

**BY ELECTRONIC MAIL**

June 3, 2013

Mr. Robert Day  
Senior Specialist, Business Planning and Performance Reporting  
Ontario Securities Commission  
20 Queen Street West, Suite 1900, Box 55  
Toronto, ON M5H 3S8  
Email: rday@osc.gov.on.ca

Dear Mr. Day:

**Re: Ontario Securities Commission Statement of Priorities for Financial  
Year To End March 31, 2013**

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We are writing in response to the Request for Comments issued by the Ontario Securities Commission (the "OSC") and dated April 4, 2013 with respect to the proposed Statement of Priorities ("SOP") for the financial year ending March 31, 2014.

Fidelity Investments Canada ULC ("Fidelity") is the 7<sup>th</sup> largest fund management company in Canada and part of the Fidelity Investments organization in Boston, one of the world's largest financial services providers. Fidelity Canada manages over \$70 billion in mutual funds and institutional assets and offers approximately 200 mutual funds and pooled funds to Canadian investors.

**Comments**

**Investor Outreach and Focus**

We support the OSC's focus on engaging investors and investor advocacy groups through community meetings, outreach and focus groups to better understand investors' key concerns. We believe that effective regulation is best achieved through consultation with all stakeholders, including industry participants. Prior to implementing new rules, we encourage the OSC to facilitate a forum where the key concerns of all stakeholders may be brought forth, discussed and debated in order to ensure a well-balanced regulatory and business environment. We commend the OSC for facilitating the roundtable discussions of the issues identified in CSA Consultation Paper 33-403 (the "Fiduciary Duty Discussion Paper") and the CSA Consultation Paper 81-403 (the "Fee Discussion Paper"). We believe that investors' concerns can be better addressed if industry participants are given the opportunity to participate in an ongoing dialogue with the regulators and investors.

## Adviser Responsibilities to Investors

We agree with the OSC that more work needs to be done to better understand the impact of imposing a best interest duty on dealers and advisers. We encourage the OSC to engage all industry participants in this process, in addition to investors and SROs. We refer you to our comment letter dated February 22, 2013 on the Fiduciary Duty Discussion Paper where we outline a number of consequences detrimental to investors that, we believe, could result from the application of a fiduciary duty which is not qualified and reasonably defined. Our overarching concern is that Canadians will be forced away from an advice-driven model, which may precipitate further unintended consequences. We reiterate our recommendation that a robust legal analysis be included as part of the OSC's initial assessment of the application of a best interest standard for advisers and dealers (i.e., surveying the case law related to fiduciary duty and its application to the sale of investment products).

## Disclosure to Investors

As part of the OSC's plan to provide investors with more effective and meaningful disclosure, it has indicated that it will publish the final proposals for delivery of fund facts instead of a mutual fund prospectus. Fidelity continues to support this initiative and is hopeful that the final proposals will be published in a timely manner.

In addition, Fidelity wishes to reiterate its concern that any benefit from a pre-sale delivery requirement would be far outweighed by the negative impact on investors. We believe that a pre-sale delivery requirement would cause investors to experience trade delays and inconvenience by having to wait and repeatedly interact with their advisors to effect a trade. This delay may prohibit an investor from placing a trade at the time of their choosing (e.g., before the price of their mutual fund changes to their detriment).

## Mutual Fund Fees

The OSC has proposed that it will advance the discussion of mutual fund fees and fees for other investment products. To achieve this, the OSC has stated that it will be considering comments on the Fee Discussion Paper and host a stakeholder roundtable to develop recommendations for next steps. We refer you to our comment letter dated April 12, 2013 on the Fee Discussion Paper. As we suggest in our comment letter, banning embedded fees and adviser compensation could severely impact mutual fund investors and, as such, decisions should not be made preemptively and without due consideration to all evidence.

To this point, we wish to highlight the recent research provided to the OSC and published by Investor Economics (Canada) and Strategic Insight (U.S.) that suggests that the costs of ownership of mutual funds in advised relationships in Canada is comparable to that of the U.S. This research directly contradicts the OSC's suggestion in its SOP that Canadian mutual fund fees are among the highest in the world. We strongly suggest that due consideration be given by the OSC to this research.

Furthermore, as suggested in our comment letter, moving to an unembedded fee model could limit retail investors' access to financial advice, increase fees for smaller investors and ultimately deter investors from seeking advice.

With this in mind, we reiterate our view that it is important to understand the cumulative impact of the regulation of mutual fund fees as well as recent and proposed regulatory initiatives, including the amendments to National Instrument 31-103 (the “**31-103 Amendments**”). The 31-103 Amendments will enhance fee transparency by allowing investors to see the dollar amount paid to their dealer for their account and by further allowing investors the ability to compare the dollar amount paid to their dealer with the dollar amount associated with the performance of their account. Consequently, the 31-103 Amendments will bring forth increased fee disclosure and scrutiny. We encourage you to assess the impact of this initiative prior to introducing further regulations.

