of the Investor is unique among Canadian regulators as is the Investor Advisory Panel. The financial support for FAIR Canada has been a very positive action since the Canadian investor advocacy community is chronically underfunded. The OSC's principled stand countering the financial services industry's relentless attempts to thwart, delay or water down investor protection reforms is recognized. While the 2016-17 priority list doesn't spell out the details of the reforms that the OSC may propose in the year ahead, it sets the tone and clear direction that the client relationship model (CRM) reforms are not the end of the road for retail regulatory reform. The initiative regarding a Best interests standard of advice demonstrates true leadership in investor protection.

According to Statistics Canada, household debt reached a record level during the final quarter of 2015: with mortgage growth the key driver. Its statistics, show that the total credit debt market for households leapt by 1.2 % during the final three months of the year, reaching $1.923 trillion: household credit market debt incorporates both mortgage and non-mortgage loans, as well as consumer credit. Overall, this means that households in Canada hold an average of $1.65 in debt for each dollar they earn after tax and other fees. http://www.wealthprofessional.ca/news/canadian-debt-at-all-time-high-204434.aspx According to a Broadbent Institute study *An Analysis of the Economic Circumstances of Canadiam seniors* https://d3n8a8pro7vhmx.cloudfront.net/broadbent/pages/4904/attachments/original/1455216659/An_Analysis_of_the_Economic_Circumstances_of_Canadian_Seniors.pdf?1455216659 a large percentage of older, working Canadians are heading to retirement without adequate savings.

These statistics along with several others point to the need for robust investor protection.

With the evolution of the investment markets, technological change, changing age demographics, complex structured products , new investment "opportunities" (medical marijuana companies) ,high personal debt and the key "RRSP rollover" decision point, investor risks and vulnerabilities are much greater than ever before. Canadian investors are highly vulnerable due to low financial literacy, information asymmetry vs. dealers/dealing Reps ("advisors"), investor overconfidence in their investing skills, blind trust in advice givers and a desperate search for yield in a low interest environment. Whatever savings they have must be protected against industry wrongdoing.

Much of the regulatory reform debate has centered on conflicts-of-interest and the argument that embedded commissions gives rise to conflicts-of-

interest and skewed investment advice recommendations. There is another important dimension to consider. Commission –based **and** fee-based advice can also cause excessive leveraging, discourage debt reduction, minimize insurance coverage, ignore household spending patterns and downplay savings (as opposed to investing). True wealth management would not focus exclusively on investments .This why we strongly support the idea of revealing the actual financial advisory services provided by any fees or commissions charged. This would give investors the opportunity to assess the value delivered by the advice.

Recent high profile scandals, "advisor" abuse and changing demographics (higher ratio of seniors, pensioners and retirees) suggest that retail investor protection demands HIGH priority attention from the OSC .Our review of the draft SOP suggests that the OSC has, to a large extent, the appropriate priorities and emphasis but we would add more meat to one: Seniors Issues. Abuse of the elderly in particular continues to emerge as a major issue as reported by OBSI, the SRO's, academic research and others. A 2015 BCSC research report found that one-in-eight British Columbians over 50 is vulnerable to investment fraud and that doesn't include abuses committed under the "suitability" advice regime. http://www.investright.org/uploadedFiles/news/research/2015BCVulnerability.pdf It is simply not enough to " Improve outreach and education focused on senior and vulnerable investors and work with the Investor Advisory Panel to identify further opportunities to advance investors' interests." Indeed the U.K's FCA is encouraging financial firms to do more to support an aging population .

Over the past two decades the financial services industry has rebranded itself from a transaction business to an advice business and more recently to a Wealth management business but remained anchored in a transaction based regulatory environment. Corporate culture has remained tied to a sales and marketing mindset rather than as a trusted provider of unbiased investment advice. Regulators have allowed this disparity between reality (the suitability standard) and advertising and marketing to persist by permitting dealers and salespeople to hold themselves out to Canadian consumers as trusted advisors despite significant conflicts- of- interest that affect the advice provided. The OSC priority now should be to transform itself from a regulator of transactions to a regulator of investment advice as well as products.

