Kenmar Associates
Dedicated to Investor Protection

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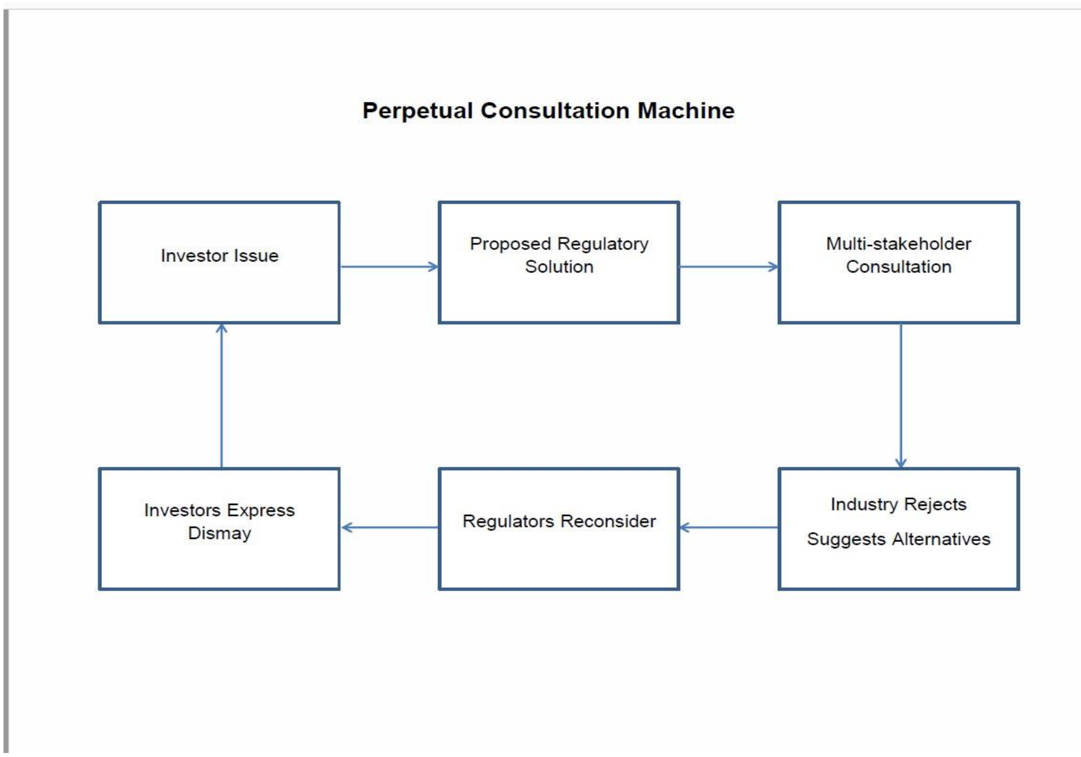
ONTARIO SECURITIES COMMISSION NOTICE 11-771 – STATEMENT OF PRIORITIES

REQUEST FOR COMMENTS REGARDING THE STATEMENT OF PRIORITIES FOR FINANCIAL YEAR TO END MARCH 31, 2019
http://www.osc.gov.on.ca/documents/en/Securities-Category1/sn_20180329_11-780_rfc-sop-end-2019.pdf

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 appreciates the opportunity to comment on the Proposed 2018-2019 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 monthly 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

The Canadian debt to income ratio is at record highs. The investment dealer overcharging scandal is still fresh in our minds. A recent OSC report http://www.osc.gov.on.ca/documents/en/Securities-Category1/sn_20180320_11-779_seniors-strategy.pdf on Seniors demonstrated the need for prompt affirmative action to protect the elderly and other vulnerable investors. We are delighted to see that the OSC has a priority strategy to protect seniors and other vulnerable investors.

Meanwhile ,abusive mutual fund sales practices, defective KYC/Suitability documents , improper fee-based accounts, exploitative Off-book transactions or misleading disclosures and regulatory arbitrage reveal there's serious investor protection issues that need to be addressed and NOW.

With low investor financial literacy/numeracy, a growing number of seniors /retirees, increased investor longevity and a misunderstanding about an advisor's fiduciary obligations, Canadian retail investors are extremely vulnerable -their life savings in jeopardy. Providing appropriate investor protection must be top priority for the OSC.

This Consultation again paints a picture of a fragmented, staggeringly complex financial service industry regulatory structure gingerly testing the waters on a number of inter-related Investor protection measures. Sometimes these investor protection initiatives are abandoned entirely (e.g. the abandonment of the Best interest standard by a majority of CSA regulators), sometimes they move ahead incrementally (e.g. the improved disclosure of how much investors pay to their dealers) but more often than not governments and regulators kick key decisions down the road by consulting...and then consulting again...and again....for decades. The

1995 report ***Regulatory strategies for the mid-'90s: recommendations for regulating investment funds in Canada*** by Glorianne Stromberg sounds almost current today!

Our review of the draft SOP suggests that the OSC is uncharacteristically continuing to study and research without project action plans, milestones or end dates. The reason may well be disharmony among CSA members on a number of fronts. Some of the differing views may be irreconcilable .It could ultimately be necessary to take independent action to protect Ontarians as Quebec has done in some instances for its citizens.

