1.1.3 OSC Notice 11-767 – Notice of Statement of Priorities for Financial Year to End March 31, 2013

**OSC NOTICE 11-767 – NOTICE OF STATEMENT OF PRIORITIES
FOR FINANCIAL YEAR TO END MARCH 31, 2013**

The *Securities Act* requires the Commission to deliver to the Minister by June 30th of each year a statement of the Commission setting out its priorities for its current financial year in connection with the administration of the Act, the regulations and rules, together with a summary of the reasons for the adoption of the priorities.

In the notice published by the Commission on March 30, 2012, the Commission set out its draft Statement of Priorities and invited public input in advance of finalizing and publishing the 2012 – 2013 Statement of Priorities. One hundred-five (105) responses were received. Many of the comments we received confirmed support for our recently completed strategic plan and the various initiatives we plan to undertake in order to achieve our goals.

The responses commended the overall direction of the OSC goals and priorities and included:

(a) Strong support for the creation of the Office of the Investor and increased focus on investor concerns

(b) Endorsement of OSC's commitment for expansion of the research and data analysis capabilities in order to adopt a data-based approach to identifying issues, decision making and policy development

(c) Positive acknowledgement of the OSC's dedication to keeping pace with national and international developments

(d) Encouragement to move towards better identification, prioritization and coordination of specific initiatives and policy development.

The comments focussed on a wide range of issues. We address notable comments in the following discussion:

(a) Increased accountability was noted as an area that requires further clarity and transparency. It was recommended that the Commission clearly define performance metrics and use these measures to report on the progress of achieving its goals. In addition it was suggested that further information be provided regarding the timing, plans, and performance criteria for the deliverables contained in the Statement of Priorities.

We agree with this comment and wish to note that the Statement of Priorities includes a key priority to improve our accountability. In the coming year we will finalize key performance indicators (KPIs) to better track the outcomes of OSC activities and plan to report more clearly on progress. We have modified the Statement of Priorities to indicate the implementation of KPIs will occur by fiscal year end.

(b) A number of respondents commented on our initiative to re-evaluate the adviser-client relationship to consider whether an explicit statutory fiduciary duty or other standards should apply to all advisers and dealers in Ontario. While some respondents were quite supportive of this initiative, others noted the current common law fiduciary regime is effective and no further work is required.

In consultation with the CSA, we plan to complete a thorough analysis of this issue and a research paper will be published for comment.

(c) While there is overall support for the establishment of the Office of the Investor ("Office"), we received requests for more detailed information about the Office, such as: disclosure of the mandate, goals, composition, and future initiatives. There were also some suggestions regarding the focus and mandate of the Office.

We are in the early stages in establishing the Office including finalizing the terms of reference and mandate. The comments received will be considered as part of this process.

(d) We received comments regarding a mechanism by which the OSC could award compensation to Ontario investors who suffer losses because of violations of the *Securities Act* (Ontario).

We recognize the importance of this matter and have revised the Statement of Priorities to include more focus on applications under s.128 of the *Securities Act* (Ontario).

(e) A significant number of comments focussed on the need to adopt an offering memorandum exemption in Ontario to increase and expand the capital raising capabilities of exempt market dealers.

On June 7, 2012, we published OSC Staff Notice 45-707 – *OSC Broadening Scope of Review of Prospectus Exemptions* (available on the OSC website at *www.osc.gov.on.ca*) indicating our decision to broaden the scope of our exempt market review to consider alternative capital raising exemptions, including the offering memorandum exemption.

(f) Several respondents commented on the initiative to "conduct research and analysis, and publish a discussion paper on the cost of ownership of mutual funds in Canada, identifying investor protection and public interest issues". They noted that the cost of ownership of mutual funds is transparent; however, the same cannot be said about other financial products such as market securities, insurance products, GICs, etc. It was suggested that the OSC collaborate with other regulators for those products that do not come under its jurisdiction. It is our intention to apply our findings to comparable investment fund products.

(g) Many respondents commended the OSC's efforts regarding consultation on regulatory initiatives with market participants and industry, working with the Canadian Securities Administrators (CSA), and with other regulators in Canada and internationally. It was noted that as long as multiple securities regulators exist, it is important to work together to ensure the regulatory process remains cooperative and harmonized to promote effective capital markets, an investor focus and financial stability.

Some comments suggested that more consultation and opportunities for input from market participants and investors is also required. To improve collaboration and consultation we have recently established a number of committees with broad industry participation. We will continue to include market participants on our various advisory committees, consult with industry and other regulators on various securities regulatory matters, and develop stronger relationships with other financial service regulators in Canada and internationally.

