Kenmar Associates
Dedicated to Investor Protection

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ONTARIO SECURITIES COMMISSION NOTICE 11-777 – STATEMENT OF PRIORITIES

REQUEST FOR COMMENTS
REGARDING THE STATEMENT OF PRIORITIES FOR FINANCIAL YEAR TO END MARCH 31, 2018

http://www.osc.gov.on.ca/documents/en/Securities-Category1/sn_20170323_11-777_rfc-sop-end-2018.pdf

Executive Summary

Kenmar Associates welcomes the opportunity to comment on the Proposed 2017-2018 Statement of Priorities (SOP). Kenmar is an Ontario- based privately-funded organization focused on investment fund investor education via on-line research papers hosted at www.canadianfundwatch.com.Kenmar also publishes *the Fund OBSERVER* on a bi-weekly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

We'd like to acknowledge the OSC's determined and positive actions on retail investor protection over a wide spectrum of issues. The Office of the Investor is unique among Canadian regulators as is the Investor Advisory Panel. The OSC's principled stand countering the financial services industry's relentless attempts to thwart, delay or water down investor protection reforms is recognized.

While the 2017-18 priority list doesn't spell out the details of the reforms that the OSC may propose in the year ahead, it sets the tone and clear direction that the client relationship model (CRM) reforms are not the end of the road for retail investor regulatory reform. The initiative regarding a Best interests standard of advice (albeit non-fiduciary) demonstrates true

leadership in investor protection as does the establishment of a Seniors Expert Advisory Committee.

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

The OSC has recognized this and is leading the way on reforms. We believe the OSC statement of priorities (SOP) are the right ones to address the rebranding.

Introduction

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

Recent high profile scandals such as double dipping, "advisor" abuse and changing demographics (higher ratio of seniors, pensioners and retirees) suggest that retail investor protection demands HIGH priority attention from the OSC .Our review of the draft SOP suggests that the OSC has, to a large extent, the appropriate priorities and emphasis. We'd have liked to see more milestones and deadlines to demonstrate a sense of urgency and a basis for measurement.

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

In a series of announcements on Dec.15, 2016, the CSA, MFDA and IIROC portray a comprehensive system of incentives and inducements whose basic intent is to thwart the fundamental principle that registrants are required to deal fairly, honestly and in good faith with clients. They reveal a systemic, firm-wide system of compensation practices, direct and indirect, and inducements that put the commercial interests of firms and advisors ahead of their clients. That they have been allowed to exist is a reflection on the failure of regulators to protect investors. The 2017-18 priorities look to us as the first steps towards correcting the situation.

Specific Comments

Our comments are limited to retail investor issues. Here are our recommendations regarding retail investor protection priorities for the 2017-18 fiscal year:

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

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

Multiple consultations have been conducted. An analysis of complaint data also shows the fundamental weaknesses of the suitability regime. It has been well over a decade since the FDM was first proposed. All this accumulated knowledge plus the mystery shopping experiment results and the Cumming report should be more than adequate to understand the crying need for a Best interests standard for Canadians saving for retirement. We respectfully suggest that the adverse impact on Ontarians of NOT imposing a Best interest duty is fairly obvious. The status quo is not, in our view, a viable option.

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

The report reveals that the pace of reform has been slow for an industry entrusted with the retirement security of Canadian consumers. "It's time all employees of the financial planning industry in Canada face the reality-they need to employ a uniform standard of care for investors, complete with a full disclosure of how they're being compensated," noted Jonathan Bishop, co-author of the report. The research reveals Canadian consumers are potentially leaving thousands of their retirement dollars in someone else's hands by not being fully informed .The report concluded that the time remains ripe for provincial consumer and finance ministries to work towards a regulatory framework for financial advisors .The Report is available at http://docplayer.net/7401323-Purse-strings-attached-towards-a-financial-planning-regulatory-framework.html

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

It is in the Public interest to introduce a Best interests standard and we fully support the OSC in this initiative. We are well aware that the OSC and NBSC stand alone in public support for BI and are therefore very concerned what will happen to this initiative once the OSC is subsumed into the CMRA.

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

A "senior crisis" posed by the risk of seniors' outliving their assets and their declining ability to manage their money as they age must be addressed.

Given that thousands of Canadians each month are retiring/entering into RRIF's (de-accumulation account phase), time is of the essence. This is a major socio-economic issue as well as an important regulatory issue.