In 2015 , the U.S. organization, the Public Investors Arbitration Bar Association (PIABA) issued a report ***MAJOR INVESTOR LOSSES DUE TO CONFLICTED ADVICE: BROKERAGE INDUSTRY ADVERTISING CREATES THE ILLUSION OF A FIDUCIARY*** DUTY https://piaba.org/system/files/pdfs/PIABA%20Fiduciary%20Study%20News%20Release.pdf highlighting how U.S. brokerages mislead investors as to the true nature of the dealer- client relationship. They want Federal action to stop U.S. Brokerage Firms misleading investors about their role as

fiduciaries, which Firms deny to block arbitration claims. The report states that investors believe they are doing business with individuals they can trust, because the brokers use titles which imply trust, their advertisements give the impression they can be trusted, and the brokers say they can be trusted to look out for the best interests of their clients. Yet when that trust is breached, the PIABA survey of answers filed in arbitrations demonstrate that these same firms disclaim liability when held to account in arbitration, and rely on case law to say no such duty exists. The public face of the firms is that they hold themselves to the highest standards, while the private face of the firms, in the arbitration forum where everything is non-public, is that they are mere order-takers.

We face a similar situation in Canada when we read about OBSI rejection and " low ball" cases, SRO enforcement decisions and denial of responsibility letters sent to complainants by dealers. Were it not for our strong engagement with investors we would not see dealer responses to complaints because of confidentiality agreements ("gag orders") clients are forced to sign in order to obtain any restitution.

It's not just trust that is misrepresented. While marketing materials suggest robust financial plans are prepared, qualified income tax advice will be provided and that competent estate planning is available, our experience is that, with a few notable exceptions, the vast majority of the focus is on selling product. A report *Lack of truth in advertising deceives investors* from SIPA deftly illustrates the divergence of the advisory services promoted vs. the actual services delivered.
http://www.sipa.ca/library/SIPAsubmissions/720_SIPA_Report_Deception_20150505.pdf

Our comments are limited to retail investor issues. We leave it to others to deal with such issues as shareholder democracy, insider trading, HFT, diversity on Boards, reverse takeovers, major fraud etc. Here are our recommendations regarding retail investor protection priorities for the 2016-17 fiscal year:

1. **Establish a Seniors Advisory Committee to laser focus on senior's issues:** A 2014 IIAC report made it clear that Senior investor protection is a very critical issue with many challenges. With the aging population, there is a likelihood there will be more and more abuse of seniors by the financial industry .OBSI report that about half of all complaints emanate from those over 60. Boomers and current retirees need protection from the same predatory business practices for the same reasons. They do not have as many options as younger investors who have time to recover from bad financial advice, excessive expenses, and bad investment products. They face tough options like deferred retirements, reduced standards of living during retirement, and financial instability late in life.

The Canadian Centre for Policy Alternatives has released a damning condemnation of mutual fund fees Canada's much maligned mutual fund fees have been the object of derision for some time now The 22-page report *The Feeling's Not Mutual :The High Costs of Canada's Mutual Fund Based Retirement System* from CCPA, while well produced, contains some inaccuracies. The average equity mutual fund in Canada in 2014 according to this report was 2.1%, six times higher than the average pension plan fee of 0.38% – 0.36% for defined benefit plans and 0.69% for defined contribution plans – and a big reason why Canada is considered to have some of the highest mutual fund fees in the world. Despite some quibbles with some of the data, the central conclusion is on the mark- Canadians need a better solution for their retirement income needs.

A "senior crisis" posed by the risk of seniors' outliving their assets and their declining ability to manage their money as they age must be addressed. Given that thousands of Canadians each month are retiring/entering into RRIF's (de-accumulation account phase), time is of the essence. This is a major socio-economic issue as well as an important regulatory issue.

We recommend that the OSC establish a standing multi-stakeholder Seniors Advisory Committee to keep on top of the developing situation and stimulate progress on addressing the issues facing senior investors identified in the 2014 IAP/OSC Seniors Round-table, the MFDA, IIAC and other research.

2. **Decide on Best interests standard for all advice givers:** We are very pleased to see that the Draft SOP states this is a priority item . The term "Best Interests " is not defined at this point.A document worth reading is the Proposed Best Practices Institute for the fiduciary standard http://www.thefiduciaryinstitute.org/wp-content/uploads/2015/02/BestPracticesFinal-copy.pdf which provides an overview of Best interests .This review of Best interests is taking place against the backdrop of social and demographic changes which have led to an increasing need for individuals to take more responsibility for their own financial future. AND for the industry to provide competent unbiased advice.

Much independent research has already been done in Canada and elsewhere that demonstrates that conflicted advice acts against the investors' interests. Our Comment letters on Fund Fees and Best interests consultations provided a comprehensive listing of independent research references. Roundtables have been held. OSC Enforcement and Compliance reports have been issued that year after year contain the same issues adversely impacting retail investors.

