

December 18, 2023

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Re: OSC Notice 11-798 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Fiscal Year 2024-2025

FAIR Canada is pleased to provide comments to the Ontario Securities Commission (OSC) in response to the above-referenced Consultation.

FAIR Canada is a national, independent, non-profit organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. We advance our mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. As part of our commitment to be a trusted, independent voice on issues that affect retail investors, we conduct research to hear directly from investors about their experiences and concerns. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly advancing the interests of retail investors and financial consumers.¹

A. General Comments

We recognize the OSC's stated commitment to ensuring investor protection remains a top priority in all initiatives and actions the OSC undertakes. However, twelve out of the sixteen priorities reflect repeated priorities from last year. Furthermore, as we noted in last year's comment letter, the Statement of Priorities (SoP) appears overweighted with priorities that do not have investor protection at their core. We urge the OSC to ensure its strategic priorities remain focused on delivering investor protection initiatives in a timely manner. We have identified those initiatives, including those absent from the proposed priorities, below.

B. Assess Implementation of Client Focused Reforms (CFRs) and Consider Impact of Limited Product Shelves

We applaud the OSC for prioritizing further investigation of registrants' shelf formulation approaches and the decisions of some firms to rely on predominantly proprietary products. FAIR Canada noted with deep

¹ Visit www.faircanada.ca for more information.

concern² that the decision by some registrants to limit client product choices by no longer selling mutual funds from other firms goes against the spirit and intent of the CFRs.

We also strongly support the OSC's commitment to conducting additional CFR sweeps regarding the Know-Your-Client (KYC), suitability and Know-Your-Product (KYP) requirements. However, it is disappointing that the planned outcome of this priority is limited to heightening "awareness by firms of their CFR obligations." Firms have had ample opportunity to learn and plan for implementation of their CFR obligations, including:

- Access to extensive guidance published in the Companion Policy to National Instrument 31-103 relating to CFR obligations, as well as ongoing Frequently Asked Questions (periodically updated).³
- The benefit of a significant implementation period (initially 14 months for conflict of interest obligations, 38 months for the remaining amendments; extended⁴ to 20 months for conflicts of interest).
- Participation in an implementation committee that provided guidance, responded to questions, and otherwise assisted registrants to operationalize the CFR obligations.

We also note that the CFR are a much more targeted and narrow set of requirements than what regulators had been publicly proposing and consulting with stakeholders on over many years - imposing a best interest standard. Suffice it to say firms should be fully aware of their CFR obligations by now.

Given this, the results of the Joint Securities Administrators/Canadian Investment Regulatory Organization (CIRO) Staff Notice 31-363 – *Client Focused Reforms: Review of Registrants' Conflicts of Interest Practices and Additional Guidance* were extremely disappointing and concerning:

- 66% of reviewed firms had inadequate policies and procedures related to conflicts of interest,
- 53% of firms had missing or incomplete disclosure related to material conflicts of interest, and
- 34% of firms failed to identify one or more material conflicts of interest.⁵

We recommend the OSC focus on its other stated outcomes instead, including:

- Imposing consequences for identified deficiencies,
- Proposing additional measures to protect the goals of the CFRs, and
- Enhancing the competitive landscape for investment products.

C. Study the Limitation of Advice in the Order-Execution Only (OEO) Channel

² See [FAIR Canada Newsletter](#) (September 13, 2021).

³ [Client Focused Reforms – Frequently Asked Questions](#).

⁴ [CSA Notice 31-357 – Blanket Orders/Class Orders in respect of Certain Client Focused Reforms Provisions of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations](#) (April 16, 2020).

⁵ [CSA/CIRO Staff Notice 31-363 – Client Focused Reforms: Review of Registrants' Conflicts of Interest Practices and Additional Guidance](#) (August 3, 2023).

We support the OSC’s consideration of whether OEO firms can provide non-tailored advice to meet the needs of do-it-yourself investors while not diluting the value of robust established advice channels so the two are not confused.

However, we encourage the OSC to take a broader approach in assessing the needs and experiences of OEO investors. Currently, anyone with access to the internet can easily open an OEO account in minutes with a few clicks. The OSC and CISO ought to consider if some basic assessment tools should be interposed, or if enhanced warning mechanisms should be required to ensure investors understand their obligations and the risks. This is particularly important for novice investors seeking to open margin accounts.