We encourage the OSC to bring forward NASAA model legislation to protect seniors/ vulnerable investors.

Kenmar look forward to the early release of the Seniors investor Strategy and its implementation.

3. Deal with the IIROC issue In a very real sense IIROC is the national regulator for retail investors. Its robustness as a regulator is therefore key to effective retail investor protection.

IIROC operates under a Recognition Order from the CSA making it the principal national regulator for retail investors. The OSC is the primary overseer of the Order granting IIROC the privilege and responsibility for retail investor protection in Canada. Kenmar has identified a growing number of issues that we believe deserve addressing. Some examples:

1. Governance - heavy dealer focus ---retail investor not represented on BOD. See SIPA REPORT: *Investor Protection and IIROC Governance* This report examines The Investment Industry Regulatory Organization of Canada's (IIROC) governance and its impact on investor protection. It highlights serious IIROC governance issues that directly impair investor protection. It concludes with constructive recommendations to make IIROC a better, more responsive self-regulator.
2. Enforcement system effectiveness- many sub issues some of which highlighted in CSA/OSC Oversight reports
3. Low level of Investor engagement and sensitivity- no Investor advisory Panel [IIROC's U.S. counterpart, FINRA ,has incorporated an Investor Issues Committee]
4. Controversial sanction guidelines -no numerics, strictly principles based - who monitors deterrence effectiveness of aggregate results?
5. Not enforcing dealer/ Rep use of titles that mislead investors – Guidance was issued in March 2014 but issue remains. http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=3254A1EA88C74EBBB00C4167F2708B67&Language=en
6. Questionable initiatives regarding protection of seniors -e.g. proposed allowance of stockbrokers as executors [the OSC IAP officially oppose this rule change See http://www.osc.gov.on.ca/documents/en/Investors/20150831_members-dealers-rule.pdf]
7. Well identified serious issues with dealer risk profiling practices not being expeditiously addressed. See PlanPlus report on Risk Profiling which highlights serious investment industry system deficiencies. Many unfit for use.

8. Ideology of blaming "advisors " most of the time w/o considering root causes i.e. dealer management policies /supervision / compensation
9. Deficient dealer complaint handling rules - many issues including substantive responses, internal bank "ombudsman", systemic issues etc. We have provided a detailed analysis to IIROC with NIL response to date. This is our critique of the IIROC complaint handling rule https://drive.google.com/open?id=0ByxIhlsExjE3ZGp5MWc1TUI4RzA
10. Proposed Guidance for regulating discount brokers that would, in our view, unduly limit the capabilities available to those retail investors seeking to control their own financial destiny. See **Comments on IIROC's proposed guidance on Order Execution Only Services** | Depth Dynamics http://blog.moneymanagedproperly.com/?p=5835

Another major issue that has been observed by all consumer groups is that IIROC does not make publicly available the research they cite when formulating policy, rules or Guidance. We ask the OSC as primary overseer of IIROC to require IIROC to make such materials available so commenters can provide more informed and robust submissions.

For over a decade we have been pleading with IIROC to enforce the dealing fairly , honestly and in good faith provisions of the OSA re allowing discount brokers to receive full trailer commissions for advice they cannot and do not provide. Our pleas have been met with resolute inaction.According to the CSA there is approximately $18 billion in A class mutual funds with IIROC licensed discount brokers, so at a 1% trailer, about $180,000,000 is being spent each year for advice that is never delivered. If this doesn't count as regulatory malpractice we don't know what does. We've also requested that even if IIROC does not intend to enforce the law, it should at least issue an Investor ALERT warning investor of the overcharging. They have not, so we did See Investor ALERT: Online brokers may be overcharging you http://www.canadianfundwatch.com/

On Dec. 15, 2016, IIROC released the results of its preliminary review of compensation conflicts among its dealer members. http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=4DD98E70F0534980BC7510CEB6F3940D&Language=en IIROC's review singles out concerns with firms using compensation models that favour proprietary products over cheaper products. In addition, the review flags the risks associated with advisors being encouraged to move clients to fee-based accounts from commissions-based arrangements, even when it's not in clients' best interest, and the risks that heftier commissions for new issues encourage advisors to push these products in cases in which they may not be suitable. IIROC's review also indicates that the compensation arrangements for supervisors or branch managers that are tied to sales or revenue could also "result in sales behaviour that is not in the best interests of clients." They also noted more subtle forms of bias that could indirectly motivate representatives inappropriately to favour related -party products. Examples include bonuses based on the overall percentage of fee-based revenue, and

equity ownership programs in related-party issuers. All in all, a compensation infrastructure designed to push sales over sound, trusted advice to clients.