Multiple consultations have been conducted. An analysis of complaint data also shows the fundamental weaknesses of the suitability regime. It has been over a decade since the FDM was first proposed. All this accumulated knowledge plus the mystery shopping experiment results and the Cummings report should be more than adequate to understand the crying need for a

Best interests standard for Canadians saving for retirement. We respectfully suggest that the adverse impact on Ontarians of NOT imposing a Best interest duty is fairly obvious. Such a reform is in the Public Interest. The status quo is not, in our view, a viable option.

No discussion of investor protection issues and the costs of transactions/advice can be complete without consideration of the broker and investment dealer business model. If embedded commissions are prohibited but a Best interests regime is not applied, all that will happen is that commissions will be converted into fees potentially leaving investors worse off. Thus, removal of embedded commissions alone is not a panacea.

It is glaringly evident to us that investment advice robustness needs to be dramatically improved. We recommend the OSC move away from the transaction model and pursue a fiduciary / Best interests regime for advisors without undue delay. Embedded commissions are not consistent with a Best interests advice standard. Professional financial advisor and respected author John DeGoey has enumerated the advantages of prohibition of embedded commissions .These include:

- Transparency- investors will understand very well that neither mutual funds, nor advice associated therewith is "free".
- Cost arbitrage- both advisors and investors will be able to substitute higher-cost products with lower-cost products (including, but not limited to, other mutual funds) resulting in higher returns.
- Allowing for potential [tax] deductibility of advice depending on the nature of the account
- Removing the potential of compensation-induced bias- both within and throughout product lines
- Enhancing consumer confidence in both advisor motives and the actual advice given
- Improving consumer understanding of the constituent component parts of mutual fund costs
- Allowing for scalability of fees (a so-called 'volume discount) as accounts grow

Canadian retail consumers need increased protection when dealing with the financial services industry, according to a report released March 26, 2013 by the Public Interest Advocacy Centre (PIAC) entitled, *Purse Strings Attached : Towards a Financial Planning Regulatory Framework* .

The report reveals that the pace of reform has been slow for an industry entrusted with the retirement security of Canadian consumers. "It's time all employees of the financial planning industry in Canada face the reality-they need to employ a uniform standard of care for investors, complete with a full disclosure of how they're being compensated," noted Jonathan Bishop, co-author of the report. The research reveals Canadian consumers are potentially leaving thousands of their retirement dollars in someone else's hands by not being fully informed .The report concluded that the time remains ripe for provincial consumer and finance ministries to work towards

a regulatory framework for financial advisors .The Report is available at ttp://www.piac.ca/files/pursestrings_attached_final_for_oca.pdf

In a 2014 paper ***The Costs and Benefits of Financial Advice*** http://www.hbs.edu/faculty/conferences/2013-household-behavior-risky-asset-mkts/Documents/Costs-and-Benefits-of-Financial-Advice_Foerster-Linnainmaa-Melzer-Previtero.pdf Stephen Foerster, Juhani Linnainmaa, Brian Melzer Alessandro Previtero assess the value that financial advisors provide to clients using a unique panel dataset on the Canadian financial advisory industry. They found that advisors influence investors' trading choices, but they do not add value through their investment recommendations when judged relative to passive investment benchmarks. The value-weighted client portfolio lags passive benchmarks by more than 2.5% per year net of fees, and even the best performing advisors fail to produce returns that reliably cover their fees. The research shows that differences in clients' financial knowledge cannot account for the cross-sectional variation in fees, which implies that lack of financial sophistication is not the driving force behind the high fees. Advisors do, however, influence client savings behavior, risky asset holdings, and trading activity, which suggests that benefits related to financial planning may account for investors' willingness to accept high fees on investment advice. This research, existing independent research and the OSC contracted research should be sufficient to help shape regulations.

University of Toronto law professor and former OSC IAP Chair Anita Anand sums up the situation in her September 2013 article ***Yes, Investment Advisers Should be Fiduciaries*** with this succinct comment "Provincial securities regulators have investor protection as a central mandate. A default fiduciary standard for investment advisers is the best way to protect investors and needs to be explicitly enacted - now." **Source:** http://www.law.utoronto.ca/blog/faculty/yes-investment-advisers-should-be-fiduciaries A Best-interests obligation is one of the key factors that distinguishes advice from a sales recommendation. If broker-dealers want to portray themselves as trusted advisers, they need to meet the standard that warrants that trust.

Under a suitability standard, mutual funds and annuities, and other such investments that can't compete on quality, can and do compete by offering generous remuneration to the sellers, and that's the problem. Investors end up paying high costs, suffering substandard performance, being exposed to unnecessary risks and subjected to exploitive behaviours as a direct result. That has a huge impact on the ability of Canadians to afford a decent standard of living in retirement or fund other long-term financial goals. Surely, a CAVEAT EMPTOR standard for advice cannot be in the Public Interest.