In addition, we are pleased to note that the OSC Investor Advisory Panel (IAP) will continue to add the investors' viewpoints and comments on significant policy initiatives.

We considered all of the comments received and have reviewed our draft Statement of Priorities to determine whether any significant initiatives should be added. As noted above, we have revised the Statement of Priorities to include that where appropriate the OSC will make application under s.128 of the *Securities Act* (Ontario) to compensate investors.

We recognize many of the comment letters include useful actions that could be taken while working towards our priorities. Many of these comments will be considered in the course of undertaking the identified initiatives. However, due to a lengthy list of priority issues we had to make some difficult decisions on where we should focus our limited resources in order to achieve our mandate and strategic goals during the coming year.

All of the comment letters and our responses to the comments are available on our website www.osc.gov.on.ca.

The Statement of Priorities will serve as the guide for the Commission's operations. Following delivery of the Statement of Priorities to the Minister, we will also publish on our website a report on our progress against our 2011 – 2012 priorities.

June 28, 2012

ONTARIO SECURITIES COMMISSION
2012-2013
STATEMENT OF PRIORITIES

INTRODUCTION

The *Securities Act* (Ontario) requires the Ontario Securities Commission (OSC) to publish in its Bulletin, and to deliver to the Minister by June 30 of each year, a statement by the Chair setting out the proposed priorities for the Commission for the current financial year.

This Statement of Priorities sets out the OSC's strategic goals and the specific initiatives that will be pursued in support of each of these goals in the fiscal year commencing April 1, 2012. It also discusses the environmental factors that the OSC considered in setting these goals.

The OSC remains committed to delivering its regulatory services effectively and with accountability. The recent ruling from the Supreme Court stated that the federal government did not have the authority under the constitution to enact the proposed Canadian Securities Act. Therefore, the OSC continues to work closely with its colleagues in the Canadian Securities Administrators (CSA), and to ensure that the Canadian regulatory system continues to function efficiently and remains responsive to changing market circumstances.

Our Vision

To be an effective and responsive securities regulator – fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

Our Mandate

The OSC's mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. The mandate is established by statute.

OUR ENVIRONMENT

Each year, the OSC develops its business plan and sets goals and priorities to promote the achievement of its vision and the fulfillment of its mandate. The OSC does this in the context of current and forecast economic conditions, evolving market practices, developing trends and issues, as well as changes in public expectations. This year's planning exercise has the benefit of recent internal efforts to develop a vision and a strategic plan for the OSC as a 21st century regulator. The plan focuses on how the OSC sets its policy priorities, conducts its compliance programs and interacts with its stakeholders. This statement of priorities reflects some of these changes.

Today's market reality

Capital markets have changed fundamentally in recent years. We have experienced sharp increases in the breadth of activity as well as changes in the nature of business models and the complexity of products. Securities, insurance and banking products have become more interchangeable and global markets more interconnected than ever before.

The current market reality requires the OSC to address many new issues that have international implications, such as multi-jurisdictional enforcement investigations, a regulatory framework for the over-the-counter (OTC) derivatives, oversight of credit rating agencies and hedge funds, the regulation of emerging market reporting issuers, the proliferation of complex exchange-traded funds (ETFs) and structured products and an ever-changing market infrastructure. These raise complex regulatory, jurisdictional and operational challenges for the OSC.

There continue to be instances where retail and institutional investors have been sold products that were not adequately explained, were not suitable and did not meet their needs. These problems resulted in investor harm and have shone a spotlight on the inadequacies of the existing disclosure regimes and on the need for financial advisers to appropriately inform investors to enable them to make good investment decisions.

One of the greatest challenges now facing the OSC and other securities regulators is to strengthen the capacity and expertise to keep pace with ongoing market developments and risks that are emerging as a result of innovation and global market stresses.

International response

Given the changes to the markets and the lessons learned from the global financial crisis, expectations for financial services regulators have changed quite significantly. The unprecedented use of taxpayer dollars in many jurisdictions to bail out large financial institutions and to protect the local capital markets has created new accountability for regulators to a constituency with little interest in underwriting unnecessarily or overly risky behaviour.

In an effort to fix the underlying causes of the crisis, the G20 countries, along with the Financial Stability Board (FSB) and international standard-setters, such as IOSCO and the Basel Committee on Banking Supervision, are focussed on global support for regulation by way of additional investments in regulatory processes, development of new financial market infrastructures, expanding the perimeter of regulation and strengthening cooperation and regulatory oversight. The call for increased regulation has been challenged by those who question whether regulators can develop the agility required to keep pace with developments in the markets they regulate.

