



May 9, 2016

Delivered By Email: rday@osc.gov.on.ca

Mr. Robert Day
Senior Specialist, Business Planning
Ontario Securities Commission
20 Queen Street West
Suite 2200, Box 55
Toronto, Ontario M5H 3S8

Dear Mr. Day:

RE: Ontario Securities Commission (“OSC”) Notice 11-774 – 2016-2017 Statement of Priorities

We are writing to provide comments on behalf of the Members of The Investment Funds Institute of Canada (“IFIC” or “we”) with respect to the draft of the OSC’s Statement of Priorities (the “Statement”) for the financial year ending March 31, 2017.

General Commentary

The Statement identifies several key trends and challenges that will influence the OSC’s policy agenda in the year ahead. These same issues – changing demographics, technological innovation, globalization and regulatory balance – are shaping Canada’s investment funds industry and driving a shared interest in promoting investor protection, fair and efficient capital markets, and ultimately the financial well-being of Ontarians.

The Statement notes that the OSC remains focused on evidence-driven policymaking; we strongly support this approach, and encourage the OSC to apply it not just to new initiatives but also to rationalizing those rules already on the books that are duplicative and overlapping. For example, during the creation and implementation of Fund Facts, it was acknowledged that, once that initiative was completed, the broad array of disclosure requirements applying to mutual funds should be rationalized at the earliest opportunity; we urge you to include it in the 2016 priorities along with exploring broader utilisation of technology advancements in creating greater efficiencies.

Despite tremendous advancements in the investment industry over the past 16 years, Canadian mutual funds have been operating under investment rules that are essentially unchanged since the enactment of National Instrument 81-102 (“NI 81-102”) in February, 2000. To allow mutual funds some room to innovate to keep pace with market evolution, we encourage the OSC to add the modernization of NI 81-102 as a priority item to the Statement.

We provide specific comments on the OSC’s regulatory goals below.

Goal 1 – Deliver Strong Investor Protection

The Statement commits the OSC to implementing regulatory reforms that improve the advisor/client relationship, including consulting on regulatory provisions to create a best interest standard.

The CSA has now issued a further consultative document and we will be commenting substantively on the proposals by the due date. By presenting targeted reforms to the existing regulatory framework, the CSA has acknowledged that the Canadian regulatory framework is very robust, and that any changes that may be needed to keep the best interests of the investor front and centre can, and should, be done through refinements of the current rules balancing the need for reforms with their impact on the advice channel and, in turn, investors, rather than through the introduction of new, undefined and difficult to implement concepts. Moreover, the SROs are ideally placed to ensure compliance with, and enforcement of, any targeted reforms. By using the existing regulatory toolbox to bring about improvements in the advisor/client relationship, the OSC will fulfil both its investor protection mandate and the critical need "for an appropriate and cost-effective regulatory framework" (Statement of Priorities, Page 4), while maintaining fair and efficient capital markets.

The Statement also commits to communicating a policy direction on embedded commissions and other types of compensation arrangements. As the OSC formulates its policy direction, evidence from other jurisdictions that have banned embedded commissions warrants close attention. The recent Financial Advice Market Review in the United Kingdom, for instance, found that following the Retail Distribution Review, which included a ban on commissions, "advice is expensive and is not always cost-effective for consumers, particularly those seeking help in relation to smaller amounts of money or with simpler needs. These changes have highlighted concerns that there is an 'advice gap'." (FAMR, Page 5). Given that "a well-functioning investor/advisor relationship remains critical to the economic well-being of Ontarians and ultimately to achieving healthy capital markets" (Statement of Priorities, Page 4), the impact of any policy direction on modest investors and their access to financial advice must be thoroughly taken into account.

We strongly support the OSC's renewed Investor Office and, in particular, its focus on senior and vulnerable investors. Protecting and serving these investors is a top priority for our members. We encourage further collaboration in this area.

Goal 2 – Deliver Responsive Regulation

In order to deliver responsive regulation, the Statement commits to monitoring and assessing the impact of recent regulatory reforms in Ontario. Major reforms, including CRM2 and POS, were introduced specifically to address perceived shortcomings in the advisor/client relationship, particularly around information asymmetry, fee transparency and performance reporting. These same concerns now are being used to explore the pursuit of a regulatory best interest duty and the banning of embedded commissions before the full implementation of CRM2 and POS is complete and their impact measured. Building a responsive and effective regulatory framework should entail allowing significant initiatives to be fully implemented and assessed to determine whether they met their objective and to reveal any gaps, rather than pre-emptively layering on new rules which may prove not to be necessary.

To address a growing demographic concern for the industry, we highly recommend the OSC include, as an additional priority, Working with Stakeholders on Outreach to and Education of Senior and Vulnerable Investors.