It is in the Public interest to introduce a Best interests standard and we fully support the OSC in this initiative. [A recent report from the UK FCA

suggests **r**eforms that would make financial advice and guidance work better for smaller investors
http://www.fca.org.uk/news/reforms-will-make-financial-advice-and-guidance-work-better-for-consumers Some of the ideas would work well in Canada too and should be considered by the OSC/GofO.]

As we have said many times before , implementation of the Best interests standard must be accompanied by robust investor protection/enforcement . As discussed in 14. below, this will require a complete overhaul of IIROC governance, philosopy, culture, policies , practices and rules.

3. Resolve outstanding Mutual fund industry issues
We are delighted to note that the OSC also plans to carry out consultations on reforms to the registration rules designed to "improve the advisor/client relationship" and to "develop regulatory proposals that address conflicts of interest created by compensation arrangements related to investment funds." The OSC's pledge to " devise a policy direction on embedded commissions "and other types of compensation arrangements" is welcomed.

A significant proportion of retirement savings has been, and continues to be channeled into the mutual fund sector in Canada. About $1.2 trillion dollars is invested in mutual funds by 12 million Canadians. Because of embedded commissions and other factors, Morningstar gave Canada's fund industry an F grade (the lowest rating) in a 2013 global ranking for having the highest fees among all the ranked countries. It was the only country on the list to receive an F.

Some of the issues we see include but are not limited to:

(a) Use of misleading "advisor" titles
(b) Discount brokers collecting 1 % trailers but unable to provide the advice associated with the trailer (an IIROC enforcement issue)
(c) Using larger asset investors to subsidize smaller fund investors
(d) Mis-selling of ROC funds
(e) Selling DSC funds to the elderly
(f) Not informing income investors that distributions do not have to be reinvested
(g) Selling Segregated funds to clients to avoid CSA compliance rules and fee disclosure (regulatory arbitrage) See our Bulletin : Canadian Fund Watch: Regulatory arbitrage impairs investor protection
http://www.canadianfundwatch.com/2014/07/regulatory-arbitrage-impairs-investor.html
(h) Undue use of leveraging
(i) Not advising fund clients of price breakpoints/ alternate series
(j) Converting clients into fee –based accounts without good reason or just cause i.e. **reverse churning**

One of the most important issues is mutual fund risk disclosure (referred to as a risk classification methodology) in Fund Facts (FF) .The OSC must amend its proposal that utilizes an incomplete and misleading FF industry developed risk disclosure methodology that virtually all respondents to a recent CSA consultation stated needed major changes Ex. The Invesco Comment letter https://www.osc.gov.on.ca/documents/en/Securities-Category8-Comments/com_20160309_81-102_adelsone.pdf illustrates the many issues extremely well . Kenmar remain strongly opposed to the use of the standard deviation as the sole means of disclosing investment fund risks. Our recent submission enumerates all the shortcomings we have identified ref http://www.osc.gov.on.ca/documents/en/Securities-Category8-Comments/com_20151223_81-102_kenmar-associates.pdf .

We wish to stress that our target in our commentaries is not the individual fund salesperson aka " advisor", the majority of which would like to do a good job for clients. The target is the management that creates the culture, incentives (commission grids and the like), financial and non-financial rewards/sanctions and sales targets/quotas that drive a singular behavior to "produce". There is something inherently wrong with an "advice' system that doesn't have client satisfaction and integrity at its core yet advertizes that it does.

It's time for definitive action based on the extensive research available. The retirement savings and nest eggs of the people of Ontario are at risk. The function of the financial services industry to turn retirement savings into future retiree wealth is an important public policy issue. More and more seniors and pensioners become vulnerable each day, quarter and year that the status quo remains entrenched that a low suitability standard coupled with fund company commissions and other payments permit. Given the extensive research available on this subject we urge conclusive action on Best interests in the coming fiscal year.

4. 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. The Ontario Government is currently examining the need for more consistent standards for individuals who offer financial advice and planning services. We urge the OSC to work with the government as this important initiative evolves.

So called Robo Advisors have the potential to economically provide investment advice for investors with modest account sizes. These vary in nature, artificial intelligence and sophistication. While we expect the OSC to apply appropriate due diligence, such innovations can be a boon to small investors and their use should be encouraged subject to regulatory oversight.

Ontarions will 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 distribution ("de-accumulation '). This will require a completely different skill set, different products and **professional, unbiased** advisers competent in the art and science of pension management.

