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OSC Notice 11-788 -- Statement of Priorities: Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2021
https://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20200430_11-788_rfc-sop-end-2021.htm

Kenmar is an Ontario- based privately-funded organization focused on investment fund investor protection via on-line research and education papers and Investor ALERTS hosted at www.canadianfundwatch.com . Kenmar also publishes the Fund OBSERVER on a monthly basis discussing investor protection issues primarily for retail investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, retail investors and/or their counsel in filing complaints and restitution claims. Additionally, we are active in regulatory affairs and regularly participate in public Consultations. Through these engagements we are able to take the pulse of investor protection in Canada.

The news release says it all. “. The priorities are aligned with the four regulatory goals for the OSC, which are to: promote confidence in Ontario’s capital markets; reduce regulatory burden; facilitate financial innovation; and strengthen the OSC’s organizational foundation...”We are taken aback that investor protection is not an explicit, overarching priority for the Commission. Source: http://www.osc.gov.on.ca/en/NewsEvents_nr_20200430_osc-seeks-comment-on-its-key-priorities.htm The balance of our comments centre around the theme that the OSC is drifting away from its primary mandate of investor protection and diluting its efforts to protect Ontario investors.

Although commentators to the Notice are asked to provide input on existing priorities, the sad fact is that we found that the priorities selected for 2019 -20 did not address investor needs or the points we made in our 26 page Comment letter. We also wish to point out that the OSC’s own IAP took exception with the priorities. https://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20190527_11-785_iap.pdf

The OSC claims it has made significant progress on its *2019-2020 Statement of Priorities* (SoP) and burden reduction activities and that it will continue to work to complete this work over the next few months. We acknowledge that the OSC has done fantastic work in reducing the “burden” experienced by registrants in complying with securities laws. Unfortunately, we cannot identify where any progress has been made in protecting retail investors. In fact, things have gotten worse.

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The OSC also plans to adjust and re-align its priorities throughout the year to accommodate the outcomes of the Ontario Government's Capital Markets Modernization Task force. It is surprising that for a mandate so broad and significant that the consumer perspective is so underrepresented in Task Force composition and its interaction with the general public (retail investor stakeholder group). There is little or no retail investor involvement or engagement with/by that Task force .We consider that a concerning commitment since to date there has been no retail investor outreach or engagement by that Task Force. An open-ended commitment by the OSC to align its priorities with those outcomes seems at odds with the Acting Chair's assertion that "investor protection remains at the forefront of everything we do".

On April 15, the OSC's Compliance and Registrant Regulation (CRR) Branch emailed registrants to indicate that it had enhanced and clarified its processes to lift close supervision and strict supervision terms and conditions (T&Cs) imposed on individual registrants at firms. This initiative is part of the OSC's regulatory burden reduction program. Sponsoring Firms will now be able to submit requests to remove such T&Cs through an online portal. The OSC has published [guidance](#) describing the process and indicating the types of information a firm should submit to support a request for expedited review. On the same day, the CRR Branch also released [guidance](#) on its process to reactivate the registration of an individual coming off a suspension imposed by the MFDA. CRR staff indicated that, provided certain criteria are met, they will apply an expedited review process that does not re-examine the facts giving rise to the MFDA's disciplinary action and that aims to process the request within five business days of its receipt.

No doubt these are important priorities for industry participants but we'd like to see more OSC resources dedicated to investor protection .It is depressing to read that disciplined persons are expeditiously brought back into service, yet retail investors seeking fair compensation are low-balled after navigating a lengthy (not expedited) complaint handling process. No Name-and-Shame or sanctions for registrants in such cases.

Here are our suggestions for the priorities needed now:

Investor Office: We have had some difficulty communicating with the office. We don't know if this is because some of the staff are ill, have resigned, are too busy or have been terminated. In any event, we urge the OSC to ensure that the full complement of staff are in place especially during the COVID-19 crisis. The Office is a bright spot within the Commission.

