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Dear Mr. Day,

The Investor Advisory Panel is pleased to submit this Comment Letter regarding OSC Notice 11-769 – Statement of Priorities – Request for Comments Regarding the Statement of Priorities for Financial Year to End March 31, 2015.

The Investor Advisory Panel (“Panel”) was established to provide the Ontario Securities Commission (“OSC”) with its advice on retail investor protection. Our response to the OSC Statement of Priorities will focus on three OSC regulatory goals: to deliver strong investor protection; to deliver effective enforcement and compliance; and to run a modern, accountable and efficient organization.

***Executive Summary***

This has been a bad year for the retail investor in Ontario. As regulators continue to study measures that could improve investor protection, the years go by without significant progress. After close to 15 years of debate, development and delay, the inadequate suitability-based Client Relationship Model is still not fully in place. Debate still rages about a rule requiring pre-sale delivery to investors of Fund Facts (an information initiative that has somehow needlessly dragged on for 13 years). Two years after the Canadian Securities Administrators (“CSA”) launched formal, nationwide consultations on the merits of introducing a best interest duty, the OSC is only willing to commit to still more review and study.

These initiatives all fall under the umbrella of the CSA, which has repeatedly demonstrated an inability to reach consensus on a timely basis and to work effectively to create a robust investor protection regime for Canadian investors. The OSC’s first obligation is the protection of Ontario investors. If this is not possible through working with its CSA partners, the OSC needs to act on its own for Ontarians. Investors in Ontario should not pay the price for Canadian regulators’ inability to reach consensus: not all provinces look at things the same way and it may be time to recognize that and move on.

The *Securities Act* (Ontario) sets out the following objectives:

“(a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets.”

Investor protection is, according to statute, as important as the fostering of those fair and efficient markets in which investors can have confidence.

Fairness and balance have not been achieved and too often retail investor issues have been treated as secondary in importance to the interests of issuers and industry intermediaries. Last year, this Panel applauded the OSC’s retail investor agenda. We are unable to do so this year. This year’s Statement of Priorities does not set out an agenda which treats these two objectives equally. Instead, it focuses on capital formation and access to capital, market structures that foster competition, concerns about the sustainability of the business models of smaller dealers, regulatory burden and industry cost. While the retail investor agenda focuses on yet more studies and contains no commitment to any specific action, the capital markets agenda sets out deliverables and targets for action. Investor protection is not achieved through studies and reviews. It requires a commitment to action; and then action.

The Statement of Priorities indicates that the OSC plans to “achieve a fair deal for investors” through outreach and interaction and study of their concerns in order to “understand if there are issues to address and opportunities for improvements.” Outreach and interaction carried out in previous years have already identified serious, specific and actionable retail investor protection issues. As a matter of regulatory effectiveness, the OSC needs to focus on implementing timely solutions in our investor protection regime. The Statement of Priorities’ limited comment on solutions focuses on educating and informing the retail investor rather than on proposing concrete changes to address egregious deficiencies in advisor and advice regulation. This is a misuse of finite resources allocated to investor protection, and a failure in providing real time investor protection.

The Panel supports immediate introduction of a best interest standard to protect Ontario investors. Ontario investors believe and expect that their advisors are required to place the investor’s interest first; a decision by the OSC to require advisors to place their clients’ interests first is a basic step in investor protection and long overdue. A best interest standard will require that the advisor is the true agent of the client, putting the clients’ interests first.

This Statement of Priorities includes no short- or immediate-term commitments that would materially improve investor protection in Ontario. We need decisions and regulatory actions that will effect positive change for the retail investor in Ontario, especially as the number of vulnerable investors continues to grow.

In addition to implementing a best interest standard, we urge the OSC to adopt this agenda for investor protection in Ontario:

- Eliminate conflicted compensation practices which can bias advisors' advice and product recommendations. Conflicted compensation is the antithesis of investor protection. Compensation arbitrage biases advisors' advice and product recommendations to the detriment of Ontario investors.
- Require advisors to use informative, accurate business titles and be properly qualified and trained to provide advice.
- Implement recommended steps to ensure fair, timely and independent complaint handling, enforcement and restitution, the most urgent of which is intervention by the OSC in response to industry attacks on the key component in investor protection: the Ombudsman for Banking Services and Investments.

### ***Delivering on commitments made***

The OSC has adopted the regulatory goal to “run a modern, efficient and accountable organization.” Within this goal area two priorities have been set out: one with respect to regulatory burden on industry; the other with respect to timely and fair adjudication. These are important, to be sure. The OSC should consider regulatory goals from another perspective, and that is with respect to the timeliness and effectiveness of its organizational regulatory performance in protecting the investor.