5. Whistleblowing. We fully endorse this OSC initiative . We have provided extensive comments in our formal Submission and participated in a Roundtable. Please note a Study that shows whistleblower complaints lead to increased penalties and likelihood of enforcement http://www.lexology.com/library/detail.aspx?g=49f83aeb-168b-4b98-97db-7e99cd1732c7 The Study concludes that, in regulatory enforcement actions brought by the SEC and DOJ alleging financial misrepresentation, employee whistleblowers have a consequential impact on regulatory outcomes, increasing the size of penalties, length of prison sentences and duration of the actions. In addition, whistleblower complaints were found to significantly increase the likelihood of an enforcement action.

6. Regulation of Fixed Income Securities We strongly support the steps the OSC is taking to enhance regulation in the fixed income market and to identify opportunities where changes to regulatory approaches could improve trade transparency and better protect investor interests. The fixed income market has substantially increased in size in the last decade and there is a large presence of retail investors, particularly seniors/retirees, invested in this market directly and indirectly. As people age, the proportion of the portfolio in fixed income increases so this will be an increasingly important issue over the next few years. Corporate bond trading is opaque with limited post-trade transparency for both regulators and retail investors. This lack of transparency limits the OSC's ability to determine whether retail investors and small institutional investors are obtaining best execution. We fully support the OSC's plan to improve transparency and dealer allocation practices.

7. Tighten Enforcement: Investors want to see that justice is done and that white-collar crime is considered a serious form of financial assault. We think a significant number of issues would go away with effective enforcement, a point we make with CSA members several times per year. Has anyone ever heard of an enforcement action for NI 81-105 Mutual Fund Sales Practices violations? See *OSC identifies issues with investment funds' marketing materials:* Canadian Securities Law http://www.canadiansecuritieslaw.com/2013/07/articles/continuous-timely-disclosure/osc-identifies-issues-with-investment-funds-marketing-materials/ as an example of the information retail investors must try to make sense of.

This initiative is therefore most appropriate and timely. Beyond money, industry wrongdoing affects many aspects of people's lives including stress, marriage and health. The OSC's plan to improve the efficiency, effectiveness

and timelines of its enforcement work is welcomed. The penalties contained in settlement agreements often pale in significance to the gains made by those involved in wrongdoing. In fact, many of the fines imposed on individuals are not paid since registrants leave the industry or declare personal bankruptcy. We recommend that fines be increased and disgorgement and punitive damages be added to the tool kit.

According to the SRO's, somewhere between 80 and 90 % of fines imposed on individuals are never collected. Unpaid fines on such a scale make a mockery of the enforcement system and the general deterrence value of fines. This needs to be changed. We urge the CSA/OSC/ to give the SRO's the legal capability to collect fines or for Ontario to go it alone in this area as Quebec has done with the provisos that (a) any fines uncollected after one year will be to the account of the dealer and (b) the proceeds be used for investor education , research or restitution.

At the same time we must note that Securities commissions and SRO's often take too long to investigate and discipline, so by the time the fines are levied, years have passed and there is no money left. Speeding up core processes would be helpful. Moreover, investment dealers should be held accountable for any unpaid fines by individuals – in our opinion, such a change would result in an immediate improvement in dealer behaviour and supervisory practices. In the majority of cases cases it is the policies, practices, sales quotas , commission grids . compensation arrangements and other non-financial incentives of dealers that incent "advisors" to push the envelope of compliance. We have also encountered cases where supervision share in branch commissions earned!

Another possible approach to collection would be to work with FSCO (and other provincial insurance regulators) in establishing a reciprocal agreement so that dual licensed salespersons were not immunized form paying fines. This would help in collections from dual licensed "advisors".

Actually, fine collection is far less important to investors than recouping the money and that's what we'd like to see the OSC really focus on.

8. Introduce an Investor Restitution Fund This item has flowed in and out of OSC priorities over the years with no firm decision. Investors are very interested in **restitution** not fines imposed on registrants. Restitution is the top priority for investors who suffer losses because of violations of the securities Acts. The status quo is just not working – the published SOP does not, but should, address this long standing issue. We recommend that the OSC add investor restitution initiatives to its 2016-17 priorities. If section 128 OSA applications of the OSA are not a useful mechanism, as appears to be the case, for investor restitution, we urge the OSC to establish a restitution fund as is the case in several other provinces.