In addition, Canada is in an enviable position of being able to wait to understand how regulatory reforms in other jurisdictions, namely, the United Kingdom and Australia, will impact investors, and whether any unintended consequences may result from these reforms. We caution that all international trends should be monitored with a Canadian lens, as often the impetus and impact of regulatory reform is context-specific. For instance, the impetus for introducing greater market regulation in other jurisdictions has stemmed from evidence of market failure or systemic mis-selling; however, there is no evidence to suggest these concerns are present in Canada. In fact, the opposite is true: the Canadian marketplace is well-regulated and Canadian investors have benefited financially from the advice-driven model. Furthermore, the jurisdictions that banned embedded fees did not have the detailed disclosure requirements that the 31-103 Amendments will introduce. In light of this, the OSC is strongly encouraged to remain involved in international discussions and to monitor developments, both domestically and internationally, prior to pursuing any regulatory action.

### Effective Enforcement and Compliance

In the SOP, the OSC has stated that it will use outreach to registrants and reporting issuers to foster compliance with regulatory requirements and that it will continue to use a preventative approach to compliance oversight. To ensure effective enforcement and compliance, we believe the OSC's reach must extend beyond efforts that are “preventative” or “reactionary” to the implementation of a vigorous and proactive compliance program, similar to the approach taken by the Office of the Superintendent of Financial Institutions (OSFI). We believe that regulatory compliance can best be achieved if registrants have an expectation that the OSC will be visiting a registrant, on a regular basis, to conduct a comprehensive review of the registrant. We applaud the OSC for its efforts to take a more proactive approach in respect of recent regulatory initiatives, including its analysis of international trends, and we hope to see this approach used to foster better regulatory compliance.

### Systemic Risk to Financial Markets

We support the OSC's proposal to develop rules for an OTC derivatives regulatory framework and stress the importance of keeping up with the regulatory reforms that are happening in the U.S. and elsewhere.

### Reliance on Data and Analysis

We were pleased to see that the OSC is committed to demonstrating its effective use of research, data and analysis. In consideration of the OSC's acknowledgment in the SOP that compliance costs have been identified as an issue for market participants, we would like to see the cost-benefit analyses and calculations that are used by the OSC as support for the conclusion to proceed with a particular rule proposal. Historically, the OSC has limited this discussion to the alternatives to the proposed rule that were considered, the reasons for not proposing to adopt these alternatives and an outline of the expected costs and benefits of the proposed rule.

A comprehensive cost-benefit analysis should outline the research, analysis and calculations used to determine if: (i) a regulatory proposal will produce a net positive benefit; and (ii) the range of consequences of a regulatory proposal, with the aim of properly allocating limited resources. Consequently, conducting a robust cost-benefit analysis prior to the implementation of OSC rule proposals will serve to promote regulatory decision making that is rational and thus more efficient. Providing this analysis in every notice of a rule will serve to enhance transparency in decision-making.

### Update CSA National Systems

We eagerly await the transition of the operation of the core CSA national system to a new service provider. We find certain aspects of the current system administratively burdensome (i.e., the inputting of fees). We look forward to the improved functionality and lower costs that are anticipated by the OSC to result from this transition.

### OSC Budget Summary

In recognition of the OSC's focus on transparency and accountability, we would have liked to see further detail in the OSC's budget summary: namely, an account of the fees earned from the mutual fund industry versus other issuers. However, we support the budget approach and believe the key areas identified for expenditure (i.e., derivatives, complex products and research) are appropriate for the current regulatory landscape.

### Deliver Strong Investor Protection

We reiterate our view that mutual funds are disproportionately regulated and more transparent than most other managed investment products. To the extent that regulatory initiatives only impact mutual funds and drive investors to competing products that are less regulated, less transparent and more costly (e.g., segregated funds), the

OSC has not achieved its stated goal of investor protection. The OSC must consider this in relation to the regulation of the standard of conduct for advisors and dealers as well as mutual fund fees. Regulating mutual funds in a vacuum will only encourage advisors, and in turn, investors, to move to less-regulated competing products. This is of particular concern since, approximately 87% of financial advisors licensed with the MFDA and 63% of IIROC advisors are dually licensed as insurance salespeople.<sup>1</sup>

We thank you for the opportunity to comment on the SOP and would be pleased to discuss any of our comments further.

Yours sincerely,

***“W. Sian Burgess”***

W. Sian Burgess  
Senior Vice President, Fund Oversight

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<sup>1</sup> Source: Investor Economics, 2011 Household Balance Sheet Report.