The question is - why have IIROC allowed the investing / advice environment to deteriorate to such a low level?

For all these reasons stated, we regard reconfiguring IIROC at the same, if not higher priority as introducing a Best interests standard.

4. **Address independent evaluator's recommendation that OBSI be better empowered to secure redress for investors** The ombudservice's 2016 Annual report reveals that the total number of cases it opened in 2016 jumped to 640 from 571 in 2015, marking a 12% increase, with a disproportionate 52% of the complaints coming from Ontario, followed by British Columbia, which made up 15% of the complaints filed.

According to the Annual Report, the number of cases OBSI opened against investment firms rose by 17% from 2015 to 350, with complaints concerning mutual funds representing 44% of cases. The leading investment issues across products are suitability of the investment (27%) and suitability of margin or leverage (15%) if funds were borrowed to invest; 48% of users were 60 years of age or older. In the cases involving investment services, OBSI recommended that a modest total of $2.4 million be awarded to those whose complaints warranted monetary compensation, averaging $15,552 per complainant (the lowest level in 5 years) .A whopping 45% of investment complaints (150 of 333) ended with monetary compensation suggesting that dealer complaint handling practices may be flawed. One firm, Sentinel Financial, has refused four OBSI recommendations making a mockery of the Ombudsman service. These are sobering statistics that the OSC should address.

The" low ball" issue seems to have been swept under the carpet. We expect low-balling is alive and well based on our own experiences with victims. Further, a number of complaints are diverted to bank "internal ombudsman" which are clearly not independent dispute resolvers. The diversion has the negative effect of keeping many valid complaints away from independent OBSI where a fair investigation can be relied upon. We have asked the MFDA and IIROC to ban the use of "internal ombudsman" for investor complaints, so far with NIL effect. NOTE: These "internal ombudsman "are quite clear- they do not recognize the oversight of the SRO's and are not bound by their rules. Any time wasted with these entities does not stop the limitation time clock, a fact not appreciated by complainants.

Securities Acts, regulations and rules across the country require investment firms to deal with their clients "fairly, honestly and in good faith" — an obligation that extends to dealing with client complaints. Dealers who refuse to participate meaningfully in a regulator-mandated dispute-resolution process, dealers who reject OBSI recommendations or worse, dealers who low ball OBSI recommendations are fundamentally not acting in good faith.

They are deliberately subverting the process and OBSI. In addition, victims must sign gag orders that are attached to OBSI's restitution recommendations . . . when they are paid .Securities regulators must address such practices with prompt and decisive action.

Investors want and need a financial ombudsman that has mandate and capability to efficiently resolve disputes and deal with systemic issues in a timely manner. We believe that there are several important open issues with regard to OBSI.

Specifically, we believe that there should be a mandatory regulatory investigation of each and every case where an OBSI recommendation is not accepted by a dealer. The findings should be published and compensation, if and as appropriate, provided. Secondly, we believe that regulators owe investors an explanation of what will happen, if anything, when they are advised by OBSI of a systemic issue.

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

Finally, and most importantly, we recommend that OBSI findings be made binding on dealers as the ideal solution to the chronic issues and that OBSI reinstate the mandate to investigate systemic issues that the Board/regulators have previously removed. The OSC Investor Advisory Panel (of which I am a member) details this and other issues facing OBSI in its submission to the Independent reviewer http://www.osc.gov.on.ca/documents/en/Investors/iap_20160218_evaluation-banking-services.pdf SIPA , Kenmar Associates and FAIR Canada all support binding decision authority for OBSI as does the OBSI Board of Directors.

The 2016 Joint Regulator Annual Report
http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20170323_31-348_obsi-joint-regulators.pdf
is a bastion of indecision .No visible progress has been made since last year. Along with the ongoing pledge to deal with the recommendation for binding powers, the JRC is continuing to monitor instances of firms refusing OBSI's compensation recommendations and the size of settlements to "consider patterns and issues raised by them " and it continues to monitor quarterly reports that it receives from OBSI on complaint and case resolution data .The time for Joint Regulator Committee "monitoring" is long past. Firm definitive action is required in order to protect investors.

5. Define regulatory actions needed to address embedded commissions No discussion of investor protection issues and the costs of

transactions/advice can be complete without consideration of the broker and investment dealer business model.