9. **Stabilize OBSI** According to the OBSI 2015 Annual Report ,219 cases ended with a monetary compensation to the consumer, worth a total of $4,659,194. This represents 35% of all closed case files. The approx. $4.7 million in total compensation comprised of $4.4 million in investment cases and $300,000 in banking cases. In 2014, OBSI recommended $4.3 million in client compensation.Twenty-two percent of banking complaints (53 of 245) and **43%** of investment complaints (166 of 384) ended with monetary compensation (ie over 4 in 10 dealer complaint decisions are reversed !). The average compensation for investment complaints was $ 26, 258. Six case files ended with firms refusing to compensate their clients, representing $591,289 in uncompensated recommendations. OBSI saw a significant shift, however, in the nature of these cases, with a 21% increase in banking cases and a surprising 14% decrease in investment cases.We attribute a fair share of the apparent decrease to unfair dealer complaint handling practices and the cunning use of unregulated " internal Ombudsman " by bank-owned deaalers. More than 65% of investment cases involved suitability. Over 50 % of investment cases involved mutual funds ; 55% of users were 60 years of age or older. These are sobering statistics,

The Annual Report contains some other interesting information. For one , the" low ball" issue seems to have been swept under the carpet. The critically important board Standards Committee did not meet separately in 2015. As in the past , there is virtually no disclosure of what the Consumer and Investor Advisory Council accomplished. It's as if key issues impacting the ordinary investor are deliberately withheld.https://www.obsi.ca/en/download/fm/502 The curent governance regime is not working for investors.We recommend that three Director positions be reserved for retail investors on the Board as recommended by the 2011 Khoury Report.

Securities Acts, regulations and rules across the country require investment firms to deal with their clients "fairly, honestly and in good faith" — an obligation that extends to dealing with client complaints. Dealers who refuse to participate meaningfully in a regulator-mandated dispute-resolution process, dealers who reject OBSI recommendations or worse, dealers who low ball OBSI recommendations are fundamentally not acting in good faith. They are deliberately subverting the process and OBSI. In addition, victims must sign gag orders that are attached to OBSI's restitution recommendations . . . when they are paid .Securities regulators must address such practices with prompt and decisive action.

Investors want and need a financial ombudsman that has mandate and capability to efficiently resolve disputes and deal with systemic issues in a timely manner. We believe that there are several important open issues with regard to OBSI. Specifically, we believe that there should be a mandatory regulatory investigation of each and every case where an OBSI recommendation is not accepted by a dealer. The findings should be published and compensation, if and as appropriate, provided. Secondly, we believe that regulators owe investors an explanation of what will happen, if anything, when they are advised by OBSI of a systemic issue.

We remain disturbed that OBSI is unable to investigate an investment portfolio that contains a Segregated fund or other insurance products recommended by dually licensed "advisors". This (mal)practice places investors in harms way.

Finally, we recommend that OBSI findings be made binding on dealers as the ideal solution to the chronic issues and that OBSI be given the mandate to investigate systemic issues that the Board/regulators have removed. The OSC Investor Advisory Panel (of which I am a member) details this and other issues facing OBSI in its submission to the Independent reviewer http://www.osc.gov.on.ca/documents/en/Investors/iap_20160218_evaluation-banking-services.pdf The SIPA , Kenmar Associates and FAIR Canada Comment letters posted on the OBSI website explore the underlying issues in further detail.

The time for Joint Regulator Committee "monitoring" is long past. Action is required in order to protect investors.

10. Mobilize for regulation of The Exempt Market The Exempt market is large and growing due to a number of recent regulatory exemptions and rule changes. One estimate puts retail investor participation at about 10 %. Kenmar (and SIPA, FAIR Canada) have noted their concerns in its previous comments on OSC priorities and in response to other consultations .

We are concerned about the potential investor harm posed by new prospectus exemptions. We recommend that more information be gathered about this market especially now that exemptions are in place We had previously also recommended that an SRO be formed (or IIROC be designated or that the OSC organize /resource itself to effectively act as a well oiled SRO) and that an investor protection fund similar to CIPF be established. Specifically . we urge the OSC to keep a close eye on Equity Crowdfunding to ensure portals and startups comply with the rules and unintended consequences are detected early and resolved before retail investors are harmed.

11. Engage the Public We note that the Investor Office will be expanding and modernizing the OSC's efforts in investor engagement, research, education and outreach, to help investors to build their knowledge, understanding and confidence in planning for their investment goals and retirement finances. We'd also like to see more Investor Streetproofing materials, not just "educational" materials. There are plenty of minefields to navigate with registered representatives/dealers as well. Documents like the ***CFPBoard Consumer Guide to Financial Self Defense*** http://www.asuupmmc.utah.edu/files/CFPBoard_Financial_Self-Defense_Guide.pdf , and ***Consumer Awareness Booklet*** (28 pages loaded with useful material for the retail investor)

http://www.onusconsultinggroup.com/uploaded_files/InvestorAwarenessBooklet.pdf are examples of what we'd like to see. We have also recommended that the OSC/CSA prepare User Guides on how to use Fund Facts and the new CRM2 cost and performance reports.