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 adversely affect the advice provided.

A report ***Lack of truth in advertising deceives investors*** from SIPA (www.sipa.ca) 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

A recently released Report from the Small Investor Protection Association entitled "Listen to the Voices" reveals the financial and emotional impact on ordinary Canadians of weak investor protection. This report presents the voices of the silent majority- the victims of financial assault by Canada's financial services industry. Improved financial literacy is not an adequate Government response to the threats to Canadian's financial well-being. Enhanced conduct standards, no nonsense enforcement and a statutory financial Ombudsman service are urgently needed. Any person reading it will understand why.
http://sipa.ca/library/SIPAsubmissions/ListenToTheVoices_letterForward_20180414.pdf

The Targeted Reforms Update

In May of last year the CSA issued a Staff Notice
https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/PDF/33-319__CSA_Staff_Notice___May_11__2017/
that addressed the wealth management industry concerns with the proposed targeted reforms. The Notice reiterates the CSA's intention to proceed with reforms in each of the targeted reform areas in order to "better align the

interests of registrants with the interests of their clients, improving outcomes for clients and clarifying the nature of the client-registrant relationship." However, it also acknowledges concerns expressed by industry participants (but not of investors) in the consultation process that certain elements of the proposals were impractical, inflexible and overly prescriptive and could produce unintended negative consequences for clients (i.e. it might reduce the time available to sell product and create liabilities for dealers).

In response to industry concerns, the Notice states that, in the next phase of the [never-ending] process, the CSA will consider changes that would refine or completely eliminate a number of the prescriptive elements in the targeted reforms. Specifically, the CSA plans to <u>reconsider</u>:

- the mandatory collection of basic tax information as part of the KYC reforms as recommended by investors ;
- the element of the KYP proposal that would require the market investigation of a "reasonable universe of products";
- the requirement for representatives to understand and consider the structure, product strategy, features, costs and risks of each security on their firm's product list (in this case, the CSA will consider modifying the requirement to understand and consider all securities in a firm's product list);
- the important (to investors) default requirement to perform a suitability assessment at least once every 12 months absent a triggering event; and
- the obvious (to investors) requirement to perform a suitability assessment if there is a significant market event affecting capital markets to which the client is exposed.

The CSA will also reconsider some of the language in the proposed targeted reforms, look for ways to address industry concerns about excessive prescriptiveness and "one-size-fits-all" inflexibility in the recommended approach by "incorporating a concept of scalability". As of April 2018, absolutely Zero action has been taken on the reforms except to inform us that the final version, whenever it comes, will be significantly less robust than the ones proposed in the consultation.

In other words, nearly all of the targeted reforms touted to compensate for the CSA's abandoning Best interests will be watered down or abandoned. It is very clear the CSA has a love affair with the suitability standard / transactions and, absent an investor revolt or Government intervention, will take only cosmetic action to professionalize financial advice.

It was always going to be difficult controlling something that had no integral system and no well defined decision rules and structures. Controlling hundreds of thousands or more permutations of "advice" on a transaction by transaction basis is much more complex than a Best interest standard focused on standardisation of process. A key reason why the targeted reforms were always going to get caught on the rocks.

Detailed Commentary on Priorities

We have the highest respect for the OSC, Its staff and leadership. We recognize that the OSC is one of the 13 regulators so is constrained in just how far it can deviate from the consensus view of the other member Commissions of the tired CSA. The OSC is also likely limited by what it can publicly say given its possible absorption into the CMRA, some of whose members have wildly differing views on investor protection and redress. That being said, we are obligated to be forthright in our commentary on what is put before us. In a very real sense, many of the comments which follow are directed at the rest of the CSA for their action .At least the OSC, unlike the other securities Commissions, makes its planned priorities public and gives all stakeholders the opportunity to poke away. Perhaps this Comment letter will induce enough shame within the other CSA members and staff for them to positively respond to the needs of their fellow Canadians.

Our comments are limited to retail investor issues. We leave it to others to deal with such issues as shareholder democracy, insider trading, OTC Derivatives, HFT, diversity on Boards, reverse takeovers, Bitcoin etc.

Here are our recommendations regarding retail investor protection priorities for the 2018-19 fiscal year:

1. **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 for the OSC. 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 financial services industry to provide competent, unbiased financial advice.

The proposed best interest standard is different from that implemented in other international jurisdictions and seems to be one ensconced within the more limited scope of the "fair dealing" broker model. It is more a best product as opposed to best advice. In this context, the nature of the relationship portrayed by dealers and Dealing Representatives remains in conflict with the regulated construct.

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.

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.

Research initiatives, including the Cumming Report, the Mystery Shopping Report, the Brondesbury Group's literature review and other reports on advisor compensation, highlight problems with the client-advisor relationship and demonstrate the advice-skewing influence of embedded / trailing commissions and other compensation structures on sales practices and investors' long-term financial health. Kenmar believes that a statutory Best interest standard must be implemented in order for investors to rightly and safely expect that their financial advisors and financial planners will provide them with high-caliber trustworthy professional advice.

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

Moreover, Kenmar believes that only a statutory Best interest standard will deliver:

- adequate protection for investors ;
- Better choices for investors;
- Better financial outcomes for investors,
- More effective competition;
- Increase in professionalism in the wealth management industry; and
- Increase in the level of trust in the financial services market

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.

