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The CSA Secretariat C.P.400,
Place Victoria 800, rue du Square-Victoria, suite 2002
Montréal, QC, H4Z 1J2
Tel.: 514-864-9510 Fax: 514-864-9512
E-mail: csa-acvm-secretariat@acvm-csa.ca

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Re: CSA Staff Notice and Request for Comment 11-343 Proposal to Establish a CSA Investor Advisory Panel

Ladies and Gentlemen,

I appreciate this opportunity to comment on the Proposal to Establish a CSA Investor Advisory Panel. As a longstanding investor advocate, I was pleased that the CSA is acknowledging and beginning to address the need to incorporate a more meaningful investor perspective in its rule making and policy

development. At the risk of appearing a bit churlish, I do wish that the CSA proposal had been a bit more ambitious and creative. As proposed, the CSA IAP (the “Proposed IAP”) would provide an additional forum for the investor voice, but it does not remedy the problem that this investor voice is only heard towards the end of the decision-making process, thereby limiting its impact. I hope that this consultation process will provide the CSA with an opportunity to reconsider its proposal and recraft it in a way that will allow the Proposed IAP to inform the regulatory decision-making process at an early enough stage to provide value add for the CSA and retail investors alike.

It is clear that the CSA has borrowed heavily from the OSC IAP model in crafting the structure and terms of reference of the Proposed IAP. This relationship is underscored by the stipulation in the proposal that at least one member of the OSC IAP will, at all times, serve on the Proposed IAP. As a former member of the OSC IAP, I am flattered that the Proposed IAP is modeled so closely after the OSC version. However, given the extent of the overlap in both mandate and membership profile, I am unclear what additional value either the CSA or retail investors can expect to gain from the Proposed Panel. The two panels appear so similar that I find myself wondering if it would have been more efficient to simply add additional members from other CSA jurisdictions to the OSC IAP, increase its budget and rechristen it the CSA IAP. To be clear, I am not advocating this approach, but it seems reasonable if the CSA is content creating an IAP that will essentially duplicate the efforts of the OSC IAP.

Personally, I would like to see the CSA set its sights higher. I encourage the CSA not to be content copying the OSC IAP and instead to create a forum or a process that builds on and complements what that group is already doing. To create this type of forum or process, it is helpful to understand and evaluate what the OSC’s IAP was intended to do, what it has actually done and how effective it has been. Launched in 2010 the OSC’s IAP was mandated to solicit and represent the views of investors on the OSC’s policies and rule-making initiatives. It was designed to advise and comment on proposed rules and investor protection initiatives and to provide input on the effectiveness of investor protection measures; consult with investors and organizations that represent investors; and forward policy issues to the Commission that emerge as a result of its consultation activities. The IAP, consisting of a maximum of nine members, was required to meet at least quarterly (members receive a per diem for attending and preparing for meetings) and was intended to function independently, save for administrative support, from the OSC.

Acknowledging a degree of bias, I think that the OSC IAP has done well fulfilling its job description. It has been a prolific submitter of comment letters on a wide range of investor-related matters. While the majority of these comment letters have been addressed to the OSC, they typically deal with proposed National Instruments or national issues and are readily accessible to regulators in all CSA jurisdictions. In addition, the OSC IAP, is required to comment on the OSC’s Annual Statement of Priorities. While each year there are priorities that are unique to the OSC, many of the priorities are also CSA priorities and are consequently addressed in OSC IAP comment letter. Lastly, the OSC IAP has, subject to OSC approval, the ability to commission or undertake research on retail investor relevant topics. In recent years, the key research initiatives undertaken by the OSC IAP have included: [Current Practices for Risk Profiling in Canada](#) (2015); [A MEASURE OF ADVICE: How much of it do investors get?](#) (2019); and [IAP Horizon Project - Initial Report](#) (2021). None of these research projects was OSC or Ontario centric and their findings and observations were available to all CSA regulatory agencies.

In light of the foregoing, it would appear that in most instances the contribution of the Proposed IAP, as currently structured, will be duplicative rather than additive. This would be a suboptimal outcome for both investors and the CSA. I therefore encourage the CSA to rethink its proposal by identifying the limitations of the OSC IAP and proposing a forum or process that addresses some of these shortcomings in a way that will complement the excellent work already being done by the OSC IAP. Identification of these limitations requires a clear-eyed evaluation of the effectiveness of the OSC IAP. This evaluation is difficult to calculate. It is impossible to compare the current state of investor protection against the counterfactual of a regulatory environment without a functional OSC IAP since 2010. At the same time, the presence of the OSC IAP has not facilitated quick or easy solutions for even some of the most pressing investor protection issues in Canada or Ontario. In spite of multiple well-reasoned comment letters penned by the OSC IAP, trailing commissions have not been banned, a best interest standard has not been adopted, OBSI has not been granted binding authority, the titling of advisers has not been reformed, the complaint handling process has not been simplified and an investor restitution fund has not been established. Similarly, there are few examples of the OSC IAP comment letter prompting changes to the OSC's Annual Statement of Priorities. Also, the OSC IAP's research efforts have not, to date, generated substantive policy responses. No regulatory action has yet been taken with respect to the risk measurement deficiencies identified by the research undertaken in 2015; the 2020 research that challenged the industry position that eliminating trailing commissions would create an advice gap have gone unheeded; and the recent Horizon Report that highlighted the evolving regulatory opportunities and challenges associated with regtech, fintech, digitization and crypto did not motivate the Ontario provincial government to reimagine how best to regulate securities in the 21st century.

These outcomes cannot and should not be attributed to the membership (obviously) of the OSC IAP or the quality of its work. Instead, it reflects the fact that, structurally, OSC IAP input is only available at the final stages of the regulatory/policy making process. By the time that the OSC IAP has the opportunity to comment on a rule or input on a policy initiative, other key stakeholders have already participated in the discourse and influenced the outcome. I often compare regulatory policy making to working with cement – to have a meaningful impact you need to be there when the cement is being mixed and not when it is already being poured and starting to set. OSC IAP input is typically only solicited or considered after other stakeholders have already participated in the mix and the mold for a new policy or rule has already been formed. It is unfair to criticize the OSC IAP for not advancing its investor agenda more effectively when it is perennially forced to play catch up in the decision-making process.

I encourage the CSA to reconceive the Proposed IAP to better ensure that the investor perspective is incorporated as early as possible in the rule making and policy development process. Think in terms of a Proposed IAP that is not focused on commenting on the penultimate versions of 'proposed' regulatory initiatives and instead is designed to collaborate with CSA regulators at the formative and development stages of new rules and policies. This would entail two primary functions for the Proposed IAP – participating in the development and oversight of the CSA Business Plan and providing early and, when appropriate, ongoing input to CSA working groups tasked with developing a new policy or rule. The Proposed IAP could operate with up to twelve members and would not include any members then serving on the IAP of any provincial jurisdiction. The Proposed Panel would meet (virtually) at least quarterly. The Proposed Panel would be required to prepare an annual public report that both comments on the CSA Business Plan and reviews CSA performance on investor-related issues during the preceding 12 months. Members of the Proposed Panel should be fairly and appropriately compensated

to ensure that the CSA is able to attract a qualified, talented and diversified a pool of candidates. Members would serve for a 3-year term, subject to a maximum of two consecutive terms.

I hope that you find this feedback helpful.

Do not hesitate to contact me if you require any clarifications or any additional information.

Sincerely,

Harvey S. Naglie