The OSC website design should be enhanced to provide better navigability/search – in particular the usability of registration check needs improvement. As an aside, we continue to recommend approved OBA to be part of the public registration data file.

12. Recognize Regulatory Arbitrage as a systemic Risk Wealth Management is a strategic goal of the three main pillars of the financial services industry – banking, insurance and investments. It is clear that arbitrage is growing as all pillars are competing for the same demographic. Regulatory arbitrage often leads to a race to the bottom as has already happened with banking Ombuds complaints. Such arbitrage contributes to unfair and disorderly financial markets. Retail investors are always the big losers in these regulatory arbitrage situations. At a minimum, consideration should be given to bringing Segregated funds under securities regulation as this is a major cause of regulatory arbitrage. One constructive suggestion that keeps coming up would be to merge FSCO with the OSC to provide better 360 degree knowledge of financial system issues in Ontario. See our Bulletin on regulatory arbitage *Regulatory arbitrage impairs investor protection*
http://www.canadianfundwatch.com/2014/07/regulatory-arbitrage-impairs-investor.html

13. Improve Suitability assessment process: We appreciate that the OSC will continue with its focus on suitability sweeps and take enforcement actions as appropriate. This is necessary and appropriate. We believe that in many cases only real time or near real time software tools that make robust dealer compliance with regulations a reality.

One chronic underlying problem for investors and OBSI (and industry participants) – non-standard, misleading and inadequate NAAF forms within the industry. If the NAAF/KYC process were re-engineered and standardized, a significant number of complaints could be avoided. We recommend this be a specific 2016-/2017 priority as it will have a big payoff for all stakeholders. This was recommended to the OSC by the ***Regulatory Burden Task Force*** in December 2003.
http://www.investorvoice.ca/Research/OSC_RegulatoryBurden_Dec03.pdf
We expect that the PlanPlus risk profiling research report released by the OSC IAP will also lead to an improvement in understanding a client's appetite for risk and thereby more suitable investment recommendations.

14. Deal with the IIROC issue

IROC Unpaid Fines Report June 1 2008-March 4, 2016 reveals

total unpaid fines for IIROC current according to their website is ***$27,941,793.00*** *http://www.iiroc.ca/investors/Pages/Unpaid-Fines-Report.aspx We wonder on what basis IIROC belives their approach to enforement is effective , a deterrent or protects or protects investors.*

IIROC operates under a Recognition Order from the CSA making it the principal national regulator for retail investors. The OSC is the primary overseer of the Order granting IIROC the privilege and responsibility for retail investor protection in Canada. Kenmar has identified a growing number of issues which give us concern as to whether IIROC can be counted upon to adequately protect retail investors. Some examples:

1. Enforcement system effectiveness- many sub issues
2. Governance - heavy dealer focus ---retail investor not represented on BOD
3. Low level of Investor engagement and sensitivity
4. Investor Complaint handling process and policies- many valid complaints closed without adequate explanation.Investors are so frustrated with the boilerplate response" *Our review of your complaint is now complete and Enforcement staff has determined not to pursue formal disciplinary proceedings against Mr. X. As such, we have closed our file. "* that it is hard to see why anyone would bother to complain to IIROC at all.
5. Controversial sanction guidelines -no numerics,strictly principles based - who monitors deterrence effectiveness of aggregate results?
6. Not controlling dealer Rep titles that mislead investors
7. Best interests regime for advice givers years overdue
8. Unclear initiatives regarding protection of seniors -eg proposed use of stockbrokers as executors [the OSC IAP officially oppose this rule change See http://www.osc.gov.on.ca/documents/en/Investors/20150831_members-dealers-rule.pdf]
9. Supervision and compliance rules and audit effectiveness questionable
10. Well identified serious issues with client risk profiling practices not being expeditiously addressed
11. Hearing Panel decisions not tied to a strategic direction or vision, wrist slap penalties in too many cases. In 2015 ,the OSC actually reversed a Panel decision noting " *The Panel erred in law and proceeded on an incorrect principle in determining that a suspension was not required in all of the circumstances,In addition, the Panel's approach to determining the appropriate sanctions for Lukic's misconduct illustrates that the Panel's perception of the public interest is inconsistent with that of the Commission*." .
12. Ideology of blaming "advisors " most of the time w/ o considering root causes i.e dealer management policies /supervision / compensation
13. Deficient dealer complaint handling rules - many issues including substantive responses,internal bank "ombudsman", systemic issues etc We have provided a detailed analysis to IIROC with NIL response

to date. This is our critique of the IIROC complaint handling rule https://drive.google.com/open?id=0ByxIhlsExjE3ZGp5MWc1TUI4RzA