Implications for securities regulation in Ontario

Commitments made to the G20 will require the introduction of a broad set of new policies that cannot simply be imported from other jurisdictions, but will require careful analysis of their impact in the Canadian market. In addition, the implications and consequences of policies introduced in other jurisdictions will need to be carefully monitored and their impact considered in Canada.

The effects of all new policies and changes in other markets will be two-fold in Canada. First, direct compliance with these new rules by either domestic subsidiaries of foreign headquartered players or by local players transacting with foreign entities will cause shifts in the competitive landscape resulting in the potential for regulatory arbitrage. Second, it is possible that initiatives such as the EU Tobin tax and the US Volcker rule, or the application of lower position limits for commodity traders could drive high-frequency trading, proprietary trading and broker activity, or commodities speculation further into Canada's markets.

The greatest challenge facing regulators will not merely be the effective implementation of new rules, but also the development of the regulatory capacity to keep current with new market developments that will emerge over time as a result of financial innovation, or as unforeseen consequences of the implementation of the current proposed rules.

Whether as a result of innovation in the industry, or as required by global events, the OSC faces a fast-changing operating environment and rising stakeholder and public expectations. As the regulator of the largest share of Canada's capital markets, the OSC has an obligation to take these challenges seriously and demonstrate leadership.

The recent Supreme Court of Canada decision on the national securities regulator means that the OSC will continue to meet its mandate by working in the best interests of investors and market participants of Ontario. The OSC will continue to work cooperatively with its CSA colleagues and other regulators to make the regulatory system more efficient.

KEY REGULATORY PRIORITIES FOR 2012 – 2013

In light of the environmental factors outlined above, the OSC has reviewed and affirmed its broad strategic goals as set out below. A three year OSC strategic plan released on February 29, 2012 outlined a number of initiatives and operational programs in order to achieve its mandate.

The OSC has five regulatory goals for 2012 – 2013. Four of the goals remain the same as in previous years with a fifth goal added to respond to the systemic risk concerns raised as part of the global response to the market issues that emerged in 2008.

Goal #1 – Deliver Responsive Regulation

The OSC strives to identify the important issues and deal with them in a timely way. The OSC will continue to be proactive in pursuing regulatory standards that discourage or pre-empt regulatory arbitrage, maintain or improve market confidence, reduce financial crime and safeguard investors. Expanding OSC research and analytical capabilities in support of policy making and operational decisions will better inform policy development.

Key initiatives the OSC plans to undertake in the coming year are to:

- Facilitate shareholder empowerment in director elections by advocating for the elimination of slate voting, the adoption of majority voting policies for director elections and enhancing disclosure of voting results for shareholder meetings

- Improve the proxy voting system by:

  - conducting an empirical analysis to review concerns raised about the accountability, transparency and efficiency of the voting system

  - facilitating discussions amongst market participants on improving the functioning of the proxy system, taking into account the needs and concerns of retail investors, and

  - working with the CSA to review the role of proxy advisers in our capital markets by soliciting feedback from issuers, investors and other market participants

- Develop and publish a consultation paper addressing issues associated with market data in a multi-marketplace environment

- Undertake comparative research on capital raising regimes in other jurisdictions, including gathering economic data focussing specifically on approaches to raising capital for start-up and small businesses. This work will include consultation with issuers, investors, dealers, academics and others

- Consider and consult on alternate capital raising exemptions in Ontario in addition to the accredited investor and $150,000 exemption

- Conduct research and analysis, and publish a discussion paper on the cost of ownership of mutual funds in Canada, identifying investor protection and public interest issues

- Re-evaluate the regulatory and operational requirements associated with closed-end funds (non-redeemable investment funds) by assessing the rationale for rules that differ from the rules governing the more common open-end mutual funds. This work will include consultations with issuers and investors with a view to publishing new rules for comment

- Undertake research and analysis of increasingly complex financial products and investment strategies and collaborate closely with other regulators and exchanges to ensure regulatory approaches towards investment products are consistent and opportunities for regulatory arbitrage minimized.