Kenmar urge the OSC to proceed without undue delay and implement the regulatory changes that will introduce at least a basic form of best interests standard into Canada's wealth management industry. This should be done whether or not it is aligned with the rest of the CSA. Time is of the essence as each day that passes, the retirement income security of millions of Ontarians is unduly impaired.

2. Deal with the IIROC issue

IIROC operates under a Recognition Order from the CSA. In effect, it is 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 Ontario/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 starting with its governance. See http://www.sipa.ca/library/SIPAsubmissions/500_SIPA_REPORT_InvestorProtection_IIROCGovernance_20161009.pdf .

Despite even a Kenmar offer to finance an IAP, IIROC are unwilling to consider such an Investor-friendly tool. Kenmar are also concerned about the relatively low number of complaint cases investigated. We have expressed our dissatisfaction on the operation of Hearing Panels lack of use of Root Cause analysis. In 2015, the OSC actually reversed a IIROC 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*.". We continue to be shocked at how few cases of blatant dealer supervision compliance breakdowns go unenforced.

Kenmar note IIROC's failure to address the systemic, industry-wide compensation practice conflicts-of-interest that the CSA first publicly identified in a 2014 survey -4 years ago- and that IIROC again confirmed in its subsequent report in April, 2016. IIROC have promised to act but we see no progress. The President and CEO has publicly claimed that IIROC dealers operate under a best interest standard but IIROC's Compliance and Enforcement staff have done nothing to stop firms from using compensation practices that put the firm and its employees' financial interests ahead of the clients. They haven't even stopped firms from rewarding high sales producing "advisors" with prestigious titles like VP, meant to impress and deceive clients.

Kenmar observe that the emphasis is on sanctions on individuals rather than the dealers even when the individual was incented to cross the line and was poorly supervised. See Kenmar Report on IIROC Dealer Account Supervision http://www.canadianfundwatch.com/2018/01/report-on-iiroc-dealer-account.html In the few cases that IIROC prescribe disgorgement as a Sanction, they retain the cash -if it is collected- not a cent goes to the victims of the final assault.

Back in 2014/15, IIROC put out a proposal that would have allowed dealing Representatives to act as executors for clients, a practice long prohibited by sister SRO, the MFDA. A Oct. 2015 comment letter from SIPA attacked the proposal by pointing out all the risks to investors of such a practice http://www.sipa.ca/library/SIPAsubmissions/500%20OSC%20Greenglass%20-%20SIPA%20Comments%20re%20Executors%20201510.pdf The OSC IAP also was not supportive of the proposal http://www.osc.gov.on.ca/documents/en/Investors/20150831_members-dealers-rule.pdf After other consumer groups jumped in and industry reaction was muted, IIROC had no choice but to withdraw the proposal.

Similarly, IIROC was forced to stand down on changes it had proposed in a 2015 White paper. The prospect of a major restructuring of the competitive and regulatory landscape between investment and mutual fund dealers had to be taken off the table due to lack of support from investors , industry participants and the MFDA. The proposal asked registrants to consider two connected issues: allowing investment dealers to employ mutual fund representatives by eliminating the existing requirement that they upgrade the qualifications of mutual fund licensed employees to full-service status; and, allowing all reps to use a directed commission structure .Again , the OSC IAP expressed their concerns in this Comment letter https://www.osc.gov.on.ca/documents/en/Investors/20160404_iiroc-white-paper.pdf and so did we http://www.iiroc.ca/Documents/2016/35cdcd06-05f1-42ce-8c62-c9f0f5283990_en.pdf .

The industry-wide overcharging of investors is another huge failure for IIROC. Overall, including the settlements involving overcharging, the no-contest settlement program has been used to resolve over 15 cases, resulting in over $350 million being returned to investors collectively. Every major IIROC regulated investment dealer overcharged their clients. How did so many dealer supervisory controls fail and their failure remain undetected by IIROC, some dating back to 2000? See table below:

Significant "no contest" settlements related to overcharging clients on fees

COMPANIES AFFILIATED WITH:	OVER-CHARGING OCCURRED	DATE OF SELF-REPORTING TO THE OSC	"NO CONTEST" SETTLEMENT DATE	NO. OF CLIENTS AFFECTED	EST. CLIENT COMPENSATION DUE	VOLUNTARY PAYMENT (INCL. COSTS)	PAYMENT AS % OF CLIENT COMP.
Toronto-Dominion Bank	2000-14	May 2014	Nov. 13, 2014	10,520	$13,500,000	$650,000	4.8
Bank of Nova Scotia	2008-15	Feb. 2015	July 29, 2016	45,703	$19,997,821	$850,000	4.3
Canadian Imperial Bank of Commerce	2002-16	March 2015	Oct. 28, 2016	81,755	$73,260,104	$3,050,000	4.2
Bank of Montreal	2008-16	Feb. 2015	Dec. 15, 2016	60,393	$49,885,661	$2,190,000	4.4
Royal Bank of Canada	2005-16	Feb. 2015	June 27, 2017	50,447	$21,802,231	$975,000	4.5
Manulife Financial Corp.	2005-16	June 2015	July 13, 2017	9,420	$11,700,000	$520,000	4.4

SOURCE: INVESTMENT EXECUTIVE RESEARCH INVESTMENT EXECUTIVE CHART

Source: http://www.investmentexecutive.com/-/osc-firms-focus-on-overcharging

The IIROC investor Complaint handling process and policies needs improvement - many valid complaints are 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.