14. Interaction and engagement with OBSI unduly weak
15. Privacy and security systems - physical and digital privacy gaps

In 2015, IIROC granted 634 regulatory exemptions granted , which included more than 500 relating to proficiency requirements, 64 that involved specific aspects of the trading rules, and 14 to facilitate bulk transfers, among other issues. In March , some IIROC dealers were let off the hook to report client performance on Off Book assets.

Even a simple rule change like adding the IIROC logo to client statements has been mired in quicksand for years. More recently ,IIROC has issued a controversial White Paper that would allow sales commissions to be diverted to personal corporations for "advisors" and could dramatically disrupt the operations of the MFDA. Neither of these two outcomes support investor protection. The latest OSC Oversight report also identified a number of issues including a critical unattended IT issue.

We strongly recommend that the CSA/OSC impose on IIROC as a condition of maintaining the Recognition Order that (a) the OSC Review every aspect of IIROC operations to identify areas where investor protection is deficient (including the ones identified in this letter) and compel IIROC to make the necessary changes on a defined milestone schedule(b) set aside at least three board seats for retail investors and (c) implement a funded Investor Advisory Panel similar to the one established by the OSC . Kenmar is more than willing to participate in any restructuring of IIROC.

The OSC IAP summed up our concerns in their reponse to IIROC's Strategic Issues consultation http://www.iiroc.ca/Documents/2015/7e3a6326-4620-4945-8696-2edcd650312a_en.pdf " *IIROC cannot fulfill its investor protection mandate without major changes to its governance structure. IIROC's current governance allows ample opportunity for industry involvement but is closed to retail investor participation and engagement. IIROC offers no formal opportunity for retail investor involvement/input into its operations, its policy development or its Board of Directors. While the Ontario Securities Commission, for example, has created an Investor Advisory Panel in addition to individual retail and institutional investor representation on its policy committees, IIROC has no retail investor representation on its five industry Policy Committees or 10 member firm District Councils*. "

We regard improving IIROC as the same, if not higher, priority as introducing a Best interests standard.

15. Improve dealer complaint handling Closely related to the Best interests issue is the fairness of dealer complaint handling practices. It is bad enough that victims lose money due to bad advice but even worse when

restitution is denied due to unfair complaint handling. This reflects badly not only on the dealer but on the investor protection regime itself. Dealer responses tend to be unfair, dismissive and abrupt based on our samples. Too often the "substantive responses" are not responsive to the complaint and critical information needed by the complainant to make an informed decision is not provided. We recommend that a compliance sweep of dealer complaint handling practices be part of the 2016-2017 work plan. It is not however just the implementation of existing rules that are a problem. The rules themselves are deficient in a number of critical aspects. As noted above, Kenmar have provided the OSC as well as the CSA, MFDA and IIROC with a detailed report explaining the fundamental flaws in the prevailing SRO complaint handling rules. We recommend that the OSC address the deficiencies through improved rules , practices and more frequent audits.

SUMMARY and CONCLUSION

The OECD warns poverty among seniors is rising in Canada providing yet one more good reason to introduce a Best interests standard and ensure systemic issue complaints are promptly investigated http://www.theglobeandmail.com/report-on-business/top-business-stories/oecd-warns-poverty-among-seniors-rising-in-canada-points-to-public-pensions-gap/article15600342/ Report at http://www.oecd.org/canada/OECD-PensionsAtAGlance-2013-Highlights-Canada.pdf

Multiple research reports and polls suggest many Canadians may not be well prepared for retirement. Trusted and competent financial advice can play a huge role in mitigating this issue.

Regulatory bodies exist to safeguard trust in the system. Our quarterly Investor Protection Reports regularly highlight numerous breakdowns and missed opportunities to protect retail investors. The results of this initiative will shape the future of financial advice .Best interests has a compelling case for "trusted advice" found in history, law, research and common sense but it will require a a high level of determination to counter the well funded opponents of change. The investment industry (now rebranded as the Wealth Management industry) needs regulatory guidance, decisiveness and finality .

Kenmar Associates agree to public posting of this Comment Letter.

We would be pleased to discuss our comments and recommendations with you in more detail at your convenience.

Respectfully,

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