As we noted in our comment letter last year, improvements in accountability and transparency will ultimately be judged on results, not process.

With respect to effectiveness of performance management processes, accountability and transparency, the Panel has three overarching concerns:

- the extremely slow pace and apparent lack of progress on projects that are important to investors – whether this stems from issues with OSC planning or execution or a lack of consensus and support at the CSA level is not clear;
- the fact that a number of priorities and commitments from previous years have been dropped without explanation and without the OSC delivering the promised outcome;
- a lack of clarity about deliverables that undermines organizational effectiveness, accountability and transparency.

Specifically:

1. Last year, the Panel supported the need for simultaneous investor and industry impact studies of a best interest standard. The OSC committed to identifying options for completing a preliminary regulatory impact analysis of the application of a best interest duty for advisors and dealers by March 2014. This does not

appear to have been completed. Yet another year has gone by in the decision-making process on a key investor protection initiative with apparently little or no progress. (This year's Statement of Priorities merely repeats the OSC's commitment to complete "research that will inform our decision" and to evaluate options to move forward on some undefined timeline).

2. Last year, the Panel supported the commitment to work with standard setters to advance registration and proficiencies. We emphasized the need to set a high standard of education and proficiency for advice providers. We called on the OSC to work with the self-regulatory organizations to encourage them to undertake a long overdue review of the educational and professional standards for their registrants. The existing standards are outdated, in some cases dating back decades, and reflect a sales culture. The present standards have fallen behind the norm set by the U.K. and Australia and are inadequate and disrespectful of many professionals.

The OSC indicated that the need for standards and proficiency would be considered as part of its review of advisors' responsibilities to investors. In the Statement of Priorities 2014-15, there are no references to proficiency (or to an equally important issue: business titles) and we strongly urge the OSC to make these issues a priority for 2014-15.

3. Last year, the Panel supported and praised the OSC's plan to conduct an innovative and important mystery shopping initiative. Its findings were to be key factors in advancing the best interest standard discussions and in improving the current suitability regime. This commitment has now been scheduled for completion in 2014-15.
4. Last year, the Panel strongly supported the proposed review of the fixed-income market and development of an action plan to address specific key gaps or risks to investors. The review was to have been completed, results published and recommendations provided to the OSC. This year the OSC is committing to a review of corporate fixed income. The Statement of Priorities makes no reference to a review or any other recommendations, nor has any research or review been made public. Robust regulation of the fixed-income market is a priority for retail investors.

### ***Delivering strong investor protection***

A robust investor protection regime includes high regulatory standards of business practices, proficiency standards that are suitable for professionals who provide advice, not salespersons, and conflict of interest requirements that ensure advisors' and clients'

interests are aligned. A robust investor protection regime must provide effective compliance, enforcement and restitution.

The Statement of Priorities asserts that in order to achieve the OSC's desired outcome of "driving to achieve a fair deal for investors," the OSC must "continue its efforts to better educate investors" and to "promote the provision of information that is clearer and more easily understood." In addition, and we trust not secondarily, the Statement of Priorities asserts that to achieve this outcome of a fair deal for investors, the OSC must try to ensure that advice being provided is suitable and that any conflicts are managed appropriately. (The Panel has consistently called for a more ambitious view of what constitutes a fair deal for investors than the suitability test: advice needs to be more than just clear and suitable. It needs to be in the best interests of the client).

The OSC's resources are limited. It should be deployed to carry out only those projects that have maximum impact on strengthening investor protection and restoring the balance of interests in the asymmetrical client/advisor relationship.

It is important to distinguish between investor protection and investor education. Investor protection protects the investor from unsuitable product sales and planning advice; provides real time warning to potential victims; enforces against wrongdoers and promptly and fairly compensates investors for advisor and dealer negligence and malfeasance.

Much of the education which is carried out is intended to inform the investor about how the system works. Unfortunately, knowing how the system works is no real protection against practices that, while common or permitted, are nonetheless potentially harmful to the investor. Informing an investor of the existence of a conflict of interest is not managing the conflict. And for those who have actually been informed of the conflict, the information usually isn't very helpful because unconflicted advice is not easy to find (viz mutual fund third-party commissions).

It is surely more important and a better use of finite resources for regulators to ensure that registrants know their clients and products more thoroughly and act in their best interests than it is to try to address deficiencies in the advisor/client relationship through efforts to improve the investor's knowledge of a highly complex and fast-evolving industry.