A basic tool like IIROC's AdvisorReport is a nightmare for investors. To use that online service, investors must first agree to five pages of terms of use. The five-page document is full of confusing legalese. We have never encountered so many intimidating and unnecessary roadblocks from any other regulatory site quite like IIROC's. See http://sipa.ca/library/SIPAsubmissions/600_SIPA_OpenLetter_to_SecuritiesRegulators_20171004.pdf

Well identified serious issues with IIROC dealer client risk profiling practices are not being expeditiously addressed Re the PlanPlus Report. A deficient dealer complaint handling rule (2500B) is a very serious problem - 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 and one by CFA Andrew Teasdale http://blog.moneymanagedproperly.com/ This rule places retail investors in harms way.

Unlike their US counterpart FINRA and the MFDA, IIROC Sanction Guidelines are 100% Principles based which provides inadequate guidance for Hearing Panels to ensure consistency. The penalties levied often seem unrelated to the severity of the harm, mitigating circumstances consistently outnumber aggravating circumstances http://www.canadianfundwatch.com/2018/01/agravating-and-mitigating-factors-and.html .

IIROC's current priority on obtaining legal rights to pursue fine collection from individuals and immunization from civil action for even negligence is especially worrisome. The priority on fine collection from individuals makes no sense given the other much more important challenges. This will likely lead to a diversion of resources from compliance / enforcement with little deterrence value and zero investor compensation and a very powerful industry controlled entity outside the statutory framework e.g. they are not subject to FOI obligations. Rather than enhancing investor protection, however, these powers appear to be transforming the role of SROs more into something resembling public prosecutors, without significant consideration or public debate of the implications. See http://www.babinbessnerspry.com/blog/more-legal-authority-to-industry-regulators.html?utm_source=Mondaq&utm_medium=syndication&utm_camp

aign=View-Original .

Their engagement with consumer and investor advocacy groups is superficial. When they cite research in their Consultations, they refuse to make public that research. For over a decade, we have requested that IIROC stop the exploitation of clients by discount brokers paying A series mutual fund trailer commissions for advice they will not receive and only on April 9th was convoluted Guidance provided. The guidance permits the sale of A series mutual funds by discount brokers that even fund industry lobbyist IFIC disagrees with. Rather than require discount brokers to deal fairly, honestly and in good faith and eliminating a conflict-of-interest, IIROC says it expects the firm to "address the conflict by rebating to the client the portion of the trailing commission for ongoing advice, or taking other similar steps".

For at least 15 years we have pointed out flagrant IIROC dealer violations of NI81-105 (issued in 1998) yet we are not aware of a single dealer prosecution. A number of IIROC registered dealers have rejected or lowballed OBSI compensation recommendations with impunity. Perhaps not surprisingly, a IIROC nominee on the OBSI Board is from a dealer that was Named and Shamed!

IIROC mischaracterize Best interests as resolving conflicts-of-interests in the best interests of clients knowing full well that is nonsense and not close to the true meaning of a Best interests advisory standard. viz" *We believe that the proper management of conflicts of interest – and compensation-related conflicts in particular- is at the core of the best interest debate"*. http://www.iiroc.ca/Documents/2017/a0d6a6a5-fb14-4552-85a3-fc343ce890d0_en.pdf All manner of compensation conflicts have been permitted without regulatory action. IIROC allow dozens of Rep titles based solely on sales production, which they know are designed to mislead and build trust. See **The Best Interests Advice Standard** - Canadian MoneySaver
https://www.canadianmoneysaver.ca/the-best-interests-advice-standard/

Finally, we refer to a 2017 CSA/ OSC Oversight report that in effect gave IIROC a failing grade. In summary, CSA staff note a repeat finding in the Business Conduct Compliance department given IIROC did not implement the necessary changes to their examination programs (high priority). Also, CSA staff found that IIROC did not make sufficient progress in resolving an issue raised during the previous oversight review in the area of Information Technology (medium priority) by not providing an information security program report to a Board committee on a quarterly basis. In addition, CSA staff raise other medium priority findings in the Business Conduct Compliance (one), Information Technology (one) and Enforcement (two) departments. In particular, the report indicates that IIROC failed to make promised changes to its examination procedures for assessing suitability in managed accounts.

There is even a not so subtle comment on lying. *"Staff note that the revised procedures were implemented in October 2016, eight months after IIROC initially stated the changes had been made*," the CSA stated in its report. Additionally, the CSA says that new examination procedures for assessing compliance with certain aspects of the mutual fund sales-practices rules were not implemented by June 30, 2016, as the regulators originally agreed. "Staff were subsequently informed that the revised procedures were implemented in February 2017, more than seven months later," the report states. Some of the other, less urgent issues identified in the report include a lack of guidance for IIROC compliance staff on identifying repeat or significant deficiencies, and the absence of a process for taking a holistic view of dealers and their compliance records. All in all, not a confidence building report card.