Discount broker regulation: For years, discount brokers have robbed their do-it-yourself clients of returns by offering mutual funds that paid trailing commissions. This unfair practice has resulted in many investors being charged for advice that they neither wanted nor received. Securities regulators recently agreed to prohibit discount brokers from selling mutual funds with trailing commissions but the law has yet to come into effect. COVID-19 seems to have slowed down the regulatory process. In April, 2018 the Investment Industry Regulatory Authority of Canada

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(IIROC) issued a Notice that declared that these commission payments constituted a conflict-of-interest and required discount brokers to rebate to clients that portion of the trailer they received for advice. Unfortunately, in August, 2018 IIROC suspended its expectations for discount brokers to address such conflicts waiting for the OSC/CSA to deal with the issue in their own way. We believe that it is past time that the OSC fulfill its Public interest obligation and put a stop to this investor abuse without delay. It is shameful that class action lawyers must substitute for regulators to achieve investor protection.

Financial ombudsman service: We continue to implore the Commission to support a binding decision mandate for OBSI. Our recommendation- give the OBSI a binding decision mandate without further ado. The in-your-face low-ball settlements demonstrate a profound disrespect for the retail investor We dare not comment further as it might involve the use of an explicative On the subject of a reserved position for the investor on the OBSI board, it is time that the OSC support Ontario investors on this issue. This has been on the Commission's priority list for years on end with no action and no reasonable explanation for the inaction.

Investment fund regulation: We believe that nearly everything that could go wrong with the regulation of mutual funds has gone wrong. Efforts to eliminate embedded commissions have failed despite overwhelming evidence of harm to retail investors. The use of a risk rating based on the standard deviation in Fund Facts has led to investor confusion and bad decision making. Kenmar had warned the Commission that the rating system was fundamentally flawed and could lead to misleading risk ratings. And that is in fact what we have today. Fund Facts needs to be corrected. The Commission stands alone in continuing to consult on how to retain the toxic DSC mutual fund. We recommend that the Commission abandon its consultation and, with all other members of the CSA, ban DSC mutual funds. We appreciate that this may require that Commission leadership confront the Ontario Govt. with facts and arguments. Every single Comment letter posted to date supports a ban on the DSC sold mutual fund.

We continue to be amazed at the efforts put forth by the commission to expose retail investors to complex funds such as bitcoin and expensive Alt funds (without related changes to advisor proficiency), while failing to adequately protect the lowest income and most vulnerable retail investors from complex, punitive, hybrid, high fee products like group plan RESPs. We recommend that the OSC prioritize investor protection and balance against innovation, complexity, unfettered choice and higher cost products.

REFERENCE: **Morningstar Publishes Global Study of Regulation and Taxation in the Fund Industry, Finding Regulation to be Adequate, But Not Always Proactive** Canada ranks below average.

<https://www.newswire.ca/news-releases/morningstar-publishes-global-study-of-regulation-and-taxation-in-the-fund-industry-finding-regulation-to-be-adequate-but-not-always-proactive-835783417.html>

IIROC oversight: We refer you to our comments from last year

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(https://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20190404_kenmar.pdf) IIROC, on its own initiative, has decided to form an investor advisory panel/committee and include an investor focussed person on the board of directors. The faster this that is done the better. We encourage the Commission to work with IIROC in developing a modern day version of rule 2500B. If history is any guide, we expect a large number of complaints to emerge in the months ahead. It would be comforting to know that a robust complaint handling rule was in place. NOTE: The current combination of a relaxation of regulatory requirements, combined with investment advisors following work-at-home restrictions remote from investment firms' internal compliance staff and controls creates risks for investors. Regulatory site visits are also likely to be limited for some period of time. All of this will undoubtedly have an adverse impact on investor protection and increase the likelihood of retail investors being further harmed during this pandemic. The same comments apply to the MFDA Member Firms.

Group plan RESPs: Scholarship plan trusts: We believe FAIR Canada has made a very strong case for urgent OSC intervention to protect through moratoriums on default terms and other terms the low income, vulnerable retail investors commonly targeted by group plan RESP promoters from the potentially financially destructive consequences of missed payments and plan default caused by the economic fallout of COVID-19. The Commission should assert leadership in taking swift action to exercise its mandate to prioritize and protect the most vulnerable retail investors from financial harm from these products during these extraordinary times.

