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Dear Mr. Day,

The Investor Advisory Panel is pleased to submit this Comment Letter regarding OSC Notice 11-774 – Statement of Priorities – Request for Comments Regarding the Statement of Priorities for the year commencing April 1, 2016.

The Investor Advisory Panel (“Panel”) was established to provide the Ontario Securities Commission (“OSC”) with its advice on investor protection.

## **Overview**

The Panel is pleased to see the OSC put forward a set of priorities and clear action items that are focused on investors – these are the right priorities and they support many of the improvements we have been calling for over the years. The OSC appears to be moving forward with critical reforms such as a best interest standard – and it is using research done during 2015 to address issues such as embedded compensation. We acknowledge that this is a tall order and a challenging list – however, if the OSC is able to reach each of its goals this year, it will be a big step forward for Ontario investors.

But the journey must not end here. While a best interest standard is key, there are other areas of Canada’s investor protection landscape that must be addressed. In particular, we encourage the OSC to look closely at restitution and redress for investors who have been wronged. The OSC must tackle issues with the Ombudsman for Banking Services and Investments (OBSI) – oversight and reforms will be critical to ensure this organization works to support investors and their interests.

## **Specific comments on priorities:**

### **Goal 1: Deliver Strong Investor Protection**

The Panel wholeheartedly supports the OSC in its assertion that it *“is committed to achieving better alignment between the interests of investors and their advisors.”* We are also pleased to see the OSC building on its research into the advisor-client relationship which it undertook during the year. This includes empirical research by Professor Douglas Cummings that showed how compensation can materially drive mutual fund sales -- in

some cases, to the detriment of the investors. Professor Cummings' paper provides a solid foundation on which to move forward with meaningful reforms to create a level playing field for investors and to put investors first in the client-advisor relationship.

*Priority Issue – Implement regulatory reforms that improve the advisor/client relationship*

We are fully supportive of this priority and the action items listed – particularly the work being done towards the creation of a best interest standard. As we have stated repeatedly in the past, a best interest standard will require the advisor to be the true agent of the client, putting the client's interests first. This is a basic first step in investor protection and it is long overdue. We support the immediate introduction of a best interest standard to protect Ontario investors who expect their advisors to place their interests first.

We do, however, await clarification on how the OSC defines "best interest" – in our view the only way to define it is within the context of the client-advisor relationship as stated above. A best interest standard should fundamentally bind advisors and dealers to act in the best interest of their clients. The Panel urges the OSC to consider this as it conducts its consultations on regulatory provisions to create a best interest standard and improve the advisor/client relationship.

A best interest standard should also be a fundamental driver of its action item "*to finalize analysis of advisor compensation practices and identify those practices that appear inconsistent with current regulatory expectations.*"

*Priority Issue - Determine what regulatory action is needed to address embedded commissions and other types of compensation arrangements and improve retail investment product disclosure*

We are pleased to see the OSC focused on embedded commissions in its Statement of Priorities. In the Panel's view there is only one way to proceed on this issue. As we have asserted repeatedly, embedded commissions should be eliminated altogether. They represent a clear conflict of interest and are totally inconsistent with a best interest standard. Rather, they align the commercial interests of the fund manufacturer with those of the advisor instead of aligning the interests of advisors with clients. Professor Cummings' research showed this in a compelling and disturbing way.

We recommend regulators prohibit the payment of embedded trailer commissions. Other jurisdictions have already moved to eliminate conflicted remuneration and we urge the OSC to follow suit.

We would caution, however, that the OSC work to ensure that prohibiting embedded commissions doesn't simply lead to the practice of charging clients a fixed percentage of assets under management as a fee. Fees ought to be based on work that is actually done for the client.

*Priority Issue - Support investors in the expanded exempt market through effective oversight*

The exempt market is expanding at a rapid rate – the Panel is pleased to see the OSC seeking a risk-based supervision program for issuers, registrants and portals. We are pleased to see enhanced oversight on the OSC’s list of priorities. We also urge the OSC to closely monitor this new capital raising landscape and ensure that the environment is growing in a way that benefits all market participants – not just those seeking capital.

*Priority Issue - Advance retail investor protection, engagement and education through the OSC’s Investor Office*

We support the OSC’s focus on senior and vulnerable investors. We are also pleased to see a renewed focus on creating opportunities to strengthen the working relationship between the Panel and the OSC to identify further opportunities to advance investors’ interests.

It is also important to continually monitor the landscape to identify emerging issues and areas of investor needs – to that end, we are pleased to see the OSC committing to targeted research, seminars, and roundtables that will develop an ongoing understanding of and conversation with the investing public.

## **Goal 2: Deliver Responsive Regulation**

*Priority issue: Actively monitor and assess impacts of recent regulatory changes on the market to confirm that expected outcomes are being achieved*

We support the OSC’s focus on responsive regulation and its evidence-based approach – and we look forward to seeing the results of its post-implementation analysis of the impact of the Client Relationship Model – Phase 2 and the Point of Sale Amendments.

While disclosure of important information to investors is key, it is not investor protection. In addition, eliminating mutual fund embedded commissions altogether would constitute a significant advancement in the OSC’s work to encourage transparency.

## **Goal 3: Deliver effective compliance, supervision and enforcement**

*Priority Issue - Protect investors and foster confidence in our markets by upholding strong standards of compliance with our regulatory framework*

The Panel fully supports this priority issue. In particular, we are pleased to see the OSC committing to working closely with self-regulatory organizations (SROs) “to coordinate compliance efforts on issues in common, such as sales incentives and related conflicts of interest.”

At the same time, we have repeatedly expressed grave concerns over the industry’s refusal to accept OBSI’s findings and recommendations—concerns that are exacerbated by ongoing reports of incidents of firms “lowballing” OBSI compensation recommendations.

OBSI was created to act as an arbiter of investor complaints. OBSI ought to be a key pillar in a complaint handling and redress system that is a necessary part of investor protection. However, it has been hamstrung by a fundamental gap in its mandate: its decisions are not binding. This has undermined OBSI's role in the eyes of the industry and in the eyes of the very firms that are supposed to be participants in this process.

The Panel encourages the OSC, under the lead of the Investor Office, to look closely at OBSI and the mechanisms in place for investors to seek redress and restitution – and to step in and ensure that the system is enhanced and strengthened. While a best interest standard is an excellent and welcome part of the priorities, it is a first step. Restitution and redress are also important parts of the system for investors.

*Priority issue: Actively pursue timely and impactful enforcement cases involving fraud and other serious securities laws violations*

Throughout the past year, the Panel provided its feedback and support on the OSC's Whistleblower Program. We are pleased to see that implementation of the program is on the list of priorities this year and fully support this initiative.

#### **Goal 4: Promote financial stability through effective oversight**

*Priority issue: Increase transparency in the fixed income market through publication of corporate debt trading data provided to the Investment Industry Regulatory Organization of Canada (IIROC)*

Given Canada's aging population, the demand for fixed income products has been increasing steadily as investors move into retirement, requiring income and stability. The Panel has called for a better approach to regulation in the fixed income markets in the past. Hence, we are very pleased to see it as a priority for the OSC. This is critical for investors who are relying on these products more and more.

#### **Summary**

The OSC has put forward a list of 2016 priorities that put investors first in critical areas. We support the leading role they are playing among Canadian regulators on difficult and critical issues. It has raised the bar high for other regulators in Canada and we hope others follow the OSC's lead.