The OSC IAP summed up their concerns in their response 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 strongly recommend that the OSC impose on IIROC additional conditions for maintaining the Recognition Order. For a start, we recommend (a) set aside at least three board seats for retail investors (b) implement a funded Investor Advisory Panel similar to the one established by the OSC and (c) allow the use of restricted funds to finance independent investor research.

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

3. **Make a decision on embedded commissions**

It's still not clear whether the OSC intend to ban embedded commissions. Instead, the OSC says only that it will, "Publish policy recommendations on embedded commissions to mitigate the investor protection and market efficiency issues," and that it will also publish proposals to enact those recommendations, but it's not committing to specific reforms. This, after years of discussion, the Cumming report and endless consultations and Roundtables.

No discussion of investor protection issues and the costs of transactions/advice can be complete without consideration of the 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 but it is a start.

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

It is glaringly evident to us that investment advice robustness needs to be dramatically improved. We recommend the OSC move away from the transaction-suitability model and pursue a fiduciary / Best interests regime for advisors without undue delay. Embedded commissions are not consistent with a Best interests advice standard. A decision on embedded commissions should be a 2018-19 priority.

4. **Deal with OBSI with a Sense of Urgency**

On the issue of dispute resolution and clients' access to restitution, the OSC says it intends to work with the other regulators that oversee the Ombudsman for Banking Services and Investments (OBSI) to strengthen OBSI, but it is not committing to specific policy actions. "The OSC believes that a regulatory roadmap must be developed addressing the recommendations in the independent evaluator's report and, in particular, that OBSI's decisions should be binding on its members," it says.

However, the OSC does not promise to adopt that report's recommendations; saying only that it will, "... publish a plan to enhance compliance with OBSI's recommendations and a response to the OBSI independent evaluator's other recommendations, while providing a robust oversight framework."..." This is procrastination gone mad. Two successive independent reviews and the OBSI Board has supported binding decisions. The SIPA, Kenmar Associates, PIAC and FAIR Canada have pleaded for years for such a decision.

The OSC states it will continue to support OBSI to be better empowered to secure redress for investors. Well then, here is an idea or two to quickly demonstrate that support. The OSC could require dealers who disagree with the OBSI recommendation to file a request for reconsideration to OBSI. If that resulted in a confirmation of the original recommendation then the dealer would be obligated to comply with the recommendation. Another alternative would be for the OSC to require the applicable regulator to investigate the complaint to determine whether the dealer complied with NI31-103 and SRO rules .If the dealer is found to be non-compliant, the dealer would be obligated to comply with the OBSI recommendation .No doubt other creative methods can be applied to rejections/ low balls in the interim period until the JRC finally concludes that binding decisions are required. **What would be truly unconscionable is to retain the status quo which is known to harm Retail investors especially vulnerable ones.**

The September 2011 and June 2016 independent review reports recommended binding authority for OBSI and a discrete Investor Voice on the Board. Here we are in April 2018, **7 years later**, and the OSC/ JRC now believes a "regulatory roadmap "is required. Does the OSC really think that retail investors believe OSC declarations of support are credible? It is obvious there is no sense of urgency. Investors have every right to feel disrespected by the OSC and by the Government of Ontario.

Investors want and need a financial ombudsman that has the mandate and capability to efficiently resolve disputes and deal with systemic issues in a timely manner. For nearly two years the JRC has been focused on options for strengthening OBSI's ability to secure redress for investors. As the recent CSA Staff Notice 31-351, Complying With Requirements Regarding The Ombudsman For Banking Services and Investments, dated December 7, 2017 attests - **a fair and effective dispute resolution process is important for investor protection in Canada and is vital to the integrity and confidence of the capital markets**. Despite these fine sounding words, there is no sense of urgency at the OSC at providing this vital Investor protection.

Bottom line- Giving OBSI binding powers isn't rocket science. Ombudsman around the world have this power. We recommend that (a) OBSI recommendations be made binding on dealers as the ideal solution to the chronic issues,(b) there be a reserved Investor voice on the Board and (c) that OBSI be given the mandate to investigate systemic issues. The time for Joint Regulatory Committee "monitoring" is long past. A decision is required in order to protect investors. What reason can the OSC possibly have for not providing an effective redress system for Ontario citizens right now?

See also OSC IAP OSC IAP comments on OBSI 2017 Annual report at http://www.osc.gov.on.ca/documents/en/Investors/iap_20180423_comment-obsi-annual-report.pdf

5. Resolve outstanding Mutual fund industry issues

We are delighted to note that the OSC recognizes "A well-functioning investor/advisor relationship remains critical to the economic well-being of Ontarians and ultimately to achieving healthy capital markets".

A significant proportion of retirement savings has been, and continues to be channeled into the mutual fund sector in Canada. About $1.4 trillion dollars is invested in mutual funds by 12 million Canadians. Because of embedded commissions and other factors, Morningstar routinely give Canada's fund industry an F grade (the lowest rating) for having the highest fees among all the ranked countries.