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

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

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 is a necessary but insufficient investor protection step .It is complementary to the targeted reforms and BI implementation.

We note that the OSC also plans to carry out consultations on embedded commissions after receiving inputs to NI81-408. The faster the better.

We look forward to participating in a stakeholder roundtable to: (a) Examine the potential impacts of discontinuing embedded commissions and (b) Identify appropriate transition measures.

6. Resolve outstanding Mutual fund industry issues

A significant proportion of retirement savings has been, and continues to be channeled into the mutual fund sector in Canada. About $1.3 trillion dollars is invested in mutual funds by 12 million Canadians. Because of embedded commissions and other factors, Morningstar gave Canada's fund industry an F grade (the lowest rating) in its 2015 global ranking 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 misleading "advisor" titles by MFDA registrants
(b) Document adulteration and signature forgery (as reported by MFDA)
(c) Deficient KYC and risk profiling leading to unsuitable investments
(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) Undue use of leveraging by MFDA registrants
(f) Not advising fund clients of price breakpoints/ alternate series

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

7. Deliver effective compliance, supervision and enforcement:
The double dipping cases with bank-owned dealers certainly illustrates the fundamental supervision, monitoring and compliance system deficiencies prevailing in Canada today. The fact that such gross deficiencies remained undetected by management, compliance, supervision and advisors for years should be troubling for the OSC. The fact that IIROC did not detect this massive, multi-firm systemic issue should also be of deep concern to the OSC.

We think a significant number of issues would go away with more effective dealer compliance and enforcement, a point we make with CSA members several times per year. Has anyone ever heard of an enforcement action for NI 81-105 *Mutual Fund Sales Practices violations*?

The OSC's plan to assess collection alternatives and pilot an improved collection approach is fine but we do not see it as a top priority. Fine collection is a post-mortem action –what's needed is more prevention. Fine collection is far less important to retail investors than recouping losses (restitution) and that's what we'd like to see the OSC really focus on as a 2017-18 priority.

Improved fine collection will improve investor protection and general deterrence at the margin at best. By all means, improve fine collection but realize that restitution is a much higher priority for retail investors.

Fine collection is a topic for SRO's as well. According to the SRO's, somewhere between 80 and 90 % of fines imposed on individuals are never collected. Unpaid fines on such a scale can blemish the enforcement system and the general deterrence value of fines. See SIPA report April 2016 report SIPA Report: *Unpaid Fines: It's a National Disgrace* More than $899,216,448.32 in fines owing to Canadian regulators. That being said, we feel that the incremental gains in dollars collected and general deterrence may not be worth the effort and may in fact divert precious IIROC/MFDA resources away from prevention activities. We feel the root problem is weak dealer supervision/ compliance and prosecution of dealers will yield greater fine revenue and have a much greater impact on general deterrence.

We would not object if the Ontario/OSC were to give the SRO's the legal capability to collect fines as Quebec has done, with the provisos that (a) the collected proceeds be used for investor education, research or restitution (b) as a default policy, investment dealers should be held accountable by the OSC and SRO's for any unpaid fines by individuals. In our opinion, such a change in policy would result in an immediate improvement in collection, dealer behaviour, compliance/supervisory practices and investor protection. In the vast majority of cases it is the policies, practices, sales quotas, commission grids, compensation arrangements and other non-financial incentives (and dis-incentives) , weak dealer administrative processes and poor supervision practices of dealers that create the environment for "advisors" to push behaviour outside the envelope of compliance. Management is the ROOT CAUSE of the vast majority of issues. Management must accept accountability for the actions of its representatives and (c) except in exceptional cases, any fines uncollected from an individual after one year will be to the account of the dealer.

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.

We fully endorse the OSC whistleblowing program and are glad to see it will be actively promoted and used. Our concern is what will happen to the program once the OSC is melded into the CMRA.

8. Engage the Public We note that the Investor Office will be expanding and modernizing the OSC's efforts in investor engagement and education. We'd also like to see a lot more investor information/Streetproofing materials, not just "educational" materials. There are plenty of minefields investors need to navigate with registered representatives/dealers that can

be addressed via INVETOR ALERTS. Documents like the ***CFPBoard Consumer Guide to Financial Self Defense*** http://www.asuupmmc.utah.edu/files/CFPBoard_Financial_Self-Defense_Guide.pdf , ***Consumer Awareness Booklet*** (28 pages loaded with useful material for the retail investor) http://www.onusconsultinggroup.com/uploaded_files/InvestorAwarenessBooklet.pdf and the SEC's Investor Bulletin on Alternative Mutual Funds https://www.sec.gov/oiea/investor-alerts-bulletins/ib_altmutualfunds.html are examples 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. SIPA Report: *Above the Law: Checking an Advisor's Registration*
The SIPA report asks the question "Are They Above the Law?" It examines the system and provides detailed scrutiny and improvement suggestions. As an aside, we continue to recommend approved OBA to be part of the CSA public registration data file.