Additionally, the OSC ought to evaluate OEO account opening documents and consider whether regulators should prescribe a plain language version (or elements thereof) to facilitate investor understanding and improve comparability between different OEO platforms. Increased comparability would also promote effective and healthy competition in the interest of investors.

Our investor research⁶ shows growing reliance on the OEO channel, but a low level of investor confidence in various aspects of investing:

- Self-managing investors rely to a higher degree on the media, personal contacts, financial statements, and newsletters when making investment decisions.
- Overall, investors have low levels of confidence in various aspects of investing. Less than 30% feel very confident about their investment knowledge.

We agree that investor protection is enhanced through “quality information from verified sources”. However, the issue is not, as the OSC describes, “the dilution of the value of robust established advice channels (so the two are not confused)”. The focus ought to be on addressing the everyday investor experience in the OEO channel, their needs and the quality of information OEO firms provide to investors.

A study would also present an opportunity to re-evaluate CISO’s traditional approach to the definition of a “recommendation”, better align the regulatory framework to the modern needs of everyday investors and improve access to advice.

D. Strengthen the Dispute Resolution Framework of the Ombudsman for Banking Services and Investments (OBSI) and Modernize OSC’s Disgorgement Framework

FAIR Canada strongly supports this priority. This is the single most pressing investor protection initiative of the past decade. We applaud the OSC and its partners in the Canadian Securities Administrators (CSA) for publishing for comment a regulatory framework for an independent dispute resolution service (the OBSI) whose decisions would be binding.⁷

⁶ [FAIR Canada Investor Survey](#) (December 2022).

⁷ [CSA Notice and Request for Comment -Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations](#)

FAIR Canada has long advocated for a binding investment ombudservice regime in Canada. Binding authority will ensure fairness for investors that cannot resolve their complaints directly with their dealer.

We also praise Saskatchewan’s leadership in proposing Bill 150. We urge the OSC to work closely with the Ontario government to enact similar legislation and ensure Ontarians can also access a better system for addressing complaints against dealers. We believe this is an opportunity for Ontario to show leadership and demonstrate it remains committed to protecting investors while also being focused on capital formation and burden reduction for the industry.

We are also pleased that the Ontario government passed legislation to provide a new statutory process for the distribution of money the OSC receives under disgorgement orders made under the *Securities Act* and the *Commodity Futures Act*.

This represents a meaningful response to an important investor-focused recommendation of the Auditor General in its Value-for-Money Report.⁸ We encourage the OSC to proceed quickly with proposing rules for consultation regarding the conditions of eligibility and details of the distribution process.

E. Conduct Initiatives for Retail Investors Through Specific Education, Policy, Research and Behavioural Science Activities

FAIR Canada fully supports the OSC expanding its applications of behavioural science to policy making and operations, to improve regulatory effectiveness and produce better investor outcomes. It is essential for regulators to understand the needs, challenges and experiences of main street retail investors and find ways to tailor the regulatory framework to better serve these investors.

While important, we are not convinced that existing approaches for enhancing “investor education and financial literacy” are making a significant impact relative to the amount of money spent on them. It is just as important for the OSC and the CSA to consider ways to clarify, simplify and streamline the regulatory system to make it easier for investors to understand and navigate. This includes implementing a system that better aligns with investors’ reasonable assumptions and expectations and meets them where they are in terms of their level of knowledge and understanding.

For example, we recommend that all client-facing disclosure be reviewed and assessed to determine if most retail investors understand it. We suspect the review will find that most disclosure is too long, complicated and written in a way that most retail investors cannot easily follow or understand. We also suspect that the volume of information the average retail investor is expected to assimilate and understand quickly overwhelms them.

By prioritizing policy projects that look at the world through the lens of everyday Ontarians, the OSC can improve the impact of the regulatory system, resulting in better outcomes for investors and registrants.

[and Proposed Changes to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations](#) (November 30, 2023).

⁸ Office of the Auditor General of Ontario, [Value-for-Money Audit of the OSC](#), December 2021, see Recommendation 12.

F. Strengthen Oversight and Enforcement in the Crypto Asset Sector

We have previously expressed support for pre-registration undertakings (PRUs) and the OSC's response to protect investors from FTX. Pending registration, it will be important for the OSC to monitor and enforce compliance with the terms and conditions set out in the PRUs.

