

INVESTOR ADVISORY PANEL

May 23, 2017

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Dear Mr. Day,

The Investor Advisory Panel is pleased to submit this Comment Letter regarding OSC Notice 11-777 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2018. The Panel is an initiative by the Ontario Securities Commission (OSC) to enable investor concerns and voices to be represented in its rule and policy making process. Our mandate is to solicit and represent the views of investors on the Commission’s policy and rule making initiatives.

Overview

The Panel is once again pleased to see the OSC put forward a set of priorities and clear action items that are focused on investors. We are especially pleased to see the OSC’s ongoing commitment to furthering a best interest standard, addressing embedded commissions, and addressing ongoing challenges at the Ombudsman for Banking Services and Investments (OBSI). Among Canadian securities regulators, the OSC is taking a leading role in spearheading investor protection initiatives that have been long-awaited by both the Panel and consumer advocacy groups.

Specific comments on priorities:

Goal 1: Deliver Strong Investor Protection

Priority Issue: Publish regulatory reforms to define a best interest standard and improve the advisor/client relationship

We continue to offer our full support of this priority. As we have stated repeatedly in the past, a best interest standard will require the advisor to put 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 continue, however, to await clarification on how the OSC defines “best interest”.

Priority Issue: Define regulatory actions needed to address embedded commissions

The Panel believes all compensation models that reward behaviour that subordinates the interests of investing clients should not be permitted – embedded commissions are one of many that must also be addressed. Such practices – which are deeply ingrained across the investment industry – do harm to investors and undermine the much-needed trust that ought to be the foundation of the client-advisor relationship.

In our view, a ban on embedded commissions must go hand in hand with addressing all forms of conflicted compensation. It must also be done in tandem with best interest and targeted reforms designed to ensure that investors do not receive advice that puts the advisor’s financial interests ahead of their own.

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

We would like to express our support for an important priority of the Investor Office, which is to support the work of the Seniors Expert Advisory Committee, to support senior investors, and publish a Seniors Strategy. The Panel has been asking for a focus on seniors for a few years and we are pleased to see that the Investor Office is moving forward in this critical space.

We are, however, concerned about the emphasis being placed on investor education. While increased financial literacy is a noble goal, there will always be significant asymmetry in the knowledge of the investor and the registrant. Realistically, this mismatch can only be addressed in the investor protection regime through principles-based rules.

At the same time, delivery of an effective investor education program to all investors is a challenge that the OSC is unlikely to be able to meet. Far more useful in our view would be an investor education program focused on street-proofing investors through warnings about specific pitfalls in the market. This would likely be more effective than attempting to improve the financial literacy that aims to turn individuals into knowledgeable investors.

Priority Issue: Address independent evaluator’s recommendation that OBSI be better empowered to secure redress for investors

The Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments’ (OBSI) Investment Mandate was completed last year by Deborah Battell and Nikki Pender. It clearly identified key issues that we have pointed to several times in the past, including concerns about OBSI’s mandate, which as the report points out “tilts the playing field in favour of firms” to the detriment of investors.

Such findings are entirely unacceptable -- and they are nothing new. There have been three independent reviews of OBSI over the years recommending a range of changes, from board representation to the authority to make binding recommendations. Since this last report there have been no firm decisions made and there are no concrete actions planned so far.

The time for reports and study is over - it is time to enact meaningful change. The Panel urges the OSC to do so without delay.

Goal 2: Deliver Effective Compliance, supervision, and enforcement

Priority Issue: Actively pursue timely and impactful enforcement cases involving serious securities laws violations

The document speaks to enforcement of “law” violations. Our concern is that many would interpret law to include the Act and its regulations, but not guidance issued by the OSC. Many of the details of the investor protection regime are found in guidance rather than in “law” so it is unclear how far enforcement would go to ensure that the interpretation or policy decisions taken by the OSC as expressed in their guidance would also be subject to enforcement proceedings, should such a situation present itself.

Clarification would be useful.

Goal: Deliver Responsive Regulation

Priority Issue: Identify opportunities to reduce regulatory burden while maintaining appropriate investor protections

Reducing the regulatory burden requires beefing up of compliance and enforcement activities to monitor and ensure that investor protection is, in fact, not diminished.

Priority Issue: Work with fintech businesses to support innovation and promote capital formation and regulatory compliance

The Panel supports the efforts of the OSC to engage with the fintech community to the extent that it improves the advice process, reduces costs, and improves compliance.

Goal: Promote financial stability through effective oversight

Priority Issue: Enhance OSC systemic risk oversight

The Panel supports the OSC’s efforts to protect investors by enhancing its oversight of over-the-counter (OTC) derivatives.

Summary

The Commission has again put forward a list of priorities that put investors first in critical areas. We continue to support the leading role they are playing among Canadian regulators on difficult and critical issues.

The OSC has also raised the bar high for other regulators in Canada. Given that most other provincial securities regulators are not prepared to move forward with a best interest standard, we have deep concerns about the future of investor protection under the Cooperative Capital Markets Regulator (CCMR).

To that end, the Panel cannot support Ontario's participation in any regulatory framework that undermines investor protection. Doing so would be a significant step backward and would eliminate the progress that has been made by the OSC to date.

Yours truly,

Ursula Menke
Chair, Investor Advisory Panel