9. Increase Advisor proficiency standards While the bar needs raising, so does the floor. A CSI online course, followed by 90 day on the job training hardly equips someone to handle other people's money and retirement plan. 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 has issued a FINAL report for more consistent standards for individuals who offer financial advice and planning services. We urge the OSC to work closely with the government on this important element as a 2017-18 priority.

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

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 advisor skill set, different products/models and **professional, unbiased** advisors competent in the art and analytics of assisting retirees with their pension assets.

10. Introduce an Investor Restitution Fund This item has flowed in and out of OSC priorities over the years with no firm decision. We are disappointed not to see it as a 2017-18 priority. Retail **i**nvestors are more interested in **restitution** than fines imposed on registrants or whether they

are collected or not. 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 2017-18 priorities. If section 128 OSA applications of the OSA is 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. Ontario lags behind Quebec, N.B., Saskatchewan and Manitoba on this issue.

11. Improve KYC/Suitability assessment process: We appreciate that the OSC will continue with its focus on suitability sweeps and take enforcement actions as appropriate. This is necessary and appropriate. However, one chronic underlying problem for investors and OBSI (and industry) is KYC assessment. The SIPA report SIPA Report: *The "Know Your Client" Process Needs an Overhaul* outlines issues with the Know-Your-Client process which is meant to define the client profile and the strategy for investment, but is woefully inadequate for fairly representing the client's interests. We urge the OSC, in conjunction with the MFDA and IIROC, to initiate efforts to improve the robustness of this core investor protection process. Trustworthy advice cannot be built on a foundation of Jell-O.

12. Regulation of Fixed Income Securities This item has dropped off the list from last year but we feel the core issues remain.The fixed income market has substantially increased in size in the last decade and there is a large presence of retail investors, particularly seniors/retirees, invested in this market directly and indirectly. As people age, the proportion of the portfolio in fixed income tends to increase so this will be an increasingly important issue over the next few years. Corporate bond trading is opaque with limited post-trade transparency for both regulators and retail investors. This lack of transparency limits the OSC's ability to determine whether retail investors and small institutional investors are obtaining best execution. We recommend that the OSC continue work on improving transparency and dealer allocation practices and add this component to the priority list.

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

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

unintended consequences are detected early and resolved before retail investors are harmed.

14. Recognize Regulatory Arbitrage as a systemic Risk Wealth Management is a strategic goal of the three main pillars of the financial services industry – banking, insurance and investments. It is clear that arbitrage is growing as all pillars are competing for the same demographic. Regulatory arbitrage often leads to a race to the bottom as has already happened with banking Ombuds complaints. Such arbitrage contributes to unfair and disorderly financial markets. Retail investors are always the big losers in these regulatory arbitrage situations. At a minimum, consideration should be given to bringing Segregated funds under securities regulation as this is a major cause of regulatory arbitrage. See our Bulletin on regulatory arbitrage *Regulatory arbitrage impairs investor protection* http://www.canadianfundwatch.com/2014/07/regulatory-arbitrage-impairs-investor.html . We recommend the OSC factor arbitrage into all its rule making processes and take whatever steps it can to minimize the harm such arbitrage can inflict on retail investors. NOTE: Please see our comments re Ontario Expert Committee FINAL report. [per Ontario Minister Sousa recent announcements it appears that the Committee's report will be implemented substantially as recommended]

SUMMARY and CONCLUSION

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

It's time for definitive action based on the extensive research available. The retirement savings and nest eggs of the people of Ontario are at risk. The function of the financial services industry to turn retirement savings into future retiree wealth is an important public policy issue. More and more seniors and pensioners become vulnerable each day, quarter and year that the status quo remains entrenched in a low suitability standard coupled with fund company commissions and other incentive payments. Given the extensive research available on this subject we urge conclusive regulatory action without undue delay.

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

Kenmar Associates agree to public posting of this Comment Letter.

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

Respectfully,

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