Goal #2 – Deliver Effective Enforcement and Compliance

Timely and appropriate compliance oversight and enforcement actions are integral to fostering confidence in capital markets and preventing harm to investors. The OSC's compliance and enforcement regimes are dynamic; however, greater focus is needed on preventing non-compliance by issuers and registrants, rather than finding non-compliance after the fact. To address these issues, the OSC will:

- Work with other regulators, oversight bodies, exchanges, emerging markets issuers, auditors, underwriters and investors to address the principal concerns identified in the Emerging Markets Issuer Review (EMIR) completed in 2011 – 2012, as outlined in the OSC Staff Notice 51-719 dated March 20, 2012. This work will include:

  - developing and/or enhancing guidance and practices for boards, auditors and underwriters to address the principal concerns described in the Staff Notice

  - examining listing requirements applicable to Emerging Market issuers

- Conduct more targeted compliance reviews (i.e. "sweeps") and desk reviews of registrants by focussing on high risk areas, know your client and suitability obligations, new registrants and on major issues of concern that have been identified through compliance reviews

- Conduct compliance reviews of website and marketing disclosures by smaller issuers

- Promote vigorous and timely enforcement action by reducing timelines for completing investigations and initiating regulatory proceedings

- Continue to work with national and international enforcement regulators to develop a comprehensive response to emerging market issues

- Increase the use of stronger enforcement mechanisms and increase quasi-criminal prosecutions

- Further develop and implement a more effective, risk-based and proactive approach to both issuer regulation and compliance oversight

- Conduct educational seminars and publish a variety of practice directives and guidance to small and medium enterprises to provide direction on understanding our expectations regarding filings, and to alert them to issues we are focussing on in our review programs.

Goal #3 – Deliver Strong Investor Protection

Key initiatives the OSC plans to undertake to champion investor protection are as follows.

- The OSC will create an Office of the Investor to establish a stronger investor focus and understanding. This Office will:
  - deepen the OSC's understanding of investor issues
  - act as the focus for investor concerns and ensure investor issues are considered in policy and operational activities within the OSC
  - work with the OSC Research and Data Analysis Group to conduct specific research into investor issues and the implications for regulatory responses
  - work with investor advocacy groups and regulators to enhance OSC understanding of investor issues
  - work with the Investor Advisory Panel to support its mandate, and
  - work with the Investor Education Fund to support its efforts
- Re-evaluate the adviser-client relationship to consider whether an explicit statutory fiduciary duty or other standards should apply to all advisers and dealers in Ontario. The research underway will be completed, and a paper on the adviser's duty to clients will be prepared and published in consultation with the CSA
- Where appropriate the OSC will make application under s.128 of the *Securities Act* (Ontario) to compensate investors
- The OSC will help investors get the necessary information to enable them to make better investment decisions by:
  - applying high standards of disclosure through robust prospectus and continuous disclosure reviews
  - developing alternative, tailored disclosure documents – such as: re-examining risk disclosure in the 'Fund Facts' as part of the Point of Sale initiative, and developing similar disclosure documents for other types of investment funds and scholarship plans
  - publishing rules that ensure investors receive from their dealers/advisers reports on the ongoing costs and performance of their investments
- Continue to work with OBSI and the CSA to support a sustainable and robust system of informal dispute resolution for investors.

The need to assist and protect investors is critical given the availability of complex products, greater reliance on the exempt market for distribution, and potential intermediary conflicts of interest in the distribution of products. The OSC will:

- Examine the exempt market to obtain a better understanding of how and why individual investors participate not only in terms of direct investment in issuers, but also through structured investments sold through exempt market dealers
- Re-consider the current regulatory requirements governing shareholders' rights plans to reflect recent market and governance developments.

Goal #4 – Run a Modern, Accountable and Efficient Organization

The OSC continues to pursue its mandate and efforts to improve the efficiency and effectiveness of its operational and policy work. In its efforts to become a more performance-based and accountable organization, the OSC will:

- Prioritize and coordinate policy development. A dedicated committee will be established for the control and prioritization of policy initiatives, to ensure they are aligned with the goals and objectives of the organization and that investors' concerns and operational issues are considered early in the policy process. Greater emphasis will be placed on assessing the implications of policies, testing implementation of regulations and on collaboration with other domestic and international regulators

- Establish an Emerging Risk Committee that will develop a framework for the identification and analysis of risk

- Expand its research and data analysis capabilities to adopt a data-based approach to identifying issues, decision making and policy development. A dedicated group will be created to further enhance the research and analytical functions to bring about a more disciplined approach to policy development, a better understanding of investor behaviour and needs, and improved and timely identification of risks and issues in order to react faster

- Build an attractive, modern, high-performing workplace where every manager is a great talent manager and every employee is fully engaged

- Incorporate more sophisticated analytical tools to improve the efficiency, quality and timeliness of investigation efforts. Expand the use of technology and e-discovery tools to assist in insider trading investigations