PRUs ought to be a temporary regulatory mechanism and we encourage the OSC and CIRO to expedite their reviews where possible. Of the eleven crypto asset trading platforms (CTPs) that have filed a PRU, ten filed nearly eight months ago and were operating in Canada well before that. While a thoughtful and proactive approach, we hope the PRUs do not inadvertently slow down the process for CTPs to expeditiously pursue full registration.

G. Modernize Delivery Options of Regulatory and Continuous Disclosure Filings for Issuers

FAIR Canada supports this priority and the proposed outcome:

“Alternate delivery models for corporate finance reporting issuers and investment fund issuers that modernize the way certain documents are made available to investors, reduces undue regulatory burden and related costs for issuers, and promotes a more environmentally friendly manner of communicating information, with paper delivery remaining optional.”

We urge the OSC and its CSA partners, however, to take a broader approach to modernization and avoid focusing too narrowly on reducing regulatory burden. The focus ought to be on identifying ways to encourage a transition to electronic delivery and facilitate the ability of investors to receive information according to their own preferences.

As we have advocated before, we believe it would be more worthwhile for the OSC and its CSA partners to explore and address the root causes of low investor engagement, including solving issues around electronic delivery and consents. While “access equals delivery” may save some issuers a few dollars, it does little to serve ordinary investors. Access does not equal delivery, and we are concerned that even more investors could become less engaged if it is pursued.

H. The SoP is Missing Client-Facing Titles and Proficiencies

Contrary to our expectations, the SoP does not include any priorities related to client-facing titles and proficiencies. We also noted this absence in our previous comment letters respecting the OSC's SoPs.⁹

FAIR Canada has been open about the serious consumer protection concerns arising from Ontario's current title protection framework.¹⁰ Among many other deficiencies, the Ontario framework masks the fact that some title users may only be licensed to sell one type of financial product, as opposed to provide

⁹ See [FAIR Canada](#) (2020) and [FAIR Canada](#) (December 22, 2022).

¹⁰ See [Financial Services Regulatory Authority of Ontario - Financial Planners and Financial Advisors](#) and [FAIR Canada](#) (November 16, 2023).

financial advice. Furthermore, the framework creates a high risk of investor confusion and an unlevel playing field for those in the financial services industry.

Unfortunately, the structure of Ontario’s title framework may mislead investors about the qualifications of those using the “financial advisor” title, as well as the products or services they are licensed to provide.

We would expect the OSC to be concerned with the risks to Ontario investors given:

- the use of the titles “financial advisor” and “financial planner” by individuals registered with and by the OSC, and
- the CFR prohibition on the use of misleading titles in Ontario.¹¹

FAIR Canada’s recently released Title Survey Report confirms the confusion among investors regarding the use of titles and the gap between investor expectations and the current use of titles in the financial services:

- Surveyed investors were uncertain about the distinctions in education and training required for different job titles and the varying financial advice and services provided by individuals with different titles.
- 92% of respondents agreed that it was crucial for individuals providing financial advice to have a job title reflective of their knowledge and expertise.
- Investors agreed that titles should accurately reflect an individual’s level of accountability, expertise, and qualifications.
- More specifically, there was a high level of agreement (88%) that any person calling themselves a financial advisor should be able to provide comprehensive advice in core areas that include estate planning, tax planning, retirement planning, investment planning and alternatives, finance management, and insurance/risk management.¹²

Unfortunately, Ontario’s title protection framework does not ensure users of the financial advisor title have this expertise. This gap creates a risk of OSC registrants using titles approved by the Financial Services Regulatory Authority of Ontario (FSRA) in a manner that may nonetheless mislead investors, in contravention of the requirements in NI 31-103.

In its 2023-2026 Annual Business Plan, FSRA committed to conducting a review of the title protection framework. We encourage the OSC to prioritize working with FSRA during its review of the framework, along with the government and the CSA, to deliver stronger investor protections relating to title use.

Thank you for considering our comments on this important issue. We welcome any further opportunities to advance efforts that improve outcomes for investors. We intend to post our submission on the FAIR Canada website and have no concerns with the OSC publishing it on their websites. We would be pleased

¹¹ See section 13.18 of NI 31-103.

¹² [FAIR Canada Job Title Survey](#) (November 2023).

to discuss our submission with you. Please contact Jean-Paul Bureaud, Executive Director, at jp.bureaud@faircanada.ca or Erica Young, Head of Policy, at erica.young@faircanada.ca.

Sincerely,



Jean-Paul Bureaud

President, CEO and Executive Director

FAIR Canada | Canadian Foundation for Advancement of Investor Rights