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

(a) Use of signed blank forms/document adulteration
(b) Mis-selling of ROC funds
(c) Selling DSC funds to the elderly
(d) 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
(e) Fund Governance
(f) Closet Indexing
(g) Converting clients into fee –based accounts without good reason or just cause i.e. reverse churning
(h) Lack of NI81-105 compliance

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 2018-/2019 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

There is something inherently wrong with an "advice' system that doesn't have client satisfaction and integrity at its core yet advertises that it does. It should be a 2018-19 CSA/OSC priority to once and for all wrestle these festering issues to the ground.

6. 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.

Ontarians 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.

We are extremely disappointed to read that at this late date the OSC will "**Initiate** work on remaining reforms such as titles and proficiency…" All we can say is *please get on with it*. [we do appreciate that the OSC may be constrained in this endeavour by other regulators so it may be necessary for the OSC to remove that constraint. Things will only get worse for investors under the CMRA.]

7. Tighten up Enforcement

We are delighted that the OSC will "Increase deterrent impact of OSC enforcement actions and sanctions by actively pursuing timely and consequential enforcement cases involving serious securities laws violations". We are also pleased the Ontario government will work with the OSC to "strengthen the framework for securing compensation for investors who suffer financial losses due to the acts or omissions of registered firms."

We do have concerns about the usage of no-contest settlements and their deterrence value. A recent Settlement Agreement with Mackenzie Financial caused us to write to the OSC with our concerns about the size of the penalty wrt the nature of the breaches of law. We found the mitigating factors weak and the absence of aggravating factors disturbing.

Of course, for most retail investors it is the enforcement actions of the MFDA and IIROC that are most relevant. See our commentary on IIROC enforcement http://www.canadianfundwatch.com/2018/01/agravating-and-mitigating-factors-and.html

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 IIROC enforcement action for NI 81-105 Mutual Fund Sales Practices (issued in 1998) violations?

This initiative is therefore most appropriate and timely. Beyond financial loss, 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. Rather than spend a lot of time, effort and money on collections we believe keeping these individuals away from consumers is more important. Accordingly, we urge the OSC to establish relationships with the FCAC, MFDA and insurance regulators that would eliminate regulatory arbitrage.

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 [NOTE: "Financial services providers should also be responsible and accountable for the actions of their authorised agents"-para 6 **G20 high level principles of financial consumer protection** https://www.oecd.org/g20/topics/financial-sector-reform/48892010.pdf.]

In the majority of 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! Until this model is changed, it is unlikely investor protection in Ontario will improve.

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.

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 more interested in **restitution** than 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 2018-19 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. In 2004, a legislative committee in Ontario urged the OSC to look at ways of improving investor access to restitution. Yet, seemingly little has been done to tackle the issue.

9. **Support Innovation and Fintech**

"Work with fintech businesses to support innovation and capital formation through regulatory compliance" -this is an OSC priority we definitely support. The traditional marketplace involving transaction-based advice is too expensive and conflicted to satisfy the needs of modest investors. Fintech provides an opportunity for many clients with modest account sizes to have their money managed at a price they can afford without the conflicts-of-interest and high fees associated with traditional investment dealers. Robo Advisors are a prime example of the success of Fintech. 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.

The planned OSC approach and actions defined in the Consultation paper will provide an environment for the orderly growth of these innovative firms. This is the kind of disruption that the old line wealth management industry needs to jolt it out of its comfort zone. We fully expect these innovators to use AI and other emerging technologies to move up the value-add chain thereby helping Retail investors mitigate the decline in defined benefit pension plans.

Our biggest concern is IIROC who seems determined to stifle the creativity of online brokers that compete with the full service brokers it regulates. IIROC describe such brokers as Order Execution Only, a throwback to the early days of these entities. We urge the OSC to be alert to any initiatives from IIROC to unduly throttle innovation or improperly constrain these dealers. Discount brokers have allowed millions of Canadians to economically control their own financial destiny. The investment tools, calculators, simulators, reporting and research reports they provide are truly impressive and constantly improving.

10. 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. This is a very important priority and we are delighted to see it listed.

While we agree that there should be continuing effort on investor education, we would like to stress the critical need for that education to include a healthy dose of Street proofing .Kenmar would like to see Webinars, web materials, print literature, TV ads etc. that cover such topics as: How to use CRM2 disclosures, 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? , the impact of investing expenses on long term returns, buying into an IPO - risks and opportunities , how to use Fund Facts, 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, etc. Such materials will help counter balance the risks associated with conflicted advice, the low suitability standard, loose SRO rules and weak dealer supervision. The net societal benefit will be higher investor returns, reduced client complaints and better retirement income security for Ontarians.

Kenmar strongly support more accessible information to investors on the proficiency requirements required for individual registration categories – and the corresponding duty of care, set out in plain language - to enhance their understanding of the expertise of investment professionals.

A document 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 is a concrete example of what we'd like to see.

The OSC website design should be enhanced to provide better navigability/search – in particular the usability of registration check needs improvement.

11. On Disclosure Evaluation CRM and POS

On investor disclosure, the OSC says it intends to evaluate whether it's CRM2 and point-of-sale disclosure projects are achieving their goals of, "enhancing investors' understanding of the costs and fees associated with investment products". There is no question that CRM2 fee disclosure was the driving force in IIROC dealers coming clean on double dipping and other fee mischarging wrongdoing. It should be noted that these malpractices went on at every major investment dealer for over a decade without detection by compliance, audit or IIROC. Over $300 million had to be returned to investors via OSC no-contest settlements.