- Improve the adjudicative process by moving to electronic hearings. This will facilitate more efficient management of the increased numbers of hearings and related documents

- Develop IT tools to assist in gathering, monitoring and analyzing data, automating areas of work that are now manually intensive and not efficient – e.g. creating online information submission (eForms) to capture submissions electronically to reduce data entry and errors, expedite analysis, and improve the quality of information submitted through initial validation

- Review the existing OSC fee model and propose a new Fee Rule for implementation in April 2013

- Further develop key performance measures to track the outcomes of OSC activities to be implemented by fiscal year end

- Improve internal work processes – such as: a more effective approach to issuer regulation by continuing to improve screening and review protocols for prospectuses and compliance oversight; plus enhancing the risk-based approach to licensing registrants.

Goal #5 – Support and Promote Financial Stability

The OSC aims to build the capabilities required to play a more active role in assessing risks to its own objectives and to financial stability arising from the interaction between securities and other financial services activities. The OSC will:

- Continue the work on the creation of a framework to regulate OTC derivatives participants in order to meet the G20 requirements:

  - complete and publish various concept papers in consultation with the CSA

  - roll-out proposed rules regarding oversight of trade repositories and a requirement to report all derivative trades to an approved trade repository, and

  - publish rules for comment in late 2012

- Increase cooperation by developing more formal and regular working relationships with the CSA and other financial service regulators in Canada and internationally

- Work with IOSCO and the CSA Systemic Risk Committee to implement IOSCO Principle 6 regarding systemic risk, and Principle 7 regarding perimeter of regulation.

2012 – 2013 FINANCIAL OUTLOOK

OSC Revenues and Surplus

Overall, the OSC is forecasting revenues in 2012–2013 to increase by 9.2% from 2011–2012 actual revenues. This forecast reflects the fee increases in place for the coming year and a market growth assumption of 5%. When the OSC reset fee rates for three years in April 2010, fees were set at levels to generate revenues that would be below expected costs. The intent was to reduce the surplus that had been accumulated in the prior three year period. Based on the projected revenues and proposed 2012–2013 OSC Budget, the OSC expects to operate at a deficit in 2012–2013. As a result, the OSC surplus is projected to be $7.0 million as at March 31, 2013.

2012 – 2013 Budget Approach

The 2012–2013 OSC Budget is focused on investment in the key strategies identified in its recently completed three year OSC Strategic Plan. While these initiatives will be staffed in part through redeployment of existing resources, the scope of the initiatives is such that more resources will be needed and are reflected in the budget.

The budget reflects a projected increase of $10.0 million or 11.1% over 2011–2012 spending and 10.2% above the 2011–2012 budget. Salaries and benefits, which comprise $74.8 million or 74.8% of the budget, reflect an increase of $5.4 million or 7.7% over 2011–2012 spending. The increase in salaries and benefits cost reflects:

- new positions approved to achieve the strategic initiatives
- full-year costs for vacancies and staff hired throughout 2011–2012, and
- higher projected restructuring costs.

The 2012–2013 budget includes funding for new staff focused in the following areas to:

- address market structure issues that are increasing both in number and complexity
- establish and staff a new Office of the Investor
- set up an accredited chartered accountant training program, and
- provide analytical and research support to allow the OSC to undertake a more fact based approach.

These initiatives will support the regulatory results the OSC is seeking. The OSC is committed to becoming a 21st century regulator and needs to attract, retain and motivate staff with the required skills and experience. The OSC believes that becoming a leading employer will help it attract skilled staff. Therefore, resources have been allocated to various human resources initiatives with the goal to create the appropriate organizational structure and development environment.

				2012-2013 Budget to 2011-2012 Budget		**2012-2013 Budget to 2011-2012 Actual**	
($000's)	**2011-2012 Budget**	**2011-2012 Actual**	**2012-2013 Budget**	**$ Change**	**% Change**	**$ Change**	**% Change**
Revenues	$80,287	$85,638	$93,524	$13,237	16.5	$7,886	9.2
Expenses	90,706	90,025	99,986	9,280	10.2	$9,961	11.1
Deficiency of Revenue compared to Expenses	($10,419)	($4,387)	($6,462)	$3,957		($2,075)	
Capital Expenditures	$2,396	$1,919	$8,057	$5,661		$6,138	

The significant increase in the capital budget primarily reflects the build-out of recently acquired additional space as well as the realignment and refurbishment of the OSC's existing space. The budget also includes considerable investments to support upgrading and expansion of our information technology which will help to facilitate excellence in the execution of the OSC's operations.