The projected increase in the number of older investors is an important aspect of Canada's changing demographics that is commanding the attention of the industry, regulators and other stakeholders. The Statement identifies outreach to and education of senior and vulnerable investors as a priority, which we fully support; however, we suggest that there is an additional priority related to these groups that also belongs under Goal 1 -- Deliver strong investor protection or Goal 2--Deliver responsive regulation. Investor protection and responsive regulation should include working with industry and other stakeholders to anticipate future needs and to prepare for them. IFIC has welcomed the participation of the OSC on its multi-stakeholder Vulnerable Investors Task Force where industry, regulators and investor advocates are working to identify the smart practices, guidance, and regulatory tools needed to ensure that advisors and dealers can effectively support investors who experience cognitive decline or financial abuse, with a special focus on aspects particularly relevant to the older investor. We propose the addition of the following priority and action steps to the Statement:

Priority Issue: Support the creation of a multi-stakeholder framework that supports the protection of investors experiencing cognitive decline or third-party financial abuse (at-risk investors), with special focus on the older investor.

Action Plan/Next Steps:

- a. Work with the industry and other stakeholders to identify regulatory barriers or gaps that prevent or discourage dealers and advisors from taking the steps necessary to respond to situations involving at-risk investors.
- b. Work with the SROs to create a regulatory "safe harbour" to guide firms in their handling of the accounts of at-risk investors.
- c. Work with industry associations to create appropriate guidance documents.

Goal 3 – Deliver Effective Compliance, Supervision and Enforcement

As the Statement notes, effective compliance, supervision and enforcement are essential to protect investors and foster trust and confidence in our capital markets. We are encouraged to see the OSC commit to working closely with the SROs to coordinate compliance efforts on issues in common. As frontline regulators for product distribution, the SROs have a robust set of regulatory remedies and tools available to them and are well-placed to identify compliance concerns and potential areas of improvement in the advisor/client relationship. Empowering the SROs and coordinating their compliance, supervision and enforcement activities with the OSC will help to secure strong investor protection and effective regulation.

In addition to facilitating cross-border enforcement activities, the OSC's expanded enforcement efforts should focus on facilitating inter-provincial enforcement activities. Today, if an advisor is banned from the industry in any provincial or territorial jurisdiction, that individual can continue to operate as an advisor in most other jurisdictions. In fact, in many cases such advisors will avoid detection by not applying for licenses in other jurisdictions, but will refer their clients to willing portfolio managers and collect ongoing referral fees. These outcomes are inconsistent with the principles of investor protection.

Accordingly, we would support an arrangement among the SROs and the AMF, approved by the securities commissions in each province, that would result in the recognition and enforcement across all jurisdictions of the expulsion of an advisor from the industry in any one jurisdiction or province, and a prohibition on earning referral fees while unlicensed.

Goal 4 – Promote Financial Stability through Effective Oversight

The Statement correctly observes that cyber-attacks are a major and growing risk for market participants and regulators. We welcome the proposed initiatives on this front, particularly increased collaboration and communication with market participants. Cyber security and cyber resilience has often been referred to as a neighbourhood issue. Regulators should refrain from enacting prescriptive rules in this area, but rather should collaborate with industry to ensure broad awareness and to develop tools and best practices to allow all participants to be prepared. The investment funds industry has made this issue a priority and IFIC and Fundserv will jointly host a cybersecurity roundtable to promote the exchange of information and best practices.

We note the Statement is silent on cybersecurity risks to regulators themselves. Regulators are collecting ever-increasing amounts of data from market participants, making them a prime target for cyber-attacks. To provide some measure of assurance to the U.S securities industry, the Securities and Exchange Commission ("SEC") recently agreed to conduct expert third-party testing and verification of its capabilities to ensure adherence with current service industry information standards and security protocols. The review also assessed potential risks arising from the SEC's sharing of data with other regulatory agencies. We encourage the OSC to emulate this practice.

The industry requires and should be given assurances around data security, transfer/delivery, protection of private client information and proprietary firm data, use of data, and destruction or return of data at the completion of the regulator's use with appropriate certifications. Since we anticipate the frequency and number of data requests from regulators will only increase, the CSA, the SROs and the industry should together develop an efficient, standardized data sharing and security protocol to facilitate member firm participation and to ensure continued protection of data.

Goal 5 – Be an Innovative, Accountable and Efficient Organization

As the OSC moves to improve its use of technology and data analysis capabilities, the cybersecurity and privacy issues noted above will become increasingly important. While we support the OSC's use of data and economic analysis to inform its policy development process, the sensitive data it collects from market participants must not only be carefully protected but it must be used for the purpose for which it was collected, and the purpose must be clearly identified before the data is collected.

Under the banner of accountability, we strongly urge the OSC to consider the needs of the industry by rationalizing overlapping regulations so the industry can become more efficient. As an industry-funded organization we would also appreciate greater transparency regarding fees paid by the industry. When the industry funding model was adopted several decades ago, the fees collected were to be proportional to the services provided to the particular sector. It has become impossible to know whether the fees paid by the fund industry, for example, are being used to pay for the fund-related activities at the OSC or whether they are subsidizing other activities.

* * * * *

We thank you for considering our comments on the draft Statement and would be pleased to discuss any of our remarks, or answer any questions you may have at your convenience. Please contact me at rhensel@ific.ca or at 416-309-2314.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Ralf Hensel
General Counsel, Corporate Secretary & Vice President, Policy