Research has demonstrated that retail investors rely on their financial services intermediary as if a best interest relationship existed. Research has also shown that many investors feel they have no choice but to rely on their advisor or salesperson because they do not consider themselves competent to differ or disagree with the advice given. This is the reality that exists today. In other industries in Ontario, when such reliance has been present, reasonable and expected by the consumer, regulations

have been created that reflect this reality. We suggest that securities regulators might wish to consider a similar regulatory approach.

Investors should be entitled to receive professional, unbiased advice that is in their best interests when they seek investment advice, regardless of their level of knowledge. Do we expect or think regulators ought to work to ensure investors have a level of expertise that we do not expect of consumers of other forms of professional advice?

We do and will continue to support OSC efforts to provide useful information to investors.

Last year, we supported the OSC's goal to inform investors about the merits of working with a registered advisor. We joined the Canadian Foundation for the Advancement of Investor Rights in urging the CSA and the OSC to build a single, comprehensive one stop information service for investors. The OSC agreed that this would be a useful addition for investors and said it is supporting CSA efforts to implement a more comprehensive, one stop information service for investors. There has been no progress during the past year. This is a proven investor information initiative which the OSC should be supporting. If the CSA is unable to move quickly on this initiative, we recommend that the OSC proceed on its own to make this information available to investors in Ontario.

The Statement of Priorities also discusses engaging investors through community meetings and focus groups to ensure that their views are understood and incorporated in policy and rule making. Last year's Statement of Priorities committed to publishing a list of issues identified through these activities. We encourage the OSC to communicate these findings publicly this year. We also believe that outreach of the scope and nature that the OSC appears to be proposing is unlikely to be achieved through the current *OSC in the Community* initiative and needs to be replaced by a comprehensive measurable engagement/communications strategy.

In last year's Statement of Priorities, the OSC agreed with the suggestion to support the Office of the Investor and provide the resources needed to provide additional focus and attention on seniors. We continue to encourage the OSC and the Office of the Investor to make seniors' issues a formal priority with clear deliverables and timelines and to communicate to the investing public how and what they propose to do. This approach is more likely to result in progress on this important issue. We would also encourage a focus on other vulnerable investors, in addition to senior-specific issues.

The Panel, like a number of observers, has concerns about the equity crowdfunding exemption and will be providing specific comment in a later submission.

### ***Delivering effective compliance, enforcement and compensation***

We agree (Priority 9) that the OSC needs to better demonstrate the effectiveness of its enforcement and compliance efforts. Effective compliance and enforcement are essential to avoiding and detecting investor harm.

In its 2007-08 Statement of Priorities and again in OSC Staff Notice 33-737 – Annual Summary Report for Dealers, Advisers and Investment Fund Managers, the OSC committed to “research and consider more effective means for the resolution of complaints and restitution.” The results of this research have not yet been made public nor has any action been taken. This initiative is a key part of the OSC’s mandate and must be placed on the OSC’s research priorities.

The Panel has previously commented and we reiterate in this Comment Letter:

“Although robust enforcement policies are important to the public’s perception of market integrity, we believe that individual investors are primarily concerned with being compensated and secondarily concerned about general deterrence and penalties for securities violations on a broader level. An enforcement program which focuses only on market integrity without addressing investors’ interests in compensation is one-sided, in our view. A robust enforcement program should be based on both preventative and remedial measures.”

Regulators must provide Ontario investors with access to timely, independent and binding restitution. We will not repeat in this Comment Letter our many serious concerns about the status of the Ombudsman for Banking Services and Investments, concerns that we have communicated to the OSC throughout the past year.

Regulatory intervention is urgently needed. It is long past time for the OSC to put the issue of restitution back on its list of priorities.

We support the commitment to focusing compliance oversight on registrants that are likely to have serious compliance issues and recommend that this include suitability standards and issues specific to seniors. U.S. regulators have conducted compliance sweeps of Free Lunch Seminars aimed at seniors. These sweeps reveal high levels of non-compliance with suitability requirements. We urge the OSC to also prioritize sweeps of dealers and portfolio managers who are the subject of complaints: these dealers are likely to have serious compliance issues.

Last year, the OSC committed to make efficient and timely referrals of serious cases of unsuitable advice to Enforcement. OSC compliance reviews of exempt market dealers revealed high levels of non-compliance with suitability requirements. We strongly recommend the OSC improve the transparency of its enforcement data reporting and in particular make investors more aware of enforcement actions on suitability and vulnerable individuals.

**Summary and Conclusion:**

The Investor Advisory Panel strongly urges the Ontario Securities Commission to revise its Statement of Priorities in order to set clear goals with timelines that will materially improve investor protection in Ontario.

Do not hesitate to contact us if there are any questions concerning our Comment Letter.

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Connie Craddock, Chair  
Investor Advisory Panel