Several reports have already revealed issues. A 2017 study conducted by Credo Consulting Inc. found that 62 % of investors still think that they do not pay for the financial advice they receive, only a five-percentage-point drop from approximately six months earlier. Another 2017 report by J.D. Power found that only 24 % of investors say they fully understood the fees they are paying to their financial advisors. A study commissioned by the British Columbia Securities Commission (BCSC) showed that 52%r cent of investors who expressed less confidence and investment knowledge at the outset of the study increased their general understanding of fees after receiving their CRM2 reports.

CRM2 reporting by firms is good, but it could be better. That's the finding from the MFDA, which published a Bulletin and Report in January the results of its examinations and CRM2 sweep last year. The report reveals that some dealers' compensation disclosure could potentially increase clients' confusion about fees. Re http://mfda.ca/bulletin/bulletin0740-c/

Research has shown that disclosure, while necessary, is a limited form of investor protection. Clearly, disclosure is not the same as transparency.One major point- the cost of the fund management expense is not part of the CRM2 reporting. There is thus a crying need for CRM3 to include management fees which should be a 2018-19 OSC priority. In fact, on April 19th the MFDA, recognizing the limitations of CRM2, published a Discussion Paper on expanding cost reporting to provide a more fulsome disclosure of investing costs.

Our concern over the CRM is that it does not address investor expectations over standards of advice and the accountability for that advice while at the same time providing more rigorous disclosure that would appear to be aimed at reducing the scope for complaint. Regulators do not appear to want to upset the economics of the prevailing system which remains one focused on distribution as opposed to advice. The hope apparently seems to be that by tightening up standards around distribution while providing the additional disclosure that would reduce investor leeway for complaint. We feel that vision of regulatory focus is not the UK/Australian model, but that of making the distribution model more efficient, less prone to abuse with sufficient disclosure to limit investor opportunity for complaint. The OSC priorities, while important, are not going to lead to a professional advice industry. The CSA quite frankly does not have that as a vision, thereby constraining OSC initiatives.

12 Deal with misleading "advisor "titles

Investors assume there is some oversight of the use of "advisor "titles by either the firm or regulators. That flawed assumption can be harmful and costly.

A Sept. 2015 OSC/MFDS/IIROC Mystery shop report concluded that *"From the perspective of an investor, the number and variety of business titles encountered when shopping for advice can make the process of choosing an advisor a complex one* ".In all, the shoppers encountered no fewer than 48 different business titles during the shops. Kenmar is dismayed by the lack of consistency of business titles and the question marks around whether those titles are actually tied to specific skills and qualifications. As we have pointed out many times before, imagine if regulators in the health care field allowed individuals with the training and experience of massage therapists to call themselves physiotherapists or heart surgeons. And yet this is what the average investor faces when seeking investment advice.

http://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf

In Oct. 2016, SIPA issued a Report ***Title Trickery*** which dug deep into the use of titles to deceive clients. http://www.sipa.ca/library/SIPAsubmissions/500%20SIPA%20REPORT%20-%20Advisor%20Title%20Trickery%20October%202016.pdf . In March, 2017, CARP, which represents 300,000 members, urged regulators to deal with the issue. CARP's VP of Advocacy, Wanda Morris noted**:** ***"When people realize they are dealing with a salesperson, they naturally bring a degree of skepticism to their decision making; they instinctively protect themselves from poor advice that doesn't serve them well. Misleading titles result in misplaced confidence and trust, and in the worst of cases, substantial financial losses."***

A Dec. 2016 CSA Bulletin wrote "Firms may assign professional titles (e.g., vice president, senior representative, specialist) to representatives based on their ability to reach certain sales and revenue targets. This practice may encourage representatives to focus on the easiest route to reach a target (i.e., to focus on what's easiest to sell, what generates most revenue, what they can sell most of), rather than on what is suitable for a client, particularly as representatives get close to the target. Also, when the benefit confers a title to the representative (e.g., President's Club member), it could be misconstrued by the client as a measure of skill level, experience or quality, rather than a measure of sales activity, which may inappropriately increase client trust in the representative."
http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20161215_33-318_incentives.pdf The use of misleading titles can cause investors to place undue trust in a Dealing representative who by registration is actually registered as a salesperson.

The SEC appears ready to tackle the titles issue .In a April 19 News release the SEC said "*"Certain broker-dealers, and their associated persons, would be restricted from using, as part of their name or title, the terms 'adviser' and 'advisor' — which are so similar to 'investment adviser' that their use may mislead retail customers into believing their firm or professional is a registered investment adviser"*

In May, 2017, the CSA listed titles/designations as one of the targets of targeted Reforms. And here we are in April 2018, with no indication of any definitive action We strongly recommend that title rationalization be made a priority in 2018-19 independent of the targeted reforms.

13. **Recall IIROC Guidance on OEO** 11**-0076**
http://www.iiroc.ca/Documents/2018/54df3aa0-06d8-48fd-8e93-ce469be1c650_en.pdf The guidance was issued April 9 just 3 days after a class action[https://www.siskinds.com/mutual-fund-trailing-commissions/]

suit was filed against TDAM for paying discount brokers for advice they knew the brokers could not provide.