Vulnerable investors initiative: We urge the Commission to put this on fast track. COVID 19 is the perfect environment for vulnerable investors to be targeted. What cannot be achieved by an expedited formal consultation process should at least be attempted via moral suasion. Kenmar urge the OSC to make the Seniors Expert Advisory Committee a permanent committee given its socio-economic importance.

Investor compensation: Ontarians are hurting very badly financially and emotionally because of coronavirus. We highly recommend that the Commission make investor compensation a significant mitigating factor in settlement agreements. In addition, we recommend that the OSC subsidize arbitration costs for retail investors that choose that method of resolving disputes. We suggest that the money be sourced from the Restricted fund.

KYC and suitability: Given the market turmoil and the well-known fact that risk profiling in Canada is basically unfit for purpose, we recommend that the Commission provide leadership in ensuring that the KYC process is robust. Needless to say we are extremely concerned that many KYC's are now out of date and must be updated to ensure suitable investment recommendations are made.

Conduct standard: We had hoped that the Client Focussed Reforms would help improve registrant conduct standards but note that these have been pushed off in time so that they will not be implemented during the worst parts of the pandemic.

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We urge the OSC to adopt what industry claims it already does - a Best interests principles-based rule. That could be done relatively quickly and would help prevent a lot of investor harm and complaints.

Misleading titles: 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/SecuritiesCategory3/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. In May, 2017, the CSA listed titles/designations as one of the targets of targeted Reforms. And here we are in May, 2020, with no indication of any definitive action. We recommend in the strongest possible terms that title rationalization be made a top OSC priority. This isn't rocket science.

Industry relief and exemptions: On the positive side, we are impressed with the speed at which the Commission has provided industry relief, granted exemptions and extended reporting deadlines. We certainly wish that the Commission would move with such speed when it comes to dealing with investor protection issues. While we can understand the need for some of the relaxations are /or amendments of requirements, we urge the Commission to be vigilant to ensure that workarounds and alternate methods of working do not endanger or compromise investor protection.

Cybersecurity: work-at-home: A digital security vendor used FINRA's guidelines and rolled out a digital security assessment tool for advisors working remotely: Only 15% got a perfect score. The firm found only 15% of advisors and reps passed all 12 checks. Half the advisors failed two checks, and 20% failed three. A lack of hard disk encryption, operating systems without the latest patches, and antivirus and malware software that were not fully updated were the most common failings. Kenmar would like assurances that cybersecurity controls in Canada are robust. We believe this should be afforded a high priority given the possible ramifications such as identity theft financial fraud and other impacts on client privacy. Source - <https://www.wealthmanagement.com/technology/most-remote-advisors-fail-digital-security-test>

We are glad to see that the controversial "Access equals delivery "initiative will be put on pause. Kenmar are also pleased to see that a proposed National Instrument that would see an increase in the monetary thresholds for capital-raising and investing (crowdfunding), will be sidelined. Any delay in increasing the number of risky investment alternatives available to retail investors is a positive. We would

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much rather see the OSC make it a priority to provide a better Investor Protection framework for the vast array of existing Investment products. For example, prohibiting the sale of DSC funds would be a much better utilization of precious OSC resources

Kenmar are of the firm conviction that finding a replacement Chairperson should be a top priority. In times of economic stress and high market volatility a steady hand at the helm is essential.

Finally, we are relieved to see little or no reference to the CMRA. Any work on that project would divert scarce resources from the immediate tasks at hand.

We hope this input is useful to you.

Ken Kivenko P. Eng. (retired), President
Kenmar Associates

REFERENCE: **Canada's financial services industry has a trust problem** |
Wealth Professional

The research shows the levels of trust that Canadians have across key sectors. Financial services sits towards the bottom end of the scale with 56% saying they trust the industry, down 8 percentage points from 2019. This puts the industry between telecoms (52%) and consumer packaged goods (57%) but well behind technology (68%) and professional services (67%). Education ranks the highest (70%).

<https://www.wealthprofessional.ca/news/industry-news/canadas-financial-services-industry-has-a-trust-problem/326564> and **Edelman Trust Barometer 2020**

https://www.edelman.com/sites/g/files/aatuss191/files/2020-01/2020%20Edelman%20Trust%20Barometer%20Global%20Report_LIVE.pdf It is hard to see how a decline in trust relates to effective OSC priorities.