Although this item appears last on our list, it requires immediate attention by the OSC/CSA. We quote from the IIAC Comment letter on the IIROC proposed Guidance:
*"Industry's **Key Concerns***
*The industry has many major concerns with the proposed Guidance. The key concern of our member firms is that clients may use online "educational" tools, products and information containing inaccurate data and information from unreliable sources in order to make investment decisions if the Guidance is implemented. Investors request tools and information from OEO firms in order to make educated investment decisions. Providing a wide range of documentation and products is to the benefit of the client and this Guidance, if implemented, will not protect the investor **and is therefore not in the best interest of the client.***

We also believe that there are two other major concerns with the introduction of the Guidance:
1) An overly broad definition of "recommendation" and its ensuing applicability to both OEO and Advice dealers; and
2) The introduction of an "appropriateness" test. "
Another industry participant, RBC Direct Investing, asked IIROC to withdraw the Guidance Re http://www.iiroc.ca/Documents/2017/b8e3e93c-f7b6-4aaa-8576-74b0a10b9e3d_en.pdf So, basically industry participants did not support the proposed Guidance and expressed concerns.

Investor advocates including SIPA, FAIR, Kenmar, individual DIY investors and the OSC's own IAP vigorously opposed the guidance. Yet here we are today stuck with Guidance that will harm retail investors and is clearly not in the Public interest. See our letter at http://www.ocrcvm.ca/Documents/2016/9557bad7-f6f4-4d75-8a37-4dbed68fd788_fr.pdf and SIPA letter http://www.iiroc.ca/Documents/2017/b963d58b-9189-45ea-a3be-d7c68610ba43_en.pdf and the OSC Investor Advisory Panel letter https://www.osc.gov.on.ca/static/Investors/iap_20170202_iiroc-order-execution.pdf Discount brokers provide a safe, low-cost method of investing and through various tools, simulators and calculators assist in developing financial capability. Implementing the guidance will limit innovation, unduly constrain access and add to client costs.

It is very clear - there is no problem, DIY investors are not being harmed, all investor commenters said "Hands Off", and satisfaction with Discount brokers was very high. In order to justify their inappropriate action, IIROC had to redefine *recommendation* and *advice* to fit their approach to constrain discount brokers. We very much doubt if real Securities regulators ever conceived of these convoluted definitions. The consultation process itself was flawed – the submission timeline had to be extended twice, underlying research was not disclosed and claims of extensive consultation with advocates was rebutted. Despite IIROC unsubstantiated assertions, discount brokers do not provide personalized investor advice.

What is galling is that despite the lack of support from stakeholders, industry and investors, IIROC issued the Guidance anyways.

IIROC should instead be redefining advice provided by full service brokers to reflect modern technology and the level of irreversible disintermediation it has caused.

An SRO does not have the power to redefine *recommendation* and a*dvice* for the entire financial services industry especially via Guidance that bypasses formal regulatory approval. Such power should be left to statutory Commissions and then only after adequate research and consultation.

We are therefore asking the OSC/CSA to compel IIROC to recall the Guidance and spend more time resolving the issues raised in the latest CSA IIROC Oversight report (where it reveals they misled regulators on some issues) and the many other issues related to commission conflicted "advice" their members use to sell product to retail investors, deficient enforcement and abusive complaint handling.

14. The CMRA ISSUE

The consultation paper states that the proposed CMRA is an opportunity to enhance investor protection. This is not the view shared by the OSC's own Investor Advisory Panel and leading Investor advocates such as SIPA, Kenmar and Fair Canada. Several Research papers (e.g*. Not Ready for Prime Time* from the CD Howe Institute) have identified serious Investor protection flaws of the proposals that actually are a step backward from existing OSC protections. We urge the OSC to (a) reconsider its plan to merge into the CMRA and (b) eliminate this project from the priorities and redeploy scarce resources to Best interests and other high priority investor protection initiatives. We expect the prospect of a CMRA is creating a constraint on the priorities the OSC would like to work on.

SUMMARY and CONCLUSION

We commend the OSC for its progressive attitude and commitment to being an effective and responsive securities regulator despite the many constraints it faces. The OSC has led the way in establishing an Investor Office, setting up an IAP and introducing a creative whistleblowing program. It is a clear leader in senior investor protection driven by its Seniors Expert Advisory Committee, conducting empirical investor research and implementing evidence-based regulation.

That being said, we are disturbed that after all this time, a number of fundamental investor protections still remain lost in the wilderness. We strongly encourage the OSC to go it alone if needed investor protections cannot be harmonized with other jurisdictions .Ontarians deserve that.

The investment industry (now rebranded as the Wealth Management industry) needs regulatory guidance, decisiveness and finality. Given the realities, harmonization attempts with the other CSA members on this matter is, in our view, a waste of time. OSC leadership is required.

The retirement savings and nest eggs of the people of Ontario are at risk. More and more seniors and pensioners become vulnerable each day, quarter and year that the status quo remains entrenched. Definitive regulatory action is needed in 2018 after nearly two decades of waffling by regulators- there is more than enough information and hard facts to make the necessary regulatory reforms. The time for OSC regulatory reform is NOW.

We look forward to working collaboratively and assisting, where possible, with some of the goals identified in the draft Statement of Priorities.

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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